



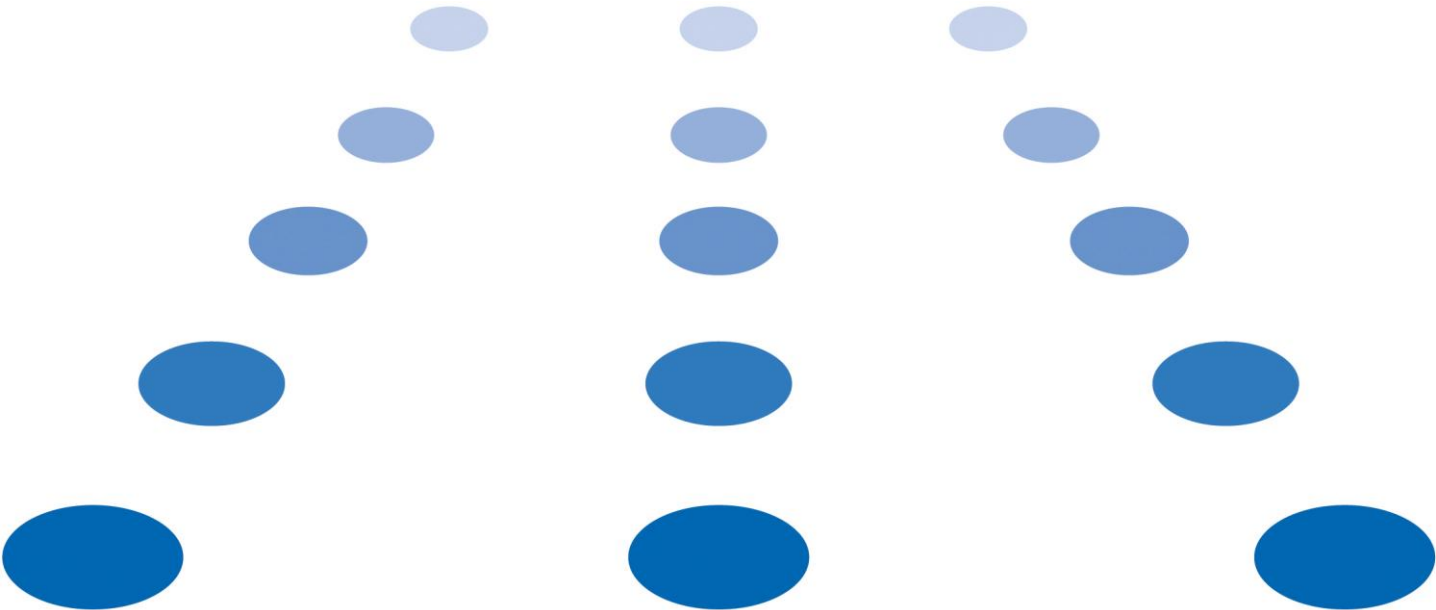
**The Progress Power
(Gas Fired Power Station) Order**

3.1 Draft Development Consent Order

Planning Act 2008
The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

PINS Reference Number:	EN010060
Document Reference:	3.1
Regulation Number:	r5(2)(b)
Author:	Pinsent Masons LLP

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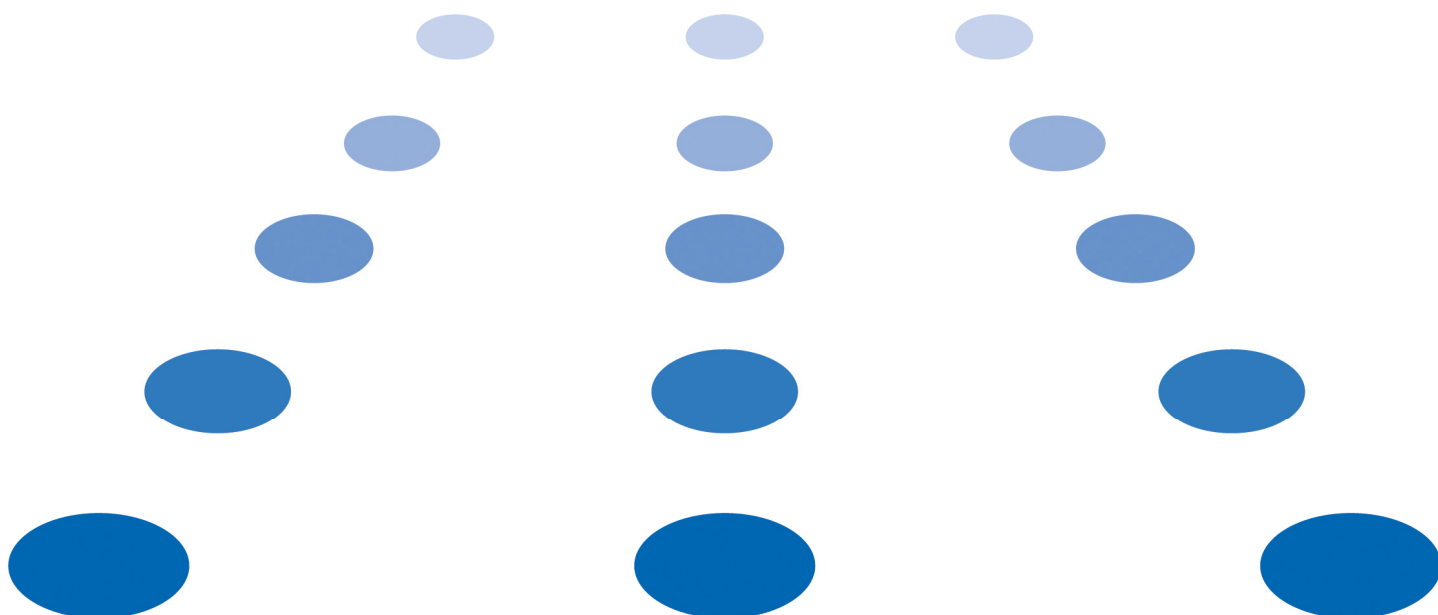
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INTRODUCTION

1. This document is submitted in relation to an application for a Development Consent Order by Progress Power Limited to the Secretary of State under the Planning Act 2008.

2. The application is for the Progress Power (Gas Fired Power Station) Order 200[X], to grant development consent for the construction, operation and maintenance of:

- (a) a new Power Generation Plant, a SCGT gas fired power generating station capable of providing between 50 - 299 MW, incorporating up to five gas turbine generators with up to five exhaust gas flue stacks;
- (b) a new electrical connection, to export electricity from the Power Generation Plant to the National Electricity Transmission System. This element incorporates a new underground cable circuit connection, and a new access road, with a new access off the A140, and a new electrical connection compound comprising a new substation and sealing end compound; and
- (c) a new gas pipeline connection to bring natural gas to the Power Generation Plant from the National Transmission System in the vicinity of the Project Site. This element incorporates an above ground installation at its southern end and a new access road off Potash Lane.

3. All aspects of the authorised development described either form an integral part of the nationally significant infrastructure project or are associated development and so are included in the Order.

4. This document is the draft Development Consent Order (or Draft DCO), and comprises part of the application documents and is provided as required under Regulation 5(2)(b) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

5. Progress Power Limited has also submitted an Explanatory Memorandum (Document Reference 3.2), which explains the terms of the Draft DCO.

201[X] No. [X]

INFRASTRUCTURE PLANNING

**The Progress Power (Gas Fired Power Station) Order
201[X]**

<i>Made</i>	- - - -	<i>[***] 201[X]</i>
<i>Laid before Parliament</i>		<i>[***] 201[X]</i>
<i>Coming into force</i>	- -	<i>[***] 201[X]</i>

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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 and Part 5 of the 2008 Act for an Order under sections 37, 114, 115, 117(4) and 120 of the 2008 Act.

The application was examined by the Examining authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act.

The Secretary of State, in accordance with section 104(2) of the 2008 Act, has had regard to the local impact report submitted by [XXX] and those matters which the Secretary of State thinks are both important and relevant to his decision.

The Secretary of State, having considered the representations made and not withdrawn and the application with the documents that accompanied the application, has determined to make an Order giving effect to the proposals comprised in the application.

The Secretary of State's determination was published on [X].

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 103, 114, 115, 117(2), 120, 122 and 123 of the 2008 Act, makes the following Order-

PART 1

PRELIMINARY

Citation and commencement

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

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961;

“the 1965 Act” means the Compulsory Purchase Act 1965;

“the 1980 Act” means the Highways Act 1980;

“the 1990 Act” means the Town and Country Planning Act 1990;

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

“the 2008 Act” means the Planning Act 2008;

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

“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;

“the book of reference” means the book of reference 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;

“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 pursuant to a power purchase agreement for which the undertaker is a counterparty;

“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;

“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;

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

“the land plans” means the plans with submission document reference number 2.6 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 and “maintenance” and “maintaining” are to be construed accordingly;

“National Grid” means National Grid plc (Company No. 04031152) whose registered office is at 1-3 Strand, London, WC2N 5EH;

“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;

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

“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 with submission document reference number 2.8 certified as the rights of way, streets and access plan by the Secretary of State for the purposes of this Order;

“Secretary of State” means the Secretary of State for Energy and Climate Change and the Secretary of State for any successor departments;

“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;

“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 plans with submission document reference number 2.7 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.

(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 shall 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 shall be construed as references to points so lettered or numbered on the rights of way, streets and access plan.

(7) The expression “includes” shall 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 shall 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 operate and use 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) Subject to article 6(2) and article 7 (consent to transfer benefit of the Order), the provisions of this Order shall have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to:

- (a) numbered works 3 and 5 for which consent is granted by this Order for the benefit of the undertaker and National Grid; and
- (b) numbered work 7 for which consent is granted by this Order for the benefit of the undertaker and the relevant highways 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, ~~except in paragraph (3),~~ shall 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 Progress Power Limited.

(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 claim that has been made has been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of any such claim;
 - (iv) payment of compensation into court in lieu of settlement of any such claim has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any claim that no compensation shall be payable.

PART 3

STREETS

Power to alter layout, etc., of streets

8.—(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 shall 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) shall 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, it is deemed to have granted consent.

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

Street works

9.—(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

10.—(1) Those parts of each means of access specified in Part 1 of Schedule 6 to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall 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 shall be completed to the reasonable satisfaction of the street authority and shall 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 8(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 6 which are not intended to be a public highway shall be completed to the reasonable satisfaction of the street authority and shall 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 shall in particular 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

11.—(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 shall provide reasonable access for 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 shall 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) that street authority shall be deemed to have granted consent.

Access to works

12.—(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

13.—(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 10(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

14.—(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) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).

(3) The undertaker shall 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 shall not be unreasonably withheld.

(4) The undertaker shall 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 shall 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 shall 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 shall 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 (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
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Authority to survey and investigate the land

15.—(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) shall, 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 shall 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 shall not be unreasonably withheld.
- (5) The undertaker shall 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

- 16.—**(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 shall 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 shall 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 shall 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 shall, 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 shall 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 shall remove the remains and as to the payment of the costs of the application.
- (8) The undertaker shall 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 shall 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 shall be re-interred in individual containers which shall 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 shall 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 shall 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) shall 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 shall 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) shall not apply to a removal carried out in accordance with this article.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

17.—(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) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(2)~~ This article is subject to [article 20 \(Compulsory acquisition of rights etc.\)](#), article 23 (acquisition of subsoil only) [and article 26 \(Temporary use of land for carrying out the authorised development\)](#).

Statutory authority to override easements and other rights

18.—(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 shall 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 shall be applied to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

19.—(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 shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent 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.

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

~~(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new right is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.~~

~~(3)~~(2) Subject to section 8 of the 1965 Act, as substituted by article 24 (acquisition of part of certain properties), where the undertaker acquires a right over land under paragraph 1, the undertaker shall not be required to acquire a greater interest in that land.

~~(4)~~(3) Schedule 7 shall 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.

~~(5)~~(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.

~~(6)~~(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (54) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Private rights

21.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order shall be 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 shall be 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 shall be 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 shall be suspended and unenforceable for as long as the 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 shall be 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 section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 28 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) shall 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 shall 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 shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land includes references to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

(3) In section 3 (preliminary notices), for subsection (1) there shall be 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 shall 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 shall be substituted ““(1)”” and after ““(given)”” there shall be inserted ““(and published)””.

(5) In that section, for subsections (5) and (6) there shall be 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 shall be inserted ““in a local newspaper circulating in the area in which the land is situated””; and
- (b) subsection (2) shall be 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)”” shall be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall 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

23.—(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 17 (compulsory acquisition of land) and paragraph (1) of article 20 (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 shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 24 (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

24.—(1) This article shall apply 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 shall 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 shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be 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 shall 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 shall 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 shall 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 shall 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, shall 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 shall 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

25.—(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) shall not 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, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be 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

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

(a) enter on and take temporary possession ~~of—~~

~~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; and

(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 shall 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—~~

~~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) ~~Before~~ 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 shall, before giving up possession of land of which temporary possession has been taken under this article, ~~the undertaker shall~~ remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall 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, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect 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) ~~except that the undertaker shall not be precluded from—~~ (a)(i).

~~(a) acquiring new rights over any part of that land under article 20 (compulsory acquisition of rights etc); or~~

~~(b) acquiring any part of the subsoil (or rights in the subsoil or airspace) of that land under article 23 (acquisition of subsoil only).~~

(9) Where the undertaker takes possession of land under this article, the undertaker shall not 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) shall apply 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 shall prevent 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

27.—(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) shall 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 shall 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 shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall 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, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect 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 shall not 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) shall apply 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

28.—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

29.—(1) Where a street is temporarily altered or diverted or its use is temporarily prohibited

or restricted under article 10 (construction and maintenance of new or altered means of access) or article 11 (temporary prohibition or restriction of use of streets) any statutory utility whose apparatus is under, in, on, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is temporarily altered or diverted or its use is temporarily prohibited or restricted under article 10 (construction and maintenance of new or altered means of access) or under article 11 (temporary prohibition or restriction of use of streets) any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the temporary alteration or diversion or temporary prohibition or restriction of use; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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 to be necessary, then, if it involves cost in the execution of the relocation work 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 paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (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 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.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by

deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) shall not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article –

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003.

Recovery of costs of new connections

30.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall 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) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 28 (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,

shall 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 paragraph –

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

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

PART 6

OPERATIONS

Felling or lopping of trees

31.—(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 ~~passengers or other~~ persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall 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, shall be determined under Part 1 of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

32.—(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 shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply 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

33. Development consent granted by this Order insofar as it relates to numbered works 1, 2, 3A and 5 described in Schedule 1 shall 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

34.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (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 shall 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; 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), shall not 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

35. Schedule 9 (protective provisions) has effect.

Certification of plans etc

36.—(1) The undertaker shall, 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 land plans;
- (c) the works plans;~~and~~
- ~~-(d) the rights of way, streets and access plan-; and~~
- (e) the environmental statement

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

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

Service of notices

37.—(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 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 shall 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).

(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

38.—(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 shall, if given, be given in writing and shall 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 it has not notified the undertaker of its disapproval and the grounds of disapproval, it shall be deemed to have approved the application or request.

(3) Schedule 10 shall have effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to requirements.

Arbitration

39. 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

[Name]

[Designation]

[] 201[X]

Department for Energy and Climate Change

SCHEDULE 1

AUTHORISED DEVELOPMENT

Article 3

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 rated electrical output of between 50 – 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 ~~with a combined nominal gross electrical output of between 50 – 299 MWe~~; 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;
- f. landscaping including tree planting, fencing and other boundary treatments and ecological mitigation; and
- g. other ancillary equipment,

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;
- 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;
- g. internal roadways, car parking, pedestrian network and hardstanding for planned maintenance; and
- h. other ancillary equipment,

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 insofar as unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2

REQUIREMENTS

Article 3

Interpretation

1. In this Part of Schedule 2—

(1) the following expressions shall have the following meanings:

“AOD” means above ordnance datum;

“design principles statement” means the design principles statement contained within the design and access statement document with submission document reference number 10.2 submitted with the application;

“ecological management strategy” means the ecological management strategy with submission document reference number 10.5 submitted with the application;

“flood risk assessment” means the flood risk assessment with submission document reference number 5.4 submitted with the application;

“outline lighting strategy” means the outline lighting strategy with submission document reference number 2.10 submitted with the application;

“outline landscaping plans” means the outline landscaping plans with submission document reference number 2.9 submitted with the application; and

“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.

Time limits

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

Numbered Works

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

Detailed Design

4.—(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 21(1)):

Works Plan Plans	Submission document reference number 2.7
Rights of Way and Access Plan	Submission document reference number 2.8

(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 21(1)):

Building Structure or	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)
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	-
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 work 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	-	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 work 3A)	2.0	-	36.0	-	25.0	-
Sealing end compound (part of numbered work 5)	12.5	-	22.0	-	45.0	-
<u>Substation:</u>						
Substation (AIS – air insulated substation) – (maximum compound size) (part of numbered work 5)	12.5	-	150.0	-	150.0	-
Substation (GIS – gas insulated substation) – (maximum compound size) (part of numbered work 5)	12.5	-	80.0	-	100.0	-
Substation (GIS – 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 shall utilise horizontal directional drilling as the installation method where the numbered work crosses the A140.

Provision of landscaping

5.—(1) Each of numbered works 1, 2, 3, 4, 5 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 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;
- (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;
- (h) details of existing trees to be retained, with measures for their protection together with any landscaping and visual impact mitigation required during the construction period;
- (i) measures for the management of the ecological resources that will remain within the Order land on completion of the authorised development;
- (j) implementation timetables for all landscaping works; and
- (k) landscaping maintenance throughout the operational life of the authorised development.

(2) All landscaping works must be carried out in accordance with the landscaping plan approved under this requirement 5 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

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

(4) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five 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.

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 and 5 must not be commenced until, for that numbered work, written details of the surface and foul water drainage strategy (including means of pollution control) have, after consultation with the relevant sewerage and drainage authority, been submitted to and approved by the relevant planning authority, 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 strategy must be implemented in accordance with the approved details.

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, after consultation with Suffolk County Council, been submitted to and approved in writing by the relevant planning authority. The written scheme of archaeological investigation must be substantially in accordance with the written scheme of archaeological investigation set out in Appendix 13.C to the environmental statement 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 in a suitable academic journal 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 to undertake the works set out within the written scheme of investigation.

- (2) Any archaeological works must be carried out in accordance with the approved scheme.

(3) The site investigation and post-investigation interpretation must be completed for that numbered work in accordance with the programme set out in the written scheme of archaeological investigation.

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.

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

Construction Environment Management Plan

11.—(1) No numbered work may commence until a construction environment management plan covering that numbered work has been submitted to and approved by the relevant planning authority. The construction environment management plan must be substantially in accordance with the outline construction environment management plan set out in appendix 4.A to the environmental statement 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) surface and ground water protection measures;
- ~~(e) landscape and visual impact mitigation (covering protection of trees to be retained and minimising visual intrusion of construction works);~~
- ~~(f)~~(e) security measures;
- ~~(g)~~(f) protocol in relation to unexploded ordnance;
- ~~(h)~~(g) protocol in the event that unexpected contaminated land is identified during ground investigation or construction; and
- ~~(i)~~(h) restoration of site following completion of construction.

(2) All construction works must be undertaken in accordance with the approved construction environment management plan ~~unless otherwise agreed with the relevant planning authority.~~

Construction traffic

12.—(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 relevant highways authority. The construction traffic management plan must be substantially in accordance with the outline construction traffic management plan set out in Appendix 12.D to the environmental statement 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 relevant highways authority.

Construction Travel Plan

13.— The travel plan (other than the measures which relate to the operational phase) must be carried out as approved during construction of the authorised development.

Travel plan during operational phase

14.—(1) Prior to the date of final commissioning a written operational travel plan must be submitted to and approved ~~be 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.

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

Construction hours

15.—(1) ~~No Subject to sub-paragraph (2) no~~ construction work, or the delivery or removal of materials, ~~must 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 ~~(excluding public holidays)~~; and
- (b) 0700 and 1300 hours on Saturdays ~~and public holidays~~.

(2) Sub-paragraph (1) shall not prevent ~~outside such hours~~ 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

16.—(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:

Noise Limit Sound Pressure Level, $L_{Aeq, 5mins}$ dB	Coordinates	
	X	Y
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 BS 7445. Measurements should be undertaken with the power plant running at base load. A single L_{Aeq} 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).

Control of artificial light emissions during operational phase

17.—(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

18.—(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 ~~38-40~~ and ~~42-44~~ of the Conservation ~~(Natural of Habitats, &c.)~~ and Species Regulations ~~1994~~2010.

Decommissioning strategy

19.—(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 and 2 must be submitted to the relevant planning authority.

(2) The demolition and removal of numbered works 1 and 2 must be implemented in accordance with the approved scheme, ~~unless otherwise agreed in writing by the relevant planning authority.~~

(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 shall notify the relevant planning authority of the same.

Commissioning of numbered work 5

20. Numbered work 5a must not be commissioned until after the commencement of construction of numbered work 1, unless otherwise agreed in writing by the relevant planning authority.

Amendments to approved details

21.—(1) With respect to the approved plans specified in requirement 4(1), the parameters specified in requirement 4(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 shall be taken to include the amendments approved pursuant to this sub-paragraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 4(2) above must not be given except ~~in relation to minor or immaterial changes unless where~~ it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought is unlikely to 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

Article 8 and 12

STREETS SUBJECT TO PERMANENT AND TEMPORARY ALTERATION OF LAYOUT

PART 1 - PERMANENT ALTERATION OF LAYOUT

<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 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	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 permanent access to numbered work 5.
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	Lays -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.
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PART 2 - TEMPORARY ALTERATION OF LAYOUT

<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.

SCHEDULE 4

STREETS SUBJECT TO STREET WORKS

Article 9

(1) <i>Area</i>	(2) <i>Street Subject to Street Works</i>	(3) <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 permanent access 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	Lays 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.

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	Footpath numbered W-583/009/0	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
TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF
STREETS

Article 11

(1) Area	(2) Street subject to temporary prohibition or restriction of use	(3) Extent of temporary prohibition or restriction of use of streets
In the District Mid Suffolk	Potash Lane	<p><u>Prohibition/Restriction:</u></p> <p>From the points marked A to B on the rights of way, streets and access plan, being approximately 30 metres.</p> <p><u>Purpose of the Prohibition/Restriction:</u></p> <p>Temporary closure of part of the street to cover numbered work 3B providing access to 3A.</p>
In the District Mid Suffolk	Potash Lane	<p><u>Prohibition/Restriction:</u></p> <p>From the points marked B to C on the rights of way, streets and access plan, being approximately 56 metres.</p> <p><u>Purpose of the Prohibition/Restriction:</u></p> <p>Temporary closure of part of the street to provide a temporary access to numbered work 3.</p>
	Part of disused runway complex	<p><u>Prohibition/Restriction:</u></p> <p>From the points marked D - F on the rights of way, streets and access plan being approximately 51 metres.</p> <p><u>Purpose of the Prohibition/Restriction:</u></p> <p>Temporary closure of part of the street to cover numbered work 4 crossing and being installed.</p>
In the District of Mid Suffolk	Potash Lane	<p><u>Prohibition/Restriction:</u></p> <p>From the points marked G – J1 on the rights of way, streets and</p>

		<p>access plan being approximately 96 metres.</p> <p><u>Purpose of the Prohibition/Restriction:</u></p> <p>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><u>Prohibition/Restriction:</u></p> <p>From the points marked J1 – J2 on the rights of way, streets and access plan being approximately metres.</p> <p><u>Purpose of the Prohibition/Restriction:</u></p> <p>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><u>Prohibition/Restriction:</u></p> <p>From the points marked K - L on the rights of way, streets and access plan being approximately 598 metres.</p> <p><u>Purpose of the Prohibition/Restriction:</u></p> <p>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	Old Norwich Road	<p><u>Prohibition/Restriction:</u></p> <p>From the points marked M - N on the rights of way, streets and access plan being approximately 143 metres.</p> <p><u>Purpose of the Prohibition/Restriction:</u></p> <p>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><u>Prohibition/Restriction:</u></p> <p>From the points marked O1 - P on the rights of way, streets and access plan being approximately 190 metres.</p>

		<u>Purpose of the Prohibition/Restriction:</u> Temporary closure of part of the street to cover part of numbered work 7 providing access to numbered work 5.
In the District of Mid Suffolk	Yaxley Road	<u>Prohibition/Restriction:</u> From the points marked Q - R on the rights of way, streets and access plan being approximately 20 metres. <u>Purpose of the Prohibition/Restriction:</u> Temporary closure of part of the street to cover numbered work 6 being installed in the street.
In the District of Mid Suffolk	Potash Lane	<u>Prohibition/Restriction:</u> From the points marked S-T on the rights of way, streets and access plan being approximately 23 metres. <u>Purpose of the Prohibition/Restriction:</u> Temporary closure of part of the street for temporary works associated with numbered works 4 and 6 being installed in the street.
In the District of Mid Suffolk	Potash Lane	<u>Prohibition/Restriction:</u> From the points marked T -U on the rights of way, streets and access plan being approximately 227 metres. <u>Purpose of the Prohibition/Restriction:</u> Temporary closure of part of the street to cover numbered works 4 and 6 being installed in the street.
In the District of Mid Suffolk	Footpath numbered W-583/009/0	<u>Prohibition/Restriction:</u> From the points marked V to W on the rights of way, streets and access plan being approximately 77 metres. <u>Purpose of the</u>

		<u>Prohibition/Restriction:</u> Temporary closure of part of the footpath to cover numbered works 4 and 6 being installed in the street and to facilitate the creation of numbered work 2.
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SCHEDULE 6

ACCESS

Article 10

PART 1 – THOSE PARTS OF THE ACCESSSES TO BE MAINTAINED AT THE PUBLIC EXPENSE

<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	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 ACCESSSES TO BE MAINTAINED BY THE STREET AUTHORITY

<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

<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.

SCHEDULE 7

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Article 20

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall 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 shall have 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 shall be 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 shall be 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 shall be substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there shall be substituted the words “right or restrictive covenant over or affecting the whole of the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there shall be substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act shall have 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 shall apply 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 shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right 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 shall be 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”) shall, in relation to that person, cease 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 shall 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 shall be 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 shall 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),

shall be 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) shall be so 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 shall be 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 shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply 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) shall be so 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

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Article 26

<i>(1) Location</i>	<i>(2) Number of land shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) 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 <u>(including the passing and re-passing of vehicles)</u> 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

(1) <i>Location</i>	(2) <i>Number of land shown on land plans</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <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 <u>(including the passing and re-passing of vehicles)</u> 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) Location</i>	<i>(2) Number of land shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) 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 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

SCHEDULE 9
PROTECTIVE PROVISIONS

Article 35

PART 1¹
FOR THE PROTECTION OF... NATIONAL GRID

PART 2
FOR THE PROTECTION OF...

PART 3
FOR THE PROTECTION OF...

¹ PPL is in active discussions with National Grid regarding their protective provisions. These will be inserted in to the Development Consent Order once agreed.

SCHEDULE 10

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Article 38

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 shall 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 shall 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 shall 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 shall have 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 shall, 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 shall be deemed to have sufficient information to consider the application and shall not thereafter be 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 shall 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 shall be as follows:

- (a) The undertaker shall submit the appeal documentation to the Secretary of State and shall on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
- (b) The Secretary of State shall appoint a person within twenty (20) business days of receiving the appeal documentation and shall 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 the requirement consultee shall submit written representations to the appointed person in respect of the appeal within twenty (20) business days of the start date and shall 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 shall 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 shall 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 paragraph 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 shall, 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) shall be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person shall notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal shall require submission of written representations to the appointed person within ten (10) business days of the specified date but shall 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 shall 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 shall be 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) shall not 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 shall 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 shall 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 shall be made, the appointed person shall have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

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 36 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at [].