



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Progress Power Gas Fired Power Station

**Examining Authority's Report of Findings, Conclusions
and
Recommendation to the**

Secretary of State for Energy and Climate Change

Jonathan Green

Examining Authority

24 April 2015

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Examining Authority's findings, conclusions and recommendation in respect of the Progress Power Gas Fired Power Station

File Ref EN 010060

The application, dated 31 March 2014, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 31 March 2014. The applicant is Progress Power Limited.

The proposed development comprises a simple cycle gas fired power plant with capacity of between 50 and 299 MWe, integral gas and electrical cable connections and associated development comprising an electrical connection compound, access road and A140 junction.

The application was accepted for examination on 25 April 2014 and the Preliminary Meeting was held on 24 July 2014.

The Examination of the application was completed on 24 January 2015.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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1 INTRODUCTION

- 1.1 This application for a development consent order (DCO) for the Progress Power Gas Fired Power Station was submitted by Progress Power Limited (the applicant) on 31 March 2014. The application was formally accepted for examination on 25 April 2014 under the provisions of section 55 of the Planning Act 2008 (as amended) (PA 2008).
- 1.2 The application is for the construction operation and maintenance of a simple cycle gas fired 'peaking' power generating plant with a capacity of between 50 - 299 MWe (the generation plant) on land at and surrounding the former Eye Airfield in Eye, Mid Suffolk. The location is shown in Figure 1.1 to the Environmental Statement (ES) (APP-035). As such it is a Nationally Significant Infrastructure Project (NSIP) as defined in section 14(1)a and section 15 of PA 2008. A pipeline connection to bring gas to the generation plant and an underground electrical cable for the export of electricity are specified as integral to the NSIP. An Electrical Connection Compound (ECC) comprising a new substation and a sealing end compound are proposed as associated development. An access road to the ECC with a new road junction off the A140 is also proposed as associated development. The draft DCO includes provisions for compulsory acquisition.
- 1.3 The application is Environmental Impact Assessment (EIA) development as defined by Regulation 2(1) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended). It was accompanied by an ES which in my view complies with these Regulations. The ES (APP-024 to APP-040) was compiled following consultation on an earlier Scoping Report (PD-001) and takes into account the views of the Secretary of State set out in a Scoping Opinion published in June 2013 (PD-002).¹
- 1.4 Following acceptance of the application I, an Examining Inspector with the Planning Inspectorate, was appointed as Examining Authority (ExA) by the Secretary of State on 25 June 2014 to carry out the Examination of the application.
- 1.5 The application has been examined under the provisions of PA 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) (EPR). The accepted application was advertised by the applicant and 108 relevant representations were received from interested parties (IP). In addition I accepted into the Examination additional application documentation, two late representations and one request to

¹ References such as APP-024 and PD-001 are to documents submitted by the applicant, statutory bodies and interested parties, records of hearings, procedural decisions and other project documents. These are listed in full in the Examination Library set out at Appendix 1.

become an interested party under the provisions of s102A of PA 2008, all submitted prior to the Preliminary Meeting. (DEC-005, DEC-006)

- 1.6 On 1 July 2014 I gave notice of the Preliminary Meeting to be held in Diss, Norfolk on 24 July 2014 and issued an initial assessment of principal issues that I expected to consider during the Examination with a draft timetable for the Examination (DEC- 004). On 4 August 2014 I issued the timetable for the Examination and my first set of written questions and requests for information (DEC-006,-007). A second round of questions was issued later in the Examination (DEC-011).
- 1.7 A joint Local Impact Report (LIR) was submitted by Mid Suffolk District Council (MSDC) and Suffolk County Council (SCC) (REP-051)
- 1.8 An Open Floor Hearing (OFH) was requested and was held on 15 October 2014. On 16 October 2014 I held an Issue Specific Hearing (ISH) on the local impact of the project and the draft DCO and a further ISH on local impact, the draft DCO and any remaining LIR issues was held on 10 and 11 December 2014. A compulsory acquisition hearing (CAH) was held on 9 December 2014.
- 1.9 I carried out an accompanied site visit on 14 October 2014 during which I visited the proposed site for the generation plant, a number of locations in the vicinity from which the NSIP and the associated development would be visible and local roads that would be used by construction traffic (DEC-009). I also made unaccompanied site visits to locations from which the application site is visible. A list of events in the Examination is set out in Appendix 2.
- 1.10 In addition to the DCO the proposed development would require an environmental permit from the Environment Agency (EA) controlling emissions from the generation plant, a permit to emit CO₂, a generation licence, a number of permits from MSDC and SCC and commercial agreements with National Grid in respect of supply of gas and export of electricity.
- 1.11 Separate consent not covered by this application would be required for a replacement overhead line (OHL) tower to the north of the ECC replacing an existing tower, temporary diversion of the existing OHL and down leads to connect the ECC to the OHL (the National Grid Works). These works have been taken into account in the ES in considering the cumulative impact of the proposed development.
- 1.12 To carry out these works National Grid would require land rights for temporary access for construction and for permanent access

for maintenance. National Grid would also require consents for the National Grid Works, and those consents would depend on the final detailed design of the National Grid Works and ECC. Whether permitted development rights would be available to National Grid Electricity Transmission (NGET) would depend on detailed design. If permitted development rights and voluntary land rights are not obtainable NGET has agreed to seek consents and land rights. Its 'best case' estimate is that it would require a period of 12 – 24 months to do so but NGET cannot guarantee that that all necessary section 37 consents and land rights as may be required in respect of the National Grid Works can definitely be obtained to enable the works to be connected by the agreed connection date.

- 1.13 The proposed development could have a significant effect on a number of European sites as defined in Regulation 3 of the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations 2010) and therefore an appropriate assessment of the implications for any European sites may need to be carried out by the Secretary of State.² This is considered further in section 5 of this report and, to assist the Secretary of State, a Report on the Implications for European Sites (RIES) has been prepared (REP-095).
- 1.14 In accordance with sections 83(1)(b)(i) and (ii) of PA 2008, this report sets out my findings and conclusions in respect of the application and my recommendation to the Secretary of State as to the decision to be made on the application.

² European sites include Special Areas of Conservation (SACs), candidate SACs (cSACs) and Special Protection Areas (SPAs), which are protected under the Habitats Regulations. As a matter of policy, Government also applies the procedures of the Habitats Regulations to potential SPAs (pSPAs), Ramsar sites, and (in England) listed or proposed Ramsar sites and possible Special Areas of Conservation, and sites identified, or required, as compensatory measures for adverse effects on any of the above sites.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

The applicant and application site

- 2.1 The applicant company has been set up by Watt Power Limited (WPL) as a special purpose vehicle to develop this project. WPL is a developer of flexible gas fired generation assets incorporated in Scotland and is a subsidiary of Noble Clean Fuels Limited (NCFL) incorporated in England. NCFL is itself a wholly owned subsidiary of Noble Group Limited incorporated in Bermuda. WPL is resourced through Stag Energy established in 2002 which has delivered over 10,000 MW of power generation and related infrastructure projects worldwide of which 2,500 MW is in the United Kingdom.
- 2.2 The proposed generation plant and the gas connection would be sited on land located on the former Eye Airfield which is now home to several industrial parks, the 12.7 MW Eye Chicken Litter Power Plant and a National Grid Gas Compressor station. There are also four 130 m high wind turbines. National Grid electricity transmission lines are carried on pylons approximately 1km to the west of the former Airfield, running in a north-south direction through the parishes of Yaxley and Thrandeston.
- 2.3 The proposed electrical cable would have a total length of approximately 1.6 km. It would run underground to the west of the generation plant passing under the north-south A140 Ipswich to Norwich road and beneath agricultural land to the ECC, also in agricultural land, where connection would be made through a sub-station and sealing end compound to the existing 400 kV overhead transmission line. A new access road to the ECC to the west of the A140 would follow the line of the cable. A new junction would provide access from the A140.
- 2.4 The generation plant would be located about 1 km north of the town of Eye. The ECC would be to the north and north-west of the village of Yaxley and less than 500 m from the nearest residential properties. The proposed location for the project site is within the administrative boundary of MSDC which itself lies within the county of Suffolk. The location is shown in Figure 1.1 to the ES (APP-035).
- 2.5 As described in the LIR (REP-051), the development is located within the parishes of Eye and Yaxley and abutting the parish of Thrandeston. The former is an historic market town with a population of approximately 2,200, while Yaxley is a small rural settlement with a population of around 600 and Thrandeston, approximately 150. The surrounding area is host to a number of other small villages, such as Mellis, Brome and Oakley, Thornham Parva, Thornham Magna and Thorndon – all with populations in this lower range.

- 2.6 This area of North Suffolk is gently rolling clayland landscape, dissected by small river valleys with a field pattern of ancient (pre- 18th Century), random and some co-axial enclosures. Small patches of straight-edged fields are associated with the later enclosure of woods and greens. Hedges of hawthorn and suckering elm with oak, ash and field maple as hedgerow trees are locally characteristic.
- 2.7 Agricultural intensification in the 20th century has thinned out the historic field patterns to some extent. However over large parts of this area enough remains intact to give a distinctive character to the landscape.
- 2.8 There is a dispersed settlement pattern of loosely clustered villages, hamlets and isolated farmsteads of medieval origin, with villages often associated with medieval greens. There are often large flat areas between river valleys; these were, or are, the locations of large greens which were later deemed to make suitable locations for airfields. This is the case with Brome Common, which was absorbed into the northern portion of RAF Eye (1943-62) although it had been enclosed prior to this.
- 2.9 Farmstead buildings are predominantly timber-framed, the houses colour-washed and the barns blackened with tar. Roofs are frequently tiled, though thatched houses can be locally significant. There remains a strong vernacular character to the settlements.
- 2.10 At Eye, recent excavations on the north side of a tributary of the River Dove have revealed an extensive Anglo-Saxon settlement overlying evidence of earlier Bronze Age and Iron Age activity. The core of the market town of Eye lies on the other side of the tributary and, as its name implies, occupies an elevated 'island' surrounded by low-lying land, including a probable former mere on its south-west side. Central to the town is the important Norman motte-and-bailey castle constructed before 1086. The town grew up around the castle and owes its distinctive oval street layout to the shape of the castle's baileys.
- 2.11 This rich history is reflected in the large number of heritage assets in Eye and in the surrounding area (as depicted in Figures 13.1 -13.4 of the ES (APP-038)). Similarly, multiple archaeological sites are recorded within or in close proximity to the development area, and there is high potential for others.

The proposed NSIP

Generation plant

- 2.12 The proposed generation plant as set out in the application and described in section 4 of the ES would consist of up to five simple cycle gas turbines (SCGT) with combined output of up to

299MW. The plant is intended to operate as peaking plant generating at times of peak demand or when other technologies such as wind and solar plant cannot generate electricity due to weather conditions. Such plant is only expected to operate for short periods of time and it is intended that the generation plant would operate for a maximum of 1,500 hours per year.

- 2.13 The gas turbine generators would either be aero-derivative designs which are particularly suited to fast start-up or a larger industrial design suited to longer running periods. If the aero-derivative design was chosen then three, four or five units would be installed to achieve the 299 MW limit. If industrial units were chosen then it is likely that only one or two units would be used.
- 2.14 Hot exhaust gases from the combustion process would be discharged to the atmosphere through stacks. No steam cooling is required. Typically each turbine would have its own stack but it is possible that two units could share a stack. Each stack would have a minimum height of 20 m and minimum diameter of 4 m and a maximum height of 30 m and maximum width of 10 m.
- 2.15 In addition to the gas turbine generators, the generation plant would also include process and fire water tanks, a control building, workshop and stores building, a gatehouse, a switchyard and banking compound to connect to transformers, a gas receiving station to meter and process gas from the National Transmission System (NTS) and a black start generator to enable the gas generators to be started in the case of a grid power failure.
- 2.16 The total area allocated for the generation plant, including ancillary equipment and area for construction and maintenance is 10 ha. The indicative layout plan for the generation plant submitted with the application can be seen at Figure 1 in the Indicative Site Layout Plans (APP-010). The generation plant is comprised of Work No 1A, 1B, 1C, 1D and 2 in the draft DCO.

Gas Connection

- 2.17 The gas connection would comprise an above ground installation (AGI), Work No 3A and 3B in the draft DCO and an underground pipeline, Work No 4. The AGI would include:
 - (a) Minimum Offtake Connection (MOC), approximately 30 m x 30 m, to be owned by National Grid connecting to the high pressure NTS with a remotely operable valve, control and instrumentation kiosk and electrical supply kiosk; and
 - (b) Pipeline Inspection Gauge (PIG) Trap Facility, approximately 30 m x 23 m, to be owned by the applicant containing PIG launching facility, emergency control valve, isolation valve,

control and instrumentation kiosk and electrical supply kiosk.

- 2.18 The gas pipeline would run from the AGI following the southern and western boundaries of the Airfield before turning east and then north to reach the generation station site. The pipeline would be designed, constructed and tested to comply with the Institute of Gas Engineers' (IGE) recommendations for high pressure pipelines of this sort. The pipeline would be buried no less than 1.2 m in agricultural land, no less than 2 m under road crossings. The working width of the corridor required to lay this pipeline may be approximately 50 m. Aside from special crossings where trenchless techniques may be used to reduce impact on sensitive areas, the pipeline would be constructed using standard open-cut cross-country construction techniques.
- 2.19 The indicative layout for the AGI submitted with the application can be seen at Figure 2 in the Indicative Site Layout Plans. The route of the gas pipeline is shown in Insert 4.2 in the ES (APP-024). Access to the AGI would be from an existing access point on Castleton Way.

Electrical Connection

- 2.20 The connection to conduct electricity from the generation plant to the National Grid transmission network would be a single 400kV cable, Work No 6 in the draft DCO. This would initially run south from the generation plant site, then turn west along the north of agricultural land towards the A140. It would pass under the A140, using horizontal directional drilling (HDD), to emerge in agricultural land to the west of the A140. It would continue west to the proposed site for the ECC crossing Leys Lane, a public right of way (PRoW). In open land the cable would be buried using the open-cut method to a typical depth of 1 m. The proposed line for the electrical connection is shown in Insert 4.3 of the ES.

The associated development

Electrical Connection Compound

- 2.21 The proposed ECC, Work No 5 in the draft DCO, would contain the equipment necessary to allow the electricity from the generation plant to be exported to the National Grid transmission network. It would be composed of a substation managing the flows of energy and a sealing end compound making the final connection with the transmission line. The proposed location for the ECC is shown at the western end of the site in Insert 4.3 of the ES. The sealing end compound would be on the west side of the existing overhead line and would be approximately 45 m x 22 m in dimensions.

- 2.22 The substation, to be located on the east side of the overhead line, could be either air insulated (AIS) with the equipment open to the air or gas insulated (GIS) with equipment housed in a substation hall and associated annexe with electrical insulation provided by sulphur hexafluoride gas (SF₆). The ground plan for the AIS variant would be approximately 150 m x 150 m. The ground plan for the GIS option would be approximately 100 m x 80 m. AIS technology is the applicant's preferred option but both options were included in the application. Further details were provided during the examination to allow both options to be evaluated on equal terms. The indicative layout for the AIS variant submitted with the application can be seen in Figure 3 of the Indicative Site layout Plans (APP-010). An equivalent indicative layout for the GIS option was provided by the applicant as Figure 3a in its response to my first questions (REP-042).³
- 2.23 In its response to my questions the applicant indicated that the GIS option would have an additional capital cost in the region of £4m (REP-042, -069). This cost had been provided by NGET as an indicative value appropriate to the site. The capital costs could change as detailed designs were developed. The applicant initially argued that an increase in capital costs of the development of £4m could require an increase in a capacity contract price of more than £1/kW to maintain an acceptable rate of return. It was suggested by the applicant that given the way in which the auction price was set in the capacity market an increase in the auction clearing price of £1/kW would equate to an increase in cost to the UK consumer of £50.8m. In later discussion it was established that NGET would be responsible for the design and construction of the ECC (REP-072) and that any incremental cost of the GIS option would be recovered through network charges which would ultimately be borne by electricity customers (REP-079). My understanding is that pricing in the capacity market would not be affected if costs are recovered through NGET's charges.

Access road and A140 junction

- 2.24 Construction and maintenance access to the west of the A140 for the cable and the ECC would be provided via a new single lane access road across agricultural land with passing places along the route of the electrical connection, Work No 7 in the draft DCO. A new T junction with the A140 would be constructed with 'Give Way' signs onto the A140. The A140 would be widened to provide for a right hand turn pocket lane and an area of safety hatching ('ghost Island'). The extent of the works required for the new junction and the access track is shown on Insert 4.4 in the ES.

³ Note that the submitted version of this document is incorrectly titled Response to Written Representations.

Dimensions of the project

2.25 The maximum (and, where appropriate, minimum) dimensions of the items to be constructed in the project site as set out in the ES are shown in Table 2.1. This provides the so called Rochdale envelope for the development. Changes were made to some of these dimensions during the course of the Examination.

Table 2.1: Original Proposed Dimensions for the Development

| Building or Structure | Maximum height (metres above existing site level of approximately 48.5 metres AOD) | Minimum height (metres above existing site level of approximately 48.5 AOD) | Maximum length (metres) | Minimum length (metres) | Maximum width (metres) | Minimum width (metres) |
|--|--|---|-------------------------|-------------------------|------------------------|------------------------|
| Each gas turbine generator (where one or two gas turbine generators are constructed) (Part of numbered work 1A) | 19.0 | | 30.0 | | 30.0 | |
| Each gas turbine generator (where three, four or five gas turbine generators are constructed) (part of numbered work 1A) | 10.0 | | 36.0 | | 23.0 | |
| Each exhaust gas emission flue stack (part of numbered work 1A) | 30.0 | 25.0 | | | | |
| Control room/office/workshop (part of numbered work 1B) | 6.0 | | 29.0 | | 23.0 | |

| Building or Structure | Maximum height (metres above existing site level of approximately 48.5 metres AOD) | Minimum height (metres above existing site level of approximately 48.5 AOD) | Maximum length (metres) | Minimum length (metres) | Maximum width (metres) | Minimum width (metres) |
|---|--|---|-------------------------|-------------------------|------------------------|------------------------|
| Black start diesel generator (part of numbered work 1b) | 5.0 | | 13.0 | | 5.0 | |
| Raw/fire water tank (part of numbered work 1B) | 18.0 | | 15.0 | | 15.0 | |
| Demineralised water tank (part of numbered 1B) | 16.0 | | 23.0 | | 23.0 | |
| Gas receiving station (part of numbered work 1B) | 3.0 | | 50.0 | | 46.0 | |
| Switchyard / banking compound (numbered work 1C) | 11.3 | | 60.0 | | 60.0 | |
| Switchgear Building (part of numbered work 1C) | 11.3 | | 21.0 | | 15.0 | |
| Gatehouse (part of numbered work 1D) | 4.5 | | 9.0 | | 8.0 | |
| Above ground installation (numbered work 3A) | 3.0 | | 72.0 | | 52.0 | |
| Pipeline inspection gauge facility | 2.0 | | 36.0 | | 27.0 | |

| Building or Structure | Maximum height (metres above existing site level of approximately 48.5 metres AOD) | Minimum height (metres above existing site level of approximately 48.5 AOD) | Maximum length (metres) | Minimum length (metres) | Maximum width (metres) | Minimum width (metres) |
|--|--|---|-------------------------|-------------------------|------------------------|------------------------|
| (part of numbered work 3A) | | | | | | |
| Minimum offtake connection (part of numbered work 3A) | 2.0 | | 36.0 | | 25.0 | |
| Sealing end compound (part of numbered work 5) | 12.5 | | 22 | | 45 | |
| Substation (AIS – maximum compound size) (part of numbered work 5) | 12.5 | | 150 | | 150 | |
| Substation (GIS – maximum compound size) (part of numbered work 5) | 12.5 | | 80 | | 100 | |
| Substation (GIS indoor switchgear hall) (part of numbered work 5) | 12.5 | | 21 | | 62 | |

2.26 The indicative site layout plans (APP-010), land plans (APP-012) and works plans (APP-013) provide supporting detail for the application.

Amendments to application during examination

2.27 A number of changes were made to the details of the proposed development during the Examination. These were:

- (a) Reduction in the diameter of the raw/fire water tank from 15 m to 11 m and reduction in its height from 18 m to 11 m (APP-076). This followed reassessment of the volume of water required for cleaning and emergency purposes.
- (b) Reduction in the diameter of the demineralised water tank from 23 m to 2 m and reduction in its height from 16 m to 2 m (APP-076). This followed a decision to adopt a dry process for control of Nitrous Oxides (NO_x) rather than the wet process originally proposed (REP-042).
- (c) Reduction in the maximum width for each exhaust stack where one or two gas turbine generators are constructed from 10 m to 8.4 m and where three, four or five gas turbine generators are constructed from 10 m to 6 m (APP-078). The 6 m width for the exhaust stacks is consistent with the photomontages and visual impact assessment in the ES submitted with the application (APP-046). The option with five exhaust stacks was considered to be the worst case scenario for visual impact.
- (d) Reduction in the order land boundary for the AIS variant by about 950 m² (a reduction of about 4% in the land area required). A small change was also made to the boundary for the GIS option. This followed a reassessment of the amount of land required for the development (AS-036).
- (e) Addition of mounding surrounding the proposed substation (AP-084). This was added to provide additional screening as part of the landscaping proposals.
- (f) Commitment, supported by a requirement in the DCO, that the new junction with the A140 should be temporary (for the duration of construction) rather than permanent as originally proposed and that the land should be reinstated (APP-078). This follows reassessment of the need for access after completion of construction work. Also a minor reduction in the land required for this junction to be subject to compulsory acquisition (AS-036).

2.28 During the course of the Examination documentation was provided for three alternative configurations for the development. These are referred to in the following discussion as:

- (a) The original application (as amended during the course of the Examination);
- (b) The refined application - AIS variant. This principally differs from the original application as amended with a reduction in the boundary for the ECC;
- (c) The GIS variant. This principally differs from the original application as amended in the smaller ECC area required for the GIS substation.

2.29 I reviewed these proposed changes to the scheme during the Examination and concluded that they were not 'material' in the sense that accepting them would be likely to result in prejudice

to any party. Given this, and having regard to the fact that information on the changes had been made available to interested parties, I concluded that the changes should be accepted for consideration in the examination as part of the proposed development (DEC-012).

Planning history

- 2.30 There have been no other NSIP applications in the immediate vicinity of the application site. MSDC and SCC have identified a number of energy related planning applications in recent years (REP-051). These include:
- (a) Planning permission granted in December 2000 on the land subject to the DCO for construction of a small-scale two storey biomass energy plant with an electrical output of 5.5 MW, and ancillary works.
 - (b) Planning permission granted in July 2010 for erection on the Airfield of two 130m wind turbines, electricity transformer and temporary works compound, construction of access tracks, hard standings and temporary access alterations. A further permission for the erection and operation of an additional two wind turbine generators (to a maximum tip height of 130m), construction of associated hard standings, temporary access tracks and substation compound was granted in February 2012.
 - (c) In the vicinity of the planned ECC an application for an 400/132 kV electricity substation with a new access road (including widening of existing lane) was rejected in 1991 on the grounds that it would *'detract significantly from the character and visual amenity of the countryside'*.

3 LEGAL AND POLICY CONTEXT

- 3.1 The application includes a Planning Statement which sets out the applicant's view of the policy context for the proposed development (APP-051). Additional information on local planning policies was provided by MSDC and SCC in their joint LIR (REP-051)

Planning Act 2008 as amended and National Policy Statements

- 3.2 The proposed development of a gas fired plant with a with capacity of between 50 and 299 MWe is an NSIP as defined in section 14(1)a and section 15 of PA 2008. National Policy Statements (NPS) in respect of this type of development have been designated and the Secretary of State must therefore, subject to certain exceptions, decide the application in accordance with the relevant NPS as specified in section 104(3) of PA 2008. Under section 104(2) the Secretary of State must have regard to any relevant NPS, any LIR and any prescribed matters including the Infrastructure Planning (Decisions) Regulations 2010(the Decisions regulations).
- 3.3 The Overarching NPS for Energy (EN-1) published in July 2011 sets out the Government's policy for delivery of major energy infrastructure.⁴ It was accompanied by five technology specific NPS for the energy sector. The NPS for Fossil Fuel Electricity Generating Infrastructure (EN-2), Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) and Electricity Networks Infrastructure (EN-5) are relevant to this application.⁵
- 3.4 EN-1 states that the UK *'needs all the types of energy infrastructure covered by the NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions.'* That includes fossil fuel plants such as the proposed development. It also states that applications for development consent should be assessed *'on the basis that the Government has demonstrated that there is a need for those types of infrastructure.'*

⁴ Overarching National Policy Statement for Energy (EN-1). Department for Energy and Climate Change July 2011.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37046/1938-overarching-nps-for-energy-en1.pdf

⁵ National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2).). Department for Energy and Climate Change July 2011.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37047/1939-nps-for-fossil-fuel-en2.pdf

National Policy Statement for Gas Supply and Gas and Oil Pipelines (EN-4). Department for Energy and Climate Change July 2011.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47857/1941-nps-gas-supply-oil-en4.pdf

National Policy Statement for Electricity Networks Infrastructure. Department for Energy and Climate Change July 2011.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47858/1942-national-policy-statement-electricity-networks.pdf

- 3.5 Fossil fuel generation is recognised as playing a vital role in providing reliable energy supplies and providing flexibility in response to changes in supply and demand and diversity in the energy mix. The NPS recognises that fossil fuel plants produce CO₂ and sets a requirement that new plant over 300 MW have to be constructed Carbon Capture Ready (CCR) so that Carbon Capture and Storage (CCS) can be retrofitted to the plant at a later date if required. As the maximum capacity of the proposed plant is 299 MW there is no requirement to provide for carbon capture.
- 3.6 EN-2 recognises that fossil fuel generating stations are large and would have an impact on the surrounding landscape and visual amenity. It states that it is not possible to eliminate the visual impacts associated with a fossil fuel generating station. The purpose of mitigation measures is therefore to reduce the visual intrusion of the buildings in the landscape and minimise impact on visual amenity as far as reasonably practical. If the location is deemed appropriate and the plant has been designed sensitively to minimise harm to landscape and visual amenity then *'the visibility of a fossil fuel generating station should be given limited weight.'*
- 3.7 EN-1 and EN-2 both recognise the contribution that combined heat and power (CHP) can make to reducing emissions and full exploration of the potential for CHP is a requirement of applications for thermal generating stations.
- 3.8 The NPS identify the contribution that good design can make to producing sustainable infrastructure and to mitigating adverse impacts of projects.
- 3.9 EN-1 sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. Generic impacts of particular relevance to this application include impacts on air quality and emissions, biodiversity, historic environment, landscape and visual, traffic and transport. Environmental, social and economic benefits and adverse impacts at national, regional and local levels should be considered. Account should be taken of:
- (a) The potential benefits of the proposed development to meeting the need for energy infrastructure, job creation and any long term or wider benefits; and
 - (b) Potential adverse impacts, including any long-term and cumulative adverse impacts, as well as measures to avoid, reduce or compensate for any adverse impacts.
- 3.10 EN-1 recognises that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment. This includes damage to the setting and significance of historic

assets which has been a particular concern of IPs in this case. EN-1 provides guidance on the assessment of damage to different categories of asset. This is considered further in section 4 of this Report.

- 3.11 Additional specific considerations for fossil fuel generation, gas pipelines and electricity networks infrastructures are set out in EN-2, EN-4 and EN-5. Where relevant these are also considered in section 4 of this report.
- 3.12 EN-1 acknowledges that other matters such as local development plans may also need to be taken into account but states that in the case of any conflict between these other documents and the NPS, the NPS prevails for the purpose of decision taking. EN-1 states that the decision maker should start with a presumption in favour of granting consent to applications for energy NSIPs.

The Infrastructure Planning (Decisions) Regulations 2010

- 3.13 The Decisions Regulations contain provisions in respect of the treatment of listed buildings, conservation areas and scheduled monuments and of biological diversity.
- 3.14 Regulation 3 of the Decisions Regulations provides that:
 - "(1) When deciding an application which affects a listed building or its setting, the decision-maker must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest that it possesses.*
 - (2) When deciding an application relating to a conservation area, the decision-maker must have regard to the desirability of preserving or enhancing the character or appearance of that area.*
 - (3) when deciding an application for development consent which affects or is likely to affect a scheduled monument or its setting, the decision-maker must have regard to the desirability of preserving the scheduled monument or its setting."*
- 3.15 In respect of biological diversity regard must be had under Regulation 7 to the United Nations Environmental Programme Convention on Biological Diversity of 1992.

European Requirements and Related UK Regulations

Habitats Directive (Council Directive 92/43/EEC)

- 3.16 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive)) forms the cornerstone of Europe's nature

conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The directive protects over 1000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc.), which are of European importance.

***Conservation and Species Regulations 2010 (as amended)
the Habitats Regulations***

***Conservation of Habitats and Species (Amendment)
Regulations 2012***

- 3.17 The Conservation of Habitats and Species Regulations 2010 are the principal means by which the Habitats Directive is transposed in England and Wales.
- 3.18 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012. These Regulations amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Wild Birds Directive) are transposed clearly.
- 3.19 The proposed development could have an impact on two European sites:
- (a) Redgrave and South Lopham Fens Ramsar Site; and
 - (b) Waveney and Little Ouse Valley Fens Special Area of Conservation (SAC)
- 3.20 This is considered further in section 5 of this Report.

Natural Environment and Rural Communities Act 2006

- 3.21 The Natural Environment and Rural Communities Act (NERC) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this duty, Ministers of the Crown, government departments and the Welsh Government must have regard to the United Nations Environment Programme Convention on Biological Diversity of 1992.

Other Legal and Policy Provisions

National policy and legislation

- 3.22 The National Planning Policy Framework (NPPF) published in 2012 sets out the Government's planning policies for England and how these are expected to be applied.⁶ The Framework does not contain specific policies for NSIPs for which particular considerations apply. These are determined in accordance with the decision-making framework set out in PA 2008 and relevant NPS for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the NPPF). The NPPF contains guidance on conserving and enhancing the historic environment and sets out particular issues to take into account in determining planning applications. That guidance is in similar terms to but is not identical with the guidance on the historic environment in EN-1.
- 3.23 As part of the government's Electricity Market Reform package, a Capacity Market has been created. This is intended to ensure security of electricity supply by providing a payment for reliable sources of capacity, alongside their electricity revenues, to ensure they deliver energy when needed. This is intended to encourage investment to replace older power stations and provide backup for more intermittent and inflexible low carbon generation sources. Peaking plant of the type proposed in this application would be able to bid for capacity payments in this market.⁷

Local Impact Report

- 3.24 A joint LIR has been submitted by MSDC and SCC (REP-051). This identified The Mid Suffolk District Local Plan and SCC's Minerals and Waste Development Framework as constituting the statutory development plan for the area. It noted that given the age of some of these policies the NPPF could also be a relevant consideration. A number of other non-statutory local policies were also identified. These include the Eye Airfield Development Framework (2013), the Eye Airfield Planning Position Statement (2013) and Conservation Area Appraisals for Eye, Mellis and Thrandeston. SCC is the highway authority for Suffolk and has adopted its Local Transport Plan 2011-2031 and Rights of Way Improvement Plan 2006-2016.
- 3.25 The principal matters raised in the LIR and considered further in section 4 of this report are:

⁶ National Planning Policy Framework DCLG, March 2012.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

⁷ Implementing Electricity Market Reform (EMR), DECC June 2014

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324176/Implementing Electricity Market Reform.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324176/Implementing_Electricity_Market_Reform.pdf)

- (a) Air quality;
- (b) Design
- (c) Ecological impacts;
- (d) Flood risk;
- (e) Effect on the historic environment, including designated and undesignated assets;
- (f) Landscape and visual impact;
- (g) Land use;
- (h) Noise and vibration;
- (i) Socio-economic impacts;
- (j) Transport and traffic;
- (k) Waste management
- (l) Water quality and resources

The Secretary of State's powers to make a DCO

- 3.26 As outlined at paragraph 2.27 a number of changes have been made to the application. I have considered whether these changes to the application meant that the application had changed to the point where it was a different application and whether the Secretary of State would have power therefore under s.114 of PA2008 to make a DCO having regard to the development consent applied for.
- 3.27 The Secretary of State will be aware of the letter dated 28 November 2011 from Bob Neill MP, then Parliamentary Under-Secretary of State for Planning.⁸ The view expressed by the Government during the passage of the Localism Act that s.114(1) places the responsibility for making a DCO on the decision maker, and does not limit the terms in which it can be made.
- 3.28 In exercising this power the Secretary of State may wish to take into account my views on the proposed changes to the application:
- (a) The changes proposed all fall within the physical limits of the original Rochdale envelope and have the effect of reducing the size of the proposed envelope. The refined application - AIS variant does not represent a materially different application from that originally proposed. The original proposal which was the subject of consultation remains the worst case option. The changes reduce rather than extend the scope of compulsory acquisition.
 - (b) I do not consider that accepting these changes would result in any person being deprived of the opportunity to be consulted on the impact of the development. I issued a procedural decision (DEC-012) that the proposed changes to

⁸ http://infrastructure.planningportal.gov.uk/wp-content/uploads/2011/11/111130_Ltr-from-Bob-Neill-MP-re-s114.pdf

the scheme were not 'material' and should be accepted as part of the proposed development.

- 3.29 Given this, and having regard to the fact that information on the changes was made available to interested parties, I recommend that the Secretary of State should accept the changes for consideration in the examination as part of the proposed development.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

MAIN ISSUES IN THE EXAMINATION

- 4.1 My initial assessment of the principal issues based on my consideration of the application documents and relevant representations received was circulated prior to the Preliminary Meeting (DEC-004). The issues are in alphabetic order and should not be taken to imply an order of importance.

Compulsory Acquisition, including issues related to:

- The requirement for the powers sought
- The need to establish a compelling case in the public interest
- Financial arrangements

Design, Layout and Visibility, including issues related to:

- The proposed design for the power station and associated development
- Use of agricultural land
- Landscape and visual impact
- Landscaping and screening

The DCO, including issues related to:

- The description of the development and definitions used
- Powers acquired through the DCO
- Requirements
- Protective provisions

Economic and Social impacts, including issues related to:

- The impact on the local economy including tourism
- The impact on local services and facilities
- The impact on housing and employment
- Access to leisure facilities
- Other developments on the business park

Environmental Impact Assessment, including issues related to:

- The adequacy of the assessment of its potential impacts
- Cumulative effects
- Mitigation measures

Other Environmental Issues, including issues related to:

- Airborne emissions and air quality
- Flooding
- Noise, lighting, dust and vibration

Habitats, Ecology and Nature Conservation, including issues related to:

- The impact on European and other protected sites and species
- Impacts on habitats and on biodiversity

The Historic and Archaeological Environment, including issues related to:

- Impact on heritage assets and historic landscapes
- Impact on archaeological remains

Operational, including issues related to:

- The operational mechanisms not to exceed 299 MW output
- Environmental Permitting
- The potential use of Combined Heat and Power

Transport and Traffic, including issues related to:

- Proposed changes to the local and national road network
- Construction Traffic movement and routeing
- Road safety

Issues identified in the Local Impact Report and submissions from statutory bodies and other interested parties

4.2 The issues identified in the LIR set out above at paragraph 3.25 (REP-051) as being of greatest concern to the local authorities were:

- The effect on biodiversity from the loss of hedgerows and use of arable land;
- The impact on heritage assets, historic field systems and archaeological remains;
- The landscape and visual impact;
- The traffic and transport implications; and
- The quality of design of the development.

4.3 These concerns were supported in submissions from IPs. In addition to representations from individuals the local parishes of Brome and Oakley, Mellis, Palgrave, Thornham Magna, Thornham Parva, Thrandeston and Yaxley made joint submissions during the course of the Examination as the Eye Airfield Parishes Working Group (EAPWG) (REP-031, -032, -077, AS-019, -028, -043). Submissions were also received from the EA (RR-108), English Heritage (EH) (RR-085, REP-025, -026) and Natural England (NE) (RR-075).

- 4.4 EA noted that under the Environmental Permitting Regulations 2010 an environmental permit (EP) would be required for the generation plant. This would require that:
- (a) All the appropriate preventative measures are taken against pollution;
 - (b) Best available techniques (BAT) are applied;
 - (c) No significant pollution is caused;
 - (d) Generation of waste is prevented or is managed in accordance with Directive 2008/98/EC;
 - (e) Energy is used efficiently;
 - (f) Necessary measures are taken to prevent accidents and limit their consequences; and
 - (g) Necessary decommissioning activities are taken on cessation of activities.
- 4.5 In the absence of an application for an EP, the EA identified a number of issues that remained to be addressed. These included being satisfied on the use of BAT, that no significant pollution would be caused affecting designated European sites and that key permitting issues would be properly addressed. The EA comments were given without prejudice to any decisions that would be taken in determining any later permit application.
- 4.6 EH has a remit to advise on the effect of proposed developments on grade I and II* listed buildings, Scheduled Ancient Monuments and Conservation Areas of which there were a number in the vicinity. EH was of the view that the project had the potential to impact on the historic environment both directly, through permanent physical changes, and indirectly through changes to the setting of heritage assets. EH expressed concern about the impact on heritage assets and the way in which this had been assessed in the ES. EH considered that the application did not fully consider the contribution that setting makes to the significance of some of the heritage assets concerned or give appropriate weight to that significance.
- 4.7 EH considered that the generation plant would result in a degree of harm to the significance of Eye Castle, a Scheduled Ancient Monument, Eye parish church, a grade I listed building and Eye Conservation Area. The ECC had the potential to result in a degree of harm to the Mellis and Thrandeston Conservation Areas and to a number of listed buildings nearby.
- 4.8 Undesignated assets are outside EH's remit but in its initial representation it noted that the proposed substation would be constructed in an area of historic field boundaries of considerable significance. These were not formally designated but could be considered as part of the wider setting of the neighbouring Conservation Areas. It was EH's view that the proposed substation could have a negative impact on the historic significance of the site and the surrounding area. EH

considered that it might be possible to mitigate this impact by amending the substation's location and design.

- 4.9 NE identified a number of locations that could be affected by the development. These were two designated Europe sites, Redgrave and Lopham Fen Ramsar site and Waveney and Little Ouse Valley Fen SAC and three nationally designated sites, Redgrave and Lopham Fen Site of Special Scientific Interest (SSSI) and national nature reserve (NNR), Major Farm, Braiseworth SSSI and Gypsy Camp Meadows, Thrandeston SSSI.
- 4.10 NE was satisfied from the information provided in the application that, subject to the inclusion of avoidance and mitigation measures in respect of dust management, stack height and emissions controls, there would be no significant effect on the European and nationally designated sites identified.
- 4.11 NE also considered the possible impact on protected species including bats and great crested newts (GCN) and on general biodiversity. A licence for trapping GCN should be obtained. Mitigation measures proposed by the applicant in respect of environmental impacts should be a requirement in any approval of the project.
- 4.12 NGET and National Grid Gas plc (NGG) submitted separate written representations (REP-037, -038). NGET stated that it did not object to the application in principle but registered a holding objection to any compulsory acquisition of its interests until such time as protective provisions were agreed.
- 4.13 In respect of the design of the substation NGET stated that it would be responsible for designing and constructing the ECC and would take final decisions on the design of the substation closer to the construction date in accordance with its statutory duty under section 9 of the Electricity Act 1989 (the Electricity Act) to bring forward efficient, co-ordinated and economical proposals in terms of network design and to have regard to amenity under Section 38 and Schedule 9 of the Electricity Act 1989. These duties are specifically referred to in EN-5.
- 4.14 NGET cited its Policy Statement on substation primary insulation, which states: *'Gas Insulated Switchgear (GIS) substations shall only be considered where lifetime related conditions (such as pollution, permanent space restriction or public visual amenity) preclude the use of open terminal equipment'*. Pursuant to these considerations, NGET did not perceive a driver for a GIS substation in this case and, having regard to its statutory duties of efficiency and economy, it was proposing an AIS substation when carrying out the detailed design of the substation. In its Statement of Common Ground

(SoCG) (REP-072) NGET stated that it would seek to ensure that an AIS substation was sensitively designed to minimise the footprint and sensitively sited taking into account agricultural use, heritage assets, landscape and visual matters and ecology. NGET noted in its comments on submissions from MSDC and SCC (REP-079) that *'whilst a prescribed full indoor GIS design may be seen as mitigating against visual amenity impacts it would prevent NGET from performing its duty to balance this consideration against its other obligations to be economic and efficient.'*

- 4.15 NGET noted that works on a replacement tower, temporary diversion of existing 400kV OHL and down leads to connect the ECC to the OHL were not sought to be consented in the DCO, nor were rights of compulsory acquisition being sought for them.
- 4.16 NGET would require land rights to carry out the works providing temporary access for construction and permanent access for maintenance. These rights could either be acquired through permitted development rights or through separate consenting processes.
- 4.17 NGET set out its objection to the proposal in the DCO to restrict commissioning of the substation until after commencement of the power generation plant. NGET argued that it required flexibility in its commissioning programme so as to be able to meet its contractual obligation that the substation will have been commissioned by the date in the Connection Agreement between the parties.
- 4.18 NGG did not object to the application in principle but identified NGG apparatus and interests which could be affected by the development. NGG registered a holding objection to the compulsory acquisition of its interests until such time as the protective provisions were agreed and included in Schedule 9 of the draft DCO or in a confidential commercial side agreement between the parties.
- 4.19 Objections to the proposed development were also received from affected persons whose land or rights would be subject to compulsory acquisition. These are considered further in section 7.

Statements of Common Ground

- 4.20 SoCG with the applicant were received from (NGET) (REP-046, -072), (NGG) (REP-047, -071), EA (REP-048), NE (REP-049) and, jointly from MSDC and SCC. The SoCG with MSDC and SCC went through several iterations as areas of disagreement were resolved during the course of the Examination (REP-050, -073, -089, -094, -097, -106). These SoCGs set out matters agreed

between the parties and matters which had not been agreed. Points of agreement or disagreement identified in SoCGs are referred to under the relevant sections below.

THE PRINCIPLE OF THE DEVELOPMENT

Need for the development

- 4.21 The proposed development is for an SCGT power station with integral gas supply and electricity export connections and associated development in the form of a substation to connect to the national electricity grid and road access from the A140. It is one of several similar projects being developed by the applicant's parent company WPL to provide peaking capacity which can bid into the new capacity market developed by Government in recent years.
- 4.22 As noted at paragraph 3.1 the proposed development qualifies as an NSIP and consideration of the proposal is subject to the guidance in EN-1 and associated NPS. Paragraph 3.4 of EN-1 states that applications for development consent for energy NSIPs should be assessed on the basis that the Government has demonstrated that there is a need for those types of infrastructure. The development of the capacity market, which has taken place since the designation of the NPS, has created a role for a particular type of flexible generation which the proposed development is designed to fulfil. However capacity market contracts will be subject to competitive tender with no guarantee that contracts will be awarded to any particular bidder. It is possible that the plant would not be successful in this tender and would sell its power in the wholesale electricity market alongside other participants without the benefit of capacity payments. In terms of meeting the need for new capacity this application for flexible generation has the same status in planning terms as other fossil fuelled generation plant.

Consideration of alternatives

- 4.23 The ES contains a section on Site Selection, Alternatives and Design Evolution. The key factors in site selection were the availability of a site of adequate size and proximity to the national gas and electricity networks. Consideration was given to alternative generation technologies and plant layout, to alternative routings for the gas connection and associated infrastructure and to alternative technologies and locations for the ECC.

Site selection

- 4.24 The ES states that the proposed site meets the selection criteria identified by the applicant. But it does not give any detail on alternative locations that had been considered. This was challenged during the course of the application and discussed at

the second ISH. The applicant argued that EN-1 did not impose a policy imperative to consider alternatives but in response to my request for further information on alternative locations agreed to provide additional material. This was submitted as an annex to its summary of the oral evidence at the second ISH (HR-049). This set out how an initial database of 24,000 sites had been progressively reduced through the use of more detailed screening criteria, including a high level environmental impact assessment, to a short list of 22 in Southern England and Wales. Of these, four sites had been selected for development. The view that inadequate attention had been given to alternative sites was raised in the context of concern about the possible impact of the development on heritage and historic assets and I consider this further at paragraphs 4.162 and 4.184 below.

- 4.25 A number of representations objected to the selection of the Eye Airfield site (RR-012, -017, -029, -033, -034, -037, -055, -058, -061, -066, -069, -072, -081). MSDC and SCC considered that Eye Airfield could be an appropriate location for a gas-fired power station and in particular recognised the benefits of investment in the locality (REP-029).

Alternative generation technologies and plant layouts

- 4.26 The ES states that three options were considered for the power generation plant. These were reciprocating gas engine (RGE) plant, combined cycle gas turbine (CCGT) plant and SCGT plant. RGE plant offers more flexibility in terms of fuel use and some advantage in terms of energy efficiency when compared with SCGT but has disadvantages in terms of noise in operation, emissions control and land requirements. CCGT plant is more efficient with the addition of a steam cycle to use heat from exhaust gases but has disadvantages in terms of the speed with which it can be brought into operation and the need for a stack of up to 90 m to achieve adequate dispersion of pollutants. The cost per MW of CCGT plant would be significantly greater than for SCGT plant.
- 4.27 The SCGT plant was favoured because it combined the flexibility to start up and shut down rapidly with lower capital cost and less environmental impact than the other options. This met the objective of developing plant which could operate over short periods providing power at peak times or other periods of shortage.
- 4.28 EN-2 requires that consideration be given to the inclusion of CHP as part of any thermal generating station making use of surplus heat from the generation process. A report assessing the CHP potential at the generation site was included as part of the ES (APP-027). This concluded that there were no suitable heat users of applicable scale to use the unpredictable heat

available from the operation of a peaking plant and that no potential future heat requirements in the area had been identified that would match with the operation of the plant. The intermittent and peaking modes of operation of SCGT were considered to be incompatible with the likely continuous demands of heat users.

- 4.29 In its SoCG, the EA agreed that the CHP opportunities had been reviewed but that the EA had not validated the results (REP-048). This would be considered further as part of any application for an environmental permit. The EA acknowledged that the Energy Efficiency Directive 2012 which came into force on 5 June 2014 exempted peak load and back-up electricity generating installations which are planned to operate under 1,500 operating hours per year from the requirement to carry out a full cost benefit analysis.⁹
- 4.30 The plant layout for the SCGT plant would depend on the number and size of individual generating units. The intended capacity of 299 MW could be achieved either with one or two industrial type gas turbines (GT) or three, four or five aero derivative GTs. Each turbine might have its own exhaust stack or it might be possible for two turbines to share a stack. The maximum stack width would be 10 m and maximum height would be 30 m. The option of five turbines with individual stacks was taken as the worst case situation for evaluation purposes.
- 4.31 During the course of the examination the applicant agreed that it would use the dry NO_x process to control emissions. As a consequence the requirement to store pure water on site for NO_x control would be significantly reduced. It also identified a reduced need for storage of raw water on site for operational and emergency purposes. The size of the water storage tanks was amended accordingly in revision 4 of the draft DCO (APP-076) and subsequent revisions.

Alternative routing for the gas connection and associated infrastructure

- 4.32 Five options were considered for routing the connection from the NTS to the generation plant. A number of these were rejected because they would breach safety guidelines related to the installation of gas pipelines near wind turbines or would adversely affect existing or potential developments on the Airfield. The shortest available route was considered to be technically unachievable because of its proximity to NGG's gas compressor station. The preferred option is a longer route which skirts the southern and western perimeters of the Airfield before running back east across the Airfield to the site of the

⁹ Directive 2012/27/EU on Energy Efficiency <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0001:0056:en:PDF>

generation plant. This route is approximately 1.7 km long and includes two minor road crossings.

Alternative technologies and locations for the ECC

- 4.33 As described in paragraph 2.22, the applicant's preferred option for the electricity substation is for the use of AIS technology but details have also been provided for the GIS variant. NGET, which would be responsible for the final design and construction of the substation, expressed its preference for AIS technology and drew attention to its statutory duties of efficiency and economy under the Electricity Act.
- 4.34 Throughout the Examination MSDC and SCC stated their opposition to the AIS variant which they did not consider was consistent with local planning policies. With the GIS variant, conflict with local policies, particularly those relating to cultural heritage and the historic landscape, would be reduced although the local authorities still considered that introduction of such a structure within the open countryside would weigh against granting development consent (REP-029, -106).
- 4.35 There was almost unanimous opposition to the location of the substation in open agricultural land from locally based IPs. This can be seen both in individual representations and in the collective views submitted by the EAPWG. The EAPWG maintained throughout the Examination that whichever option is pursued the ECC would cause substantial harm by reason of its scale and elevation within the most sensitive part of the historic ancient rural landscape (AS-043).
- 4.36 The ES set out two alternative locations for the ECC both in farmland to the west of the generation site and adjacent to the 400 kV OHL. Both locations had the potential to give rise to adverse effects on visual amenity and landscape character. It was considered that the southern location had greater potential for adverse visual impacts but the northern location, which would require diversion of a PRoW and affect watercourses and local drainage, could increase technical difficulty and cost. The applicant considered that in view of the availability of mitigation measures for landscape and visual impacts the southern location should be preferred. Both locations were the subject of opposition in representations.

Design evolution

- 4.37 A Design and Access statement (DAS) was provided as part of the application (APP-052). This set out the context for the development in terms of its location, the local landscape, existing buildings and visual impact. General design principles were set out and an indicative design response for the main elements in the development was provided. The indicative

design for the power station and visual representations were for the five unit option with five individual exhaust stacks of up to 30 m.

- 4.38 MSDC and SCC raised concern about the adequacy of the DAS. Further assurances were sought as to how the design principles would be delivered in order for the development to comply with the NPS' demands for high quality design (HR-035). It was suggested that there should be a design review.
- 4.39 The applicant held further discussions about design principles with the local authorities and the EAPWG and Eye Town Council. A revised design principles statement (DPS), to be read alongside the original DAS was agreed with the local authorities. It was submitted as annex 8 to the SoCG with MSDC and SCC of 19 December 2014 (REP-097). The revised principles include a commitment to further public engagement in the finalisation of detailed design and landscaping proposals and to a Design Review by an independent body before any submission of plans for approval by the relevant planning authority.

Conclusion on the principle of the development

- 4.40 I am satisfied that the proposed SCGT power station with integral gas supply and electricity export connections and associated development in the form of a substation to connect to the national electricity grid and road access from the A140 would contribute to meeting the need for new generation capacity identified in EN-1. Subject to my further consideration of landscape and visual impact and the impact on historic and heritage assets below, I am also satisfied that adequate consideration has been given to design and to alternatives to the development as required by EN-1.

EMISSIONS

Air quality

- 4.41 The proposed development has the potential to affect air quality both through dust and particulates during the construction and decommissioning phases and through stack emissions during the operation of the generation plant
- 4.42 The ES sets out background concentrations of NO_x and particulates in the area of the development, as measured by local authorities and DEFRA. These show concentrations that are well within the air quality objectives for the protection of human health and ecosystems. Background levels of nitrogen deposition at the nearby European sites and other nearby locations show existing deposition to be above the minimum critical load levels for these locations. This is principally attributable to agricultural rather than industrial sources. For acidification effects the deposition of sulphur is relatively low

but the combined nitrogen/sulphur deposition exceeds the lower limit for critical load for the majority of the habitats affected.

- 4.43 During the construction period it is expected that, in the absence of mitigation, there would be a high risk of dust effects from earthworks on both the generation plant and the gas connection. These risks are associated with impacts on the adjacent industrial properties. The risk of impact on residential properties, which are further away, is considered to be low. There is a medium risk of impact on ecological receptors, for example the deposition of dust on foliage, from earthworks for all elements of the development. This would be dependent on day to day activity and meteorological conditions. Other impacts from construction activities, for example from construction equipment and traffic, are considered to be negligible.
- 4.44 Dispersion modelling was used to assess the emissions of nitrogen dioxide (NO₂) and carbon monoxide (CO) from the generation plant and determine stack height. The objective was that the impact of these emissions should be negligible where there was a risk that the assessment standard would be exceeded and total ambient concentrations with the generation plant in operation should be well below the standard where there could be a medium or large impact on receptors.
- 4.45 A minimum stack height of 25 m was identified in the ES as resulting in impacts of less than 1% of the annual mean objective but just exceeding 10% of the hourly mean standard. For both process contribution and the total predicted environmental contribution the predicted levels of emissions were well within the UK's air quality objectives for the protection of human health. The 8 hour hourly mean concentration over the five years tested would be around 1.4% of the objective. For NO₂ the maximum process contribution would be 0.85% of the annual mean objective and 10.25% of the hourly mean objective. As such no significant health effects were anticipated to result from the operation of the generation plant. Since there was negligible risk of exceeding any ambient air standards the impact of the operation of the generation plant was considered to be 'not significant' in EIA terms. Sensitivity testing with a 30 m stack height (the maximum height considered) showed a slight reduction in the impact of emissions to air.
- 4.46 The expected contribution of emissions from the generation plant on European sites and other designated sites was well below the critical levels for NO_x and acid deposition. The impact of the generation plant was considered to be of negligible significance and not to represent a significant risk of exceeding a critical load. The possible impact on European sites is considered further in section 5.

Water quality

- 4.47 During construction, operation and decommissioning there would be some potential for the proposed development to impact on local water quality and resources. This could result from the use and disposal of water at the generation plant or from the impact of the other elements in the development on local bodies of water. Any discharge of water from the site would be regulated by the EA through the environmental permit.
- 4.48 Eighteen water abstraction operations for agricultural or industrial use and 38 discharge consents have been identified in the vicinity of the site. The site falls within a Groundwater Source Protection Zone (SPZ). The River Dove flows approximately 2 km east of the site for the generation plant. Both the River Dove and the SPZ are identified as being of high importance. Seven bodies of surface water, principally field drains and small ponds, have been identified in the vicinity. Two of these are classified as being of medium significance, the others are of low significance.
- 4.49 During construction water may be used for mixing of concrete. This would be done off-site and a local water supply would not be needed. Any disposal of water from the site is likely to be by licensed contractor with no discharges to local water bodies. Provision for disposal of water would be included in the Construction Environmental Management Plan (CEMP). Kerbed and bunded areas would be used to prevent the accidental spillage of fuel, lubricants and hydraulic fluids affecting surface or groundwater. Construction of the access road could affect one of the small ponds close to the A140. Overall the construction activities are expected to result in some slight or moderate changes which would not result in any significant effects on water resources. Similar considerations apply to the decommissioning phase.
- 4.50 The electrical and gas connections do not require operational water supplies and the substation would require only a small supply for sanitation purposes. As noted at paragraph 2.27 it was agreed during the Examination that dry NO_x control would be used and as a result the need for the supply and storage of water was significantly reduced. A supply of pure water would still be required for occasionally washing the blades of the air compressor.
- 4.51 Water used on the site would be discharged into an attenuation pond and would pass through oil interceptors before flowing into the on-site sewerage system. This system would connect to on-site septic tanks which would be managed by suitable contractors. Any water generated from the washing of the compressor blades would be stored in an attenuation pond and

tankered off-site. There are therefore expected to be negligible impacts on water quality and water resources during the operational phase. Surface water runoff would be managed through infiltration or through use of existing drainage systems. All surface and foul water drainage systems would be subject to approval by the relevant planning authority, in consultation with the EA, as a requirement in the DCO.

Flood risk

- 4.52 The Project Site is located in Flood Zone 1 and is not considered by the applicant to be at significant risk from any source of flooding, namely fluvial, tidal, groundwater, overland flow and artificial sources. A Flood Risk Assessment (FRA) was carried out (APP-097).
- 4.53 The greatest risk of flooding to adjacent land is associated with surface water runoff, with reported flood incidents within the Eye Airfield Industrial Site to the north of the site of the generation plant. This is understood to be as a result of a combination of blocked surface water drains within the Airfield, blockages within the culverted watercourse and also a lack of capacity in the culverted watercourse. Any increase in surface water runoff from the site, including that associated with climate change effects, could exacerbate existing surface water flood risk.
- 4.54 Preference would be given to the use of infiltration systems for all areas of the development. If infiltration is unsuitable to manage all surface water runoff from the site of the generation plant, the proposed surface water drainage strategy is to drain surface water runoff to the existing drainage connection located to the north of the site adjacent to Eye Power Station. Runoff would be attenuated to the existing greenfield runoff rate, up to the 1 in 100 year event. A maximum rate has been agreed with the EA. Storage would be provided in the form of a retention pond located within the generation plant site boundary.
- 4.55 It is proposed that surface water runoff from the ECC and AGI would be discharged via infiltration into the ground where feasible. In the case of low infiltration rates, connection would be sought into existing surface water ditches/drains following consultation with the internal drainage board and/or other relevant parties.
- 4.56 The conclusion of the FRA was that the proposed surface water drainage system would meet the following principles:
- (a) No runoff from the development from rainfall depths up to 5 mm;
 - (b) No increase in the volume or rate of surface water runoff from the site in the 1 in 1 and 1 in 100 year rainfall events;

- (c) No increase in flooding to people and property elsewhere as a result of the development;
- (d) No surface water flooding within the proposed development in all rainfall events up to and including a 1 in 30 year return period storm;
- (e) Overland flows within the site from rainfall events exceeding a 1 in 30 year return period storm are to be managed to minimise risk to people and property, up to the 1 in 100 year return period storm;
- (f) The surface water management proposals are to be designed to allow for a 10% increase in rainfall intensity in the 1 in 100 year rainfall event over the lifetime of the development;
- (g) Surface water runoff would be treated through the use of SUDS and oil separator.

Noise

- 4.57 Noise from the development has been assessed using standard techniques for both the construction and operational phases. The CEMP would contain provisions on hours of work and work methods aimed at containing noise during the construction period (APP-026). The generation plant would be designed from the outset to minimise its noise impact. This would include the use of acoustic enclosures and high performance silencers. Noise limits would be agreed with the local authority.
- 4.58 Likely noise from construction and construction traffic was assessed for each element of the development at a number of nearby noise sensitive receptors (NSR). For all of the NSRs the expected level of noise was well below the daytime level of 65 dB(A) significance threshold set out in BS 5228: 2009 and the 45 dB(A) level set for night-time. The levels of impact of noise during construction were not considered to be significant.
- 4.59 A number of different measures were used to assess operational noise depending of the type of NSR. Allowance was made for the intermittent operation of the plant which could aggravate the impact. In all cases the impact of noise was considered to be, at worst, minor and overall not to be significant. Embedded design was considered to be adequate to control any vibration and the effect would be imperceptible at the nearest NSR.

Mitigation measures to control emissions

- 4.60 For the construction phase the CEMP would contain provisions for :
- (a) The development of a site specific dust management for all aspects of the project;
 - (b) Containment of any accidental spillages which could affect water quality.

(c) Work methods to contain noise.

- 4.61 Details of these provisions were included in the final versions of the outline CEMP submitted with the SoCG with MSDC and SCC on 19 December 2014 (REP-097, annex 3 and 4) and 13 January 2015 (REP-106, annex 3). A requirement to agree the final CEMP with the relevant planning authorities and the EA is included in the draft DCO.
- 4.62 For the operational phase the generation plant would be designed to ensure negligible effects on air quality through the minimum stack height and the use of emissions control measures, including dry NO_x burners. The choice of SCGT technology and dry NO_x burners would minimise the requirement for water usage during operations. The plant would be designed to ensure that any contaminated water does not leach into water course or adjoining land. Bunding would be used to contain any spillages of oil or chemicals. Control of noise through use of high performance silencers and other features would also form part of the design of the generation plant. Requirements on surface and foul water drainage, construction hours and control of operational noise are included in the draft DCO. The plant would also require an EP from the EA which would set emissions limits and monitoring requirements for air and water quality.

Views of Interested Parties

- 4.63 In its response to my first round of questions (REP-041) the EA indicated that the outline CEMP, although a high level document, covered all potential pollution issues during construction.
- 4.64 In its relevant representation (RR-108) the EA raised concerns that while the FRA took account of how a 1 in 30 year flood event could be managed it was also necessary to show how a 1 in 100 year event would be managed. The applicant responded to this (REP-042) indicating that the attenuation pond would be sized to accommodate the 1 in 100 year plus climate change event and would limit discharge from these features to the equivalent 1 in 100 year greenfield runoff rate in accordance with EA requirements.
- 4.65 In the SoCG (REP-048) with the EA it was agreed that the Secretary of State must be satisfied that potential releases from the development could be adequately regulated under the control of pollution control framework and that cumulative impacts are not unacceptable in relation to statutory environmental limits. Having considered the environmental information in the ES, the EA is satisfied and agrees that the proposed SCGT type of plant should be capable of being adequately regulated under the pollution control framework and

that the cumulative impacts should fall within statutory limits. At that time the EA was not aware of anything that would preclude the grant of an EP for a single cycle gas turbine. This statement was without prejudice to the EA's determination of the application for the EP. Only once an application had been received and assessed could the EA determine whether or not a permit could be granted.

- 4.66 In the SoCG the applicant agreed to a number of amendments to the CEMP and the draft DCO suggested by the EA.
- 4.67 NE stated that it was satisfied that with the proposed avoidance, mitigation and enhancement measures potential environmental impacts upon designated sites either would not occur or would be sufficiently mitigated (RR-075).
- 4.68 Other IPs raised general concerns about air and water pollution (RR-015, -018, -026, -027, -029, -038, -066, -068, -096, -100). Concerns were also raised about noise both from the generation plant and the ECC affecting the lives of nearby residents (RR-001, -015, -017, -023, -025, -033, -048, -052, -055, -086).

Conclusions on emissions

- 4.69 I have considered the analysis of aerial and water emissions and of noise as set out in the ES and the measures proposed to mitigate the impact of any emissions. Mitigation measures include measures embedded in the design of the main elements of the development, adoption of the CEMP, requirements for approval of drainage systems and limits on operational noise by the relevant planning authority. These measures should ensure that the levels of emissions are kept below the thresholds above which significant adverse effects could be expected to occur.
- 4.70 Emissions to air and water would be regulated through an EP which has not yet been applied for. The EA has stated, without prejudice to its decision on any application subsequently received, that it is satisfied that the proposed type of plant should be capable of being adequately regulated under the pollution control framework and that the cumulative impacts should fall within statutory limits. At that time the EA was not aware of anything that would preclude the grant of an EP for an SCGT.
- 4.71 EN-1 states that the planning and pollution control systems are separate but complementary. The Examination should work on the assumption that the relevant pollution control regime will be properly applied and enforced by the relevant regulator. Consent should not be refused on the basis of pollution impacts unless there is good reason to believe that any relevant necessary operational pollution control permits will not

subsequently be granted. Taking into account the proposed embedded design features, the ES does not identify any significant adverse effects of air or water quality. On the basis of the evidence before me and without prejudice to any future consideration by the EA, I do not have any reason to believe that an EP for the generation plant would not be granted.

- 4.72 On this basis I conclude that, subject to the mitigation measures identified, there should not be any significant adverse effects from emissions to air and water or from noise.

BIODIVERSITY

Hedgerows and arable land

- 4.73 Each of the elements in the proposed development would be sited on existing arable land. In the ES this is considered to be a type of habitat that is widespread in the area supporting very little in the way of biodiversity. The main habitats that are considered to be of value are the mix of species rich and species poor hedgerows in the neighbourhood of each of the elements of the development. The ES identified the loss of 274 m of hedgerow with the AIS substation and 24 m with the GIS variant. These figures were subsequently revised to 277 m for AIS and 25 m for GIS (HR-036). In the LIR it was suggested that there could be further loss of hedgerows, not identified in the ES from the creation of the access point to the A140.
- 4.74 Concern was expressed in the LIR about the effect on biodiversity from the cutting through or removal of a number of hedgerows from the development of the ECC and associated access road (REP-051). Arable field margins could also be affected by the ECC. Hedgerows provide locally important habitat for brown hares, bats, GCN and breeding birds. Although the hedgerows affected were classified as species-poor, unnecessary disturbance should still be avoided as this would still have ecological consequences. A scheme of mitigation for loss of hedgerows was seen as essential.
- 4.75 The EAPWG argued that the hedgerows that would be affected by the development were not species-poor and submitted evidence in support based on field inspection (REP-031). Species rich hedgerows are a Suffolk Priority Biodiversity Action Plan (BAP) priority habitat. The hedgerows were used by bats for foraging and commuting and by birds for nesting. At the first ISH the applicant agreed that even hedgerows that it had classified as species-poor should be given the same status as species rich hedgerows as valued ecological receptors (VER) of local value.
- 4.76 The Ecological Management Strategy submitted with the application set out the plans for new planting associated with

the development (APP-055). The area around the ECC using AIS technology would include the creation of approximately 1.6 ha of woodland, 0.5 ha of grassland, 674 m of hedgerow and would retain approximately 260 m of existing hedgerow. With the GIS variant approximately 0.6 ha of woodland, 0.2 ha of grassland, 413 m of hedgerow would be created and approximately 510 m of existing hedgerow would be retained. A further 0.04 ha of grassland and 166 m of hedgerow would be created around the sealing end Compound. Landscaping around the generation plant would create 0.7 ha woodland and 0.1 ha scrub and around the AGI 0.5 ha woodland and 245 m of hedgerow.

- 4.77 The Landscape Mitigation Strategy (APP-056) and Outline Landscaping Plans (APP-015) submitted with the application set out proposals for planting round each element of the development. This comprised a mix of hedgerow and woodland planting. Both the LIR and the EAPWG submissions expressed concerns about the proposed planting to replace hedgerows in respect of the proposed plant mix and the setting of hedgerows around new woodland planting.
- 4.78 In response to comments received from IPs the applicant submitted a revised Outline Ecological Management Strategy and included additional provisions on ecological mitigation in the CEMP. These were agreed with the local authorities (REP-050 annex 2 & 3). An updated Landscape Mitigation Strategy and associated Landscaping plans for both the AIS and GIS options were also agreed with the local authorities after discussion with IPs including the EAPWG (REP-089 annex 1 & 2).
- 4.79 It is a requirement in the draft DCO that final versions of these strategies and plans must be agreed with the relevant planning authority after consultation with relevant statutory bodies prior to the commencement of works.
- 4.80 NE in a SoCG agreed with the assessment of impacts on ecology and nature conservation as set out in the ES (REP-049). It also agreed that the mitigation measures set out in the Ecological and Landscape Management Strategies and Plans were appropriate to address potential effects on VERs. Following the provision of additional survey information NE agreed that no further measures were needed to protect GCN. No transboundary impacts on biodiversity were identified. Further consideration about the impact on European Sites is set out in section 5.

Skylarks

- 4.81 The LIR identified concerns about the impact that the removal of land from arable use would have on ground nesting birds, notably skylarks which are a UK and Suffolk Priority BAP species. The local authorities accepted that there was unlikely

to be a significant effect on skylarks but considered that the development should result in no net loss to the species. In their view this would be consistent with the advice in EN-1 in respect of biodiversity. They sought provision in a S106 agreement for a contribution to secure skylark plots in the locality on a level commensurate with the loss of habitat for 1 - 3 breeding pairs for a period of not less than 10 years. Agreement was reached on a sum of £1,000 to be paid to SCC for this purpose (APP-120).

Conclusions on biodiversity

- 4.82 Although the proposed development would lead to the loss of arable land and of some hedgerows which were classified as VER, a significant amount of new planting is proposed to offset any adverse effect. The draft DCO contains provisions for the agreement of the final Ecological Management Strategy with the relevant planning authority in consultation with NE and for details of the landscaping to be agreed with the relevant planning authority as appropriate mitigation. The S106 agreement contains provisions for action outside of the boundary of the development to mitigate the impact on skylarks. I am satisfied that, subject to these provisions, the proposed new planting would be adequate to address any adverse effects on biodiversity in the neighbourhood of the development. The agreed provisions meet the requirements of the Decisions Regulations and the NERC to have regard to the purpose of biodiversity and to the United Nations Environment Programme Convention on Biological Diversity of 1992.
- 4.83 Further consideration is given to the impact of the development on hedgerows in the consideration of landscape and visual impact and heritage and historic assets below.

LANDSCAPE AND VISUAL IMPACT

- 4.84 A landscape and visual impact assessment (LVIA) was carried out for the proposed development covering a study area with a radius of 15 km from the centre of the site. This assessment took into account guidance in EN-1, the NPPF and Local Plan policies. Methodology was based on the Guidelines for Landscape and Visual Impact Assessment (GLVIA), third edition, published by the Landscape Institute and Institute of Environmental Management and Assessment (2013). Separate zones of theoretical visibility (ZTV) were considered for the generation plant and the ECC and the development was assessed for impact both on landscape character and visual amenity.
- 4.85 The ES provides a summary of the main areas that would be affected by the proposed development. There are no nationally designated landscapes within the study area. There are four

registered village greens and four areas of registered common land within 5 km of the development. MSDC has designated a number of locally important Special Landscape Areas (SLA). These include the valleys of the rivers Dove and Waveney and SLAs close to the site at Burgate, Thornham Park/Mellis Common, Mellis, Thornham Magna, Wortham, Hoxne Low Street and Eye. Visually Important Open Spaces which are considered worthy of protection include Eye, Yaxley, Mellis, Thrandeston, Thornham Magna, Hoxne and Stuston.

- 4.86 There are eight Conservation Areas within 5 km of the site. These are urban Conservation Areas at Eye and Diss and rural Conservation Areas at Scole, Mellis, Palgrave, Thrandeston, Hoxne Low Street and Hoxne Cross Street.
- 4.87 The bulk of the study area falls into the category of South Norfolk and High Suffolk claylands. This is principally arable farmland with slightly undulating topography and relatively small individual landholdings. There is a mix of irregular small fields with pollarded hedgerow oaks, early co-axial field patterns and large modern fields without hedges or trees.
- 4.88 The impact on heritage assets and other historic features (including the co-axial field patterns) is considered later in this report.

The Generation Plant

- 4.89 The option of five generating units each with separate 30 m high stacks was taken as the worst case scenario for landscape and visual impact. During construction potential temporary adverse landscape and visual impacts would arise from site clearance, construction activities including tower cranes, temporary structures, lighting and construction traffic. During operation long term landscape and visual impact would occur from the new structures resulting in the loss of agricultural land and the extension of large scale industrial structures within the Airfield. Visual impact would result from the five stacks, the gas turbines and other buildings, the security fencing, lighting and operational traffic. There would be a permanent loss of 6 ha of agricultural land and temporary loss of 2 ha during construction.
- 4.90 The generation plant would be located close to a number of existing industrial structures. These include the four wind turbines, the national Grid Gas Compressor Station with associated 50 m mast and the Eye Power Station with its 40 m stack. Woodland and existing structures would largely screen the generation plant from the north, north-east and north-west. Taller elements of the plant are likely to be visible over a large area to the south, south-east and south-west.

- 4.91 It is stated in the ES that mitigation of landscape and visual impacts was embedded into the design of all elements of the development. The choice of SCGT technology allowed a significant reduction in stack height compared to other technologies. Architectural design, use of materials and colours would be used to assimilate the plant into the surrounding landscape. As noted at paragraph 4.39, the design principles for the project were refined during the course of the Examination in discussion with IPs. Changes to the details of the application submitted during the application included a commitment to a maximum width of 6 m for each of the five stacks (see paragraph 2.27) as shown in photomontages of the generation plant. This would be specified in the DCO.
- 4.92 Mitigation planting around the perimeter of the site for the generation plant was included in the application in the landscape mitigation strategy (APP-056) and the outline landscaping plan (APP-015). The landscaping plan was revised during the Examination following discussions with IPs (APP-084). At maturity this planting would screen the smaller structures on the site leaving only the upper parts of the gas turbines and the stacks visible. In the applicant's view the width of planting should provide a screen even during winter months.
- 4.93 The assessment in the ES was that there would only be minor indirect effects on the Dove Valley SLA with limited visibility. No significant effect was expected on the rural river valley/ wooded valley meadowlands and rolling clay plateau landscapes. Woodland, plantations and hedgerows would limit views of the generation plant from designated areas in Thornham Parva, Thornham Magna, and Mellis Green to a few discrete areas. Given the limited locations affected it was not considered that there would be significant effects on the local landscape.
- 4.94 The generation plant would be visible in views towards Eye Airfield from the south and would be partly screened by existing woodland in views from Eye to the south-east. The five 30 m stacks would be the main element that would be visible from all directions and would change the skyline. Given the relatively flat landscape the stacks would be visible over a long distance but would be seen in the context of the other tall structures on the Airfield. The plant would be visually prominent from the footpath that follows the southern boundary of the site.
- 4.95 The main receptors of views of the generation plant identified in the ES include:
- (a) Residents at the edges of settlements located south, south-east, south-west and north-west of the application site at Eye, Yaxley, Thornham Parva, the eastern edge of Mellis;
 - (b) PRow users between the generation plant site, Castleton Way and Eye;

- (c) Road users on the A140 road travelling in both directions;
- (d) Road users and pedestrians using Castleton Way;
- (e) Walkers using public footpaths contiguous with the former Eye Airfield runways and the western and southern boundaries of the generation plant site;
- (f) Walkers along sections of the Mid Suffolk Footpath; and
- (g) Recreational users at the viewing platform at Eye Castle.

4.96 The ES concluded that while there would be a short term moderate adverse visual impact from some nearby viewpoints the proposed planting would offset this during the operational period leaving a negligible longer term impact.

The Above Ground Installation

4.97 The gas connection and AGI would be on the south-west edge of the Airfield next to Castleton Way. The AGI would have a maximum height of 3 m with a 2 m high security fence and would be an isolated industrial development in agricultural land. There would be temporary loss of 0.32 ha of agricultural land of which 0.2 ha would be permanently displaced. There would be some loss of mature trees in the immediate vicinity of the pipeline but there would be new hedge and woodland planting around the AGI compound. Landscaping plans are set out in the landscape mitigation strategy (APP-056) and the outline landscaping plan (APP-015).

4.98 The ES concludes that the AGI would have a moderate adverse effect of the landscape character of this part of the Airfield. It would indirectly alter views and the open, rural character of the area and have a moderate adverse effect. The AGI would be visually prominent in the surrounding open, rural landscape and would be visible from Yaxley and Thornham Parva and from PRowS with a significant moderate adverse effect from nearby viewpoints. The landscape and visual impacts would decrease as mitigation planting matured and would be reduced to a level that was not significant.

The Electrical Connection

4.99 Potential landscape and visual impacts could occur from all of the components of the electrical connection - the cable, the access road and A140 junction and the ECC with substation and sealing end compound.

4.100 The 1.5 km cable would be laid across agricultural land and buried to a depth of 1.2 m. Where necessary trenchless construction would be used to avoid removing sections of hedgerows and ponds. The access road would be 6 m wide and run from the A140 to the ECC crossing agricultural land and the Lays Lane PRow. It would be used by construction and

operational traffic and by farm vehicles. Both sides of the road would be left open.

- 4.101 The ECC would be situated adjacent to and on the eastern side of the existing 400 kV overhead line between the isolated Leys and Meadow Barn houses and the linear developments between Yaxley and Mellis villages. It would be set in agricultural land and, for the AIS variant, would form a diagonal arrangement in relation to the small-scale rectangular field pattern. The sealing end compound would lie on the western side of the OHL. The AIS variant as set out in the application would extend over an area of 150 x 150 m and the main equipment would be open to the air. The maximum height of equipment would be 12.5 m. The indicative layout for the AIS variant submitted with the application can be seen in Figure 3 of the Indicative Site layout Plans (APP-010) and in the outline landscaping plans (APP-015).
- 4.102 The GIS variant would be in a rectangular pattern aligned with the existing field boundaries and would cover an area of 100 x 80 m. Much of the equipment would be enclosed in a substation hall with ground plan of 62 x 21 m and maximum height of 12.5 m. The layout for the GIS variant can be seen in additional plans provided in REP-042. The outline landscaping plans for the GIS variant can be seen in APP-084.
- 4.103 As set out at paragraph 4.73 in the discussion on biodiversity 277 m of existing hedgerow would be lost with the AIS variant and 25 m with the GIS variant. These would principally be at the ECC site but with some other losses at the A140 junction. During construction topsoil would be stripped and stored in temporary stockpiles. There would be structures associated with the construction activity, lighting and construction traffic.
- 4.104 In the long term, in addition to the loss of hedgerows there would be loss of agricultural land and the permanent addition of industrial structures of up to 12.5 m with security fencing in a rural landscape. In mitigation new hedgerow and woodland planting is proposed and the temporary A140 junction would be closed on completion of the construction of the ECC.
- 4.105 The direct adverse effects in terms of landscape loss as evaluated in the ES include:
- (a) Disruption of the historic field pattern;
 - (b) Removal of trees and hedgerows to accommodate the construction trench where 'trenchless' construction is impractical in the vicinity of the new A140 Junction;
 - (c) Permanent displacement of agricultural land required for the ECC and Access Road;
 - (d) Fragmented areas of agricultural land.

- 4.106 These impacts were considered in the ES to be in the moderate adverse category and to be significant in terms of the landscape character of the immediate area of ancient plateau claylands both during construction and operation.
- 4.107 In terms of impact on visual amenity the ES considered that the ECC and the access road would have impacts on the quality of views experienced by people living, working or visiting the surrounding area. They would be visible both from fixed locations and while moving through the area either on roads or footpaths. Hedgerows would filter the views but would provide a less effective screen in winter months.
- 4.108 The AIS variant for the substation would be more extensive than the GIS variant. All its structure would be visible through the security fencing until screened by mitigation planting. The footprint of the GIS variant would be significantly smaller with the majority of the structures sited within buildings which could be designed to blend into the surrounding landscape.
- 4.109 The visual impact was assessed from a number of viewpoints on all sides of the site, all within about 2 km of the ECC. For each of these the impacts both during construction and operation were considered to be in the moderate adverse and significant category. The proposed planting around the ECC would reduce the impact as it matured but this was expected to take 15 years to reduce the impact to slight adverse but still significant in the case of the AIS variant. Screening would have effect earlier, in five to seven years, for the GIS variant and could reduce the impact to a level that was not significant.

Lighting

- 4.110 Lighting would be required at the generation plant, the AGI and the ECC for a mix of operational, safety and security requirements. Lighting Design Principles were developed in discussion with MSDC and SCC during the Examination and these would form the basis for a written scheme of management and mitigation to be agreed with the relevant planning authority before commencement of the main construction activities. These were agreed with MSDC and SCC (REP-097)
- 4.111 In the final version of the Lighting Design Principles (APP-089, -090), which included indicative lighting plans, it was agreed that lighting should be designed to limit obtrusive light to sensitive receptors around the project site. Receptors included nearby residents, particularly in Yaxley and Eye and key ecological corridors. Lighting would be required at all times for operational reasons at the generation plant but lighting at the AGI and the ECC would be infrequent and only activated when a security

system was triggered or if night-time working was required. General principles to be followed would include:

- (a) Locating significant sources of light away from sensitive landscape and ecological receptors;
- (b) Use of full cut-off luminaires with shields and baffles directed downwards to prevent upward and horizontal light;
- (c) Use of lower units rather than tall wide beam units to light large areas and avoid light spillage;
- (d) Use of infra-red floodlighting and CCTV for security to avoid the use of visible lighting outside working hours (NGET agreed that this sort of lighting would be acceptable at the ECC);
- (e) Use of automated switching to control lights according to activity and ambient levels.

Views of Interested Parties

- 4.112 In their joint LIR, MSDC and SCC accepted that the LVIA in the ES was effective and robust (REP-051). The local authorities' principal concerns were with development of the ECC. In their view the LVIA provided a strong justification for any consent being limited to a GIS substation. In their view this would deliver more than the 'marginally better environmental outcome' argued by the applicant.
- 4.113 Either option would represent an alien feature in the landscape but the AIS variant with its layout across field boundaries did not respond to and had not minimised adverse impacts on the character of the landscape. The GIS variant would minimise the footprint and intrusion of the ECC. Since the application is for the AIS variant it was not, in MSDC and SCC's view, consistent with local policy on landscape and visual effects.
- 4.114 The LIR also contained suggestions for improvements in the Landscape Mitigation Strategy and its extension to the GIS option. These suggestions were taken forward during the course of the Examination. The local authorities also suggested that further off-site mitigation could be achieved by woodland and hedgerow planting in the vicinity of the development. In the final S106 agreement a sum of £54,551 was agreed for off-site planting and maintenance. A sum of £5,000 was also agreed for monitoring of the on-site landscaping over a ten year period.
- 4.115 Most of the local IPs expressed some degree of concern about the landscape and visual impact of the proposed development in their initial relevant representations. The main focus of concern was on the location of the ECC in an agricultural area. There was strong opposition to any aspect of the development taking place to the west of the A140. A number of IPs questioned why the substation could not be located on the Airfield alongside the generation plant with underground cable to the existing

overhead line. Concern was expressed about the possible impact of lighting at the development. There was concern about lighting both at the power station and the ECC. Any lighting at the ECC would introduce light into a rural area that at present was dark.

- 4.116 The EAPWG in its written representation (REP-031) was concerned that little had been done to blend the power station and the ECC into the immediate surroundings or to minimise the impact on viewpoints over a wide area. The ECC would be hard to screen in its rural location. The EAPWG was opposed to both the AIS and GIS options but recognised that the visual effects could be reduced by adopting the GIS variant. Concern was also expressed about the possible visibility of the plume from the exhaust stacks. At the first ISH the applicant confirmed that because of the high temperature of exhaust gases from a SCGT plant there should be no visible plume from the operation of the plant (HR-036).
- 4.117 The EAPWG provided a detailed report on landscaping and screening prepared by a qualified landscape architect (REP-031). It was argued that the evaluation of impact in the ES was flawed in a number of respects. Almost all of the hedgerows that would be affected by the ECC were species-rich, not species-poor as assumed in the ES; the photomontages showing mitigation of impact through new planting were misleading in showing plants in leaf in a winter setting; the proposed use of a mix of woodland and hedge planting was inappropriate in this field setting; the extent of planting proposed was inadequate to provide the screening suggested and would take longer to develop than had been assumed.
- 4.118 This report concluded that the generation plant would be highly prominent and constitute a visual intrusion on a massive industrial scale. The sensitivity of the proposed site for the ECC made this an altogether unsuitable location regardless of whether the AIS or GIS option was considered. The application failed to follow the SCC Landscape Character Assessment guidelines and should be refused.
- 4.119 The EAPWG and other IPs also submitted detailed comment on the impact on heritage and historic assets and these are considered in the following section.

Conclusions on landscape and visual impact.

Generation plant, gas connection and AGI

- 4.120 The guidance in EN-1 acknowledges that virtually all NSIPs will have effects on the landscape and have visual effects for many people. The aim in designing a project should be to minimise the harm to the landscape and visual effects and provide

reasonable mitigation. EN-2 states that if the location for a fossil fuel generation project is appropriate and it has been designed sensitively to minimise harm to landscape and visual amenity then the visibility of the generating station should be given limited weight.

- 4.121 The generation plant would add to the industrialisation of the Airfield. The buildings and stacks would be visible from the nearby town of Eye and neighbouring villages but mitigation planting as set out in the outline landscaping plans and the landscape mitigation strategy and secured in the DCO would help to provide a screen over the years. The stacks would be visible over a much wider area and, although not as high as existing structure nearby, including the four wind turbines, would be a significant feature on the skyline. The choice of SCGT technology allows stack height to be kept to a maximum of 30 m and would not result in any visible plume. The revised DPS with further consultation and a Design Review would allow further mitigation of impact through design to be incorporated into any final development. In addition the Lighting Design Principles have been developed and agreed with MSDC and SCC. In my view adherence to the agreed approach to landscaping, design and lighting for the generation plant, which would be secured through provisions in the DCO meets the requirements of EN-1 and EN-2.
- 4.122 The gas connection and AGI would also have some adverse impact on landscape and visual amenity although this would be confined to the immediate vicinity of the development. The balance between any remaining adverse effects from the generation plant and the AGI and any benefits from the project, including the need for new generating capacity is considered later in this report.

The electricity connection compound

- 4.123 The development of the ECC with associated cable laying and access road would introduce an industrial type of development into an agricultural area, albeit an area which is crossed by a major overhead power line. With the AIS variant a considerable length of existing hedgerow would be removed and the layout of the ECC would sit diagonally across the existing field boundary orientation. The ECC would be visible from nearby houses and from a number of small villages surrounding the site. It would also be visible from some more distant locations. The impact on landscape and visual amenity is acknowledged in the ES to be significant. Mitigation planting would soften the impact but, for the applicant's preferred AIS variant this could take 15 years to develop. The lighting plans, including the use of infra-red lighting for security should be adequate to avoid any adverse impact from lighting in the rural area.

- 4.124 The GIS variant would provide some further mitigation of the impact by providing a design with a much smaller footprint involving only a small loss of existing hedgerow and would be aligned with existing field boundaries. Much, but not all of the equipment would be installed inside a building. That would still result in a new intrusion into the agricultural landscape but this could be designed to blend in with the agricultural location and other farm buildings nearby. In my view the GIS variant does provide the opportunity to reduce the impact of the ECC on landscape and visual amenity compared with the AIS variant. It would therefore be consistent with the principle of minimising harm as set out in EN-1 to prefer the GIS variant. However, as noted at paragraph 2.23 there may be an additional cost associated with the GIS option and I will take this into account, along with NGET's obligations as transmission operator in considering the balance of costs and benefits later in this report.

HERITAGE AND HISTORIC ASSETS

- 4.125 The section of EN-1 concerned with the historic environment recognises that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on those elements in the historic environment which hold value to future generations because of their historic, archaeological, architectural or artistic interest. These heritage assets may have statutory designation but there may be assets of archaeological interest that are not currently designated but which are demonstrably of equivalent significance. EN-1 states that the absence of designation for such heritage assets does not indicate lower significance. If they may be affected by a proposed development then they should be subject to the same policy consideration as designated assets. Consideration should also be given to other non-designated assets on the basis of evidence that they have a heritage significance that merits consideration even though they may be of lesser value than designated heritage assets.
- 4.126 The decision maker should seek to identify and assess the significance of any heritage asset that might be affected by the development including development affecting the setting of the assets. There should be a presumption in favour of the conservation of designated heritage assets and the more significant the heritage asset the greater the presumption in favour of its conservation should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to a grade II listed asset should be exceptional. Substantial harm to a scheduled monument or a grade I or grade II* listed asset should be wholly exceptional.

- 4.127 Any harmful impact on the significance of a designated asset should be weighed against the public benefit of the development. Where the application would lead to substantial harm or total loss of significance of a designated heritage asset the decision maker should refuse consent unless it can be demonstrated that this is necessary in order to deliver substantial public benefits that outweigh that loss or harm.

Views of the applicant

- 4.128 The potential impact of the development on the setting and significance of heritage assets was considered in the ES. The impact on Scheduled Monuments (SM), Listed Buildings (LB) and Conservation Areas were considered as well as non-designated assets. The assessment took into account the guidance on the historic environment in EN-1, the NPPF and local planning policies. It was carried out in accordance with Institute for Archaeologists (IfA) and EH guidelines. The technical terminology applied to the assessment process in this document is based on that contained in the Cultural Heritage Section of the Design Manual for Road and Bridges (DMRB) issued by the Highways Agency in 2007 enhanced as appropriate for Heritage Assets.¹⁰
- 4.129 The assessment looked separately at the impact of the development on the significance and the setting of each historic asset. Significance was defined as the value of a heritage asset to this and future generations because of its heritage interest. The definition of setting taken from the NPPF was '*... the surroundings in which an asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of setting may make a positive or negative contribution to the significance of an asset ...*' The assessment considered impacts in an Inner Study Area extending 1 km from the edge of the project site and an Outer Study Area extending 5 km from the centre of the site.
- 4.130 A cultural or sensitivity value was assigned to the significance of each asset ranging from Very High (International) down to Negligible (Neighbourhood) or Uncertain with the measure of harm ranging from Substantial through to Negligible or No Change. Setting can contribute to the significance of an asset through its physical surroundings, the way it is experienced or through relationships between assets, cultural links or other factors. Sensitivity of the setting of an asset was considered to be very high where setting made a very high contribution to the significance of the asset. A matrix approach was adopted to make a subjective assessment of the magnitude of impact of the development taking into account both the value of each

¹⁰ Design Manual for Roads and Bridges, 2007
<http://www.standardsforhighways.co.uk/dmrb/vol11/section3/ha20807.pdf>

asset and the sensitivity of its setting. A magnitude of impact of moderate or above was considered as significant (APP-033).

- 4.131 No SMs were identified in the Inner Study Area but 12 were recorded in the Outer Study Area. These included the remains of the motte and bailey castle in Eye from which the generation plant would be visible. 72 LBs were identified in the Inner Study Area. Two of these are Grade I and six are Grade II*. Over 400 LBs were identified in the Outer Study Area of which five were Grade 1 and 22 Grade II*.
- 4.132 A number of non-designated heritage assets (HA) were identified in the Inner Study Area. These include 23 findspots with individual items dating from the prehistoric period (flints, axes), the Romano-British period (coins, pottery) and medieval items (brooches, metalwork and pottery). Only one of these finds was within the boundaries of the proposed development. 20 larger heritage assets were identified as lying within the site of the proposed development. These include the Iron Age field system within the ECC (HA10) and medieval field boundaries on the Airfield (HA31), the Roman Road (HA41) which would be crossed by the ECC access road and the Airfield itself where the generation plant would be located (HA32). In addition there are a number of medieval heritage assets within the Inner Study Area. These include Large Green at Mellis (HA01), Little and Great Green at Thrandeston (HA04, HA20) and the moated site at Goswald Hall (HA21). A geophysical survey was carried out across the development site. This identified three areas of potential archaeological evidence.
- 4.133 Construction of the generation plant has the potential to impact on buried archaeology and would impact directly on the non-designated assets HA31 and HA32, the medieval field boundaries on the Airfield and the Airfield itself. There would be a substantial and permanent adverse effect on these assets but they were considered to be of low local significance. Overall the ES concluded that there would be a moderate or slight adverse effect from construction of the plant which was not considered significant. There would be no further impact on these assets during operation or decommissioning. There are a number of designated assets in the Inner and Outer Study Areas which have national significance some of which would have a direct line of sight to the generation plant. Intervening planting would reduce the impact for many of these assets. For most of the designated assets the effect on setting would be slight. For others the adverse effect could be in the slight to moderate range. These impacts apply both during construction and operation. The construction and the operation of the gas connection and AGI were not expected to add any further impact to heritage assets.

- 4.134 Excavation for the electrical connection, the access road, the A140 junction and the foundations of the ECC all have the potential to impact directly on buried archaeology. Seven field/field boundaries of potential Iron Age date (HA10) lie within the ECC. With the AIS variant two existing field boundaries and five historic boundaries which are no longer extant above ground would be affected; with the GIS variant only one existing field boundary and one historic boundary would be affected. There could be a substantial adverse effect on these assets which was considered to be of moderate to large significance. Scatters of medieval metalwork may be indicative of an Anglo-Saxon cemetery which could be of regional significance and may be affected by the ECC. The Roman Road would also be directly impacted by the cable corridor and access road. The significance of the effect on these assets was considered to be moderate or slight.
- 4.135 The ES considered that the significance of the field system and medieval scatter that could be affected by the ECC was uncertain and had not been fully investigated but they were considered to be of regional significance. Fieldwork investigation would be carried out in line with a brief issued by SCC's Archaeologist. Assets identified would be preserved *in situ* if possible in line with NPPF recommendations. If this was not possible there would be a topographic survey of extant earthworks followed by trial trenching. A written scheme of investigation (WSI) for the whole project site would be agreed with SCC.
- 4.136 The ES concluded that the construction of all elements of the development had the potential to have a temporary adverse effect on the setting of designated assets including 12 SMs, 455 LBs and 5 CAs. The adverse effect would be slight to moderate or slight and, therefore, not significant or requiring mitigation. The effect on the setting of non-designated assets was considered to be neutral or slight. The construction work would have a direct substantial adverse effect on the non-designated assets at the ECC and the generation plant, particularly the field boundaries. It was acknowledged that the impact on the field system at the ECC could be reduced by using the GIS variant. There was also the potential to have a substantial adverse effect on undiscovered archaeology on all parts of the site.

Views of the local planning authorities

- 4.137 In their joint LIR, MSDC and SCC identified effects on the historic environment as one of their matters of overriding concern. They considered that the approach to the possible impacts of the development on heritage assets in the ES was unclear and that scant consideration had been given to the setting of Grade II listed buildings or to the Conservation Areas in Eye, Mellis and Thrandeston. The setting of historic assets

and the contribution that setting makes to their significance had not been adequately established. Commentary on setting in the ES had largely been confined to the potential inter-visibility between components of the project and assets. MSDC and SCC provided their own assessment of the impact of the development on the designated heritage assets in Eye, Mellis, Thrandeston and Yaxley. For 24 of the 71 listed assets the overall effect of the development on the significance of the asset was considered to be harmful, for the other 47 the effect was neutral. The effect on the three Conservation Areas of Eye, Mellis and Thrandeston was also considered to be harmful.

- 4.138 MSDC and SCC considered that the rarity and significance of the historic field system which potentially dates back to the Iron Age and would be affected by the ECC had not been fully recognised in the ES. The work of Professor Tom Williamson was cited.¹¹ He had identified remains of ancient field systems surviving on a large scale in this part of Suffolk. Although there had been a long history of piecemeal alteration and some boundaries had been removed the framework of ancient boundaries and trackways still survived. The predominant north-south axis of the field systems was still relatively intact in the area of the proposed ECC between Judas Lane and Leys Lane which are themselves major features of the historic landscape. According to Professor Williamson *'Centuries of piecemeal alteration have preserved the essential orientation of field layout.'*
- 4.139 No detailed evaluation of these field boundaries was available at the time the LIR was prepared but MSDC and SCC were of the opinion that the loss of individual components of the field system had the potential to have significant adverse effects on the overall historic landscape character in the area and not the neutral or moderate to slight effect set out in the ES. The AIS variant, positioned diagonally across the alignment of the existing field boundaries would result in a substantial change in the historic landscape and the associated woodland planting would further undermine the character of the area. The AIS variant made little attempt to set the ECC within the existing landscape structure in order to minimise its impact on historic features. The impact on the landscape would be reduced with the GIS variant which would fit into the field system with the loss of only one historic field boundary. This would provide more than the 'marginally better environmental outcome' asserted in the ES. Offsite planting to be agreed through a S106 agreement could also help to reinforce the historic character of the landscape but could not mitigate for the loss of historic features associated with the footprint of the ECC.

¹¹ Williamson T. 1987. Early Co-axial Field Systems on the East Anglian Boulder Clays. Proceedings of the Prehistoric Society 53, 419 - 431.

- 4.140 Below ground archaeological remains are suspected or known in the area, including field boundaries and Anglo Saxon metalwork. A WSI needed to be agreed with SCC and included as a requirement in the DCO.
- 4.141 Further discussions on these issues took place between the local authorities and the applicant during the course of the Examination. In response to the LIR the applicant submitted a further Review of the Setting of Heritage Assets (Appendix B, REP-056). This gave additional prominence to certain elements of the original assessment, particularly in respect of Conservation Areas. It included a comparison of the assessment of harm to historic assets using the ES methodology and the approach adopted by MSDC. The applicant argued that a clear comparison could not be made between individual assessments because the classification of 'harmful' used by MSDC did not give any indication of the degree of harm. It could not therefore be used to reach a conclusion on whether the setting of an asset was harmed to the extent that it would undermine the significance of the asset as was required by EN-1.
- 4.142 The applicant also commissioned a report on the Eye to Yaxley field systems from Dr Adrian Chadwick, a published specialist in Iron Age and Romano-British field systems and rural settlement, (Appendix D, REP-056). This set out the results of research into the possible date and potential significance of the co-axial field systems identified in the ES. Dr Chadwick reviewed material presented in the ES, relevant academic publications and other publically available material. The report considered country wide information on co-axial field systems and the evidence for these systems in East Anglia and Suffolk before considering the proposed development. None of the field boundaries were considered to be of high or very high significance. Leys Lane was considered to be of medium significance for the contribution it could make to regional research objectives. Other field boundaries were considered to be of low significance. The report concluded that some but not all of the field and trackway boundaries affected by the development could be of medieval or earlier origin. Leys Lane could have its origins in the Iron Age but the surviving hedgerows were likely to be of medieval or later origin. If disturbance of hedgerows could not be avoided archaeological mitigation would be necessary.
- 4.143 SCC was critical of Dr Chadwick's analysis arguing that he had focused too much on the age of individual hedgerows rather than taking a wider view of the longevity of the field boundaries. Nonetheless SCC welcomed his view that the ECC would be located within an ancient field system in the form of trackways (Leys Lane and Judas Lane), banks, ditches and hedgerows (alongside below-ground remains) (REP-062).

- 4.144 Dr Chadwick subsequently submitted a reassessment of the possible date and significance of the field systems as an independent consultant (REP-083). He acknowledged the validity of some of the criticisms of his earlier report made by SCC and others. He had considered that report to be a first draft not the final version for publication. He accepted that there was additional information to take into account and that it was important to take account of the importance of the overall field system and not to focus too much on individual elements within it. In the light of the comments received and the additional information provided he concluded that there were field boundaries along Leys Lane of high significance in the proposed development area, other boundaries were of high to medium significance and a few of medium to low significance . Overall the Eye-Yaxley field system was, in his view, *'a rare example of upstanding, extant field boundaries that nonetheless reflect much earlier periods of land allotment and land-use, and as such it must be regarded as having a High Significance and potentially national importance.'*
- 4.145 Further expert evidence was provided on behalf of the applicant at the second ISH by David Bonner, Technical Director of Network Archaeology Ltd (HR-044, -049). He considered whether the undesignated field system met the test in EN-1 of being *'demonstrably of equivalent significance to a scheduled monument'* and therefore subject to the same policy considerations as a designated asset. He reviewed the evidence on the field system against the criteria set out in EH's criteria for scheduling.
- 4.146 The criteria considered are:
- (a) Period: The origin of the field system was agreed to be late pre-historic, but there is an on-going debate about the dating of the existing system. The asset derives its significance from a range of dates. In Mr Bonner's view this alone would not be a criterion for considering it to be of national importance.
 - (b) Rarity/Diversity: Co-axial field systems are an important part of the East Anglian landscape. They exist locally, regionally and nationally. Rarity could be related to size or pattern both of which had been cited in this case. He did not consider that current size alone made the system important.
 - (c) Survival and condition: Other experts had suggested that the survival of the field system was 'moderate to good'. He noted that there had been a notable loss of extant boundaries and other features. He considered this debateable without a fuller understanding of the original extent of the system. In his view the surviving condition was likely to be no greater than 'moderate'.

- (d) Fragility and Vulnerability: The field boundaries may not be robust features but in his view they are only vulnerable in that they are located in a working landscape.
- (e) Documentation/finds and Potential: There is knowledge of the field system from maps and photographs but limited evidential information on the field boundaries. This could be enhanced through archaeological investigation. In his view much of this particular asset's value derives from its potential in that respect.
- (f) Group value: Association with other assets could be important. He had not identified any positively dated associations with other assets and he did not consider that associations with other assets contributed significantly to the value of the field system.

4.147 Based on his assessment against these criteria Mr Bonner concluded that the field system was of regional importance and of medium value. He did not consider it to be of demonstrably equal significance to a scheduled monument.

4.148 Following receipt of Dr Chadwick's report submitted by the applicant, Dr Chadwick's subsequent reassessment and the submission at the ISH by Mr Bonner, the local authorities submitted further detailed comment on the impact of the development on the field system HA10 (HR-058, AS-044). This criticised Mr Bonner's analysis as unsubstantiated in many respects, partial and therefore far from compelling. In the view of the local authorities the time-depth of the field system adds greatly to its significance and its visible persistence and scale in the modern landscape establishes its rarity on a national scale. The survival of field boundaries over two millennia is remarkable and combined with documentary evidence and group value confirms the views of Professor Williamson and Dr Chadwick that the field system is potentially of national importance and therefore of schedulable quality.

4.149 A further analysis of the field boundaries within the boundary of the development was provided. The local authorities argued that the extent of loss of field boundaries had been understated. The ES had stated that there were two existing and five historic field boundaries within the ECC. The numbering on the Important Hedgerow Plan submitted by the applicant (AS-014) showed seven existing hedgerows within the ECC boundary. Updated information provided by the applicant following the second ISH (HR-049) indicated a total length of 570 m for the extant field boundaries within the ECC which it was assumed would be lost under the original application. The local authorities considered that under the original proposal one length of 66 m was expected to be retained so that this total should be reduced to 504 m. The applicant argued that with the refined AIS boundary only 277 m would be lost but the local authorities considered that a further 176 m would, in effect, be

lost because they would be subsumed into the woodland planting scheme and would no longer contribute to the appreciation of HA10. On this basis the total loss of field boundaries with the refined AIS variant would be 453 m. The local authorities agreed with the applicant that the loss of boundaries with the GIS variant was 25 m.

- 4.150 MSDC and SCC also drew attention to some confusion on the definition of HA10. In the original desk based assessment it is stated that '*A relict co-axial field system has been identified within Yaxley parish and extends into the Electrical Connection Site (Williamson 1987). It is likely that this asset dates to the Iron Age as some of the fields have been bisected by the later Roman Road (HA41). The field system comprises rectangular and square fields interspersed with trackways.*' However it did not appear that the applicant intended HA10 to cover the whole area referred to by Professor Williamson. Figure 13.6 in the ES showed the field boundaries to the east of Judas Lane and west of the A140 centred on the ECC site. Although wider areas had been referred to in later submissions from the applicant, the local authorities took the view that for the purpose of assessing the impact of the development and reflecting the uniquely intact nature of the coaxial landscape it would be appropriate to take the area between Judas Lane and Leys Lane as the major articulating features defining HA10.
- 4.151 MSDC and SCC commented further on the possible designation of field boundaries (REP-085). They made reference to EH guidance on monuments associated with agriculture.¹² It was unlikely that heritage assets such as the Eye-Yaxley field system would be considered appropriate for scheduling but this did not mean that an asset is not of national importance. Scheduling covering extensive areas is the exception because of the controls that would be introduced over actively farmed areas. Other management measures including the planning system are considered to be more effective in delivering appropriate protection. In this regard the local authorities drew attention to the provisions of EN-1 on the protection to be given to undesignated assets.
- 4.152 Following discussions between the applicant, MSDC and SCC and taking into account the views of experts submitted during the course of the Examination the SoCG was updated in respect of Cultural Heritage. In the final SoCG (REP-106) it was agreed that the Stage 1 and Stage 2 of the WSI combined with agreed mitigation measures, were adequate in respect of the treatment of buried archaeology and would be secured through the DCO. It was agreed that with the AIS variant the impact of the ECC on the Ancient Plateau Claylands Landscape Character would be

¹² http://www.english-heritage.org.uk/publications/dssg-agriculture/121213_Agriculture_SSG_final.pdf

Moderate Adverse and that the impact on the field system HA10 would be substantial adverse. It was agreed that no built heritage assets within the Inner or Outer Study Areas would be subject to substantial harm; that there would be some degree of harm to such assets but it would be less than substantial.

4.153 Agreement was not reached on the following points:

- (a) The applicant considers that the field system HA10 is of no more than regional importance, as reported in the ES. The local authorities consider that HA10 is of at least regional importance.
- (b) The applicant's view is that in the absence of conclusive evidence to suggest that the affected boundaries are of lower importance, the impact on the field boundaries and system, as both an above ground and below ground heritage asset is that there would be a Moderate/Large adverse effect on the basis of the loss of all field boundaries within the Order Limits (as assessed in the ES). The local authorities consider that there is a large adverse effect on HA10.
- (c) The applicant's view is that an AIS substation is suitable and acceptable, having regard to its impact on the extant co-axial field boundaries, and that a GIS substation would only result in 'marginally reduced' environmental impacts. This was not accepted by the local authorities.
- (d) The applicant's view is that the outline landscape plans for the AIS substation sufficiently respond to the landscape character of the area. The local authorities' view is that the orientation of the substation across the fieldscape creates the need for an uncharacteristic woodland layout that does not follow the underlying pattern of enclosure.
- (e) There was a difference of view on the degree of harm in respect to 28 heritage assets due either to interpretation of the setting of specific assets or the assessment of the degree of harm to the setting.

Views of English Heritage

4.154 EH, in its written representation, stated that it considered that the development had the potential to impact upon the historic environment both directly, through permanent physical changes, and indirectly through changes to the setting of heritage assets (REP-025). EH was critical of the assessment provided in the ES. The assessment of the significance of individual heritage assets was often incomplete and appeared to be based on a limited notion of what constitutes the setting of a heritage asset. Prioritising the study of assets based on their grade of designation might not give adequate weight to other assets.

- 4.155 EH considered that the visual impact of development of the generation plant would result in a degree of harm to the significance of Eye Castle, the Eye Conservation Area and Eye parish church. The ECC had the potential to result in a degree of harm to the wider settings of Mellis and Thrandeston Conservation Areas, Thrandeston parish church, Yaxley Manor, Yaxley Hall and possibly Rook Hall. Little could be done to mitigate the impact of the generation plant. Location of the ECC on the Airfield would result in a significant reduction in the impact on Mellis, Thrandeston and Yaxley with little or no greater impact on assets in Eye. The GIS variant for the ECC would still result in harmful visual impact but had the potential for mitigation if placed in alignment with existing field boundaries.
- 4.156 On the significance of the field systems which were undesignated, EH deferred to SCC Archaeology Service but noted that the field systems boundaries, whether of prehistoric or later date, were unusual survivals of considerable significance (REP-066).

Views of other interested parties

- 4.157 The Prehistoric Society submitted representations drawing attention to the prehistoric field systems (AS-008, -025). It argued that preserved prehistoric field systems were remarkably rare in England. The proposed ECC would impact on seven potentially Iron Age co-axial field systems. The removal of these archaeological features would be extremely detrimental to the archaeological landscape and to understanding of pre-Roman landscape in East Anglia. This could be considered as substantial harm and the assets should be left intact.
- 4.158 The Suffolk Preservation Society in its initial representation (RR-065,) drew attention to the rich cultural heritage of the area. The industrialising effect of the project, in particular the siting of the ECC, would, in the Society's view, result in harm to the setting of many designated heritage assets. The rural historic villages rely upon their agricultural setting as part of their intrinsic historic significance. The application of the methodology used to assess the impacts of the scheme had failed to provide a clear and accessible narrative account of how the significance of the heritage assets' setting would be affected and how the development would reduce or enhance that significance. The impacts on the Conservation Areas of Mellis, Thrandeston and Eye had not been adequately assessed. The impact upon the archaeological resource had not been adequately quantified and the project would result in substantial adverse impacts on significant non-designated heritage assets.
- 4.159 In its written representation and later submission the Society set out a detailed analysis of how it considered individual assets

and locations would be affected by the development (REP-019, -076). In the Society's view the analysis in the ES was flawed in taking a narrow approach to assessing effects of setting on significance and in not reviewing all designated assets. As a result the ES significantly underestimated the impact of the development on the rural setting of a wide range of heritage assets.

- 4.160 The EAPWG in its written representation (REP-031) noted that the area affected by the development had one of the highest densities of medieval and sub-medieval buildings and church heritage in the country. The impact of the development on the setting of built heritage and nearby Conservation Areas was understated by the ES as a result of flawed methodology. The proposed site of the ECC and access route completely ignored the field boundaries of pre-Roman conquest origin in its orientation and location. The area is an attractive and unspoilt block of countryside rich in natural and man-made heritage. This would be blighted by the presence of the ECC with no consideration of the layout of the land.
- 4.161 During the course of the Examination the EAPWG made a number of further submissions focussed in particular but not exclusively on landscape and visual impact (referred to in paragraphs 4.116 to 4.118 above) and harm to the significance of heritage assets (REP-077, AS-016, -019, -028). The EAPWG's final submission (AS-043) provided a summary of these contributions. In respect of heritage assets the main points highlighted were:
- (a) The applicant had considerably understated the adverse impact the proposal would have on the local heritage, including the pre-Roman co-axial field system, the damage to which could be detrimental on a national scale.
 - (b) Statements in support of the importance of the field system had been provided by Professor Tom Williamson of the University of East Anglia, Dr Helen Geake, of the British Museum and Dr Jane Sidell on behalf of the Prehistoric Society. These reaffirmed the rarity, importance and significance of the surviving ancient landscape which should be safeguarded for future generations.
 - (c) The EAPWG supported the detailed assessment of the impact on designated heritage assets submitted by the Suffolk Preservation Society with its emphasis on the very special historic landscape and wealth of built heritage around the proposed development site. These views were consistent with opinions expressed by EH, MSDC and SCC.
 - (d) There was unanimity amongst interested parties that the area was of much greater historic and landscape significance than had been appreciated by the applicant at the outset of the project. The significance and magnitude of adverse effects identified meant that it was unacceptable to

disregard alternative locations for the development. This view was supported by legal submissions which are considered below.

- (e) The EAPWG endorsed the stance of all of the expert opinions, apart from Mr Bonner, that there was sufficient evidence to justify regarding the field system as being of potential national significance. The applicant had not demonstrably shown that no harm would occur to this historic site and the precautionary principle should be applied in considering the development.
- (f) The EAPWG had considered ways in which the impact on its member communities could be mitigated but it had grave concerns that some of the elements of the proposal were impossible to mitigate satisfactorily and their impact remained unacceptable and disproportionate to the public benefit.
- (g) The benefits to the local economy, except during the construction phase, would probably be negative and the national benefit would be the production of less than 0.1% of the country's electricity demand. In EAPWG's view the public benefits did not outweigh the significant harm identified. The applicant had failed to demonstrate through the consideration of alternative sites and their associated impacts that this harm is necessary and unavoidable. The DCO should be recommended for refusal.

Legal submissions

- 4.162 The final legal submission from Counsel for the EAPWG addressed the need for and the adequacy of the applicant's assessment of alternative sites (AS-043). It was argued that:
- (a) It had become clear during the Examination that the ECC would cause substantial irreversible harm to the ancient field pattern. Both the AIS and GIS options would cause substantial harm within the most sensitive part of the historic ancient rural landscape. It would severely erode the current ability of the observer to perceive the ancient structure of field boundaries largely unaffected by modern development on any scale. The EAPWG, EH and the joint local authorities had produced cogent evidence from acknowledged experts to support this conclusion. The impact on designated and undesignated assets would be substantial
 - (b) Presumption against development that causes harm to heritage assets is set out in EN-1. The relevant sections of EN-1 were the presumption in favour of the conservation of designated assets (5.8.14); the guidance that where the application would lead to substantial harm or the loss of significance of a designated asset [the IPC] should refuse consent unless it can be demonstrated that the substantial harm to or loss of significance is necessary in order to

deliver substantial public benefit that outweigh that loss or harm (5.8.15); there are heritage assets with archaeological interest that are not currently designated as scheduled monuments, but which are demonstrably of equivalent significance (5.8.4) ... The absence of designation for such heritage assets does not indicate lower significance. If the evidence ... indicates that a non-designated heritage asset of the type described in 5.8.4 may be affected by the proposed development then the heritage asset should be considered subject to the same policy considerations as those that apply to designated heritage assets (5.8.5).

- (c) The effect on designated and non-designated assets is demonstrably significant. The onus is therefore on the applicant to show that the harm is necessary in order to deliver the public benefits. Effectively the applicant must show that the harm is unavoidable. If the benefits can be achieved elsewhere or in some other way without causing that harm it cannot be said that the harm is unavoidable.
- (d) Information concerning alternatives to the proposed development that is required to be included in the ES as a relevant consideration. Implicit in the consideration of alternatives is the proposition that the minimising of adverse environmental impacts of large infrastructure projects is to be treated as an intrinsic part of site selection. Case law suggests that there should be a rigorous assessment of potential alternatives. The applicant has failed to carry out such a rigorous assessment and has not provided information to validate its assertion that none of the other sites considered but not chosen for development were suitable.

4.163 Attention was drawn to the provisions of section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires the decision maker to have special regard to the desirability of preserving an LB or its setting. This has been the subject of recent decisions by the Court of Appeal in the Barnwell Manor case and the High Court in the Forge Field Society case.¹³ It was argued that these recent authorities had now established that considerable importance and weight should be given to the harm to the setting of listed buildings even where the harm is less than substantial. The Forge Field case had recognised that there was a need for a suitably rigorous assessment of potential alternatives where the development causes harm to the setting of designated heritage assets. Reference was also made to an earlier Court of Appeal case involving Trust House Forte in which the view had been taken that where there are planning objections to development on a particular site it may well be relevant and indeed

¹³ Barnwell Manor Wind Energy Ltd v E. Northamptonshire DC (2012) EWCA Civ 137 and R (The Forge Field Society) v Sevenoaks DC (2014) EWHC 1895

necessary to consider whether there is a more appropriate site elsewhere.¹⁴

- 4.164 It was acknowledged that the decision in Forge Field was not of direct application but it identified a legal principle that could be applied in the current case because there is a strong presumption against harm to heritage assets. This could be traced back in case law at least to Trust House Forte.
- 4.165 The conclusion of this analysis was that the only safe option open to the Secretary of State would be to refuse the application for reasons which include the substantial harm to the significance of important heritage assets and the applicant's failure to provide or disclose a rigorous assessment of alternative sites referring to their environmental effects that could indicate that such harm was a necessity.
- 4.166 The applicant provided a detailed rebuttal of the arguments set out in the EAPWG's legal submissions (AS-023). Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the duty to have 'special regard' did not apply to decisions to grant development consent under PA 2008. For decisions under PA 2008 the Decisions Regulations set out a duty to 'have regard' to the desirability of preserving certain heritage assets. In the applicant's view the Barnwell Manor and Forge Field Society decisions were not directly applicable to the application. The applicant acknowledged that under PA 2008 the Secretary of State must have regard to 'any other matters which the Secretary of State thinks are both important and relevant'. He could therefore have regard to the duty to have 'special regard' in the Town and Country Planning regime. This was relevant to the weight to be attached to any adverse effects of the development and not to the adequacy of the environmental information provided.
- 4.167 The applicant noted that EN-1 did not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. EN-1 set out the principles that applied to the consideration of alternatives. The EIA Regulations also required an explanation of the alternatives considered but did not require the applicant actively to seek out and consider alternatives. The applicant's view was that it had complied with the requirements of the NPS and the EIA Regulations.

Conclusions on Heritage and Historic Assets

- 4.168 The potential impact of the development on heritage and historic assets has been explored in detail during the course of the Examination both in written submissions and at the ISH. I

¹⁴ Trust House Forte v Secretary of State (1986) 53 P&CR 293

have also viewed the main locations that might be affected on the accompanied site visit and on separate unaccompanied visits. Views have been expressed on which assets might be affected, the magnitude of any impact, the significance of that impact and the implications of any findings for the DCO. Following the distinctions set out in EN-1 I have considered the possible impact on three categories of heritage asset:

- (a) Designated assets - 12 SM, 455 LBs and five Conservation Areas;
- (b) Heritage assets with archaeological significance not currently designated as SM but which it has been argued by some IPs are demonstrably of equivalent significance - principally the field system and field boundaries, HA10;
- (c) Non-designated assets which are of lower value than designated heritage assets.

Designated assets

- 4.169 The area is rich in designated assets and attention has been drawn to their collective value as part of the heritage of the area as well as their individual status.
- 4.170 I am satisfied that none of the designated assets would be directly affected by the proposed development in the sense that no part of an asset would be destroyed. The concerns expressed are about the impact of the development on the setting of these assets and how changes might affect their significance. Questions were raised about the adequacy of the assessment of impact on setting provided in the ES and some further information and explanation was provided by the applicant during the course of the Examination. I consider that adequate information has been provided on which to base a judgment of impact.
- 4.171 All parties, including the applicant, accept that there would be a degree of harm to the significance of at least some of the designated assets identified in the study area. Views have differed on the extent of that harm. The Suffolk Preservation Society has argued that for some assets, such as the Mellis and Thrandeston Conservation Areas and individual listed buildings, this would result in significant harm to their setting and significance. MSDC and SCC listed 28 assets on which they disagreed with the applicant's assessment of harm. These include grade I, grade II* and grade II LBs for which the applicant has assessed the significance of impact or degree of harm as moderate/slight adverse or slight adverse but which the local authorities have assessed the harm to significance as less than substantial but still harmful. EH also considered that harm (but not substantial harm) would be caused to the significance of a number of LBs and to the Thrandeston and Mellis Conservation Areas.

- 4.172 The Decisions Regulations require the decision-maker to have regard to the desirability of preserving a listed building or its setting and of preserving or enhancing the character or appearance of a conservation area. I agree with the applicant that this is the relevant requirement in considering an application for a DCO. The requirement in the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a LB or its setting does not apply in this case and I do not see any reason why a stricter test than is required by the Decisions Regulations should be applied to this application. EN-1 provides guidance on the consideration of harm to designated assets. There should be a presumption in favour of the conservation of designated assets. Loss affecting any such asset should require clear and convincing justification. No substantial direct harm to or loss of any of the designated assets has been identified.
- 4.173 EN-1 states that any harmful impact on the significance of a designated asset should be weighed against the public benefit of development. The greater the harm, the greater the justification will need to be. In considering the degree of harm in this case I attach weight to the views of MSDC, SCC and EH as statutory bodies with responsibilities in respect of historic and heritage assets. I also acknowledge the views of the Suffolk Preservation Society based on their understanding of the historical landscape. All have expressed concern that, in some degree, the applicant has understated the degree of harm to the significance of designated assets. I note that concerns expressed about the impact of a visible plume should be discounted given the assurances that with the high temperature of the exhaust gases there should be no such plume from an SCGT plant.
- 4.174 The principal locations of concern, all of which I have visited, are:
- (a) The setting of the LBs in Eye and the Eye Conservation Area. Within the town the generation plant would only be visible from Eye Castle. The stacks would be a prominent feature but, in my opinion, the Castle takes its significance as much from its position in the town as from its view into the surrounding area. Views towards Eye from the higher ground to the South would be affected with the development visible as an addition to the existing industrialised background. I consider that to have a relatively small impact on the wider setting of the LBs and the Conservation Area and therefore on significance. Mitigation through the design of the generation plant and its stacks would be important in reducing the impact on setting.
 - (b) The setting of LBs in Yaxley, Mellis and Thrandeston and the Mellis and Thrandeston Conservation Areas. The significance

of these LBs and Conservation Areas in their village settings would be affected by the ECC and, to a lesser extent by the generation plant. Existing trees and hedgerows would provide some screening, even in winter, but the ECC would result in the introduction of an industrial development into a largely rural landscape which surrounds the Conservation Areas and provides the setting for the LBs in the vicinity. The stacks of the generation plant would be visible from some locations as an addition to the existing vertical features of the wind turbines and the chicken litter plant. I consider that the impact is likely to be greatest on the Mellis Conservation Area where the common land is closest to the ECC and where the existing hedgerow is thin. The setting of the LB at Goswald Hall, which is close to the ECC would also be significantly changed. There would be a lesser impact on other LBs and Thrandeston Conservation Area where there is more screening from existing trees and hedgerows. Mitigation through landscaping would provide some reduction in harm (although I note concerns that some of the landscaping proposals could themselves have a harmful effect).

- (c) Other LBs and Conservation Areas further from the development site. These assets may have some views of the ECC or the generation plant but these would be distant and would not constitute prominent features. In my view there should not be any harmful impact on setting or significance for these more distant assets.

- 4.175 The degree of harm to the significance of designated assets is for the most part small but in some cases could be moderate or in one case significant. There is scope for impact to be reduced by good design and by landscaping measures. This may still leave some degree of harm which would need to be taken into account in balancing the overall benefits and adverse effects of the development.

Heritage assets demonstrably of equivalent significance

- 4.176 EN-1 recognises the existence of heritage assets with archaeological interest that are not currently designated as SMs but which are demonstrably of equivalent significance. The absence of designation for such assets does not indicate lower significance. If such assets may be affected by a development then they should be considered subject to the same policy considerations as designated heritage assets. The Decisions Regulations require the decision-maker to have regard to the desirability of preserving a scheduled monument or its setting.
- 4.177 There has been considerable discussion about the status to be accorded to the field system HA10. No clear definition has been provided for the extent of HA10 but I agree with the local authorities' suggestion (see paragraph 4.150) that this should

be taken as the area between Judas Lane and Leys Lane centred on the site of the ECC. But I also note that this forms part of a wider field system as identified by Professor Williamson. It has been argued that the field system HA10 which would be affected by the development of the ECC is an asset of at least regional significance, some have argued of potentially national significance. In the applicant's view HA10 is only of regional significance. EH commented that consideration of the significance of the field system boundaries and the impact of the development on them was primarily a matter for SCC's Archaeology Service to whom EH would defer on these matters. EH did however note that the field boundaries were unusual survivals of considerable significance.

- 4.178 The assessments of the field system submitted by academic experts (taking Dr Chadwick's reassessment as his final word on the subject) were all in favour of regarding this as at least of regional and potentially of national significance. Mr Bonner, for the applicant, argued that the field system did not meet the criteria set out by EH for designation. His views were strongly contested by the EAPWG and by MSDC and SCC on the grounds that his analysis was unsubstantiated in many respects, partial and therefore far from compelling.
- 4.179 The weight of expert opinion that has accumulated during the Examination is in favour of finding that field system HA10 met the EN-1 standard of being demonstrably of equivalent significance to a designated SM. To be fully satisfied on that point I would need to have an opinion to that effect from EH, the body responsible for designation of SMs. EH has not provided such an opinion but has stated that the field boundaries are of considerable significance. Given the evidence submitted, I am satisfied that there is a reasonable possibility that the 'demonstrably of equivalent significance' test could be met if subject to a full assessment. Where the proposed development would cause substantial direct and irreversible harm to the field system then, in my view, it would be appropriate to err on the side of caution and to proceed as if the test had been met. This would mean that there should be a presumption in favour of conservation of the field system with any harmful effect requiring clear and convincing justification.
- 4.180 It is agreed by the applicant, MSDC and SCC that the magnitude of the direct impact of the development on the field system as set out in the ES (the AIS variant) is substantial adverse and would be permanent. It is also agreed that the impact would be substantially reduced if the GIS variant were adopted. There is disagreement on the exact number of metres of boundary that would be affected by the AIS variant - a range of 277 - 570 m - but agreement that the GIS variant would only affect 25 m. The GIS variant would significantly reduce the direct harm to HA10. In the view of MSDC and SCC this would

reduce the harm from substantial to a moderate adverse significant effect.

- 4.181 Both options would change the setting within which HA10 sits and affect its significance. The AIS variant would have a strong impact because it would be set across the pattern of the existing boundaries. The GIS variant would fit within the existing boundaries and have a lesser impact. Landscaping may offset the visual impact although it would take time to mature and, in the case of the AIS variant, could obscure the existing boundaries.
- 4.182 The EAPWG has drawn attention to the provision in EN-1 that consent should be refused unless it can be demonstrated that the substantial harm to or loss of significance is necessary in order to deliver the substantial public benefits that outweigh that loss or harm. It was argued that the applicant must show that harm is unavoidable and that in order to do so it must provide an assessment of alternatives which took account of environmental effects, including the effect on heritage assets. That required a more rigorous assessment of alternatives than had been provided by the applicant and no attempt had been made to identify alternatives that would avoid or reduce effects on the environment, particularly on heritage assets.
- 4.183 The applicant's consideration of alternatives has been discussed above at paragraphs 4.23 to 4.36. The process of site selection, including a high level environmental impact assessment, was outlined. Alternative technologies, locations and layouts were considered before putting in the application for the chosen site. In my view the information provided meets the requirements for consideration of alternatives as set out in EN-1 and the EIA Regulations.
- 4.184 I do not accept the EAPWG assertion that the requirement for a 'rigorous assessment' of alternatives referred to in the Forge Field case is relevant in the context of PA 2008, nor that in the absence of such an assessment showing that harm to heritage assets is unavoidable it would be unsafe to grant consent. It is not a requirement that a site is selected on the basis that each potential adverse impact is minimised. Such an approach would make site selection almost impossible and not meet the proportionality test in EN-1. Consideration of alternatives is always likely to involve a trade-off between greater or lesser impacts from different aspects of a project. The harm from different aspects of any alternative chosen then has to be balanced against the wider public benefits.
- 4.185 My view on the impact of the proposed development on the field system HA10 it is that :

- (a) The field system HA10 may be of equivalent significance to a designated SM. This has not been conclusively demonstrated but should be assumed to be the case where substantial irreversible damage to an asset could occur.
- (b) The AIS variant (in both its original and refined versions) would cause substantial and irreversible damage to HA10. The GIS variant would cause only a small amount of irreversible damage.
- (c) Both options would have an adverse effect on the setting of HA10 but this would be reduced with the GIS variant.
- (d) Adequate consideration has been given to alternatives to the development, both in terms of site selection and consideration of options within the selected site. This includes the alternative of the GIS substation.

4.186 I conclude that substantial weight should be given to the harm arising from the AIS variant and that such harm should only be allowed in exceptional circumstances but that the less than substantial harm resulting from the GIS option may make it more acceptable in planning terms. I will take this assessment into account in my consideration of all the benefits and adverse effects of the proposed development.

Non-designated assets

- 4.187 EN-1 requires me also to consider the impact of the development on non-designated heritage assets. Over 40 undesignated assets, including HA10 discussed above, have been identified in the vicinity. These include the Roman Road (HA41) which would be crossed by the ECC access road, medieval field boundaries on the Airfield (HA31) and the Airfield itself where the generation plant would be located (HA32). In addition there are a number of medieval heritage assets within the Inner Study Area. Large Green at Mellis (HA01), Little and Great Green at Thrandeston (HA04, HA20) fall within their local Conservation Areas.
- 4.188 Although the proposed development, particularly the generation plant sited on the Airfield, would cause permanent harm to some of these assets it has not been suggested that, apart from HA10, these undesignated assets are of such heritage significance that they should be given particular consideration.
- 4.189 The case has been strongly argued that HA10 is of heritage significance at regional or higher level and therefore, even if the Secretary of State did not agree with my recommendation at paragraph 4.179 that it should be treated as if it had been classified as being of demonstrably equivalent significance to a designated SM, it merits consideration in taking a decision on this application.

- 4.190 In that case the same considerations as set out at paragraph 4.185 would apply, namely that:
- (a) The AIS variant (in both its original and refined versions) would cause substantial and irreversible damage to HA10. The GIS variant would cause only a small amount of irreversible damage.
 - (b) Both options would have an adverse effect on the setting of HA10 but this would be reduced with the GIS variant.
- 4.191 The presumption in favour of conservation does not apply in the same way to non-designated assets but the reduction in adverse effect from the GIS variant should still be a consideration in the final evaluation of the benefits and adverse effects of the development.

TRAFFIC AND TRANSPORT

- 4.192 The principal impact of the development on traffic and transport would occur during the construction phase of the project. Access to the site of the generation plant and the AGI would be from Castleton Way where the existing access point would be remodelled. Access to the ECC would be from a new T-junction on the A140. This would cross the stopped up Old Norwich Road which provides local access to a fishing lake and allotments and continue on a new single track road with passing places across agricultural land. This access road would also cross the PRow along Leys Lane.
- 4.193 Traffic analysis was carried out for the construction and operational phases of the development with consideration of traffic associated with workers on-site, HGV movements and abnormal loads. Six junctions on the A140 close to the proposed development (including the new access point for the ECC) were analysed. These are shown on Insert 12.1 in the ES. One of these, the junction with the B1077, already operates at over capacity in peak periods and construction traffic would result in a small addition to delays at this junction. The other junctions operate below full capacity and the additional traffic was expected to have only a minor effect on traffic flows.
- 4.194 A Construction Traffic Management Plan (CTMP) was included with the application (APP-032). The routing of HGVs would be constrained to the A140 in order to minimise any potential disruption in Eye or Yaxley. Routes for abnormal loads would be constrained to suitable major roads, such as the A14 and A140, to enable the transportation of abnormal loads from the destination port to the Project Site. Based on the gravity model used to identify the likely origin and destinations of staff, it was anticipated that there would be a limited number of construction staff travelling through Eye.

Views of interested parties

- 4.195 In their joint LIR, MSDC and SCC identified the impact of construction traffic on the A140 as a major local issue (REP-051). In particular there was concern that traffic conditions on the road would deteriorate as traffic volume increased, making access to the A140 at its various junctions more difficult. Ultimately this could have implications for road safety. PRowS on the Airfield would be affected during construction. Users of PRowS on both sides of the A140 would be affected in the operational phase through changes in the surrounding environment (principally in relation to visual amenity). The development, which spans the A140, offers an opportunity to improve PRowS on both east and west of the A140 and to enhance existing links between the Airfield and Eye.
- 4.196 Concern was also expressed that by assuming that HGV movements would be spread equally across the day, the applicant had not considered the worst case scenario. The applicant subsequently carried out a sensitivity test with all HGV traffic arriving during peak periods. It concluded that although in this scenario there could be an increase in delays at some junctions this did not alter the conclusion in the ES that the impact on the road network would not be significant (REP-055).
- 4.197 SCC as the highway authority set out a number of concerns about the detailed design of the Castleton Way and new A140 access points. SCC discussed these with the applicant and revisions were made to the plans. These included agreement that:
- (a) The A140 access which was initially proposed as a permanent junction should be closed after the completion of construction;
 - (b) Access to the fishing lake and allotments along Old Norwich Road should be maintained unhindered by gates;
 - (c) Visibility splays both on Castleton Way and the A140 should be improved;
 - (d) The PRow along Leys Lane should be kept open during the construction period;
 - (e) Banksman would be used to ensure safety of users of Old Norwich Road and Leys Lane during construction.
- 4.198 Other IPs expressed concerns about the effect of construction traffic on local roads and the A140 (RR-001, -007, -014, -015, -022, -029, -033, -037, -038, -041, -043, -044, -049, -051, -055, -059, -062, -064, -066, -070, -072, -074, -088, -090, -091, -092, -096). There was particular concern about adding to the level of traffic on the A140 which was already seen as dangerous. Concerns were also expressed by horse riders about possible disruption of the ride along Leys Lane with danger both to horses and their riders.

- 4.199 A Traffic and Transport Position Statement was submitted with the SoCG with MSDC and SCC of 24 October 2014 (REP-073, Annex 2) and revisions to the Interim CTMP and associated access drawings were submitted with revised SoCGs on 19 December 2014 and 13 January 2015 (REP-097, -106). On the basis of this material SCC agreed that safe access to the generation plant could be achieved through the proposals for the Castleton Way junction and that the proposed new A140 junction arrangements were of a safe, achievable design.
- 4.200 On the basis of the Transport Assessment in the ES and the sensitivity test carried out on HGV arrivals during peak hours, the applicant agreed:
- (a) to provide proportionate measures to improve the A140/B1077 junction to reduce the risk of collision;
 - (b) to monitor HGV construction traffic as part of the CTMP;
 - (c) to undertake a traffic survey of construction workers and discuss findings and any appropriate course of action with SCC;
 - (d) to review routing of HGV traffic accessing the generation plant site from the south to prevent queuing on the turn from the A140 into Castleton Way; and
 - (e) through the CTMP to discourage and monitor use of the B1077 by construction workers and agree any mitigation measures with SCC.
- 4.201 In the light of these changes SCC agreed to the findings of the Transport Assessment. A provision for a sum of £86,000 to be paid to SCC for the sole purpose of alleviating the impact of the development at the B1077/A140 junction is written into the S106 agreement signed on 13 January 2013 (APP-120). A further provision of £44,451 (in two tranches) is written into the S106 agreement for improving connectivity between the development, Eye, the Airfield and Yaxley.
- 4.202 The concerns of horse riders were raised in written representations, at the OFH and the first ISH (RR-037, -049, -059, -074, REP-014, HR-023, HR-036). The CTMP was amended to make it clear that banksmen would be used to control the flow of traffic along the access road to the ECC to ensure that all construction vehicles stop and give priority to the users of Leys Lane throughout the construction period. This is to ensure the safety of pedestrians, equestrians and other road users. The construction of the access road and the laying of the cable where it crosses Leys Lane would be carried out without the need to close the Lane completely. Partial closure of one side and then the other would be used to allow single file traffic to operate while a duct for the cable was installed. The updated CEMP (REP-097) also contains a section on equestrian management with examples of mitigation measures to address the safety of horse and riders. These mitigation measures would

be agreed with SCC, MSDC and a community liaison group as part of the final CEMP.

Conclusions on Traffic and Transport

- 4.203 Although the traffic on the A140 is already a cause of concern to local residents the traffic analysis carried out as part of the ES does not show a significant increase resulting from the proposed development. Financial contributions would be made through the S106 Agreement for improvements to the B1077/A140 junction which is already at full capacity at peak times and to improve connectivity between the Airfield, Eye and Yaxley. The design of the two junctions giving access to the construction areas have been modified to meet the concerns of the highway authority and the junction on the A140 would be removed on completion of construction of the ECC. Mitigation measures agreed with the highway authority would be included in the CTMP. In response to concerns expressed by IPs access to the local fishing lake and allotments would be maintained during the construction period. Particular attention would be paid in the CTMP and CEMP to the safety of horse riders and other users of the Leys Lane PRow.
- 4.204 Taking into account the agreed changes to the design of junctions, the proposed mitigation measures in the CTMP and CEMP to limit the impact of traffic on local roads and the PRow which would require approval by the relevant planning authority as a requirement in the DCO, and the financial contribution secured in the S106 agreement for off-site junction improvement, I am satisfied that traffic and transport associated with the development can be accommodated safely and without any significant detriment to the local community.

SOCIO-ECONOMIC IMPACTS

Views of the applicant

- 4.205 The ES reviewed the potential impact of the development on the local community looking in particular at effects in the local labour market, impact on tourism and recreation and on community infrastructure. The effect on agriculture was not considered to be significant.
- 4.206 During the construction period of 21 months the number of construction workers onsite would range from 25 to 127. The construction work is anticipated to contribute £8.8 m gross value added (GVA) to the national economy. This was considered in the ES to have a slight effect on local employment and amount to a minor beneficial impact. There is sufficient temporary accommodation in the area to meet the needs of temporary workers. Similar effects could be expected during the decommissioning phase. There would be 15 full time equivalent

posts at the generation plant during the operational phase. This phase would contribute £0.6 m GVA a year to the local economy. Again it was considered that this would have a minor beneficial impact. The development would provide an opportunity to improve the skills of a small section of the local workforce helping to reduce unemployment and improve productivity.

- 4.207 A survey of local tourism related businesses indicated that a majority considered that the proposed development would have no impact on their trading performance. The overall assessment indicated no significant impact on tourism or recreation either during the construction or operational phases.
- 4.208 The community infrastructure facilities within a 5 km radius include schools, healthcare facilities, transport routes and both indoor and outdoor recreational facilities. The significance of the impact on any of these was considered to be slight.

Views of interested parties

- 4.209 MSDC and SCC in their LIR agreed that the development had the potential to benefit the local economy through provision of direct employment and provision of indirect services but sought a more detailed analysis of the impact of the take up of tourist accommodation by construction workers. They sought to enhance the prospects for local people gaining employment and local businesses providing services through provisions in the S106 agreement.
- 4.210 MSDC and SCC agreed a socio-economics position statement with the applicant (REP-073). This suggested that 66% of construction jobs were relatively unspecialised and could be filled by the local workforce. Other jobs might need to be sourced from outside the area. It was estimated that a maximum of 47% of the construction workforce would need to be provided with local accommodation. There was sufficient capacity in the area to meet this requirement.
- 4.211 The applicant agreed to work with SCC to develop an education programme focusing on the role of the plant. This would include information and supporting educational material, a programme of visits to local schools and site visits.
- 4.212 The final S106 agreement contains provision for an Education and Development Scheme to be agreed with MSDC and SCC to provide training opportunities, apprenticeships or other programmes for local residents to obtain knowledge, skills, experience, confidence and the opportunity to gain employment in the construction of the development and a programme of education about the development. It also provides for a Local Services Scheme with measures to assist businesses based in

the vicinity to benefit directly from the opportunities arising from the development.

- 4.213 A number of IPs expressed concern that there was no clear evidence of economic benefit to the local economy from the development and that there could be an adverse impact of the development on tourism in the area. This was argued both in general terms and by reference to specific local businesses. The local employment generated by the development would be small and would not offset losses in other businesses. There was also concern about the loss of agricultural land and the possibility that the use of the Airfield site for this development would pre-empt other activities which might create more employment and deter the development of housing nearby. (RR-001, -008, -023, -033, -037, -044, -052, -055, -062, -070, -072, -078, -081, -088; REP-012, -014, -017, -031, -036)

Conclusions on socio-economic impacts

- 4.214 I acknowledge the concerns about local employment raised by IPs but I am satisfied on the basis of the evidence in the ES and the additional material provided in the SoCGs with MSDC and SCC that the impact on the local economy from direct and indirect employment and contribution to GVA during the construction and operational phase of the development is likely to be small but positive. It is unlikely that there would be any significant adverse effect on tourism.

HEALTH

- 4.215 An electrical infrastructure electro-magnetic field (EMF) assessment was carried out and submitted as part of the application (APP-034). This considered EMF strengths resulting from the connection from the existing 400 kV OHL to the proposed sealing end compound, the 400kV cable from the sealing end compound to the substation and the cable from the generation plant to the substation. There are no statutory regulations limiting exposure to EMFs but the Government has endorsed the adoption of the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines which set conservative exposure levels for the general public.
- 4.216 The exposure from the connection from the existing OHL to the sealing end compound would be the same as exposure from the existing OHL which is below the ICNIRP recommended level. The exposure from the cable connection, measured as magnetic field at 1 m above ground level, would also be below the ICNIRP recommended level.
- 4.217 The assessment concluded that the maximum EMF strengths would be within nationally and internationally accepted

guidelines and that changes due to the establishment of the ECC and the cable connection would constitute a 'minor' effect.

- 4.218 Effects on health from effects on air and water quality, noise, geology and contamination and waste were also considered in the ES. No significant adverse effects on public health were identified.
- 4.219 Concerns were expressed by a number of IPs in general terms about possible adverse effects on health from the development. A number of specific concerns were raised about the health effects of EMFs. Concern was also expressed that EMFs from the cable under Leys Lane could affect the behaviour of horses with risk both to horse and rider. (RR-002, -008, -023, -028, -032, -059, -080, -081; REP-013)
- 4.220 Responding to these concerns the applicant did not anticipate any EMF phenomena related to the development would be capable of harming horses and their riders using the PRow network. The cable design would restrict any electromagnetic fields to within the cable cross section. Cables are generally buried at depths of 1m or more and under normal operation no electrical current is carried outside of the conductors making up the electricity network. Under fault conditions some current may flow in the earth but UK standards are such that this would have no impact on the public. (REP-052)
- 4.221 In response to my second round of questions NGET provided additional information on the possible effects of rise of earth potential (RoEP) on livestock (REP-079). Although the information available for livestock is less detailed than for humans the threat of RoEP to livestock is of very low probability. For EMFs NGET considered that the exposure guidelines in place for humans also provide appropriate protection to other mammalian species including horses.
- 4.222 Public Health England PHE confirmed that the development as proposed did not appear to pose any significant risk to public health (RR-099).

Conclusions on health

- 4.223 I conclude that there should be no adverse effect on health from emissions from the generation plant or from EMFs associated with the cable and substation.

S106 AGREEMENT

- 4.224 A S106 agreement was negotiated during the Examination. The final agreement was signed on 13 January 2015 and is between the applicant, MSDC, SCC and Elizabeth Anne Moore and Harry Charles Moore, the landowners of the site for the generation plant.

4.225 The agreement provides for payments to be made by the applicant for:

- (a) The Education and Employment Scheme;
- (b) The Local Services Scheme;
- (c) Connectivity;
- (d) Landscaping and visual amenity;
- (e) Traffic and Transport;
- (f) Skylarks; and
- (g) Discharge of requirements.

4.226 The details of work to be carried out with the funds made available have been discussed in the relevant sections above. They principally relate to work outside of the application site which cannot be covered by requirements in the DCO. They also include payments to MSDC for regular inspection of on-site landscaping over a period of ten years and to MSDC and SCC to cover fees relating to the discharge of requirements in the DCO. I am satisfied that they provide additional mitigation for the effects of the proposed development that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

- 5.1 As noted earlier at paragraph 1.13 the proposed development could have a significant effect on a number of European sites as defined in Regulation 3 of the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations 2010) and therefore an appropriate assessment of the implications for any European sites might need to be carried out by the Secretary of State.
- 5.2 The proposed project is not connected with or necessary to the management for conservation of a European site.
- 5.3 The applicant submitted screening matrices with their DCO application as part of a No Significant Effects Report (NSER) (APP-023). These matrices presented the applicant's evidence on whether the project, alone or in-combination with other projects, potentially affects a European site, and whether it is likely to have a significant impact on key features of each European site. The matrices presented have been reviewed with the support of the Environmental Services Team of the Planning Inspectorate.
- 5.4 The NSER identified two European sites as being potentially affected by the proposed development.¹⁵ These sites were agreed with NE (RR-075) and are at least 7.3 km from the project site. The European sites identified are:
- (a) Redgrave and South Lopham Fens Ramsar Site; and
 - (b) Waveney and Little Ouse Valley Fens SAC.
- 5.5 The NSER screened these sites for likely significant effects. The possible effects considered were:
- (a) Habitat loss of features;
 - (b) Fragmentation: the generation plant, gas and electrical connections could result in habitat fragmentation and/or species population fragmentation;
 - (c) Changes in air quality from atmospheric pollution associated with construction and operation of the project could result in changing the pH of the habitats which are primarily alkaline;
 - (d) Changes in hydrology that could affect the Ramsar Site or SAC; and
 - (e) Direct and indirect disturbance including noise and vibration effects during construction.

¹⁵ The HRA followed the methodology set out in PINS Advice Note 10: Habitat Regulations Assessment relevant to nationally significant infrastructure projects.
<http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/09/Advice-note-10-HRA.pdf>

- 5.6 Stage 1 screening matrices were provided. These considered direct and in-combination impacts and showed no significant effects at either of the locations. NE was satisfied that the NSER demonstrated beyond reasonable scientific doubt that there would be no significant effect on the integrity of these two European sites. The EA also indicated that it had reviewed the NSER on a light touch basis and took the view that the important ecological points had been identified and addressed with respect to on-site and local impacts (RR-108).

The Report on the Implications for European Sites

- 5.7 In order to assist the Secretary of State in carrying out his responsibility as Competent Authority I have, with the support of the Planning Inspectorate's Environmental Services Team, prepared a RIES (REP-095). The purpose of the RIES (and any consultation responses received in relation to it) is to compile, document and signpost information provided within the DCO application and information submitted throughout the Examination by both the applicant and interested parties. It is issued to ensure that interested parties including the statutory nature conservation bodies are consulted formally on habitats regulations matters. This process may be relied on by the Secretary of State for the purposes of Regulation 61(3) of the Habitats Regulations.
- 5.8 The RIES was published on 15 December 2014 and takes into account the original NSER, comments were invited. The only comment received was from the EA which repeated the views in its original representation as noted above.
- 5.9 Mitigation and monitoring measures directly relevant to the scope of potential effects on European sites include:
- (a) Implementation of a CEMP;
 - (b) Adherence to all relevant Environmental Permits, Best Practice Guidance/Regulations, British Standards, and monitoring in respect of air quality, noise and vibration, and water resources;
 - (c) Implementation of industry standard methods and procedures to ensure air quality impacts are minimised throughout all phases of the project;
 - (d) Use of Dry Low NO_x burners (or better) during operation to ensure limitation of NO_x emissions in accordance with the Industrial Emissions Directive (IED) and the BAT associated emissions levels for the firing of natural gas in GTs;
 - (e) Choice of SCGT technology which does not require a large amount of water for its operation to minimise impacts on water resources;
 - (f) Use of industry best practices in design and construction of water course crossings (e.g. HDD) to reduce interactions with water courses;

- (g) Implementation of a Sustainable Urban Drainage System (SUDS); and
 - (h) Implementation of a range of measures within the design to minimise any impacts from noise and vibration such as housing GTs and major compressors in individual acoustic enclosures, fitting of high performance silencers on turbine filter and ventilation apertures, installation of high performance silencers in the outlet ducts between the GTs, and housing of unit transformers and generator transformers in appropriate enclosures.
- 5.10 These measures would be secured either through the EP or through requirements in the DCO. Taking mitigation measures into account the stage 1 screening matrices did not identify any significant effects and it was not necessary to consider the effects on the integrity of European sites.
- 5.11 Taking into account the NSER and the evidence presented by IPs I accept the applicant's conclusion of no likely significant effect on the European sites in question and conclude that it is not necessary for the Secretary of State to carry out an appropriate assessment.

6 RECOMMENDATION ON THE CASE FOR THE DEVELOPMENT

Need for the development

- 6.1 As noted at paragraph 3.1 the proposed development qualifies as an NSIP and consideration of the proposal is subject to the guidance in NPS EN-1 and associated NPS EN-2, 4 and 5. EN-1 states that applications for development consent for energy NSIPs should be assessed on the basis that the Government has demonstrated that there is a need for those types of infrastructure. That guidance carries considerable weight in any consideration of whether to grant a DCO.
- 6.2 The development of the capacity market as part of the Government's programme of energy market reform has created a role for a particular type of flexible generation which the proposed development is designed to fulfil. However capacity market contracts will be subject to competitive tender with no guarantee that contracts will be awarded to any particular bidder. In the light of that uncertainty I attach only limited additional weight to the proposal on the grounds of its potential for flexible operation.

Emissions

- 6.3 I have considered the analysis of aerial and water emissions and noise as set out in the ES and the measures proposed to mitigate the impact of any emissions. These include measures embedded in the design of the main elements of the development, requirements for approval of drainage systems, adoption of a CEMP based on the agreed outline, and limits on operational noise by the relevant planning authority. These measures which are included in Requirements 3, 8, 11 and 17 of the final draft DCO, (discussed in detail in section 8), should ensure that the levels of emissions are kept below the thresholds above which significant adverse effects could be expected to occur.
- 6.4 Emissions to air and water would be regulated through an EP which has not yet been applied for. The EA has agreed that the proposed SCGT type of plant should be capable of being adequately regulated under the pollution control framework and that the cumulative impacts should fall within statutory limits. When an application is received the EA would need to make further enquiries but the EA was not aware of anything that would preclude the grant of an EP for an SCGT. On the basis of the evidence before me and without prejudice to any future consideration by the EA, I do not have any reason to believe that an EP for the generation plant would not be granted.
- 6.5 On this basis I conclude that, subject to the mitigation measures identified, there should not be any significant adverse

effects from emissions to air and water or from noise. For this reason, in my view emissions from the plant, including the effects of noise are not matters which should carry significant weight in the consideration of whether to grant a DCO.

Biodiversity

- 6.6 Although the proposed development would lead to the loss of arable land and some hedgerows, a significant amount of new planting is proposed to offset any adverse effect. Requirement 10 of the final draft DCO contains provisions for the agreement of the final Ecological Management Strategy with the relevant planning authority in consultation with NE. Requirements 4 and 5 provide for details of the landscaping to be agreed with the relevant planning authority and for the implementation and maintenance of the landscaping plan. The S106 agreement contains provisions for action outside of the boundary of the development to mitigate the impact on skylarks. I am satisfied that, subject to these provisions, the proposed new planting would be adequate to address any adverse effects on biodiversity in the neighbourhood of the development and that these are not matters which should carry significant weight in the consideration of whether to grant a DCO.

Landscape and visual impact

- 6.7 The guidance in EN-1 acknowledges that virtually all NSIPs will have effects on the landscape and have visual effects for many people. The aim in designing a project should be to minimise the harm to the landscape and visual effects and provide reasonable mitigation. EN-2 states that if the location for a fossil fuel generation project is appropriate and it has been designed sensitively to minimise harm to landscape and visual amenity then the visibility of the generating station should be given limited weight. Guidance in EN-5 principally relates to OHL development but recognises that substations and sealing end compounds can also give rise to landscape and visual impacts.
- 6.8 The generation plant would add to the industrialisation of the Airfield and would be visible from the nearby town of Eye and neighbouring villages but mitigation planting would help to provide a screen over the years. The stacks would be visible over a much wider area and would be a significant feature on the skyline. The choice of SCGT technology allows stack height to be kept to a maximum of 30 m and would not result in any visible plume. The revised DPS with further consultation and a Design Review would allow further mitigation of impact through design to be incorporated into any final development. This is ensured in the DCO through Requirement 3. In addition Lighting Design Principles have been developed and agreed with MSDC and SCC and are set out in the outline lighting strategy.

Requirement 18 provides for the lighting scheme for the development to be agreed with the relevant planning authority and to be substantially in accordance with the outline lighting strategy. In my view this approach to design and lighting for the generation plant meets the requirements of EN-1 and EN-2 to minimise harm to landscape and visual amenity. The gas connection and AGI would also have some adverse impact on landscape and visual amenity although this would be confined to the immediate vicinity of the development.

- 6.9 The development of the ECC with associated cable laying and access road would introduce an industrial type of development into an agricultural area, albeit an area which is crossed by a major overhead power line. The ECC would be visible from nearby houses and from a number of small villages surrounding the site. It would also be visible from some more distant locations. The impact on landscape and visual amenity is acknowledged in the ES to be significant. Mitigation planting would soften the impact but, for the applicant's preferred AIS variant this could take 15 years to develop. The GIS variant would provide some further mitigation of the impact by providing a design with a much smaller footprint involving only a small loss of existing hedgerow and would be aligned with existing field boundaries. That would still result in a new intrusion into the agricultural landscape but could be designed to blend in with the agricultural location and other farm buildings nearby. The S106 agreement provides for additional offsite planting to provide further mitigation in respect of visual impact of either the AIS or the GIS option.
- 6.10 In my view there would be a landscape and visual impact from each of the main elements of the proposed development. Mitigation by use of good design can reduce but not completely offset those impacts. Taking proposed mitigation measures into account it would be consistent with the guidance in EN-2 to give limited weight to the visual impact of the generation plant but the other elements of the development also need to be considered. The impact is greatest for the ECC which is in a primarily rural location. It would be consistent with the principle of minimising harm as set out in EN-1 and subject to consideration of any additional costs, to prefer the GIS variant which would reduce the impact of the ECC on landscape and visual amenity compared with the AIS variant. Taking the development as a whole I attach some weight to the adverse effects on landscape and visual impact of the development in consideration of whether to grant a DCO and I consider that that weight would be reduced if the GIS variant were to be adopted.

Heritage and Historic Assets

- 6.11 The potential impact of the development on heritage and historic assets has been explored in detail during the course of the Examination. Following the distinctions set out in EN-1 I have considered the possible impact on three categories of heritage asset:
- (a) Designated assets;
 - (b) Heritage assets with archaeological significance not currently designated as SM but which it has been argued by some IPs are demonstrably of equivalent significance;
 - (c) Non-designated assets which are of lower value than designated heritage assets.

Designated assets

- 6.12 The area is rich in designated assets and attention has been drawn to their collective value as part of the heritage of the area as well as their individual status.
- 6.13 I am satisfied that none of the designated assets would be directly affected by the proposed development in the sense that no part of an asset would be destroyed. All parties accept that there would be a degree of harm to the setting and significance of at least some of the designated assets identified in the study area. Views have differed on the extent of that harm.
- 6.14 The Decisions Regulations set out matters to which the decision maker must have regard when considering the impact on LBs, conservation areas and SMs. EN-1 provides guidance on the consideration of harm to designated assets. There should be a presumption in favour of the conservation of designated assets. Loss affecting any such asset should require clear and convincing justification. No substantial harm to or loss of any of the designated assets has been identified. EN-1 states that any harmful impact on the significance of a designated asset should be weighed against the public benefit of development. The greater the harm, the greater the justification would need to be.
- 6.15 In considering the degree of harm in this case I attach weight to the views of MSDC, SCC and EH as statutory bodies with responsibilities in respect of historic and heritage assets. I also acknowledge the views of the Suffolk Preservation Society based on their understanding of the historical landscape. All have expressed concern that, in some degree, the applicant has understated the degree of harm to the significance of designated assets.
- 6.16 On the basis of the evidence submitted and my site visits it is my view the degree of harm to the setting and significance of designated assets is for the most part small but in some cases could be moderate. This is a matter to which the decisionmaker

must have regard under the requirements of the Decisions Regulations. There is scope for impact to be reduced by good design and by landscaping measures which are included in the DCO through Requirements 3, 4 and 5. This may still leave a degree of harm to which some weight should be given in consideration of whether to grant a DCO.

Heritage assets demonstrably of equivalent significance

- 6.17 EN-1 provides for the existence of heritage assets with archaeological interest that are not currently designated as SMs but which are demonstrably of equivalent significance. The absence of designation for such assets does not indicate lower significance. If such assets may be affected by a development then they should be considered subject to the same policy considerations as designated heritage assets.
- 6.18 There has been considerable discussion about the status to be accorded to the field system HA10. In the applicant's view HA10 is only of regional significance. EH commented that the field boundaries were unusual survivals of considerable significance but did not offer a view on whether this was of demonstrably equivalent significance to a designated SM. The assessments of the field system submitted by academic experts were all in favour of regarding the field system as being at least of regional and potentially of national significance.
- 6.19 Given the evidence submitted, I am satisfied that there is a reasonable possibility that the 'demonstrably of equivalent significance' test could be met if subject to a full assessment. If the proposed development would cause substantial direct and irreversible harm to the field system then it would, in my view, be appropriate to err on the side of caution and to proceed as if the test had been met. This would mean that in considering whether to grant a DCO there should be a presumption in favour of conservation of the field system with any harmful effect requiring clear and convincing justification.
- 6.20 It is agreed by the applicant, MSDC and SCC that the magnitude of the direct impact of the development on the field system as set out in the ES (the AIS variant) is substantial adverse and would be permanent. It is also agreed that the impact would be reduced if the GIS variant were adopted. In the view of MSDC and SCC this would reduce the harm from substantial to a moderate adverse significant effect. In the applicant's view the GIS variant would only result in marginally reduced environmental impacts.
- 6.21 My view on the impact of the proposed development on this category of historic asset is that :

- (a) The field system HA10 may be of equivalent significance to a designated SM. This has not been conclusively demonstrated but should be assumed to be the case where substantial, irreversible damage to an asset could occur.
 - (b) The AIS variant (in both its original and refined versions) would cause substantial and irreversible damage to HA10. The GIS variant would cause only a small amount of irreversible damage.
 - (c) Both options would have an adverse effect on the setting of HA10 but this would be reduced with the GIS variant.
- 6.22 In my view considerable weight should be given to the substantial adverse direct impact and adverse impact on setting of the AIS variant on HA10 in considering whether to grant a DCO with a presumption in favour of conservation. Some weight should also be attached to the reduced adverse direct and indirect impact of the GIS variant.

Non-designated assets

- 6.23 EN-1 requires me also to consider the impact of the development on non-designated heritage assets. Over 40 undesignated assets, including HA10, have been identified in the vicinity. Although the proposed development, particularly the generation plant sited on the Airfield, would cause permanent harm to some of these assets it has not been suggested that, apart from HA10, these undesignated assets are of such heritage significance that they should be given particular consideration.
- 6.24 The case has been strongly argued that HA10 is of heritage significance at regional or higher level and therefore, even if the Secretary of State did not agree with my recommendation that it should be treated as if it had been classified as being of demonstrably equivalent significance to a designated SM, it merits consideration in taking a decision on this application.
- 6.25 In that case these considerations would apply:
- (a) The AIS variant (in both its original and refined versions) would cause substantial and irreversible damage to HA10. The GIS variant would cause only a small amount of irreversible damage.
 - (b) Both options would have an adverse effect on the setting of HA10 but this would be reduced with the GIS variant.
- 6.26 The presumption in favour of conservation does not apply in the same way to non-designated assets. Nonetheless, in my view some weight should be attached to the adverse effects on non-designated assets in considering whether to grant a DCO and the reduction in adverse effect from the GIS variant should be a consideration.

Traffic and transport

- 6.27 Although the traffic on the A140 is already a cause of concern to local residents the traffic analysis carried out as part of the ES does not show a significant increase resulting from the proposed development. A financial contribution would be made through the S106 Agreement for improvements to the B1077/A140 junction which is already at full capacity at peak times and to the improvement in connectivity in the area. The design of the two junctions giving access to the construction areas has been modified to meet the concerns of the highways authority and the junction on the A140 would be removed on completion of construction of the ECC. This is ensured through Requirement 6 in the draft DCO. Mitigation measures agreed with the highway authority would be included in the CTMP. In response to concerns expressed by IPs, access to the local fishing lake and allotments would be maintained during the construction period. The outline CTMP and CEMP, which would form the basis for the final Plans to be prepared and approved in accordance with Requirements 11 and 13, include provisions relating to the safety of horse riders and other users of the Leys Lane PRoW.
- 6.28 Taking into account the agreed changes to the design of junctions, the proposed mitigation measures in the CTMP and CEMP to limit the impact of traffic on local roads and the PRoW which would require approval by the relevant planning authority under Requirements 11 and 13 in the DCO and the financial contribution secured in the S106 agreement for off-site junction improvement and improvements in connectivity, I am satisfied that traffic and transport associated with the development can be accommodated safely and without any significant detriment to the local community. I do not consider that effects of the development on traffic and transport are matters which should carry significant weight in consideration of whether to grant a DCO.

Socio-economic impacts including health

- 6.29 There should be a small positive impact on the local and national economy to which some weight should be given in considering whether to grant a DCO. No adverse effects on health have been identified.

National Grid's duties

- 6.30 NGET has drawn attention to its duty under section 9 of the Electricity Act to bring forward efficient, co-ordinated and economical proposals in terms of network design and to have regard to amenity under Section 38 and Schedule 9 of the Electricity Act (see paragraphs 4.13 and 4.14 above). The section 9 duty is referred to at 2.3.5 in EN-5 as a matter to be taken into account by the decision maker.

- 6.31 NGET has expressed its preference for the AIS variant and suggested that prescribing a GIS design would prevent NGET from performing its duty to balance amenity considerations against its other obligations to be economic and efficient. The implication of NGET's approach, which was supported by the applicant, is that since NGET would be responsible for the design and construction of the ECC, the detail of which would be decided at a later date, the choice between the AIS and GIS options should be left to NGET subject to its Electricity Act duties. The Rochdale envelope approach adopted in the application ensured that the worst case has been subject to assessment in the ES and that sets the constraint within which NGET would operate.
- 6.32 I have considered NGET's arguments but I do not accept the analysis. As set out above, there are significant differences in planning terms between the impacts of the AIS and GIS options. These impacts are important and relevant considerations in making a recommendation on whether to grant a DCO and in considering the details of the draft DCO. They concern issues which are the subject of the Decisions Regulations and of guidance in EN-1 on the assessment of generic impacts, in particular section 5.8 on the Historic Environment. They are also matters identified as being of overriding concern in the LIR. These are all matters to which the Secretary of State must have regard in making his decision.
- 6.33 Where it is possible for me to make a recommendation and the Secretary of State to take a decision on planning matters as part of the application such a decision should not be deferred and, in effect, delegated to a third party. Coming to a view on the choice between the AIS and GIS options would not, in my view, override NGET's Electricity Act duties. NGET has acknowledged that it can only carry out the design and construction of the ECC in line with the terms of the DCO. The DCO would set the parameters within which NGET must then exercise its duties.

Conclusions on the case for the development

- 6.34 I have considered the evidence submitted with the application as updated during the course of the Examination, representations from statutory bodies and other IPs including the joint LIR from the two local authorities and other evidence accepted into the examination. I have taken into account the on-site mitigation measures that have been agreed during the course of the Examination and which are secured through the DCO. I also attach weight to the additional mitigation of adverse effects which would be provided through off-site measures secured in the S106 agreement. I have taken into account the no significant effects findings in the RIES. I consider that this

material taken together provides an adequate basis on which to make a recommendation on the application for a DCO.

- 6.35 As summarised above I consider that, taking into account mitigation measures agreed, no significant weight needs to be attached to the impact of the development on :
- (a) Emissions from the development including emissions to air, water and noise;
 - (b) Biodiversity;
 - (c) Traffic and transport; and
 - (d) Health
- 6.36 I consider that there would be positive impacts from the development from its contribution to the need for new fossil fuel generation capacity identified in EN-1 and to its potential role in the newly introduced capacity market. EN-1 also states that the decision maker should start with a presumption in favour of granting consent for energy NSIPs. This applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. I have also identified a small positive contribution to the local and national economy from the development.
- 6.37 On the other side of the balance I have identified a negative impact from the project in terms of its impact on:
- (a) Landscape and visual impact. This would be partly but not totally offset by mitigation measures and would be smaller if the GIS variant was adopted.
 - (b) Historic and heritage assets. There would some adverse impact on the setting of designated heritage assets even after mitigation measures. If the AIS variant was adopted there would be a substantial direct and irreversible adverse effect on the field system HA 10 which in my view may be of equivalent significance to a designated SM. If the GIS variant was adopted there would still be an adverse effect but it would be less than substantial.
- 6.38 EN-1 is clear that there should be a presumption in favour of conservation of designated assets or assets with archaeological interest that are not currently designated as SM but are demonstrably of equivalent significance. The impacts on LBs, conservation areas and SMs are matters to which the decision-maker must have regard under the requirements of the Decisions Regulations. EN-1 sets out that loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of designated assets of the highest significance including SMs should be wholly exceptional. The same consideration applies to an asset that may be of equivalent significance to a designated SM. In my view that indicates that significant weight should be given to the

damage to the field system from the AIS variant and it would need to be shown why wholly exceptional reasons apply in granting a DCO. If the GIS variant was adopted weight should still be given to the harm but this would be at a lower level of significance. Under either option some weight should be attached to the adverse impact on the setting of the field systems.

- 6.39 Even if the field system was not considered to be of equivalent significance to a SM, weight should still be given to the harm that would be caused to non-designated heritage assets and to the fact that this harm would be less if the GIS variant was adopted.
- 6.40 EN-1 does not provide a yardstick for comparing degrees of benefit and harm from a development. Drawing on the guidance in EN-1 on the assessment of individual aspects of the development I consider that a high weighting should be given both to the established need for the development and to the substantial harm that would occur, with the AIS variant, to an asset that should be considered to be of equivalent significance to a SM. Taking these two factors on their own there is a fine balance between the benefits and the adverse impacts of the development. I attach particular importance to the fact that the damage to the field system would be permanent. In addition I note that the benefit to be obtained from allowing the development is not contingent on adopting the AIS variant. It can equally be obtained by adopting the GIS variant which has a lesser impact both in respect of landscape and visual impact and historic and heritage assets. There would be an additional cost of the GIS option, estimated to be £4m, which would be passed on to electricity customers but this would be amortised over the life of the investment.
- 6.41 On balance my view in relation to the AIS variant is that the established need for new generation capacity and the lower cost of the AIS variant do not provide the exceptional reasons required to justify the harm to an asset of equivalent significance to a SM and that the presumption in favour of granting consent for an energy NSIP should not prevail. For that reason I find that the case for the AIS variant has not been made out.
- 6.42 I am satisfied that, taking into account the requirements in the DCO and the additional off-site measures provided for in the S106 agreement, the level of harm can be reduced with the GIS variant to a level where the need and other benefits can be expected to be greater than the harm to landscape and visual impact and historic and heritage assets. I therefore find that on balance the case for the GIS variant has been made out.

7 COMPULSORY ACQUISITION AND OTHER LAND MATTERS

The Request for Compulsory Acquisition Powers

- 7.1 The nature and scope of the proposed development has been described in Section 2 of this Report. The Order Limits for the project are shown by the red line boundary on sheet 1 of the original Land Plans (APP-012). Compulsory acquisition (CA) powers are sought in respect of the freehold of land shown in pink on the Land Plans and in respect of acquisition of rights over land shown in blue on the Land Plans. In both cases it is proposed to extinguish easements, servitudes and other private rights. CA powers would be provided through appropriate articles in the DCO. Temporary use of land is also sought for the land shown in yellow on the Land Plans. This does not constitute CA and is provided for in separate articles in the DCO.
- 7.2 In the previous section I concluded that, on balance, the case for the GIS variant had been made and that, on balance the case for the AIS variant had not been made. I have, nonetheless, for completeness considered the three separate applications for CA powers (and temporary possession) that were in the draft DCOs before me at the close of the Examination namely the revised original application, the refined application - AIS variant and the GIS variant. These variants differ in the extent of the land over which the relevant powers would be exercised.
- 7.3 A Statement of Reasons (APP-057), Funding Statement (APP-042) and Book of Reference (APP-043) were provided with the application. The Book of Reference was updated during the course of the Examination and separate versions were provided linked to the three separate versions of the draft DCO provided in the final stages of the Examination. Books of Reference were provided for the revised original application (APP-099), the refined application - AIS variant (APP-110) and the GIS variant (APP-112). Land Plans were provided for the revised original application (APP-012), the refined application - AIS variant (APP-091) and the GIS variant (APP-092).
- 7.4 The land for which CA powers are sought is primarily agricultural land on the former Airfield and on land to the west of the A140. The crossing of the A140, Old Norwich Road and Leys Lane would affect public highways.

The Requirements of the Planning Act 2008

- 7.5 Sections 122 and 123 of PA 2008 allow for the inclusion in the DCO of a provision authorising CA if the Secretary of State is satisfied that certain conditions are met.
- 7.6 Section 122 (2) states that the land must be:

- (a) required for the development to which the development consent relates; and
 - (b) required to facilitate or be incidental to it; or
 - (c) be exchange land.
- 7.7 Guidance (the Guidance) states that the land to be taken must be no more than is reasonably required and be proportionate.¹⁶
- 7.8 Section 122(3) requires that there must be a compelling case in the public interest for compulsory acquisition. The Guidance states that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is acquired.
- 7.9 Section 123 requires that one of three conditions is met by the proposal¹⁷. I am satisfied that the condition in s.123(2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.
- 7.10 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:
- (a) all reasonable alternatives to compulsory acquisition must be explored
 - (b) the applicant must have a clear idea of how it intends to use the land and to demonstrate that funds are available; and
 - (c) the decision maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

Examination of the case for Compulsory Acquisition and other powers

The applicant's case

- 7.11 The applicant's justification for seeking CA and other powers as set out in the Statement of Reasons is to secure land, the temporary use of land and the rights and other interests required to enable it to construct, operate and maintain the project within a reasonable commercial timeframe. It maintained that the land and rights to be acquired together with

¹⁶ Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

¹⁷ (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met.

(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

(4) The condition is that the prescribed procedure has been followed in relation to the land.

the land required for temporary use was no more than was required to facilitate the project, its construction and future maintenance.

7.12 During the course of the Examination the applicant reached agreement with affected parties on the acquisition of the land and rights in questions and all objections to CA were withdrawn. Nonetheless the applicant wished to proceed with CA in order to ensure that certain easements and other private rights identified as affecting the land were extinguished. In addition there may be unknown rights, restrictions, easements or servitudes affecting the land which also need to be removed or extinguished in order to facilitate the construction and operation of the project without hindrance. In the absence of CA powers the Order Land might not be assembled. Uncertainty would prevail and the applicant considered that its objectives and Government policy objectives would not be achieved.

7.13 In the original application CA of the freehold in land was proposed for:

- (a) Plot 1_MS, agricultural land, for the purpose of the construction, maintenance and landscaping of the generation plant (Works 1 and 2), gas connection (Works 4) and the electrical cable (Works 6);¹⁸
- (b) Plot 7_GR, agricultural land for the purpose of the construction and landscaping of the AGI and associated access (Works 3a) and the gas connection (Works 4)
- (c) Plots 14_ER, 15_ER, 16_ER, 17_ER, agricultural land, for the purpose of the construction and landscaping of the substation, associated infrastructure and landscaping (Works 5a and 5c-f) and plot 19_ER, agricultural land for the construction of the works associated with sealing end compound (Works 5a, and 5c-e)
- (d) Plots 1_JW and 2_JW, land forming part of farm, for the construction of a new access point to the A140 (Works 7).

7.14 Creation of new rights in order to facilitate the construction, operation and maintenance of the proposed development were proposed for:

- (a) Plots 1_GR, part of public footpath, 2_GR, land part of disused runway, 3_GR, private access road, 4_GR and 5_GR, agricultural land, woodland and access track and 6_GR, private access road; the right to construct, install, use, maintain and landscape the gas connection (Works 4). Plot 6_GR would also be required to provide access to the AGI (Works 3b). All of these plots would also be the subject of temporary use during construction.

¹⁸ References such as Plot 1_MS relate to the plots shown on the relevant Land Plans.

- (b) Plots 1_ER, part of public footpath, 2_ER, land part of disused runway, 3_ER, private access road, 4_ER, agricultural land and access track, 5_ER, part of A140, 6_ER, part of farm, 7_ER, part of Old Norwich Road, 8_ER, Part of Old Norwich Road, 9_ER, agricultural land, 10_ER, agricultural land, 11_ER, part of Leys Lane, 12_ER, part of Leys Lane and 13_ER, agricultural land; the right to construct, install, use and maintain the underground cable (Works 6). All of these plots would also be the subject of temporary use during construction.
- (c) Plots 10_ER, agricultural land, 11_ER, part of Leys Lane, 12_ER, part of Leys Lane, 13_ER, agricultural land, 4_JW, agricultural land, 5_JW, access road and car park and 6_JW, agricultural land; the right to construct use and maintain new access between Works 5 and the A140 (Works 7). All of these plots would also be the subject of temporary use during construction.

7.15 Temporary use of land not subject to CA would be required for:

- (a) The construction and installation of the gas connection and associated work (Works 4) on the following plots; 1a_GR, part of public footpath, 2a_GR, part of disused runway, 2b_GR, part of disused runway, 3a_GR, private access road, 4a_GR, agricultural land, 6a_GR, private access road and 7a_GR, agricultural land.
- (b) The underground cable associated work (Works 6) on the following plots; 1a_ER, part of public footpath, 2a_ER, part of disused runway, 2b_ER, part of disused runway, 3a_ER, private access road, 4a_ER, agricultural land, 4b_ER, agricultural land, 4c_ER, agricultural land, 9a_ER, agricultural land and 9b_ER, agricultural land.
- (c) The construction and installation of new access between Works 5 and the A140 (Works 7); plot 3_JW, agricultural land.

7.16 Under the provisions of the DCO (Article 23) private rights over land subject to CA would be extinguished (except where subject to protective provisions). All private rights over land of which the applicant takes temporary possession would be suspended for as long as the applicant remained in possession of the land in so far as their continuance would be inconsistent with the temporary possession. This applied to each of the plots listed as subject to CA above.

7.17 There are no Crown interests or special category land involved in the proposed development.

7.18 A number of statutory undertakers would be affected by the CA proposals. Protective provisions to be included in the DCO have been agreed with NGET, NGG and Eastern Power Networks (REP-092, -082, AS-039). General protective provisions for the

protection of electricity, gas, water and sewerage undertakers and operators of electronic communications code networks would also be included in the DCO.

- 7.19 The powers sought in order to implement the required CA and also the associated temporary possession of land are set out in Parts 3, 4, 5 and 6 of the draft DCO.
- 7.20 Section 120(5)(a) of PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s.117(4) provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. Schedule 7 of the draft DCO modifies the Compulsory Purchase Act 1965 and the Land Compensation Act 1965 and I confirm that the draft DCO is in the form of a statutory instrument.

Changes to proposals during the Examination

- 7.21 During the Examination the applicant made changes to the Land Plans for the junction with the A140 and adjusted the proposed boundary for the AIS substation. It also submitted a separate set of Land Plans and Book of Reference for the GIS variant. I accepted these changes, all of which were within the original red line boundary for the site. At the end of the examination three separate sets of Land Plans and Books of Reference were provided relating to:
- (a) The revised original application DCO - APP-012 and APP-099;
 - (b) The refined application - AIS variant DCO - APP-091 and APP-110; and
 - (c) The GIS variant DCO - App-092 and APP-112.
- 7.22 Compared to the revised original application the changes to the CA proposals in the refined application - AIS variant are:
- (a) Change in plot 1_JW from acquisition of freehold to creation of rights and removal of plot 2_JW from any CA requirement. This followed agreement that the A140 junction would not be permanent but would be removed on completion of construction of the ECC.
 - (b) Reduction in the area of plot 15_ER from 3,686 sq m to 2,930 sq m, reduction in the area of plot 16_ER from 33,625 sq m to 31,576 sq m, reduction in the area of plot 17_ER from 15,448 sq m to 14,366 sq m. These reductions reflect the smaller land take required to accommodate revised landscaping plans for the ECC.
- 7.23 Compared to the revised original application the changes to the CA proposals in the GIS variant are:

- (a) Change in plot 1_JW from acquisition of freehold to creation of rights and removal of plot 2_JW from any CA requirement. This followed agreement that the A140 junction would not be permanent but would be removed on completion of construction of the ECC.
- (b) Increase in the size of plot 13_ER from 2,585 sq m to 4,237 sq m; identification of plot 13a_ER for temporary use of 4,361 sq m of agricultural land; removal of plot 14_ER, 7,241 sq m and plot 15_ER, 3,686 sq m; reduction in area of plot 16_ER from 33,625 sq m to 20,059 sq m; removal of plot 17_ER, 15,448 sq m; reduction in area of plot 18_ER from 8,242 sq m to 5,720 sq m. These revised dimensions and change in layout reflect the smaller footprint of the GIS variant and associated connections to the underground cable and the sealing end compound.

7.24 All of these changes result in a reduction in the red line boundary for the proposed development. The reduction in land required for each element in the project is summarised in Table 7.1 (HR-049).

Table 7.1: Land take for alternative red line boundaries.

| | Revised original application (ha) | Refined application - AIS variant (ha) | GIS variant (ha) |
|--------------------------------------|-----------------------------------|--|------------------|
| Total land take (order limits) | 28.96 | 28.47 | 25.33 |
| Generation plant (1_MS) | 8.67 | 8.67 | 8.67 |
| Gas connection (1_GR - 7a_GR) | 8.23 | 8.23 | 8.23 |
| Electrical connection (1_ER - 13_ER) | 5.89 | 5.89 | 6.06 |
| ECC (13a_ER - 19_ER) | 7.08 | 6.60 | 3.30 |

Possible alternatives to compulsory acquisition

7.25 The consideration given to alternative locations for the development has been summarised at paragraph 4.23 to 4.36 above. Within the chosen location consideration was given to alternative layouts for the generation plant but these would all have required the same land take. A number of options were considered for the routing of the gas connection. Three shorter options requiring less land were rejected because they would breach National Grid safety guidelines for the positioning of gas pipes in proximity to wind turbines and the gas compressor station. Two other routes were rejected by the applicant because they would affect existing businesses or future

development on the Airfield. An overhead line connection to the national transmission system was rejected as unsuited to the area and the underground cable follows the shortest route across open land. Two sites were considered for the ECC, the preferred site was considered by the applicant to have fewer disadvantages in terms of environmental impact. The alternatives of AIS and GIS substations with different land take as shown above were presented to the Examination. Where appropriate temporary possession was proposed as an alternative to CA.

- 7.26 Taking into account the alternatives considered the applicant took the view that the application for CA met the requirements of s 122(2)a and 122(2)b of PA 2008 as being required for the development to which the development consent relates and required to facilitate or incidental to that development.

Availability and Adequacy of Funds

- 7.27 A Funding Statement was provided with the application (APP-042). The applicant is a subsidiary of WPL. NCFL is the parent undertaking of WPL and is itself a subsidiary of Noble Group Limited incorporated in Bermuda. NCFL has total net assets of \$10 m; Noble Group has net assets of \$5 bn.
- 7.28 The total cost of the development is estimated to be £210 m. The applicant has the ability to procure financial resources to fund the proposed development subject to approval of Noble Group Limited. These funds would meet the capital expenditure of the project, the cost of acquiring land and any compensation that might be payable.
- 7.29 Following discussion at the first ISH the applicant agreed to an article being included in the DCO requiring a guarantee or alternative form of security in respect of liabilities to pay compensation being in place before it began to exercise any of the CA powers conferred by the DCO (AS-018). This was amended following the second ISH (AS-039).

Objections to compulsory acquisition

- 7.30 The Hammond family and the Talbot family both objected to the application in similar terms (REP-030, -040) on the grounds of its impact on landscape character and visual amenity. The families own land which would be subject to CA and temporary possession for the installation of the electrical cable and the construction of the ECC. The Hammonds own plots 8, 9, 10, 11 and 15_ER. The Talbots own plots 12, 13, 14, 16, 17, 18 and 19_ER. They were concerned about the impact of CA on their farm and livelihood (RR-098). Following the completion of an option agreement with the applicant the objections of both families were withdrawn (REP-100, -101).

- 7.31 Transam Trucking Limited objected to the application on the grounds that the CA powers being sought could affect access to its business on a site to the north east of the proposed generation plant (RR-102). The proposals for plots 3_GR, 3a_GR, 6_GR and 6a_GR were identified as being of concern. After entering into an agreement with the applicant which met its concerns Transam Trucking Limited withdrew its objections (REP-109).
- 7.32 Tobar Group Trading Limited objected to the application on the grounds that the CA powers being sought could affect access to its warehouse on the Eye Airfield Industrial Estate (RR-107). Plots 3 and 6_GR were identified as being of concern. After entering into an agreement with the applicant which met its concerns Tobar Group Trading Limited withdrew its objections (REP-108).
- 7.33 Energy Power Resources and its subsidiary EPR Eye which operates the biomass (chicken litter) power station on the Airfield objected to the application on the grounds that the CA powers being sought could affect rights which the companies benefited from over plots 3_GR, 3_ER, 3a_GR, 3a_ER, 6_GR and 6a_GR (REP-034). After entering into an agreement with the applicant which met its concerns Energy Power Resources and EPR Eye withdrew their objections (REP-098, -099).
- 7.34 Eye Windpower submitted a late submission which I accepted objecting to the application on the grounds that the CA powers being sought could affect access to its wind turbine sites (AS-033). Plots 6_GR and 6a_GR were identified as being of concern. After entering into an agreement with the applicant which met its concerns Eye Windpower withdrew its objections (REP-107).
- 7.35 NGG objected to the application on the grounds that the CA powers could extinguish rights which it had over plots 7_GR and 7a_GR which were essential for access to and maintenance of the national gas transmission system (REP-038). Protective provisions were necessary to ensure that any rights required by NGG for its undertaking which were extinguished or removed were adequately replaced or reinstated and that provision was made for consultation with NGG prior to the exercise of any CA powers. Following discussions with the applicant NGG agreed the terms of protective provisions for inclusion in the DCO. NGG was satisfied that all outstanding matters between the parties had been resolved and its interests in the Order Land would be adequately protected. NGG accordingly withdrew all representations in respect of the DCO (REP-092).
- 7.36 NGET objected to the application on the grounds that the CA powers could extinguish rights which it had over plots 13_ER, 14_ER, 17_ER, 18_ER and 19_ER (REP-037). Protective

provisions were necessary to ensure that any rights required by NGET for its undertaking which were extinguished or removed were adequately replaced or reinstated and that provision was made for consultation with NGET prior to the exercise of any CA powers. Following discussions with the applicant NGET agreed the terms of protective provisions for inclusion in the DCO. NGET was satisfied that all outstanding matters between the parties had been resolved and its interests in the Order Land would be adequately protected. NGET accordingly withdrew all representations in respect of the proposed CA of its interests (REP-082).

- 7.37 A CA hearing was held on 9 December 2014 at which the applicant provided an update on its discussions with affected persons on its CA proposals (HR-040, -049). No further representations were made at the hearing.

Human Rights Act 1998 considerations¹⁹

- 7.38 A key consideration in formulating a compelling case is consideration of the potential interference with human rights which may occur if CA and temporary possession powers are granted and exercised.
- 7.39 The applicant acknowledged that the DCO engaged a number of the articles of the Human Rights Act:
- (a) Article 1 of the First Protocol (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with).
 - (b) Article 6 entitles those affected by CA powers sought for the project to a fair and public hearing of their objections.
 - (c) Article 8 protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.
- 7.40 The applicant has stated that it considers that there would be a very significant public benefit arising from the granting of the DCO (APP-058). There has been the opportunity for affected persons to make representations during the preparation of the application. They had been consulted in accordance with s44 of PA 2008 and had rights to make claims for compensation.
- 7.41 The applicant considered that any infringement of the rights of those affected by CA would be proportionate and legitimate and in accordance with national and European law.

¹⁹ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

Temporary possession

- 7.42 Articles 28 and 29 of the DCO set out powers to take temporary possession of land to carry out the authorised development and to maintain it. The land which would be subject to these powers has been listed above at paragraphs 7.15 and 7.23 and set out in the relevant Books of Reference and Land Plans for each variant of the application. Justification for the use of temporary possession powers is set out in the Statement of Reasons. Compensation is provided for through the funding arrangements described at paragraphs 7.27 to 7.29.
- 7.43 As indicated above these powers are not compulsory acquisition powers and accordingly the tests under sections 122 and 123 are not applicable. However, the use of the power must be justified in order to enable the proposed development to be implemented and maintained, the inevitable interference with human rights must be justified and there must be adequate compensation provisions in place for those whose land is affected.
- 7.44 The Human Rights Act considerations have been addressed above and I am satisfied that the temporary possession powers are needed both to facilitate implementation of the proposed development and to maintain it and that there are also adequate compensation provisions in place in the draft DCO.

Conclusions on compulsory acquisition and other powers

- 7.45 I have considered the three alternative proposals for CA and temporary possession that were before me at the close of the Examination. I am satisfied that in identifying these three options the applicant has, as described in paragraphs 4.23 - 4.36, adequately considered a wider range of alternatives.
- 7.46 I am satisfied that the land which is the subject of the request for compulsory acquisition for the refined application - AIS variant, meets the requirements of sections 122(2)a and 122(2)b for a development with an AIS substation. The area of land subject to CA has been reduced relative to the original application in the light of revised landscaping plans and the change in the status of the A140 access from permanent to temporary. However, for the reasons set out in section 6 I have concluded that the case for the AIS variant has not been made.
- 7.47 The refined application- AIS variant only differs from the revised original application in those two respects. In all other respects the construction and operation of the proposed development would be the same. On that basis I conclude that the revised original application does not meet the requirements of sections 122(2)a and 122(2)b. Clearly not all of the land identified for CA in the original application is required for the development of an

AIS substation or is required to facilitate or is incidental to the development with an AIS substation.

- 7.48 For the reasons set out in section 6 I have concluded that the case for the GIS variant has been made. This variant requires considerably less land to be subject to CA and I am satisfied that the land which is the subject of the request for CA for the GIS variant, meets the requirements of sections 122(2)a and 122(2)b. I am also satisfied that the land over which temporary possession is sought is necessary for the development to take place.
- 7.49 EN-1 states that the UK *'needs all the types of energy infrastructure covered by the NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions.'* That includes fossil fuel plants such as the proposed development. It also states that applications for development consent should be assessed *'on the basis that the Government has demonstrated that there is a need for those types of infrastructure.'* The Government has recently introduced a capacity market in order to strengthen energy security and the proposed plant is intended to operate in that part of the energy market. The plant would therefore meet the general public interest in the provision of additional generation capacity identified in the NPS and the specific need for capacity that could provide power at times of peak demand or other shortage. This can only be achieved with the use of CA powers. I am satisfied that the GIS variant would meet the condition in 122(3) that there is a compelling case in the public interest for the land to be acquired compulsorily.
- 7.50 I am satisfied that the financial provision to provide compensation for CA as revised during the course of the Examination is adequate to meet the expected liabilities.
- 7.51 Having regard to the relevant provision of the Human Rights Act I have considered the individual rights interfered with and the submissions made by affected parties in this regard and am satisfied that:
- (a) In relation to Article 1 of the First Protocol that the proposed interference with the individual's rights would be lawful, necessary, proportionate and justified in the public interest.
 - (b) In relation to Article 6 that objectors have had the opportunity to present their cases to us in writing and at the CA hearing and that all objections which have been made have been resolved.
 - (c) In relation to Article 8 the interference is in accordance with the law and is necessary in the interests of the economic well-being of the country.

- 7.52 My approach to the question whether and what compulsory acquisition powers I should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of PA 2008, notably s.122 and s.123, the Guidance and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 7.53 The draft DCO deals with both the development itself and compulsory acquisition powers. The case for compulsory acquisition powers must be consistent with the view that I have taken about the development as a whole.
- 7.54 In the conclusion to the preceding section I took the view that the case for the revised original application and the refined application - AIS variant had not been made out but the case for the GIS variant had been made. I am satisfied that, in the light of the factors set out above, the case has been made that the CA and temporary possession powers associated with the GIS variant are necessary to enable that development to proceed and I recommend accordingly.
- 7.55 If the Secretary of State were to disagree with my recommendation in favour of the GIS variant and decide that development consent should be granted for the refined application - AIS variant I am satisfied that the case has been made that the CA and temporary possession powers associated with that variant are necessary to enable the refined application - AIS variant of the development to proceed and I recommend accordingly.
- 7.56 If the Secretary of State were to decide in favour of the revised original application, I am not satisfied that the compulsory acquisition powers associated with the original application are necessary in full to enable the development to proceed. In that case I recommend that the land which is additional to the land required for the refined application - AIS variant should not be subject to CA powers.²⁰

²⁰ The additional land can be identified by comparison of Plots ER_15, _16, _17 in the Land Plans at APP-012 and App-091.

8 DRAFT DEVELOPMENT CONSENT ORDER

- 8.1 A draft DCO was submitted with the application (APP-044) together with an Explanatory Memorandum (EM) (APP-045). The application DCO was progressively amended during the course of the Examination in response to my questions and discussions with IPs. The final version, revision 7, was submitted towards the end of the Examination (APP-116). This is referred to here as the final application DCO.
- 8.2 As explained at paragraph 2.28 in addition to the amendments to the application DCO, the applicant also submitted two variants. The first of these related to a refined version of the original application including the AIS variant for the substation but with a reduced red line boundary to the ECC. The final version of this (APP-114) is referred to here as the final refined application DCO. The second variant of the DCO includes the GIS instead of the AIS substation. This is referred to here as the final GIS variant DCO (APP-122).²¹ A revised EM was provided setting out the purpose and effect of the provisions in the final application DCO and showing how the final application DCO differed from the Model Provisions (APP-118).
- 8.3 I have concluded in section 6 that the case for the GIS variant has been made and that the case for the AIS variant has not been made. Nonetheless, for completeness, I have considered all three variants of the DCO which were before me at the close of the examination.
- 8.4 The main changes made to the application DCO during the examination were to the Interpretation section in Part 1, Principal Powers in Part 2, the Requirements in Schedule 2 and the Protective Provisions in Schedule 9. Some of these reflected drafting changes to reflect current practice, others of a substantive nature are discussed below. In considering the DCO I have also taken into account the additional off-site mitigation measures that would be secured through the S106 agreement (APP-120).

Articles

- 8.5 The principal powers to be granted through the DCO are the same in all three versions that were before me at the close of the Examination. Comments below apply to all three versions unless specifically noted. These powers either follow the Model Provisions (which are not binding) or, if different, an explanation has been provided. Unless commented on below, I

²¹ Track change versions for each iteration of each of these DCOs are available showing changes from the previous draft. APP-062, -066, -072, -077, 079, -102, -117 show successive changes to the original application DCO. APP-106 and -114 show changes to the refined application DCO and APP-104 and -123 show changes to the GIS variant DCO.

am satisfied with the use of the Model Provisions and with the explanations for variations from these Provisions.

8.6 Differences between these three versions of the proposed development are captured in the different versions of the documents listed in article 2 and which would be certified by the Secretary of State under the provision of article 38. For the purpose of comparison I have summarised the documents in the Examination Library relevant to each version of the DCO in Table 8.1. The principal differences between the versions (which have been summarised at paragraph 2.28) are in the books of reference, the land plans, works plans and important hedgerow plans. There are some consequential changes to other documents. I am satisfied that the documents listed here adequately describe the different versions of the development for the purposes of each DCO.

Table 8.1: References to key documents

| | Final application DCO | Final refined application DCO | Final GIS variant DCO |
|---------------------------------------|---|--|---|
| Book of Reference | Revision 3.0, 19 December 2014 (APP-099) | Revision 4, 19 December 2014 (APP-110) | Revision 1, 19 December 2014 (APP-112) |
| Design Principles Statement | p39 - 43 of the Design and Access Statement, March 2014 (APP-052) and Design Principles Document (REP-097, Annex 8) | p39 - 43 of the Design and Access Statement, March 2014 (APP-052) and Design Principles Document (REP-097, Annex 8) | p39 - 43 of the Design and Access Statement, March 2014 (APP-052) and Design Principles Document (REP-097, Annex 8) |
| Ecological Management Strategy | Revision 1.0, September 2014 (REP-050, Annex 3) | Revision 1.0, September 2014 (REP-050, Annex 3) | Revision 1.0, September 2014 (REP-050, Annex 3) |
| Environmental Statement | Environmental Statement with appendices and figures (APP-024 to -038). Errata document APP-064 and Non-Technical Summary Revision 1 (APP-040) | Environmental Statement with appendices and figures (APP-024 to -038). Errata document APP-064 and Non-Technical Summary Revision 1 (APP-040)) | Environmental Statement with appendices and figures (APP-024 to -038). Errata document APP-064 and Non-Technical Summary Revision 1 (APP-040) |

| | Final application DCO | Final refined application DCO | Final GIS variant DCO |
|---|--|--|--|
| Flood Risk Assessment | Revision 0, March 2014 (APP-020) | Revision 1, December 2014 (APP-097) | Revision 0, December 2014 (APP-098) |
| Important Hedgerow Plan | Revision 1, December 2014 (HR-052) | Revision 2.0, December 2014 (HR-054) | Revision 1, December 2014 (HR-053) |
| Landscape Mitigation Strategy | Revision 3, December 2014 (REP-097 Annex 9) | Revision 3, December 2014 (REP-097 Annex 9) | Revision 3, December 2014 (REP-097 Annex 9) |
| Land Plans | Revision 0, March 2014 (APP-012) | Revision 1, December 2014 (APP-091) | Revision 0, December 2014 (APP-092) |
| CTMP | Revision 4, January 2015 (REP-106 Annex 2) | Revision 0, December 2014 (REP-097 Annex 5) | Revision 0, December 2014 (REP-097 Annex 6) |
| CEMP | Revision 3, January 2015 (REP-106 Annex 1) | Revision 0, December 2014 (REP-097 Annex 3) | Revision 0, December 2014 (REP-097 Annex 4) |
| Outline Landscaping Plans | Revision 1, November 2014 (REP-089 Annex 2). NB Figures 11.35 & 11.36 only | Revision 0, December 2014 (Annex 1) (REP-097) | Revision 0, December 2014 (Annex 2) (REP-097) |
| Outline Lighting Strategy | Revision 0, December 2014 (REP-097 Annex 7) | Revision 0, December 2014 (REP-097 Annex 7) | Revision 0, December 2014 (REP-097 Annex 7) |
| Rights of Way, Streets & Access Plan | Revision 1, 19 December 2014 (APP-108) | Revision 1, December 2014 (APP-095) | Revision 0, December 2014 (APP-096) |
| Stage 2 WSI | Stage 2 Written Scheme of Archaeological Investigation, September 2014 (REP-050 Annex 8) | Stage 2 Written Scheme of Archaeological Investigation:- Revision 1, December 2014 (APP-087) | Stage 2 Written Scheme of Archaeological Investigation:- Revision 0, December 2014 (APP-088) |
| Travel Plan | Revision 0, March 2014 (APP-032 Appendix 12.E) | Revision 0, March 2014 (APP-032 Appendix 12.E) | Revision 0, March 2014 (APP-032 Appendix 12.E) |
| Works Plans | Revision 1, 19 December 2014 | Revision 1, December 2014 | Revision 0, December 2014 |

| | Final application DCO | Final refined application DCO | Final GIS variant DCO |
|--|------------------------------|--------------------------------------|------------------------------|
| | (APP-107) | (APP-093) | (APP-094) |

- 8.7 The only other significant change made to article 2 during the Examination is the inclusion in all versions, at my request, of a revised definition of 'maintain'(DEC-007). This provides a narrower definition than was originally proposed. This is in line with recent practice in DCOs for other NSIPs.
- 8.8 Article 8 was added during the Examination to provide for a guarantee or other form of security for compensation payment to be in place before exercise of CA or temporary possession powers, as discussed at paragraph 7.29. This follows the form used in the Hornsea Offshore Wind Farm (Zone 4) Project 1 DCO and I consider this necessary to provide assurance that the financial liabilities that would be incurred in the exercise of these powers can be met.
- 8.9 Article 9 was added following discussions between the applicant, MSDC and SCC to allow for the removal of hedgerows specified in the plans for the development which are covered by the Hedgerows Regulations 1997.
- 8.10 Article 10(5) originally provided a period of eight weeks for a street authority to take a decision on an application for consent in respect of street works after which time consent would be deemed to be granted. Following discussion this was amended to allow for a longer period than eight weeks to be agreed by the undertaker in writing. Similar wording has been included in article 13(6) in respect of temporary prohibition on use of streets, article 40(2) in respect of approvals and in Schedule 10 on the procedure for the discharge of requirements. These changes have been agreed by the relevant authorities (REP-068). I am satisfied that they provide adequate time for decisions to be taken.
- 8.11 Article 19 in the final application DCO includes a provision 19(3) to disapply the power to compulsorily acquire land from plots 1_JW and 2_JW. Following the agreement that the A140 junction should only be temporary these two plots would not be subject to CA (see paragraph 7.22 above). The reference is included in article 19 because the land plans linked to this version of the DCO have not been amended. There is an equivalent reference to plot 2_JW at article 22(6) in respect of acquisition of rights. These references are not included in the final refined application DCO and the final GIS variant DCO because the relevant land plans have been amended to allow for the changes.
- 8.12 Wording was added to article 28 concerning the temporary use of land. The new wording allows the article to be used in the

context of land which may be the subject of compulsory purchase prior to any such compulsory purchase taking place. This wording closely follows the wording in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

- 8.13 Articles 19 to 32 set out the powers necessary for carrying out the CA and temporary possession provisions that have been considered in section 7.
- 8.14 Article 33 was amended following consultation between the applicant, MSDC and SCC to allow for the removal of hedgerows within the order limit including the important hedgerows identified by the local authorities and listed in Schedule 11.
- 8.15 Article 38 on the certification of plans was amended at my request to include all of the key plans and other documents referred to in the article 2.

Description of works

- 8.16 Schedule 1 sets out the seven elements in the works to be covered by the DCO. These are largely unchanged from the list in the original application. Works numbered 1, 2, 3, 4 and 6 - the generation plant, the AGI and the gas and electricity connections - constitute the NSIP; Works numbered 5 and 7 - the ECC and access road from the A140 - are associated development. At my suggestion the minimum size for the generating station was increased from 50 MWe to 50.1 MWe in order to be clear that it meets the NSIP test of being greater than 50 MWe. Provisions in Work No 3A (the AGI) and Work No 5 (the ECC) referring to 'other ancillary equipment' have been deleted.
- 8.17 As a generating plant with a maximum output of 299 MWe the plant would not be subject to the requirement set out in EN-1 and the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 (the CCR Regulations) for the plant to be carbon capture ready. During the Examination I raised with the applicant the question of whether the maximum rated output of 299 MWe referred to the gross output of the generating plant or the net output exported from the site after allowing for transformer and other losses. Also whether this should be taken as an absolute limit or cap on output or a maximum in specified operating conditions (DEC-011, HR-049).
- 8.18 The applicant argued that the term 'rated electrical output' should be retained in the DCO because this was the term used in the CCR Regulations (HR-049). It was acknowledged that the term 'rated' was not defined in these Regulations but this was generally taken to refer to output under a standard set of ambient conditions as defined in ISO 2314. Actual maximum output might vary above or below that level with changes in the

ambient conditions. Setting a maximum based on actual output would be inefficient because the ambient conditions in which more power is produced occur when it is cold, precisely when more power is required (HR-036). The applicant also drew attention to paragraph 4.7.5 of EN-1 where reference is made to 300 MW net capacity in respect of coal fired generation capacity.

- 8.19 I asked the EA for its views on the appropriate definition. The EA referred to the Directive on the Geological Storage of Carbon Dioxide 2009/31/EC (REP-074). This too does not provide a definition of rated output. The EA pointed out that performance tests used to agree rated output with a manufacturer could differ in the amount of ancillary equipment included as part of the test. These provided a net output value. There could clearly be variation between one performance test and another depending on the agreed ancillary plant that has been switched off.
- 8.20 To enable a meaningful comparison, the EA therefore considered that for the purposes of Article 33 of the Directive, the rated electrical output should be demonstrated by means of measurement of the electrical output at the generator output (gross output) and corrected to ISO conditions. This figure does not account for any parasitic electrical demand and would therefore be comparable. The demonstration would be made during the guarantee performance tests. The EA agreed with the applicant that it would not be appropriate to impose a cap on actual output.
- 8.21 Following discussion with the EA the applicant set out definitions of gross and net output for consideration (HR-036). These are:
- (a) *"net rated electrical output" means the net electrical power as calculated by subtracting the energy used to operate the plant from the gross electrical power, and determined in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010 (as amended) or subsequent legislation.*
 - (b) *"gross rated electrical output" means the gross electrical power as measured at the generator terminals in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010 (as amended) or subsequent legislation.*
- 8.22 By setting a maximum output of 299 MW the applicant does not have to meet the requirements for carbon capture readiness that would apply to a plant with output of 300 MW or more. It is therefore important that the definition of output used is consistent with Directive 2009/31/EC and the CCR Regulations.

In my view the Directive and the regulations have the objective of controlling, either now or in the future, the emissions of CO₂ from fossil fuel plant. The scale of any emissions would be determined by the gross output of the plant, not the net output after allowing for ancillary equipment. That suggests that a gross output definition would be consistent with the legislation and, as the EA has pointed out, would provide consistency of treatment between plant. It is for the Secretary of State to decide on this point but my recommendation is that the description of the authorised development in Schedule 1 should refer to 'gross rated electrical output of 50.1 - 299 MWe' and that the definition of gross rated electrical output agreed by the EA should be included in the Interpretation section in article 2. These changes are therefore included in my recommended draft DCO.

Requirements

- 8.23 The DCO if granted would be subject to a number of requirements which are set out in Schedule 2. I comment here only on requirements which address specific issues raised during the course of the Examination.
- 8.24 Requirement 3 on Detailed Design sets out specific parameters for the main elements of the development. These represent the Rochdale envelope for the plant. The modifications agreed during the Examination are the inclusion of maximum widths for the emissions stack with different widths depending on the number of generating units. The maximum width has been reduced from 10 m in response to concerns raised by IPs and to maintain consistency with the ES and associated photomontages. The size of the raw and pure water tanks has been reduced in line with identified need for water on site. In the GIS variant the smaller scale of the substation is included in the limits. Provisions in respect of HDD under the A140 have been added at the request of the highway authority.
- 8.25 The details for Work No 5 specifies a maximum height for the sealing end compound and substation of 12.5 m. In its SoCG (REP-072) NGET agreed that both the AIS and GIS options for the substation could be built within the vertical parameters set out in this requirement. This would require the two gantries on the site not to exceed a maximum of 12.5 m. However the final gantry height would be subject to detailed design and confirmation from National Grid. Requirement 3 enables the parameters to be amended subject to the approval of the relevant planning authority under the provisions of Requirement 23(1). I comment separately on that requirement at paragraph 8.46 below.
- 8.26 Requirements 4 and 5 deal with landscaping. A landscaping plan substantially in accordance with the landscaping mitigation

strategy and outline landscaping plans developed during the Examination must be agreed before the start of the Works. Landscaping must then be carried out in accordance with that plan. As noted in my conclusions on landscaping at paragraphs 4.120 to 4.124 I agree that the landscaping proposals would go some way to mitigating the landscape and visual impact of the development, particularly the ECC and should be included whichever option is preferred. The S106 agreement provides for the funding of additional offsite planting and maintenance which I consider will provide valuable additional mitigation for the landscaping and visual impact.

- 8.27 Requirement 6 deals with highway access. This has been amended during the Examination so that the access from the A140 is only temporary and the land must be reinstated after completion of construction. This reduces the long term impact of the development.
- 8.28 Requirements 7 and 8 require details of fencing and drainage to be agreed with the relevant planning authority. At its request the EA has been included as a consultee on the drainage plans.
- 8.29 Requirement 9 provides for a written scheme of archaeological investigation to be agreed with the relevant planning authority in consultation with SCC. This must be substantially in accordance with the Stage 2 scheme submitted during the Examination. Provision is also made for a subsequent scheme of archaeological mitigation to be agreed. SCC and MSDC have confirmed that this requirement provides adequate assurances over the mitigation for any archaeological resources encountered during construction.
- 8.30 Requirement 10 on ecological management was amended during the Examination to include NE as a consultee. The ecological mitigation strategy would provide necessary mitigation for possible adverse effects on biodiversity in the neighbourhood of the development. The S106 agreement contains provisions for action outside of the boundary of the development to mitigate the impact on skylarks.
- 8.31 The outline CEMP referred to in Requirement 11 is a key document in defining mitigation measures that would be taken to address possible adverse impacts during the construction period. It outlines mitigation measures in respect of noise levels, air quality, contaminated land and groundwater, ecology, archaeology, cultural heritage, landscape and visual amenity and artificial lighting. It was revised during the course of the Examination to take into account comments from IPs and statutory bodies and includes provision for the setting up of a Community Liaison Group. Requirement 12 was added at the request of the EA setting out further steps to be taken in

respect of contaminated land on the site for the generation plant.

- 8.32 Requirements 13, 14 and 15 relate to traffic and travel arrangements. The CTMP referred to in Requirement 13 has been amended during the Examination to take into account comments from IPs and statutory bodies. The main traffic impact would be during the construction period and mitigation measures have been agreed with the highway authority. Attention has been paid to maintaining access to local amenities during the construction period. Provision has been made in the S106 agreement to fund improvement to the A140/B1077 junction which is already at full capacity at peak times.
- 8.33 Requirement 16 sets standard restrictions on construction hours.
- 8.34 Requirement 17 sets limits for noise levels at specific locations. The levels of impact of noise during construction were not considered to be significant. Noise control would be embedded into the design of the generation plant. The impact of noise was considered to be, at worst, minor and overall not to be significant. Concern was expressed about noise at the ECC located in agricultural land. Assurances were given that noise at the ECC would not be perceptible and I accept that no additional requirements to control noise are required.
- 8.35 Control of artificial light under Requirement 18 would be subject to a written scheme substantially in accordance with the outline lighting strategy. Separate outline strategies have been provided for the AIS and GIS variants reflecting their different sizes.
- 8.36 Requirement 19 requires further survey work to be carried out to identify the presence of any European protected species. If such species are identified then protection and mitigation must be approved by the relevant planning authority after consultation with NE. Although recent survey work had not identified the presence of GCN this requirement provides further assurance that mitigation measures would be put in place if future survey work identified a need.
- 8.37 Requirement 20 was added at my suggestion in order to ensure that the operation of the generation plant was limited to the 1500 hours a year set out in the application and the ES. The drafting was refined during the course of the Examination and I am satisfied that it now correctly sets the limit whatever the number of generating limits installed.
- 8.38 Decommissioning requirements set out in Requirement 21 of the draft DCO only apply to Works 1 and 2, the generation plant. It was argued by MSDC and SCC that the AGI (Work 3A) and the

ECC (Work 5) should also be subject to decommissioning at the same time as the other Works (REP-051, -061). They argued that consent for the ECC was sought as associated development required for the operation of the generation plant and that its life should be linked to the life of the generation plant. Any extension of life beyond that of the generation plant should be subject to obtaining a new consent.

- 8.39 National Grid which would have the benefit of the Order for the ECC argued that once constructed the new substation would be owned by NGET and form part of the Main Interconnected Transmission System (MITS) in Great Britain (REP-044, HR-034)). Under section 9 of the Electricity Act NGET is required to develop and maintain an efficient, co-ordinated and economical system of electricity transmission. While there are currently no proposals to connect other generation to the proposed substation that could not be ruled out in future. If a new requirement arose (and that is a matter that is outside of NGET's control) which could be met from use of the substation as the best available option it would prioritise use of existing assets in accordance with its section 9 and licence duties. Linking the proposed substation to the lifespan of this one power station by requiring decommissioning would fail to comply with NGET's statutory duties.
- 8.40 I have commented at paragraphs 6.30 to 6.33 on the interaction between NGET's duties and the definition of the development in the DCO and taken the view that specifying the GIS variant in the DCO would not put NGET in breach of its duties. In my view the same considerations apply in respect of any decommissioning requirements, namely that NGET must carry out its statutory duties within any requirements set in the DCO based on planning considerations.
- 8.41 The ECC is included in the application as associated development. As such its rationale is linked to the existence of the generation plant. If the plant is decommissioned then that rationale no longer exists. In my analysis of the balance between benefits and adverse effects I have taken the view that, for the GIS variant, the benefit in terms of the need for new generating capacity outweighs the adverse effects including the adverse effects from the ECC. If the generation capacity is closed then that benefit no longer exists and it is appropriate to require mitigation measures in terms of decommissioning. In my view the same consideration should apply to the AGI which is an integral part of the NSIP. If, by the time decommissioning of the generation plant is in prospect, NGET or NGG has identified a continuing use for either the AGI or the ECC then it would be open to them to seek a variation to the DCO. I therefore recommend that Requirement 21 be extended to cover Works 3 and 5 in addition to Works 1 and 2 and should also cover any other un-numbered works carried out as

necessary or expedient for the purposes of those numbered works. I have included this change in my recommended draft DCO.

- 8.42 Requirement 22 was supported by MSDC and SCC in order to ensure that the substation (Works 5a) was not commissioned until the commencement of construction of the generation plant. The intention was to ensure that if the power station did not go ahead the substation was not constructed in advance of or in the absence of the generation plant (HR-035).
- 8.43 This was opposed by NGET on the grounds that it needed flexibility in the timing of the commissioning of the substation because of the lead time in planning outages on the national transmission network (HR-034). Commissioning was dictated by the date set in the connection agreement with the customer. Outages on the system to enable connection are then booked in accordance with that agreement. NGET has a contractual obligation and statutory and licence duties to connect the customer in accordance with that agreement - if connection of the power station is delayed, as is frequently the case, and outages are not available for access to the system, the outage and therefore commissioning date of the substation and subsequent connection of the generator must be delayed until outages are available.
- 8.44 A key overarching requirement of NGET's transmission licence is to ensure that it complies with its section 9 duty to develop and maintain an efficient, coordinated and economical system of electricity transmission. NGET would work closely with the applicant to optimise the construction programme making efficient use of outage availability. It was unlikely that construction work would commence until there was certainty over the generation plant going ahead. It would be very difficult, if not impossible, for NGET to comply with the proposed requirement against the backdrop of those obligations and outage constraints.
- 8.45 In my view the requirement is not well drafted to achieve the stated objective. It would allow the construction but not the commissioning of the substation and so would not avoid the creation of a stranded asset if the generation plant was not constructed. I see merit in NGET's arguments that, given its licence duties, it would not undertake unnecessary investment. I recommend that this requirement be rejected and have deleted it from the recommended draft DCO.
- 8.46 Requirement 23(1) provides for amendment to the approved plans, parameters, details and schemes by the relevant planning authority. This goes beyond the provision for flexibility

considered appropriate in Advice Note 15, on drafting DCOs published by the Planning Inspectorate in October 2014.²² The only possible use of this requirement that was mentioned during the course of the Examination was in respect of the gantry height at the sealing end compound and substation specified in Table 2 of Requirement 3 (see paragraph 8.25). The proviso in Requirement 23(2) states that approval should not be given unless it has been demonstrated that the change is unlikely to give rise to any materially new or materially different environmental effects. I consider that this requirement provides a small but reasonable degree of flexibility in finalising details of design but I recommend that it be strengthened by changing the words 'is unlikely to' to 'does not'. To be consistent with this recommendation I also recommend that the tailpiece to Schedule 1 (after the description of Work No 7) should be amended to change 'are unlikely to' to 'do not'.

- 8.47 Schedules 3 - 6 set out the proposed street works as detailed in the relevant land and works plans. Schedule 7 sets out provisions for compensation for the creation of new rights. Schedule 8 sets out the land over which temporary possession is sought as detailed in the relevant land and works plans. Schedule 9 provides protective provisions for National Grid, other electricity, gas, water and sewerage undertakers, operators of electronic communications code networks and Eastern Power Networks as agreed with the named operators.
- 8.48 Schedule 10 provides for discharge of requirements by the relevant planning authority and for appeal against decisions. Decisions must be taken within 8 weeks unless a longer period is agreed by both parties. These provisions have been agreed by the relevant planning authorities.
- 8.49 Schedule 11 sets out a list of important hedgerows agreed with MSDC and SCC which could be removed under the provisions of article 33. Schedule 11 is the same for the final application DCO and the final refined application DCO. It contains a shorter list of important hedgerows in the final GIS variant DCO.
- 8.50 A summary of the main issues raised during the Examination, proposed mitigation measures and how these might be secured through the DCO or other means is set out in Table 8.2.

Table 8.2: Issues raised, mitigation measures and implementation

| Issue raised | Proposed mitigation | Means of implementation |
|--------------|---------------------|-------------------------|
|--------------|---------------------|-------------------------|

²² Advice Note 15. Drafting development Consent Orders. Planning Inspectorate October 2014. http://infrastructure.planningportal.gov.uk/wp-content/uploads/2014/10/advice_note_15_version_1.pdf

| | | |
|-------------------------------------|---|---|
| Air quality | Embedded design (stack height) CEMP Operational hours EP | R3 R8 R20 To be considered by EA |
| Water use and quality | Embedded design (Dry NO _x) Drainage system Land contamination CEMP EP | R3 R8 R12 R11 To be considered by EA |
| Noise | Specific limits CEMP | R17 R11 |
| Lighting | Outline lighting strategy | R18 |
| Biodiversity | New planting EMP Protected species Skylark provision | R4, R5 R10 R19 S106 |
| Landscape and visual impact | Embedded design (SCGT, GIS) Landscaping/ new planting Decommissioning Offsite planting | R3 R4, R5 R21 S106 |
| Historic and heritage assets | Embedded design (SCGT, GIS) Landscaping Archaeological investigation | R3 R4, R3 R9 |
| Traffic and transport | Junction layout Temporary junction on A140 Access to local facilities, safety of horse riders CEMP, CTMP, CTP, TP, construction hours B1077/A140 junction and connectivity | R6 R6 R11, R13, R14, R15, 16 S106 |
| Health | Site safety (fencing) | R7 |
| Socio economic impact | Construction hours Education and employment; use of local services | R16 S106 |

Findings and conclusions on the DCO

- 8.51 As set out above at paragraph 6.41 I have concluded on the basis of the evidence before me and for the reasons given that the case for the AIS variant of the ECC has not been made out. I therefore recommend that the applications for the final application DCO and the final refined application DCO should not be granted.
- 8.52 As set out at paragraph 6.42 I consider that the case for the GIS variant has been made and also that, taking into account relevant sections of PA 2008, notably s.122 and s.123, the Guidance and the Human Rights Act 1998 the case has been made that the CA powers associated with that variant are necessary to enable the GIS variant to proceed (see paragraph 7.54). I recommend that the application for the final GIS variant DCO should be granted in the form attached at Appendix 4. The relevant versions of the documents referred to in the draft DCO which would be submitted to the Secretary of State for certification are set out in the final GIS variant DCO column of Table 8.1.
- 8.53 For the avoidance of doubt the recommended DCO is the same as the final GIS variant submitted by the applicant except for:
- (a) Drafting changes to conform with the required statutory instrument format including the addition of footnotes;
 - (b) The addition of the definition of gross rated electrical output in Article 2, Interpretation;
 - (c) The substitution of the words 'gross rated electrical output' in place of 'rated electrical output' in the third line of Schedule 1;
 - (d) The addition of Works No 3 and 5 to Requirement 21;
 - (e) The deletion of Requirement 22 in Schedule 2;
 - (f) The amendment of the wording in the tailpiece to Schedule 1 from 'are unlikely to' to 'do not' and in Requirement 23 (renumbered as Requirement 22) from 'is unlikely to' to 'does not'.
- 8.54 If the Secretary of State does not accept my conclusion in favour of the GIS variant and considers that the case for the AIS substation has been made then I recommend that the application for the final refined application DCO should be granted using the final draft submitted by the applicant and subject to the same changes as are listed in paragraph 8.53 above. The relevant versions of the documents referred to in the draft DCO which would be submitted to the Secretary of State for certification are set out in the final refined application DCO column of Table 8.1. The final application DCO although the same in many respects as the final refined application DCO differs in the extent of land subject to CA. As noted at paragraph 7.56, I do not consider that the additional land meets

the requirements of section 122 and I recommend that that DCO should not be granted.

9 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

- 9.1 The application is for the construction, operation and maintenance of an SCGT 'peaking' power generating plant with a capacity of between 50.1 - 299 MWe on land at and surrounding the former Eye Airfield in Eye, Mid Suffolk. As such it is a NSIP as defined in section 14(1)a and section 15 of PA 2008. A pipeline connection to bring gas to the generation plant and an underground electrical cable for the export of electricity are specified as integral to the project. An ECC comprising a new substation and a sealing end compound is proposed as associated development. An access road to the ECC with a new road junction off the A140 is also proposed as associated development. The draft DCO includes provisions for compulsory acquisition.
- 9.2 I have carried out this Examination of the application in accordance with the general principles and specific guidance set out in EN-1, EN-2, EN-4 and EN-5. I have also had regard to the joint LIR submitted by MSDC and SCC.

Principal issues

- 9.3 My findings and conclusions on the principal issues raised by the proposed development have been set out in section 4 of this report. My conclusions on the case for the development taking individual issues into account and balancing the benefits and adverse effects identified are set out in section 6. On balance I have found that, taking into account mitigation measures that would be secured through the DCO and S106 agreement, no significant weight needs to be attached to the impact of the development on :
- (a) Emissions from the development including emissions to air, water and noise;
 - (b) Biodiversity; and
 - (c) Traffic and transport.
 - (d) Health
- 9.4 I consider that there would be positive impacts from the development from its contribution to the need for new fossil fuel generation capacity identified in EN-1 and to its potential role in the newly introduced capacity market. EN-1 states that the decision maker should start with a presumption in favour of granting consent for energy NSIPs. This applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. I have also identified a small positive contribution to the local and national economy from the development.
- 9.5 On the other side of the balance I have identified a negative impact from the project in terms of its impact on:

- (a) Landscape and visual impact. This would be partly but not totally offset by mitigation measures and would be smaller if the GIS variant was adopted.
- (b) Historic and heritage assets. There would some adverse impact on the setting of designated heritage assets even after mitigation measures. If the AIS variant was adopted there would be a substantial direct and irreversible adverse effect on the field system HA 10 which in my view may be of equivalent significance to a designated SM. If the GIS variant was adopted there would still be an adverse effect but it would be less than substantial.

9.6 EN-1 is clear that there should be a presumption in favour of conservation of designated assets or assets with archaeological interest that are not currently designated as SM but are demonstrably of equivalent significance. The impacts on LBs, conservation areas and SMs are matters to which the decision-maker must have regard under the requirements of the Decisions Regulations. EN-1 sets out that loss affecting any designated heritage asset should require clear and convincing justification. Substantial harm to or loss of designated assets of the highest significance including SMs should be wholly exceptional. The same consideration applies to an asset that may be of equivalent significance to a designated SM. In my view that indicates that significant weight should be given to the damage to the field system from the AIS variant and that it would need to be shown why wholly exceptional reasons apply in granting a DCO. If the GIS variant was adopted weight should still be given to the harm but this would be at a lower level of significance. Under either option some weight should be attached to the adverse impact on the setting of the field systems.

9.7 Even if the field system was not considered to be of equivalent significance to a SM, weight should still be given to the harm that would be caused to non-designated heritage assets and to the fact that this harm would be less if the GIS variant was adopted.

9.8 There is a fine balance between the benefits and adverse effects of the development. I attach particular importance to the fact that the damage to the field system would be permanent. In addition I note that the benefit to be obtained from allowing the development is not contingent on adopting the AIS variant. It can equally be obtained by adopting the GIS variant which has a lesser impact both in respect of landscape and visual impact and historic and heritage assets. There would be an additional cost of the GIS option, estimated to be £4m, which would be passed on to electricity customers but this would be amortised over the life of the investment.

- 9.9 On balance my view in relation to the AIS variant is that the established need for new generation capacity and the lower cost of the AIS variant do not provide the exceptional reasons required to justify the harm to an asset of equivalent significance to a SM and that the presumption in favour of granting consent for an energy NSIP should not prevail. For that reason I find that the case for the AIS variant has not been made out.
- 9.10 I am satisfied that the level of harm can be reduced with the GIS variant to a level where the need and other benefits can be expected to be greater than the harm to landscape and visual impact and historic and heritage assets. I therefore find that on balance the case for the GIS variant has been made out.
- 9.11 I have considered NGET's arguments that restricting its choice to a GIS substation could put it in breach of its obligations under section 9 of the Electricity Act but I do not accept the analysis. There are significant differences in planning terms between the impacts of the AIS and GIS options. These impacts are important and relevant considerations in making a recommendation on whether to grant a DCO and in considering the details of the draft DCO. They concern issues which are the subject of guidance in EN-1 and are matters identified as being of overriding concern in the LIR. These are both documents to which the Secretary of State must have regard in making his decision.
- 9.12 Where it is possible for me to make a recommendation and the Secretary of State to take a decision on planning matters as part of the application such a decision should not be deferred and, in effect delegated to a third party. Coming to a view on the choice between the AIS and GIS options would not, in my view, override NGET's Electricity Act duties. NGET has acknowledged that it can only carry out the design and construction of the ECC in line with the terms of the DCO. The DCO would set the parameters within which NGET must then exercise its duties.

Habitats Regulations

- 9.13 Two European sites have been identified as being potentially affected by the proposed development. These sites which are at least 7.3 km from the project site are:
- (a) Redgrave and South Lopham Fens Ramsar Site; and
 - (b) Waveney and Little Ouse Valley Fens SAC.
- 9.14 Taking mitigation measures into account the stage 1 screening matrices did not identify any significant effects and it was not necessary to consider the effects on the integrity of European sites.

- 9.15 Taking into account the evidence presented I accept the applicant's conclusion of no likely significant effect on the European sites in question and conclude that it is not necessary for the Secretary of State to carry out an appropriate assessment.

Compulsory acquisition

- 9.16 I have considered the three alternative proposals for CA and temporary possession that were before me at the close of the Examination.
- 9.17 I am satisfied that the land which is the subject of the request for compulsory acquisition for the refined application - AIS variant, meets the requirements of sections 122(2)a and 122(2)b for a development with an AIS substation. The area of land subject to CA has been reduced relative to the original application in the light of revised landscaping plans and the change in the status of the A140 access from permanent to temporary. However I have concluded that the case for the AIS variant has not been made.
- 9.18 The refined application- AIS variant only differs from the original application in those two respects. In all other respects the construction and operation of the proposed development would be the same. On that basis I conclude that the original application does not meet the requirements of sections 122(2)a and 122(2)b. Clearly not all of the land identified for CA in the original application is required for the development of an AIS substation or is required to facilitate or is incidental to the development.
- 9.19 The GIS variant requires considerably less land to be subject to CA and I am satisfied that the land which is the subject of the request for compulsory acquisition for the GIS variant, meets the requirements of sections 122(2)a and 122(2)b for a development with a GIS substation. I am also satisfied that the land over which temporary possession is sought is necessary for the development to take place.
- 9.20 The plant would meet the general public interest identified in EN-1 in the provision of additional generation capacity identified in the NPS and the specific need for capacity that could provide power at times of peak demand or other shortage. This can only be achieved with the use of CA powers. I am satisfied that the GIS variant would meet the condition in 122(3) that there is a compelling case in the public interest for the land to be acquired compulsorily.
- 9.21 I am satisfied that the financial provision to provide compensation for CA as revised during the course of the Examination is adequate to meet the expected liabilities.

- 9.22 Having regard to the relevant provision of the Human Rights Act I have considered the individual rights interfered with and the submissions made by affected parties in this regard and am satisfied that:
- (a) In relation to Article 1 of the First Protocol that the proposed interference with the individual's rights would be lawful, necessary, proportionate and justified in the public interest.
 - (b) In relation to Article 6 that objectors have had the opportunity to present their cases to us in writing and at the CA hearing and that all objections which have been made have been resolved.
 - (c) In relation to Article 8 the interference is in accordance with the law and is necessary in the interests of the economic well-being of the country.
- 9.23 I have concluded that the case for the original application and the refined application - AIS variant had not been made out but the case for the GIS variant had been made. I am satisfied that, in the light of the factors set out above, the case has been made that the CA and temporary possession powers associated with that variant are necessary to enable the GIS variant of the development to proceed and I recommend accordingly.
- 9.24 If the Secretary of State were to disagree with my recommendation in favour of the GIS variant and decide that development consent should be granted for the refined application - AIS variant I am satisfied that the case has been made that the CA and temporary possession powers associated with that variant are necessary to enable the refined application - AIS variant of the development to proceed and I recommend accordingly.
- 9.25 If the Secretary of State were to decide in favour of the revised original application, I am not satisfied that the compulsory acquisition powers associated with the revised original application are necessary in full to enable the development to proceed. In that case I recommend that the land which is additional to the land required for the refined application - AIS variant should not be subject to CA powers.

International obligations

- 9.26 I am satisfied that deciding the application on this basis would not lead to the United Kingdom being in breach of its international obligations. The Secretary of State would not be in breach of any duty imposed on him by or under any enactment nor would the decision be unlawful by virtue of any enactment.

Development consent

- 9.27 I am satisfied that the measures proposed in the draft DCO and in the S106 agreement provide mitigation for adverse effects

identified during the Examination. They are necessary, relevant to planning and relevant to the development. The measures proposed are enforceable, precise and reasonable. To the extent that there are adverse effects which are not mitigated by these measures I have balanced those adverse effects against the benefits of the development. I am satisfied that the benefits in meeting the national need for new generation capacity and to the local economy outweigh any remaining adverse effects of the proposal in the case of the GIS variant but do not outweigh the adverse effects of the AIS variant.

- 9.28 I therefore recommend that the Secretary of State does not grant development consent for the final application DCO nor the final refined application DCO but does grant development consent for the proposed development including CA provisions in the terms of the draft DCO for the GIS variant in the form attached at Appendix 4.

APPENDICES

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APPENDIX 1: EXAMINATION LIBRARY

EXAMINATION LIBRARY

CONTENTS

The following is a list of documents that were submitted during the course of the Examination. The documents are grouped together by document type.

Each document has been given an identification number (e.g. APP-001), and all documents are available to view on the Planning Inspectorate's National Infrastructure Planning website at the South Hook Combined Heat & Power Station project page:

<http://infrastructure.planningportal.gov.uk/projects/eastern/progress-power-station/>

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| Hearing, Meeting & Site Visit Documents | HR-xxx |
| Project documents | PD-xxx |
| Additional Submissions | AS-xxx |

| APPLICATION DOCUMENTS (APP) | |
|------------------------------------|---|
| DOC REF | TITLE |
| | Application Form |
| APP-001 | Reference not used |
| APP-002 | 1.1 Introduction to the Applicant |
| APP-003 | 1.2 Application Form |
| APP-004 | 1.3 Copies of Newspaper Notices |
| APP-005 | Covering Letter and Book of Reference Cross Reference Table |
| | Plans & Drawings |
| APP-006 | 2.1 Location Plan |
| APP-007 | 2.10 Outline Lighting Layout |
| APP-008 | 2.2 Existing Site Layout Plan |
| APP-009 | Reference not used |
| APP-010 | 2.4 Indicative Site Layout Plans |
| APP-011 | 2.5 Indicative Elevation Drawings |
| APP-012 | 2.6 Land Plans |
| APP-013 | 2.7 Works Plans |
| APP-014 | 2.8 Rights of Way Streets and Access Plan |
| APP-015 | 2.9 Outline Landscaping Plans |
| APP-084 | 2.9 Outline Landscaping Plans (v.2.0) |
| APP-089 | 2.10 Outline Lighting Layout (rev. 3.0) |
| APP-090 | 2.10 Outline Lighting Layout - GIS Variant |
| APP-091 | 2.6 Land Plans (rev. 1.0) |
| APP-092 | 2.6 Land Plans - GIS Variant |
| APP-093 | 2.7 Works Plans - Refined application |
| APP-094 | 2.7 Works Plans - GIS Variant |
| APP-095 | 2.8 Rights of Way Street and Access Plan – Refined application |
| APP-096 | 2.8 Rights of Way Street and Access Plan - GIS Variant |
| APP-107 | 2.7 Works Plans (Rev. 1.0) |
| APP-108 | 2.8 Rights of Way, Streets and Access Plan (Rev. 1.0) |
| APP-121 | 2.7 Works Plans rev 1 (amended 21 January 2015) |
| | Reports |
| APP-016 | 5.1 Consultation Report |
| APP-017 | 5.2 Consultation Report Appendices - Volume 1 Appendices 2.A - 3.M |
| APP-018 | 5.2 Consultation Report Appendices - Volume 2 Appendices 3.N - 4.D |
| APP-019 | 5.3 Consultation Report Non-Technical Summary |
| APP-020 | 5.4 Flood Risk Assessment |
| APP-021 | 5.5 Statement of Engagement of Section 79(1) of the Environmental Protection Act 1990 |
| APP-022 | 5.6 Details of Other Consents and Licences |
| APP-023 | 5.7 No Significant Effects Report |
| APP-097 | 5.4 Flood Risk Assessment (rev. 1.0) |

| DOC REF | TITLE |
|---------|---|
| APP-098 | 5.4 Flood Risk Assessment - GIS Variant |
| | Environmental Statement |
| APP-024 | 6.1 Environmental Statement |
| APP-025 | 6.2 Environmental Statement Appendices - Volume A Appendices 3.A - 3.B |
| APP-026 | 6.2 Environmental Statement Appendices - Volume B Appendix 4.A Outline CEMP |
| APP-027 | 6.2 Environmental Statement Appendices - Volume C Appendix 5.A CHP Report |
| APP-028 | 6.2 Environmental Statement Appendices - Volume D Appendices 6.A - 6.D |
| APP-029 | 6.2 Environmental Statement Appendices - Volume E Appendices 7.A - 7.B |
| APP-030 | 6.2 Environmental Statement Appendices - Volume F Appendices 8.A - 8.F |
| APP-031 | 6.2 Environmental Statement Appendices - Volume G Appendices 10.A - 10.C |
| APP-032 | 6.2 Environmental Statement Appendices - Volume H Appendices 12.A - 12.I |
| APP-033 | 6.2 Environmental Statement Appendices - Volume I Appendices 13.A - 13.E |
| APP-034 | 6.2 Environmental Statement Appendices - Volume J Appendix 15.A E and I EMF Assessment |
| APP-035 | 6.3 Environmental Statement Figures - Volume A Figures 1.1 - 6.7 |
| APP-036 | 6.3 Environmental Statement Figures - Volume B Figures 7.1 - 10.1 |
| APP-037 | 6.3 Environmental Statement Figures - Volume C Figures 11.1 - 11.36 |
| APP-038 | 6.3 Environmental Statement Figures - Volume D Figures 13.1 - 14.7 |
| APP-039 | 6.4 Environmental Statement Non-Technical Summary |
| APP-040 | 6.4 Updated Environmental Statement Non-Technical Summary |
| APP-085 | Appendix A of the outlined construction management plan – AIS Variant (for Refined application) |
| APP-086 | Appendix A of the outlined construction management plan - GIS Variant |
| APP-087 | Stage 2 written scheme of archaeological Investigation (rev. 1.0) |
| APP-088 | The Stage 2 written scheme of archaeological Investigation - GIS Variant |
| APP-109 | Cover page inserts for ES Appendices submitted at deadline 7 |
| | Compulsory Acquisition Information |
| APP-041 | 4.1 Statement of Reasons |
| APP-057 | Statement of Reasons (Rev 1.0) |
| APP-058 | Statement of Reasons (Rev 1.0, track changed) |
| APP-042 | 4.2 Funding Statement |
| APP-043 | 4.3 Book of Reference |
| APP-059 | Book of Reference (Rev. 1) |

| DOC REF | TITLE |
|---------|---|
| APP-060 | Book of Reference (Rev 1, track changed) |
| APP-069 | Amended Book of Reference (Rev. 2) |
| APP-070 | Amended Book of Reference (Rev 2, track changed) |
| APP-080 | 4.3 Book of Reference - Refined application |
| APP-081 | 4.3 Book of Reference - Refined application (track changed) |
| APP-082 | 4.3 Book of Reference - GIS Variant |
| APP-083 | 4.3 Book of Reference - GIS Variant (track changed) |
| APP-099 | 4.3 Book of Reference (Rev.3) |
| APP-100 | 4.3 Book of Reference (Rev.3, track changed) |
| APP-110 | 4.3 Book of Reference – Refined application (Rev.4) |
| APP-111 | 4.3 Book of Reference – Refined application (Rev.4, track changed) |
| APP-112 | 4.3 Book of Reference – GIS Variant (Rev.1) |
| APP-113 | 4.3 Book of Reference – GIS Variant (Rev.1, track changed) |
| | Draft Development Consent Order |
| APP-044 | 3.1 Draft Development Consent Order |
| APP-045 | 3.2 Explanatory Memorandum |
| APP-061 | Draft Development Consent Order (Rev. 1) |
| APP-062 | Draft Development Consent Order (Rev. 1, track changed) |
| APP-065 | Draft Development Consent Order (Rev. 2) |
| APP-066 | Draft Development Consent Order (Rev. 2, track changed) |
| APP-071 | Draft Development Consent Order (Rev. 3) |
| APP-072 | Draft Development Consent Order (Rev. 3, track change) |
| APP-076 | Draft Development Consent Order (Rev. 4) |
| APP-077 | Draft Development Consent Order (Rev. 4, track changed) |
| APP-078 | Draft Development Consent Order (Rev. 5) |
| APP-079 | Draft Development Consent Order (Rev. 5, track changed) |
| APP-101 | Draft Development Consent Order (Rev. 6) |
| APP-102 | Draft Development Consent Order (Rev. 6, track change) |
| APP-103 | Draft Development Consent Order – GIS variant |
| APP-104 | Draft Development Consent Order – GIS variant (track change) |
| APP-105 | Draft Development Consent Order - Refined application |
| APP-106 | Draft Development Consent Order - Refined application (track changed) |
| APP-114 | Draft Development Consent Order – Refined application (rev. 1.0) |
| APP-115 | Draft Development Consent Order – Refined application (rev. 1.0, track changed) |
| APP-116 | Draft Development Consent Order (rev. 7.0) |
| APP-117 | Draft Development Consent Order (rev. 7.0, track changed) |
| APP-118 | Explanatory Memorandum (rev. 1.0) |
| APP-122 | Draft Development Consent Order - GIS variant (rev. 1.0) |
| APP-123 | Draft Development Consent Order - GIS variant (rev. 1.0, track changed) |
| | Other Information (inc APFP Reg 6 info) |
| APP-046 | 7.1 Photographs and Photomontages |

| DOC REF | TITLE |
|-----------------------------------|---|
| APP-067 | Revised photomontage images submitted by Progress Power Limited |
| APP-047 | 7.2 Plan Identifying Locations of Photographs |
| APP-048 | 7.3 Index of Photographs |
| APP-049 | 9.1 Grid Connection Statement |
| APP-050 | 9.2 Gas Connection Statement |
| APP-051 | 10.1 Planning Statement |
| APP-052 | 10.2 Design and Access Statement |
| APP-053 | 10.3 Electrical Connection Siting Report |
| APP-054 | 10.4 Statement of Proposed Heads of Terms for an Agreement Pursuant to s106 of the TCPA 1990 |
| APP-055 | 10.5 Ecological Management Strategy |
| APP-056 | 10.6 Landscape Mitigation Strategy |
| APP-068 | Draft s.106 agreement between Progress Power Limited, Suffolk County and Mid Suffolk District Councils, Harry Charles Moore and Elizabeth Moore |
| APP-073 | Draft s.106 agreement between Progress Power Limited, Suffolk County and Mid Suffolk District Councils, Harry Charles Moore and Elizabeth Moore (v2.0) |
| APP-074 | Draft s.106 agreement between Progress Power Limited, Suffolk County and Mid Suffolk District Councils, Harry Charles Moore and Elizabeth Moore (v2.0. track changed) |
| APP-075 | Draft s.106 agreement between Progress Power Limited, Suffolk County and Mid Suffolk District Councils, Harry Charles Moore and Elizabeth Moore (v3.0).pdf |
| APP-119 | Cover Letter for s.106 Agreement |
| APP-120 | s.106 agreement between PPL, Suffolk County and Mid Suffolk District Councils, Harry Charles Moore and Elizabeth Moore |
| | Post submission changes |
| APP-063 | Cover letter for submission submitted 16 July 2014 |
| APP-064 | ES Clarificatory and Errata Document |
| Procedural Decisions (DEC) | |
| DEC-001 | Notification of Decision to Accept Application |
| DEC-002 | ProgressPower Section 55 Acceptance of Applications Checklist VG v 3 (1) |
| DEC-003 | Section 56, 59, regulation 13 certificates |
| DEC-004 | Progress Power Rule 6 Letter |
| DEC-005 | Letter to Mr Andrew Stafford re IP status dated 3rd July 2014 |
| DEC-006 | Rule 8 letter |
| DEC-007 | Examining Authority's First Round of Written Questions |
| DEC-008 | Notification of Hearings and Site Visit |
| DEC-009 | Notice of Hearing and Site Visit Agendas for 14-17 October 2014 |
| DEC-010 | Reference not used |
| DEC-011 | Notice of hearings and second round of questions |

| DOC REF | TITLE |
|--------------------------------------|--|
| DEC-012 | Changes to the Original Application |
| DEC-013 | Notification of Completion of Examination Authority's examination. |
| Relevant Representations (RR) | |
| RR-001 | Brome and Oakley Parish Council |
| RR-002 | Terry Keeley |
| RR-003 | Nicolette Hallett |
| RR-004 | Ms Penelope Jane Lucas |
| RR-005 | Mervyn Barker |
| RR-006 | Roy McDonald |
| RR-007 | Mrs S McLean |
| RR-008 | Neil Weston |
| RR-009 | Stephen Jacobs |
| RR-010 | Tracey Jacobs |
| RR-011 | CivilAviation Authority |
| RR-012 | Michael Drew |
| RR-013 | Peter Scott |
| RR-014 | Tracey Simonds |
| RR-015 | Tom Tierney |
| RR-016 | Ken Williamson |
| RR-017 | Philip Jacobs |
| RR-018 | John Farley |
| RR-019 | Anglian Water Services |
| RR-020 | Mrs Talbot |
| RR-021 | East of England Energy Group (EEEGR) |
| RR-022 | Stephen Schwarz |
| RR-023 | Hayley Talbot |
| RR-024 | Norfolk County Council |
| RR-025 | Debbie Hawes |
| RR-026 | Thornham Parva Parish Meeting |
| RR-027 | L Speak |
| RR-028 | Carol Winmill |
| RR-029 | Louise Clifford |
| RR-030 | Mrs Beryl Morrison |
| RR-031 | Sandra Smith |
| RR-032 | Phil Butler |
| RR-033 | Dr Geoffrey Hazlewood |
| RR-034 | P G Messer |
| RR-035 | James Fawcett |
| RR-036 | Vanessa Maguire |
| RR-037 | Mrs K Denby |
| RR-038 | Diana Kearsley |
| RR-039 | Argiva Limited |

| DOC REF | TITLE |
|---------|--|
| RR-040 | Pauline Smith |
| RR-041 | Yaxley Parish Council |
| RR-042 | Caroline Drew |
| RR-043 | Geoffrey Randall |
| RR-044 | Ben Hall |
| RR-045 | Common Concern |
| RR-046 | Simon Durant |
| RR-047 | David Williamson |
| RR-048 | Mary Maidment |
| RR-049 | Mrs Sue Wade |
| RR-050 | Mr Paul Dye |
| RR-051 | Thornham Magna Village Meeting |
| RR-052 | Jonathan Crabb |
| RR-053 | South Norfolk Council |
| RR-054 | Triodos Renewables (Eye) Limited |
| RR-055 | Eye Town Council |
| RR-056 | Angela Lee |
| RR-057 | Brian Guthrie |
| RR-058 | Mr David John Prior |
| RR-059 | British Horse Society (BHS) |
| RR-060 | John Benjamin Harvey Box |
| RR-061 | Margaret Elizabeth Oliver |
| RR-062 | Ursula Halton |
| RR-063 | Christopher Aldous |
| RR-064 | Mrs Penny Bullock |
| RR-065 | Suffolk Preservation Society |
| RR-066 | Thrandeston Parish Council |
| RR-067 | John Musgrave |
| RR-068 | Suffolk Wildlife Trust |
| RR-069 | Mr A.W. Melbourne |
| RR-070 | Andrew Fox |
| RR-071 | Simon J Cairns |
| RR-072 | C A Schwarz |
| RR-073 | Jessica Fleming |
| RR-074 | Lorraine Rees |
| RR-075 | Natural England |
| RR-076 | Suffolk County Council |
| RR-077 | Neil Lockett |
| RR-078 | Sarah Cameron |
| RR-079 | Mandy Bray |
| RR-080 | Gordon Clark |
| RR-081 | Rebecca Clark |
| RR-082 | Guy McGregor |
| RR-083 | Neil Roberts |
| RR-084 | Margaret Williamson |

| DOC REF | TITLE |
|------------------------------|--|
| RR-085 | English Heritage |
| RR-086 | Simon Johnson |
| RR-087 | Paul Read |
| RR-088 | Mrs Alison Johnson |
| RR-089 | Mid Suffolk District Council |
| RR-090 | Frances Beasley |
| RR-091 | Bridget Bloom |
| RR-092 | Josephine Beedell |
| RR-093 | Mr TM Russell |
| RR-094 | National Grid Gas Plc and National Grid Electricity Transmission Plc |
| RR-095 | Mr Richard Bullock |
| RR-096 | Palgrave Parish Council |
| RR-097 | P D Hammond & Sons |
| RR-098 | Gordon and David Talbot |
| RR-099 | Public Health England |
| RR-100 | Mellis Parish Council |
| RR-101 | Mr M Spence |
| RR-102 | Transam Trucking Limited |
| RR-103 | Gillian Russell |
| RR-104 | Alex Grinsted |
| RR-105 | David Burn |
| RR-106 | John Shaw |
| RR-107 | Tobar Group Trading Limited |
| RR-108 | Environment Agency |
| Representations (REP) | |
| | Adequacy of Consultation Responses |
| REP-001 | Adequacy of Consultation response from Norfolk County Council |
| REP-002 | Adequacy of Consultation response from South Norfolk Council |
| REP-003 | Adequacy of Consultation response from Breckland Council |
| REP-004 | Adequacy of Consultation response from Essex County Council |
| REP-005 | Adequacy of Consultation response from Ipswich Borough Council |
| REP-006 | Adequacy of Consultation response from Waveney and Suffolk Coastal District Councils |
| REP-007 | Adequacy of Consultation response from the Broads Authority |
| REP-008 | Adequacy of Consultation response from Suffolk County Council and Mid Suffolk District Council |
| | Written Representation |
| REP-009 | Written representation by the Civil Aviation Authority |
| REP-010 | Written representation by Mike Drew |
| REP-011 | Written representation by John Farley |
| REP-012 | Written representation by Neil Lockett |
| REP-013 | Written representation by British Horse Society |

| DOC REF | TITLE |
|---------|---|
| REP-014 | Written representation by Penny Bullock |
| REP-015 | Written representation by Steven Jacobs |
| REP-016 | Written representation by Triodos Renewables (Eye) Limited |
| REP-017 | Written representation by Philip Butler |
| REP-018 | Summary of written representation by Philip Butler |
| REP-019 | Written representation by Suffolk Preservation Society |
| REP-020 | Summary of Written representation by Suffolk Preservation Society |
| REP-021 | Written representation by Common Concern |
| REP-022 | Summary of written representation by Common Concern |
| REP-023 | Written representation by Hayley Talbot |
| REP-024 | Written representation by Tracey Jacobs |
| REP-025 | Written representation by English Heritage |
| REP-026 | Summary of written representation by English Heritage |
| REP-027 | Written representation by Mellis Parish Council |
| REP-028 | Written representation by Mathew Spence |
| REP-029 | Joint written representation by Mid Suffolk District Council and Suffolk County Council |
| REP-030 | Written representation by Eleanor Havers on behalf of Gordon and David Talbot - Withdrawn |
| REP-031 | Written representation by Eye Airfield Parishes Working Group |
| REP-032 | Summary of written representation by Eye Airfield Parishes Working Group |
| REP-033 | Written representation by Brian Guthrie |
| REP-034 | Written representation by Berwin Leighton Paisner on behalf of Energy Power Resources Limited and EPR Eye Limited - Withdrawn |
| REP-035 | Written representation by Simon Cairns |
| REP-036 | Written Representation by David Burn |
| REP-037 | Written representation by National Grid Electricity Transmissions - Partly withdrawn |
| REP-038 | Written representation by National Grid gas - Withdrawn |
| REP-039 | Summary of written representation by National Grid Electricity Transmissions - Partly withdrawn |
| REP-040 | Late written representation by Eleanor Havers on Behalf of Paul and Eileen Hammond, David Hammond and Richard Hammond - Withdrawn |
| | First round of questions |
| REP-041 | Responses to first round of questions by Environment Agency |
| REP-042 | Responses to first round of questions by Progress Power Limited |
| REP-043 | Joint response to first round of questions by Mid Suffolk District Council and Suffolk County Council |
| REP-044 | Responses to first round of questions by National Grid Electricity Transmissions - Partly withdrawn |
| REP-045 | First round of question responses by National Grid gas - Withdrawn |

| DOC REF | TITLE |
|---------|--|
| | Statements of Common Ground |
| REP-046 | Statement of Common Ground between Progress Power limited and National Grid Electricity Grid - Partly withdrawn |
| REP-047 | Statement of Common Ground between Progress Power limited and National Grid Gas - Withdrawn |
| REP-048 | Statement of Common Ground between Progress Power limited and Environment Agency |
| REP-049 | Statement of Common Ground between Progress Power limited and Natural England |
| REP-050 | Statement of Common Ground between Progress Power limited and Suffolk County Council and Mid Suffolk District Council. Submitted for deadline II |
| REP-071 | Updated Statement of Common Ground between Progress Power Ltd and National Grid Gas - Withdrawn |
| REP-072 | Updated Statement of Common Ground between Progress Power Ltd and National Grid Electricity Transmission - Partly withdrawn |
| REP-073 | Updated Statement of Common Ground between Progress Power Limited, Suffolk County Council and Mid Suffolk District Council, including annexes. Submitted for deadline IV |
| REP-089 | Updated Statement of Common Ground between the Applicant, Suffolk County Council and Mid Suffolk District Council, including annexes. Submitted for deadline V |
| REP-094 | Updated Statement of Common Ground between the Applicant, Suffolk County Council and Mid Suffolk District Council. Submitted for deadline VI |
| REP-097 | Updated Statement of Common Ground between Progress Power Limited, Suffolk County and Mid Suffolk District Council submitted at deadline VII |
| REP-106 | Updated Statement of Common Ground between Progress Power Limited, Suffolk County Council and Mid Suffolk District submitted for deadline VIII |
| | Local Impact reports |
| REP-051 | Joint Local Impact Report by Mid Suffolk District Council and Suffolk County Council |
| | Comments on relevant representations |
| REP-052 | Comments on relevant representations by Progress Power Limited |
| REP-053 | Comments on relevant representations by National Grid Electricity Transmissions - Partly withdrawn |
| | Comments on written representations |
| REP-063 | Comments on Written Representations by Progress Power Limited |
| | Comments on Local Impact Reports and Statement of Common Ground |
| REP-055 | Comments on Local Impact Report and Statement of Common Ground by Progress Power |
| REP-056 | Comments on Local Impact Report, Annexes A-G by Progress Power |
| REP-057 | Comments on Local Impact Report, Annex H by Progress Power |

| DOC REF | TITLE |
|---------|--|
| | Other Comments |
| REP-058 | Response to comments on relevant representation by Mervyn Barker.pdf |
| REP-059 | Comments on documents revived for deadline 2 by Phil Butler |
| REP-060 | Comments on documents submitted for deadline 2 by Common Concern |
| REP-061 | Comments by Mid Suffolk District Council and Suffolk County Council on documents submitted for deadline 2 |
| REP-062 | Comments by Mid Suffolk District Council and Suffolk County Council on the Report on the Possible Date and Potential Significance of Co-axial Field System Boundaries at Eye and Yaxley, Suffolk |
| REP-067 | Simon J Cairns comments on documents submitted prior to Deadline 5 |
| REP-068 | Suffolk County Council and Mid Suffolk District Council comments on submission prior to deadline 5 |
| REP-070 | Progress Power Limited's comments on documents submitted prior to Deadline 5.pdf |
| REP-084 | Applicant's comments on other parties Deadline 5 submissions |
| REP-085 | Comments on responses to ExA's second round of questions and any further Statements of Common Ground from Suffolk County Council and Mid Suffolk District Council |
| REP-086 | Comments on responses to ExA's second round of written questions and any further Statements of Common Ground by Cllr. Jessica Fleming |
| REP-087 | Comments on responses to ExA's second round of written questions by Common Concern |
| REP-088 | Comments on responses to ExAs second round of written questions and any further Statements of Common Ground by Phil butler |
| REP-096 | Progress Power Limited - Comments on Deadline 6 Submissions |
| REP-104 | Progress Powers Limited's Response to other parties' Deadline 7 submissions |
| REP-105 | Environment Agency's comments received for deadline 8 |
| | EIA |
| REP-054 | No significant effects report screening matrices |
| | Correspondence |
| REP-064 | Reference not used |
| REP-065 | The Examining Inspector's response to Eye Airfield Parishes Working Group's letter dated 14 November 2014 |
| REP-081 | Withdrawal of all representations in respect of the DCO application from National Grid Gas |
| REP-082 | Withdrawal of all representations in respect of the proposed compulsory acquisition of its interests from National Grid Electricity Transmission plc |
| REP-090 | Response to Eye Airfield Parishes Working Group dated 14 November 2014 |

| DOC REF | TITLE |
|----------------------|--|
| REP-091 | Reference not used |
| REP-092 | Withdrawal of all representations in respect of the DCO application from National Grid Gas |
| REP-093 | Reference not used |
| REP-098 | Energy Power Resources Limited withdrawal of objections to the application |
| REP-099 | EPR Eye Limited withdrawal of objections to the application |
| REP-100 | George and David Talbot - Withdrawal of submissions |
| REP-101 | Withdrawal of David, Paul, Richard and Eileen Hammond's submissions |
| REP-102 | Daniel Poulter MP - Other submission |
| REP-103 | Response to Daniel Poulter MP letter dated 12 January 2015 |
| REP-107 | Eye Wind Power Limited – Withdrawal of representations |
| REP-108 | Tobar group Trading Limited – Withdrawal of representations |
| REP-109 | Transam Trucking Limited – Withdrawal of representations |
| | Second round of questions |
| REP-066 | English Heritage – Response to second round of questions.pdf |
| REP-069 | Responses to second round of questions by Progress Power Limited |
| REP-074 | Environment Agency – Response to second round of questions |
| REP-075 | Phil Butler Response to second round of questions.pdf |
| REP-076 | Suffolk Preservation Society responses to second round of questions and comments on written summary by Progress Power Ltd.pdf |
| REP-077 | Eye Airfield Parishes Working Group - Responses to second round of questions and additional submissions.pdf |
| REP-078 | Joint response to second round of questions by Suffolk County Council and Mid Suffolk District Council |
| REP-079 | National Grid Electricity Transmission PLC - Responses to second round of questions and comments on written summaries - Partly withdrawn |
| REP-080 | Common Concern - responses to second round of questions.pdf |
| | Other Documents |
| REP-083 | Re-assessment of Co-axial Field System Boundaries by Dr Adrian M. Chadwick |
| | Report on Implication on European Sites |
| REP-095 | Report on the Implications for European Sites (RIES) |
| Hearings (HR) | |
| | Preliminary Meeting held on 24 July 2014 |
| HR-001 | Letter to Progress Power Ltd and Hirwaun Power Ltd re Preliminary Meeting dates |
| HR-002 | Watt Power Ltd letter to PINS re Preliminary Meeting 30 06 14 |
| HR-003 | Note of the Preliminary Meeting |

| DOC REF | TITLE |
|---------|---|
| HR-004 | Part 1 of the Preliminary Meeting Audio |
| HR-005 | Part 2 of the Preliminary Meeting Audio |
| HR-006 | PM request from Brian Guthrie |
| HR-007 | PM request from Bridget Bloom |
| HR-008 | PM request from Brome and Oakley Parish Council |
| HR-009 | PM request from Chris Aldous |
| HR-010 | PM request from David Burn |
| HR-011 | PM request from Eye Town Council |
| HR-012 | PM request from John Farley |
| HR-013 | PM request from Mellis Parish Council |
| HR-014 | PM request from Mrs Speak |
| HR-015 | PM request from Ms Anna Eastgate on behalf of National Grid Gas Plc and National Grid Electricity Transmission plc - Partly withdrawn |
| HR-016 | PM request from Naomi Sunkin on behalf of Tobar Group Trading Limited and Transam Trucking Limited |
| HR-017 | PM request from Palgrave Parish Council |
| HR-018 | PM request from Paul Read |
| HR-019 | PM request from Thrandeston Parish Council |
| HR-020 | PM request from Yaxley Parish Council |
| | Open Floor Hearing held on 15 October 2014 |
| HR-021 | Reference not used |
| HR-023 | Written summary of Common Concern's Oral representation given at the open floor hearing |
| HR-024 | Audio recording of the Open Floor Hearing held at 2.00pm on Wednesday 15 October 2014 |
| HR-025 | Audio recording of the Open Floor Hearing held at 6.00pm on Wednesday 15 October 2014 |
| HR-022 | Written summary of Phil Butler's Oral representation given at the open floor hearing |
| HR-035 | Written summary of Suffolk County Council's Oral representation given at the Issue Specific & Open Floor Hearings |
| HR-037 | Written summary of Cllr. Fleming's Oral representation given at the Open Floor Hearings on behalf of Suffolk County Council - Hartismere Division |
| HR-038 | Reference not used |
| HR-039 | Written summary of Palgrave Parish Council's Oral representation given at the open floor hearing |
| | Issue Specific Hearing held on 16-17 October 2014 |
| HR-026 | Audio recording of the Issue Specific Hearing held on Thursday 16 October 2014 - Part 1 |
| HR-027 | Audio recording of the Issue Specific Hearing held on Thursday 16 October 2014 - Part 2 |
| HR-028 | Audio recording of the Issue Specific Hearing held on Thursday 16 October 2014 - Part 3 |

| DOC REF | TITLE |
|---------|--|
| HR-029 | Audio recording of the Issue Specific Hearing held on Thursday 16 October 2014 - Part 4 |
| HR-030 | Audio recording of the Issue Specific Hearing held on Friday 17 October 2014 - Part 1 |
| HR-031 | Audio recording of the Issue Specific Hearing held on Friday 17 October 2014 - Part 2 |
| HR-032 | Audio recording of the Issue Specific Hearing held on Friday 17 October 2014 - Part 3 |
| HR-033 | Eye Airfield Parishes Working Group - Statement presented at Issue-specific Hearing, 16-Oct-14 |
| HR-034 | National Grid Electricity Transmission Plc - Statement presented at Issue-specific Hearing, 16-Oct-14 - Partly withdrawn |
| HR-035 | Written summary of Suffolk County Council's Oral representation given at the Issue Specific & Open Floor Hearings |
| HR-036 | Written summary of Progress Power Limited's Oral representation given at the Issue Specific Hearings, including appendices |
| | Compulsory Acquisition Hearing held on 9 Dcember 2014 |
| HR-040 | Audio recording of the Compulsory Acquisition Hearing held on 9 December 2014 |
| | Issue Specific Hearing held on 10-11 December 2014 |
| HR-041 | Notice of Hearing Agenda for 10 – 11 December 2014 |
| HR-042 | Revised Notice of Hearing Agenda for 10 - 11 December 2014 |
| HR-044 | Audio recording of the Issue Specific Hearing held on 10 December 2014 - Part 1 |
| HR-045 | Audio recording of the Issue Specific Hearing held on 10 December 2014 - Part 2 |
| HR-046 | Audio recording of the Issue Specific Hearing held on 10 December 2014 - Part 3 |
| HR-047 | Audio recording of the Issue Specific Hearing held on 10 December 2014 - Part 4 |
| HR-048 | Audio recording of the Issue Specific Hearing held on 11 December 2014 |
| HR-043 | Written summary of Suffolk Preservation Society oral representation given on 10 December 2014 |
| HR-049 | Progress Power Limited - Written summary of oral representations made at hearings of 9, 10 and 11 December 2014 |
| HR-050 | Progress Power Limited - Cultural Heritage Mitigation Table with coverage |
| HR-051 | Progress Power Limited - Field Boundary Photographs presented at Second Issue Specific Hearings |
| HR-052 | Progress Power Limited - Important Hedgerow Plan (Rev. 1.0) |
| HR-053 | Progress Power Limited - Important Hedgerow Plan - GIS Variant (Rev. 1.0) |
| HR-054 | Progress Power Limited - Important Hedgerow Plan - Refined Application (Rev. 2.0) |
| HR-055 | Progress Power Limited - Protected Field Boundary Plans presented at Second Issue Specific Hearing |

| DOC REF | TITLE |
|------------------------------------|--|
| HR-056 | Progress Power Limited - Second Issue Specific Hearings Witness CV Booklet |
| HR-057 | Written summary of Eye Airfield Parishes Working Group representations |
| HR-058 | Written summary of Suffolk County Council and Mid Suffolk District Council representations |
| HR-059 | Written summary of National Grid Electricity Transmission Plc's Oral representation given 11 December 2014 |
| HR-060 | Progress Power - Update to annex 1 of their hearing summary dated 9, 10 and 11 December 2014 |
| Project Documents (PD) | |
| PD-001 | Scoping Report |
| PD-002 | Progress Power Station Scoping Opinion |
| PD-003 | Essex & Suffolk Water Late Response |
| PD-004 | Norfolk County Council Late Response |
| PD-005 | Highways Agency Late Response |
| PD-006 | Reference not used |
| PD-007 | Reg 9 Replacement List |
| PD-008 | Progress Power Transboundary Rescreening Matrix |
| Additional Submissions (AS) | |
| AS-001 | Late submission by Nigel Highfell |
| AS-002 | Additional Submission by BLP Law on behalf of Energy Power Resources Limited & EPR Eye Limited - Withdrawn |
| AS-003 | Additional Submission by Progress Power Limited regarding the Examination Timetable - 25 July 2014 |
| AS-004 | Additional representation by Elizabeth Speak concerning the site visit |
| AS-005 | Progress Power Limited's cover letter for deadline 2. |
| AS-006 | Progress Power Limited's comments relating to the site visit |
| AS-007 | Reference not used |
| AS-008 | Other Submission by the Prehistoric Society |
| AS-009 | Viewpoints suggested by Philip Butler |
| AS-010 | Viewpoints suggested by Palgrave Parish Council |
| AS-011 | Viewpoints suggested by Common Concern |
| AS-012 | Additional representation by Progress Power Limited, National Grid Gas and National Grid Electricity Transmission regarding the Grid and Gas Connection - Partly withdrawn |
| AS-013 | Progress Power Limited's cover letter for deadline 3 |
| AS-014 | Plan over Potentially Important Hedgerows by Progress Power Limited |
| AS-015 | Report into the use of the term Species Poor in the Environmental Statement by Eye Airfield Parishes Working Group |

| DOC REF | TITLE |
|---------|--|
| AS-016 | Questions from the Eye Airfield Parishes Working Group relating to the hearing scheduled for 16 October 2014 |
| AS-017 | Additional submission from Mr Farley, submitted at the open floor hearing on 15 October 2014 |
| AS-018 | Applicant's cover letter for deadline 4 |
| AS-019 | Submission by Eye Airfield Parishes Working Group requesting a Regulation 17 Direction |
| AS-020 | Progress Power Limited's errata sheet for the submission submitted for deadline 3 (2 October 2014) |
| AS-021 | Progress Power Limited's response to Eye Airfield Parishes Working Group's letter dated 12 October 2014 |
| AS-022 | Correspondence relating to Regulation 17 of the Infrastructure Planning EIA Regulations 2009. This submission also contains Progress Power Limited's response to the Eye Airfield Parishes Working Group submission dated 2 October 2014 |
| AS-023 | Progress Power Limited's Response to Regulation 17 Direction |
| AS-024 | British Horse Society – Guidance for construction near routes used by horses |
| AS-025 | Other submission by the Prehistoric Society accepted into the examination on 7 November 2014 |
| AS-026 | Additional Submission from Progress Power Limited on Power Generation Plant Design & Transformers.pdf |
| AS-027 | Progress Power Limited's cover letter for deadline 5 |
| AS-028 | Additional Representation received for deadline 6 by Eye Airfield Parishes Working Group |
| AS-029 | Applicant's cover letter for deadline 6 |
| AS-030 | Draft Design Principles Statement submitted by the Applicant for deadline 6 |
| AS-031 | Reference not used |
| AS-032 | Energy Power Resources Limited and EPR Eye Limited - agreement reached with Progress Power - Withdrawn |
| AS-033 | Eye Wind Power submission regarding protection of rights - Withdrawn |
| AS-034 | Potentially Important Hedgerow Plan - Refined Application |
| AS-035 | Potentially Important Hedgerow Plan - GIS Variant |
| AS-036 | Progress Power cover letter for deadline 6 (late submissions) |
| AS-037 | Progress Power Limited - Field Boundaries (AIS variant) |
| AS-038 | Progress Power Limited - Field Boundaries (GIS variant) |
| AS-039 | Progress Power Limited - Cover Letter for deadline 7 |
| AS-040 | Progress Power Limited's cover letter regarding updates to the deadline 7 submissions |
| AS-041 | Progress Power limited – Deadline 8 cover letter |
| AS-042 | Deadline 8 Submission from Cllr. Jessica Fleming |
| AS-043 | Deadline 8 submission from Eye Airfield Parishes Working Group |

| DOC REF | TITLE |
|---------|--|
| AS-044 | Deadline 8 submission from Suffolk County Council and Mid Suffolk District Council |
| AS-045 | Progress Power Limited - Errata sheet for deadline 6 |
| AS-046 | Progress Power Limited's second errata letter for the deadline 6 (5 December 2014) |
| AS-047 | John Farley - Authentication of Neolithic hand hoe |

APPENDIX 2: EVENTS IN THE EXAMINATION

The Table below lists the main 'events' occurring during the Examination and the main procedural decisions taken by the Examining Authority (ExA).

| Date | Examination Event |
|-------------------------|---|
| 24 July 2014 | Preliminary Meeting and start of Examination |
| 4 August 2014 | <p>Issue by the ExA of:</p> <p>Procedural decision under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 made at and following the preliminary meeting.</p> <p>Examination timetable</p> <p>ExA first written questions and requests for Statements of Common Ground</p> |
| 14 August 2014 | <p>Deadline 1</p> <p>For the receipt of:</p> <p>Notification by statutory parties to inform the ExA of a wish to be considered as an interested party.</p> <p>Request or receipt of notification (using the prescribed form) by persons within certain categories of interests in the land of a wish to become an interested party</p> |
| 4 September 2014 | <p>Deadline 2</p> <p>For the receipt of:</p> <p>Comments on relevant representations (RRs)</p> <p>Summaries of all RRs exceeding 1500 words</p> <p>Written representations (WRs) by all interested parties</p> <p>Summaries of all WRs exceeding 1500 words</p> <p>LIR from any local authorities</p> <p>Statements of Common Ground requested by ExA</p> <p>Responses to ExA's first written questions</p> <p>Notification of wish to speak at a compulsory</p> |

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| | <p>acquisition hearing</p> <p>Notification of wish to make oral representations at the first issue specific hearing on the local impact of the project</p> <p>Notification by interested parties of wish to be heard at an open floor hearing</p> <p>Notification by interested parties of wish to attend any accompanied site visits and any representations relating to locations to view at or near the site and in the surrounding area</p> <p>Comments on any other / additional submissions received prior to the preliminary meeting</p> <p>Submissions from interested parties recommending itinerary items for the accompanied site visit</p> <p>Any further information requested by the ExA for this deadline</p> |
| 15 September 2014 | <p>Notification by ExA of date, time and place for:</p> <p>First issue specific hearing to be held on the local impact of the project</p> <p>Any accompanied site visit(s)</p> <p>Any open-floor hearing</p> |
| 2 October 2014 | <p>Deadline 3 For the receipt of:</p> <p>Comments on WRs and responses to comments on RRs</p> <p>Comments on LIRs</p> <p>Comments on Statements of Common Ground</p> <p>Comments on responses to ExA's first written questions</p> <p>Revised DCO from the applicant</p> <p>Any further information requested by the ExA for this deadline</p> |
| 14 October 2014 | Accompanied Site Visit |

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|-------------------------------------|---|
| 15 October 2014 | Open floor hearing |
| 16 October - 17 October 2014 | Issue specific hearing on the local impact of the project, including the first draft DCO hearing |
| 24 October 2014 | <p>Deadline 4 For the receipt of:</p> <p>All post hearing documents (including any revised DCO from the applicant)</p> <p>Any updated Statements of Common Ground</p> <p>All written summaries of oral cases made at the open-floor and issue specific hearings</p> <p>Notification by interested parties of wish to make oral representations at the second issue specific hearing on the draft Development Consent Order (DCO) and any related LIR matters</p> <p>Any further information requested by the ExA for this deadline</p> |
| 27 October 2014 | <p>Issue by ExA of:</p> <p>ExA's second round of written questions and any further request for Statements of Common Ground</p> <p>Notification by the ExA of the time and place for the second issue specific hearing relating to the draft DCO and any related LIR matters</p> <p>Notification by the ExA of the time and place for compulsory acquisition hearings</p> |
| 17 November 2014 | <p>Deadline 5 For the receipt of:</p> <p>Responses to ExA's second written questions and any further requests for Statements of Common Ground</p> <p>Comments on written summaries of case put at the first issue specific and open floor hearings</p> |
| 2 December 2014 | <p>Deadline 6 For the receipt of:</p> <p>Comments on responses to ExA's second round of written questions and any further Statements of Common Ground</p> |

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| 9 December 2014 | Compulsory acquisition hearing |
| 10 December - 11 December 2014 | Issue specific hearing including second DCO hearing and LIR issues |
| 15 December 2015 | <p>Issue by ExA of:</p> <p>The Report on the Implications for European Sites (RIES)</p> |
| 19 December 2014 | <p>Deadline 7</p> <p>For the receipt of:</p> <p>Optional written summary of the case put orally at the issue specific hearing on draft DCO and any related LIR matters</p> <p>Optional written summary of the case put orally at compulsory acquisition and any other hearings held</p> <p>Any proposed amendments to the draft DCO</p> |
| 13 January 2015 | <p>Deadline 8</p> <p>For the receipt of:</p> <p>Comments on written summaries of case put at the second issue specific hearing, compulsory acquisition and any other hearings held</p> <p>Comments on any proposed amendments to the draft DCO</p> <p>Comments on the RIES</p> |
| 16 January 2015 | <p>Issue by ExA of:</p> <p>Decision relating to non-material changes to the application</p> |
| 24 January 2015 | <p>Deadline for close of examination</p> <p>The ExA is under a duty to complete the examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting</p> |

APPENDIX 3: LIST OF ABBREVIATIONS

| | |
|-----------------|---|
| AIS | Air Insulated Substation |
| AGI | Above Ground Installation |
| AOD | Above Ordnance Datum |
| BAP | Biodiversity Action Plan |
| BAT | Best Available Techniques |
| CA | Compulsory Acquisition |
| CAH | Compulsory Acquisition Hearing |
| CCGT | Combined Cycle Gas Turbine |
| CCR | Carbon Capture Ready |
| CCR Regulations | The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 |
| CCS | Carbon Capture and Storage |
| CEMP | Construction Environmental Management Plan |
| CHP | Combined Heat and Power |
| CO | Carbon Monoxide |
| CO ₂ | Carbon Dioxide |
| CTMP | Construction Traffic Management Plan |
| DAS | Design and Access Statement |
| dB | Decibels |
| DCO | Development Consent Order |
| DECC | Department of Energy and Climate Change |
| DEFRA | Department for Environment, Food and Rural Affairs |
| DMRB | Design Manual for Roads and Bridges |
| DPS | Design Principles Statement |
| EA | Environment Agency |
| EAPWG | Eye Airfield Parishes Working Group |
| ECC | Electrical Connection Compound |
| EH | English Heritage |
| EIA | Environmental Impact Assessment |
| EM | Explanatory Memorandum |
| EMF | Electro-magnetic Fields |
| EN-1 | The Overarching National Policy Statement for Energy |
| EN-2 | National Policy Statement for Fossil Fuel Electricity Generating Infrastructure |
| EN-4 | National Policy Statement for Gas Supply and Gas and Oil Pipelines |
| EN-5 | National Policy Statement for Electricity Networks Infrastructure |
| EP | Environmental Permit |
| EPR | The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) |
| ES | Environmental Statement |
| ExA | Examination Authority |
| FRA | Flood Risk Assessment |
| GCN | Great Crested Newt |
| GIS | Gas Insulated Substation |
| GLVIA | Guidelines for Landscape and Visual Impact Assessment |

| | |
|----------------------------------|--|
| GT | Gas Turbine |
| GVA | Gross Value Added |
| Ha | Hectares |
| HA | Non-designated Historic Assets |
| The Habitats Regulations 2010 | Conservation of Habitats and Species Regulations 2010 |
| HDD | Horizontal Directional Drilling |
| HGV | Heavy Goods Vehicle |
| ICNIRP | International Commission on Non-Ionizing Radiation Protection |
| IfA | Institute for Archaeologists |
| IGE | Institute of Gas Engineers |
| IPC | Infrastructure Planning Commission |
| IED | Industrial Emissions Directive 2010/75/EU |
| IP | Interested Party |
| ISH | Issue Specific Hearing |
| kV | Kilovolt |
| km | Kilometre |
| LB | Listed Buildings |
| LIR | Local Impact Report |
| LVIA | Landscape and Visual Impact Assessment |
| m | Metre |
| MITS | Main Interconnected Transmission System |
| MOC | Minimum Offtake Connection |
| MSDC | Mid Suffolk County Council |
| MW | Megawatt |
| MWe | Megawatt electrical |
| NCFL | Noble Clean Fuels Limited |
| NE | Natural England |
| NGET | National Grid Electricity Transmission plc |
| NGG | National Grid Gas plc |
| NNR | National Nature Reserve |
| NO ₂ | Nitrogen Dioxide |
| NO _x | Nitrous Oxides |
| NPPF | National Planning Policy Framework |
| NPS | National Policy Statement |
| NSER | No Significant Effects Report |
| NSIP | Nationally Significant Infrastructure Project |
| NSR | Noise Sensitive Receptor |
| NTS | National Transmissions System |
| OFH | Open Floor Hearing |
| HGV | Heavy Goods Vehicles |
| OHL | Overhead Line |
| PA 2008 | The Planning Act 2008 (as amended) |
| PIG | Pipelines Inspection Gauge |
| PRoW | Public Right of Way |
| RGE | Reciprocating Gas Engine |
| RIES | Report on the Implications for European Sites |
| RoEP | Rise of Earth Potential |
| SAC | Special Area of Conservation |
| SCC | Suffolk County Council |
| SCGT | Simple Cycle Gas Turbine |

| | |
|----------------------|--|
| SF6 | Sulphur Hexafluoride gas |
| SLA | Special Landscape Areas |
| SM | Scheduled Monuments |
| SoCG | Statement of Common Ground |
| SPA | Special Protection Areas |
| SPZ | Ground Source Protection Zone |
| Sq m | Square Metres |
| SSSI | Site of Special Scientific Interest |
| SUDS | Sustainable Urban Drainage System |
| VER | Valued Ecological Receptor |
| Wild Birds Directive | Council Directive 79/409/EEC on the Conservation of Wild Birds |
| WPL | Watt Power Limited |
| WSI | Written Scheme of Investigation |
| ZTV | Zones of Theoretical Visibility |

APPENDIX 4: RECOMMENDED DEVELOPMENT CONSENT ORDER

201* No.

INFRASTRUCTURE PLANNING

The Progress Power (Gas Fired Power Station) Order

Made - - - - [***] 201[X]

Laid before Parliament [***] 201[X]

Coming into force - - [***] 201[X]

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

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

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 140 of the 2008 Act, makes the following Order—

(a) .I. 2009/2264 as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.

(b) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27), see S.I. 2013/1124 for transitional provisions.

(c) S.I. 2010/103, as amended by S.I. 2012/635.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Progress Power (Gas Fired Power Station) Order 201[X] and comes into force on [X] 201[X].

Interpretation

2.—(1) In this Order—

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

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

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

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

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

“the 2008 Act” means the Planning Act 2008;

“address” includes any number or address used for the purposes of electronic transmission;

“AOD” means above ordnance datum;

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

“authorised development” means the development and associated development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

-
- (a) 1961 c.33. There are amendments to the 1961 Act which are not relevant to this Order.
- (b) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991. Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991. Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006. There are other amendments to the 1965 Act which are not relevant to this Order.
- (c) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraph 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 65(5) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985; and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994. Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (d) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force in relation to England: 6th April 2012: S.I. 2012/601). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

“the book of reference” means the book of reference submitted as revision 1.0 dated 19 December 2014 certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“commence” means the carrying out of a material operation, as defined in section 155 of the Planning Act 2008 (which explains where development begins), comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

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

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis;

“the design principles statement” means the design principles statement contained within the design and access statement at pages 39 to 43 (inclusive) submitted under regulation 5(2)(q) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 together with the design principles document dated December 2014 (where there is conflict between the two documents, the design principles document of December 2014 shall prevail) and both certified as such by the Secretary of State for the purposes of this Order;

“the ecological management strategy” means the outline ecological management strategy, submitted as revision 1.0 dated September 2014 and which is certified as such by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“the environmental statement” means the environmental statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as such by the Secretary of State for the purposes of this Order updated as follows—

- (a) Appendix 4.A is superseded by the outline construction environment management plan;
- (b) Appendix 12.D is superseded by the outline construction traffic management plan;
- (c) Appendix 13.C is superseded by the stage 2 written scheme of archaeological investigation;

“exhaust gas emission flue stack” means the exhaust gas emission flue stack excluding any ancillary support structures, sound proof cladding, and emissions monitoring platforms;

“the flood risk assessment” means the flood risk assessment submitted as revision 0 dated December 2014 and certified as such by the Secretary of State for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“gas turbine generator” means either one or two gas turbines which drive a single electricity generator for the purposes of generating electricity;

“gross rated electrical output” means the gross electrical power as measured at the generator terminals in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010(a) (as amended) or subsequent legislation.

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

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

“important hedgerow plan” means the important hedgerow plan submitted as revision 1.0 dated December 2014 and certified as such by the Secretary of State for the purposes of this Order;

“landscape mitigation strategy” means the interim landscape mitigation strategy submitted as revision 3.0 dated December 2014 and which is certified as such by the Secretary of State for the purposes of this Order;

“the land plans” means the plans submitted as revision 0 dated December 2014 and certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means, in respect of numbered works 1, 2, 3, 5 and 7 the outer limits of the corresponding numbered area shown on the works plans and, in respect of numbered works 4 and 6, the limits to either side of the corresponding numbered line shown on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve to the extent that the same are unlikely to give rise to any materially new or materially different environmental effects from those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“National Grid” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH and/or National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH as the context requires;

“Order land” means the land required for, or affected by, the proposed development shown on the land plans and described in the book of reference;

“the Order limits” means the limits shown on figure 1 (sheet 1 and 2) of the works plans within which the authorised development may be carried out;

“the outline construction environment management plan” means the outline construction environment management plan submitted as revision 0 dated December 2014 and which is certified as such by the Secretary of State for the purposes of this Order;

“the outline construction traffic management plan” means the outline construction traffic management plan submitted as revision 0 dated December 2014 and which is certified as such by the Secretary of State for the purposes of this Order;

“the outline landscaping plans” means the outline landscaping plans, submitted as revision 0 and dated December 2014 and certified as such by the Secretary of State for the purposes of this Order;

“the outline lighting strategy ” means the outline lighting strategy submitted as revision 0 dated December 2014 and which is certified as such by the Secretary of State for the purposes of this Order;

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

“Progress Power Limited” means Progress Power Limited (Company No. 8190283) whose registered office is at 33 Cavendish Square, London W1G 0PW;

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

“requirements” means those matters set out in Schedule 2 to this Order;

“rights of way, streets and access plan” means the plan submitted as revision 0 dated December 2014 and certified as the rights of way, streets and access plan by the Secretary of State for the purposes of this Order;

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

“stage 2 written scheme of archaeological investigation” means the stage 2 written scheme of archaeological investigation submitted as revision 0 dated December 2014 and certified as such by the Secretary of State for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

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

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

“travel plan” means the travel plan contained in appendix 12.E of the environmental statement setting out measures to promote sustainable transport during the construction phase and outline measures to propose sustainable transport during the operational phase of the authorised development;

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

“undertaker” means Progress Power Limited or the person who has the benefit of this Order in accordance with articles 6 and 7;

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

“the works plans” means the works plans submitted as revision 0 and dated December 2014 and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order.

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

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

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference to numbered work 1 means 1A to 1D (inclusive) and a reference to numbered 3 means 3A and 3B (inclusive).

(6) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the rights of way, streets and access plan.

(7) The expression “includes” is to be construed without limitation.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

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

(2) Subject to paragraph (3), each numbered work must be situated on the corresponding numbered line or numbered area shown on the works plans.

(3) In constructing each numbered work, the undertaker may deviate from the corresponding numbered line shown on the works plans or within the corresponding numbered area(s) shown on the works plans up to the limits of deviation.

Maintenance of authorised development

4.—(1) Except to the extent that this Order or an agreement made under this Order provides otherwise and subject to the provisions of this Order and to the requirements, the undertaker is authorised to and, subject to the requirements, may at any time maintain the authorised development.

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

Operation of authorised development

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

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of a generating station.

Benefit of the Order

6.—(1) Section 156(1) of the 2008 Act applies to the grant of development consent by this Order.

(2) Without prejudice to paragraph (1), in relation to numbered works 3 and 5 consent is granted by this Order for the benefit of the undertaker and National Grid; and

(3) Without prejudice to paragraph (1), in relation to numbered work 7 consent is granted by this Order for the benefit of the undertaker and the highway authority.

Consent to transfer benefit of the Order

7.—(1) Subject to paragraph (4), the undertaker may—

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

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

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

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

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

Guarantees in respect of payment of compensation

8.—(1) The undertaker must not begin to exercise the powers in articles 11 to 30, 32 and 33 of this Order in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose which has been approved by the Secretary of State.

(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under the Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

Application and modification of legislative provisions

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

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

PART 3

STREETS

Power to alter layout, etc., of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 3 (permanent alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 3 (temporary alteration of layout) in the manner specified in relation to that street in column (3).

(2) Regardless of the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing place(s).

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of eight weeks beginning with the date on which the application was made (or such longer period as may be agreed with the undertaker in writing), it is deemed to have granted consent.

(6) Paragraphs (3), (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

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

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order limits and may—

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

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

(3) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Construction and maintenance of new or altered means of access

12.—(1) Those parts of each means of access specified in Part 1 of Schedule 6 to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 6 to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 10(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 6 which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), a court is, in particular, to have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed.

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the

action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Temporary prohibition or restriction of use of streets

13.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets specified in columns (1) and (2) of Schedule 5 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(6) If a street authority fails to notify the undertaker of its decision within 8 weeks of receiving an application for consent under paragraph (5)(b) (or such longer period as may be agreed with the undertaker in writing) that street authority is deemed to have granted consent.

Access to works

14.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access, in the location specified in Part 1 of Schedule 3 (streets subject to permanent and temporary alteration of layout);
- (b) form and layout the temporary means of access in the location specified in Part 2 of Schedule 3 (streets subject to permanent and temporary alteration of layout); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

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

- (a) the construction of any new street including any structure carrying the street;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;
- (d) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order; or

- (e) the carrying out in the street of any of the works referred to in article 12(1) (construction and maintenance of new or altered means of access).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

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

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

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

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

(5) Except as authorised under this Order, the undertaker must not, in carrying out or maintaining works, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2010.

- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(b) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

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

(b) 1964 c.40.

- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in that Act.

Authority to survey and investigate the land

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

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

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

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

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

Removal of human remains

18.—(1) In this article “the specified land” means the Order land.

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

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

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

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are

interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

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

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

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

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

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

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

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

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

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) This article is subject to article 22 (Compulsory acquisition of rights etc.), article 25 (acquisition of subsoil only) and article 28 (Temporary use of land for carrying out the authorised development).

Statutory authority to override easements and other rights

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

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

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

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract, authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

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

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

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

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(b) as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

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

(b) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of,

(2) The authority conferred by article 28 (temporary use of land for carrying out the authorised development) must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights etc.

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

(2) Subject to section 8 of the 1965 Act, as substituted by article 26 (acquisition of part of certain properties), where the undertaker acquires a right over land under paragraph (1), the undertaker is not to be required to acquire a greater interest in that land.

(3) Schedule 7 is to have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

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

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

Private rights

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

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

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

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

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

and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are amendments to the 1981 Act which are not relevant to this Order.

undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

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

(6) This article does not apply in relation to any right to which article 30 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of rights over land,
- (ii) the undertaker's appropriation of it,
- (iii) the undertaker's entry onto it, or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

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

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

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

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

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

24.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Order were a compulsory purchase order.

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

(3) In section 3 (preliminary notices), for subsection (1) there is substituted—

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

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

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

(5) In that section, for subsections (5) and (6) there is substituted—

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

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

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

(a) in subsection (1), after ““(publication)”” there is inserted ““(in a local newspaper circulating in the area in which the land is situated)””; and

(b) subsection (2) is omitted.

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

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

Acquisition of subsoil only

25.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 19 (compulsory acquisition of land) and paragraph (1) of article 22 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) must not prevent article 26 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

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

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

(b) a copy of this article is served on the owner with the notice to treat.

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

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

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

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

(a) without material detriment to the remainder of the land subject to the counter-notice; or

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

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

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

(a) without material detriment to the remainder of the land subject to the counter-notice; or

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

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

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

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

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

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

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

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

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

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

Rights under or over streets

27.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the requisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of Schedule 8, or any other mitigation works.

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building removed under this article.

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

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

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

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory

acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8.

Temporary use of land for maintaining the authorised development

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

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

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

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

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

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

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

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

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

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

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

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

(11) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning.

Statutory undertakers

30. Subject to the provisions of Schedule 9 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish or suspend the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plans and described in the book of reference; and

- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Apparatus and rights of statutory undertakers in streets subject to temporary prohibition or restriction

31.—(1) Where a street is temporarily altered or diverted or its use is temporarily prohibited or restricted under article 12 (construction and maintenance of new or altered means of access) or article 13 (temporary prohibition or restriction of use of streets) any statutory utility whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

32.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 30 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 30 (statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003^(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

33.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(a) 2003 c.21.

(2) In carrying out any activity authorised by paragraph (1) and paragraph (4), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may, for the purposes of the authorised development—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 11 (removal of important hedgerows).

(5) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerow Regulations 1997.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

34.—(1) This article applies to—

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

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

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

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

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

Cases in which land is to be treated as not being operational land

35. Development consent granted by this Order insofar as it relates to numbered works 1, 2, 3A and 5 described in Schedule 1 is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (Cases in which land is to be treated as not being operational land).

Defence to proceedings in respect of statutory nuisance

36.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990^(a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974^(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

Protective provisions

37. Schedule 9 (protective provisions) has effect.

Certification of plans etc

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

- (a) the book of reference;
- (b) the design principles statement;
- (c) the ecological management strategy;
- (d) the environmental statement;
- (e) the flood risk assessment;
- (f) the important hedgerow plan;
- (g) the land plans;
- (h) the landscape mitigation strategy;
- (i) the outline construction environment management plan;
- (j) the outline construction traffic management plan;
- (k) the outline landscaping plans;
- (l) the outline lighting strategy;
- (m) the rights of way, streets and access plan;

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

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

- (n) the stage 2 written scheme of archaeological investigation; and
- (o) the works plans

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

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

Service of notices

39.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body, and,
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(a) 1978 c.30

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Procedure in relation to certain approvals etc

40.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a traffic authority, a street authority, or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Save for applications made pursuant to Schedule 10, if, within eight weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed with the undertaker in writing) it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(3) Schedule 10 is to have effect in relation to all consents, agreements or approvals required from the relevant planning authority in respect of discharge of requirements listed in Schedule 2.

(4) Where an application is made to or request is made of the relevant planning authority for any consent, agreement or approval required or contemplated by article 14(1)(c) (access to works) or requirement 6 (Highway accesses) of Schedule 2 to the Order, such application or request must at the same time be sent to the highway authority for its reference.

(5) Where an application is made to or request is made of the relevant planning authority for any consent, agreement or approval required or contemplated by any requirement where a third party is a consultee under that requirement, such application or request must at the same time be sent to that third party for its reference.

Arbitration

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

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

| | |
|---------|--|
| Address | <i>Name</i> |
| Date | Designation |
| | Department for Energy and Climate Change |

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Suffolk and the District of Mid Suffolk—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act consisting of a generating station with a gross rated electrical output of between 50.1 – 299MWe and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

Work No. 1A development comprising—

- (a) up to 5 gas turbine generators; and
- (b) up to 5 exhaust gas emission flue stacks,

Work No. 1B development comprising—

- (a) an administration building;
- (b) a store;
- (c) a control room/office/workshop;
- (d) telemetry apparatus;
- (e) a black start diesel generator;
- (f) a raw/fire water tank and demineralised water storage tank;
- (g) a natural gas receiving station and gas treatment compound containing:
 - (i) a pipeline inspection gauge (PIG) receiving facility;
 - (ii) isolation valves, metering, heating, filtering, compression, pressure regulation equipment;
 - (iii) electricity supply kiosk; and
 - (iv) control and instrumentation kiosks,

Work No. 1C development comprising a switchyard / banking compound containing up to seven transformers, switchgear building and other plant required to manage the transmission of electricity,

Work No. 1D development comprising—

- (a) security infrastructure, including cameras, perimeter fencing and a gatehouse;
- (b) site lighting infrastructure, including perimeter lighting columns;
- (c) internal roadways, car parking, pedestrian network, cycle parking, hardstanding and water treatment trailers;
- (d) site drainage, attenuation pond and waste management infrastructure;
- (e) electricity, water, wastewater and telecommunications and other services;
- (f) landscaping including tree planting, fencing and other boundary treatments and ecological mitigation;
- (g) high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling;
- (h) underground gas pipeline connection, associated telemetry and cathodic protection test / transformer rectifier unit;
- (i) other ancillary equipment; and

- (j) new means of accesses from Potash Lane including permanent road surface, drainage, gates and fencing,

Work No. 2 development comprising—

- (a) a maintenance compound including new hardstanding,
- (b) landscaping including tree planting, fencing and other boundary treatments; and
- (c) site drainage,

Work No. 3A development comprising—

- (a) an above ground installation (also referred to as a minimum offtake connection compound) containing:
 - (i) a minimum offtake connection comprising remotely operable valves, control and instrumentation kiosks and electrical supply kiosks;
 - (ii) a pipeline inspection gauge (PIG) facility, comprising a PIG launching facility, emergency control valves, isolation valves, control and instrumentation kiosks, and electricity supply kiosks;
- (b) security infrastructure, including cameras, lighting (including perimeter lighting columns) and perimeter fencing;
- (c) site drainage and waste management infrastructure;
- (d) electricity and telecommunications connections and other services;
- (e) below ground sacrificial anode pit; and
- (f) landscaping including tree planting, fencing and other boundary treatments and ecological mitigation,

Work No. 3B development comprising new means of access between Potash Lane and numbered work 3A, including signing and road markings works, permanent road surface, gates, fencing, drainage, infilling, landscaping and tree and hedge removal and other incidental works,

Work No. 4 development comprising—

- (a) a new underground gas pipeline connection and telemetry cabling, approximately 1.7km in length connecting the natural gas receiving station and gas treatment compound in Work No. 1B to Work No. 3A;
- (b) pipeline field marker posts and cathodic protection test/ transformer rectifier unit;
- (c) below ground drainage works;
- (d) tree and hedge removal; and
- (e) landscaping including tree planting, fencing and other boundary treatments and ecological mitigation,

Work No. 5 development comprising—

- (a) 400kV substation and site office and welfare accommodation;
- (b) 400kV cable sealing end compound;
- (c) underground high voltage electrical cables and associated telemetry and electrical protection auxiliary cabling;
- (d) security infrastructure including perimeter fencing with gates, security cameras and site lighting;
- (e) landscaping including bunds, tree planting, fencing and other boundary treatments and ecological mitigation;
- (f) site drainage and waste management infrastructure; and
- (g) internal roadways, car parking, pedestrian network and hardstanding for planned maintenance,

Work No. 6 development comprising—

- (a) an underground 400kV electrical cable circuit and associated telemetry and electrical protection auxiliary cabling, approximately 1.6km in length; and
- (b) joint bays in relation to Work No. 6a,

Work No. 7 development comprising new means of access between Work No. 5 and the A140 including road widening, new turning lane, signing and road markings works, permanent road surface, gates, fencing, drainage, infilling, landscaping and tree and hedge removal and other incidental works,

and such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule 1 but only within the Order limits and do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

Time limits

1. The authorised development must be commenced within 5 years of the date of this Order.

Numbered Works

2. Where these requirements refer to numbered work 1 or numbered work 3, such reference is to be taken to mean numbered works 1A to 1D (inclusive) and numbered works 3A and 3B respectively.

Detailed Design

3.—(1) The authorised development must be carried out in accordance with the approved plans, inclusive of any limits of deviation, bearing the references listed below and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authority pursuant to any requirement (as the same may be amended by approval of the relevant planning authority pursuant to requirement 23(1)):

Table 1

| |
|--|
| Works Plans |
| Rights of Way, Streets and Access Plan |

(2) The authorised development must be carried out in accordance with the parameters specified below (as the same may be amended by approval of the relevant planning authority pursuant to requirement 23(1)):

Table 2

| <i>Building or structure</i> | <i>Maximum height (metres above existing site level of approximately 48.5 metres AOD)</i> | <i>Minimum height (metres above existing site level of approximately 48.5 metres AOD)</i> | <i>Maximum length (metres)</i> | <i>Minimum length (metres)</i> | <i>Maximum width (metres)</i> | <i>Minimum width (metres)</i> |
|---|---|---|--------------------------------|--------------------------------|-------------------------------|-------------------------------|
| Each gas turbine generator (where one or two gas turbine generators are constructed) (Part of numbered work 1A) | 19.0 | – | 30.0 | – | 30.0 | – |
| Each gas | 10.0 | – | 36.0 | – | 23.0 | – |

| <i>Building or structure</i> | <i>Maximum height (metres above existing site level of approximately 48.5 metres AOD)</i> | <i>Minimum height (metres above existing site level of approximately 48.5 metres AOD)</i> | <i>Maximum length (metres)</i> | <i>Minimum length (metres)</i> | <i>Maximum width (metres)</i> | <i>Minimum width (metres)</i> |
|--|--|--|---------------------------------------|---------------------------------------|--------------------------------------|--------------------------------------|
| turbine generator (where three, four or five gas turbine generators are constructed) (part of numbered work 1A) | | | | | | |
| Each exhaust gas emission flue stack (where one or two gas turbine generators are constructed) (part of numbered work 1A) | 30.0 | 25.0 | – | – | 8.4 | – |
| Each exhaust gas emission flue stack (where three, four or five gas turbine generators are constructed) (part of numbered work 1A) | 30.0 | 25.0 | – | – | 6.0 | – |
| Control room/office/workshop (part of numbered work 1B) | 6.0 | – | 29.0 | – | 23.0 | – |
| Black start diesel generator (part of numbered | 5.0 | – | 13.0 | – | 5.0 | – |

| Building or structure | Maximum height (metres above existing site level of approximately 48.5 metres AOD) | Minimum height (metres above existing site level of approximately 48.5 metres AOD) | Maximum length (metres) | Minimum length (metres) | Maximum width (metres) | Minimum width (metres) |
|---|---|---|--------------------------------|--------------------------------|-------------------------------|-------------------------------|
| work 1B) | | | | | | |
| Raw/fire water tank (part of numbered work 1B) | 11.0 | – | 11.0 | – | 11.0 | – |
| Demineralised water tank (part of numbered work 1B) | 2.0 | – | 2.0 | – | 2.0 | – |
| Gas receiving station (part of numbered work 1B) | 3.0 | – | 50.0 | – | 46.0 | – |
| Switchyard / banking compound (numbered work 1C) | 11.3 | – | 60 | – | 60 | – |
| Switchgear Building (part of numbered work 1C) | 11.3 | – | 21.0 | – | 15.0 | – |
| Gatehouse (part of numbered work 1D) | 4.5 | – | 9.0 | – | 8.0 | – |
| Above ground installation (numbered work 3A) | 3.0 | – | 72.0 | – | 52.0 | – |
| Pipeline inspection gauge facility (part of numbered work 3A) | 2.0 | – | 36.0 | – | 27.0 | – |
| Minimum offtake connection (part of numbered | 2.0 | – | 36.0 | – | 25.0 | – |

| <i>Building or structure</i> | <i>Maximum height (metres above existing site level of approximately 48.5 metres AOD)</i> | <i>Minimum height (metres above existing site level of approximately 48.5 metres AOD)</i> | <i>Maximum length (metres)</i> | <i>Minimum length (metres)</i> | <i>Maximum width (metres)</i> | <i>Minimum width (metres)</i> |
|--|---|---|--------------------------------|--------------------------------|-------------------------------|-------------------------------|
| work 3A) | | | | | | |
| Sealing end compound (part of numbered work 5) | 12.5 | – | 22.0 | – | 45.0 | – |
| Substation: (gas insulated substation) – (maximum compound size) (part of numbered work 5) | 12.5 | – | 80.0 | – | 100.0 | – |
| (gas insulated substation) - (indoor switchgear hall) (part of numbered work 5) | 12.5 | – | 21.0 | – | 62.0 | – |

(3) To the extent that design principles for any numbered work are set out in the design principles statement, that numbered work must be designed substantially in accordance with the relevant design principle set out therein.

(4) Except to the extent approved pursuant to requirement 6, numbered works 1, 2, 3 and 5 may not commence until, for that numbered work, details of the layout, scale and external appearance of the numbered work have been submitted to and approved by the relevant planning authority.

(5) In respect of numbered work 6a, the undertaker must utilise horizontal directional drilling as the installation method where the numbered work crosses the A140.

(6) No part of numbered work 6a must commence until a method statement detailing measures to protect the integrity of the A140 from horizontal directional drilling or activities associated therewith has been submitted to and approved by the highway authority. The method statement must be implemented as approved.

Provision of landscaping

4.—(1) Each of numbered works 1, 2, 3, 4, 5, 6 and 7 of the authorised development may not commence until a written landscaping plan for that numbered work has been submitted to and approved by the relevant planning authority. The landscaping plan must include details of all proposed hard and soft landscaping works and such plan is to be substantially in accordance with the landscaping mitigation proposals set out in the outline landscaping plans and the landscape mitigation strategy, and include details of—

- (a) location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting, and details of protection measures including guards, stakes and deer fencing;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) bunds and proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) measures for the management of the ecological resources that will remain within the Order land on completion of the authorised development;
- (h) implementation timetables for all landscaping works; and
- (i) a scheme of landscape maintenance for the life of the authorised development (to include an aftercare protocol providing for joint annual inspections by the relevant planning authority and the undertaker for a period of ten years from the implementation date(s) as agreed pursuant to requirement 5(2)).

Implementation and maintenance of landscaping

5.—(1) All landscaping works must be carried out in accordance with the landscaping plan approved under requirement 4 in accordance with the relevant recommendations of appropriate British Standards.

(2) The landscaping works must be carried out in accordance with implementation timetables approved in the landscaping plan.

(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years (save in relation to numbered works 1 and 5 which is to be seven years) after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

Highway accesses

6.—(1) Each of numbered works 1, 3 and 7 of the authorised development must not commence until for that numbered work, written details of the siting, design and layout (to the extent either not provided as part of or differing from, the details contained in Schedule 1, the works plans or the rights of way, streets and access plan) of any new permanent or temporary means of access to a highway to be used by vehicular traffic (including those identified in Schedule 3), or any alteration to an existing means of access to a highway used by vehicular traffic has been submitted to and approved by the relevant planning authority (in consultation with the highway authority).

(2) The highway accesses must be constructed in accordance with the approved details and substantially in accordance with the drawing at Appendix A and Appendix B to the outline construction traffic management plan.

(3) Prior to the date of final commissioning, a reinstatement plan for those elements of numbered work 7 which enable connectivity between Old Norwich Road and the A140 must be submitted to and approved by the relevant planning authority, in consultation with the highway authority. The reinstatement plan must include—

- (a) measures to reinstate the A140 carriageway to its pre-construction condition; and
- (b) a landscaping plan showing how the land outside the A140 carriageway will be reinstated.

(4) The reinstatement plan must be implemented as approved.

Fencing and other means of enclosure

7.—(1) Each of numbered works 1, 3 and 5 of the authorised development must not commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure for that numbered work have been submitted to and approved by the relevant planning authority.

(2) Any construction sites must remain securely fenced at all times during construction of the authorised development.

(3) Any temporary fencing must be removed within three months of the completion of the authorised development.

(4) The details approved pursuant to this requirement must be implemented.

Surface and foul water drainage

8.—(1) Each of numbered works 1, 2, 3, 5 and 7 must not be commenced until, for that numbered work, written details of the surface and foul water drainage strategy (including means of pollution control and measures designed to control surface water during construction) for construction and operational phases of the project have been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency, such strategy to be in accordance with the principles set out in Section 5 of the flood risk assessment.

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

Archaeology

9.—(1) Each of numbered works 1 - 7 must not be commenced until for that numbered work a written scheme of archaeological investigation covering that numbered work has been submitted to and approved in writing by the relevant planning authority, in consultation with Suffolk County Council. The written scheme of archaeological investigation must be substantially in accordance with the stage 2 written scheme of archaeological investigation.

(2) Following completion of the investigations set out in the approved written scheme of archaeological investigation and prior to the commencement of each of numbered works 1 - 7, a written scheme regarding archaeological mitigation measures for that numbered work must be submitted to and approved in writing by the relevant planning authority, in consultation with Suffolk County Council and must include the following—

- (a) an archaeological and historical background;
- (b) the rationale, programme and methodology of site investigation and recording;
- (c) the programme for post-investigation interpretation;
- (d) provision to be made for publication and dissemination of the results of the site investigation, including for public benefit and understanding, should the nature of the archaeology warrant it;
- (e) provision to be made for the deposition of the finds assemblage and the site archive;
- (f) provision to be made for a programme of excavation fieldwork and post-excavation assessment should significant archaeological remains be encountered, and where warranted post-excavation analysis; and
- (g) nomination of a competent person or persons/organisation with appropriate local / regional expertise to undertake the works set out within the written scheme of investigation.

(3) Any archaeological works must be carried out in accordance with the schemes approved pursuant to sub-paragraphs (1) and (2).

(4) Any site investigation and post-investigation interpretation must be completed for the relevant numbered work(s) in accordance with the programme set out in the schemes approved pursuant to sub-paragraphs (1) and (2).

Ecological management plan

10.—(1) Each of numbered works 1 to 7 must not be commenced until, for that numbered work, a written ecological management plan substantially reflecting the ecological mitigation and enhancement measures and surveys set out in the ecological management strategy has been submitted to and approved by the relevant planning authority, in consultation with Natural England.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved.

Construction Environment Management Plan

11.—(1) Each of numbered works 1 to 7 must not be commenced until a construction environment management plan covering that numbered work has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency. The final construction environment management plan must be substantially in accordance with the outline construction environment management plan and must include the following—

- (a) complaints procedures;
- (b) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise and vibration);
- (c) waste management;
- (d) an assessment of the site specific risks to and mitigation measures designed to protect controlled waters (surface and groundwaters) including pollution incident control;
- (e) landscape and visual impact mitigation (specifically the protection of trees and hedgerows to be retained in accordance with BS 5837: 2012 (or its updates) and a scheme to minimise visual intrusion of the construction works);
- (f) security measures;
- (g) protocol in relation to unexploded ordnance;
- (h) save in respect of numbered work 1, a protocol in the event that unexpected contaminated land is identified during ground investigation or construction;
- (i) restoration of site following completion of construction;
- (j) the requirement for completion of a soil resources survey, details of methods for soil handling, storage and replacement during construction and details of the aftercare programme; and
- (k) A scheme of artificial lighting.

(2) All construction works must be undertaken in accordance with the approved construction environment management plan.

Land contamination

12.—(1) No part of numbered work 1 may commence until a written scheme (which may be included in the construction environment management plan) to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or significant pollution of controlled waters or ground waters or the environment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and a remediation strategy identifying the remedial measures to be taken, if required, to render the

land fit for its intended purpose, together with a management plan (as necessary) which sets out long-term measures with respect to any contaminants remaining on the site and a verification plan outlining how achieving the remedial objectives will be demonstrated.

(3) Remediation, if required, must be carried out in accordance with the scheme approved under sub-paragraph (1).

(4) A verification report demonstrating completion of any remediation works and the effectiveness of the remediation must be submitted to and approved, in writing, by the local planning authority in consultation with the Environment Agency.

Construction traffic

13.—(1) No numbered work may commence until a construction traffic management plan has been submitted to and approved by the relevant planning authority in consultation with the highway authority. The construction traffic management plan must be substantially in accordance with the outline construction traffic management plan and must include the following—

- (a) construction vehicle routing plans;
- (b) details of a vehicle tracking system;
- (c) evidence of appropriate trial runs that demonstrate the suitability of the route from point of entry onto the trunk road network to the site for the proposed types of abnormal indivisible loads;
- (d) site access plans;
- (e) proposals for the management of junctions to and crossings of highways and other public rights of way;
- (f) proposals for the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads;
- (g) details of escorts for abnormal indivisible loads;
- (h) proposals for temporary warning signs and banksman and escort details;
- (i) proposals for assessing the existing condition of affected highways;
- (j) details of any temporary or permanent improvements to highways;
- (k) proposals for the making good of any incidental damage to highways by construction traffic associated with the authorised development including street furniture, structures, drainage features, highway verge and carriageway surfaces; and
- (l) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during any of the activities, operations or works associated with the creation or upgrading of any permanent or temporary means of access pursuant to this Order.

(2) The construction traffic management plan must be implemented as approved.

(3) During the operation or decommissioning of the generating station no abnormal indivisible loads may be transported into or out of the site without the prior written approval of the relevant planning authority in consultation the highway authority.

Construction Travel Plan

14.—(1) No numbered work may commence until a construction worker travel plan has been submitted to and approved by the relevant planning authority in consultation with the highway authority. The construction worker travel plan must be substantially in accordance with the travel plan (other than the measures which relate to the operational phase).

(2) The construction worker travel plan must be carried out as approved.

Travel plan during operational phase

15.—(1) Prior to the date of final commissioning a written operational travel plan must be submitted to and approved by the relevant planning authority. The operational travel plan must be substantially in accordance with the outline measures to propose sustainable transport during the operational phase set out in the travel plan (other than the measures which relate to the construction phase).

(2) The operational travel plan must be carried out as approved.

Construction hours

16.—(1) Subject to sub-paragraph (2) no construction work, or the delivery or removal of materials, may take place on any Sunday or public holiday and no construction work, or the delivery or removal of materials, may take place outside the hours of—

- (a) 0700 and 1900 hours on weekdays; and
- (b) 0700 and 1300 hours on Saturdays.

(2) Sub-paragraph (1) does not prevent construction works, or the delivery or removal of materials, being carried out on public holidays or outside the hours set out in sub-paragraph (1) with the prior written approval of the relevant planning authority.

(3) Nothing in sub-paragraph (1) precludes a start-up period from 0630 to 0700 and a shut down period from 1900 to 1930 on weekdays (excluding public holidays) and start-up period from 0630 to 0700 and a shut down period from 1300 to 1330 on a Saturday.

Control of noise during operational phase

17.—(1) Following the date of final commissioning of numbered work 1, site-attributable noise attributable to numbered work 1 during the operational phase must be limited to the noise levels set out below measured at the coordinates set out below:

Table 3

| <i>Noise Limit Sound Pressure Level, $L_{Aeq, 5mins}$ dB</i> | <i>Coordinates</i> | |
|---|--------------------|----------|
| | <i>X</i> | <i>Y</i> |
| 57 | 613272.4 | 275205.6 |
| 55 | 613214.4 | 275014.8 |
| 52 | 613131.2 | 275156.8 |

(2) Noise measurements at each of the identified locations must be undertaken in accordance with the equipment specifications, measurement procedures and monitoring equipment positioning guidelines outlined in sections 4, 5 and 6 (save for 6.3.5 and 6.3.6 which are not applicable) of BS 4142:1997. Measurements should be undertaken with the power plant running at base load. A single LAeq 5min measurement will be required at each identified location during the day, evening and night time periods identified as follows: daytime (0700hrs to 1900hrs), evening (1900hrs to 2300hrs) and night time (2300hrs to 0700hrs).

(3) Within three months of the date of final commissioning of numbered work 1, the undertaker must submit measurements to the relevant planning authority taken in the vicinity of the relevant locations specified at sub-paragraph (1) of this requirement, including details of any remedial works and a programme of implementation should the emissions exceed the levels specified at sub-paragraph (1) of this requirement.

Control of artificial light emissions during operational phase

18.—(1) Each of numbered works 1, 3 and 5 must not commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of artificial light emissions for that numbered work which is substantially in accordance with the outline lighting strategy has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the operation of the relevant numbered work

European protected species

19.—(1) Each of numbered works 1-7 must not commence until further supplemental survey work identified in the ecological management strategy and ecological management plan for European protected species has been carried out covering that numbered work to establish whether European protected species are present.

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

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

Operation of the authorised development

20.—(1) In any calendar year the operation of the gas turbine generators comprised in numbered work 1A shall not exceed 1500 hours in total.

(2) Within three months of the end of a calendar year, the undertaker must submit a written report to the relevant planning authority detailing the actual total number of hours of operation of the gas turbine generators comprised in numbered work 1A.

(3) For the purposes of this requirement, “operation of the gas turbine generators” means the duration in which any energy is exported at the settlement metering point, being the point at which a supply to the transmission system from the authorised development is measured.

Decommissioning strategy

21.—(1) Subject to obtaining the necessary consents, unless otherwise agreed with the relevant planning authority, within twenty four months of the site ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis), a scheme for the demolition and removal of numbered works 1, 2, 3, 5 and any other un-numbered works carried out as necessary or expedient for the purposes of those numbered works must be submitted to the relevant planning authority.

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

(3) On the one year anniversary of the site ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis) the undertaker must notify the relevant planning authority of the same.

Amendments to approved details

22.—(1) With respect to the approved plans specified in requirement 3(1), the parameters specified in requirement 3(2) and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any other requirement (the “Approved Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Plans, Parameters, Details or Schemes is to be taken to include the amendments approved pursuant to this sub-paragraph.

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

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 3(2) above must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

SCHEDULE 3

Articles 10 and 14

STREETS SUBJECT TO PERMANENT AND TEMPORARY
ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

Table 4

| <i>(1)</i> Area | <i>(2)</i> Street subject to alteration of layout | <i>(3)</i> Description of alteration |
|--------------------------------|---|--|
| In the District of Mid Suffolk | Potash Lane | The lowering of the levels of the kerb between the points marked A and B on the rights of way, streets and access plan to provide permanent access to numbered work 3A. |
| In the District of Mid Suffolk | Old Norwich Road | Creation of new access comprising part of numbered work 7 including the lowering of the levels of the kerb between the points marked M and N on the rights of way, streets and access plan to provide permanent access to numbered work 5. |
| In the District of Mid Suffolk | Access Road Serving Yaxley Lake | Upgrading of the existing access comprising part of numbered work 7 between the points marked O1 and P on the rights of way, streets and access plan to provide permanent access to numbered work 5. |
| In the District of Mid Suffolk | Leys Lane | Works to facilitate the creation of a new access comprising part of numbered work 7 between the points marked Q - R on the rights of way, streets and access plan to provide permanent access to numbered work 5. |

PART 2
TEMPORARY ALTERATION OF LAYOUT

Table 5

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street subject to alteration of layout</i> | <i>(3)</i> <i>Description of alteration</i> |
|--------------------------------|---|--|
| In the District of Mid Suffolk | Potash Lane | The lowering of the levels of the kerb between the points marked B and C on the rights of way, streets and access plan to provide temporary access to numbered work 3 during construction. |
| In the District of Mid Suffolk | A140 | Creation of new access comprising part of numbered work 7 including the lowering of the levels of the kerb between the points marked K and L on the rights of way, streets and access plan to provide temporary access to numbered work 5 during construction. |

SCHEDULE 4

Article 11

STREETS SUBJECT TO STREET WORKS

Table 6

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street Subject to Street Works</i> | <i>(3)</i> <i>Description of the street works</i> |
|--------------------------------|---|---|
| In the District of Mid Suffolk | Potash Lane | Works for numbered work 3B including installation of drainage between the points marked A and B on the rights of way, streets and access plan. |
| In the District of Mid Suffolk | Part of disused runway complex | Works for numbered work 4 to be installed within that part of the disused runway complex between the points marked D - E on the rights of way, streets and access plan. |
| In the District of Mid Suffolk | Part of disused runway complex | Works for numbered works 4 and/or 6 to be installed within that part of the disused runway complex between the points marked H - I on the rights of way, streets and access plan. |
| In the District of Mid Suffolk | A140 | Works for the provision of a new temporary access during construction comprising part of numbered work 7 between the points marked K and L on the rights of way, streets and access plan. |
| In the District of Mid Suffolk | Old Norwich Road | Works for the provision of a new permanent access comprising part of numbered work 7 between the points marked M and N on the rights of way, streets and access plan. |
| In the District of Mid Suffolk | Access Road Serving Yaxley Lake | Works for the provision of a new permanent access comprising part of numbered work 7 between the points marked O1 and P on the rights of way, streets and access plan. |
| In the District of Mid Suffolk | Leys Lane | Works for numbered work 6 to be installed in the street between the points marked Q - R on the rights of way, streets and access plan. |

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street Subject to Street Works</i> | <i>(3)</i> <i>Description of the street works</i> |
|--------------------------------|---|---|
| In the District of Mid Suffolk | Potash Lane | Works for numbered works 4 and 6 to be installed in the street between the points marked T -U on the rights of way, streets and access plan. |
| In the District of Mid Suffolk | Footpaths numbered W-583/009/0 and W 239/015/0 | Works for numbered works 4 and 6 to be installed in the street between the points marked V and W on the rights of way, streets and access plan. |

SCHEDULE 5

Article 13

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS

Table 7

| <i>(1)</i> Area | <i>(2)</i> Street subject to temporary prohibition or restriction of use | <i>(3)</i> Extent of temporary prohibition or restriction of use of streets |
|--------------------------------|---|---|
| In the District of Mid Suffolk | Potash Lane | <p>Prohibition/Restriction: From the points marked A to B on the rights of way, streets and access plan, being approximately 30 metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street to cover numbered work 3B providing access to 3A.</p> |
| In the District of Mid Suffolk | Potash Lane | <p>Prohibition/Restriction: From the points marked B to C on the rights of way, streets and access plan, being approximately 56 metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street to provide a temporary access to numbered work 3.</p> |
| In the District of Mid Suffolk | Part of disused runway complex | <p>Prohibition/Restriction: From the points marked D - F on the rights of way, streets and access plan being approximately 51 metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street to cover numbered work 4 crossing and being installed.</p> |

| <i>(1)</i> Area | <i>(2)</i> Street subject to temporary prohibition or restriction of use | <i>(3)</i> Extent of temporary prohibition or restriction of use of streets |
|--------------------------------|---|--|
| In the District of Mid Suffolk | Potash Lane | <p>Prohibition/Restriction: From the points marked G – J1 on the rights of way, streets and access plan being approximately 96 metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street to cover numbered works 4 and 6 crossing and being installed.</p> |
| In the District of Mid Suffolk | Part of disused runway complex | <p>Prohibition/Restriction: From the points marked J1 – J2 on the rights of way, streets and access plan being approximately metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street to cover numbered works 4 and 6 crossing and being installed.</p> |
| In the District of Mid Suffolk | A140 | <p>Prohibition/Restriction: From the points marked K - L on the rights of way, streets and access plan being approximately 598 metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street to cover part of numbered work 7 providing access to numbered work 5.</p> |
| In the District of Mid Suffolk | A140 | <p>Prohibition/Restriction: From the points marked K - L on the rights of way, streets and access plan being approximately 598 metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street to cover the reinstatement of part of numbered work 7 providing access to numbered work 5.</p> |

| <i>(1)</i> Area | <i>(2)</i> Street subject to temporary prohibition or restriction of use | <i>(3)</i> Extent of temporary prohibition or restriction of use of streets |
|--------------------------------|---|--|
| In the District of Mid Suffolk | Old Norwich Road | <p>Prohibition/Restriction: From the points marked M - N on the rights of way, streets and access plan being approximately 143 metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street to cover part of numbered work 7 providing access to numbered work 5.</p> |
| In the District of Mid Suffolk | Access Road Serving Yaxley Lake | <p>Prohibition/Restriction: From the points marked O1 - P on the rights of way, streets and access plan being approximately 190 metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street to cover part of numbered work 7 providing access to numbered work 5.</p> |
| In the District of Mid Suffolk | Leys Lane | <p>Prohibition/Restriction: From the points marked Q - R on the rights of way, streets and access plan being approximately 20 metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street to cover numbered work 6 being installed in the street.</p> |
| In the District of Mid Suffolk | Potash Lane | <p>Prohibition/Restriction: From the points marked S-T on the rights of way, streets and access plan being approximately 23 metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street for temporary works associated with numbered works 4 and 6 being installed in the street.</p> |

| <i>(1)</i> Area | <i>(2)</i> Street subject to temporary prohibition or restriction of use | <i>(3)</i> Extent of temporary prohibition or restriction of use of streets |
|--------------------------------|---|---|
| In the District of Mid Suffolk | Potash Lane | <p>Prohibition/Restriction: From the points marked T -U on the rights of way, streets and access plan being approximately 227 metres.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of part of the street to cover numbered works 4 and 6 being installed in the street.</p> |
| In the District of Mid Suffolk | Footpaths numbered W-583/009/0 and W 239/015/0 | <p>Prohibition/Restriction: From the points marked V to W on the rights of way, streets and access plan being approximately 77 metres.</p> <p>Purpose of the Prohibition/Restriction: Partially restrict the footpath to cover numbered works 4 and 6 being installed in the street and to facilitate the creation of numbered work 2.</p> |
| In the District of Mid Suffolk | Castleton Way | <p>Prohibition/Restriction: At a distance of no greater than 30 metres along Castleton Way and no more than 15 metres along Potash Lane at the Castleton Way/Potash Lane junction.</p> <p>Purpose of the Prohibition/Restriction: To manage articulated vehicles, with the use of 4 banksmen, during construction from accessing and exiting Potash Lane.</p> |

SCHEDULE 6

Article 12

ACCESS

PART 1

THOSE PARTS OF THE ACCESSSES TO BE MAINTAINED AT THE PUBLIC EXPENSE

Table 8

| <i>(1)</i> <i>Location</i> | <i>(2)</i> <i>Street</i> | <i>(3)</i> <i>Description of relevant part of access</i> |
|--------------------------------|-----------------------------|--|
| In the District of Mid Suffolk | A140 | The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched blue between points K and L. |
| In the District of Mid Suffolk | A140 | The reinstated access pursuant to requirement 6(3) and shown on the rights of way, streets and access plan hatched blue between points K and L. |
| In the District of Mid Suffolk | Old Norwich Road | The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched blue between points M and N. |

PART 2

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

Table 9

| <i>(1)</i> <i>Location</i> | <i>(2)</i> <i>Street</i> | <i>(3)</i> <i>Description of access</i> |
|--------------------------------|---------------------------------|--|
| In the District of Mid Suffolk | Potash Lane | The new access constituting numbered work 3B and shown on the rights of way, streets and access plan hatched red between points A and B. |
| In the District of Mid Suffolk | A140 | The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched red between points K and L. |
| In the District of Mid Suffolk | Old Norwich Road | The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched red between points M and N. |
| In the District of Mid Suffolk | Access Road Serving Yaxley Lake | The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched red between points O1 and P. |
| In the District of Mid Suffolk | Means of access | The new access constituting part of numbered work 7 and shown on the rights of way, streets and access plan hatched red between points P – O2. |

PART 3

THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

Table 10

| <i>(1)</i> <i>Location</i> | <i>(2)</i> <i>Street</i> | <i>(3)</i> <i>Description of relevant part of access</i> |
|--------------------------------|-----------------------------|--|
| In the District of Mid Suffolk | Potash Lane | Those areas between the points marked B and C on the rights of way, streets and access plan hatched red. |

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

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

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

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

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

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

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

Application of the 1965 Act

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

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

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

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

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right

(a) 1973 c.26.

is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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

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

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

The Progress Power (Gas Fired Power Station) Order 201[X] (“the Order”) ceases, in relation to that person, to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

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

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

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

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

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

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

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

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 8

Article 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 11

| <i>(1)</i> <i>Location</i> | <i>(2)</i> <i>Number of land shown on land plans</i> | <i>(3)</i> <i>Purpose for which temporary possession may be taken</i> | <i>(4)</i> <i>Relevant part of the authorised development</i> |
|---|---|---|--|
| Part of public footpath numbered W-583/009/0 situated to the east of Oaksmere Business Park, Eye | 1a_GR | Temporary use to facilitate construction for the numbered work 4 | Part of numbered work 4 |
| Land forming part of the disused runway complex at Eye Airfield situated to the east of Oaksmere Business Park, Eye | 2a_GR | Temporary use to facilitate construction for the numbered work 4 | Part of numbered work 4 |
| Land forming part of the disused runway complex at Eye Airfield situated to the south east of Oaksmere Business Park, Eye | 2b_GR | Temporary use (including the passing and re-passing of vehicles) to facilitate construction for the numbered work 4 | Part of numbered work 4 |
| Land forming part of the private access road known as Potash Lane situated to the south east of Oaksmere Business Park, Eye | 3a_GR | Temporary use to facilitate construction for the numbered work 4 | Part of numbered work 4 |
| Part of agricultural land, part of wooded area and part of an access track forming part of White House Farm situated to the south of Oaksmere Business Park, east of the A140 and north of Castleton Way, Eye | 4a_GR | Temporary use to facilitate construction for the numbered work 4 | Part of numbered work 4 |
| Land forming part of the private access road known as Potash Lane leading from Castleton Way to the disused runway complex at Eye Airfield, Eye | 6a_GR | Temporary use to facilitate construction for the numbered works 3B and 4 | Part of numbered work 4 |

| <i>(1)</i> <i>Location</i> | <i>(2)</i> <i>Number of land shown on land plans</i> | <i>(3)</i> <i>Purpose for which temporary possession may be taken</i> | <i>(4)</i> <i>Relevant part of the authorised development</i> |
|---|---|---|--|
| Part of agricultural land forming part of White House Farm situated north of Castleton Way and to the east of the access road leading from Castleton Way to the disused runway complex at Eye Airfield, Eye | 7a_GR | Temporary use to facilitate construction for the numbered works 3A and 4 | Part of numbered works 3A and 4 |
| Part of public footpath numbered W-583/009/0 situated to the east of Oaksmere Business Park and to the south west of the National Grid Gas compound, Eye | 1a_ER | Temporary use to facilitate construction for the numbered work 6 | Part of numbered work 6 |
| Land forming part of the disused runway complex at Eye Airfield situated to the east of Oaksmere Business Park and to the south west of the National Grid Gas compound, Eye | 2a_ER | Temporary use to facilitate construction for the numbered work 6 | Part of numbered work 6 |
| Land forming part of the disused runway complex at Eye Airfield situated to the south east of Oaksmere Business Park and to the south west of the National Grid Gas compound, Eye | 2b_ER | Temporary use (including the passing and re-passing of vehicles) to facilitate construction for the numbered work 6 | Part of numbered work 6 |
| Land forming part of the private access road known as Potash Lane situated to the south east of Oaksmere Business Park, Eye | 3a_ER | Temporary use to facilitate construction for the numbered work 6 | Part of numbered work 6 |
| Part of agricultural land and access track situated to the south of Oaksmere Business Park and White House Farm buildings, Eye | 4a_ER | Temporary use to facilitate construction for the numbered work 6 | Part of numbered work 6 |

| <i>(1)</i> <i>Location</i> | <i>(2)</i> <i>Number of land shown on land plans</i> | <i>(3)</i> <i>Purpose for which temporary possession may be taken</i> | <i>(4)</i> <i>Relevant part of the authorised development</i> |
|--|---|--|--|
| Part of agricultural land, part of access track and hard standing to White House Farm buildings situated to the south and west of Oaksmere Business Park and White House Farm buildings, Eye | 4b_ER | Temporary use to facilitate construction for the numbered work 6 | Part of numbered work 6 |
| Part of agricultural land situated to the east of the A140 and south west of White House Farm buildings, Eye | 4c_ER | Temporary use to facilitate construction for the numbered work 6 | Part of numbered work 6 |
| Part of agricultural land forming part of Red House Farm situated to the west of Old Norwich Road and south and south west of Yaxley Lake, Eye | 9a_ER | Temporary use to facilitate construction for the numbered work 6 | Part of numbered work 6 |
| Part of agricultural land forming part of Red House Farm situated to the west of Old Norwich Road and south and south west of Yaxley Lake, Eye | 9b_ER | Temporary use to facilitate construction for the numbered work 6 | Part of numbered work 6 |
| Part of agricultural land forming part of Vine Farm situated to the north of Vine Farm and west of Leys Lane, Eye | 13a_ER | Temporary use to facilitate construction for numbered works 5, 6 and 7 | Part of numbered works 5, 6 and 7 |
| Part of agricultural land forming part of Red House Farm situated to the south of the access road from Old Norwich Road to Yaxley Lake, Eye | 3_JW | Temporary use to facilitate construction for the numbered work 7 | Part of numbered work 7 |

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID

Application

1. For the protection of National Grid as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means

- (a) electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid;
- (b) mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“commence” has the same meaning as under section 56 of the 1990 Act and means the earliest date on which any material operation comprised in the authorised development begins to be carried out and commencement shall be construed to have the same meaning;

“functions” includes powers and duties;

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

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

“National Grid” means either—

- (a) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; or
- (b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH,

as the context shall require.

3. Except for paragraphs 4 (apparatus in streets subject to temporary prohibition or restriction), 8, 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) this Schedule does not

(a) 1989 (c.29)

apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary prohibition or restriction

4. Notwithstanding the temporary prohibition or restriction under the powers of article 13 (temporary prohibition or restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such street and/or 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 apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

5.—(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 acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Schedule shall prevail.

Removal of apparatus

6.—(1) If, in the exercise of the agreement reached in accordance with paragraph (5) or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance 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 National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 7 sub-paragraph (1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of 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, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under paragraph 7 sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 41 (arbitration) of the Order shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

8.—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works specified in National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" that are within the proximities described therein to any apparatus the removal of which has not been required by the undertaker under paragraph 6 sub paragraph (2) or otherwise, the undertaker must submit to National Grid a plan.

(2) In relation to works which will be situated on, over, under or within 15 metres measured in any direction of any apparatus to which sub-paragraph (1) applies, or (wherever situated) impose any load directly upon any such apparatus or involve embankment works within 15 metres of any such apparatus, the plan to be submitted to National Grid under sub-paragraph (1) shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22").

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);

(b) must not be unreasonably withheld.

(5) In relation to a work to which sub-paragraphs (1) and (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4), (5), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 7 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 6 sub-paragraph (2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—

(a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

Retained apparatus: protection of National Grid as Electricity Undertaker

9.—(1) Not less than 56 days before the commencement of any authorised development under this Order that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6 sub-paragraph (2) or otherwise and to which sub-paragraph (2)(i) or (2)(ii) applies, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted under sub-paragraph (1) shall show—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) shall be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (2)—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraphs (1), (2) or (3) apply until National Grid has given written approval of the plan so submitted,

(5) Any approval of National Grid required under sub-paragraph (1), (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (8);
- (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraphs (1), (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (2), (3) or (5), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the undertakers' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1), (2), (3) or (5) (except in an emergency)

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 7 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 6 sub-paragraph (2).

(10) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a

new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

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

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6 sub-paragraph (3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised 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 reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration) of the Order 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 National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not

possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

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

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) 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 National Grid 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.

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

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under Article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section 3(b) shall be subject to the full terms of this Schedule including this paragraph 11 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without first consulting the undertaker and considering their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 11 applies. If requested to do so by the undertaker, National Grid shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 11 for claims reasonably incurred by National Grid.

Enactments and agreements

12. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 6 sub-paragraph (2) and paragraphs 8 or 12) 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 the other party's operations.

Access

14. If in consequence of the agreement reached in accordance with paragraph 5 sub-paragraph (1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraph 6(2), 6(4), 7(1), 8 and 9 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 41 (arbitration) of the Order.

PART 2

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

16. For the protection of the utility undertakers referred to in this part of this Schedule (save for National Grid which is protected by Part 1 of this Schedule and Eastern Power Networks which is protected by Part 4 of this Schedule), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

17. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(b);
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

(a) 1989 c.29.

(b) 1991 c.56. Section 51A to the 1991 Act was inserted by section 92(1) of the Water Act 2003(c.37).

(c) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

18. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

19. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such 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 apparatus which at the time of the prohibition or restriction was in that street.

20. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

21.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(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 apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of 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, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling

around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

22.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(2) 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 arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

23.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 21(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 16 to 22 apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

24.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 21(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

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

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

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 41 (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 the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) 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 where such extension is required in consequence of the execution of any such works as are referred to in paragraph 21(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

25.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 21(2), any damage is 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 property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

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

(2) 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 act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

26. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3
FOR THE PROTECTION OF OPERATORS OF ELECTRONIC
COMMUNICATIONS CODE NETWORKS

27.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)(b) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

28. The exercise of the powers of article 30 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(d) (undertaker’s works).

29.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (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 an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) 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 act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the

(a) 2003 c.21.

(b) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(c) See section 106.

(d) 1984 c.12. Paragraph 23 was amended by section 190 of, and paragraph 68 of Schedule 25 and part 1 of Schedule 27 to, the Water Act 1989 (c.15), section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and section 106(2) of, and paragraphs 1, 5(d) and 8 of Schedule 3 to, the Communications Act 2003.

undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 41 (arbitration).

30. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

31. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 4

FOR THE PROTECTION OF EASTERN POWER NETWORKS

32. For the protection of Eastern Power Networks as referred to in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Eastern Power Networks.

33. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Eastern Power Networks to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by Eastern Power Networks;

“functions” includes powers and duties;

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

“Eastern Power Networks” means Eastern Power Networks plc (Company No. 2366906) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP;

34. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Eastern Power Networks are regulated by the provisions of Part 3 of the 1991 Act.

35. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary prohibition or restriction of use of streets), Eastern Power Networks is at liberty at all times to take all necessary access across any such 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 apparatus which at the time of the prohibition or restriction was in that street.

36. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

37.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Eastern Power Networks’ apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of Eastern Power Networks to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Eastern Power Networks in accordance with sub-paragraphs (2) to (7).

(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 apparatus placed in that land, the undertaker must give to Eastern Power Networks written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Eastern Power Networks reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Eastern Power Networks the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(a) 1989 c.29.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of 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, Eastern Power Networks must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed provided that this obligation shall not require Eastern Power Networks to exercise any power it may have to acquire any land or rights by compulsory purchase order.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Eastern Power Networks and the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) Eastern Power Networks must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41 (arbitration), and after the grant to Eastern Power Networks of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Eastern Power Networks that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Eastern Power Networks, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Eastern Power Networks.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

38.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to Eastern Power Networks facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Eastern Power Networks or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(2) 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 arbitrator less favourable on the whole to Eastern Power Networks than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Eastern Power Networks as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

39.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 37(2), the undertaker must submit to Eastern Power Networks a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Eastern Power Networks for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Eastern Power Networks is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Eastern Power Networks under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Eastern Power Networks in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 32 to 38 apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Eastern Power Networks notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

40.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Eastern Power Networks the reasonable expenses incurred by Eastern Power Networks in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 37(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

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

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

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 41 (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 Eastern Power Networks by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) 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 where such extension is required in consequence of the execution of any such works as are referred to in paragraph 37(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Eastern Power Networks in respect of works by virtue of sub-paragraph (1), 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 Eastern Power Networks any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

41.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 37(2), any damage is 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 property of Eastern Power Networks, or there is any interruption in any service provided, or in the supply of any goods, by Eastern Power Networks, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Eastern Power Networks in making good such damage or restoring the supply; and
- (b) indemnify Eastern Power Networks for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Eastern Power Networks,

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

(2) 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 act, neglect or default of Eastern Power Networks, its officers, servants, contractors or agents.

(3) Eastern Power Networks must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

42. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Eastern Power Networks in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order the relevant planning authority must give notice to the undertaker of their decision on the application within a period of eight (8) weeks beginning with:

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the relevant planning authority in writing.

(2) Subject to sub-paragraph (3), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where:

- (a) an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order; and
- (b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and
- (c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved, then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

Further information

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

(2) In the event that it considers such further information to be necessary it must, within twenty one (21) business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant planning authority does not give such notification within this twenty one (21) day period it is deemed to have sufficient information to consider the application and thereafter is not entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph 2 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 1(1)(b), paragraph 1(3) and paragraph 2.

Appeals

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

- (a) the relevant planning authority refuses (including a deemed refusal pursuant to paragraph 1(3)) an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
 - (b) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
 - (c) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.
- (2) The appeal process is to be as follows:
- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;
 - (b) The Secretary of State must appoint a person within twenty (20) business days of receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent;
 - (c) The relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty (20) business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
 - (d) The appeal parties must make any counter-submissions to the appointed person within twenty (20) business days of receipt of written representations pursuant to sub-paragraph (c) above; and
 - (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty (30) business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

The appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five (5) business days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and any requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten (10) business days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(e).

- (5) On an appeal under this paragraph, the appointed person may—
- (a) allow or dismiss the appeal, or
 - (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

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

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

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

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

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

(10) The appointed person may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten (10) years' experience.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

SCHEDULE 11

Article 33

REMOVAL OF IMPORTANT HEDGEROWS

Table 12

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Number of hedgerow shown on important hedgerow plan</i> |
|------------------------------|--|
| Mid Suffolk District Council | Hedgerow 1, as shown between A-B on Sheet 1 |
| Mid Suffolk District Council | Hedgerow 2, as shown between C-D on Sheet 1 |
| Mid Suffolk District Council | Hedgerow 3, as shown between E-F on Sheet 1 |
| Mid Suffolk District Council | Hedgerow 4, as shown between G-H on Sheet 1 |
| Mid Suffolk District Council | Hedgerow 5, as shown between I-J on Sheet 1 |
| Mid Suffolk District Council | Hedgerow 6, as shown between K-L on Sheet 1 |
| Mid Suffolk District Council | Hedgerow 7, as shown between M-N on Sheet 1 |
| Mid Suffolk District Council | Hedgerow 8, as shown between O-P on Sheet 1 |
| Mid Suffolk District Council | Hedgerow 9, as shown between Q-R on Sheet 1 |
| Mid Suffolk District Council | Hedgerow 10, as shown between S-T on Sheet 1 |
| Mid Suffolk District Council | Hedgerow 11, as shown between U-V on Sheet 1 |

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Progress Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the new section of highway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 38 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at the offices of Mid Suffolk County Council 131 High Street, Needham Market, Suffolk, IP6 8 DL.