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23 July 2015

Dear Mr Chris McKerrow

**PLANNING ACT 2008  
PLANNING CONSENT APPLICATION – PROPOSED PROGRESS POWER  
GAS FIRED POWER STATION**

1. I am directed by the Secretary of State for Energy and Climate Change (the “Secretary of State”) to advise you that consideration has been given to:
  - (a) the report dated 24 April 2015 of the Examining Authority, Jonathan Green (“the ExA”), who conducted an examination (“the Examination”) into the application (the “Application”) submitted on 31 March 2014 by Progress Power Limited (“the Applicant”) to the Planning Inspectorate for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Progress Power Gas Fired Power Station; and
  - (b) representations received by the Secretary of State and not withdrawn in respect of the Application.
2. The Examination of the Application began on 25 July 2014 and was completed on 24 January 2015. The Examination was conducted on the basis of written evidence submitted to the ExA, site visits, an Open Floor Hearing held on 15 October 2014, an Issue Specific Hearing (“ISH”) held on 16 October 2014 on the local impact of the project and the draft Order and a further ISH on local impact, the draft Order and any remaining Local Impact Report (“LIR”) issues held on 10 and 11 December 2014. A compulsory acquisition hearing was also held on 9 December 2014.
3. The Order, as applied for, would grant development consent for the construction and operation of a simple cycle gas-fired ‘peaking’ power generation plant with capacity of up to 299 MW, integral gas and electrical cable connections and associated development comprising an electrical

connection compound ("ECC"), made up of a substation and sealing end compound, an access road and a new road junction off the A140 ("the Development"). The Development would be located in the administrative boundary of Mid-Suffolk District Council and within the parishes of Eye and Yaxley. The site for the proposed generation plant is on agricultural land on the former Eye Airfield in Eye, Mid Suffolk. The proposed electrical cable would have a total length of approximately 1.6 km and 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, where connection would be made through a sub-station and sealing end compound to the existing 400 kV overhead transmission line.

4. The generation station would be located about 1km north of the town of Eye. The ECC would be located to the north and north-west of the village of Yaxley and less than 500m from the nearest residential properties.
5. The Applicant submitted two variants for the substation with the Application which could be either an Air Insulated Substation ("AIS variant"), with the equipment open to the air, or a Gas Insulated Substation ("GIS variant") with equipment housed in a substation hall and associated annex. The Applicant expressed a preference for the AIS but consideration was given by the ExA to both options.
6. Published alongside this letter is a copy of the ExA's Report of findings and conclusions ("the Report") as amended by the Errata Sheet (Ref EN 010060) of corrections produced by the Planning Inspectorate and agreed by the ExA prior to a decision being made. The ExA's findings and conclusions are set out in chapters 4 and 5 of the Report, and the ExA's recommendation is at chapter 9.

### **Summary of the ExA's Recommendation**

7. The ExA recommended that the Order be made, on the basis of the provisions for the GIS variant set out in Appendix 4 to the Report.

### **Summary of the Secretary of State's Decision**

8. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application for the GIS variant. This letter is a statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("2009 Regulations").
9. The Secretary of State has also had regard to the joint Local Impact Report ("LIR") submitted by Mid-Suffolk District Council and Suffolk County Council and to the relevant local plans as well as to the environmental information as defined in Regulations 2(1) of the 2009 Regulations, the Infrastructure Planning (Decisions) Regulations 2010 (the "Decisions Regulations") and to all other matters which the Secretary of State considers to be important and relevant to her decision as required by section 104 of the 2008 Act.

## **Secretary of State's consideration**

10. The Secretary of State has considered the Report and all other material considerations. The Secretary of State's consideration of the Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Report of the Examination ("ER").
11. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of her conclusions and recommendations.

## **Need for the Proposed Development**

12. After having regard to the comments of the ExA set out in Chapter 6 of the Report, and in particular the conclusions set out in Chapter 9, the Secretary of State considers that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements (NPS) EN-1 (Overarching NPS for Energy), EN-2 (NPS for Fossil Fuel Electricity Generating Infrastructure), EN-4 (Gas Supply Infrastructure and Gas and Oil Pipelines) and EN-5 (Electrical Networks Infrastructure) which set out a national need for development of new nationally significant electricity generating and network infrastructure of the type proposed by the Applicant. Accordingly, the Secretary of State is satisfied that the need for this development has been established.

## **Ecology and Biodiversity**

13. The Secretary of State notes that the Examining Authority considered a number of issues under the above heading:
  - a) Habitats Regulations Assessment
14. The Conservation of Habitats and Species Regulations 2010 (as amended) ("the Habitats Regulations") require the Secretary of State to consider whether the project would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment ("AA") must be undertaken by the Secretary of State pursuant to regulation 61(1) of the Habitats Regulations to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if the Secretary of State has ascertained that it will not adversely affect the integrity of a European site.
15. The ExA, with support from the Planning Inspectorate's Environmental Services Team, prepared a Report [ER 5.7] on the Implications for European Sites ("RIES"), based on working matrices prepared by the Applicant as part

of the No Significant Effects Report (“NSER”) it submitted with the Application. These matrices presented the Applicant’s evidence and assessed whether the project is likely to have a significant effect on European Sites. The Secretary of State is content to accept the ExA’s recommendation that the RIES, and written responses to it, represents an adequate body of information to enable the Secretary of State to fulfil her duties in respect of European sites and species without the need for an AA to be undertaken.

16. The Secretary of State has considered the RIES alongside submissions from the Statutory Nature Conservation Body, Natural England (“NE”), and the Environment Agency (“EA”). The Secretary of State notes [ER 5.4] that the NSER prepared by the Applicant identified two European sites potentially affected by the Development which were agreed with NE for consideration in the NSER (Redgrave and South Lopham Fens Ramsar site and Waveney and Little Ouse Valley Fens Special Area of Conservation) and screened by the Applicant for likely significant effects. This showed no significant direct and in-combination effects at either site and NE was satisfied that the NSER demonstrated that subject to inclusion of the agreed mitigation measures there would be no significant effect on the two European sites.
17. The EA noted [ER 4.4 and 4.5] that an Environmental Permit would be required to ensure (among other things) that no significant pollution would be caused affecting European Sites. The EA confirmed during the ISHs that they were satisfied that the proposed single cycle gas generating station should be capable of being adequately regulated under the pollution control framework and that the cumulative impacts should fall within statutory limits [ER 4.65]. The Secretary of State notes that this is without prejudice to the EA’s determination, once submitted, of the application made by the Applicant for an Environmental Permit.
18. The agreed mitigation measures will be secured through either the Order or through an Environmental Permit from the EA which would set emissions limits and monitoring requirements for air and water quality. The EA confirmed during the ISHs that they were not aware of anything that would preclude the grant of an Environmental Permit for the Development [ER 4.65].
19. Following the advice of NE and the EA, the Secretary of State is satisfied that the identified mitigation measures will effectively ensure that no likely significant effect will occur as a result of the Development alone and in-combination with other plans and projects. The Secretary of State is therefore satisfied that the Development will not have a likely significant effect on any European site; and agrees with the ExA that an AA is not required [ER 5.11].

b) Effects on other protected Sites and Species

20. NE also considered the possible impact on protected species including bats [ER 4.11] and great crested newts [ER 4.11] and noted that a licence for trapping great crested newts may be required. Requirement 19 of the Order



requires further survey work to be carried out to identify the presence of any European Protected Species, and if such species are identified, then protection and mitigation must be approved by the relevant planning authority after consultation with NE.

21. NE identified that alongside the two European sites mentioned above, three nationally designated sites could be affected by the Development: 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 [ER4.9]. As with the European sites NE concluded that subject to mitigation measures and the need to gain an Environmental Permit there would be no significant effects on these designated sites.
22. NE noted [ER 4.11] that the mitigation measures proposed by the Applicant in respect of protected species and general biodiversity impacts should be a requirement in any approval granted for the Development. This is secured in Requirement 10 of the Order with provisions for the agreement of the final Ecological Management Plan to be agreed by the relevant planning authority in consultation with NE.

### **Landscape and Visual Impacts**

23. The Secretary of State notes the ExA's consideration of the landscape and visual impact of the Development [ER 4.84-4.124] and of the guidance in EN-1 and EN-2. EN-1 acknowledges that virtually all nationally significant infrastructure projects ("NSIPs") will have effects on the landscape and have visual effects for many people, but 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 impact, then the visibility of the generating station should be given limited weight.
24. The Secretary of State notes that concerns were raised by a number of different parties about the impact of the Development on visual amenity and the landscape in respect of the: generation station with its five generating units with separate 30m high stacks; Above Ground Installation ("AGI"); and the ECC, which is to be located on agricultural land.

### **Generating Station**

25. The Secretary of State notes that the generating station would be located close to a number of existing industrial structures, including four wind turbines and the National Grid Gas Compressor Station (with associated 50m mast) and the Eye Power Station (with its 40m high stack). The Secretary of State notes that the ExA considered that the five 30m stacks would be the main element visible from all directions and would change the skyline, but would be seen in the context of the other tall structures on the Airfield [ER 4.94].
26. The Secretary of State notes the assessment of the impacts by the Applicant in their Environmental Statement which 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 [ER4.96].

27. The Secretary of State also notes that the ExA considered that from the north, north-east and north-west existing structures and woodland would largely screen the generating plant but that taller elements of the plant were likely to be visible over a large area to the south, south-east and south-west [ER 4.90]. The ExA concluded that the generation plant would add to the industrialisation of the Eye Airfield and the buildings and stacks associated with the generating station would be visible from the nearby town of Eye and neighbouring villages, but mitigation planting and the landscape mitigation strategy secured through the Order would help to provide a screen over the years [ER 4.121]. It was noted that the 30m stacks would be seen over a much wider distance and although they would not be as tall as nearby existing structures, they would be a significant feature on the skyline. It was noted, however, that the choice of Simple Cycle Gas Turbine ("SCGT") technology ensured stack height would be kept to a maximum of 30m and would not result in a visible plume. The ExA also noted that further mitigation of impacts would take place through the opportunities for further consultation on the design of the final development. For this reason the Secretary of State notes that the ExA was satisfied that the agreed approach to landscaping, design and lighting of the generation plant meet the requirements of EN-1 and EN-2 to minimise harm to landscape and visual amenity.

#### The Above Ground Installation ("AGI")

28. The Secretary of State notes [ER 4.97] that in relation to the AGI, there would be a temporary loss of 0.32 ha of agricultural land of which 0.2 ha would be permanently displaced. The ExA noted [ER 4.98] that the Applicant's Environmental Statement concluded that the AGI would have a moderate adverse effect on the landscape character of this part of the Eye Airfield and would indirectly alter the open rural character of the area, but that the impacts on landscape and views would decrease as mitigation planting matured and would be reduced to a level that was not significant. The Secretary of State notes the conclusion of the ExA that the gas connection and AGI would have some adverse impact on landscape and visual amenity but that this would be confined to the immediate vicinity of the Development [4.122].

#### The Electrical Connection

29. The ExA noted [ER 4.99] that potential landscape and visual impacts could occur from all the components of the electrical connection: the cable; the access road and the A140 junction; and the Electrical Connection Compound ("ECC") with substation and sealing end compound.

30. The Secretary of State notes that the main concerns raised by the local authorities around the landscape and visual impact of the Development were in relation to the ECC. They considered that both the AIS and GIS variant would represent an alien feature in the landscape and that the AIS variant was not consistent with local policy on landscape and visual effects. The local authorities however considered that the GIS variant would minimise the

footprint and intrusion of the ECC [ER 4.113]. A number of local interested parties also raised concerns about the location of the ECC in an agricultural area [ER 4.115] with strong opposition to any part of the Development taking place west of the A140. The Secretary of State notes that concern was also raised about the possible impact of lighting at the ECC as this would introduce light into a rural area that is at present dark. The Eye Airfield Parishes Working Group ("EAPWG") was concerned [ER 4.116] that little had been done to blend the generation plant and the ECC into the immediate surroundings or to minimise the impact on viewpoints over a wide area. The EAPWG provided a detailed report on landscaping and screening that argued [ER 4.117] that the evaluation of the impacts in the Environmental Statement submitted with the Application was flawed in a number of respects. The EAPWG report concluded [ER 4.118] that the generation plant would be highly prominent and constitute a visual intrusion on a massive industrial scale and that the sensitivity of the site for the ECC made it highly unsuitable for either the AIS or GIS variant.

31. The Secretary of State notes that the ExA considered that the ECC and associated cable laying and access road would introduce an industrial type development into an agricultural area, albeit an area crossed by a major overhead power line [ER 4.123]. The ExA noted that the AIS variant would require the removal of a considerable length of hedgerow and the layout would sit diagonally across the existing field boundary orientation. It would also be visible from nearby houses and villages and whilst mitigation planting would reduce this impact it could take fifteen years to develop [ER 4.123]. The Secretary of State notes [ER 4.124] that the ExA considered that the GIS variant would provide some 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. Most of the equipment would be installed in the building, which although this would still be a new intrusion on agricultural landscape, could be designed to blend in with other nearby farm buildings [ER 4.124]. The ExA therefore concluded the GIS variant provided the opportunity to reduce the impact of the ECC on landscape and visual amenity compared with the AIS variant, and that it would be consistent with the principle of minimising harm as set out in EN-1 to prefer the GIS variant. The Secretary of State also notes that the ExA concluded that the lighting plans should be adequate to avoid any adverse impact from lighting in a rural area [ER 4.123].

### Conclusion

32. Overall the Secretary of State notes the ExA considered [ER 6.10] that there would be a visual impact from each of the main elements of the proposed Development and that mitigation would reduce but not completely offset this impact. Taking the 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 Secretary of State notes that the other elements of the Development also needed to be considered. The Secretary of State notes that the rural location of the ECC means that the landscape and visual impact is greatest at the ECC. The Secretary of State notes that the ExA considered that it would be consistent with the principle of minimising harm, as set out in EN-1, to prefer the GIS variant which would

reduce the impact of the ECC on landscape and visual amenity compared with the AIS variant.

33. The Secretary of State notes the ExA considered [ER 9.8] there was a fine balance between the benefits and adverse effects of the Development [ER 9.4-9.6] and that the benefit of allowing the Development was not contingent on adopting the AIS variant. Taking the Development as a whole, the Secretary of State notes that the ExA attached some weight to the adverse effects of the proposed Development on landscape and visual impact but considered that this weight would be reduced if the GIS variant were to be adopted [ER 6.10]. The Secretary of State agrees with the ExA, that on balance the case for the GIS variant has been made and the need and other benefits can be expected to be greater than the harm, with the GIS variant, to landscape and visual impact and to historic and heritage assets [ER 9.10]. The Secretary of State's consideration of historic and heritage assets is set out below at paragraphs 34- 45.

### **Historic and Heritage Assets**

34. The Secretary of State notes that the main issues raised during the Examination were in relation to the potential impact from the Development on heritage and historic assets. English Heritage (now Historic England), in its written representation, stated 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 [ER 4.154].
35. The ExA considered the designation to be given to heritage assets [ER 4.125-7] and the requirement on the decision maker to identify and assess the significance of heritage assets that might be affected by the Development. The potential impact of the Development on the setting and significance of heritage assets was considered in the Environmental Statement prepared by the Applicant and its conclusions considered by the ExA [ER 4.128 -136]. The ExA concluded [ER 9.6] that 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 Scheduled Monuments ("SM") but are demonstrably of equivalent significance. The ExA noted the matters which the decision-maker must have regard to under the Decisions Regulations. The ExA further noted that EN-1 sets out that loss affecting any designated asset of the highest significance should require clear and convincing justification, and substantial harm to or loss of designated assets of the highest significance should be wholly exceptional. The ExA noted that the same consideration applies to an asset that may be of equivalent significance to a designated SM.
36. The Secretary of State notes that the ExA considered the potential impact of the Development on three categories of heritage assets, namely, heritage assets designated by statute, non-designated assets and heritage assets with archaeological significance not currently designated as a SM but which could be argued to be demonstrably of equivalent significance [ER 4.168]. The ExA also considered the concerns expressed about the impact of the



Development on the setting of historic assets and how changes might affect their significance.

#### Designated Assets

37. The Secretary of State notes that all parties, including the Applicant, accepted that there would be a degree of harm to the significance of at least some of the designated assets but there was disagreement on the extent of the harm. The ExA was satisfied that no substantial direct harm to or loss of any designated assets had been identified [ER 6.13]. Instead the ExA noted that concern had been raised about the impact of the generating station on the setting of these assets. The ExA concluded that the degree of harm to the significance of designated assets is for the most part small but in some cases could be moderate. However, in the case of the Mellis Conservation Area [ER 4.174] the ExA considered the impact is likely to be greatest and significant as it is located closest to the ECC where the existing hedgerow was noted to be thin. The ExA noted that there was some scope for impact to be reduced by good design and landscaping measures but that there may still be some degree of harm [ER 4.175].

#### Non-designated Assets

38. The ExA concluded [ER 4.188] that although the Development, particularly the generation plant, would cause permanent harm to some non-designated assets, it had not been suggested, with the exception of the field boundaries (see paragraphs 39-44 below), that these non-designated assets are of such heritage significance that they should be given particular consideration. The ExA noted that the impact on non-designated heritage sites would however be reduced if the GIS variant was chosen [ER 4.191].

#### Assets of equivalent significance to a designated scheduled monument

39. The Secretary of State notes that a number of parties raised concerns around the impact of the ECC on field boundaries of potential Iron Age date, a non-designated heritage asset. Extensive discussion took place [ER 4.176- 4.186] around whether this asset fell with the definition set out in EN-1 of a heritage asset with archaeological interest that is not currently designated as a SM but which is demonstrably of equivalent significance. EN-1 states that such assets are to be subject to the same policy as a designated heritage asset.

40. The ExA considered that the weight of expert opinion accumulated during the Examination was in favour of finding that the field system met the EN-1 standard of being demonstrably of equivalent significance to a designated SM [ER 4.179]. The Secretary of State notes that English Heritage (now Historic England), the body responsible for the designation of SM, had not provided an opinion, but had stated that the field boundaries were of considerable significance. The Secretary of State agrees with the ExA that it should be assumed that the field systems meets the test of being of demonstrably equivalent significance to a SM set out in EN-1 given that the Development could cause substantial irreversible harm to field boundaries. The Secretary of State agrees with the ExA that it is therefore appropriate to err on the side of caution and proceed as if the test has been met.

Accordingly, this means applying a presumption in favour of conservation of the field system with any harmful impact requiring clear justification.

41. The Secretary of State notes that during the Examination extensive discussion took place on the extent of the harm to the field system and whether there was clear and convincing justification for this harm as required in EN-1.
42. The EAPWG argued that where the application would lead to substantive harm or the loss of significance of a designated asset, EN-1 requires the Applicant to demonstrate that substantial harm or loss of significance is necessary in order to deliver substantial public benefits that outweighs the loss or harm [ER 4.162]. The EAPWG argued that the onus is on the Applicant to show that the harm is necessary in order to deliver the public benefits and that the Applicant must show that the harm to designated assets is unavoidable. This means that if the benefits can be achieved elsewhere or in some other way without causing harm then it cannot be said that the harm is unavoidable. For that reason the EAPWG argued the Applicant must provide an assessment of alternatives that would reduce or avoid impacts on the environment. They argued that the Applicant had failed to carry out such a rigorous assessment of potential alternatives or provide information to validate its assertion that none of the other sites considered but not chosen for the Development were suitable. The EAPWG, therefore, considered that the Application should be refused Development Consent due to the substantial harm the Development would cause to the significance of important heritage assets and the failure of the Applicant to provide or disclose a rigorous assessment of alternative sites referring to their environmental effects that could indicate that such harm was a necessity [ER 4.165].
43. The Secretary of State notes that the ExA did not accept the assertion by the EAPWG that in the absence of an assessment showing that harm to heritage assets is unavoidable it would be unsafe to grant consent. The ExA considered [ER 4.184] that it is not a requirement that a site is selected on the basis that each potential adverse impact is minimised because such an approach would make site selection almost impossible and not meet the test of proportionality set out in EN-1. The ExA also considered [ER 4.183] that alternative technologies, locations and layouts had been considered before the Application was submitted and the information provided by the Applicant met the requirements for consideration of alternatives set out in EN-1 and the Environmental Impact Assessment Regulations. The Secretary of State notes that the Applicant set out the alternatives considered in the 'Electrical Connection siting report' and the Secretary of State agrees with the ExA and is satisfied that the requirements for consideration of alternatives as set out in EN-1 and the EIA Regulations has been met.
44. The ExA concluded [ER 4.186] that the AIS variant would cause substantial and irreversible damage to the field system whilst the GIS variant would cause only a small amount of irreversible damage. The ExA also noted that both options would have an adverse effect on the setting of the field system but this would again be reduced with the GIS variant. The ExA attached particular importance to the fact that the damage to the field systems would

be permanent and concluded that in the case of the harm arising from the AIS variant that such harm should only be allowed in exceptional circumstances. The ExA concluded exceptional reasons did not exist to justify the harm to the field boundaries that would result from the AIS variant but the less than substantial harm resulting from the GIS option may make it more acceptable in planning terms. The Secretary of State notes the ExA's conclusion that the level of harm could be reduced with the GIS variant to a level where the need and other benefits of the Development were expected to be greater than the harm to both the historic and heritage assets and the visual and landscape impact [ER 9.10].

### Conclusion

45. The Secretary of State is satisfied that the requirements of EN-1 have been met and, on balance agree that the case for the GIS variant has been made and that impacts of the GIS variant are outweighed by the need for the Development and other benefits.

### Substation Design

46. The Secretary of State notes National Grid Electricity Transmission plc ("NGET") expressed a preference for the AIS variant and suggested that restricting its choice to a GIS design would prevent it from performing its duty to balance amenity considerations against its other obligations to be economic and efficient. NGET therefore argued that the choice between the AIS and GIS options should be left to them. The Secretary of State agrees with the ExA [ER 9.11] that there are significant differences in planning terms between the impacts of the AIS and the GIS options that are relevant to the consideration as to whether to grant an Order and that coming to a view on the choice between the AIS and GIS options would not override NGET's duties under the Electricity Act 1989 but just set the parameters in which these duties must be undertaken [ER 9.11].

47. The Secretary of State notes the consideration given by the ExA [ER 6.40] to the permanent damage that would result from the AIS variant and that the same benefits could be achieved through the GIS variant. The Secretary of State acknowledges that the GIS variant will cost an additional £4m that will be passed on to consumers but that this will be over the lifetime of the Development.

48. The Secretary of State agrees with the conclusion reached by the ExA [ER 6.41] that on balance the need for new generating capacity and the lower cost of the AIS variant does not provide exceptional reasons to justify the harm to the field boundaries, as an asset of equivalent significance to a SM, or the harm to the landscape and visual impact that would result from the AIS variant. The Secretary of State agrees with the ExA that with the GIS variant, the need for the Development and other benefits would be greater than the harm to landscape and visual impact and to heritage assets. The Secretary of State is therefore satisfied that whilst the case for the AIS variant has not been made, the case for the GIS variant has been.

### Other Matters

### Compulsory Acquisition ("CA") Powers

49. The Secretary of State notes that the ExA considered whether the evidence provided during the Examination justified the grant of CA powers sought by the Applicant having regard to the statutory and other requirements and representations made by affected parties. The Secretary of State has considered the CA powers sought for land, rights over land and the extinguishment or suspension of rights. The rights sought are of both a permanent and temporary nature, for the purposes of constructing, operating and maintaining the Development. The ExA's detailed consideration of CA matters is set out in ER section 7.
50. The Secretary of State notes that during the course of the Examination, the Applicant reached agreement with affected parties on the acquisition of the land and rights in question and that all objections to CA had been withdrawn [ER 7.12].
51. The Secretary of State agrees with the ExA that for the reasons set out above, the case for the CA powers has not been made for the AIS variant but that it has been made for the GIS variant.
52. The Secretary of State is satisfied with the ExA's analysis of the issues relating to CA and notes the ExA's conclusion that the CA and temporary possession powers associated with the GIS Variant are necessary to enable the Development to proceed; that the land to be taken is reasonably necessary and proportionate; that there is a compelling case in the public interest for the land to be acquired compulsorily for the GIS variant; and that the financial provision to provide compensation for CA is adequate to meet the expected liabilities.
53. The Secretary of State is satisfied that the requirements in sections 122 and 123 of the 2008 Act and all other requirements for granting CA have been met. The Secretary of State agrees with the ExA's conclusions that the proposed interference with individuals' rights as a result of the grant of CA powers would be, necessary, proportionate and justified in the public interest [ER 7.51-52].

### Combined Heat and Power

54. There is a requirement in EN-1 that thermal generation stations applied for under the 2008 Act should either include combined heat and power ("CHP") or contain evidence that opportunities for it have been explored.
55. The Secretary of State notes the ExA's consideration of CHP issues [ER 4.28-4.29] and is content that they are addressed properly in line with the requirements of EN-1. The Secretary of State notes that Applicant's Environmental Statement 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. The Secretary of State therefore agrees with the ExA's conclusion that CHP opportunities have been reviewed and noted though there were no current



opportunities for the supply of CHP, this will be reviewed as part of the application for the Environmental Permit.

56. Overall the Secretary of State is satisfied that the CHP requirements set out in EN-1 have been adequately addressed.

#### Definition of Output

57. As the Development will have a maximum output of 299 MW the Secretary of State notes that the Development is just below the threshold of 300MW where it would 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.

58. The Secretary of State notes that discussion took place around the definition of “output” and whether this should be the gross output of the generating plant or the net output exported from the site after allowing for transformer and other losses. The ExA noted that it was important that the definition of output used is consistent with Directive 2009/31/EC and the CCR Regulations. The ExA argued that the purpose the Directive and CCR Regulations is to control emissions and that the scale of emissions is therefore determined by the gross output. The Secretary of State notes that the EA also considered that gross output should be used and therefore agrees with the ExA’s conclusion that a gross output definition would be consistent with the legislation.

#### Construction of the substation

59. The Secretary of State notes that discussion took place around the inclusion of a requirement in the Order that would ensure the substation was not constructed in advance of or in the absence of the generating station. The Secretary of State notes that the local authorities supported inclusion of this requirement but NGET argued that they needed flexibility in the timing of the commissioning of the substation due to the lead in time for planning outages on the national transmission network.

60. The Secretary of State notes that a key overarching requirement of NGET’s transmission licence is to ensure that it complies with its duty to develop and maintain an efficient, coordinated and economical system of electricity generation and that it is therefore unlikely to commence construction work until there was certainty of the generation plant going ahead. The Secretary of State therefore agrees with the ExA [ER 8.45] that there is merit in NGET’s argument and that given its duties under its transmission licence to ensure that it complies with its duty to develop and maintain an efficient, coordinated and economical system of electricity generation it would not undertake unnecessary investment. The Secretary of State therefore agrees with the ExA that the inclusion of this requirement in the Order should be rejected.

#### Representations received after the close of the ExA’s examination of the Application

61. A letter was received on 18 May 2015 from Dr Daniel Poulter, the local MP for Mid-Suffolk and Ipswich stating his objection to the proposed Development, setting out that following letters received from numerous

constituents and local businesses the MP considered Eye to be an unsuitable site for the plant as it would lead to over industrialisation of an essentially rural area. He also considered that the capacity of the proposed site for accommodating large structures has already been maximised to full potential, the proposed Development would have adverse visual and environmental impacts as well as an adverse impact on the character of the town and tourism. The MP in particular raised concern about the siting and large size of the proposed substation noting that it would have adverse landscape and visual impacts as well as adverse impacts on listed buildings, conservations areas, the character of the area and traffic. The Secretary of State considers that these are all issues raised during the Examination and addressed by the ExA in his Report and is satisfied that this representation does not raise any new issues that need further consideration in reaching a decision on whether or not to grant consent for the Development.

## **General Considerations**

### Equality Act 2010

62. The Equality Act 2010 introduced a public sector “general equality duty”.

This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships<sup>1</sup>; pregnancy and maternity; religion and belief; and race. This Secretary of State is satisfied that there is no evidence of any harm, lack of respect for equalities, or disregard to equality issues in relation to this Application.

### Human Rights Act 1998

63. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the Development and compulsory purchase powers. The Secretary of State notes that the ExA concludes that the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent. The Secretary of State agrees that the ExA’s rationale for reaching its conclusion, as set out in ER 7.38-7.41 that this provides a justifiable basis for taking the view that the grant of development consent for the GIS variant would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

### Section 40(1) of the Natural Environment and Rural Communities Act 2006

64. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the

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<sup>1</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

view that the Report considers biodiversity sufficiently to accord with this duty.

### **Secretary of State's conclusions and decision**

65. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the Application for the GIS Variant, given the national need for the proposed Development and that the potential adverse local impacts of the Development do not outweigh the benefits of the scheme.
66. The Secretary of State notes that in addition to the Order, the Development would need an Environmental Permit from the EA to ensure further protection for the environment by regulating emissions from the power plant during its operation. The Secretary of State notes, however, that the Applicant will not be able to operate the power plant until EA is satisfied that stringent environmental conditions are met and that appropriate monitoring of environmental impacts will be required in the event that operation of the power plant does take place. The Secretary of State further notes that as set out in paragraph 18 above, the EA confirmed during the Examination that they were not aware of anything that would preclude the granting of an Environmental Permit for the Development.
67. The Secretary of State has therefore decided to accept the ExA's recommendation in paragraph 9.28 of the Report to make the Order granting development consent for the GIS variant, and to impose the requirements recommended by the ExA, but subject to the modifications described below. In reaching this decision, the Secretary of State has had regard to the Report as amended by the Errata sheet referred to in paragraph 6 above, and to all other matters which the Secretary of State considers important and relevant to the decision as required by section 105 of the 2008 Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that the environmental information as defined in regulation 2(1) of those Regulations has been taken into consideration.

### **Modifications to the Order**

68. The Secretary of State has removed the word "improve" from the definition of "maintain" set out in Article 2 as this is considered to go beyond the intended meaning of "maintain". This is consistent with previous Orders.
69. The Secretary of State has amended the definition of the "design principle statement" in Article 2 to remove the explanation around what is to happen when there is conflict between the two documents referenced within the definition as it is not appropriate that such an explanation is included within a definition.

70. The Secretary of State has amended Article 7 to state that consent is required to transfer or lease the benefit of the provisions of the Order unless the transferee or lessee is a licence holder under section 6 of the Electricity Act 1989 or section 7 of the Gas Act 1986 rather than if they are a statutory undertaker. This is consistent with previous Orders.
71. The Secretary of State notes that the ExA considered that Works number 1, 2, 3, 4 and 6 (the generation plant, the AGI and the gas and electricity connections) constituted the NSIP and works numbered 5 and 7 (the ECC and access road from the A140) as associated development [ER 8.16]. The Secretary of State however considers that the works connected to the gas connection (and related AGI) and the electrical connection are not integral to the generation station and therefore constitute associated development. The Secretary of State has therefore amended schedule 1 to clarify that works works number 3A, 3B, 4, 5, 6 and 7 are associated development.
72. The Secretary of State notes that the maximum height set out in Schedule 2 table 1 for the sealing end compound and substation was 12.5m whilst the maximum height assessed and which mitigation has been considered for the Applicant's Environmental Statement was 12m. The Secretary of State has therefore amended the height of the sealing end compound and substation in Schedule 2, table 1 of the Order from 12.5m to 12m.
73. The Secretary of State has added a requirement for a Community Liaison Group to be set up as part of requirement 11 in the Order with regards the, "Construction Environmental Management Plan" to correct what the Secretary of State considers to be an omission.
74. The Secretary of State has removed the lower limit set out in the description of the capacity of the power station. As development consent for NSIPs can only be granted under the 2008 Act to projects over 50MW, the Secretary of State does not consider it necessary for the lower limit to be specified in the Order. This is consistent with previous Orders.
75. The Secretary of State has made a number of minor drafting changes to the Order, notably in cases where the recommended drafting does not achieve the intended effect, is unclear or does not follow standard statutory instrument drafting practice.

### **Challenge to decision**

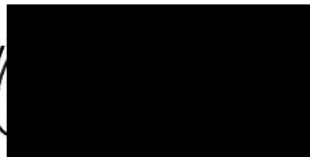
76. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

### **Publicity for decision**

77. The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.



Yours sincerely



Giles Scott  
Head of National Infrastructure Consents and Coal Liabilities

## ANNEX

### LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the date when the Order is published. The Progress Power Gas Fired Power Station Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

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

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)**