1. This document provides the consolidated submissions on behalf of the Eye Airfield Parishes Working Group (the Working Group) in support of an application to the Examining Authority to make a direction that the Applicant should provide further environmental information in support of its application. It is understood the Examining Inspector, Mr Green, has asked that these submissions be submitted by 24 October 2014.

2. Progress Power Ltd seek a Development Consent Order (“DCO”) under section 14 of the Planning Act 2008 for development comprising a gas fired power station and associated works and structures at the Eye Airfield Business Estate, Eye, Suffolk.

3. The Working Group have made representations in respect of their objections to the proposals. However the need for this application arises from their concern that the effect of the development on cultural heritage and the rich historic landscape around the Eye Airfield site has not been adequately considered and assessed in the Environmental Statement (ES) and the further environmental information that has been produced by the Applicant in support of the DCO application.

Context of the application – the importance of cultural heritage in any decision.

(1) The Site and the Proposed Development

4. Since the cessation of its use for military purposes after the Second World War, the former airfield has evolved into a series of business or industrial estates comprising Mid Suffolk Business Park, Airfield Industrial Park, Oaksmere Business Park, Eye Industrial Estate South and Brome Industrial Estate. The resident businesses include the EPR power station, known locally as the ‘chicken litter factory’ associated with which is a 40m chimney stack. Additionally, four wind turbines of 130m (80m hub height) have been constructed on the airfield in the recent past. A National Grid gas compressor station is also located on the airfield, immediately to the east of the site proposed for the power generation plant (PGP), while National Grid electricity transmission lines are carried on pylons approximately 1.6 km to the west of the airfield, running in a north-south direction through the parishes of Yaxley and Thrandeston. The A140, a major north-south conduit through Suffolk, bisects the site of the electrical connection compound (ECC or substation) and that of the PGP.
5. The joint SCC/MSDC Local Impact Report (LIR)\(^1\) acknowledges at paragraph 2.10 that: “The land affected by the development is mostly in agricultural use, an important sector for the local economy. Also of importance locally is tourism, largely associated with the natural and historic beauty of the area.

6. The principal components of the development are the power station itself which includes up to five gas turbines, each with a stack of width (diameter) of some 10 metres and height of 30 metres on a site adjacent to the business estate on the east side of the A140.

7. On a separate site to the west of the A140 and close to the villages of Thrandeston and Yaxley it is proposed to provide an electricity substation (ECC) and connection to the National Grid. On the basis of the Applicant’s preferred option of air-insulated switchgear (AIS), those works involve an array of masts, busbars, switchgear and gantries up to 12.5 metres high, a loom of connection to the existing 400kV line and a replacement of one of the pylons with a repositioned “terminal tower” that will need to be of a much heavier design and construction to the existing tower it will replace. As National Grid state ‘the visual impact of termination towers is significant’. PPL have now sought to ring-fence the Terminal Tower out of this DCO application notwithstanding advice in EN-1 which indicates that associated infrastructure should be part of the assessment of impacts.

8. The ECC site is remote from the business estate, 1.6 km away at a high point in a gently rolling and profoundly rural landscape, with the main A140 passing close by. One respondent describes it as “quintessential Suffolk rural landscape and heritage”\(^2\) and this assessment appears to be shared by the Working Group generally.

9. Conservation Area Appraisals have been adopted for Eye (2011), Mellis (2008) and Thrandeston (2008). The local villages are protected by these conservation area designations, which rest not only on their wealth of vernacular historic buildings but also derives in significant part from their largely undamaged rural character. For example, in the same submission, Mellis is described as “...a historic landscape [which] has one of the largest Commons in England along with 32 listed buildings and 14 sites of archaeological interest it was designated a Conservation Area in 1973, but is also a Special Landscape Area and Visually Important Open Space, a designated County Wildlife Site and a Suffolk Wildlife Trust nature reserve”.

10. The decision of the Secretary of State must be made in accordance with the relevant national policy statement and the other matters, such as the local development plan, are relevant considerations.

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\(^1\) Suffolk County Council and Mid Suffolk District Council Local Impact Report 4.9.14

\(^2\) See Response from Philip Butler
11. The Key relevant NPS is EN-1, the “Overarching National Policy Statement for Energy”. The Secretary of State is required to have regard to this statement in making his decision.

**(2) Impact on the Historic Environment**

12. The development is EIA development; that is to say it is development that is subject to an Environmental Impact Assessment carried out on behalf of the Applicant, Progress Power Limited, in accordance with the Environmental Impact Regulations and Directive. The effects of the development on heritage assets are considered in the ES and other application documents.

13. The ES records that there are 12 scheduled monuments, 455 listed buildings and five conservation areas within a 5 km study area around the project site.

14. There do not appear to be any direct effects on identified designated heritage assets. However, the effect on the setting of designated assets; in particular listed buildings, ancient monuments and conservation areas has been considered in the ES and the responses from a number of consultees, as well as direct effect on undesignated heritage assets. The historic field pattern in the area where the ECC is proposed is increasingly recognised as an important undesignated heritage asset and the wider historic context of the landscape is now emerging as being much more significant than the sum of the individual designated heritage assets.

15. As an interim response to the report by Dr Adrian Chadwick on the Pre-Roman Field System in Yaxley, a statement from Professor Tom Williamson, of the University of East Anglia was presented to the Examining Inspector at the Issue Specific Hearings on 16/17 October 2014:

“It is important to be clear about why, precisely, a number of individuals claim that the field pattern around Yaxley is of considerable historic significance. Nobody has ever argued that it represents an arrangement of boundaries which has survived, unaltered, since the Iron Age. Over a period of two thousand years some elements have been added and others taken away, so that many – perhaps most – represent later modifications of the original field system. Even these, however, may be of some antiquity. Many will be of medieval date and most predate the eighteenth century. The fact that the landscape around Yaxley is thus a palimpsest does not reduce its significance; the precise date of individual elements does not affect the meaning of the whole. This is one of the few places in England where a Roman military road, probably laid out in the first century, visibly slices through the fieldscape like a modern bypass or railway line. This is not only an ancient landscape, but a place where antiquity can be shown, and appreciated, with an immediacy impossible to convey in books,
words, or images; it embodies in striking visual form both the antiquity and the continuity of the English rural landscape.

The idea that sections of or elements in important historic landscapes can be removed, damaged or radically altered so long as the majority of their physical structure remains intact, is problematic. So too is the idea that because such a landscape has been added to and altered over time, its value is diminished. We would not, for example, easily accept that a power generation facility could be intruded into a landscape designed by Capability Brown, even if many of his original trees had been lost and new ones planted; nor would we accept that sections of such a landscape could be removed, provided that they were carefully recorded. The landscape under consideration here is arguably of similar historic importance.”

16. Dr Jane Siddell, speaking here as an officer of the Prehistoric Society has added:

“So what I would recommend... is for you[the Working Group] to rebut the assertion that the impact would only be ‘slight adverse’ on the basis of unknown date. As the report indicates uncertainty over the date of the field systems, the precautionary principle should be applied, i.e. the field systems should be treated as of high or national significance until their date is proven, and any potential damage should take this into account, thus giving an impact value of Major Adverse until proof is forthcoming on their date. Prehistoric earthworks, by their rarity will be more significant than post-medieval ones (unless there is an association that makes them particularly rare) and so it may be that fieldwork is needed to determine the date, and thus their significance, which if prehistoric and well preserved should be Nationally Significant. They should not be written off as of low significance because their date has not yet been established; that is clearly inappropriate.”

(3) The Effect on the Setting of Heritage Assets – is there a lesser test in determinations under the Planning Act 2008?

17. The Applicants have drawn attention to the different tests to be found in, on one hand, section 66 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990, which applies to planning applications determined under Part III of the Town and Country Planning Act 1990, and on the other, the relevant provisions which apply under the Planning Act 2008, in Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010.

18. Regulation 3 of the Infrastructure Planning Decision Regulations 2010 provides:
“Listed buildings, conservation areas and scheduled monuments

3. (1) When deciding an application which affects a listed building or its setting, the
decision-maker must have regard to the desirability of preserving the listed building or its
setting or any features of special architectural or historic interest which it possesses.

(2) When deciding an application relating to a conservation area, the decision-maker must
have regard to the desirability of preserving or enhancing the character or appearance of
that area.

(3) When deciding an application for development consent which affects or is likely to affect
a scheduled monument or its setting, the decision-maker must have regard to the desirability
of preserving the scheduled monument or its setting.

19. In considering whether to grant planning permission under the planning acts (which do not
include applications under the Planning Act 2008) for development which affects a listed
building, or its setting Section 66 of the Town and Country Planning (Listed Buildings and
Conservation Area) Act 1990 requires the decision maker to have special regard to the
desirability of preserving the building or its setting. These duties have been the subject of
recent important decisions in the Court of Appeal (see Barnwell Manor Wind Energy Ltd v E.
Northamptonshire DC (2012) EWCA Civ 137) and subsequently the High Court (see Forge Field Society v Sevenoaks D.C. (2014) EWHC 1895), which have reviewed, clarified and reinforced the
importance of these statutory duties. From these recent authorities it is now established
that considerable importance and weight should be given to harm to the setting of listed
buildings even where the harm is less than substantial.

20. In their submissions in this respect, in PPL’s Relevant Representations Response, Chapter 13
Heritage and Archaeology, which states:

“13.2.24 In the context of listed buildings, regulation 3 of the Infrastructure Planning
(Decisions) Regulations 2010 (the “Decisions Regulations”) sets out that it is necessary for the
Secretary of State to “have regard to the desirability of preserving the listed building or its
setting or any features of special architectural or historic interest which it possesses”
(emphasis added). This language differs from the duty in section 66 of the Planning (Listed
Buildings and Conservation Areas) Act 1990 (“PLBCAA”) for a decision maker to have “special
regard” (emphasis added) and indicates that Parliament intends that a particular approach
be taken in the case of NSIPs. .......
13.2.27 PPL’s reading of the situation is that applications for development consent are excluded from the ambit of section 66 of the PLBCAA. This interpretation is supported in that the provisions in relation to the restriction on works to a listed building, and the control of demolition of listed buildings set out in the PLBCAA specifically carve out applications for development consent (again, pursuant to the Planning Act 2008). However, the duty to have special regard could be considered by the Secretary of State to be “relevant and important” in the context of his decision making under section 104 of the Planning Act 2008.”

21. No relevant case law is cited by the Applicant and as far as can been established there is none on the point. Nor has any other DCO decision been referred to by the Applicant on which it could be said a lesser test has been adopted.

22. The absence, in Regulation 3, of the word “special” in applying to the duty is noted; however, the claim in the Applicant’s Response that the 2008 Act sets a lower bar for the assessment of the impact on heritage assets and their setting, is strongly resisted by the Working Group, not least because although certain applications are necessarily dealt with as DCOs, in other cases the choice of whether to follow the DCO route or a traditional application for planning permission under section 70 is a decision for the developer. If the situation was that the weight to be attributed to the effect on heritage assets, and therefore the acceptability of certain proposals that adversely affect such assets, depended on the administrative procedure selected for the determination of the application it would mean that applications affecting buildings of national importance were treated differently for reasons that were irrelevant to planning considerations.

23. This question was directly addressed when the Regulations were enacted. In introducing the Regulations, in the House of Lords, on 1st February 2010 the Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton) (the Minister) stated:

“As noble Lords will be aware, the Planning Act puts in place a single consent regime, which enables promoters to apply for one consent in respect of infrastructure development, where previously they may have needed to apply for several. The Act does this in two ways. It removes the requirement to obtain certain consents that were otherwise needed, which are set out in Section 33 of the Act, and in a few cases permits decision-makers to grant deemed consent. However, where those consents include a requirement to have regard to one of the important matters mentioned earlier, it is vital that we ensure the protection provided is not lost. This SI therefore reapplyes the tests contained in those consents to ensure that decision-
makers have proper regard to them. For example, Section 33 of the Planning Act removes the requirement to obtain listed building consent under Section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 16 of that Act requires decision-makers, in considering whether to grant listed building consent for any works, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest that it possesses. Since the need to obtain consent is removed, the protection provided in Section 16 would also be lost if it were not reapplied by this statutory instrument. That is the essence of this short but important statutory instrument. In closing, I want to set this in the context of the wider planning system. The requirements to have regard to certain matters exist across the planning system to ensure that decision-makers take proper account of the effect of their decisions on certain areas, such as national parks, biodiversity, and so on. Since the issues are cross-cutting, it is important that there is consistency across the legislative framework applying to decision-makers under both the Planning Act and the wider Town and Country Planning Act system. A change to one would necessitate a change to the others. It is therefore a basic principle of these regulations that they should not seek to add or remove elements of this framework. They should ensure that the status quo is maintained, and where that status quo changes in the wider context – where the requirements are changed, added to, or removed – these regulations will need to be amended to reflect that."

24. If, on the contrary, the Applicant’s statement: “However, the duty to have special regard could be considered by the Secretary of State to be “relevant and important” in the context of his decision making under section 104 of the Planning Act 2008.” means that the “special” status of heritage assets as a material consideration is accepted, then it would follow that it should be common ground that, although strictly section 66 does not apply, the recent case law in relation to the weight and presumptions that attach to the protection of heritage assets would apply equally in either DCO or planning permission.

25. For the avoidance of doubt, it is the Working Group’s submission that, while the different language of the statutes is there to be seen, there can be no basis for treating the weight and importance of impacts on the setting of heritage assets as being less significant (and therefore implicitly requiring a lower standard of environmental information) simply on account of the absence of the word “special” from the Regulations.

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5 See extract from Hansard 2.2.2010
26. Whilst it must be recognised that, strictly, the decisions in *Barnwell Manor and Forge Field* were not concerned with determinations under the 2008 Act, the approach which they lay down regarding heritage assets is a relevant consideration in this application.

27. The Applicant’s reliance on the distinction between the two legislative regimes to justify a lower standard of assessment or indeed some of the judgments that they have made is misconceived. It is the Working Group’s case that those impacts need to be properly assessed in the ES, in order for the ES to constitute an adequate assessment of the environmental impacts of the development for the purposes of the Directive and the Regulations.

28. The impact of the development on heritage assets is the subject of independent assessments by English Heritage (EH), the Suffolk Preservation Society (SPS) and the Conservation Officer of Mid Suffolk District Council (MSDC) which is the local planning authority for the site, but a statutory consultee in this application.

29. Those assessments are unanimous in finding that the development would cause a material degree of harm to the setting of designated heritage assets; being listed buildings and conservation areas in the vicinity of the site. The listed buildings affected include buildings listed as Grade 1 or II* which together comprise less than 10% of all heritage assets and scheduled ancient monuments. There is also a direct effect, caused by the proposed ECC, which would cause significant harm and direct destruction of parts of pre-Roman field boundaries, which may be a most significant surviving intact field pattern and boundaries from that pre-historic period. In the words of Professor Tom Williamson, an acknowledged expert on the subject in general and on the Yaxley fields in particular, *This is not only an ancient landscape, but a place where antiquity can be shown, and appreciated, with an immediacy impossible to convey in books, words, or images; it embodies in striking visual form both the antiquity and the continuity of the English rural landscape.* (in litt.)

30. The response to consultation from EH [see letter dated 3 September 2014] expresses concern at the harm to the setting of heritage assets and also, equally worryingly, is highly critical of the methodology of the assessment.

31. EH finds a degree of harm to the setting of the Grade 1 Eye Castle and the Thrandeston Conservation Area caused by the development and also harm caused by the electrical connection compound to the “wider settings of Mellis and Thrandeston conservation areas, Thrandeston parish Church, Yaxley Manor and possibly Rook Hall”. EH express concern that “While the information submitted with the application concerning the historic environment is helpful, we do not consider it fully establishes the significance of heritage assets in the
vicinity of the development site, particularly as regards the contribution made to that significance by their setting.”

32. In addition to the findings of harm, there is criticism of the assessment carried out on behalf of the Applicant. The EH assessment finds the “methodology for assessment ... to be based on a limited notion of what constitutes the setting of a heritage asset.”

33. Further concern is expressed that “the terminology used in the applicant’s assessment does not utilise the concept of “harm to the significance of heritage assets” which is common to both EN1 and the NPPF. This makes assessment of impact problematic”.

34. The LIR makes further points:

“9.9. The local authorities have concerns that the desk-based assessment provided in the technical appendices of the ES is not sufficient for the purposes of assessing the way in which heritage assets are experienced. As such their setting and the contribution that setting makes to their significance has not been adequately established.

9.10. Instead, the commentary within the ES is confined largely to matters relating to the potential inter-visibility between the various components of the project and the assets. This suggests that an analysis of the way in which the setting of each asset is appreciated or experienced and might be impacted upon by the project is not fully appreciated or understood.”

35. The assessment carried out by the MSDC Conservation Officer which is attached as Appendix 2 of the LIR finds harm in respect of the setting of numerous heritage assets, including those which are the rarest (less than 10%) and most important as nationally important buildings, classed as Grade 1 and II*.

36. An assessment carried out by the SPS has been submitted as a representation in the application process.

37. That study finds that a very high number of designated heritage assets will be affected to varying degrees by the proposals and that the assessment provided in support of the proposals is “both flawed and inadequate”. It cites the fact that the survey was carried out in summer and when only two turbines had been erected, the second pair being erected in early 2014. The assessment of cumulative impact therefore does not take account of all four turbines. SPS takes issue with the approach taken by the Applicant’s assessment which assumes that “harm justifies more harm”. The assessment has not generally considered grade II buildings and “significantly underestimates” the impact on their setting. The approach is considered contrary to the policy in the National Planning Policy Framework and the guidance issued by English Heritage in 2011.
38. SPS also picks up the link between harm to heritage assets, the presumption in the statutes against such harm and the need to consider alternatives.

39. Thus the three independent assessments of EH, SPS and the LPA all find that (i) a degree of harm is caused by the development; and (ii) the assessment carried out on behalf of the Applicant in the Environmental Statement and information submitted with the application is flawed to a greater or lesser extent and understates the true impact on heritage assets.

(4) The need for a Regulation 17 Direction

40. Regulation 17 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 provides:

“17. (1) Where an Examining authority or the Secretary of State is examining an application for an order granting development consent; and paragraph (2) applies, the Examining authority or the Secretary of State must—

(a) issue a written statement giving clearly and precisely the full reasons for its conclusion;

(b) send a copy of that written statement to the applicant; and

(c) suspend consideration of the application until the applicant has provided further information. The Examining authority or the Secretary of State must suspend consideration of the application until the requirements of paragraph (3) are satisfied.

(2) This paragraph applies if—

(a) the applicant has submitted a statement that the applicant refers to as an environmental statement; and

(b) the Examining authority or the Secretary of State is of the view that the statement should contain further information.”

41. The basis for any application is that the information provided in the ES is inadequate in some material respect and the Examining Authority is persuaded that further information should be provided. In this case, the Working Group consider that a direction is necessary and justified, in order (i) to ensure that any decision to grant the DCO is compliant with the Environmental Impact Assessment Directive and the relevant Infrastructure Planning EIA Regulations; and (ii) to ensure that in any determination of the DCO application, the Secretary of State or the Examining Authority does not have regard to immaterial considerations.

42. The Working Group previously made a provisional submission in support of their application dated 12 October 2014 and the Applicant responded in a Response by Michael Humphries Q.C. and Mark Westmoreland Smith dated 13 October 2014 (“the Response”). In their
Response the Applicant makes a number of points which are addressed below. The Applicant describes the submissions and application as “misconceived”, in that it:

a. does not disclose proper grounds for concluding that the ES is ‘inadequate’; and
b. does not identify why the additional information already supplied to the Examination does not meet its concerns.

(a) Whether there are proper grounds for concluding that the ES is “inadequate”

43. The legal submissions and the various authorities cited in paragraphs 10 to 14 of the Applicant’s Response are noted. The Applicant appears to rely on these authorities to suggest that a Regulation 17 direction can only be made where “the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations.”

44. However, the threshold for making any Regulation 17 Direction is simply where the Examining Authority is “of the view that the statement should contain further information” and is not limited to those circumstances where the failure to provide relevant information in the ES is so deficient that the ES is not to be treated as an ES at all and it is noted that the cases relied on by the Applicant in support of that proposition are largely cases concerned with challenges to the validity of a planning permission or its ES.

45. In any case and, for the avoidance of doubt, the Working Group’s point is not simply that the contents of the ES are “controversial” or that the Working Group merely disagrees with the judgements and assessments of merits made in the environmental information provided by the Applicant, as the Applicant’s Response seeks to allege.

46. Rather, it is the absence of essential and important environmental information on the basis of which the Examining Authority (and all consultees and interested parties) can assess the significance of the environmental effects of the proposals that is the Working Group’s concern. The Working Group have reached the view that where information had been provided, the serious and fundamental flaws or omissions in the Applicant’s assessments mean that it fails to provide an adequate assessment of the significant environmental effects of the proposals.

(b) Whether the request identifies why the additional information already supplied to the Examination does not meet its concerns.
47. The matters in respect of which the Working Group considers that information already submitted is inadequate are:

(a) a failure to carry out a comprehensive assessment of the effect on the setting of listed buildings and conservation areas

(i) during winter,

(ii) in accordance with English Heritage (2011) Guidance;

(iii) which includes an appropriate assessment of cumulative effect; and

(b) failure to provide any assessment of alternatives in accordance with paragraph 18 of Schedule 4 of the 2009 Regulations, and established case law, or even to identify what those alternatives might be.

48. Schedule 4 Part 1 paragraph 19 of the IPEIA Regulations requires that a “description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors”.

49. Accordingly, it is the view of the Working Group that:

(i) the Environmental Statement is required to provide an assessment of the significant effects on cultural heritage and the historic landscape;

(ii) That assessment should be carried out in accordance with guidance published by the relevant professional bodies and government agencies or, if not should explain why it has not followed the relevant best practice in accordance with the guidance

(iii) The assessment should include “worst case” impacts, information concerning the alternatives (including alternative locations) considered.

(iv) The assessment should consider the effect of cumulative development on the historic landscape and the setting of heritage assets.

50. The Working Group notes that the Applicant has previously accepted that further environmental information is required and has provided additional cultural heritage information, most recently on 2 October 2014. The Working Group is grateful for the Applicant’s assistance in identifying the additional material that they rely on to address the Working Group’s concerns but regret that it does not address the inadequacies identified.

51. At paragraph 20 of the Response, the Applicant specifically identifies the information submitted in the latest round and which it relies on to conclude at paragraph 21 that “the Applicant does not consider that the Examining authority, in fact, needs to make a direction
52. The material that they rely on to show that the Direction is not needed is set out in para 20 of their Response and these submissions address each of those documents in reply below.

**Failure to evaluate the impact on the setting of heritage assets in winter.**

53. The first sub-paragraph of paragraph 20 of the Applicant’s Response is misleading. It gives the impression that the whole study area has been the subject of three separate site visits on three separate occasions which is not so.

54. Section 6.1 Site Visit Assessment (page 57 of document 6.2 ES Appendices Vol. 1.1, Appendices 13A-13E) states: “6.1.1 A site visit was carried out in June 2013, which included a drive through of the Project Site and its Inner Study Area. A photographic archive was compiled and a selection of views is presented as plates 10-17.

55. Plates 10-17 are summer views consistent with the date June 2013. There are no winter views.

56. On 2 October 2014 the Applicant submitted a “Review of the Setting of Heritage Assets surrounding Eye Airfield” (Appendix B in the Applicant’s Response to SCC MSDC Local Impact Report – Part 1, Appendices A – G). At paragraph 4.1.1 it states “The outer study area was visited by a team of archaeologists and assessed during the winter and summer months”.

57. The Applicant’s Response at 20.1 suggests that the original assessment was comprehensive in terms of the time allowed and the seasons covered. Yet, the inner study area which includes the assets most greatly affected was subject only to a single site visit in June 2013.

58. The countryside and settlements in the locality around the site are characterised by the presence of deciduous trees and hedges. These have the effect of causing a significant change to the views of buildings and settlements in the landscape in winter, when the views are much more open when compared with the summer. It is the view of the Working Group, EH and MSDC (and consistent with the “precautionary principle” in considering environmental impacts) that worst case assessments should be made and assessments of views in summer do not present the worst case.

**Cumulative Impact**

59. Schedule 3 paragraph 14 of IPEIA Regulations require that the “characteristics of development must be considered having regard, in particular (b) the cumulation with other development” Paragraph 20 under Schedule 4 includes cumulative effects in the matters that must be included in the environmental statement.

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6 Response para 21
60. The English Heritage publication “Setting of Heritage Assets” (Revised June 2012) provides clear guidance on the assessment of cumulative impact on the setting of heritage assets. “Cumulative impacts affecting the setting of a heritage asset can derive from the combination of different environmental impacts (such as visual intrusion, noise, dust and vibration) arising from a single development or from the overall effect of a series of discrete developments (CLG 2006). In the latter case, the cumulative visual impact may be the result of different developments within a single view, the effect of developments seen when looking in different directions from a single viewpoint, or the sequential viewing of several developments when moving through the settings of one or more heritage assets.

Some cumulative impacts may also have a greater combined effect than the sum of their individual effects, sometimes termed a ‘synergistic effect’ (ODPM et al 2005, 78). Where the impacts of proposals for successive developments (or a proposal that may generate an additional cumulative impact) affecting the setting of a heritage asset are considered to be potentially detrimental to its significance, assessment of their overall, as well as individual, impact is appropriate.

In order to address the implication of serious cumulative effects on the settings of historic assets, English Heritage recommends that, where appropriate and proportionate, Local Planning Authorities may:

(a) have regard to the implications of cumulative effects on the settings of historic assets when framing policies of their Local Development Documents and, where specific problems are identified, consider providing more detailed guidance on cumulative effects in Supplementary Planning Documents;

(b) where Conservation Area appraisals indicate a problem in regard to cumulative effects on the settings of a conservation area or the heritage assets within it, have regard to the implications when framing Conservation Area Management Plan policies and consider the use of Article 4 Directions to control permitted development impacts;

(c) having regard to the appropriate weight to be attached, include within any assessment of the effects of a development: the impacts of earlier development; the anticipated impacts of development for which consent has been granted but not yet implemented or completed; and the anticipated effects of registered applications which have yet to be determined;

(d) recognise that previous permissions for similar developments may not provide a sound reference point for the acceptability of impacts on setting (as the cumulative effect is different for each new development and may have reached a tipping-point beyond which further development results in substantial harm to significance) and consider making this
clear in the informatives attached to planning consents where sequential applications are anticipated.”

61. Assessment of cumulative effect is required by the EIA Directive and the associated Regulations. Guidelines for Landscape and Visual Impact Assessment 3rd Ed published by the Landscape Institute defines cumulative effects as those that “result from additional changes to the landscape or visual amenity caused by the proposed development in conjunction with other developments (associated or separate to it), or actions that occurred in the past, present, or are likely to occur in the foreseeable future.”

62. The only specific assessment of cumulative impact provided in the Applicant’s Response is at paragraph 20(iii) and refers only to the “…cumulative impact from National Grid Work on the setting of heritage assets, including in paragraph 13.9.29 which states "The new OHL diversion towers would be 39m in height…. Whilst this may cause a negligible cumulative impact for the setting for some of the designated heritage assets, it is not considered to be significant.”

63. Putting aside the superficial and unstructured assessment by the Applicant, the statement exposes the substantial failure to recognise that cumulative impact is the combination of development features, existing and proposed, acting together. The reference to a single feature (the new OHL diversion towers) cannot provide such an assessment. There is nothing to indicate with which other features the towers were considered cumulative in their impact.

64. Paragraph 4.15.20 in Appendix B, The Review of Setting of Heritage Assets surrounding Eye Airfield (Appendix B in the Applicant’s Response to SCC MSDC Local Impact Report – Part 1, Appendices A – G) concludes “The proposed power generation plant will be to the east of the listed buildings. The development is unlikely to dominate the existing power related structures and will be an addition to a landscape that is already characterised by power generation. Although the plant may compromise the setting of the assets, the impact will be minimal cumulative.”

65. There is, with respect, a fundamental failure on the part of the Applicant to recognise and understand the process of cumulative effects, which increase, rather than decrease, as large scale industrial development is added to the landscape. Any structured assessment needs to consider all inter-project and intra-project effects

66. A structured approach should define a study area and assess both combined (where the observer is able to see two or more developments from one viewpoint) and sequential

7 See GLVIA 3rd Ed para 7.8
effects (where the observer moves from one viewpoint to another in order to see different developments or is moving through the study area).

67. The assessment of cumulative effects carried out by the Applicant is so seriously deficient that it bears no resemblance to the acknowledged and published guidance provided both by the government agency responsible for cultural heritage, nor the professional institute responsible for landscape assessment. It cannot be treated as providing the assessment of significant environmental effects in respect of cumulative impact required by the Directive and the Regulations. With each additional development the capacity of a locality to carry more diminishes rather than increases.

Consideration of Alternatives

68. The Infrastructure Planning Environmental Impact Assessment Regulations require that, where alternatives have been considered, information for inclusion in environmental statements includes, “an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice taking into account the environmental effects.”

69. The consideration of availability of alternative sites or approaches to development has long been accepted as a material consideration in the determination of applications for EIA development, particularly where a development is bound to have some adverse impacts: see Trust House Forte v Secretary of State (1986) 53 P&CR 293, where power stations are recognised as such developments.

70. In Trust House Forte the Court of Appeal (Simon Brown L.J.) held that where there are clear planning objections to development upon a particular site, it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. In his view, this was particularly so when a development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it.

71. The case of Forge Field (discussed above) has specifically recognised that alternatives need to be considered where the development causes harm to the setting of designated heritage assets. Lindblom J. (the current president of the new Planning Court) held that the statutory presumption in section 66 “implies the need for a suitably rigorous assessment of potential alternatives”

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8 IP EIA Regulations Schedule 4 Paragraph 18
72. The consideration of alternatives is not limited to sites, but can include other ways of dealing with the need for the application, including not carrying out the development at all. The material provided by the Applicant refers to the requirement to provide an outline of the main alternatives considered under the Regulations. It is clear that the assessment, which does not in fact identify any alternative site which the Applicant claims to have considered, is based on an underlying assessment that the application site is, in principle, acceptable. In the view of the Working Group, this approach is flawed, particularly having regard to the recent case law.

73. In respect of alternative sites the Applicant’s response merely repeats its assertion that it considers that it has met all relevant policy and legislative requirements. In respect of alternative sites for the power plant and the CCS, the totality of the information provided by the Applicant is provided in section 5 of the ES as follows:

“5.2.1 In deciding upon the Power Generation Plant Site, the Applicant has had regard to a number of factors, such as those described in NPS EN-2. However, the Applicant has also had regard to paragraph 2.2.1 of NPS EN-2, “it is for energy companies to decide which applications to bring forward and the government does not seek to direct applicants to particular sites for fossil fuel generating stations” unlike, for example, nuclear generating stations.

5.2.2 As part of a detailed feasibility assessment, the Applicant looked at a range of sites around the UK to support power generation plants of this nature. This search for potential power generation plant sites across the UK was focused on areas that were capable of meeting the Applicant’s strategic project development criteria:

- Acceptable proximity to national gas & the national electricity transmission system or local distribution networks;
- Located within areas that are net importers of electricity;
- Compatible land use designation/s.

5.2.3 In terms of technical constraints, the size of the site (i.e. large enough to support a power generation plant of up to 299 MW and integral infrastructure) and the proximity of a site to appropriate gas and electrical connection points were both key considerations.

5.2.4 From an environmental perspective, the site must have due regard to close sensitive receptors (to avoid unacceptable impacts from noise and visual disturbance), the current make up of the surrounding area (to limit impacts on the landscape character of the area), previous site uses and land quality (to avoid sterilisation of the best and
most versatile agricultural land or mineral assets) and proximity to sensitive ecological habitats.

74. To the best of the Working Group’s knowledge and belief the above statement represents the entirety of the environmental information submitted concerning the choice and selection of sites and the alternatives considered. As can be seen it fails to identify any of the alternative sites considered or to explain why they were rejected and, in relation to cultural heritage whether the likely significant effects on those sites considered was comparable, greater or less than the impact on the Eye Airfield site. No outline of the alternative sites considered has been provided and the Working Group is unable to understand for what environmental reasons, if any, the alternative sites that were considered were not chosen. Simply setting out, as the Applicant has done in the ES section 5 the reasons why the application site was considered satisfactory, is not an adequate assessment of alternative sites. In fact it is not an assessment of alternative sites at all.

75. Accordingly, in terms of the statutory requirements in the Regulations, the ES fails to meet the requirements of paragraph 18 of Schedule 4.

76. This is a development which, self-evidently, and as an express finding by independent and statutory consultees, including the local and county planning authorities and the government agency with national responsibility for heritage assets, English Heritage, does have harmful impacts on nationally important designated heritage assets.

77. In addition, there are clearly adverse effects on the wider historic landscape and substantial impact on residential amenity for adjacent dwellings (and in particular Meadow Barn and The Leys) such that it would render them unattractive places to live and therefore affect their continuing viability.

Choice of Electricity Substation (ECC).

78. The Electricity substation has three key impacts:

1. Effect on setting of heritage assets;
2. Effect on living conditions of adjoining residential occupiers; and
3. Direct effect on important and rare undesignated assets – the surviving pre-Roman field pattern.

79. Agricultural intensification in the 20th century has thinned out the historic field patterns (of largely pre 18th Century enclosures) to some extent. However over large parts of this area enough remains intact to give a distinctive character to the landscape. The ECC has a notably poor fit with the underlying field pattern, necessitating significant loss of field boundaries and species-rich hedgerows.
80. The type of substation being promoted by the DCO is the AIS substation variant, which is three times larger than the alternative variant, the gas-insulated switchgear (GIS) substation.

81. The ES recognises that it would “constitute a new industrial element within a highly sensitive landscape characterised by a strongly rectangular, small-scale historic field pattern. The field pattern would be lost within the Electrical Connection Compound Site and the diagonal arrangement of the Electrical Connection Compound in relation to the field layout would leave severed, unusable areas of agricultural land….There would be widespread visibility of the Electrical Connection Compound from residential properties…. And from the nearby PRoWs” (Document 6.1, Table 11.9 page 618-620)

82. With respect to the GIS variant, the ES concludes that the “Impacts on landscape character would be similar to those described above for an AIS substation. However, due to the smaller footprint, the field pattern would remain substantially intact and the loss of boundary hedgerows would be less. The extent of mitigation planting would be constrained by the field pattern and smaller in extent compared to the AIS Substation layout.” (Ibid)

83. With either substation variant, the impact of the proposed changes to the pylon on the existing overhead line to which the substation would connect remains the same with gantries in both the substation and the sealing end compound.

84. The County Council in the Report to Cabinet, which accompanied their Written Representation in June 2014, at paragraphs 175 and 176 they state:

‘On that basis the Council contends that, irrespective of whether Progress Power and/or National Grid consider that an AIS version strikes an appropriate balance between the latter’s statutory obligations, the Secretary of State should consider whether the GIS variant overcomes significant impacts such that an AIS variant should not be consented.

As outlined in some detail above, based on the information provided and the conclusions of the Environmental Statement, the Council considers there to be significant, not ‘marginal’, environmental benefits to the GIS variant – specifically that mitigation would take effect up to 10 years earlier (Document 5.18.13), a co-axial field pattern of potentially considerable rarity and importance would be largely retained; impacts on agricultural operations would be reduced and ecological impacts would be lessened. These benefits, in the Council’s view, outweigh the additional costs associated with a GIS substation.’

85. Despite being asked to reconsider their choice of ECC, the Applicant and the National Grid remain committed to the AIS model, principally on grounds of costs. It is noted that Suffolk
County Council and Mid Suffolk District Council within their Deadline 3 Response question in depth the cost application and explain reasons why this approach is flawed.

86. The National Policy Statement on Energy, EN-1 acknowledges the visual impact from energy infrastructure nevertheless states that ‘Applicants and the IPC should consider taking independent professional advice on the design aspects of a proposal. In particular, Design Council CABE can be asked to provide design review for nationally significant infrastructure projects and applicants are encouraged to use this service.

87. EN-1 recommends that the IPC should also consider taking independent advice on the design aspects of the project.

88. It does not appear that such independent advice has been taken although it is clear that the advice from the joint authorities, SPS and, in particular, English Heritage, being the Government Agency, should be given very significant weight.

89. While the Applicant’s Response paragraph 20 refers to “the Electrical Connection Siting Report (Document Reference 10.3) [which] provides detail on the options considered as part of the siting of the Electrical Connection; consideration of the alternative GIS variant of the ECC and close examination of the justification for the preference of the AIS option and the scale and capacity of the ECC which far exceeds the connection needs of the energy plant proposed mean that independent assessment is imperative and has not been made. For these reasons (inter alia) serious doubts are now being raised as to the basis of the Applicant’s preference of this alternative. The Working Group’s analysis indicates that the difference in cost to the consumer is far less significant than was originally suggested and should not have ruled out the assessment of impact of less damaging alternatives.

Other matters

90. The Working Group notes the Applicant’s reference to Regulation 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 at paragraph 15 of the Response. However, that Regulation is directed to circumstances where the Examining Authority requires an interested party to provide further information and the Working Group does not consider that it applies to requirements that the Applicant should provide further information.

91. However the object of this Submission is to seek to ensure that environmental information that the Working Group considers the Applicant should have provided in the ES is made available in accordance with the Directive and the Regulations as to the impacts of the

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9 Comments by Mid Suffolk District Council and Suffolk County Council on documents submitted for deadline 2 – 2.10.14
proposal on the historic environment; in particular its adverse effects on the rich cultural heritage and valued landscape in the vicinity of the application site. If there is an alternative basis on which the Examining Authority can direct the Applicant to provide the required information, then provided that it has the same result, the Working Group is content that such alternative power is used.

**Overall Conclusions**

92. It is clear that there is widespread concern both from statutory bodies and from the Working Group that the assessment of impacts in the Environmental Statement carried out by the Applicant, particularly in respect of the effect on heritage assets, has not been adequate or appropriate.

93. Any decision based on the material currently submitted by the Applicant is likely to be susceptible to being defective either on the failure to assess the impacts of the development on the environment in accordance with the Directive and the Regulations and/or being based on immaterial considerations.

**The Direction to require Further Environmental Information.**

94. It is submitted that there is abundant justification, on the basis of the representations made so far, for the Examining Authority to find, at this stage, that the work previously carried out by the Applicant in their EIA is flawed and inadequate and that further work needs to be carried out. The Authority would therefore be able to make a direction under the Environmental Impact Regulations to require further information to be provided by the Applicant both in respect of the impact of the development on heritage assets and the availability of alternative sites to see whether any suitable sites are available that would not cause the identified harm.

95. The appropriate mechanism would appear to be through the application of Regulation 17 of the Infrastructure Planning Environmental Impact Assessment Regulations 2009.

96. In respect of the effect on the setting of heritage assets, the Direction might state that such further environmental information might include the consideration of all listed buildings and in particular to consider them fully in accordance with the guidance published by English Heritage in 2011, taking account of the increases in inter-visibility during the winter months, as well as the criticisms of the assessment made in representations referred to above.

97. The consideration of cumulative impact should also be properly considered and it may be helpful for the Direction to indicate that reliance on harm already caused to the settings of heritage assets to justify further harm is misconceived, as such an approach would lead to
iterative damage being caused. In determining previous applications, such as the permissions for the wind turbine development that has taken place at the site, the need to consider future cumulative effect would not have been a material consideration. It needs to be considered now and is not justified by previous harm.

98. The Applicant should be required to provide details which identify and provide the comparative assessment of the environmental impact on cultural heritage of alternative sites.

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