



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Meaford Energy Centre

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Energy and Climate Change**

Examining Authority

David Richards

19 April 2016

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Examination Authority's findings and conclusions and recommendation in respect of Meaford Energy Centre

File Reference EN010064

The application, dated 31 March 2015, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 31 March 2015.

The Applicant is Meaford Energy Limited.

The application was accepted for examination on 24 April 2015.

The examination of the application began on 20 August 2015 and was completed on 20 February 2016.

The development proposed is a Combined-Cycle Gas Turbine (CCGT) power station with the capacity of generating up to 299 megawatts (MWe) rated electrical output. It comprises a Power Station Complex along with a Gas Connection from a nearby point on the gas network, an Electrical Connection for the export of electricity, and other infrastructure works.

Summary of Recommendation:

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

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1 INTRODUCTION

1.1 INTRODUCTION

1.1.1 This application for a development consent order (DCO) for the Meaford Energy Centre (MEC) was submitted by Meaford Energy Limited (MEL) (the Applicant) on 31 March 2015. The application was formally accepted for examination on 24 April 2015 under the provisions of section 55 of the Planning Act 2008 (as amended) (PA 2008).

1.1.2 The application is for a Combined-Cycle Gas Turbine (CCGT) power station with the capacity of generating up to 299 MWe rated electrical output on land within the Meaford Business Park (MBP), between Barlaston and Stone, Staffordshire as shown on Figure 2.1.1 Site Location Plan in the ES [APP-003]. It comprises a Power Station Complex along with a Gas Connection from a nearby point on the gas network, an Electrical Connection for the export of electricity, and other infrastructure works all of which is or forms part of the Nationally Significant Infrastructure Project (NSIP). The draft DCO includes provisions for compulsory acquisition.

1.1.3 The application is Environmental Impact Assessment (EIA) development as defined by Regulation 2(1) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended). It was accompanied by an Environmental Statement (ES) which in my view complies with these Regulations. The ES was compiled following consultation on an earlier Scoping Report and takes into account the views of the Secretary of State set out in a Scoping Opinion published in April 2014.

1.2 APPOINTMENT OF EXAMINING AUTHORITY

1.2.1 Following acceptance of the application I was appointed as Examining Authority (ExA) by the Secretary of State on 24 June 2015 to carry out the Examination of the application.

1.2.2 The application has been examined under the provisions of PA 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) (EPR). The accepted application was advertised by the Applicant and 15 relevant representations were received from interested parties (IPs). In addition I accepted into the Examination additional application documentation, two late representations and one request to become an interested party under the provisions of s102A of PA 2008, all submitted prior to the Preliminary Meeting.

1.2.3 On 17 July 2015 I gave notice of the Preliminary Meeting to be held at the Yarnfield Conference Centre near Stone on 20 August 2015 and issued an initial assessment of principal issues that I expected to consider during the Examination with a draft timetable for the Examination [PD-004]. On 27 August 2015 I issued the timetable for

the Examination [PD-005] and my first set of written questions and requests for information [PD-006].

- 1.2.4 A joint Local Impact Report (LIR) [LIR-001] was submitted by Stafford Borough Council (SBC) and Staffordshire County Council (SCC).
- 1.2.5 On 11 November 2015 I held an Issue Specific Hearing (ISH) on the environmental effects of the project and the draft DCO. A further ISH on the draft DCO was held on 12 November 2015. A compulsory acquisition hearing (CAH) was also held on 12 November 2015.
- 1.2.6 I carried out an accompanied site visit on 22 September 2015 during which I visited the proposed site for the generation plant, a number of locations in the vicinity from which the NSIP would be visible and local roads that would be used by construction traffic [EV-004]. I also made unaccompanied site visits to locations from which the application site is visible [EV-003].
- 1.2.7 On 7 January 2016 I issued a Rule 8(3) letter varying the Examination timetable, removing deadline 9 from the timetable, and giving notice of possible early closure of the examination in the event that no further information was received [PD- 010]. No response was received to the Rule 8(3). I closed the examination on 21 January 2016 [PD-011].

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.1 THE APPLICATION AS MADE

- 2.1.1 MEL is a joint venture company established by St Modwen and Glenfinnan Properties. Both companies have a background in the development and economic regeneration of sites throughout the UK, including the energy sector.
- 2.1.2 The Scheme constitutes an NSIP by virtue of section 14(1)(a) and section 15 of the PA 2008 which includes within the definition of an NSIP any onshore generating station in England or Wales of 50MWe capacity or more.
- 2.1.3 The Scheme comprises:
- a CCGT power station complex (the "Power Station Complex") (work numbered 1 in Schedule 1 of the Order);
 - an integral electrical connection (the "Electrical Connection") (work numbered 3 in Schedule 1 of the Order);
 - the integral gas connection (the "Gas Connection") and above ground installation (AGI) (work numbered 2 in Schedule 1 of the Order);
 - the Northern Access Road works (work numbered 4 in Schedule 1 of the Order);
 - the temporary and permanent Laydown Areas (Work numbered 5 in Schedule 1 to the Order);
 - replacement, maintenance or refurbishment of existing surface water drainage (work numbered 6 in Schedule 1 of the Order);and
 - the landscaping works (work numbered 7 in Schedule 1 of the Order).
- 2.1.4 The applicant identified all of the works as being integral to the development and none as associated development. I agree that all the works included in the DCO are integral to the project.
- 2.1.5 The Power Station Complex would be fuelled by natural gas and would have an electrical generation capacity of up to 299 MWe. The electricity generated would be exported to the National Grid via an existing local distribution network electricity sub-station (Barlaston Substation) within the MBP Site, beside the Power Station complex.
- 2.1.6 The Scheme is located mainly within the MBP Site [APP-005]. The components of the Scheme are identified in the Works Plans [APP-007].
- 2.1.7 The MBP comprises approximately 43 hectares of largely brownfield land with extant outline planning permission for warehousing, industrial, offices and business support activities on 34 ha of the MBP Site. The former Meaford A and B coal-fired power station buildings have been demolished, although some evidence of this past use

remains, including several retained buildings at the northern end of the MBP Site, overhead electricity lines and two sub-stations, located at the northern and western sides of the MBP Site. These sub-stations are identified as Meaford C sub-station and Barlaston sub-station respectively.

- 2.1.8 The MBP Site occupies a low-lying position between the River Trent and the Trent and Mersey Canal. The site is currently predominantly vacant and derelict. From the southern and eastern boundaries of the site the land slopes down to the main central area of the MBP Site, which contains extensive areas of levelled land with excavations and stockpiles of soil and rubble associated with the demolition of the former power stations.
- 2.1.9 At the northern end of the wider MBP Site are a number of red-brick buildings and a bowling club, both of which were associated with the former Meaford A and B power stations and which remain in use today.
- 2.1.10 Road access is gained currently from the junction with Meaford Road (known as the Northern Access Road) at the north-western corner of the MBP Site. Another former access (which is within the Order Limits as identified on the Works Plans [APP-007] from Meaford Road adjacent to the western, Barlaston sub-station is gated, disused and protected by concrete blocks.
- 2.1.11 The MBP Site is bordered by mature trees and shrub vegetation in a variable condition. Parts of the north-eastern and southern areas of the MBP Site are well vegetated with mature trees, and the eastern and western site boundaries also benefit from mature tree growth, particularly adjacent to Meaford Road where self-set birch and coniferous species predominate. The woodland located at the southern extent of the MBP Site is dominated by broad-leaf tree species including sweet chestnut, lime, common ash and large areas of old hazel coppice.
- 2.1.12 The Trent and Mersey Canal runs along the eastern boundary of the MBP Site for much of its length, and the West Coast Main Line railway follows a generally parallel route on the eastern side of the canal. Meaford Road forms the western boundary of the MBP Site. To the west of Meaford Road the River Trent follows a meandering course across its flood plain on the valley floor.
- 2.1.13 The MBP Site is not covered by any national or local landscape, ecological and heritage designations. The Trent and Mersey Canal has been designated as a Conservation Area.
- 2.1.14 Figure 4.1 of the ES [APP-051] shows the Order Limits of the Application and general works areas for the Scheme. Land within the Order Limits is approximately 16.6 hectares (ha) in area and includes approximately 3.2 ha in the central part of the MBP Site on which the Power Station Complex would be constructed. The existing Barlaston

sub-station is adjacent to the area where the Power Station Complex would be located, enabling the electrical connection that the proposed Power Station Complex would require.

- 2.1.15 To the north of the Power Station Complex, the MEC Site incorporates two linear corridors, accommodating the proposed highway access (known as the Northern Access Road) and accommodating the Gas Connection described later in this chapter. The Northern Access Road extends north-westwards to its junction with Meaford Road.
- 2.1.16 From the central part of the MEC Site, the Gas Connection corridor runs at first north-eastwards from the Power Station Complex, passing under existing overhead electricity lines, and then parallel to an existing overhead line towards the eastern MBP Site boundary. The corridor then includes two existing bridges that cross the Trent and Mersey Canal (Canal Bridge 101) and the West Coast Main Line Railway (Rail Bridge 104), before terminating at the Gas Connection point with the Local Transmission Network (LTS) high pressure gas pipe.
- 2.1.17 The Order Limits incorporate two construction and maintenance Laydown Areas. One is located within the northern part of the Site, shown as 'Works Package 5B' on the Works Plans [APP-007], which would be used for the construction of the Scheme and subsequently used as a permanent Laydown Area for the maintenance of the MEC and landscape mitigation. The second Laydown Area is located immediately to the south of the proposed Power Station Complex and would be temporary as it would be used for construction only. This is identified on the Works Plans as 'Works Package 5A', and would be landscaped once construction of the Scheme is complete.
- 2.1.18 Within the MBP Site there are extensive areas of hardstanding, earth mounding, localised depressions and spoil heaps. There are also a number of electrical pylons approximately 30 m in height with their overhead power lines linking to the Barlaston sub-station. In the north of the MBP Site are a number of occupied brick buildings in varying states of repair. The MBP Site is bordered by mature tree and shrub vegetation in variable condition, particularly adjacent to the Meaford Road. Adjacent to the Trent and Mersey Canal, the MBP Site is bordered by a chain link fence, which is in a poor condition with many sections damaged and some missing.
- 2.1.19 The immediate landscape context for the MEC Site is provided by the Trent valley, which runs generally north-south and contains three transport routes that reinforce this north-south emphasis. These are the Trent and Mersey Canal, the West Coast Main Line Railway and the A34 dual carriageway.
- 2.1.20 The local landscape is predominately an undulating landform of agricultural land with localised woodland blocks. Barlaston golf course is located to the north-west of the MEC Site. The closest residential properties to the Order Limits are properties on the A34, the closest of

which are approximately 300m south-west of the Order Limits. Properties along Washdale Lane including Meaford Farm lie approximately 450m east of the Site, and, off Meaford Road approximately 500m to the south of the Site, lie properties on St. Vincent Mews and Admiral's View.

2.1.21 The larger settlements of Stone and Barlaston are located to the south and north, respectively. The centre of Barlaston is approximately 1.2 km to the north. The outskirts of Stone lie approximately 0.9 km to the south of the MEC Site.

2.1.22 The locality incorporates a range of landscape character types. A rural pattern of open fields, broadleaved woodland, hedged country lanes and individual farms and properties is evident to the east of the Site. Downs Banks, a more open area of heathland, lies 0.8 km to the east of the Site in a valley bisected by the Downs Banks Brook. The open heathland landscape of Downs Banks has been restored by the National Trust and is maintained by traditional cattle grazing. The upper slopes of Downs Banks afford views over the local landscape.

2.1.23 Beyond the flood plain to the west of the MBP Site, notable landscape features include plantations of coniferous woodland on rising slopes within, which the Iron Age Bury Bank hill fort can be found.

2.2 THE APPLICATION AT THE CLOSE OF EXAMINATION

2.2.1 There were no material amendments to the application during the course of the examination. A number of minor changes to the drafting of the DCO and reference to additional illustrative plans that do not materially change the nature of the application are discussed in section 8 below.

2.3 RELEVANT PLANNING HISTORY

2.3.1 The site was previously occupied by Meaford A and B coal fired power stations which have since been decommissioned and demolished. It lies within Meaford Business Park, which has planning permission for some 110,000 m² of B1, B1 and B8 development, but has yet to be developed.

3 LEGAL AND POLICY CONTEXT

3.1.1 Chapter 2 of the ES sets out the Applicant's view of the policy context for the proposed development [APP-032]. Additional information on local planning policies was provided by the Applicant in response to the ExA's first round questions [PD-006] and by Stafford Borough Council (SBC) and Staffordshire County Council (SCC) in their joint LIR [LIR-001].

3.2 PLANNING ACT 2008

3.2.1 The proposed development of a gas fired generating plant with a capacity of between 50 and 299 MWe is an NSIP as defined in section 14(1)(a) and section 15 of PA 2008. National Policy Statements (NPS) in respect of this type of development have been designated and the Secretary of State must therefore, subject to certain exceptions, decide the application in accordance with the relevant NPS as specified in section 104(3) of PA 2008. Under section 104(2) the Secretary of State must have regard to any relevant NPS, any LIR and any prescribed matters including the Infrastructure Planning (Decisions) Regulations 2010 (the Decisions regulations).

3.2.2 This report sets out the ExA's findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 PA2008.

3.3 NATIONAL POLICY STATEMENTS

3.3.1 The Overarching National Policy Statement for Energy (EN-1) sets out the Government's policy for delivery of major energy infrastructure.¹ It was accompanied by five technology specific NPS for the energy sector. The National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2)², National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)³ and National Policy Statement for Electricity Networks Infrastructure (EN-5)⁴ are relevant to this application.

3.3.2 EN-1 states that the UK 'needs all the types of energy infrastructure covered by the NPS in order to achieve energy security at the same

¹ Overarching National Policy Statement for Energy (EN-1). Department for Energy and Climate Change July 2011. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37046/1938-overarching-nps-for-energy-en1.pdf

² National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2).). Department for Energy and Climate Change July 2011. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37047/1939-nps-for-fossil-fuel-en2.pdf

³ National Policy Statement for Gas Supply and Gas and Oil Pipelines (EN-4). Department for Energy and Climate Change July 2011. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47857/1941-nps-gas-supply-oil-en4.pdf

⁴ National Policy Statement for Electricity Networks Infrastructure. Department for Energy and Climate Change July 2011. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47858/1942-national-policy-statement-electricity-networks.pdf

time as dramatically reducing greenhouse gas emissions.' That includes fossil fuel plants such as the proposed development. It also states that applications for development consent should be assessed 'on the basis that the Government has demonstrated that there is a need for those types of infrastructure.'

- 3.3.3 Fossil fuel generation is recognised as playing a vital role in providing reliable energy supplies and providing flexibility in response to changes in supply and demand and diversity in the energy mix. The NPS recognises that fossil fuel plants produce CO₂ and sets a requirement that new plant over 300 MWe have to be constructed Carbon Capture Ready (CCR) so that Carbon Capture and Storage (CCS) can be retrofitted to the plant at a later date if required.
- 3.3.4 The 'authorised development' is defined in Schedule 1 of the DCO. The description of Work No. 1A (a) is 'one gas turbine building with up to two gas turbines and one steam turbine building with one steam turbine, each connected to its own generator with a combined rated electrical output of up to 299 MWe'. Article 5 of the draft DCO authorises the undertaker to operate and use the generating station comprised in the authorised development. Any production of electricity above the rated capacity would therefore be in breach of the terms of the DCO. As the maximum capacity of the proposed plant is limited by the terms of the DCO to 299 MWe there is no requirement to provide for carbon capture.
- 3.3.5 EN-2 recognises that fossil fuel generating stations are large and would have an impact on the surrounding landscape and visual amenity. It states that it is not possible to eliminate the visual impacts associated with a fossil fuel generating station. The purpose of mitigation measures is therefore to reduce the visual intrusion of the buildings in the landscape and minimise impact on visual amenity as far as reasonably practical. If the location is deemed appropriate and the plant has been designed sensitively to minimise harm to landscape and visual amenity then 'the visibility of a fossil fuel generating station should be given limited weight.'
- 3.3.6 EN-1 and EN-2 both recognise the contribution that combined heat and power (CHP) can make to reducing emissions and full exploration of the potential for CHP is a requirement of applications for thermal generating stations.
- 3.3.7 The NPS identify the contribution that good design can make to producing sustainable infrastructure and to mitigating adverse impacts of projects.
- 3.3.8 EN-1 sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. Generic impacts of particular relevance to this application include impacts on air quality and emissions, biodiversity, historic environment, landscape and visual, traffic and transport. Environmental, social and economic

benefits and adverse impacts at national, regional and local levels should be considered. Account should be taken of:

- (a) The potential benefits of the proposed development to meeting the need for energy infrastructure, job creation and any long term or wider benefits; and
- (b) Potential adverse impacts, including any long-term and cumulative adverse impacts, as well as measures to avoid, reduce or compensate for any adverse impacts.

3.3.9 EN-1 recognises that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment. This includes damage to the setting and significance of historic assets.

3.3.10 Additional specific considerations for fossil fuel generation, gas pipelines and electricity networks infrastructures are set out in EN-2, EN-4 and EN-5. Where relevant these are also considered in section 4 of this report.

3.3.11 EN-1 acknowledges that other matters such as local development plans may also need to be taken into account but states that in the case of any conflict between these other documents and the NPS, the NPS prevails for the purpose of decision taking. EN-1 states that the decision maker should start with a presumption in favour of granting consent to applications for energy NSIPs.

3.4 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

Renewable Energy Directive 2009

3.4.1 The Renewable Energy Directive sets out legally binding targets for Member States with the expectation that by the year 2020, 20% of the European Union's energy mix and 10% of transport energy will be generated from renewable energy sources. The UK's contribution to the 2020 target is that by then 15% of energy will be from renewable sources. The UK Renewable Energy Strategy 2009 (Renewable Energy Strategy) sets out how the UK proposes to meet the targets.

3.4.2 The applicant has stated that its proposal would contribute to the achievement of UK renewable energy targets by providing low carbon generating capacity to support more intermittent forms of renewable energy generation such as off-shore wind and solar.

Habitats Directive (Council Directive 92/43/EEC)

3.4.3 The Habitats Directive (together with the Wild Birds Directive) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The directive protects over 1000 animals and plant species and over 200 habitat types (for example:

special types of forests; meadows; wetlands; etc.), which are of European importance.

- 3.4.4 The applicant has stated that its proposal would have no likely significant effect in respect of the Habitats Directive (see paragraph 4.6.7 below).

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

Conservation of Habitats and Species (Amendment) Regulations 2012

- 3.4.5 The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) update the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.
- 3.4.6 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles.
- 3.4.7 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012. These Regulations amend the 2010 Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Wild Birds Directive) are transposed clearly.
- 3.4.8 The application proposal has been assessed as having no likely significant effect in respect of the Habitats Directive (see paragraph 4.6.7 below).

Water Framework Directive

- 3.4.9 On 23 October 2000, the EU Water Framework Directive (the WFD) was adopted. The Directive provides a framework for the integrated management of groundwater and surface water and commits EU member states to the achievement of good qualitative and quantitative status of all water bodies.
- 3.4.10 The Applicant undertook a Water Framework Assessment Screening in response to the WFD which is included in Appendix 14 to the ES [APP-143]. It concludes that the construction, operation and decommissioning of the Scheme will not:
- cause deterioration in the status of the ecological/chemical elements of the water body;
 - introduce impediments to the attainment of Good WFD status for the water body;

- compromise the ability of the water body to meet its WFD status objectives; or
- cause a permanent exclusion or compromise achieving the WFD objectives in other bodies of water in the same River Basin District.

3.5 OTHER LEGAL AND POLICY PROVISIONS

National Policy and Legislation

- 3.5.1 The National Planning Policy Framework(NPPF) sets out a number of core planning principles for land-use planning which include an emphasis on: high quality design and a good standard of amenity; taking account of the different roles and character of different areas; protecting Green Belts and recognising the intrinsic character and beauty of the countryside; supporting the transition to a low carbon future in a changing climate; conserving and enhancing the natural environment and reducing pollution; reuse of land that has previously been developed; promoting mixed use developments; and conserving heritage assets in a manner appropriate to their significance.
- 3.5.2 It emphasises the Government's commitment to securing economic growth and to meeting the twin challenges of global competition and of a low carbon future.
- 3.5.3 Insofar as they are relevant to the determination of this NSIP application, these matters are considered in the appropriate sections of the Report below. In the event of any conflict, the NPS advice prevails.
- 3.5.4 As part of the government's Electricity Market Reform package, a Capacity Market has been created. This is intended to ensure security of electricity supply by providing a payment for reliable sources of capacity, alongside their electricity revenues, to ensure they deliver energy when needed. This is intended to encourage investment to replace older power stations and provide backup for more intermittent and inflexible low carbon generation sources.

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)

- 3.5.5 The Wildlife and Countryside Act 1981 (WCA) is the primary legislation which protects animals, plants, and certain habitats in the UK. The WCA provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England Natural England). The Act also contains measures for the protection and management of SSSIs.
- 3.5.6 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV on miscellaneous provisions.

- 3.5.7 This has relevance to consideration of impacts on SSSIs and on protected species and habitats.
- 3.5.8 The applicant has stated that its proposal has no likely significant effect in respect of matters covered in the Act.

3.6 TRANSBOUNDARY EFFECTS

- 3.6.1 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations) the Secretary of State is not of the view that the proposed development is likely to have significant effects on the environment in another European Economic Area (EEA) State. The matter has been kept under continuous review throughout the examination and I agree with the conclusion of the Secretary of State.
- 3.6.2 In reaching this view the Secretary of State has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12: Transboundary Impacts⁵) and taken into account the information supplied by the Applicant.

3.7 LOCAL IMPACT REPORT

- 3.7.1 A joint Local Impact Report (LIR) has been submitted by Stafford Borough Council and Staffordshire County Council [LIR-001]. The principal matters addressed in the LIR are the socio-economic effects of the proposal, transport and traffic, air quality, noise and vibration, land contamination, flooding and drainage, waste and minerals, landscape and visual effects, ecology and trees, historic environment and archaeology, and the effects on public rights of way.
- 3.7.2 These matters are considered in section 5 of this Report.

3.8 THE DEVELOPMENT PLAN

- 3.8.1 The Development Plan for the area within which the proposal is located includes the Plan for Stafford Borough (PSB), adopted on 10 June 2014 [LIR-011], and Staffordshire and Stoke-on-Trent Joint Waste Local Plan 2010 - 2016 (JWLP) [LIR-012].
- 3.8.2 The PSB sets out the strategy for the delivery of sustainable development and includes strategic development locations for housing and employment.
- 3.8.3 The Meaford Business Park site is a brownfield site which is identified as a major developed site in the North Staffordshire Green Belt. The Trent and Mersey Canal Conservation Area also runs along the site's eastern boundary.

⁵ <http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

The following policies from the PSB are relevant to this proposal:-

SP1 - Presumption in favour of sustainable development

- 3.8.4 In terms of the strategic delivery of sustainable development across the Borough, SP1 reflects the presumption in favour of sustainable development contained within the NPPF.

SP2 - Stafford Borough housing and employment requirements

- 3.8.5 In addition to housing SP2 sets out the provision for approximately 8 hectares of employment land per year.

SP5 - Stafford Borough employment growth distribution

- 3.8.6 SP5 sets out the annual targets for the distribution of employment land identified in SP2 as follows:

- Stafford 56%
- Stone 12%
- Rest of Borough Area 32%

- 3.8.7 The Meaford Business Park and Meaford Energy Centre are included within the 'Rest of Borough Area'.

SP7 - Supporting the location of new development

- 3.8.8 SP7 seeks to deliver development or activities of a scale and nature appropriate to secure the sustainability of each settlement. Criterion (i) in particular allows for development in other locations and in the green belt where this is consistent with national policies and E5.

Policy E1 - Local Economy

- 3.8.9 Policy E1 seeks to support and sustain the local economy by, amongst other things, safeguarding an adequate supply and variety of land and buildings as set out in SP5.

Policy E5 - Major Developed Sites in the Green Belt

- 3.8.10 Policy E5 allows for complete redevelopment, where this is supported for employment purposes, providing this is consistent with SP7 and would not have a greater impact on the openness of the green Belt and the purposes of including land within it than the existing development.

Policy N1 - Design

- 3.8.11 Policy N1 sets out criteria for design quality under four general headings: 'use', 'form', 'space' and 'movement'. The criteria which are relevant to this proposal are use and form.

- 3.8.12 When considering 'use', provision (a) looks at the scale, nature and surroundings of major applications and requires that these are comprehensively master planned. The MEC is substantially located within the wider MBP which has yet to be built out.
- 3.8.13 When considering 'form', the policy requires at provision (d) that consideration is given to sustainable construction and energy conservation techniques in accordance with Policy N2. In turn criteria (g) and (f) give regard to biodiversity and landscape features, and require that design takes account of local character, context (including heritage assets), historic views and sight lines, and density. Amenity criteria are also considered in provision (e) with regards to noise and light implications and the amenity of adjacent uses, including residential properties.

Policy N2 - Climate Change

- 3.8.14 In seeking to mitigate against the impact of climate change, Policy N2 requires proposals to take particular account of the need to ensure that they are protected from and do not worsen flooding.

Policy N3 - Low Carbon Sources & Renewable Energy

- 3.8.15 Relevant provisions relate to residential amenity, the significance of heritage assets and their setting, and effects on the surrounding landscape, which essentially repeat the provisions in Policy N1. Additionally the policy requires that such proposals are accompanied by decommissioning conditions and the ability to ensure restoration of the site following the cessation of energy production.

Policy N4 - The Natural Environment and Green Infrastructure

- 3.8.16 Provision (a) refers to the Staffordshire Biodiversity Action Plan to increase and enhance biodiversity in general, as well as geological conservation and geodiversity through the management of networks. Provision (b) relates to the conservation and management of water courses including canal systems. Criterion (c) also provides that ancient woodland and ancient or veteran trees are protected, whilst criterion (f) seeks mitigation, compensation measures or appropriate site management regimes for unavoidable impacts on the natural environment.

Policy N5 - Sites of European, National & Local Nature Conservation Importance

- 3.8.17 Policy N5 identifies a hierarchy of designated nature conservation sites and measures to afford adequate protection and enhancement of such sites.

Policy N8 - Landscape Character

- 3.8.18 Policy N8 requires development proposals to be informed by, and be sympathetic to, landscape character and quality, which is

demonstrated through local site specific assessments in the context of Staffordshire Landscape Character Assessment together with Historic Landscape Character Assessment and the Historic Environment Character Assessment.

- 3.8.19 Developments should therefore demonstrate under provisions (a) to (d) that proposals with landscape and visual implications take account of elements of the landscape that contribute to the local distinctiveness of the area, including heritage assets, cultural character and biodiversity. Furthermore, the setting and views of or from heritage assets are identified, together with locally distinctive patterns of landscape elements such as woodland, streams, hedgerows, trees and field boundaries.

Policy N9 - Historic Environment

- 3.8.20 For proposals that would affect the significance of a heritage asset, Policy N9 requires sufficient information to be provided for the impact to be assessed. Furthermore, any potential harm to the significance of the heritage asset, including its setting, will require clear justification and which takes account of the factors including density of development; scale, form and massing of buildings and structures; materials; significant landscape features together with views and vistas; and archaeological remains.

Policy T1 - Transport

- 3.8.21 Policy T1 seeks to achieve a sustainable transport system through measures that principally include reducing the need to travel by private car in urban areas, requiring new development to produce transport assessments and travel plans, working with the Highway Authorities to improve highway safety, and reducing the need to travel through producing a balanced mix of land uses.
- 3.8.22 The following Policies of the Joint Waste Local Plan (JWLP) are also relevant to the proposal.
- 3.8.23 Policy 1 sets out general principles designed to ensure that waste is minimised and treated as a resource. Policy 1.2 applies these principles to non-waste related development and seeks to maximise the on-site management of construction, demolition and excavation waste arising during construction. Policy 1.3 favours the recycling of construction, demolition and excavation waste and the diversion of inert waste to quarries requiring backfill over new inert landfill/landraising proposals. Policy 1.4 sets out criteria for assessing the use of inert waste for the improvement of agriculture, forestry or landscaping.

3.9 THE SECRETARY OF STATE'S POWERS TO MAKE A DEVELOPMENT CONSENT ORDER

- 3.9.1 The application has been made in accordance with all statutory provisions and regulations. No material changes have been made

since the submission of the application, and nothing occurred during the course of the examination which would require the Secretary of State to consider whether the application had changed to the point where it was a different application.

3.9.2 In summary, having regard to the development consent applied for, the ExA considers that there is nothing to prevent the Secretary of State from making the DCO under s.114 of PA2008.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.1 MAIN ISSUES IN THE EXAMINATION

4.1.1 Annex C of the Rule 6 letter published on 17 July 2015 [PD-004] sets out my preliminary identification of the principal issues for the examination, as follows:

Policy

- Compliance with NPS, the NPPF and development plan policy
- Design, Layout and Visibility
- The design concept and process
- Landscape and visual effects, in particular effects on nearby residents, Downs Banks, the Local PRow network and the Trent and Mersey Canal

How good design will be secured through the provisions of the DCO

- Limits of deviation, and how these will be treated in the DCO
- Mitigation

Biodiversity, Ecology and Natural Environment

- Adequacy of baseline assessment
- Adequacy of proposed mitigation

Transport and Traffic

- Traffic movement and routing during construction
- Effects on service providers and emergency services
- Aviation

The Historic Environment

- Effects of the project on the settings of heritage assets, particularly the Trent and Mersey Canal and associated structures

Other Environmental Issues, including issues related to:

- Airborne emissions and air quality
- Noise, dust and vibration during construction and operation

Operational matters

- Implications of different operational scenarios as set out in paragraph 4.39 of ES 6.2.4 Volume 2 (The proposed development).

Compulsory Acquisition

- The need for the land proposed to be subject to compulsory acquisition
- The need to establish a compelling case in the public interest
- Financial arrangements and compensation

The Development Consent Order (DCO), including issues related to:

- Protective provisions
- Requirements

4.1.2 These matters were the subject of written questions by the ExA which were published on 27 August 2015 [PD-006]. Responses were received from the Applicant, SPs and IPs for Deadline 2 including SoCGs between the Applicant and SBC/SCC [REP2-019], between the Applicant and Natural England [REP2-017], between the Applicant and Historic England [REP2-016], and between the Applicant and the Environment Agency [REP2-015]. Matters arising from these representations were explored further at an Issue Specific Hearing (ISH) on Environmental matters held on 11 November, an ISH on the DCO held on 12 November in the morning, and a Compulsory Acquisition Hearing (CAH) held on 12 November in the afternoon.

4.2 ISSUES ARISING FROM WRITTEN SUBMISSIONS

Relevant representations

- 4.2.1 Amongst those IPs who were local residents including Terence Stock [RR1], Kenneth Hughes [RR2], and those represented by the Meaford Road Residents Association [RR5] the main concern was with potential impacts on dwellings, particularly traffic, noise and visual intrusion, rather than with the principle of the development. Particular concern was expressed over the relationship between proposals for developing the Meaford Business Park and the existing landscape features which were said to form part of the screening of the Meaford Energy Centre. The Meaford Road Residents Association also considered that the development would result in devaluation of their properties, and sought compensation from the Applicant.
- 4.2.2 A number of other IPs, statutory undertakers and licensed operators, including Western Power Distribution [RR9], National Grid Gas PLC [AS-002] and Network Rail [AS-005] were principally concerned with protecting rights, easements or existing installations and equipment within the site or otherwise directly affected by the proposed development. While not objecting to the principle of the development, they submitted holding objections, pending the satisfaction of their outstanding concerns. However they indicated they would withdraw their objections if satisfactory arrangements for the protection of these rights are included within the draft DCO, or through side agreements.

- 4.2.3 St Modwen Corporate Services Ltd (acting on behalf of the freeholder of the Meaford Business Park, St Modwen Properties 1 Sarl) fully supports the application [RR-010].
- 4.2.4 NATS confirmed that they did not anticipate any impact from this development and had no comments to make on the proposal. The Civil Aviation Authority [RR-003] suggested that any aerodrome operators/licenseses in the locality should be consulted. However they confirmed that 'given the maximum height of 50m and the likely event that there is no aerodrome issue ... the CAA would not in isolation make any case for lighting.' The Office of Road and Rail [RR-004] did not have any comments on the application.
- 4.2.5 The National Trust [RR-011] owns, manages and provides public access to some 68.4 Ha of land close to the application site. While welcoming the landscaping mitigation proposed, including retention of existing areas of woodland, they object to the impact of the power station on Downs Banks, particularly the view from Receptor 8 (view looking west from the footpath on the western edge of Downs Banks) [APP-075], in the absence of further mitigation through design, colour and off-site landscaping.
- 4.2.6 The Canal and River Trust [RR-012] raise a number of issues, including the impact of the gas pipeline on the structure of Malkin's Bridge (Bridge 101), the need for repairs to the bridge structure, the effect on the canal conservation area, the need for appropriate landscaping adjacent to the canal and the removal of redundant pipes from Turnover Bridge (Bridge 100) which is a Grade II listed structure owned by the Trust. The Trust objected to the compulsory acquisition provisions in respect of their ownership, but would pursue efforts to reach prior agreement with the Applicant with a view to granting the necessary land and rights.
- 4.2.7 Royal Mail Group Limited [RR-013] expressed concern that its ability to deliver an efficient mail sorting and delivery service could be impaired by the cumulative traffic impact of the construction of the MEC, the MPB and other major developments in the area. The University Hospitals of North Midlands NHS Trust [RR-014] were concerned about the possible impact of construction traffic and sought liaison arrangements between themselves and Meaford Energy Ltd in the event of difficulties arising.
- 4.2.8 Highways England [RR-006] requested the inclusion of additional information in the final version of the Construction Traffic Management Plan (CTMP) including an HGV booking/management system, a mechanism for notifying abnormal loads, management of HGVs during concrete pouring, information on HGV routeing and a methodology for monitoring, review and penalties for infringements of agreed targets.
- 4.2.9 Public Health England [RR-015] noted that the conclusion of the air quality and modelling assessment of the ES that there would be no

significant impact on health, and confirmed that they did not wish to register as an interested party.

- 4.2.10 Natural England [RR-008] asked to be registered as an interested party but confirmed they did not have any significant concerns in relation to this application.
- 4.2.11 South Staffordshire DC [RR-007], a neighbouring authority, confirmed they did not have any comments to make.

Written representations

- 4.2.12 At the written representations stage, GTC and the Office of Rail and Road confirmed they had no comments on the proposed development. Historic England confirmed their previously expressed view that there would be no adverse impact on cultural heritage from the proposed development [REP2-005]. The Environment Agency responded to the ExA's written questions but confirmed they did not wish to submit a written representation and did not feel it necessary to speak at or attend any hearings [REP2-006]. Highways England reiterated its request (See paragraph 4.2.8 above) for further matters to be included in the CTMP [REP2-007].
- 4.2.13 Mr Edmund Kuhn submitted two further representations on behalf of Meaford Road Residents Association. The first presented further evidence concerning the alleged reduction in property values that would result from the development [REP2-003]. The second concerned a reserved matters planning application submitted to Stafford Borough Council for two buildings at the southern end of Meaford Business Park, which, if approved, would result in the felling of mature trees which the Residents Association believed to have been identified as part of the screening for the MEC [REP2-004].
- 4.2.14 A written representation from Staffordshire County Council [REP2-010] sets out the Council's general support for the principle of the development, while raising a number of matters of detail including the effectiveness of the proposed 10 metre landscape strip adjacent to the Trent and Mersey Canal, the potential for maintenance of the power lines under the vegetation to reduce its effectiveness, and identifying opportunities for further landscaping and ecological mitigation within the site. The representation also sought the inclusion of measures for managing abnormal loads, the enforcement of the proposed routeing of construction vehicles and the inclusion of arrangements to ensure that the southern access would be used for construction following the completion of the A34 junction and access road improvement works currently under construction. Changes to the requirements in the DCO were also canvassed to address these points.
- 4.2.15 These matters are addressed in the relevant sections of Section 5 below.

4.3 ISSUES ARISING IN LOCAL IMPACT REPORTS

4.3.1 The issues identified in the LIR [LIR-001] set out above at paragraph 3.7.1 as being of greatest concern to local authorities were: traffic during the construction phase, air quality, noise and vibration, flooding and drainage, landscape and visual effects, ecology and trees, and effects on the historic environment.

4.4 CONFORMITY WITH THE DEVELOPMENT PLAN POLICIES

4.4.1 The proposal would be generally in conformity with the relevant Strategy Policies of the PSB, identified in paragraphs 3.8.3 - 3.8.10 above. It would contribute to the promotion of sustainable development and help to unlock the development of the Meaford Business Park, a key strategic employment site in the Borough

4.4.2 With regard to the Employment Policies it would make appropriate use of a site identified for employment use, and would help to bring forward the development of land identified for employment use in the Meaford Business Park.

4.4.3 Policy E5 allows for the complete redevelopment of identified Major Developed Sites in the Green Belt, provided it would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development. The Policy is generally in accord with the advice in the Framework.

4.4.4 In the first round of written questions [PD-006, Question PLC 1], the ExA requested an explanation of how the proposal should be assessed in respect of Policy E5 and the associated advice in the Framework. In its response, the local planning authority (SBC), considered that it was necessary to give consideration to all buildings within the wider Business Park area, including the MEC, in relation to the previous power station buildings, and provided a brief resume of the planning history [REP2-008].

4.4.5 In considering the original outline application for the MBP site the local planning authority stated that the power station buildings included five cooling towers, a high chimney and power station hall amounting to 51,000 m² of footprint area, with other buildings amounting to a further 3,746 m² footprint. The five cooling towers were 76 metres high and the chimneys were up to a height of 124 metres. The assessment also acknowledged that the Business Park proposals would not significantly encroach onto non-brownfield areas of the site and would be much lower in height, so in consequence would be less visually intrusive in the Green Belt. The local planning authority concluded that while the building footprint would be somewhat larger than what previously existed, the proposals would have less impact on the Green belt by virtue of being lower and capable of being well screened [REP2-008, Question PLC 1].

4.4.6 The most recent 2014 permission for an extension of time for the implementation of MPB (1/21379/EXTO) grants permission for the

development of 110,000 m² of industrial and storage and distribution floorspace, within the 34.1ha development. In determining the application the local planning authority considered that the principle of development remained acceptable in terms of the Framework and Policy E5 of the SPB. However, as the MEC proposal was by then under consideration, it was considered necessary to secure a Section 106 obligation for the whole site limiting the overall floorspace to 110,000 m² within a footprint of 96,500 m², and within an area not to exceed 34.1 hectares in total including the footprint and floorspace permitted by the DCO. This was provided in the form of a Unilateral Undertaking dated 1 May 2015 [LIR-008].

- 4.4.7 The highest components of the MEC proposal would be the 50 m high flue stacks and the 35 metre heat recovery steam generator buildings. The site was previously occupied by the major structures associated with Meaford A and B Coal Fired Power Stations, including the substantial turbine halls, cooling towers, distribution infrastructure and associated uses such as fuel stockpiles, all of which had a significant visual impact on the surrounding area. The impacts of the current proposal are addressed in detail in the ensuing sections, but in general terms it is the case that the construction of a gas fired power station of up to 299 MW capacity, within the parameters set out in the draft DCO, would have a substantially reduced impact on the openness of the Green Belt in comparison with the previous structures on the site. The combined impact of the MEC and MBP is governed by the unilateral undertaking limiting the overall footprint of the MBP. In this context I agree with the conclusion of the local planning authority that the combined effect of the MEC and MBP proposals would not have a greater impact on the openness of the Green Belt, and so would comply with Policy E5 of the PSB.
- 4.4.8 Design is fully addressed in Section 5.1 below, where I conclude that the issue of good design has been satisfactorily addressed in the evolution of the project, and in the drafting of the DCO. The use is appropriate for the identified MBP site, and does not give rise to any significant conflicts with the relevant environmental policies of the plan (Policies N1 - N5, N8 & N9). Mitigation is proposed which satisfactorily addresses issues arising in respect of visual and landscape impact, biodiversity, climate change, heritage, and amenity considerations. The development would contribute to carbon reduction through the use of natural gas to generate electricity in support of intermittent sources of low carbon or carbon free electricity, such as windfarms.
- 4.4.9 With regard to Policy T1, the proposal would give rise to very little traffic during operational phase. The fuel supply would be by pipeline direct to the site. The DCO includes measures to minimise disruption during the construction phase through the Construction Traffic Management Plan, and to promote car sharing and other sustainable modes of transport.
- 4.4.10 The DCO also secures measures to ensure general compliance with the provisions of the Joint Waste Local Plan (JWLP), including waste

minimisation, on-site management and recycling of construction, demolition and excavation waste.

- 4.4.11 Paragraph 6.5 of the Joint SoCG between the Applicant, SCC and SBC, records that the parties agree, in principle, that the scheme is compliant with the relevant policies of the development plan [REP2-019]. Nothing arose during the course of the Examination which leads me to take a different view, and I therefore conclude that the proposal would be broadly in accordance with the provisions of the development plan.

4.5 THE PRINCIPLE OF THE DEVELOPMENT

- 4.5.1 PA 2008 requires that applications for energy infrastructure must be decided in accordance with the relevant NPSs except to the extent that to do so would lead to the UK being in breach of its international obligations, be in breach of any statutory duty, be unlawful, would result in adverse impacts from the development outweighing the benefits or would be contrary to regulations.

- 4.5.2 Paragraph 3.3.10 of NPS EN-1 sets out the Government's commitment to increasing dramatically the amount of renewable generation capacity as part of the need to diversify and decarbonise electricity generation. 3.3.11 recognises that some renewable sources are intermittent and cannot be adjusted to meet demand. As a result, more renewable generating capacity requires more capacity overall, to provide back-up at times when the availability of intermittent resources is low.

- 4.5.3 Paragraphs 3.6.1 and 3.6.2 address the role of fossil fuel electricity generation. It states that:

'Fossil fuel power stations play a vital role in providing reliable electricity supplies: they can be operated flexibly in response to changes in supply and demand, and provide diversity in our energy mix. They will continue to play an important role in our energy mix as the UK makes the transition to a low carbon economy, and Government policy is that they must be constructed, and operate, in line with increasingly demanding climate change proposals.'

'Fossil fuel generating stations contribute to security of energy supply by using fuel from a variety of suppliers and operating flexibly. Gas will continue to play an important role in the electricity sector - providing vital flexibility to support an increasing amount of low-carbon generation and to maintain security of supply.'

- 4.5.4 The need for the proposed development has not been challenged by any SP, IP or other person. In principle, a CCGT power station fuelled by natural gas fits clearly into the energy strategy set out in NPS EN 1. The remainder of this report considers whether any adverse impacts of the development would outweigh the benefits.

4.6 ENVIRONMENTAL STATEMENT (ES) AND ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 4.6.1 The application was accompanied by a comprehensive ES which covered likely significant impacts in relation to socio-economic effects, transport and traffic, noise and vibration, landscape and visual effects, air quality, ecology, historic environment, ground conditions, and the water environment. Cumulative and in-combination effects were also considered [ES Chapter 16, APP-046]. An Arboricultural Impact Assessment [APP-127], Habitats Risk Assessment - No Significant Effects Report [APP-029], Flood Risk Assessment [APP-026], a Water Framework Directive Assessment (APP-143) and a Drainage Strategy [APP-144] were included, together with a draft Construction Traffic Management Plan (CTMP) [APP-117], a Site Waste Management Plan (SWMP) [APP-146] and a Construction Environment Management Plan (CEMP) [APP-147]. A non-technical summary was provided in ES Vol 1 [APP-030].
- 4.6.2 The adequacy of environmental information was considered initially at acceptance stage and the S55 checklist records that the level of detail provided meets the minimum requirements set out in Schedule 4 Part 2 of the 2009 Regulations [PD-001]. I am satisfied that the ES adequately assesses likely significant effects, including any significant residual effects taking account of the proposed mitigation measures, in accordance with the advice in Section 4.2 of NPS EN-1.

Habitats Regulations

- 4.6.3 The ES considered whether the proposed development would have any implications for the Habitats Regulations. A 'No Significant Effects' report was provided with the ES Ref 5.7 [APP-029]. The HRA Screening Assessment considered four identified designated international sites:
- Midland Meres and Mosses Phase 2 Ramsar site located approximately 10.5 km to the south west;
 - Pasturefields Salt Marsh Special Area of Conservation (SAC) located approximately 14.84 km to the south east;
 - West Midlands Mosses SAC located approximately 15 km to the south east; and
 - Midland Meres and Mosses Phase 1 Ramsar site located approximately 15 km to the south east.
- 4.6.4 The Applicant concluded that the only potential effects on international sites as a result of the construction of the scheme would be from water and/or air pollution. In the Applicant's view the sites are sufficiently far away from the scheme that they would be unaffected by any water pollution incidents.
- 4.6.5 The Air Quality assessment for the Scheme identified that increments to ground level concentrations of oxides of nitrogen are 0.1% of the critical level at all four sites, and the contributions of the scheme to

the relevant critical loads for nitrogen deposition are equal to or less than 0.1%. Such increments are considered negligible. It was concluded that the scheme would have no likely significant effect on any of the sites, and accordingly it was not necessary for an Appropriate Assessment to be made [APP-029 and REP2-014].

4.6.6 The EA have agreed with the Applicant the ES assessment of significance (alone and cumulatively) in respect of both air quality and the water environment [REP2-015]. A similar agreement was reached with Natural England in respect of the assessment of significance in relation to protected sites and species in which NE might have an interest [REP2-017].

4.6.7 Having regard to the views of the EA and NE I conclude that the Secretary of State can be confident that the scheme is not likely to have a significant effect alone or in combination with other plans or project on sites with which the Habitats Regulations are concerned.

Consideration of alternatives

4.6.8 The EIA Regulations⁶ require that an ES should include an outline of the main alternatives that have been considered and an indication of the main reasons for its choices, taking into account the likely significant impacts of each alternative.

4.6.9 NPS EN-1 (Para 4.4.1 - 4.4.2) states:

'From a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. Furthermore, it is not necessary to consider alternative technologies for generating stations.'

However:

Applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the Applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility.'

4.6.10 The alternatives that have been considered by the Applicant are set out in Chapter 3 of the ES [APP-033].

4.6.11 The Applicant undertook a strategic search for potential sites, focused initially on identifying locations where gas supply and electrical grid networks with sufficient capacity to serve a new CCGT power station coincide. The ES notes that there are relatively few areas of the country where this criterion is met, and many of the locations that do comply are already the subject of power station proposals by other

⁶ Infrastructure Planning (Environmental Impact Assessment) Regulations (Amended) 2012.

developers. Meaford was one of four locations examined nationally that met the criterion. It is a very large brownfield site (formerly occupied by Meaford 'A' and 'B' coal-fired power stations) which has two existing electricity sub-stations and a number of gas distribution pipelines in close proximity. It is owned by St Modwen, one of the Applicant's principal shareholders.

4.6.12 Given its history, the site is largely free of environmental designations. It is identified as a major developed area within the green belt in the development plan, allocated for new employment uses. There is an existing outline planning permission for 110,000 m² of storage and distribution usage.

4.6.13 The scale of the site affords several site options for a CCGT power station. The Applicant undertook a review of site options within the larger MBP site which found that it would be technically feasible to locate the power station complex in the northern, central and southern areas of the site. A consultation exercise indicated that many consultees preferred the southern siting option because it is better screened by trees and woodland, closer to the A34, distance from Barlaston and because it occupies a similar position to the former Meaford 'B' power station, a much larger structure than what is now proposed. Taking into account that the north and central sections would place the upper sections of the scheme more directly in the view from dwellings along the A34 the Applicant concluded that the southern option would be most suitable because it:

- is located on a relatively low-lying and flat part of the MBP Site at a suitable distance from housing and other sensitive receptors in the area around the MBP Site;
- is in a derelict and largely unvegetated area of low ecological potential, and is not subject to flood risk;
- takes advantage of existing tree cover on rising ground to the south of the MBP Site for visual containment;
- makes full and effective use of a triangular area of land defined by existing high voltage overhead lines that terminate at the Barlaston substation, and leaving less constrained areas of the MBP Site available for employment uses in accordance with the Stafford Borough Local Plan;
- is next to the existing Barlaston substation through which it is proposed to make the electricity grid connection, thus minimising the length of cable connections;
- can be connected to the local gas distribution network through a relatively short length of new pipeline;
- is less likely to affect residential visual receptors in Barlaston and on the A34 than the other two options; and
- was the preferred option during the non-statutory consultation.

4.6.14 In the joint LIR, SBC and SCC commented that the photomontage in Appendix 10.3 Annex 2 Figure 9 [APP-122] does not appear to support the Applicant's position that the southern location would have lesser visual effects [LIR-001]. The landscape and visual implications of the

proposal are discussed in Section 5.9 below. However from my visit to the site and surroundings, I consider that there are clear advantages from the proposed siting on the relatively low-lying part of the site, where adjoining woodland to the south provides established screening and where a direct connection can be made to Barlaston sub-station. SBC and SCC remain broadly supportive of the siting of the scheme within the Meaford Business Park.

4.6.15 I therefore consider that an appropriate and proportionate evaluation of alternatives has been undertaken in the ES. This site is available to the Applicant and offers reasonable certainty of delivery if the DCO is approved. To my mind it offers a relatively scarce set of circumstances where the relevant policy matrix, the brownfield character of the site, the ready availability of a gas supply and distribution infrastructure and the absence of significant environmental constraints coincide to create a highly favourable context for the development proposed.

4.6.16 On this basis the Secretary of State can be satisfied that the site chosen by the Applicant is an appropriate location for the type of development proposed.

Mitigation measures

4.6.17 Table 17.1 of Chapter 17 of the ES provides a summary of mitigation measures [APP-047]. These broadly fall into three categories:

- Measures included within the scheme design, such as choice of technology and fuel to achieve reduced carbon emissions, distance from residential and other sensitive receptors, provision of on-site nature conservation features, and landscape enhancement.
- Measures to be undertaken during the construction stage, to be delivered through the draft CEMP and CTMP, final versions of which must be approved by the relevant planning authority prior to construction.
- Management actions to be undertaken as part of the operation of the scheme, including environmental permitting requirements.

4.6.18 A summary of the main mitigation measures proposed and how these would be secured through the DCO or other means is set out below in tabular form. Where specific issues concerning the effectiveness of mitigation have been raised by IPs, or have otherwise arisen during the course of the examination, these are considered and addressed in Section 5 of the report (below).

Issue	Proposed mitigation	Means of implementation
Air Quality	Inherent design Stack height Choice of technology and fuel	R3* R3 and EP EP

	Site management practices during construction	R5 CEMP R10 CTMP
Flood Risk and Water quality	Inherent design Drainage Strategy Piling Strategy Site management practices during construction Contamination	R3 and EP R13 R7 R5 CEMP R6
Noise and vibration	Inherent design (insulation) Piling Strategy Hours of working during construction Site management practices during construction	R3 and EP R7 R12 R5 CEMP R10 CTMP
Lighting	Inherent design	R14
Ecology	New planting and ecological mitigation Habitat Management Plan Site management practices during construction	R4 - Work Nos. 1E, 5B, 6 & 7 R9 R5 CEMP
Landscape and visual impact	Inherent design Landscaping and new planting Decommissioning	R3 R4 R21
Historic heritage	Inherent design Landscaping and new planting Repairs to bridge plinths	R3 R4 R16
Traffic and transport	HGV routeing Travel plan for operational phase Hours of working	R10 CTMP R11 R12
Socio economic impact	Scheme to promote local benefit	R18
<p>* Rxx signifies a requirement of the DCO</p> <p>EP: Environmental Permit</p> <p>CTMP: Construction Transport Management Plan</p> <p>CEMP: Construction Environment Management Plan</p>		

5 ENVIRONMENTAL EFFECTS

5.1 GOOD DESIGN

- 5.1.1 Criteria for good design in energy infrastructure is set out in Section 4.5 of NPS EN-1. It states that high quality and inclusive design goes far beyond aesthetic considerations. The functionality of an object including fitness for purpose and sustainability is equally important. Paragraph 4.5.1 of the NPS advises that 'Applying good design to energy projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible'. It acknowledges in the same paragraph however that the nature of much infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.
- 5.1.2 Section 4.9 of NPS EN-1 is concerned with grid connection as an important consideration for Applicants for this type of energy infrastructure. The MEC site is brownfield land which was formerly used for power generation in the form of substantial coal-fired power stations. The distribution network remains in place and the transformers, equipment and transmission lines operated by the regional power distribution company are prominent features of the site. In addition National Grid Gas has a main trunk pipeline close to the site from which the fuel supply will be taken. These factors contribute strongly to the functionality of the proposed development, in that they make effective use of existing fixed infrastructure, and avoid the need for significant new connections with potential for environmental impact.
- 5.1.3 The final design of the project is not yet known though the visual assessment has been undertaken on the basis of a worst case 2 + 1 arrangement which represents the largest volume of buildings and structures that would be consented, illustrated in Drawings 5105324 MEA DRG 103, 104, 105 [APP-010, APP-011, APP-012]. A series of photomontages were prepared as part of the ES [APP-074 to APP-084]. Photosheet I [APP-075] presents a representative view in Year 1 post construction from Receptor No 8 (Footpath on Downs Banks), and Photosheet J shows the same view with the Meaford Business Park development [APP-076]. Photosheet K [APP-077] illustrates a relatively open view of the MEC from Receptor 42 (adjacent to A34 due west of the application site) and Photosheet L [APP-078] the scheme with Meaford Business Park.
- 5.1.4 The gas turbine building is shown as a typical orthogonal building up to 25 metres high, which would be similar in appearance to a large B2 or B8 building. To my mind it would not be significantly more intrusive than buildings which could be erected under the existing outline planning permission for the Meaford Energy Centre. The steam turbine building and air condenser block would be of a similar height and again not untypical of business park development in external

appearance. The other principal elements would be the stacks of up to 50 metres and associated heat recovery buildings of up to 35 metres. These would be the most prominent elements of the scheme. However, they are a functional requirement of this type of scheme and, as they would be set at a relatively low level in the surrounding landscape, I do not consider they would be excessively dominant or intrusive, though they would certainly be noticeable from some viewpoints, including those referred to above.

- 5.1.5 Draft Requirement 3 of the DCO includes provisions for the approval of the siting, design, external appearance, dimensions and floor levels of all permanent building and structures, as well as the colour, materials and surface finishes. The design of each numbered work must be substantially in accordance with any relevant design objectives set out in the Design and Access Statement submitted with the application, which includes: siting of the scheme in relation to environmental constraints, securing a compact and ordered form of development; achieving high quality design with appropriate materials and colouring; and using planting and landscaping to 'soften' the site and promote wildlife.
- 5.1.6 The Applicant also proposes to amend the wording in the Design Objectives Statement to the following:-
- "given the green belt location and proximity to conservation areas, all buildings and structures should be of high-quality design, employing a palette of appropriately-graded colouring, and avoiding bright, prominent or reflective materials;"*
- 5.1.7 On this basis SBC, the planning authority that will be responsible for approving the final design details considers that Requirement 3 in the DCO provides adequate measures for SBC to influence the design aspects of the proposal and which are now reinforced by the amended wording to the Design Objectives Statement. [REP2-008, Question LVE 2].
- 5.1.8 Paragraph 2.6.2 of NPS EN-2 recognises that the main structures of a fossil fuel generating station, including the turbine and boiler halls, exhaust gas stacks, and other essential operational features are large. It states that Applicants should therefore design fossil fuel generating stations with the aim of providing the best fit with the existing local landscape so as to reduce visual impacts. The NPS advice on design is set out above in Section 3 of the report.
- 5.1.9 In my view, the ES and other material accompanying the application demonstrates that careful consideration had been given to the siting of the MEC to minimise visual and other environmental effects. While it is not possible to fully screen the complex, the siting takes advantage of existing landscape features, and the lower level structures of the scheme should be seen in the context of the proposed Meaford Business Park. The requirements of the draft DCO require the final design and appearance of the scheme to be approved by the relevant

planning authority, and provide the opportunity to ensure that the visual impact is mitigated as far as possible.

5.1.10 Having said that I am satisfied that the location is appropriate for the project and accord limited weight to its visibility in accordance with Paragraph 2.6.10 of NPS EN-2.

5.1.11 I therefore consider that the issue of good design has been satisfactorily addressed in the evolution of the project, and in the drafting of the DCO.

5.2 COMBINED HEAT AND POWER (CHP)

5.2.1 The scheme has been designed to facilitate CHP, should such provision prove feasible and viable, in accordance with the advice in Section 4.6 of EN-1. The wider business park provides potential opportunities for the use of heat from the power station which would otherwise be wasted. Requirement 20 provides for a review of potential opportunities for the use of heat from the power station and provides for plant and pipework to be provided in the event that viable opportunities for the use of heat are identified.

5.3 AIR QUALITY AND EMISSIONS

5.3.1 The proposed development has the potential to affect air quality both through dust and particulates during the construction and decommissioning phases, and through stack emissions during the operation of the generation plant.

5.3.2 The scheme will be required to operate within conditions specified by the EA in the relevant Environmental Permit (EP), subject to the operator's permit application having satisfactorily demonstrated the use of Best Available Technique (BAT) to protect the environment. The EP will, amongst other things, specify limits to the flue gas concentrations of pollutants emitted from the scheme stacks.

5.3.3 The Air Quality assessment in the ES (Chapter 8) includes an atmospheric modelling study of emissions to atmosphere from the scheme stacks [APP-038]. This was carried out in accordance with EA permitting guidance to assess the potential effects on the environment. The EA agreed the approach to the assessment methodology and significance criteria, relating in particular to the modelling of stack emissions and the identification of receptors in a SoCG [REP2-015].

Operational phase

5.3.4 The modelling study undertaken for the ES addresses the combustion products discharged in the flue gas from the stacks, principally oxides of nitrogen (NO_x) and carbon monoxide (CO). Emissions of NO_x from this type of plant (i.e CCGT fired by natural gas) are the lowest for any thermal generating plant [APP-038, paragraph 8.4]. The modelling

study also considered the effects of PM¹⁰ emissions at the request of the SBC Environmental Health Officer (EHO).

- 5.3.5 The assessment takes the 2+1 arrangement with two stacks as a realistic worst case scenario for potential operational air quality impacts because it provides the least favourable dispersion characteristics, and as a result, gives higher estimates of ground level pollutant concentrations and deposition rates than an arrangement with a single stack.
- 5.3.6 NPS - EN-2 states that 'fossil fuel generating stations are likely to emit nitrogen oxides (NO_x) and sulphur oxides (SO_x), although SO_x emissions from gas fired generating stations may be negligible.'
- 5.3.7 The assessment used background concentrations of relevant pollutants from the continuous monitoring station (CMS) in the City of Stoke on Trent. These were in general higher than more localised diffusion tube monitoring data, and hence represent a more conservative approach to the assessment of process contributions (PC) to the total predicted environmental concentration (PEC). The assessment of baseline air quality conditions was agreed by the EA [REP2-015].
- 5.3.8 For nitrogen dioxide (NO₂), the highest modelled concentration at a sensitive receptor is predicted at a property called Beechwood, on Old Road, Oulton Heath. This property is situated on elevated terrain at a distance of some 1.7 km east of the scheme stacks. The modelled PC of NO₂ at this location is 0.8 ug/m³. Adding a background concentration of 29 ug/m³ (which, for the reasons given above, is considered to be a conservative estimate for this more rural area) gives a PEC of 29.8 ug/m³. The relevant Air Quality Standard (AQS)⁷ for NO₂ is 40 ug/m³, so the PEC at this location would be some 75% of (and well within) the AQS. Similar results are predicted to occur around Kenhall and Moddershall, again well within the AQS.
- 5.3.9 As the modelled increments from scheme stack emissions are small, and the total predicted concentrations below or well below the AQS objective, the effect of scheme stack emissions on long-term average NO₂ concentrations is assessed as negligible by the Applicant.
- 5.3.10 The assessment also shows that the PEC would not exceed 75% of the AQS for hourly average ground levels of NO₂ at any location where short-term exposure is relevant. Modelled concentrations at relevant locations close to the scheme, including the Trent and Mersey canal towpath to the east, the Barlaston Golf Club to the north west, and the bowling green by the northern access road, are 10% or less of the hourly AQS.

⁷ As set out in The Air Quality (England) Regulations (SI 2000 No. 928) and The Air Quality Standards Regulations 2010 (SI 2010 No. 1001).

- 5.3.11 The model predicts that predicted environmental concentrations of CO are negligible in relation to relevant AQS, and the effects on human health are accordingly considered insignificant by the Applicant.
- 5.3.12 With regard to particulate emissions, it is generally accepted that natural gas has significant benefits over other fossil fuels. For example, NPS EN-1 recognises that emissions of oxides of sulphur from gas-fired generating stations may be negligible. In response to the ExA's first written questions [PD-006, Question AQ5] the EA commented that:
- 5.3.13 'Gas fired plants using natural gas will not generally require particulate control. As part of any EP Application, the Applicant would have to demonstrate the potential emission concentration of particulate matter to atmosphere' [REP2-006].
- 5.3.14 The ES sets out an indication of the maximum increment to the annual average ground level concentration of PM10s derived from the modelled results for oxides of nitrogen. On this basis, the maximum increment to the annual average ground level concentration at a significant receptor is 0.12 ug/m³. This is less than 1% of the AQS objective (40 ug/m³ and can therefore be considered insignificant. The maximum increment to daily average ground level concentration at a sensitive receptor is 2.0 ug/m³. This is 4% of the short-term PM10 standard of 50 ug/m³ and therefore well within the relevant AQS.

Construction phase

- 5.3.15 Changes to local air quality due to vehicle movements associated with construction activities have been evaluated in the ES and a qualitative assessment of dust emissions from construction activities undertaken, together with a qualitative assessment of dust emissions from decommissioning.
- 5.3.16 Construction of the development is expected to last for a period of three years and would involve activities that have a high propensity to generate dust, including demolition, earthworks, construction and vehicle movements.
- 5.3.17 The ES demonstrates that there are no receptors that are considered highly sensitive to dust deposition within 100 m of the Power station Complex, Gas Connection, Electrical Connection or the individual construction laydown areas within the Order Limits. 100 m is the distance within which dust particles are most likely to be deposited in the absence of effective mitigation. Furthermore there are no sensitive properties downwind of the prevailing south-westerly wind, while there is dense vegetation south west and south east of the southern extent of the Order Limits and between Meaford Road and Barlaston Golf Course, which provides a natural barrier to wind blown dust.

- 5.3.18 The ES identifies mitigation measures, including a complaints system to allow timely abatement of dust events, regular site inspections to monitor compliance with the Dust Management Plan (DMP), use of solid screens or barriers around dusty activities, water suppression and other good site management practice. Implementation of such measures, which would be secured through the Requirement 5 of the DCO (Construction and Environmental Management Plan), would ensure that the production and dispersion of dust during the construction of the scheme is minimised.
- 5.3.19 With regard to emissions from construction traffic, the ES estimates that 55 HGVs on average would access the MEC site per day, giving an increase in the two-way flow on Meaford Road and the A34 of 110 HGV movements. In addition a peak of some 300 light vehicles would visit the site daily. Although the increase in the traffic along Meaford Road would exceed 10% of the existing flow, the total flow would not exceed 5000 vehicles. This is below the daily flow threshold at which advice published by Environmental Protection UK (EPUK) and the Institute for Air Quality Management (IAQM) indicates that an air quality assessment for traffic related impacts should be carried out. The ES concluded that in the circumstances no further assessment of air quality impact was required and the air quality impact can be deemed to be neutral, in accordance with the guidance in Design Manual for Roads and Bridges (DMRB para 3.4).
- 5.3.20 The ES assessment used the then current EPUK/IAQM (2010) guidelines, which have since been updated to 2015. The Applicant was asked to comment on whether application of the 2015 guidelines would have made any difference to the assessment [PD-006, Question AQ3].
- 5.3.21 In summary, the Applicant accepted that under the 2015 guidance, an assessment would now be required for the construction traffic associated with the scheme alone as the increment in the number of HDV movements marginally exceeds the new EPUK/IAQM (2015) criterion of 100 vehicles per day on Meaford Road and 500 LDVs on the A34.
- 5.3.22 However, the ES did include an assessment of cumulative traffic increases on the A34 and Meaford Road. Interpreting the findings of the cumulative assessment for construction traffic in accordance with the new EPUK/IAQM (2015) impact descriptors, the change in annual mean NO₂ and PM10 concentrations due to cumulative construction traffic at the nearest receptor (receptor 3) would be described as negligible. It follows that emissions from construction traffic of the scheme alone must also be described as negligible for both pollutants. The EPUK/IAQM (2015) guidance states that a change of such magnitude can be interpreted as not significant.

ExA's conclusion on Air Quality

- 5.3.23 The proposed development will require an Environmental Permit from the EA. No EP application has yet been submitted. However, in response to the ExA's first Written Questions, the EA stated that 'based on the information we have seen to date and the pre-application discussions held, we have not identified any issues which would preclude us from granting an Environmental Permit for the proposed operations' [REP2-006].
- 5.3.24 The Overarching NPS for Energy (EN-1) advises that consideration of NSIP applications should focus on whether the development itself is an acceptable use of land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves, working on the assumption that the relevant pollution control regime will be properly applied and enforced by the relevant regulator.
- 5.3.25 On the basis of the evidence of the ES relating to air quality impacts, which has not been challenged in any significant way, I conclude that the application proposal would not result in any unacceptable effects on human health arising from air quality impacts. There is no reason to believe that any relevant necessary operational pollution control permits or licences will not subsequently be granted.

5.4 ECOLOGY

- 5.4.1 The ecological assessment for the ES assumes the loss of all habitats within the Order Limits (which includes all elements of the MEC) and therefore the loss of all biodiversity on the MEC Site on a permanent basis. This represents a realistic worst case scenario as habitats will be retained within the order limits where possible, including the semi-natural broad leaved woodland along the Trent and Mersey Canal to the east of the MEC site.
- 5.4.2 Potential effects on ecology are summarised in ES Chapter 11 [APP-041]. There were no significant challenges to the data or analysis put forward in the ES in the course of the examination, and the following section relies substantially on the material contained in it.

Construction phase

- 5.4.3 There are no European or Internationally Designated Sites within 10 km of the scheme. It is not therefore considered that there will be any direct negative effect from the construction phase. The separate air quality assessment in Chapter 8 of the ES concluded that no impacts were likely on these sites. There are no potential pathways for indirect effects to occur, so it can be concluded that the magnitude of change is negligible and the effect is not significant.
- 5.4.4 There are no obvious pollution pathways or direct habitat links to King's and Hargreaves Wood SSSI, Stone Meadows LNR, Crown Meadow LNR and Barlaston and Rough Common LNR, all of which are in excess of 1.9 Km from the site. The ES accordingly concludes that

there will not be any direct negative effects on these sites during construction.

- 5.4.5 The identified statutory designated sites would be too far from the Scheme to be affected by dust emissions. However, the River Trent offers a potential pathway for a pollution incident within the Order Limits to affect the LNRs at Stone Meadows, Crown Meadow and Barlaston and Rough Close Common LNR in the absence of mitigation.
- 5.4.6 There are also eight local wildlife sites (LWS) within 1 km of the PEIR site boundary. Of these only the Trent and Mersey Canal LWS is considered to have the potential to be affected by a pollution incident in the absence of mitigation.
- 5.4.7 Within the Order Limits, the loss of spoil, grassland, bare ground and hard standing would be a negative effect. In the absence of mitigation, the loss of these habitats would reduce diversity and population sizes of invertebrates. However, these habitats are present within the wider area and are not rare or notable.
- 5.4.8 Semi-natural broadleaved woodland, tall ruderal vegetation, scattered scrub and other features which provide suitable habitat for birds, bats, invertebrates and amphibians will be directly affected during the construction phase. However, these habitats are common in the wider area and the scheme will not result in the loss of these habitats beyond the order limits.
- 5.4.9 The baseline survey confirmed that no Great Crested Newts (GCN), Otters, Water Voles or Reptiles were found during the surveys and no negative effects are predicted for any of these species. There would be no direct impact from the scheme on badger setts, though it would be necessary for excavations to be covered or fenced at night, or provided with an escape route in case of foraging badgers falling in. It is not predicted that any bat roosts will be lost as a result of construction. The scheme is located in areas of brownfield land where at present there are only low levels of bat activity. Key areas of foraging and commuting known to be used by bats along the canal corridor are outside the Order Limits.
- 5.4.10 The ES identifies a slight negative effect on the diversity of invertebrates within the Order Limits arising from the loss of invertebrate habitat. There would also be some loss of vegetation suitable for breeding birds, but this is not considered significant in the context of the wider area.

Operational phase

- 5.4.11 During the operational phase, the only anticipated ecological effects are associated with emissions from the power station complex. Emissions from the stacks will be regulated by the Environment Agency through the Environmental Permitting system. The EA has confirmed that, having considered the environmental information in

the ES, it is unaware of anything that would preclude the grant of an EP for the scheme.

- 5.4.12 The air quality assessment of the ES considered the potential for impacts on the Pasturefields Salt Marsh SAC, West Midlands Mosses SAC and the Midlands Meres and Mosses Phase 1 and Phase 2 Ramsar Sites. The assessment concluded that the modelled contributions to ground levels of oxides of nitrogen would be negligible at 0.1% of the critical level for the protection of vegetation at each of these sites of $30 \mu\text{g}/\text{m}^3$ at each of these sites, and that the associated contributions of emissions to the critical loads for nitrogen and acid deposition are also negligible, at 0.1% or less at each of these sites [APP-041, para 11.242].
- 5.4.13 Of the non-European sites, the air quality assessment focussed on the potential impacts to Stone Meadows LNR as it is the closest statutory designated site to the scheme. The maximum contribution from the power station to annual mean concentrations of oxides of nitrogen at this LNR would be 0.18% $\mu\text{g}/\text{m}^3$. This increment would be less than 1% of the critical level and can be considered insignificant [APP-041, para 11.243].
- 5.4.14 Of the non-statutory designated sites the maximum modelled increase from emissions was modelled at Meaford Sludge Beds LWS with an increment equivalent to less than 12% of the NO_x critical level of $30 \mu\text{g}/\text{m}^3$ and as such the impact on this and other LWS can be considered insignificant [APP-041, para 11.245].
- 5.4.15 Due to the limited levels of the modelled emissions the ES further concludes that there would be no significant adverse effects on Ancient Woodland, habitats, invertebrates, breeding birds or protected species during the operational phase [APP-041, paras 11.246 - 11.258] .

Mitigation

- 5.4.16 Construction activity at the site would be governed by the CEMP (APP-147), secured through Requirement 5 of the DCO. The CEMP includes a number of measures to secure good site management practices to minimise the potential for harm to ecology including:
- Clearance of potential habitat to take place outside of the bird nesting season;
 - Measures to deter birds from nesting during the construction period;
 - Retention of existing tree groups and woodland and reinforcement with new native planting;
 - Use of standard working practices to minimise potential for dust and pollution incidents;
 - Staff awareness briefings.
- 5.4.17 While the ES was prepared on the basis that all habitats within the Order limits would be lost as a worst case scenario, the scheme

includes a number of specific proposals for compensatory provision within the Order Limits. The proposals include the creation of circa 3 ha of replacement habitat, as shown in the Indicative Landscape Plan [APP-017]. Where semi-natural broadleaved woodland will be lost at the southern edge of the site, this will be compensated for within the Order Limits through the implementation of new landscape planting. Scrub and ephemeral vegetation is found throughout the site and would be the main habitat lost as a result of the development. The habitats will be partially compensated for by the proposed habitat creation, which includes a butterfly bank, pond, native woodland planting, woodland edge planting and flower rich swards shown on the Indicative Landscape plan.

- 5.4.18 To compensate for lost invertebrate habitat an area of low soil fertility will be created to the north of the power station complex. This will consist of a mosaic of habitats with retained and new planting with appropriate native species. Although it will be smaller than the areas to be lost, it will be more concentrated and will support a comparable number of invertebrates.
- 5.4.19 A lime tree adjacent to the railway which supports a temporary summer bat roost will be protected during the construction period.
- 5.4.20 It is not anticipated that any of the retained habitats within the Order Limits will be adversely affected during the operational period. However the replacement habitats created to compensate for losses during construction will need to be managed to maintain their ecological value, and this will be secured through the DCO Requirement 9: Habitat Management Plan.
- 5.4.21 The joint LIR [LIR-001] also refers to the loss of open mosaic habitats on previously developed land. It states that such habitats are rare in Staffordshire. Three butterflies characteristic of such open areas were recorded in the Order Area, along with an assemblage of rare and scarce invertebrates. Such habitats are considered to be of principal importance in the UK Biodiversity Action Plan, and there is a duty under s.40 of the Natural Environment and Rural Communities Act to consider the conservation of such habitats and species. In a written representation submitted for Deadline 2 [REP2-010], Staffordshire County Council requested that further consideration should be given by the Applicant to the provision of further ecological mitigation within the Order Limits, particular on land within the gas connection corridor, the southern laydown area (Work No. 5A).
- 5.4.22 The Applicant does not consider that the area proposed for ecological compensation is small in comparison of areas of habitat to be lost, as shown in Table 11.23 of the ES [APP-041]. Whilst the Order Limits extend over an area of 16.6 ha, only the power station site and the AGI will be above ground structures occupying some 3.2 ha. The area on which mitigation is to be provided is some 3.0 ha. Of the areas with potential identified by SCC, the Applicant states that the land occupied by Work No 5A is a temporary construction and laydown area, and will

not be available for ecological mitigation as it will be returned to the owner of the MBP. Similarly, the land above the gas pipeline will be returned to the owner of MPB, and may be needed in connection with the implementation of the MBP planning permission. The Applicant considers that it would be inappropriate to provide additional mitigation alongside the Northern Access Road (Work No 4), as it would also restrict development of the MBP in accordance with the extant planning permission.

- 5.4.23 I note that the ecological mitigation proposed was the subject of early discussions between the Applicant and SCC ecologist, and Natural England, and agreed as appropriate. Notwithstanding the concerns expressed in the written representation, SCC signed an SoCG with the Applicant agreeing the mitigation methodology, assessment of significance, mitigation principles and conclusions of the ecology assessment in the ES set out in Paragraphs 11.264 - 11.294, including ecological protection and enhancement provisions in draft DCO Requirements 4, 5 and 9 [REP2-019]. The illustrative Landscape Plan 5105324-MEA-DRG-081 [APP-017], which includes the areas proposed for ecological mitigation, have also been agreed as appropriate in para 6.9.5 of the LIR [LIR-001].
- 5.4.24 While the ES acknowledges that construction of the MEC will have some adverse ecological impacts, particularly for invertebrates, the MEC site is not subject to statutory nature conservation designations. The wider Meaford Business Park site is identified for strategic employment use in policy E5 of the adopted Plan for Stafford Borough. The draft plan was subject to Strategic Environmental Appraisal, on which nature conservation bodies were consulted.
- 5.4.25 While brownfield sites if left undisturbed for any length of time will develop their own ecology, national planning policy gives strong support for the redevelopment of brownfield sites particularly where development accords with up to date Local Plans, provided it is not of high environmental value.
- 5.4.26 In my view, while the loss of open mosaic habitat is regrettable, the weight to be attributed to it is limited, in view of the planning history of the site and the extent of compensatory provision proposed. There have been no objections to the proposal by Natural England or any local nature conservation body. In this context, I consider that the ecological provision proposed by the Applicant and secured through the Requirements of the DCO would provide satisfactory compensation for the limited adverse effects identified in the ES.

ExA's conclusions on Ecology

- 5.4.27 With the implementation of the mitigation and compensation measures discussed above there would be no significant negative effects to any sites designated for their nature conservation value. While the scheme would result in the direct loss of semi-natural broadleaved woodland, tall ruderal vegetation, scattered scrub

ephemeral/short perennial vegetation and waterbodies within the Order Limits, the Applicant proposes a satisfactory scheme of mitigation and compensation including planting of broadleaved trees and the creation of the landscape mitigation area shown in the indicative Landscape Plan [APP-017]. These measures accord with the advice in paragraph 5.3.18 of NPS ES-1. In this context, the weight to be attributed to the loss of habitat within the MEC site is limited, and is a factor to be weighed against the benefits of the scheme.

5.4.28 The relevant statutory bodies (Natural England and the Environment Agency) are satisfied with the environmental information provided in the ES and have not raised any concerns in response to consultation on the DCO scheme. There are no objections from any local nature conservation body.

5.4.29 Accordingly I conclude that there is no reason to withhold consent for the scheme on ecological grounds.

5.5 CIVIL AND MILITARY AVIATION AND DEFENCE INTERESTS

5.5.1 NATS confirmed that they did not anticipate any impact from this development and had no comments to make on the proposal. The Civil Aviation Authority [RR-003] suggested that any aerodrome operators/licensees in the locality should be consulted. However they confirmed that 'given the maximum height of 50m and the likely event that there is no aerodrome issue ... the CAA would not in isolation make any case for lighting.'

5.5.2 Requirement 14 of the DCO includes provision for the fitting of infra-red light to the exhaust gas emission flue stack, if reasonably required by the CAA. It also requires the Applicant to notify the Defence Geographic Centre of the precise details of the installation including the date of completion of construction.

5.5.3 The SoS can accordingly be satisfied that the effects on civil and military aerodromes and other defence assets have been addressed by the Applicant, and there would be no conflict with defence interests, in accordance with paragraphs 5.4.14 and 5.4.15 of NPS EN-1.

5.6 COMMON LAW NUISANCE AND STATUTORY NUISANCE

5.6.1 S. 158 of PA 2008 confers statutory authority for carrying out development consented to by, or doing anything else authorised by, a development consent order, for the purpose of providing a defence in any civil or criminal proceedings for nuisance. Paragraph 4.14.2 of NPS EN-1 emphasises the importance of considering possible sources of nuisance under section 79(1) of the Environmental Protection Act 1990 Act, and how they may be mitigated.

5.6.2 The Report considers possible sources of nuisance including, dust, noise and vibration, and artificial lighting in the relevant Sections below. Having regard to the ES and the relevant Requirements which have been included in the DCO, I conclude that there are no particular

identifiable sources of nuisance that would be an inevitable consequence of the development, and no reason to disapply the defence of statutory authority as referred to in paragraph 4.14.3 of NPS EN-1.

5.7 FLOOD RISK AND WATER RESOURCES

- 5.7.1 Flood Risk and the Water Environment are addressed in Chapter 14 of the ES [APP-044].
- 5.7.2 A level 2 Flood Risk Assessment (FRA) has been prepared to assess the potential flood risks within the MEC Site as a result of the scheme construction. The FRA identified potential flood risks to include groundwater flooding, overlain/pluvial flooding and infrastructure failing [APP-142].
- 5.7.3 A majority of the scheme is located in Flood Zone 1, except the part where the surface water drainage system would discharge to River Trent, which is in Flood Zone 3.
- 5.7.4 Potential for the scheme to impact on the water environment during the construction, operation and decommissioning phases is assessed in Chapter 14 of the ES [APP-044]. A programme of mitigation measures would be implemented during the construction phase through the draft CEMP [APP-147] which would be secured through Requirement 5 of the DCO.
- 5.7.5 During operation of the scheme, the ES concludes that the implementation of the foul and surface water drainage strategy [APP-142] would result in insignificant effects on the water environment.
- 5.7.6 The drainage strategy was developed in consultation with both the EA and Severn Trent Water. Neither organisation has raised any objection to the proposals. All run-off from impermeable areas such as roofs, hardstanding and highway areas would be drained using a piped system via a retention pond and control chamber, out falling into an existing manhole within a private network, ultimately discharging downstream via a 450mm diameter pipe into the River Trent (Work No 6 in the DCO). The maximum permitted discharge rate from the proposed Scheme into the existing private system and ultimately into the River Trent will be limited to the annual average existing run-off rate (QBAR) of 15.1 l/s. This flow rate will apply for all rainfall events up to and including the 1 in 100-year +20% event. Therefore it is considered by the Applicant that the additional input of water into the River Trent would have an insignificant effect on the flow regime and flood risk of the River Trent as the Scheme's drainage system will manage the power station complex discharges, as agreed by the EA, so as not to increase the risk of flooding.
- 5.7.7 The requirements of the WFD are to prevent further deterioration of aquatic ecosystems and to protect and enhance their status. It is apparent from the ES that the design of the drainage system takes this into account to ensure the discharge to the River Trent will have a

negligible magnitude impact and an insignificant effect on the water environment [APP-044, paragraph 14.126 and APP-143]. Any discharges will be at rates agreed with the EA and in line with best practice. An appropriate permit will be needed and there is no reason to think that such a permit might not be granted.

- 5.7.8 Requirements 5 (CEMP), 7 (Piling), and 13 (Foul and surface water drainage) are the means by which the mitigation and design measures will be secured through the DCO. The SoCG between the Applicant and the EA confirms agreement on the wording of the Requirements set out in Schedule 2 of the draft DCO [REP2-015, para 6.16]. The EA has specifically confirmed that it has no objection to the three specific requirements referred to above, and does not consider that any others need to be included.
- 5.7.9 Staffordshire County Council pointed out in its written representation that it no longer has any responsibility for adoption and maintenance of the surface water drainage system, in particular the retention pond. Following consultation in 2014 the government has removed the establishment of local authority SuDS approval bodies in favour of the planning system being used as the main delivery vehicle for the approval and maintenance of sustainable drainage systems (SuDS). Therefore, there is a need for clarity over who would be responsible for maintaining the SuDS and how this will be funded, as the County Council will not be adopting the retention pond. [REP2-010].
- 5.7.10 In response, the Applicant acknowledged the change in responsibility for the adoption of SuDS and proposed to assume responsibility for the management and maintenance of the SuDS for the operational life of the MEC, unless the owner of MBP requires it to be managed in conjunction with the overall surface water drainage for the MBP as a whole [REP3-006, paragraph 6.6.2].
- 5.7.11 Requirement 13 of the DCO provides for written details of the surface and foul water drainage systems and SuDS to be approved by the local planning authority prior to the commencement of construction of the main power station building. This mechanism provides the opportunity to specify the Applicant's responsibilities in respect of the on-going management and maintenance of the SuDS system.

ExA's conclusion on Flood Risk and Water Resources

- 5.7.12 Nothing has arisen in the course of the examination to lead me to any other conclusion than that the draft DCO makes satisfactory provision in respect of flood risk and the water environment to ensure that the scheme would not give rise to any significant adverse impacts. The design of the scheme has had regard to relevant River Basin Management Plan and meets the requirements of the WFD, in accordance with paragraph 5.15.6 of NPS EN-1.

5.8 HISTORIC ENVIRONMENT

- 5.8.1 Consideration of the impact of a proposed development on any heritage assets should take into account the particular nature of the significance of the heritage asset and the value they hold for this and future generations. This understanding should be used to avoid or minimise conflict between conservation and proposals for development [EN-1, paragraph 5.8.12].
- 5.8.2 Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater harm to the significance of the asset the greater the justification will be needed for any loss [EN-1, paragraph 5.8.15].
- 5.8.3 Regulation 3.1 of the Decisions Regulations⁸ requires the SoS to have regard to the desirability of preserving any listed building or its setting affected by a proposal, and Regulation 3.2 imposes a similar duty to have regard to the desirability of preserving or enhancing the character or appearance of any conservation area affected.
- 5.8.4 A SoCG between Historic England (HE) and the Applicant dated 25 September 2015 [REP2-016] confirmed HE's agreement to the following: the historic environment baseline described in paragraphs 12.56 - 12.68 in Chapter 12 of the ES; the approach to the assessment methodology and significance criteria set out in paragraphs 12.31 - 12.55 in Chapter 12 of the ES; the assessment of significance (alone and cumulatively) set out in paragraphs 12.89 - 12.109 in Chapter 12 of the ES; and the proposed mitigation, including planting alongside the Trent and Mersey Canal set out in paragraphs 10.55 - 10.63 in Chapter 10 of the ES, and Malkin's Bridge repair works set out in paragraph 4.11 of Chapter 4 of the ES. On this basis HE confirmed their earlier view that there would be no adverse impact on cultural heritage and that HE did not have any further issues to raise.
- 5.8.5 A number of designated heritage assets will be affected by the scheme to a greater or lesser extent. The site directly adjoins the Trent and Mersey Canal Conservation Area (CA), and part of the Order Limits extend over Malkin's Bridge (Canal Bridge 101), a non-designated heritage asset within the CA. The Grade II listed Turnover Bridge also crosses the canal in the vicinity of the site. There are two Grade II* listed buildings at Meaford Hall, some 475 m south of the Order limits, and its Nursery House, some 520 m south of the Order Limits.
- 5.8.6 There are no known non-designated archaeological heritage assets within or near the Order Limits. Much of the land within the MEC site has been severely disturbed and is still for the most part occupied by disturbed ground, concrete slabs, or rubble piles from demolition. It is

⁸ The Infrastructure Planning (Decisions) Regulations 2010 as amended

therefore highly likely that any potential for the presence of archaeological remains at shallower depths would have been destroyed or removed by previous activity.

- 5.8.7 The ES identifies slight adverse effects on particular heritage assets during the construction phase, including the Canal CA, Malkin's Bridge and Turnover Bridge. These would arise from the construction of the scheme and the installation of above ground elements such as the installation of the pipeline over Malkin's Bridge. The construction period would be 36 months, during which time there would be a slight adverse temporary effect on the setting of the assets.
- 5.8.8 The main impact on the historic environment resource during the operational phase will be through the visual presence of the scheme (particularly its taller elements such as the stacks and the HRSGs). Operational traffic will not have an impact on historic environment receptors. There will be no physical impacts on below-ground archaeology during the operational phase.
- 5.8.9 The ES acknowledges that in the operational phase there would be some impact on the setting and character of the Trent and Mersey Canal and the listed and non-listed structures associated with it in the immediate locality of the scheme.
- 5.8.10 The joint LIR [LIR-001] refers to the Trent and Mersey Canal Conservation Area Appraisal adopted in August 2014, which post-dates the ES. It describes the significance of the canal as an area of special historic character and appearance completed in 1777 to the design of James Brindley. It follows the natural contours of the landscape with very few embankments or cuttings, and has a wealth of brick structures such as bridges and locks, many of which are listed buildings. It highlights the 'predominantly rural' character of the canal corridor between Barlaston and Meaford, and the sense of enclosure created by the hedgerows and trees in the vicinity of the MEC site, where views along the canal are largely confined by the belt of trees to the west and embankment of the railway to the east.
- 5.8.11 Malkin's Bridge is described in the joint LIR as an unlisted structure within the canal CA. It appears to be a mid-19th century accommodation bridge, but has been substantially rebuilt with patchy redbrick repairs, a deformed arch, and partially lost blue-brick parapet with stone coping.
- 5.8.12 The gas connection pipeline as shown in the Illustrative Gas Connection Pipeline proposals Plan [APP-015] would oversail Malkin's Bridge and would in part be visible above the parapet. The bridge is currently in a somewhat dilapidated condition and would benefit from sympathetic repairs to the parapet which would be undertaken by the Applicant as part of the scheme. The joint LIR acknowledges the benefit of repair, but considers that it would be countered by the installation of 2.5 metre high security fencing along the boundary of the site.

- 5.8.13 I agree that the visible part of the pipeline would be a slight visual intrusion with a corresponding adverse effect on the character and appearance of the conservation area. DCO Requirement 3 includes provision for the detailed design of this work to be approved by the relevant planning authority, and it will be important that careful consideration is given to this element of the project to minimise any adverse effect. SBC suggested in the joint LIR that consideration could be given to increasing the parapet height to screen the pipeline, given that the bridge requires repair and has already been the subject of numerous alterations. In response the Applicant has proposed a revision to the draft DCO to include a requirement for a method statement for the extent and nature of repairs to the parapet of Malkin's Bridge to be submitted and approved. It will also be important for careful consideration to be given to the design, type and finish of any fencing proposed as provided for in Requirement 8. Given these safeguards, I consider that the harm to character and appearance of the CA and Malkin's Bridge would be slight, and would represent less than substantial harm to the significance of the CA and the associated structures.
- 5.8.14 As discussed in section 5.9 below there would be filtered views of the upper parts of the power station complex from the canal, towpath and from Turnover Bridge, notwithstanding the proposed 10 metre landscape buffer to be retained and improved as part of the mitigation for the scheme. This would slightly increase the intrusion of modern infrastructure into the setting of the CA and other heritage assets, including Turnover Bridge. However the MEC/MBP location has a previous history of large industrial structures and while the canal now has a primarily recreational function, its significance as part of the infrastructure of an earlier period of industrialisation should not be forgotten. It is also possible to discern the existing site through the vegetation, which contains such discordant features as pylons, overhead lines and rubble piles which adversely affect the CA and associated structures. To my mind the harm, which would arise from filtered glimpses rather than open visibility of the MEC would result in no more than a slight loss in visual amenity for users, who would mostly be moving along the canal in boats, or using the towpath for walking and cycling. These effects would amount to less than substantial harm to the significance of the assets.
- 5.8.15 Meaford Hall lies some 470 m from the Order Limits boundary. The Hall sits in the remains of a designated landscape, with designed views to the west across parkland to the River Trent. To the west and south of the Hall are the Nursery House and the former stable. This group of buildings sits within Meaford Hall Conservation Area, which covers the original parkland of Meaford Hall and the small village of Meaford to the south.
- 5.8.16 The ES concludes that views to and from this group of assets would be generally constrained by the intervening bands of mature tree growth. SBC questioned whether the ES had considered the potential for views towards Meaford Hall from the parkland to be affected by the proposal

[LIR-001, para 6.10.5]. The Applicant's response is set out in paragraph 6.10.5 of their comments on the LIR [REP3-006]. A site visit undertaken by the Applicant's advisors in winter indicated that, with the screening effect of intervening terrain and woodland, the Power Station Complex/Stacks would not become a notable feature in views from Meaford Hall and its immediate environs, or in views towards the listed building from the former historic parkland to the west, southwest and south. It was concluded that 'there may be a very small number of locations within the parkland where glimpses of the tops of the stacks may be visible over or through trees in the winter months but these will not affect the contribution that the historic parkland makes to the setting and significance of the listed building.'

- 5.8.17 While it is possible that upper parts of the scheme may be visible from this area, I consider that the impact on the setting and outlook of these assets would be of very limited significance. The designed views from Meaford Hall to the west would not be affected by the proposal. The existing block of trees to the east of Meaford Road, between this group and the MEC site, would offer substantial visual protection from this direction. Again I find that any harm to significance would be minor, and fall into the 'less than substantial' category, to be weighed against any public benefits of the proposal.
- 5.8.18 The ES also identifies minor adverse effects on the Grade II* listed Meaford Old Hall, located on a gently sloping south facing slope some 820 m to the south of the MEC site, and Outlanes Farm House (Grade II listed), approximately 750 m to the south east of the MEC site.
- 5.8.19 Due to the nature of the topography and thick bands of tree growth at the southern end of the MEC site, and along the railway and canal corridor, views to the site from Meaford Old Hall would be highly restricted. However the possibility of oblique views of the stacks would give rise to a permanent minor adverse effect.
- 5.8.20 Outlanes Farm House occupies an elevated position and, while the majority of the scheme would be largely concealed by dense tree and other vegetation, the stacks would feature in views to and from the farmhouse, with a permanent minor adverse effect on the setting of the asset.
- 5.8.21 The cumulative impact of the MEC with the MBP fully built out and the A34 road improvements completed has also been assessed in the ES. The principal cumulative impacts will be on the Canal CA and associated assets, and on the Meaford Hall group of assets. As residents of the area have pointed out, this area has experienced significant change with the construction of the new A34 access road, and will be further impacted by the development of the MBP and the MEC.
- 5.8.22 The ES states that '*the development of MBP would require further approval. This process is likely to require an appropriate landscape*

scheme that would address the development's relationship with the Trent and Mersey Canal. Given this it is assumed that the MBP would have minimal additional impact on the setting of the Trent and Mersey Canal when considered cumulatively with the scheme.' Overall it concludes that there would be a permanent slight adverse significance of effect [APP-042 para 12.99].

ExA's conclusions on Historic Environment

- 5.8.23 A SoCG between Historic England (HE) and the Applicant dated 25 September 2015 [REP2-016] confirmed their earlier view that there would be no adverse impact on cultural heritage and that HE did not have any further issues to raise.
- 5.8.24 With regard to the duties under regulations 3.1 and 3.2, while minor adverse effects on a number of heritage assets have been identified in the ES, I consider that the harm identified is in all cases less than substantial, and falls to be balanced against any public benefits.
- 5.8.25 It is also important to consider any identified harm in the context of the planning history of the site, which previously accommodated the coal-fired power stations and associated distribution infrastructure, and its longstanding identification in the Local Plan as a major developed site in the Green Belt. The MBP has outline planning permission, and while further approvals are needed before construction commences, including the landscaping strategy, the general pattern of redevelopment of the site is established.
- 5.8.26 Paragraph 5.8.15 of NPS EN-1 advises that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification that will be needed for any loss. The overall balance of harm against benefit is considered later in this report.

5.9 LANDSCAPE AND VISUAL IMPACTS

- 5.9.1 Landscape impacts have been assessed within the ES on the basis of a power plant configuration containing 2 gas turbines each with their own heat recovery steam generator (HRSG) and stack, and a single steam turbine (the 2 + 1 layout). In the Applicant's view this configuration would have the maximum likely significant effects on the landscape resource, views and visual amenity, and is therefore a realistic worst case scenario.
- 5.9.2 The landscape baseline for the assessment is described in Chapter 10 of the ES and summarised in the joint Local Impact Report as follows:

'The application site falls within the character type 'Coalfield Farmlands' in the Potteries and Churnet Valley. The Staffordshire Landscape Character Assessment 'Planning for Landscape Change' (2000) describes this as an intact lowland pastoral landscape characterised by well-trimmed hedges, hedgerow oaks and small

winding lanes. It is noted that the flat or very gently undulating landform results in limited views, and hedgerow trees often visually coalesce to foreshorten views. In the area around the site woodland cover is quite extensive. In places steeper landform allows more extensive views across the landscape.

'In this area, the Trent Valley has extensive urban fringe influences, including modern urban expansion, busy roads and rail lines and numerous pylons that connect to Barlaston sub station. The pylons, whilst being detracting elements, are to some extent visually permeable. Woodland cover and landform locally help to reduce and contain the urbanising influence.

'The Staffordshire Landscape Character Assessment identifies landscape restoration as the landscape policy of woodland planting to increase screening of the urban edge and mitigation for urban developments is high.

'The site lies between the settlements of Stone and Barlaston on the valley floor. This allows views towards the site from more elevated locations in the surrounding landscape. Woodland in the vicinity of the site provides intermittent site screening.' [LIR-001, Paras 6.8.3 - 6.8.6].

- 5.9.3 The LIR concludes that the large scale industrial features of the scheme would be visible in the landscape, and a significant intrusion in the valley. It would reduce the buffering of urban development that currently exists and have a local detrimental effect on the landscape character of the area.
- 5.9.4 The National Trust also raised concern about landscape impacts, particularly in views of the scheme from Downs Banks, a popular area of open land on higher ground to the east of the site in the Trust's ownership. The Trust welcomed the landscaping mitigation that is proposed, including the retention of existing areas of woodland. However, they did not consider that this would adequately mitigate the adverse effect on the view from the footpath along the western boundary (Footpath 46, Stone Rural). They indicated a willingness to discuss further mitigation, including the possibility of planting on Trust land along the boundary.
- 5.9.5 As illustrated in the photomontages prepared for the ES, the application scheme would include some large structures characteristic of this type of energy infrastructure. The higher structures in particular (the stacks and HRSG buildings) would be clearly visible from certain locations in the surrounding landscape, and these impacts cannot be effectively mitigated. The most significant views would be from the higher ground to the east at Downs Banks, which is National Trust land and accessible by public footpath Stone Rural 46.
- 5.9.6 During the examination, I made an accompanied site visit to Downs Banks, and walked on the route of FP 46, adjacent to the western

boundary of the Trust's holdings. Much of the site to the east is either lower lying or at a sufficient distance from the MEC site to be screened by the ridgeline along which the footpath runs. Accordingly there would be no view of the MEC site from much of the NT property. While the scheme would be visible from Receptor 8, given the wide extent of the views to the west, south-west and north-west I consider that the harm to the amenity of users of the NT land and footpath network would be limited. This accords with the ES assessment of the harm to the view from the edge of Downs Banks being 'moderate adverse' which has not been disputed by NT [APP-040, para 10.212].

- 5.9.7 The application scheme includes proposals that are designed to help mitigate the landscape and visual impact of the Scheme. This would be secured in the DCO by Requirement 4, which requires the submission of a landscaping scheme that has to be substantially in accordance with the outline landscaping plans. Existing planting to be retained on the Site, and managed and reinforced within the Order Limits as part of the Scheme is shown on the indicative landscape masterplan for the Power Station Complex, AGI and Gas Connection - drawing number 5105324-MEA-DRG-081 [APP-017].
- 5.9.8 During the course of the examination SCC, whilst broadly supporting the scheme as a whole, questioned the adequacy of the proposed 10 metre landscaping strip along the eastern side of the site, and its effectiveness in providing screening in views from the Trent and Mersey Canal, its towpath, and the listed Turnover Bridge. Concern was expressed about the absolute width of the proposed buffer, the presence of power lines within/immediately adjacent to the buffer strip and the potential for vegetation management by the utility company to compromise its buffer and screening function through the exercise of their easement rights.
- 5.9.9 Further discussion took place at the IS hearing on environmental matters on 11 November 2015. Reference was made to a plan annexed to the Applicant's response to the LIR [REP3-006]. The plan was prepared having regard to guidance in the Energy Network Association (ENA) Document 43-8: Overhead Line Clearances and shows the clearance required, allowing for a 1 m sag for the lines and an addition 0.4 m to allow for the growth of vegetation. On this basis the Applicant considered that the strip of vegetation would be sufficient to screen the MEC whilst also allowing adequate clearance between the vegetation and the overhead line. An 'eyeline' drawing was appended as Annex 2 to the Applicant's summary of oral case put at the ISH on 11 November 2015 to demonstrate this [REP4-012].
- 5.9.10 To my mind, while I acknowledge that the height of vegetation would be restricted by safety considerations over some of the 10 m width, there is sufficient scope within the proposed landscape buffer to retain an adequate thickness of vegetation to achieve an effective screen of the power station complex when viewed from the canal and towpath.

- 5.9.11 I acknowledge the concern that a third party undertaker, unaware of the importance of the screening function, might carry out wholesale clearance works under the lines which could compromise its effectiveness. However, at the hearing the Applicant offered an amendment to DCO Requirement 4 to make specific reference to the plan showing safety clearances referred to above. DCO Requirement 4(5) sets a requirement for the landscaping to be maintained during the life of the MEC. The final details of the landscaping scheme are to be approved by the relevant planning authority prior to commencement, and this would include the height of vegetation in accordance with the submitted plan. Provided these safety clearances were maintained at all times by the site operator, there would be no reason for the owners of the power line to undertake any works on the site.
- 5.9.12 With regard to visual impacts, the ES concludes that during the operational phase, in Year 1 of opening and in year 15, the height of the power station complex would result in a mostly moderate effect for a number of visual receptors, due to the proximity of receptors to the Order Limits, the new built form being visible above the MBP boundary vegetation and the elevated views of receptors. The receptors include residential properties along the A34, recreational users of PROW Stone Rural 45 and PROW Stone Rural 46 (Downs Banks) and along the Trent and Mersey Canal. The residential properties at receptor 23 (A34 to the west of MEC site) however would experience a major adverse effect with the upper section of the Power station complex and stacks seen in the context of the existing substation and pylons within the direct frame of view. The visual impact for receptors beyond 2km from the site is reduced due to the intervening landform and vegetation limiting views to the upper sections of the Stacks only, which are considered to be a minor component in wider views, some of which already include infrastructure feature. [APP-040, ES Chapter 10, paras 10.212 - 10.215]
- 5.9.13 The joint LIR is in broad agreement with the conclusions of the ES Chapter 10, though it suggests that while the section drawings demonstrate that the lower building elevations would benefit from some screening by existing elevations for users of the Trent and Mersey Canal and towpath, the upper elevations would not be fully screened. It also argues that the relatively low lying position of the site means that from more elevated viewpoints, such as properties on the A34 and Right of Way Stone Rural 46 at Downs Banks, there would be direct views of a greater proportion of the building elevations. [LIR-001, 6.8.10/11].
- 5.9.14 Meaford Road Residents Association (MRRA) raised an issue about the relationship between existing landscaping which forms part of the baseline for the assessment of landscaping and visual effects in the ES, and a recent planning application for the approval of reserved matters on land at the southern end of the wider Business Park site (15/22560/REM). This proposes the removal of some existing mature trees to allow the construction of commercial units, which the MRRA

say they understood to be woodland to be retained as part of the screening for the MEC. They do not claim that the trees would open up views to the power station from their homes, but rather that they are critical to the screening of the power station from the eastern side of Rookery Lane and its junction with Washdale Lane at Top Lock Bridge (a grade 2 listed structure) [REP4-013].

- 5.9.15 Stafford Borough Council refused planning permission for the reserved matters application on 6 October 2015. The refusal reasons include impact on the openness and visual amenity of the Green Belt, harm to the rural character of the area, harm to the conservation area a number of listed buildings and the loss of trees which form a prominent landscape feature in the local area and have a significant public amenity value. A provisional Tree Preservation Order has been placed on the trees by the Borough Council.
- 5.9.16 The photographs submitted by MRRA with their representations demonstrate how the trees in question contribute at present to the visual enclosure of the southern end of the MBP [REP4-013].
- 5.9.17 The Applicant responded that the MEC scheme does not rely on any mitigation set out in the Meaford Business Park Planning application, as the schemes are separate [REP4-012, para 5.17]. They stated that the ES does not rely on mitigation outside of the redline of the MEC Order limits, but that it does refer to the baseline and existing vegetation in the areas surrounding the site.
- 5.9.18 While I agree that, because of their location, the trees are not critical to the screening of the MEC itself in views from residents' properties, it is not hard to understand how residents would have gained the impression from Figure 3 of the Preliminary Environmental Impact Report that the trees were to be retained as part of the MPB development. The indicative layout does not show any built development to the south of the position of the line of trees.

ExA's conclusion on landscape and visual impact

- 5.9.19 The guidance in EN-1 acknowledges that virtually all energy NSIPs will have landscape and visual impacts which cannot be fully mitigated. The aim in designing projects should be to minimise the harm to the landscape and visual effects and provide reasonable mitigation. EN-2 states that if a location for a fossil fuel generation project is appropriate and it has been designed sensitively to minimise harm to landscape and visual amenity then the visibility of the generating station should be given limited weight.
- 5.9.20 The proposed location for the MEC is a brownfield site, which has previously been occupied by the large scale structures of Meaford 'A' and 'B' power stations, and retains much of the distribution network associated with this use, in the form of transformers, pylons and overhead lines. A major benefit of the site for energy generation is that it does not require the construction of new above ground supply

or distribution networks, but makes use of this established infrastructure.

- 5.9.21 It also must be remembered that the site has planning permission for the development as a business park, which itself will have landscape and visual impacts, albeit that the buildings and structures of the business park would for the most part be lower than the taller elements of the MEC scheme.
- 5.9.22 It is not disputed that there will be some landscape and visual effects that cannot be mitigated in full, particularly that arising from the height of the stacks and the associated HRSG units. Nevertheless I consider that the landscaping proposals within the order limits will provide satisfactory screening for key views from the canal conservation area, and related heritage assets. The DCO contains measures which allow the relevant planning authority (SBC) to give further consideration to mitigation through detailed design, choice of materials, colour and finish which will help to assimilate the structures in the landscape as far as possible and minimise visual intrusion. SBC has indicated that they are content that this approach can secure a satisfactory design outcome.
- 5.9.23 In view of the suitability of the location for the development, I consider that limited weight should be attached to the unavoidable residual landscape and visual impacts of the scheme in accordance with the advice in paragraph 2.6.10 of NPS EN-2. The balance between any remaining adverse impacts and any benefits of the project is considered later in this report.

5.10 NOISE AND VIBRATION

- 5.10.1 Local residents, including Mr Terence Stock [RR-001] and Mr Kenneth Hughes [RR-002] sought assurance that appropriate measures would be taken to ensure that potential impacts of noise and vibration on residential properties is eliminated, and that the latest technology will be used to fully mitigate the impact on local residents and the local environment.
- 5.10.2 Paragraph 5.11.9 of NPS EN-1 states that development consent should not be granted unless the proposals avoid significant adverse impact on health and quality of life from noise. EN-1 recognises that the primary mitigation for noise from fossil fuel generating stations is through good design, including enclosure of plant and machinery to minimise the potential for operations to create noise.

Operation

- 5.10.3 In my judgment the ES identifies a realistic worst case scenario from within the scheme parameters. For the operational phase this would be the 2+1 arrangement with two stacks because it would involve the maximum number of noise emitters. Two gas turbines within a single hall have been assessed as the reverberant noise level would be higher with two separate halls and a gas turbine in each.

- 5.10.4 To assess the likely impacts from the operation of the scheme, the methodology of BS 4142:1997 was used, which involves a comparison of the noise level due to the operation of the power station complex with the existing background noise levels, applying a worst case correction +5dB for acoustic features (e.g. tonal effects). The ES assessment assumes that the scheme would be operational 24 hours a day and that night-time would be the most sensitive period for residential receptors.
- 5.10.5 For many of the residential receptors identified in the ES the rating level would be below the background noise level, the effects being assessed as neutral and complaints unlikely, in accordance with BS4142. However for a number of other properties, with very low measured night-time background levels, difference of + 5 to +10 dB were predicted using this method. These are shown at Table 9.19 and include Meaford Farm, Pool Cottage, Keepers Cottage, Ivy Cottage, Ford Farm and Meaford Old Hall Farm House (all at Washdale Lane) [APP-039].
- 5.10.6 However, BS4142:1997 states that this method is not suitable for assessing the noise measured inside buildings or when the background and rating noise levels are both very low., i.e. where background noise levels are below some 30 dB and rating levels below some 35 dB, as is the case with the Washdale Lane properties (APP-039). With the agreement of Stafford Borough Council's Environmental Health Officer, a further assessment was therefore undertaken of external noise at these properties during the daytime, and internal noise at night. The predicted daytime increments were likely to be less than 3 dB. An increase of 3dB is generally just noticeable and is a small change in the perceived level. Night-time effects have been assessed in accordance with BS 8223: 2014 which sets out a design target for the internal living areas of dwellings at night. The predicted noise rating levels are shown in Table 9.21 of the ES [APP-039]. Allowing for an open window for ventilation the predicted internal noise levels for each of these properties would meet the BS 8233 design target at night-time.
- 5.10.7 None of the operational activities within the MEC are known to generate significant vibration impacts at the noise sensitive receivers.
- 5.10.8 In response to a question by the ExA the Applicant reviewed the assessment to take account of the recently issued update to the guidance, BS 4142:2014 [REP2-014, Question N&V 3]. A +6dB tonality correction was applied to the predicted noise level at each receiver as a precautionary assessment, as this is the most onerous correction that can be applied in line with BS 4142:2014. An intermittency correction of + 3dB was also considered appropriate to allow for the fact that the plant may be switched off depending on the energy demand of the market. It was not considered appropriate to apply an 'impulsivity correction' as there are no items of plant with highly impulsive characteristics. Under BS 4142:2014 a combined penalty of +9dB would apply, instead of the +5dB assumed in

accordance with the 1997 version. This would result in the rating levels being 4 dB higher than those shown in Table 9.19 of the ES [APP-039].

- 5.10.9 The results of this re-assessment are set out in REP2-014 paras 5.24 - 5.27. The Applicant concluded that the new BS 4142:2014 standard is not expected to affect the outcome of the assessments.

Construction

- 5.10.10 For construction noise the realistic worst case scenario is to assume that the highest activity noise at the Order Limit boundary. In practice this will give a conservative assessment, as much of the construction activity would take place away from the boundary, and further from sensitive receptors.
- 5.10.11 Construction hours will be between 07:00 and 19:00 Monday to Friday and 07:00 to 13:00 hours on Saturday. No consent will take place on Sundays, public or bank holidays without prior consent from the local authorities.
- 5.10.12 The ES assessment has used measured noise levels from typical construction plant items taken from BS 5228-1 (Code of practice for noise and vibration control on construction and open sites. Noise) together with a methodology for predicting typical noise levels at receptors. Breaking out of concrete, piling, construction of earth works, use of diesel generators, welding, hand held circular saws and vehicle movements have been identified as particularly noisy activities from BS 5228-1.
- 5.10.13 Table 9.14 and Table 9.15 of the ES indicate that noise impacts due to the construction phase are expected to be negligible at the residential noise sensitive receptors (NSRs) in the study area, with the assumed construction activities taking place during day-time [APP-039]. This is primarily due to the effects of distance attenuation, the nearest residential property to the order limit boundary being some 290 metres away (properties off A34: Bankside and Meaford Road). Table 14 indicates that the effect of distance would attenuate the worst case noise impacts (concrete breakout and piling) by some 29dB. At this distance, the sound pressure level at the receptor would be below the measured baseline ambient level (LAeq,T). Consequently, the impact would be assessed as negligible. As the attenuation effect increases with distance, similar conclusions can be reached in respect of all other residential receptors.
- 5.10.14 It is acknowledged that worst case construction activity would have a greater impact on identified non-residential receptors including the Bowling Club, Barlaston Golf Club and the Canal. However these worst case effects would be of relatively short duration. While typical case effects on these receptors would still be significant, they are not residential properties and involve intermittent (primarily recreational) use. In my judgement they are less sensitive receptors and I do not

consider that the effects of construction activities, which are by their nature temporary, would be unacceptable.

- 5.10.15 An assessment of the likely vibration effects from percussive piling has been undertaken at the nearest sensitive receiver to the site (properties off A34: Bankside and Meaford Road). The Applicant's assessment is based on a worst case scenario which assumes that a hammer driven impact pile would be used, and that ground type is very stiff and cohesive in nature. According to BS 5228-2 (Code of practice for noise and vibration control on construction and open sites. Vibration) the potential impacts from percussive piling works would be of minor significance [APP-039, paragraph 9.122]. The predicted velocity of 0.62 mms⁻¹ may be just perceptible in a residential environment, but is below 1 mms⁻¹ that is likely to result in complaints. The levels are significantly below those which could result in cosmetic damage to buildings.
- 5.10.16 An assessment of road traffic noise effects during construction was carried out in accordance with the methodology of the Design Manual for Roads and Bridges (DMRB). Predicted change would be less than 1dB in all locations and can therefore be regarded as negligible at all the assessed NSRs (Table 9.17).

ExA's conclusions on Noise and Vibration

- 5.10.17 The scheme will require an Environmental Permit (EP). In deciding whether to issue the permit, the Environment Agency will give detailed consideration to the noise and vibration implications of the project. This includes construction and operational noise. Responsibility for determining the EP precludes the EA from making any statement at this stage which might prejudice its determination of the EP application when it is made. Only once an application containing the full justification of Best Available Techniques (BAT) has been received and assessed can the EA determine whether or not a permit can actually be granted. However, while not addressing the issue of noise and vibration in specific terms, the SoCG between the Applicant and the Environment Agency states that 'having considered the environmental information in the ES, the EA is satisfied and agrees that the scheme is of a type of plant (gas-fired CCGT) that should be capable of being adequately regulated under the pollution control framework and that cumulative impacts should fall within statutory limits. At this point in time the EA is unaware of anything that would preclude the grant of an EP' [REP2-015, para 6.15].
- 5.10.18 In its response to the ExA first written questions and in the LIR, SBC set out a number of concerns, including a request for a noise management action plan, a complaints management system and shorter working hours to limit the impacts of construction on residential properties. The Applicant set out a detailed response to these matters in REP3-006 & REP3-007. With regard to the need for a noise management action plan and a complaints monitoring system during the construction phase, Requirement 5 of the DCO includes

provision for nuisance management, including measures to avoid or minimise the impacts of construction works, to be addressed in the CEMP, a draft of which was submitted with the ES. Amongst other things, it includes provision for environmental monitoring, defined roles and responsibilities for staff, means of communication, record keeping, reporting, auditing and review, and a complaints procedure. I am satisfied that the Borough Council's concerns in this regard can be satisfied through the finalisation of the CEMP as required by Requirement 5.

- 5.10.19 With regard to the suggested reduction in working hours, the Applicant points out that the first and final hours of the working day on a construction site rarely give rise to the most significant noise and vibration effects. It is also likely that a reduction in working hours would extend the contract period for construction, so that in the unlikely event of residents experiencing any significant disturbance from construction activities, it would potentially extend over a longer period. In my view the working hours proposed in Requirement 12 would provide satisfactory protection for the occupiers of sensitive properties.
- 5.10.20 SBC subsequently agreed the following in respect of Noise and Vibration in the SOCG with the Applicant [REP2-019].
- the baseline detailed in paragraphs 9.102 - 9.113 of the ES;
 - the approach to the assessment methodology and significance criteria detailed in paragraphs 9.48 - 9.101 of the ES;
 - the assessment and conclusion of significance (alone and cumulatively);
 - the construction noise and vibration principles set out in paragraphs 9.145 - 9.152 of the ES including the draft CEMP and the related requirement in the DCO; and
 - the responsibility for setting and enforcing compliance with noise limits during the operational phase of MEC will lie with the Environment Agency through the EP process.
- 5.10.21 The evidence set out in the ES has not been substantially challenged, either by the EA or SBC, the two bodies principally concerned with noise regulation. I am satisfied that it provides a proportionate and robust assessment of the likely impacts of noise and vibration from the scheme on relevant receptors. The draft DCO contains provision for a CEMP and CMTP which satisfactorily address potential issues during the construction phase. The operational phase will be regulated through the EO process. Furthermore, Requirement 3 of the draft CPO contains provisions to ensure that appropriate sound insulation and noise mitigation measures will be included in the final design of the buildings. On this basis I conclude that the proposal accords with the advice in paragraph 5.11.9 of NPS EN-1 and that there would be no unacceptable noise or vibration effects such as to justify refusing consent for the Order.

5.11 TRAFFIC AND TRANSPORT

- 5.11.1 The ES concludes that there will be no significant long term operational effects following the completion of the construction phase. Once operational the scheme is predicted to generate 30 staff visits per day, the majority of which are likely to occur outside the highway peak periods. The traffic impact of this would be negligible.
- 5.11.2 Traffic generation will be significantly higher during the construction phase, though this effect will be temporary. The ES predicts that during the peak of construction activity approximately 55 additional HGV visits (55 arrivals and 55 departures) and 300 staff vehicle visits (300 arrivals and 300 departures). This is predicted to have a slight adverse effect on accidents and safety, pedestrian amenity (including fear and intimidation) and residential amenity.
- 5.11.3 The significance of effect is assessed as slight adverse during construction, and neutral during the operational phase [APP-037, Table 7.16].
- 5.11.4 In response to the ExA's first round questions, SCC confirmed that they were satisfied with the use of professional judgement in the traffic and transport assessment regarding the importance/sensitivity of identified receptors, the magnitude of change relating to road traffic and the assessment of residual effects. They also confirmed that they were satisfied with the use of estimated volumes of traffic and staff numbers during construction, and that this represented a worst case scenario [REP2-009].
- 5.11.5 Highways England (HwE) sought more information on matters addressed in the draft CTMP, in particular:
- a HGV booking / management system for co-ordinating HGV arrivals and departures at the site;
 - a system for notifying HwE on occasions when abnormal loads will require access to the site;
 - consideration of how HGV movements will be managed during the concrete pouring stage of construction;
 - information on distribution figures for HGV's arriving at and departing from the site and of the transport routes that will be used; and
 - a finalised methodology for monitoring, review and penalties associated with targets not being met to ensure that the developer remains accountable throughout the construction [REP2-007].
- 5.11.6 SCC also requested the inclusion of additional wording in Requirement 10 to ensure that accountability for breaches in the use of specified routes should rest with the Applicant and its contractors. They also sought the inclusion of a requirement that a route assessment should be made prior to any abnormal load being brought onto the site.

- 5.11.7 In response the Applicant submitted a revised draft CTMP (Rev 1) at Deadline 4 which included information on the number of construction vehicles during construction, giving details of distribution figures for HGV's arriving at or departing the site and of the transport routes to be used [REP4-006]. It also includes express wording relating to the management of HGV movements during the concrete pouring stage of construction, and a further amendment to Requirement 10(1)(b) to put in place reasonable mechanisms to ensure compliance with the provisions of the CTMP.
- 5.11.8 With regard to the other matters raised by HwE and SCC, a booking management system is discussed in the ES (para 7.195) and is included in the draft CTMP at paragraph 5.3.3 [REP4-006]. Requirement 10 of the DCO also specifically addresses the need for an HGV booking management system and Requirement 10(1)(g) requires a route assessment for abnormal loads.
- 5.11.9 In written representations SCC raised a matter concerning the relationship between the MEC, the wider MBP and the County Highway Works. SCC assumed that once the new southern access to the business park had been completed then the Business Park and Energy Centre would utilise that as the access for construction purposes.
- 5.11.10 The ES undertakes assessment of the site with and without the new access. However the application does not cover the possibility of using the southern access to the business park as an option for construction purposes. SCC also note that the Order limits do not extend to the new southern access and as such the Order doesn't provide for the use of the southern access. SCC felt that it is important through the examination to address the issue and ascertain if there is potential for the southern access to be utilised and if so how this could occur.
- 5.11.11 To my mind, the key point is that the existing access has been demonstrated to be acceptable for use in the construction and operation of the MEC, as SCC readily acknowledge. It may well be that, as all parties seem to accept in principle, that use of the southern access through the business park for the construction of the MEC, would be preferable from an environmental and traffic perspective. However it has yet to be constructed as part of the implementation of the business park, and there is no certainty as to when it will be constructed. In the circumstances I do not consider that it would be reasonable to withhold the making of the DCO in the absence of a formal agreement between the parties to use an alternative access.

ExA's conclusion on Traffic and Transport

- 5.11.12 The revised draft CTMP [REP4-006] includes a robust range of measures and site management practices which will be secured by Requirement 10. The measures will provide effective mitigation for the impact of construction traffic so that the significance of the residual effect will be slight adverse during the construction phase.

There would be no adverse traffic and transport impacts attributable to the operational phase of the development.

5.12 POLLUTION CONTROL AND OTHER ENVIRONMENTAL REGULATORY REGIMES

- 5.12.1 The scheme would require an Environmental Permit. The EA which has responsibility for the permitting regime has indicated that on the basis of the evidence it has seen (which includes the Environmental Statement) they have not identified any issues which would preclude the granting of an Environmental Permit for the proposed operations [REP2-006]. In accordance with paragraph 4.10.7 of NPS EN-1, the SoS can be satisfied that the relevant pollution control authority considers that potential releases can be adequately regulated under the pollution control framework.

5.13 OBJECTION BY RESIDENTS ASSOCIATION

- 5.13.1 Meaford Road Residents Association [RR-005] represents the owners of properties at Meaford Hall, Home Farm, St. Vincent's Mews and Admiral's View, a total of 17 dwellings, located within 450 and 550 m of the application site and immediately adjacent to a section of Meaford Road that will be the main and sole HGV traffic route to the MEC. Fourteen of these dwellings were constructed since the former coal fired power station was demolished in 1996, and others have changed ownership. Association members have made it clear that had the power station remained operational they would have been less likely to purchase or at least paid a lower price.
- 5.13.2 The construction of a new power station, albeit gas fired, gives association members considerable concern in regard to property values both during the construction and operation of the proposed MEC. The association has been generally supportive of the project subject to the provision of road infrastructure and recognition of an inevitable reduction in property values owned by the association members. Road infrastructure improvements have been commissioned by Staffordshire County Council and are underway, but the issue of valuation has not been addressed.
- 5.13.3 MEL's preliminary environmental information report (PEIR) stated that the impact on residential property values would be negligible because of the site's historic industrial use. The association commissioned an opinion from Tinsley Garner, an established local estate agent, of which the following is an extract:

'We note that the DCO application claims mostly insignificant and/or statute compliant adverse effects for members of the Meaford Road Residents Association from the proposed construction and operation of the Power Station in regard to potential health and safety hazards, visual effects and amenity value. However, adverse effects will arise and provide a factual basis for an existing public perception that 'living

in the shadow of a power station' is injurious to health, unattractive and highly undesirable.

We therefore believe that the overall market appeal of homes owned by Association members will be diminished and this, we estimate, will result in property values being reduced by as much as 15% during the construction phase of the power station and between 10-15% whilst in operation.'

5.13.4 The association submitted further information at written representations stage [REP2-003] including a further opinion from a Chartered Surveyor with over thirty years experience in valuing property in the area. This concurred with Tinsley Garner's view that a fall in value of 10 -15% could be expected. An association member stated that if he had been aware of plans for the MEC he would probably not have purchased his property on 23 May 2014, or at least would have negotiated a much reduced purchase price.

5.13.5 While this is an NSIP scheme rather than a planning application, certain principles that are applicable to the planning regime are also relevant to the consideration of NSIP applications.

5.13.6 It is a long held principle that planning is concerned with land use in the public interest. The Applicant refers to Paragraph 008 of the Planning Practice Guidance:

'The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.'

[REP3-007, para 3.6]

5.13.7 I have given detailed consideration to potential environmental impacts of the MEC, including transport impacts, in general terms and specifically their impacts on residential amenity. While I acknowledge the concerns of the Residents Association, I have not found any long term impacts arising from the scheme which would have a significant detrimental impact on their living conditions.

5.13.8 The impacts of the proposal have been assessed in the context that the wider MBP site has been identified as a major developed site in the Green Belt with redevelopment potential for many years, and has had planning permission for a major commercial/industrial development since at least 2007, with the principle having been approved by Stafford Borough Council in 2000. Such a development will itself have effects on the living conditions of residents, and these will have been assessed in the decision to grant permission.

- 5.13.9 While I understand that proximity to a power station might be perceived as harmful to residential amenity (and hence to property values), the characteristics of a relatively small gas fired power station are very different to the coal fired power stations that previously occupied the site, with substantially less potential for atmospheric pollution and health impacts. Such matters would be regulated by an Environmental Permit, which imposes stringent limits on emissions. It will be located a reasonable distance from the properties in question, and I have found that existing and proposed landscaping will protect these properties from any significant visual impact. Traffic attributable specifically to the scheme will be minimal during the operational phase of the scheme, and the DCO secures measures to limit environmental and amenity impacts during the construction phase. The new access road and roundabout for the Meaford Business Park under construction at the time of the Examination will move traffic slightly further away from properties on St Vincent's Mews and Admiral's View.
- 5.13.10 In the context of the specific legal regimes that provide for compensation to be payable in appropriate circumstances, the Applicant does not consider there to be impact on value for which compensation would become due, but has indicated a willingness to discuss such matters with the Association's adviser, though that does not appear to have happened to date. It would be open to third parties to initiate a claim to be heard before the Lands Tribunal, which would determine the matter should a claim be successfully brought at the appropriate time.
- 5.13.11 Accordingly, I do not consider that effects on residential amenity would justify the withholding of consent for the DCO. Compensation is a matter that would have to be pursued through other legal avenues.

6 THE EXA'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

6.1 THE PLANNING BALANCE

- 6.1.1 The need for the proposed development was not challenged by any statutory consultee, IP or other person. I conclude at paragraph 4.5.4 above that a CCGT power station fuelled by natural gas fits clearly into the energy strategy set out in NPS EN-1.
- 6.1.2 The scheme would be fully in accord with the statement of Government policy set out in NPS EN-1, and in particular that gas will continue to play an important role in the electricity sector - providing vital flexibility to support an increasing amount of low-carbon generation and to maintain security of supply (EN-1 para 3.6.2). Substantial weight should be given to the contribution which projects would make towards satisfying the identified need for energy infrastructure (EN-1 para 3.1.4). It has been designed to be CHP ready should there be a future demand, in accordance with advice in para 4.6.8 of NPS EN-1. Its rated capacity would not exceed 299 MWe and therefore there is no requirement to demonstrate that the plant would be 'carbon capture ready' [NPS EN-1 para 4.7.10].
- 6.1.3 At paragraph 4.4.7 above I conclude that the combined effect of the MEC and MBP proposals would not have a greater impact on the openness of the Green Belt, and so would comply with Policy E5 of the PSB. In other respects I conclude in paragraph 4.4.11 that the proposal would generally comply with the provisions of the development plan for the area.
- 6.1.4 At paragraph 4.6.16 I report my finding that the site chosen by the Applicant is an appropriate location for the type of development proposed. It offers a relatively scarce set of circumstances where the relevant policy matrix, the brownfield character of the site, the ready availability of a gas supply and distribution infrastructure and the absence of significant environmental constraints coincide to create a highly favourable context for the development proposed.
- 6.1.5 With regard to potential impacts of the scheme I conclude at 5.1.11 that the issue of good design has been satisfactorily addressed in the evolution of the project, and in the drafting of the DCO. On Air Quality (5.3.25), I find that the scheme will not result in any significant effects on human health arising from air quality impacts and that there is no reason to believe that any relevant necessary operational pollution control permits or licenses will not be granted. With regard to Ecology, I conclude that, with the implementation of the mitigation measures as secured through the DCO there would be no significant negative effects to any sites designated for their nature conservation interest. While the scheme would result in the loss of some habitat within the Order limits, the Applicant proposes a satisfactory scheme of mitigation including planting of broadleaved trees and the creation of a

landscape mitigation area, which includes areas of replacement habitat. (5.4.27).

- 6.1.6 At 5.7.12 I conclude that the draft DCO makes satisfactory provision in respect of Flood Risk and the Water Environment to ensure the scheme would not give rise to any significant adverse impacts. It would accord with the objectives of the Water Framework Directive, which provides for the management of inland surface water, groundwater and coastal waters in order to prevent and reduce pollution, promote sustainable water use, protect the aquatic environment, improve the status of aquatic ecosystems and mitigate the effects of floods and droughts. At 5.10.21 I conclude that there would be no unacceptable noise or vibration effects such as to justify refusing consent for the Order. Similarly there would be no unacceptable impacts arising in respect of traffic and transport considerations (5.11.12). With regard to the objection by the Residents Association, I have not identified any significant adverse effects on residential amenity that would justify withholding consent for the scheme. Compensation, if justified, should be sought through other legal avenues (5.13.11).
- 6.1.7 In section 5.8 above I have identified some slight adverse impacts on a number of heritage assets, including Meaford Hall, Meaford Old Hall, Outlanes Farm, the Trent and Mersey Canal Conservation Area and Turnover Bridge. However in all cases the significance of impact would be minor. There is potential for slight harm to the appearance of Malkin's Bridge (an unlisted heritage asset within the CA) from the installation of the gas supply pipeline, but there would also be an improvement from repairs to be undertaken as part of the scheme. The extent of the adverse impact on all heritage assets would in any event be minor, and are outweighed by the wider benefits of the application.
- 6.1.8 I also acknowledge (at 5.9.23) that there will be some landscape and visual effects that cannot be mitigated in full, particularly those arising from the height of the stacks and the associated heat recovery steam generation (HRSG) units. Nevertheless I conclude that the landscaping proposals within the order limits will provide satisfactory screening for key views from the canal conservation area, and related heritage assets. In view of the suitability of the location for the development, I consider that limited weight should be attached to the unavoidable residual landscape and visual impacts of the scheme, in accordance with the advice in paragraph 2.6.10 of NPS EN-2.
- 6.1.9 The harm identified and described above is very limited, and in the case of heritage assets less than substantial.
- 6.1.10 I conclude that the benefits of the scheme substantially outweigh the limited harm, and that there is a clear case for granting Development Consent.

7 COMPULSORY ACQUISITION AND RELATED MATTERS

7.1 THE REQUEST FOR COMPULSORY ACQUISITION POWERS

- 7.1.1 The Request for CA powers is made through the inclusion of Articles 18 - 28 in the Applicant's initial draft DCO [APP-018] and as Articles 18 - 28 in the ExA's recommended DCO (Appendix D below). This is supported by a Statement of Reasons [APP-020], a Book of Reference [APP-022] which was subsequently updated during the pre-examination stage [AS-006], and a Funding Statement [APP-021]. Individual plots are shown on the Land Plan [APP-006], subsequently updated at Deadline 2 in response to a question by the ExA [REP2-018].
- 7.1.2 The extent of land over which CA powers are sought is shown on the amended Land Plan [REP2-018]. The bulk of the land within the Order Limits is within the control of the Applicant through an option agreement between the freehold owner of the MBP, St Modwen Properties I SARL and Meaford Land Limited (MLL). The lease within the option agreement includes the necessary alienation provisions to allow MLL to transfer, assign or underlet the whole of the land and the necessary rights to MEL together with the unfettered ability to call upon such land and rights in order to deliver the scheme in accordance with the Order (a draft of the lease is included in REP2-014). However, the DCO also proposes to create and acquire new rights and impose restrictions over two small plots shown in blue on the Land Plan and in the Book of Reference as GC3 and GC5. GC3 is a bridge over the West Coast Mainline Railway in the ownership of Network Rail. GC5 is a bridge over the Trent and Mersey Canal, also known as Malkin's Bridge or Bridge 101, in the ownership of the Canal and River Trust. These rights and restrictions are needed to allow the Applicant to construct the Gas Connection which will supply natural gas to the power station.
- 7.1.3 Over the remainder of the land (shaded yellow in the Land Plan) the Order seeks to suspend private rights and restrictive covenants to the extent that their continuance would be inconsistent with any activity authorised by the Order. As the Applicant has secured the majority of the land and rights for the Scheme by agreement, it is necessary to ensure that there are no unidentified private rights or restrictions that could impede the scheme.
- 7.1.4 No power to acquire freehold land is included in the Order. Article 25 of the DCO allows the undertaker to enter and take temporary possession of land identified in the Land Plan and Book of Reference for the carrying out of the authorised development. This is because the Applicant does not propose to acquire any freehold rights, but to impose new rights and restrictions on the land.
- 7.1.5 Paragraph (3) of Schedule 3 of the DCO imposes modifications to the compulsory purchase and compensation provisions under the

compulsory purchase code. They do not affect entitlement to compensation but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order, that is the creation of new rights and the imposition of restrictions. Accordingly the relevant compensation provisions are proposed to be modified only to the extent necessary to ensure that they apply properly to the acquisition of rights and imposition of restrictions and not to affect the amount of compensation to which landowners would be entitled. This approach has been used in other NSIP orders.

7.1.6 Paragraphs 1.20 - 1.21 of the Statement of Reasons [APP-020] set out the steps that the Applicant has taken to acquire all the relevant land and interests by agreement. Further updates on the current state of negotiations were given during the examination in responses to the ExA's questions [REP2-014, paragraphs 8.82 - 8.88] and at the CA hearing [REP4-010]. However, the Applicant has sought to keep CA powers in reserve to ensure that the project would be realised in the event of a negotiated acquisition not being achievable.

7.2 THE PURPOSES FOR WHICH THE LAND IS REQUIRED

7.2.1 The Applicant requires compulsory acquisition powers to create rights and impose restrictions over Plots GC 3 and GC 5 in order to provide the natural gas to fuel the Power Station Complex.

7.2.2 Accordingly, the Applicant seeks to acquire rights on and over the railway bridge known as 'Rail Bridge 104' and over the canal bridge known as 'Canal Bridge 101 (Malkin's Bridge) for all purposes in connection with the laying, installation, use and maintenance of the Gas Connection pipeline (and associated telecommunications cables). These restrictions are no more than industry standard and are necessary to protect the fuel supply to the Power Station Complex.

7.2.3 Various private rights also exist over the development site, which benefit third parties, including over land already within the Applicant's control. To allow the development to proceed unhindered the right to suspend these interests has been reserved.

7.2.4 No Crown Land would be affected by the Order.

7.2.5 The interests of Statutory Undertakers will be protected through Article 26 and Schedule 7 (Protective Provisions to the Order).

7.3 THE REQUIREMENTS OF THE PLANNING ACT 2008

7.3.1 Compulsory acquisition powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008 are met.

7.3.2 Section 122 (2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land

required for the development, the land to be taken must be no more than is reasonably required and be proportionate.⁹

- 7.3.3 Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right. But this does not mean that the compulsory acquisition proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.
- 7.3.4 Section 123 requires that one of three conditions is met by the proposal¹⁰. The ExA is satisfied that the condition in s.123 (2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.
- 7.3.5 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers –
- all reasonable alternatives to compulsory acquisition must be explored
 - the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
 - the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

7.4 HOW THE EXA EXAMINED THE CASE FOR COMPULSORY ACQUISITION

- 7.4.1 A CA Hearing was held on 12 November 2015. The hearing considered updates from the Applicant and affected parties, though no IP attended the hearing. Following receipt of written summaries arising from the hearing, the ExA issued second round questions, including requests for clarification of CA matters.

⁹ PA 2008: Guidance related to procedures for compulsory acquisition DCLG February 2010

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

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

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

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

The Applicant's case

7.4.2 The overall case for the CA of land and/or rights is set out by the Applicant in the Statement of Reasons [APP-020]. Para 7.3 states that:

'Given that the only feasible way to connect the Power Station Complex to the local transmission system (LTS) is by crossing the Canal at Canal Bridge 101 (Malkin's Bridge) and the West Coast Mainline Railway at Rail Bridge 104, [the Applicant] considers that the area over which compulsory acquisition powers are sought are the minimum needed to operate the Scheme'.

7.4.3 The private rights which are subject to potential interference or suspension(identified in Part 3 of the Book of Reference (AS-006) are all for the benefit of statutory undertakers with the exception of the Trustees of the Barlaston Bowls and Tennis Club (plot NAR1), and various unknown beneficiaries in plots GC1, GC2, GC4, GC6, GC6A, NAR1, NAR2, NAR2A and NAR2B. The statutory undertakers will have the benefit of Schedule 7 (Protective Provisions) to the Order and are thus protected, whilst Trustees of the Barlaston Bowls and Tennis Club have rights over NAR1 through a tenancy at will of adjoining land. Therefore the private loss is minimal and clearly outweighed by the need for the scheme.

Consideration of Alternatives

7.4.4 The Applicant continued to negotiate the acquisition of the necessary rights throughout the course of the Examination. Updates were received at Deadline 2 indicating that the relevant parties considered that the outstanding matters could be resolved by agreement. However, at the time the Examination closed these matters had not been finally resolved.

7.4.5 All reasonable alternatives were considered in the preparation of the Scheme application. MEL considers that the site offers the most appropriate location for the scheme because: it minimises impacts on third party land, including the requirement for CA; it is sufficiently close to the LTS and electricity distribution network to enable the supply of fuel and export of electricity from the Power Station Complex; it has good accessibility; it is located within the existing MPB site and accords with local planning policy; and it avoids significant impacts on environmentally sensitive areas and local adverse impacts are capable of being minimised to an acceptable degree.

Availability and Adequacy of Funds

7.4.6 The Applicant is MEL, a joint venture company established by St Modwen Properties V Sarl ('St Modwen') and Glenfinnan Properties with the intention of promoting and securing a DCO for the scheme. All of the land required for the scheme is already owned by St Modwen with the exception of Canal Bridge 101 (Malkin's Bridge) and Rail Bridge 104.

- 7.4.7 The Applicant states that St Modwen and Glenfinnan have an extensive background in the development and economic regeneration of sites throughout the UK. St Modwen is a wholly owned subsidiary of St. Modwen Properties Plc, a FTSE 250 company with a current capitalisation of over £1 billion (March 2015). Glenfinnan is a private company with an investment profile that includes power generation, renewable energy, farming, tourism, and property development and has a total value in excess of £300 million.
- 7.4.8 The estimated cost of the scheme is some £300 million. This represents the cost of implementing the scheme, including the cost of construction and the funding of acquisition of the necessary rights over land. This figure has been arrived at after taking professional guidance.
- 7.4.9 Through St Modwen and Glenfinnan properties, MEL has the ability to procure the financial resources necessary to fund the scheme. The St Modwen arm of the joint venture alone has a sufficient asset base to cover the funding of the scheme.
- 7.4.10 In response to ExA's Question OL13 the Applicant set out the following clarification:
- 'Prior to commencement of the development MEL will have made a final investment decision. Before reaching this point, MEL will have secured all the funding required for the development which, as is normal for any development of this scale, will be made up of equity, shareholder funds and may also consist of third party funding, bond issue, initial public offering or other form of third party funding.'*
- 'If voluntary rights cannot be negotiated on Land Parcels GC3 and GC5, MEL is seeking compulsory rights and understands that compensation may be payable to the relevant landowners for the rights to cross the two bridges. The value of the rights will take into account the fact that the owners of the two bridges have no access rights to land on either side of the bridges. MEL and Meaford Land Limited (MLL) have secured access rights to the land on either side of the bridges.'*
(REP2-014)
- 7.4.11 The Applicant reported that the Central Electricity Authority (CEA), and its successors, obtained a right in 1957 to cross the bridges in question. The rights permitted the CEA to construct and use a 12" filtrate pipe and two 8" ash discharge pipes, on supports over the two bridges in return for a one off payment of £132. MELs current estimate of the likely compensation to owners, in accordance with standard valuation practice is between £250 and £750 in each case, taking account of the fact that neither of the beneficial owners has access rights over the bridges. This amount will not be an issue for MEL to pay.

7.5 THE EXA'S CONSIDERATION OF THE CA ISSUES

ExA's approach

- 7.5.1 The approach taken to the question of whether and what CA powers the ExA should recommend to the Secretary of State has been to seek to apply the relevant sections of the PA2008, notably s122 and s123, and the DCLG Guidance¹¹.

The public benefit

- 7.5.2 In considering the case for granting Development Consent I have concluded that the benefits of the scheme would substantially outweigh the limited harm identified. This is because the harm identified is very limited and the scheme would be fully in accord with the statement of Government policy on electricity generation set out in NPS EN1, and in particular that gas will continue to play an important role in the electricity sector - providing vital flexibility to support an increasing amount of low-carbon generation and to maintain security of supply (NPS EN-1, Paragraph 3.6.2).

Alternatives

- 7.5.3 The DCLG Guidance requires (para 20) that –
- ‘The promoter should be able to demonstrate to the satisfaction of the decision-maker that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored...’
- 7.5.4 The Order is not reliant on the acquisition of any freehold land, and minimises the areas of land where it is necessary to acquire rights to the two bridges needed to provide the gas supply to the site. The need to extinguish, suspend or remove rights is generally subject to protective provisions which will ensure no detriment to the carrying on of any undertaking.
- 7.5.5 The Applicant has made diligent efforts to secure the rights needed by agreement, and there remains every likelihood of this being achieved. However, to ensure that the achievement of the development is not impeded it is necessary for the Applicant to secure CA powers in the event of agreement not being reached on a voluntary basis.

The site selected and specific characteristics of the site

- 7.5.6 I have concluded that the MEC site offers a relatively scarce set of circumstances where the relevant policy matrix, the brownfield character of the site, the ready availability of a gas supply and distribution infrastructure and the absence of significant environmental

¹¹ PA 2008: Guidance related to procedures for compulsory acquisition - February 2010

constraints coincide to create a highly favourable context for the development proposed.

- 7.5.7 The Applicant has considered alternative configurations within the site, but all would be reliant on the same means to secure the gas supply from the existing NGG installation across the railway and canal bridges.

7.6 THE EXA'S CONCLUSIONS ON SPECIFIC PARCELS

Western Power Distribution - Plots GC1, GC2, GC3, GC4, GC5, GC6, GC6A, NAR1, NAR2, LS1, PS1, PS1A, EA1, EC1, SW2 and SW3

- 7.6.1 Western Power Distribution has a number of interests in the site of the proposed development. The DCO contains protective provisions over which WPD and the Applicant have been engaged in negotiations. Should agreement not be reached on these, WPD will need to object to the scheme, at least until it is satisfied with the development and its effects on its operations and apparatus.
- 7.6.2 At the CA hearing on 12 November 2015 the Applicant outlined the discussions which had been held with WPD and referenced the WPD letter of 9 November summarising their position and stating that negotiations were ongoing between the parties regarding protective provisions and a side agreement. WPD did not attend the hearing.
- 7.6.3 At the date the examination closed there was no indication that agreement had been reached on the protective provisions.
- 7.6.4 In its response to Written Representations [REP2-014, para 3.36], the Applicant stated that WPD benefits from a Licence to Retain Assets, which provides continuous access to WPD's equipment. It also protects the equipment that exists on site. The parties agreed at a meeting on 19 October 2015 that WPD will prepare an asset register for all of their equipment within the MBP, which can be appended to the Licence for future reference.
- 7.6.5 The protective provisions in favour of electricity, gas, water and sewerage undertakers are set out in Part 2 of Schedule 7 to the DCO. Broadly it protects the right of utility undertakers to maintain their apparatus irrespective of any temporary restriction on the use of streets. It prevents the Applicant from acquiring any apparatus other than by agreement. Apparatus cannot be moved, or any right to access be extinguished, unless alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question. Any alternative apparatus must be constructed in a manner to be agreed by the utility undertaker.
- 7.6.6 The extinguishment, suspension or removal of any relevant right would be subject to the protective provisions included within Revision 2 of the DCO, and I am satisfied that the extinguishment, suspension or removal of any relevant right can take place without serious

detriment to the carrying on of the WPD's undertaking (PA 2008 s.127). I am also satisfied that it is necessary for the purposes of the development in the event of any relevant right being shown to be inconsistent with the carrying out or operation of the development. (PA 2008 s.138).

National Grid Gas - GC2

- 7.6.7 National Grid Gas PLC has a high pressure local transmission pipeline located within the order limits which is affected by works proposed and which forms part of the connection to the local gas transmission network. NGG will require protective provisions to be included within the DCO to ensure that its apparatus and land interests are protected and to include compliance with the relevant safety standards.
- 7.6.8 At the CA hearing on 12 November 2015 the Applicant outlined the discussions which had been held with NGG and stated that the parties were close to reaching agreement on the protective provisions and the accompanying side agreement. NGG did not attend the hearing.
- 7.6.9 At the date the examination closed there was no indication that agreement had been reached on the protective provisions.
- 7.6.10 The protective provisions in favour of NGG are set out in Part 1 of Schedule 7 to the DCO. Broadly it protects the right of NGG to maintain their apparatus irrespective of any temporary restriction on the use of streets. It prevents the Applicant from acquiring any apparatus or land interest, or overriding any easement other than by agreement. Apparatus cannot be moved, or any right to access be extinguished, unless alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the NGG. Any alternative apparatus must be constructed in a manner to be agreed by NGG.
- 7.6.11 With regard to the statutory tests s.127 of PA 2008 does not apply to NGG as the Applicant is not seeking to acquire any land or rights belonging to NGG. The extinguishment, suspension or removal of any relevant right would be subject to the protective provisions included within Revision 2 of the DCO, and I am satisfied that it is necessary for the purposes of the development in the event of any relevant right being shown to be inconsistent with the carrying out of the development, in accordance with s.138 PA 2008.

Network Rail - GC3

- 7.6.12 Network Rail objects to any proposed compulsory acquisition of its land or any rights in, over or under its land. The extent of the project's interface with the railway is that a gas pipeline will cross the railway over Rail Bridge 104. Discussions have been entered into with the Applicant regarding the grant of an easement for that purpose, subject to appropriate protections and conditions required by Network Rail. There are standard protective provisions for the benefit of Network Rail which are well precedented in DCOs. Although the DCO

includes some protective provisions for the benefit of Network Rail, these are not wholly in a form that is acceptable to Network Rail.

- 7.6.13 At the CA hearing on 12 November 2015 the Applicant outlined the discussions which had been held with Network Rail and stated that the protective provisions were agreed subject to a side agreement being agreed. The Applicant has made a financial offer to Network Rail on 11 November in order to progress discussions. Network Rail did not attend the hearing.
- 7.6.14 At the date the examination closed there was no indication that final agreement had been reached on the proposed acquisition of rights and restrictions.
- 7.6.15 The protective provisions in favour of Network Rail are set out in Part 3 of Schedule 7 to the DCO. Any consent or approval required of Network Rail is subject to compliance with any relevant railway operational measures and any obligations under its network licence. Powers conferred by the DCO relating to CA of rights can only be exercised with the consent of Network Rail. It further protects the right of Network Rail to maintain their apparatus irrespective of any temporary restriction on the use of streets. Before commencing construction of any specified work the Applicant must supply plans for the approval of the engineer and work must be carried out in accordance with the plans. The engineer may also specify any protective measures to ensure the safety and stability of the railway.
- 7.6.16 As I understand it the content of the protective provisions are agreed by Network Rail in general terms.
- 7.6.17 From the evidence produced at the CA hearing it is my understanding that the Applicant has made diligent effort to acquire the necessary rights by agreement and without resorting to compulsory acquisition powers. Given the nature of the Network Rail's objection it would appear that there are no overriding obstacles to such agreement being reached between the parties. Nevertheless as final agreement had not been reached by the time the examination closed, it is necessary for the Secretary of State to consider whether the statutory tests for compulsory acquisition are met.
- 7.6.18 Having regard to the protective provisions included within Revision 2 of the DCO, I am satisfied that the creation of new rights can be purchased without serious detriment to the carrying on of the Network Rail's undertaking (PA 2008 s.127). I am also satisfied that the extinguishment, suspension or removal of any relevant rights is necessary to the carrying out of the development, as the provision of a gas supply over Bridge 101 is essential to the success of the development (PA 2008 s. 138).

Canal and River Trust - GC5

- 7.6.19 The Trust objects to the inclusion in the draft Order of powers to compulsorily acquire its land or rights over its land. It is noted that

under paragraph 48(1) of part 4 of Schedule 7 of the draft Order that the Trust's consent is required for the exercise of these powers. However, this is qualified in Article 48(6) which provides that the Trust may not unreasonably withhold or delay consent. The Trust states its intention of instead seeking to reach prior agreement with the promoter with a view to granting the land and rights that are strictly necessary for the development.

- 7.6.20 At the CA hearing on 12 November 2015 the Applicant outlined the discussions which had been held with CRT in seeking to reach agreement. The Applicant made a financial offer to CRT on 11 November in order to progress discussions on a side agreement. It was pointed out that the Gas Pipeline will oversail Canal Bridge 101 (Malkin's Bridge) and will not touch the deck of the Bridge. CRT do not own any land on either side of the bridge and therefore has no beneficial use of it. CRT did not attend the hearing.
- 7.6.21 At the date the examination closed there was no indication that agreement had been reached on the protective provisions or the proposed acquisition of rights and restrictions.
- 7.6.22 The protective provisions in favour of CRT are set out in Part 4 of Schedule 7 to the DCO. The protective provisions were revised by the Applicant and included in Revision 2 of the DCO submitted at Deadline 4. (REP3-008) The revisions were made because an anticipated signing of a side agreement had not taken place by the date of the CA hearing. The paragraph 48(1) provision referred to above in paragraph 7.6.19 were deleted from the draft DCO. However, the Applicant considered it necessary to retain reference to CRT's consent not being unreasonably withheld as no agreement had been signed at the time of the hearing. Broadly the protective provisions prevent the Applicant from interfering with pedestrian or vehicular access to the waterway, the supply of water and drainage without the Trust's consent. The Applicant must provide fencing where required by the Trust's engineer and submit plans of the proposed works for his or her approval. The Applicant must consult with the Trust on the design and appearance and environmental effects of the specified works. The right of navigation must be maintained, unless the Trust agrees to a temporary stoppage, and the waterway must be restored to its previous condition on completion of the works.
- 7.6.23 From the evidence produced at the CA hearing it is my understanding that the Applicant has made diligent efforts to acquire the necessary rights by agreement and without resorting to compulsory acquisition powers. Given the nature of the Trust's objection (as set out in paragraph 7.6.19 above) it would appear that there are no overriding obstacles to such agreement being reached between the parties. Nevertheless as agreement had not been reached by the time the examination closed, it is necessary for the Secretary of State to consider whether the statutory tests for compulsory acquisition are met.

7.6.24 Having regard to the protective provisions included within Revision 2 of the DCO, I am satisfied that the creation of new rights can be purchased without serious detriment to the carrying on of the Trust's undertaking (PA 2008 s.127). I am also satisfied that the extinguishment, suspension or removal of any relevant rights is necessary to the carrying out of the development, as the provision of a gas supply over Bridge 101 is essential to the success of the development (PA 2008 s. 138).

SP Manweb PLC ("SPM") - NAR 1, NAR 2, EA1, EC1, SW3

7.6.25 SPM requested the inclusion of protected provisions regarding access to a pylon that is located outside the Order limits. Protective provisions are included in the DCO Rev 2 submitted for Deadline 4.

7.6.26 With regard to the statutory tests, s.127 does not apply as the Applicant is not seeking to acquire land or rights from SPM. Having regard to the protective provisions, I am satisfied that any extinguishment, suspension or removal of a relevant right is necessary in the event of any relevant right being shown to be inconsistent with the carrying out of the development (PA 2008 s.138).

British Telecom PLC - NAR1, NAR 2, NAR2A, NAR2B, PS1, PS1A, EA1, EC1, SW2, SW3

7.6.27 Protective provisions for the benefit of British Telecom PLC have been drafted to align with BT's document 'Special requirements when working in the vicinity of Openreach apparatus' sent to the Applicant by BT on 27 April 2015.

7.6.28 At the CA hearing on 12 November, the Applicant confirmed their understanding that the amended protective provisions included in Revision 2 of the DCO submitted for Deadline 4 fully address BT's interest in the case. However, BT had not responded to the Applicant's requests for confirmation. BT did not attend the hearing.

7.6.29 With regard to the statutory tests, s.127 does not apply to Telecommunications undertakers. Having regard to the protective provisions, I am satisfied that any extinguishment, suspension or removal of a relevant right is necessary in the event of any relevant right being shown to be inconsistent with the carrying out of the development (PA 2008).

Colt Telecom Limited ('Colt') - SW2

7.6.30 Protective provisions for telecommunications providers have been included in Schedule 7 of the DCO.

7.6.31 At the CA hearing on 12 November, the Applicant reported that Colt had confirmed in 2014 that no other specific provisions needed to be included to protect their interests.

7.6.32 With regard to the statutory tests, s.127 does not apply to Telecommunications undertakers. Having regard to the protective provisions, I am satisfied that any extinguishment, suspension or removal of a relevant right is necessary in the event of any relevant right being shown to be inconsistent with the carrying out of the development (PA 2008).

KCOM Group PLC ('KCOM') - SW2

7.6.33 Protective provisions for telecommunications providers have been included in Schedule 7 of the DCO.

7.6.34 At the CA hearing on 12 November, the Applicant reported that KCOM had not responded to any communications from the Applicant up to that date.

7.6.35 With regard to the statutory tests, s.127 does not apply to Telecommunications undertakers. Having regard to the protective provisions, I am satisfied that any extinguishment, suspension or removal of a relevant right is necessary in the event of any relevant right being shown to be inconsistent with the carrying out of the development (PA 2008 s.138).

The Trustees of Barlaston Bowls and Tennis Club - NAR1

7.6.36 The Trustees are included in Parts 2 and 3 of the Book of Reference due to their access to the Bowling Green, which is currently exercised over the Northern Access Road.

7.6.37 The Trustees confirmed by letter dated 2 April 2015 that they had been informed about the works to be carried out to the northern access road as part of the MEC works. They understood that access to the Bowling Club will be maintained during the works, and confirmed their satisfaction with those arrangements.

7.6.38 In the absence of any objection by the Trustees I am satisfied that the interests of the Trustees have been addressed, and that any suspension or removal of a relevant right is necessary in the event of any relevant right being shown to be inconsistent with the carrying out of the development (PA 2008 s.138).

7.7 THE EXA'S OVERALL CA CONCLUSIONS

7.7.1 The ExA's approach to the question whether and what compulsory acquisition powers it should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of the Act, notably s.122 and s.123, the Guidance¹², and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

Human Rights Act¹³ 1998 considerations

7.7.2 A key consideration in formulating a compelling case is a consideration of the interference with human rights which would occur if compulsory acquisition powers are granted.

7.7.3 Neither Article 1 of the First Protocol (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with) nor Article 8 which relates to the right of the individual to 'respect for his private and family life, his home ...' is engaged by the CA provisions of this DCO.

7.7.4 Those affected by compulsory acquisition powers sought for the project were provided with the opportunity for a fair and public hearing of their objections through the examination process, so Article 6 has been complied with.

7.7.5 Article 25 of the DCO provides for the undertaker to take temporary possession of land specified in Schedule 9 for the construction of the project, subject to clear limits on the length of time that the undertaker can use land in this way. Subsection 5 of Article 25 provides that the undertaker must pay compensation to the owners and occupiers of such land for any loss or damage arising from the exercise of these powers, with any disputes to be determined under Part 1 of the 1961 Act. There were no objections or representations specifically to the provisions of Article 25 and no evidence was presented to the examination that there would be any disadvantage to the interests of any affected party. Were such disadvantage to be identified subsequently, the Article provides an avenue for compensation to be paid. The use of temporary possession powers as an alternative to CA has ensured that the need for CA is minimised. In view of the compensation provisions I conclude that the temporary possession powers do not engage any of the provisions of the HRA.

7.7.6 The Secretary of State can accordingly be satisfied that there would be no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998 .

¹² Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

¹³ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

Adequacy of funding

- 7.7.7 As set out in the funding statement, the Applicant is a joint venture company established by St Modwen and Glenfinnan Properties to promote the DCO scheme. St Modwen is a well-known public company, listed in the FTSE 250, and prominent in the field of re-development and regeneration. The Annual Report and Financial Statements 2014, provided with the Funding Statement (APP-021) show that it has a property portfolio of some £1.3billion with profits before all tax of £138.1 million in 2014. St Modwen is involved in a number of large development projects, including the regeneration of Longbridge, Swansea Bay and New Covent Garden Market. Its partner in the MEL venture has a property portfolio of some £300 million. Both partners appear on the evidence to have extensive experience in the promotion and funding of major capital projects such as the DCO scheme.
- 7.7.8 St Modwen already owns the bulk of the land for the project which is available to the Applicant through an option agreement. CA powers are only needed to the secure rights and restrictions needed to install and maintain the gas connection over two bridges, and to ensure its ongoing protection. The Applicant provided convincing evidence that the liability for compensation to the owners is likely to be minimal, given that they have no access rights to the land either side of the bridges, and that as statutory undertakers they will benefit from protective provisions in the DCO, which mean that there will be no detriment to their operations [REP2-014]. While the level of compensation was the subject of ongoing negotiation during the examination, there was no indication from any affected party to suggest that it would not be possible for agreement to be reached.
- 7.7.9 The provision to suspend private rights insofar as they would interfere with the implementation or operation of the DCO scheme is also likely to have minimal or zero impact on the operation of any statutory undertaker or other beneficiary of the rights to be suspended. While the DCO Articles secure a right to compensation to any party affected, in practice the liability for compensation would appear to be very small.
- 7.7.10 Article 7 of the draft DCO would provide for the transfer of numbered works 2A(i), 2A(ii) and 3 (i.e. the gas and electricity connections) to any person with the consent of the SoS. Article 7(4) permits the transfer of these works without SoS consent if it is to a person who has a licence under the electricity or gas acts. In practice this would limit the transfer to established utility companies who would be likely to have the resources to meet any outstanding liabilities for compensation, unless consent is given by the SoS, or the time limits for compensation claims has expired.
- 7.7.11 In conclusion, having regard to the DCLG Guidance I am satisfied that the evidence points to the Applicant having the adequacy of resources to ensure the proposed development would be financially viable,

including any liability to pay compensation arising from confirmation of the DCO. There is nothing in the material put to the ExA in the relevant representations or during the course of the examination to suggest the contrary.

The ExA's Recommendations on the Granting of CA powers

s.122(2)

- 7.7.12 It is clear from the evidence submitted that the development would not be able to proceed if the Applicant is unable to secure the rights to install the gas connection over the two bridges (Plots GC3 and GC5) as there is no alternative means of providing the necessary fuel supply. Accordingly, the Secretary of State can be satisfied that the rights and restrictions over land to be acquired are no more than reasonably required for the purposes of the development.

s.122(3)

Whether there is a compelling case

- 7.7.13 I have concluded in the preceding section that development consent should be granted. Having regard to all the particular circumstances in this case for compulsory acquisition, in the event that the Secretary of State decides to make the Order, there would be a compelling case in the public interest for acquisition.

s.120(5)(a) and s.126

- 7.7.14 The Order would be compliant with s.120(5)(a) and s.126(2) of the Act, as it has only modified the application of a compensation provision to the extent necessary to apply the provision to the acquisition of rights and imposition of restrictions over land.

s.127 and s.138

- 7.7.15 I am satisfied that tests on s.127 are met, in that the CA proposals, including where relevant the extinguishment, suspension or removal of rights would allow the rights to be purchased (including the right to impose restrictions) without detriment to the carrying on of the undertaking.
- 7.7.16 With regard to s.138 I am also satisfied that the CA proposals, including where relevant the extinguishment, suspension or removal of rights would in all cases be necessary to the carrying out of the development.
- 7.7.17 Article 25 of the DCO allows the undertaker to enter and take temporary possession of land identified in the Land Plan and Book of Reference for the carrying out of the authorised development. This represents a proportionate approach which minimises the need to include CA powers in the DCO, limiting the effect of CA to the acquisition of new rights and imposition of restrictions necessary to

the continuing operation and maintenance of the gas supply. There are no HRA implications for the use of temporary possession powers under Article 25.

7.7.18 In conclusion I consider that the Secretary of State can be satisfied that the request for CA powers in relation to the project, together with the provisions for temporary possession and those for the extinguishment, suspension or removal of any relevant right meet the tests set out in statute and guidance.

8 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

8.1 INTRODUCTION

8.1.1 This section considers the evolution of the DCO, from the version which was submitted with the application (APP-018 3.1 MEC Draft Development Consent Order), to the final version which is recommended by the ExA (Appendix D below). There have been a number of iterations of the DCO through the examination.

8.1.2 The ExA's consideration of the DCO focuses on the more significant issues which have been addressed during the examination. It does not review every change to the DCO where the issues have not been controversial, and where the ExA agrees with the consensus view of the Applicant, statutory bodies and IPs.

Structure and main features of the DCO

8.1.3 Parts 1 - 6 of the DCO set out the principal and supplemental powers, powers of compulsory acquisition (CA) and various miscellaneous provisions, as follows:

- Part 1 contains the preliminary provisions providing for commencement, citation and interpretation
- Part 2 (Articles 3 - 9) sets out the principal powers for the construction, maintenance and operation for the development- this part sets out the works provisions, with articles 3 to 9 containing the principal powers.
- Part 3 (Articles 10 - 15) sets out various powers to alter the layout of streets, carry out street works and traffic regulation in connection with the development.
- Part 4 (Articles 16 & 17) contains supplemental powers relating to the discharge of water and the authority to enter and survey the land
- Part 5 (Articles 18 - 28) contains the powers in relation to acquisition and possession of land, including powers to acquire new rights and restrictions over land and the temporary use of land for carrying out the authorised development.
- Part 6 (Articles 29 - 36) sets out a number of miscellaneous and general provisions.

8.1.4 Schedules 1 to 9 of the DCO contain information referred to in the articles to the Order such as: the development authorised by the DCO; requirements to which the developer will be subject; streets affected by the proposals; and provisions for the protection of specified undertakers.

8.1.5 During the course of the examination the ExA addressed a number of written questions to the Applicant and others concerning the drafting of the DCO [PD-006, DCO 1 - 17]. The Applicant's responses to these first questions are set out in (REP2-014). An Issue Specific Hearing on

the DCO was held on 12 November 2015, at which the main participants were the Applicant, Stafford Borough Council and Staffordshire County Council. The Applicant's summary of oral case made at the ISH is at REP4-013. Following the ISH a second round of questions on the DCO was published [PD-009]. The Applicant's response is at [REP5-002, Questions DCO 18 - 21].

8.2 ARTICLES

- 8.2.1 Article 3 grants development consent for the scheme to be carried out within the order limits. Paragraph 3 of the Article allows that, in constructing each numbered work, the undertaker may deviate within the corresponding numbered area shown on the works plan up to the limits of deviation. This 'Rochdale envelope' approach is a familiar and established procedure in dealing with applications for this type of development.
- 8.2.2 The ES has been prepared on this basis and I am satisfied that the limits of deviation shown on the works plan (APP-007) permits an appropriate degree of flexibility in the siting of the various works, while ensuring that the effects of the scheme would remain as described and assessed in the ES.
- 8.2.3 Article 6(1) makes it clear that the benefit of the order generally has effect solely for the undertaker. However Article 6(2)(a) provides that for the gas connection, numbered works 2A(i) and 2A(ii), the benefit of the Order is for the undertaker and National Grid. Similarly, Article 6(2)(b) provides that for the electricity connection, numbered work 3, the benefit of the Order is for the undertaker and Western Power Distribution (WPD). These provisions allow for circumstances where it would be more efficient and effective for all or part of the works to be carried out by the operators of the existing supply infrastructure. There is a relevant precedent for this in Article 7 of the Network Rail (Norton Bridge Area Improvements) Order 2014.
- 8.2.4 Article 7 allows any or all of the benefit of the provisions of the Order and related statutory rights to be transferred to another person, with the consent of the Secretary of State. Under Article 7(4), the Secretary of State's consent would not be required for the transfer of the gas and electricity connections, provided the transfer was to a holder of a relevant certificate under the Gas and Electricity Acts, or of the compensation provisions for the acquisition of rights or interests in land have been discharged or are no longer relevant.
- 8.2.5 The Article 7(4) provision in respect of certificate holders was added to the draft DCO in response to the ExA's Question DCO 3 (PD-006). The justification for these provisions is that in such cases, the transferee or lessee will either be of similar financial or regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are to be compulsorily acquired, or there are no outstanding actual or potential compulsory purchase claims.

- 8.2.6 The Compulsory Acquisition provisions of the Order do not seek to acquire any land, but seek to impose new rights and restrictions over the Malkin's Bridge (Bridge No.101) and Rail Bridge 104. Article 8 (and Schedule 3) apply the legislative provisions relating to compulsory purchase, with certain modifications, to the creation of new rights (or the imposition of new restrictions) under the Order as they would apply in respect of compensation on the acquisition of land or interests in land. This is in accordance with Section 120(5)(a) of the PA 2008 which provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.
- 8.2.7 Article 18 provides for the undertaker to create and acquire compulsorily the rights and impose the restrictions over the Order land described in Part 1 of the Book of Reference. Where the undertaker creates and acquires a right over land or imposes a restriction, Article 18(2) provides that the undertaker is not required to acquire a greater interest in the land.
- 8.2.8 The justification for imposing restrictions is to ensure that it is not possible for anything to be done that would interfere with the authorised development. The restrictions would be needed to prevent damage or interference with the above ground section of the gas supply pipeline. The Applicant refers to similar approaches being adopted in orders made under the Transport and Works Act, and I consider it to be reasonable and appropriate in the context of the development proposed in this DCO.
- 8.2.9 Article 19 of the DCO would incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 subject to minor modifications and the provisions set out in s158 of the Act relating to the statutory authority and protection given to override easements and other rights.
- 8.2.10 Article 21 allows the undertaker to interfere with any easement or other right annexed to land in carrying out or using the authorised development. Compensation may be payable for any such interference in accordance with section 152 of the PA 2008. The Applicant refers to precedent in the Rookery South (Resource Recovery Facility) Order 2011 (Article 18) and the Hinkley Point C (Nuclear generating Station) Order 2013 (Article 25).
- 8.2.11 Article 23 has the effect of suspending private rights and restrictive covenants over land in which the undertaker creates and acquires a right or imposes a restriction, whether compulsorily or by agreement, insofar as their continuance would be inconsistent with the exercise by the undertaker of the rights created and acquired or the burden of the restriction imposed. It also suspends such rights and covenants over land which is leased to the undertaker and land of which the undertaker takes temporary possession. In all cases compensation would be payable to any person who suffers loss by the suspension of any private right.

- 8.2.12 The original version of Article 23 in the draft DCO submitted with the application would have allowed the undertaker to extinguish these rights. In response to ExA's question DCO 6 (First Written Questions) the Article was amended by the Applicant during the course of the Examination to exclude the extinguishment of such private rights from Article 23 [REP2-014]. The power to extinguish the rights of Statutory Undertakers was, however, retained in Article 26, subject to protective provisions.
- 8.2.13 Article 23(2)(b) allows for the suspension of rights over land which is leased by the undertaker or subject to rights by agreement for the benefit of the undertaker. The ExA sought clarification in Question DCO 6 of the types of agreement that this provision would apply to, and why the power is necessary.
- 8.2.14 In response, the Applicant explained that MEL does not intend to hold the leasehold interest of all the land within the Order limits. Instead MEL will enjoy rights granted it by voluntary agreement over parcels of land within the order limits on the exercise of the option date 31 March 2015 [REP2-014, paras 8.27 - 8.29]. These are illustrated in the plans attached as Appendix E to the Applicant's response to the ExA first written questions and summarised in Appendix E1. They include the land for the surface water system, part of the electrical connection, part of the gas pipeline, and the landscaping works along the Trent and Mersey Canal.
- 8.2.15 With regard to the need for the power, and its application to all rights/restrictions over land, and not solely rights of way, the Applicant explained that it is necessary to ensure that any other rights that may exist cannot prevent the implementation or use of the authorised development. A similar approach was taken in the Rookery South (Resource Recovery Facility) Order 2011 (Article 17) and the M1 Junction 10a (Grade Separation) Order 2013 (Article 21).
- 8.2.16 At the ISH on the DCO, the ExA sought further clarification from the Applicant as to whether the indefinite suspension of a right is in fact compulsory acquisition. In response, the Applicant stated that their legal advice is that a suspension, for any length of time, is not CA, but is a statutory right to suspend. However, Article 23 as amended would not negate the possibility of a relevant claim under section 57 of the Planning Act 2008 being made [REP4-013, paras 5.13, 5.14].
- 8.2.17 At the ISH, the Applicant further explained that the known interests are set out in the Book of Reference (BOR). Part Three of the BOR includes those persons entitled to easements and rights over land that may be extinguished, suspended or interfered with. Part Two includes those persons entitled to make a relevant claim under section 10 of the Compulsory Purchase Act 1965, section 152 of the Planning Act 2008 or Part 1 of the land Compensation Act 1973 [AS-007].
- 8.2.18 The Applicant has taken a precautionary approach and assumed that all those parties listed in Part Three of the BOR may be able to make a

relevant claim, and so they have also been listed in Part Two. The Applicant is not aware of any other parties that have rights of easement (though there are various 'unknown' beneficiaries listed in the BOR. The interests referred to above have, in general, been protected through the inclusion of the protective provisions in Schedule 7 of the DCO for the benefit of various statutory undertakers and others. The valuation of the various interests is assessed as being low, and the Applicant affirms that it has the funds to address these interests if required.

- 8.2.19 In my judgement the Applicant has undertaken a robust and proportionate exercise to identify relevant interests which might be affected by the scheme and from which relevant claims for compensation might arise. Known interests are listed in the BOR. Protective provisions have been included in the DCO to ensure there would be no interference in the operations of statutory undertakers
- 8.2.20 With regard to unknown interests, the Project has been through all the stages of publicity and consultation required by the Planning Act 2008, allowing for any previously unknown rights to be identified and registered, and offering the opportunity for beneficiaries to become interested parties and participate in the Examination. Article 23 is limited to the suspension of rights insofar as they would be inconsistent with the implementation and operation of the DCO scheme. As drafted, it does not seek to exclude beneficiaries from making a relevant claim for compensation.
- 8.2.21 I therefore conclude that Article 23 is appropriately included in the DCO, to ensure that any unknown rights cannot interfere with the ability of the undertaker to implement and operate the scheme.
- 8.2.22 Article 26 allows the undertaker to: extinguish or suspend the rights of, and reposition the apparatus belonging to statutory undertakers shown on the land plan (Ref 2.2) and described in the BOR [AS-006]; and to create and acquire rights or impose restrictions over land belonging to statutory undertakers as shown on the land Plan and described in Part 1 of the BOR.
- 8.2.23 The Article differs from Article 31 of the former model provisions to allow for the suspension of rights as well as their extinguishment.
- 8.2.24 The Explanatory Memorandum (EM) states that the ability to acquire land compulsorily has been removed from Article 26(b) as it is not necessary to do so in the context of the proposed development. However, the Applicant has clarified that the EM wording is intended to distinguish between the acquisition of freehold land (which is not required) and the acquisition of rights over land, which is what is sought in the DCO. It is not intended to imply that the creation of rights or imposition of restrictions would not be Compulsory Acquisition. This is reflected in the wording of Article 26 (b) [Ref - REP2-014, paras 8.36 - 8.38].

- 8.2.25 In all cases the powers conferred by this article are subject to the protective provisions within schedule 7 of the Order.
- 8.2.26 While the wording of the EM is somewhat confusing with regard to the acquisition of land, Article 26 itself is clear that confirmation of the Order would allow the undertaker to acquire rights and impose restrictions over land in Part 1 of the book of reference, and the Applicant accepts that this would be Compulsory Acquisition.

8.3 DESCRIPTION OF WORKS

- 8.3.1 Schedule 1 of the draft DCO defines the works. Through first round written questions [PD-006, Question DCO 10], the ExA sought further clarification of the reference to 'such other works or operations as may be necessary' in respect of Work No. 4(a) which relates to alteration of the site access.
- 8.3.2 The Applicant responded that the works will comprise resurfacing, signage, replacement of lighting and may require the temporary removal and replacement of the existing traffic island. No work would be undertaken on the public highway. The wording is required because detailed design work, such as micro-siting, has not yet been undertaken for the proposed development. The full scope of the works cannot be determined at this time, which is why the Applicant has adopted a worst case approach to the ES. However the DCO limits the scope of 'such other works' by inclusion of the phrase '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 ES'. This approach has been accepted recently by the SoS in other Orders, for example, The Progress Power (Gas Fired Power Station) Order 2015 [REP2-014, paras 8.43 - 8.46].
- 8.3.3 In addition Requirements 3 and 17 require detailed design work to be approved by the relevant planning authority.
- 8.3.4 In the ExA's view, the Secretary of State can be satisfied that description of Work No 4(a) provides sufficient clarity as to the nature of the works proposed, and would not permit the undertaker to deviate in any material way from that which is sought in the DCO application.
- 8.3.5 The plans to be approved by the Secretary of State are set out in Article 33 of DCO Revision 2 [REP4-002], as follows:
- (a) the book of reference [Version 1, AS-006];
 - (b) the land plan [Revision 1, REP2-018];
 - (c) the works plans [APP-007];
 - (d) the access rights of way plan [APP-008];
 - (e) the environmental statement [APP-030 to APP-147];
 - (f) the design and access statement [APP-025];
 - (g) the illustrative landscaping plan [APP-017]);
 - (h) the illustrative foul and surface water drainage plan [APP-013]; and

(i) the illustrative cross sections drawing [REP-003 Appendix].

In the event that the SoS is minded to make the Order, the undertaker must, as soon as practicable after the making of the Order, submit to the SoS copies of these documents for certification that they are true copies of the documents referred to in the Order. Where documents have been updated during the course of the examination references in square brackets are to the latest versions of the documents, which are the appropriate versions for certification.

8.4 PROTECTIVE PROVISIONS

8.4.1 The Applicant's final version of the DCO [REP4-002] includes 'Schedule 7a'. This appears to be an error. There is no Schedule 7b, nor any other reference in the document to Schedule 7a. Accordingly I recommend that 'a' is deleted and the Schedule is simply referred to as Schedule 7.

8.4.2 The Schedule sets out a series of protective provisions. Negotiations between the Applicant and the affected parties continued during the Examination with a view to reaching agreement on the final form of the provisions to be included in the Order. While final agreement had yet to be reached on the precise wording of protective provisions in a number of instances at the close of the examination, there appeared to be no fundamental reasons why such agreement could not be reached.

8.4.3 The general intent of the protective provisions is to ensure that the development does not interfere with the ability of statutory undertakers and other service providers to fulfil their statutory functions or to deliver their service in a manner no less efficient than previously. Part 1 of Schedule 7 is for the protection of the National Grid. Part 2 is for the protection of electricity, gas, water and sewerage undertakers (save for the National Grid). Part 3 is for the protection of Railway Interests. Part 4 is for the protection of the Canal and River Trust. Part 5 is for the protection of operators of electronic communications code networks. Part 6 is for the protection of SP Manweb. Part 7 is for the protection of BT Group PLC.

8.4.4 In my judgement, these provisions have addressed any issues arising in relation to s.127 and s.138 of PA 2008 and provide satisfactory protection for the interests of the beneficiaries.

8.5 OTHER SCHEDULES

8.5.1 The Order contains a number of other Schedules. Schedule 2 includes the requirements, and is considered in the next section. Schedule 3 modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. The principal effect of Schedule 3 is to apply the compensation provisions of these Acts to the creation of new rights or the imposition of restrictions. Schedule 4 specifies Streets subject to permanent

alteration of layout, Schedule 5 Streets subject to works and Schedule 6 Streets that will be subject to a temporary prohibition or restriction to facilitate the development.

- 8.5.2 Schedule 8 sets out the procedure for the discharge of requirements by the relevant planning authority. In response to the ExA's Question DCO 16 [PD-006], Stafford Borough Council questioned the practicalities of provision 2.(2) of Schedule 8 as this only gives the local authority 21 days to notify the undertaker in writing of what further information is required in order to consider an application. They pointed out that this might make it difficult to obtain the views of other consultees in time, and could delay the discharge process.
- 8.5.3 The Applicant subsequently agreed to increase the number of days for the planning authority to request further information from 21 to 28. This was confirmed in the SOCG [REP2-019, Table at 6.29, Item 4] and included in the Revised DCO issued in October [REV3-008, Schedule 8 section 2].
- 8.5.4 Schedule 9 sets out the land of which temporary possession may be taken pursuant to Article 25, and makes clear the purposes for which such temporary possession may be taken.

8.6 REQUIREMENTS

- 8.6.1 The Requirements are set out in Schedule 2 to the DCO. Many of the draft requirements were not controversial, so this section focuses on those which were the subject of discussion and amendment during the course of the examination.
- 8.6.2 Requirement 3 is concerned with detailed design. In written questions and through the ISH on the DCO, the ExA was concerned to ensure that the plans to be approved by the Secretary of State provide sufficient definition of the proposal, and that the requirements would not permit material alterations to the scheme to be approved through the procedure for discharge of requirements detailed in Schedule 8.
- 8.6.3 To this end the ExA's question DCO 12 [PD-006] sought a clearer definition of what would constitute the approved plans, and which 'other' plans were capable of amendment without material alteration to the nature of the scheme. In its response, the Applicant gave reason why it considered that the current drafting was sufficiently clear, and why it was necessary to retain a degree of flexibility in relation to the key parameters set out in Table 2 of the Requirement [REP2-014].
- 8.6.4 Further discussion took place at the DCO hearing on 12 November. The ExA put forward an alternative form of wording for Articles 3 and 19, which was considered and accepted by the Applicant, subject to a further amendment designed to retain the ability for non-material changes to the parameters to be considered by the relevant planning authority in discharging the Requirements. The plans listed in Table 1 of Requirement 3 cannot be altered in any circumstances. The

Applicant drew attention to the Progress Power (Gas Fired Power Station) Order 2015 where the SoS had accepted this approach in Requirements 3 and 22 of Schedule 2.

8.6.5 In the second round questions the ExA asked for further justification of the Applicant's position on the need to retain flexibility. [PD-009 Question DCO 21]. The Applicant's response is that it is necessary because the final design and the final equipment is not yet known.

8.6.6 The Applicant goes on to say *'Table 2 contains the maximum parameters assessed in the Environmental Statement and Requirement 19 allows for amendments to these parameters, if approved by the relevant planning authority. This is subject to the Applicant demonstrating to the satisfaction of the relevant planning authority that this is unlikely to give rise to any materially new or materially different environmental effects in comparison with the development as approved (as identified in the Environmental Statement). The Applicant considers that a change which would not materially alter the conclusions of the Environmental Statement and which is approved by the relevant planning authority at the relevant time is not a matter for contention in granting the DCO for the Scheme as currently drafted.'*
[REP5-002]

8.6.7 The Applicant emphasises that the mechanism for approval would only apply to changes that would be de minimis. It would be for the relevant planning authority to assess whether any change proposed by the Applicant in seeking to discharge the Requirements of the DCO would be material, having regard to conclusions of the ES. In accordance with Requirement 19 the relevant planning authority would be unable to lawfully approve anything which amounted to a more than material change, or which invalidated the conclusions of the ES in respect of the significance of scheme impacts.

8.6.8 Both Staffordshire County Council and Stafford Borough Council indicated that they would be content with this approach in the SoCG [REP2-019]. I acknowledge that they would be experienced in assessing the materiality of amendments to schemes in the context of the Town and Country Planning Act 1990, and the principles are no different in relation to NSIP schemes.

8.6.9 I am accordingly satisfied that the suggested amended wording of requirements 3 and 19 [REP4-002] would not permit anything other than minor variations to the scheme and is appropriate and acceptable in the particular circumstances that apply to this Order.

8.6.10 It is apparent from paragraph 5.8.6 of Revision 2 of the Explanatory Memorandum to the Draft Order for the MEC [REP4-005] that there is a mistake in Table 3 of Requirement 3 in the updated version of the DCO [REP4-002]. Table 3 refers to parts of numbered works 2A and 2B (the gas connection). As the height of the terrain varies along the route of the gas connection, Table 3 should specify the maximum

height above the existing site level rather than the height above ordnance datum. I therefore recommend that the heading in Column (2) of Requirement 3, Table 3 should be amended to read '*Maximum height (metres) above the existing site level*'.

- 8.6.11 Requirement 4 addresses the provision of, implementation and maintenance of landscaping, and was the subject of some discussion during the course of the examination. These matters are reported at paragraphs 5.9.8 - 5.9.11 above. I conclude that Requirement 4 in the final version of the Order satisfactorily addresses the issues raised in respect of the provision and maintenance of landscaping to mitigate the visual and other impacts of the scheme.
- 8.6.12 Requirement 5 was also the subject of discussion during the course of the examination. Staffordshire County Council considered that it would be necessary to appoint an Ecological Clerk of Works to oversee habitat and species mitigation works. The Applicant responded at the ISH that the draft CEMP refers to the need for a Project Environmental Lead, with responsibilities which would include ensuring compliance with the Habitats Management Plan [REP4-002, paras 5.31]. Paragraph 4.1.3 refers to the project environmental Lead being a 'senior environmental specialist'. As such the Applicant does not consider the appointment of an ecological clerk of works to be necessary.
- 8.6.13 SCC is party to the SOCG and has accepted the mitigation principles in the CEMP [REP2-019, para 6.18]. I consider that Requirement 5 in the final version of the order, which requires further approval of the draft CEMP, provides a satisfactory arrangement for ensuring that the mitigation proposed in the ES is implemented and subsequently maintained including the specification of roles and responsibilities.
- 8.6.14 SCC requested that the Habitat Management Plan referred to in Requirement 9 be specified for the lifetime of the MEC [REP2-010]. This was accepted by the Applicant and an additional clause was added to Requirement 4 in the revised DCO Rev 1 [REP3-008].
- 8.6.15 The Applicant accepted a number of amendments to Requirement 10 and the associated CTMP in response to requests from Highways England and SCC, including the need for the CTMP to include construction routeing plans and reasonable mechanisms to enforce compliance, details of an HGV vehicle management system, proposals for the scheduling and timing of abnormal loads and route assessments for abnormal loads [REP3-008 and REP4-006].
- 8.6.16 Requirement 12 was amended in DCO Revision 2 [REP4-002] to exclude public holidays from the days when construction could take place, in response to a request from Stafford Borough Council.
- 8.6.17 Requirement 13 was amended in DCO Revision 1 [REP3-008] to include reference to the submission and approval of details of sustainable drainage systems, including the subsequent maintenance

and management of the systems, in response to a comment by SCC in their written representation at Deadline 2 [REP2-010, page 5].

- 8.6.18 Requirement 14 was amended in DCO Revision 1 [REP3-008] to address a potential need for the installation of aircraft warning lights, and a requirement to notify the Defence Geographic Centre of the date of commencement of construction and the height of the tallest structure, amongst other things.
- 8.6.19 Requirement 16 was amended in DCO Revision 1 [REP3-008] to secure the submission and approval of a method statement detailing the extent and nature of the repairs for the parapet of canal Bridge 101 (Malkin's Bridge).
- 8.6.20 Requirement 19 was amended in DCO Revision 2 [REP4-002] in accordance with the discussion set out above in connection with Requirement 3, to allow for the consideration of non-material changes to the scheme parameters in the discharge of the Requirements.

Final version draft DCO as recommended by ExA - Appendix D

- 8.6.21 The final version of the DCO as recommended by the ExA is unchanged from the version submitted by the Applicant as Revision 2 at Deadline 4 (REP2-004), with the following exceptions: firstly that the heading in Column (2) of Requirement 3, Table 3 should be amended to read '*Maximum height (metres) above the existing site level*'; and secondly that 'Schedule 7a' should be amended to read 'Schedule 7'.

Summary of changes made in examination and by ExA

- 8.6.22 A number of concerns were raised in respect of the wording of the application draft DCO in the ExA's first questions [AD-006] on 27 August 2015. In response to these questions, representations from IPs including statutory undertakers, the joint LIR and the Applicant's own proposals for minor changes, a revised DCO was published on 23 October 2015 [REP3-008], together with a revised Explanatory Memorandum [REP3-010].
- 8.6.23 The main changes were: to include reference to the Revised Land Plan dated [Revision ,1 September 2015 REP2-018]; a revision to Article 7 to allow the benefit of the DCO to be transferred to the holder of a licence under section 6 of the Electricity Act 1989 or section 7 of the Gas Act (1986); deletion of reference to the extinguishment of private rights from Article 23; the addition of specified plans to Article 33; the addition of a requirement to consult with the National Trust over the colour and external appearance of buildings to Requirement 3(4); the addition of a requirement to manage and maintain the landscaping works throughout the life of the development to Requirement 4(5); the addition of reference to enforcement of compliance, and to route assessment for abnormal loads in Requirement 10(1); the addition of reference to the management and maintenance of sustainable drainage systems to Requirement 13(1); the addition of reference to

the provision of infra-red lighting to the exhaust flues and notification of the Defence Geographic Centre of the location and height of the tallest structure to Requirement 14; the addition of a requirement to submit a method statement detailing the extent and nature of Repairs to the parapet of Canal Bridge 101 (Malkin's Bridge); an increase to twenty-eight days of the period for relevant authorities to request further information in response to applications for the discharge of requirements.

- 8.6.24 A further revision to the draft DCO (Revision 2) was submitted by the Applicant in November 2015, in response to matters raised in the ExA's Written Question, responses by statutory and interested parties, and the LIR [REP4-002]. Article 26 was amended so that the compulsory acquisition of rights or impose restrictions only applied to land included in Part 1 of the Book of Reference (BOR), rather than the whole of the Order land. Article 33 and Requirements 1 and 4 of Schedule 2 were amended to include reference to the illustrative cross sections drawing 5105324-MEA-DRG-086 Rev 0 dated 24 September 2015 related to the landscape buffer. Article 3 was amended to distinguish between the plans to be approved by the Secretary of State, and other plans which are subject to approval by the relevant planning authority pursuant to the requirements. Requirement 12 was amended to exclude public holidays from the permitted hours of construction. Article 19 was amended to include reference to the parameters in Tables 1 and 2 of Requirement 3(2) as matters on which the Applicant could submit amendments for approval by the relevant planning authority, provided that such amendments would not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved.
- 8.6.25 A number of changes were also made to the Protective Provisions (Schedule 7, Parts 1 - 7), reflecting the stage of negotiation reached between the parties at the time of the revision.
- 8.6.26 I am satisfied that no material changes have been made since the submission of the application, and nothing occurred during the course of the examination which would require the Secretary of State to consider whether the application had changed to the point where it was a different application. I therefore conclude that there is nothing to prevent the Secretary of State from making the DCO under s.114 of PA2008 in the form attached as Appendix D to this report.

9 SUMMARY OF FINDINGS AND CONCLUSIONS

9.1 SUMMARY OF FINDINGS AND CONCLUSIONS

- 9.1.1 I have carried out this examination of the application in accordance with the general principles and specific guidance set out in EN-1, EN-2, EN-4 and EN-5. I have also had regard to the joint LIR submitted by SCC and SBC
- 9.1.2 The need for the proposed development was not challenged by any SP, IP or other person. I conclude at paragraph 4.5.4 that a CCGT power station fuelled by natural gas fits clearly into the energy strategy set out in NPS EN 1. The proposal would be compliant with the NPS advice on carbon capture and combined heat and power. I have concluded at paragraph 4.6.7 above that the Secretary of State can be confident that the scheme is not likely to have a significant effect alone or in combination with other plans or project on sites with which the Habitats Regulations are concerned. There are no issues arising from the provisions of the Water Framework Directive.
- 9.1.3 Accordingly, I conclude at paragraph 6.1.10 above that the benefits of the scheme substantially outweigh the limited harm, and that there is a clear case for granting Development Consent.
- 9.1.4 In reaching the recommendation, full regard has been given to Local Impact Reports, and all other matters raised and representations made have been taken into account. In considering these matters the ExA found no relevant matters of such importance that they would individually or collectively lead to a different recommendation to that set out below.
- 9.1.5 I have also concluded at paragraph 7.7.13 above that, in the event that the Secretary of State decides to make the Order, there would be a compelling case in the public interest for compulsory acquisition. The request for CA powers complies with s.122 of PA2008 and does not involve any conflict with the provisions of HRA.
- 9.1.6 The scheme is compliant with NPS EN 1 and there are no significant adverse impacts that would outweigh the benefits, or other circumstances as described in PA2008 s.104 which indicate that development consent should not be granted.

9.2 RECOMMENDATION

- 9.2.1 For all of the above reasons and in the light of my findings and conclusions on important and relevant matters set out in the report, I recommend that the Secretary of State grants development consent for the proposed development including CA provisions under the Planning Act 2008 (as amended) in the terms of the draft DCO in the form attached at Appendix D.

APPENDICES

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Appendix pages with appendix page numbering. Try not to delete the section break on the previous page as that will lose the appendix page numbering.

APPENDIX A: THE EXAMINATION

APPENDIX A: THE EXAMINATION

The list below contains the main events which occurred, and procedural decisions taken, during the examination.

Thursday 4 June 2015	Site Visit (Unaccompanied)
Thursday 20 August 2015	Preliminary Meeting
Thursday 20 August 2015	<p>Deadline 1: Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Notification of wish to speak at an open floor hearing • Nominations of locations to be inspected during accompanied site inspections, the features to be observed there, with reasons for each nomination
Thursday 27 August 2015	<p>Issue by ExA of: Rule 8 letter that included:</p> <ul style="list-style-type: none"> • Examination timetable • ExA first written questions (publication) • Notification of date for accompanied site visit
Tuesday 15 September 2015	Issue by ExA of: Itinerary for the Accompanied Site Inspection on 22 September 2015
Tuesday 22 September 2015	Site Visit (Accompanied)
Monday 28 September 2015	<p>Deadline 2 Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Notification from statutory parties, or a local authority without direct responsibility in the proposed development area, of a wish to be considered an interested party • Comments on relevant representations (RRs) • Summaries of all RR's exceeding 1500 words • Written representations (WRs) by all interested parties • Summaries of all WRs exceeding 1500 words • Local Impact Report from any local authorities • Statements of Common Ground requested by ExA • Responses to ExA's first written questions • Notification of wish to speak at an issue specific hearing • Notification of wish to speak at a compulsory Acquisition hearing • Any other information requested by the ExA

Thursday 01 October 2015	Issue by ExA of: Rule 8(3) and 13 that included: Notification of a change to the timetable <ul style="list-style-type: none"> • Notification of dates for hearings and accompanied site visit in relation to compulsory acquisition
Tuesday 22 October 2015	Deadline 3 Deadline for receipt by the ExA of: <ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs • Comments on Local Impact Reports • Comments on responses to ExA's first written questions • Any other information requested by the ExA
Monday 5 November 2015	Publication of: Provisional agendas for the compulsory acquisition and Issue Specific Hearings.
Wednesday 11 November 2015	Issue specific hearing on environmental matters
Thursday 12 November 2015	Issue specific hearing on draft DCO
Thursday 12 November 2015	Compulsory acquisition hearing
Thursday 19 November 2015	Issue by ExA of: A Rule 8(3) that included: Notification of a variation to the timetable and cancellation of hearings.
Thursday 19 November 2015	Deadline 4 Deadline for receipt by the ExA of: <ul style="list-style-type: none"> • Updated Statements of Common Ground • Post-hearing documents including written summaries of oral cases, of any evidence or documents presented, or amendments requested by the ExA; Revised draft DCO from the applicant taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions) <ul style="list-style-type: none"> • Any further information requested by the ExA for this deadline
Thursday 26 November 2015	Publication of: <ul style="list-style-type: none"> • ExA's second written questions
Thursday 10 December 2015	Deadline 5: Deadline for receipt by the ExA of: <ul style="list-style-type: none"> • Responses to ExA's second written questions (if

	required)
Tuesday 22 December 2015	<p>Deadline 6: Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Updated Statements of Common Ground • Post hearing documents arising from hearings including written summaries of oral cases put, of evidence and of any documents or amendments requested by the ExA; • Revised draft DCO taking account of issues raised and comments into account (clean and track-change) • Revised Book of Reference taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions) • Any further information requested by the ExA for this Deadline
Thursday 7 January 2016	<p>Issue by ExA of: A Rule 8(3) that included: Notification of a variation to the timetable</p>
Thursday 14 January 2016	<p>Deadline 7: Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on responses to ExA's second written questions
Wednesday 20 January 2016	Close of Examination
Thursday 21 January 2016	<p>Issue by ExA of: Notification of Close of Examination</p>

APPENDIX B: EXAMINATION LIBRARY

APPENDIX B: EXAMINATION LIBRARY INCLUDING RIES

Meaford Energy Centre – EN010064

Examination Library

Updated – 27 January 2016

This Examination library relates to the Meaford Energy Centre application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructures pages of the Planning Portal and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate is published to the National Infrastructure Website but is not included within the document library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

EN010064 – Meaford Energy Centre

Examination Library - Index

Category	Reference
<u>Application Documents</u> (as submitted, any amended version to be saved under the deadline received)	APP-xxx
<u>Adequacy of Consultation responses</u>	AoC-xxx
<u>Relevant Representations</u>	RR-xxx
<u>Procedural Decisions and Notifications from the ExA</u> (includes Examining Authority's questions (ExA), s55, and post acceptance s51)	PD-xxx
<u>Local Impact Reports</u>	LIR - xxx
<u>Additional Submissions</u> (this includes anything accepted at the PM, correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination)	AS-xxx
<u>Events and Hearings</u> (includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to R6 and R8)	EV-xxx
<u>Representations – by Deadline</u>	
<u>Deadline 1:</u> <ul style="list-style-type: none">• Notification of wish to speak at an open floor hearing• Nominations of locations to be inspected during accompanied site inspections, the features to be observed there, with reasons for each nomination	REP1-xxx
<u>Deadline 2:</u> <ul style="list-style-type: none">• Notification from statutory parties, or a local authority without direct responsibility in the proposed development area, of a wish to be considered an interested party• Comments on relevant representations (RRs)	REP2-xxx

<ul style="list-style-type: none"> • Summaries of all RRs exceeding 1500 words • Written representations (WRs) by all interested parties • Summaries of all WRs exceeding 1500 words • Local Impact Report from any local authorities • Statements of Common Ground requested by ExA Responses to ExA’s first written questions • Notification of wish to speak at an issue specific hearing • Notification of wish to speak at a compulsory Acquisition hearing • Any other information requested by the ExA View the documents received relating to this deadline 	
<p><u>Deadline 3:</u></p> <ul style="list-style-type: none"> • Comments on Local Impact Reports • Comments on WRs and responses to comments on RRs • Comments on responses to ExA’s first written questions • Any other information requested by the ExA 	REP3-xxx
<p><u>Deadline 4:</u></p> <ul style="list-style-type: none"> • Updated Statements of Common Ground • Post-hearing documents including written summaries of oral cases, of any evidence or documents presented, or amendments requested by the ExA • Revised draft DCO from the applicant taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions) • Any further information requested by the ExA 	REP4-xxx
<p><u>Deadline 5:</u></p> <ul style="list-style-type: none"> • Responses to ExA’s second written questions 	REP5-xxx
<p><u>Deadline 6</u></p> <ul style="list-style-type: none"> • Updated Statements of Common Ground • Post hearing documents arising from hearings including written summaries of oral cases put, of evidence and of any documents or amendments requested by the ExA • Revised draft DCO taking account of issues raised and 	REP6-xxx

<p>comments into account (clean and track-change)</p> <ul style="list-style-type: none"> • Revised Book of Reference taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions) • Any further information requested by the ExA for this Deadline 	
<p><u>Other Documents</u></p> <p>(includes s127/131/138 information, applicant’s hearing notices, includes s56, s58 and s59 certificates, and transboundary documents)</p>	<p>OD-xxx</p>

EN010064 – Meaford Energy Centre

Examination Library

Application Documents

APP-001	<u>1.1 MEC Application Form</u>
APP-002	<u>1.2 MEC Copy of Newspaper Notices</u>
APP-003	<u>2.1.1 MEC Location Plan</u>
APP-004	<u>2.1.2 MEC Existing Site Layout Plan</u>
APP-005	<u>2.1.3 MEC Illustrative Power Station Complex Site Layout Gas and Electrical Connection Plan</u>
APP-006	<u>2.2 MEC Land Plan</u>
APP-007	<u>2.3 MEC Works Plans</u>
APP-008	<u>2.4 MEC Access Rights of Way Plan</u>
APP-009	<u>2.5.1 MEC Illustrative Power Station Complex Layout Plan</u>
APP-010	<u>2.5.2 MEC Illustrative Power Station Complex Northern and Western Elevations</u>
APP-011	<u>2.5.3 MEC Illustrative Power Station Complex Eastern and Southern Elevations</u>
APP-012	<u>2.5.4 MEC Illustrative Power Station Complex Isometric View</u>
APP-013	<u>2.5.5 MEC Illustrative Power Station Complex Foul and Surface Water Drainage Strategy Plan</u>
APP-014	<u>2.6.1 MEC Illustrative Gas Connection and AGI Layout Plan</u>
APP-015	<u>2.6.2 MEC Canal Bridge 101 (Malkins Bridge) Illustrative Gas Connection Pipeline Proposals</u>
APP-016	<u>2.7.1 MEC Existing Trees and Removal Plan</u>
APP-017	<u>2.7.2 MEC Illustrative Landscape within MEC Site</u>
APP-018	<u>3.1 MEC Draft Development Consent Order</u>
APP-019	<u>3.2 MEC Explanatory Memorandum to Draft Order for the MEC</u>
APP-020	<u>4.1 MEC Statement of Reasons</u>
APP-021	<u>4.2 MEC Funding Statement</u>

APP-022	<u>4.3 MEC Book of Reference</u>
APP-023	<u>5.1 MEC Consultation Report</u>
APP-024	<u>5.2 MEC Planning Statement</u>
APP-025	<u>5.3 MEC Design and Access Statement</u>
APP-026	<u>5.4 MEC Flood Risk Assessment</u>
APP-027	<u>5.5 MEC Statement of Statutory Nuisance</u>
APP-028	<u>5.6 MEC Other Consents and Licenses</u>
APP-029	<u>5.7 MEC No Significant Effects Report</u>
APP-030	<u>6.1 MEC ES Volume 1 Non-Technical Summary</u>
APP-031	<u>6.2.1 MEC Volume 2: ES Chapter 1 Introduction</u>
APP-032	<u>6.2.2 MEC Volume 2: ES Chapter 2 Planning and Legislative Context</u>
APP-033	<u>6.2.3 MEC Volume 2: ES Chapter 3 Site Selection Alternatives and Design Evolution</u>
APP-034	<u>6.2.4 MEC ES Chapter 4 The Proposed Development</u>
APP-035	<u>6.2.5 MEC ES Chapter 5 The Scope of the EIA and Overall Methodology</u>
APP-036	<u>6.2.6 MEC ES Chapter 6 Socio-Economic Effects</u>
APP-037	<u>6.2.7 MEC ES Chapter 7 Transport and Traffic</u>
APP-038	<u>6.2.8 MEC ES Chapter 8 Air Quality</u>
APP-039	<u>6.2.9 MEC ES Chapter 9 Noise and Vibration</u>
APP-040	<u>6.2.10 MEC ES Chapter 10 Landscape and Visual Effects</u>
APP-041	<u>6.2.11 MEC ES Chapter 11 Ecology</u>
APP-042	<u>6.2.12 MEC ES Chapter 12 Historic Environment</u>
APP-043	<u>6.2.13 MEC ES Chapter 13 Ground Conditions</u>
APP-044	<u>6.2.14 MEC ES Chapter 14 The Water Environment</u>
APP-045	<u>6.2.15 MEC ES Chapter 15 Waste</u>

APP-046	6.2.16 MEC ES Chapter 16 Cumulative and In-Combination Effects
APP-047	6.2.17 MEC ES Chapter 17 Mitigation Summary
APP-048	6.2.18 MEC ES Chapter 18 Conclusions
APP-049	6.3.1 MEC ES CH01 Figure 1.1 Location Plan
APP-050	6.3.2 MEC ES CH03 Figure 3.2 Site Design Plan
APP-051	6.3.3 MEC ES CH04 Figure 4.1 Works Plan
APP-052	6.3.3 MEC ES CH04 Figure 4.2 Environmental Constraints
APP-053	6.3.4 MEC ES CH05 Figure 5.2 Other Developments Identified for the Purposes of Cumulative Assessment
APP-054	6.3.5 MEC ES CH06 Figure 6.1 Wards Within Socio-Economic Study Area
APP-055	6.3.6 MEC ES CH07 Figure 7.1 Local Highway Network
APP-056	6.3.6 MEC ES CH07 Figure 7.2 Traffic Count Location
APP-057	6.3.6 MEC ES CH07 Figure 7.3 Inbound Construction Traffic Route
APP-058	6.3.6 MEC ES CH07 Figure 7.4 Outbound Construction Traffic Route
APP-059	6.3.6 MEC ES CH07 Figure 7.5 Residential Property Locations on Meaford Road
APP-060	6.3.6 MEC ES CH07 Figure 7.6 National Cycle Network
APP-061	6.3.6 MEC ES CH07 Figure 7.7 MEC Site Access Location
APP-062	6.3.7 MEC ES CH08 Figure 8.1 Air Quality Receptor Locations
APP-063	6.3.7 MEC ES CH08 Figure 8.2 Air Quality Monitoring Site Locations
APP-064	6.3.7 MEC ES CH08 Figure 8.3 Air Quality Windrose Diagram for RAF Shawbury 2008 to 2012
APP-065	6.3.7 MEC ES CH08 Figure 8.4 Maximum Annual Mean Ground Level Concentrations of Nitrogen Dioxide
APP-066	6.3.7 MEC ES CH08 Figure 8.5 Maximum Hourly Mean Ground Level Concentrations of Nitrogen Dioxide
APP-067	6.3.7 MEC ES CH08 Figure 8.6 Maximum Annual Mean Ground Level Concentrations of Oxides of Nitrogen
APP-068	6.3.7 MEC ES CH08 Figure 8.7 Maximum Eight Hourly Mean Ground Level Concentrations of Carbon Monoxide
APP-069	6.3.8 MEC ES CH09 Figure 9.1 Nearest Noise Sensitive Receptors

APP-070	<u>6.3.8 MEC ES CH09 Figure 9.2 Baseline Noise Survey Locations</u>
APP-071	<u>6.3.9 MEC ES CH10 Figure 10.1 Zone of Theoretical Visibility</u>
APP-072	<u>6.3.9 MEC ES CH10 Figure 10.2 Ridgeline Locations and Views</u>
APP-073	<u>6.3.9 MEC ES CH10 Figure 10.3 Landscape Character Areas</u>
APP-074	<u>6.3.9 MEC ES CH10 Figure 10.4 Visual Receptor and Photomontage Locations</u>
APP-075	<u>6.3.9 MEC ES CH10 Figure 10.5a Photosheet I Photomontage 1</u>
APP-076	<u>6.3.9 MEC ES CH10 Figure 10.5a Photosheet J Photomontage 1</u>
APP-077	<u>6.3.9 MEC ES CH10 Figure 10.5b Photosheet K Photomontage 2</u>
APP-078	<u>6.3.9 MEC ES CH10 Figure 10.5b Photosheet L Photomontage 2</u>
APP-079	<u>6.3.9 MEC ES CH10 Figure 10.5c Photosheet M Photomontage 3</u>
APP-080	<u>6.3.9 MEC ES CH10 Figure 10.5c Photosheet N Photomontage 3</u>
APP-081	<u>6.3.9 MEC ES CH10 Figure 10.5d Photosheet O Photomontage 4</u>
APP-082	<u>6.3.9 MEC ES CH10 Figure 10.5d Photosheet P Photomontage 4</u>
APP-083	<u>6.3.9 MEC ES CH10 Figure 10.5e Photosheet Q Photomontage 5</u>
APP-084	<u>6.3.9 MEC ES CH10 Figure 10.5f Photosheet R Photomontage 6</u>
APP-085	<u>6.3.9 MEC ES CH10 Figure 10.6 Section towpath sightline to PSC</u>
APP-086	<u>6.3.9 MEC ES CH10 Figure 10.7a Photosheet A</u>
APP-087	<u>6.3.9 MEC ES CH10 Figure 10.7b Photosheet B</u>
APP-088	<u>6.3.9 MEC ES CH10 Figure 10.7c Photosheet C</u>
APP-089	<u>6.3.9 MEC ES CH10 Figure 10.7d Photosheet D</u>
APP-090	<u>6.3.9 MEC ES CH10 Figure 10.7e Photosheet E</u>
APP-091	<u>6.3.9 MEC ES CH10 Figure 10.7f Photosheet F</u>
APP-092	<u>6.3.9 MEC ES CH10 Figure 10.7g Photosheet G</u>
APP-093	<u>6.3.9 MEC ES CH10 Figure 10.7h Photosheet H</u>

APP-094	<u>6.3.10 MEC ES CH11 Figure 11.1 Phase 1 Habitat Plan</u>
APP-095	<u>6.3.10 MEC ES CH11 Figure 11.2 Statutory Designated Sites of National Importance and Designated Sites of Local Importance</u>
APP-096	<u>6.3.10 MEC ES CH11 Figure 11.3 European Statutory Designated Sites within 15km of the PEIR Boundary</u>
APP-097	<u>6.3.10 MEC ES CH11 Figure 11.4 Otter and Water Vole Survey Area</u>
APP-098	<u>6.3.10 MEC ES CH11 Figure 11.5 Water Bodies subject to Great Crested Newt Surveys</u>
APP-099	<u>6.3.10 MEC ES CH11 Figure 11.6 Reptile Survey - Refugia Locations</u>
APP-100	<u>6.3.10 MEC ES CH11 Figure 11.7 Breeding Birds Survey - Summary Plan</u>
APP-101	<u>6.3.10 MEC ES CH11 Figure 11.8 Bat Activity Summary Plan</u>
APP-102	<u>6.3.11 MEC ES CH12 Figure 12.1 Designated Cultural Heritage Sites or Features</u>
APP-103	<u>6.3.11 MEC ES CH12 Figure 12.2 Non-Designated Cultural Heritage Sites or Features and Findspots</u>
APP-104	<u>6.3.12 MEC ES CH13 Figure 13.1 Location of Asbestos Disposal Area and Historical PFA Slurry Lagoons</u>
APP-105	<u>6.3.13 MEC ES CH14 Figure 14.1 Study Area</u>
APP-106	<u>6.4.1 MEC ES CH05 Appendix 5.1 Scoping Opinion and covering letter</u>
APP-107	<u>6.4.2 MEC ES CH07 Appendix 7.1 Site Access Technical Note</u>
APP-108	<u>6.4.2 MEC ES CH07 Appendix 7.2 SCC Correspondence</u>
APP-109	<u>6.4.2 MEC ES CH07 Appendix 7.3 Traffic Count Data</u>
APP-110	<u>6.4.2 MEC ES CH07 Appendix 7.4 Accident Data</u>
APP-111	<u>6.4.2 MEC ES CH07 Appendix 7.5 HGV Distribution</u>
APP-112	<u>6.4.2 MEC ES CH07 Appendix 7.6 TRICS Data</u>
APP-113	<u>6.4.2 MEC ES CH07 Appendix 7.7 Access and Swept Path</u>
APP-114	<u>6.4.2 MEC ES CH07 Appendix 7.8 Construction Traffic Flows</u>
APP-115	<u>6.4.2 MEC ES CH07 Appendix 7.9 Operational Traffic Flows</u>
APP-116	<u>6.4.2 MEC ES CH07 Appendix 7.10 PICADY and ARCADY reports</u>
APP-117	<u>6.4.2 MEC ES CH07 Appendix 7.11 Draft Construction Traffic Management Plan</u>

APP-118	<u>6.4.3 MEC ES CH08 Appendix 8.1 Methodology and calculations</u>
APP-119	<u>6.4.4 MEC ES CH09 Appendix 9.1 Noise</u>
APP-120	<u>6.4.5 MEC ES CH10 Appendix 10.1 Photomontage method</u>
APP-121	<u>6.4.5 MEC ES CH10 Appendix 10.2 Landscape and visual consultation</u>
APP-122	<u>6.4.5 MEC ES CH10 Appendix 10.3 Landscape and visual opportunities</u>
APP-123	<u>6.4.5 MEC ES CH10 Appendix 10.4 Landscape baseline</u>
APP-124	<u>6.4.5 MEC ES CH10 Appendix 10.5 Visual baseline</u>
APP-125	<u>6.4.5 MEC ES CH10 Appendix 10.6 Landscape effects</u>
APP-126	<u>6.4.5 MEC ES CH10 Appendix 10.7 Visual effects</u>
APP-127	<u>6.4.5 MEC ES CH10 Appendix 10.8 Arboricultural Impact Assessment and TP Plans</u>
APP-128	<u>6.4.6 MEC ES CH11 Appendix 11.1 Invertebrates</u>
APP-129	<u>6.4.6 MEC ES CH11 Appendix 11.2 Great crested newts</u>
APP-130	<u>6.4.6 MEC ES CH11 Appendix 11.3 Bats</u>
APP-131	<u>6.4.6 MEC ES CH11 Appendix 11.4 Breeding birds</u>
APP-132	<u>6.4.6 MEC ES CH11 Appendix 11.5 Badgers</u>
APP-133	<u>6.4.6 MEC ES CH11 Appendix 11.6 Target notes</u>
APP-134	<u>6.4.6 MEC ES CH11 Appendix 11.7 Consultation responses</u>
APP-135	<u>6.4.7 MEC ES CH12 Appendix 12.1 Historic Environment baseline report</u>
APP-136	<u>6.4.8 MEC ES CH13 Appendix 13.1 Ground conditions assessment tables</u>
APP-137	<u>6.4.8 MEC ES CH13 Appendix 13.2 Extracts of de-commissioning report</u>
APP-138	<u>6.4.8 MEC ES CH13 Appendix 13.3 Tony Cox Dismantlers</u>
APP-139	<u>6.4.8 MEC ES CH13 Appendix 13.4 Halcrow Briefing Note feb 2008</u>
APP-140	<u>6.4.8 MEC ES CH13 Appendix 13.5 Geo-Env-Assessment Final draft main report</u>
APP-141	<u>6.4.8 MEC ES CH13 Appendix 13.6 Meaford Power Station Desk Study Report Final</u>

APP-142	6.4.9 MEC ES CH14 Appendix 14.1 Flood Risk Assessment
APP-143	6.4.9 MEC ES CH14 Appendix 14.2 Water Framework Directive Assessment
APP-144	6.4.9 MEC ES CH14 Appendix 14.3 Drainage Strategy
APP-145	6.4.10 MEC ES CH15 Appendix 15.1 Waste assumptions
APP-146	6.4.10 MEC ES CH15 Appendix 15.2 SWMP
APP-147	6.4.11 MEC ES CH17 Appendix 17.1 CEMP
APP-148	7.1 MEC Photographs and Photomontages
APP-149	7.2 MEC Plan showing Photographs and Photomontages Locations
APP-150	7.3 MEC Index of Photographs and Photomontages
APP-151	8.1 MEC Grid Connection Statement
APP-152	8.2 MEC Gas Connection Statement
APP-153	9.1 MEC Glossary
APP-154	9.2 MEC Health Impact Summary
Adequacy of Consultation Responses	
AoC-001	Birmingham City Council
AoC-002	Leicestershire County Council
AoC-003	South Staffordshire Council
AoC-004	Worcestershire County Council
AoC-005	Stafford Borough Council
AoC-006	Staffordshire County Council
AoC-007	Newcastle-under-Lyme Borough Council
AoC-008	Dudley Metropolitan Borough Council
AoC-009	Warwickshire County Council
AoC-010	Derbyshire County Council

Relevant Representations	
RR-001	<u>Terence Stock</u>
RR-002	<u>Mr Kenneth Hughes</u>
RR-003	<u>Civil Aviation Authority</u>
RR-004	<u>Office Of Rail and Road</u>
RR-005	<u>Meaford Road Residents Association</u>
RR-006	<u>Highways England</u>
RR-007	<u>South Staffordshire District Council</u>
RR-008	<u>Natural England</u>
RR-009	<u>James Blackwell on behalf of Western Power Distribution</u>
RR-010	<u>Euan Lindsay on behalf of St. Modwen Properties 1 Sarl</u>
RR-011	<u>National Trust</u>
RR-012	<u>Canal & River Trust</u>
RR-013	<u>Dan Parry-Jones on behalf of Royal Mail Group Limited</u>
RR-014	<u>University Hospitals of North Midlands NHS Trust</u>
RR-015	<u>Public Health England</u>
Procedural Decisions and Notifications from the Examining Authority	
PD-001	<u>Section 55 Acceptance of Application Checklist</u>
PD-002	<u>Notification of Decision to Accept Application</u>
PD-003	<u>Appointment of Examining Authority</u>
PD-004	<u>Rule 6 Letter</u>
PD-005	<u>Rule 8 Letter</u>

PD-006	<u>Examining Authority's First Written Questions</u>
PD-007	<u>Rule 8(3) and 13 Letter – 1 October 2015</u>
PD-008	<u>Rule 8(3) Letter – 19 November 2015</u>
PD-009	<u>Examining Authority's Second Written Questions</u>
PD-010	<u>Rule 8(3) Letter- 7 January 2016</u>
PD-011	<u>S99 Letter</u>
Local Impact Reports	
LIR-001	<u>Stafford Borough Council and Staffordshire County Council – Joint Local Impact Report submitted to the Deadline 2</u>
LIR-002	<u>Stafford Borough Council and Staffordshire County Council – Appendix 1 – 15/22557/REM – Relevant Planning History, of Joint Local Impact Report</u>
LIR-003	<u>Stafford Borough Council and Staffordshire County Council – Appendix 1 – 10/13609/EXT – Relevant Planning History, of Joint Local Impact Report</u>
LIR-004	<u>Stafford Borough Council and Staffordshire County Council – Appendix 1 – 09/12663/FUL – Relevant Planning History, of Joint Local Impact Report</u>
LIR-005	<u>Stafford Borough Council and Staffordshire County Council – Appendix 1 – 15/22560/REM – Relevant Planning History, of Joint Local Impact Report</u>
LIR-006	<u>Stafford Borough Council and Staffordshire County Council – Appendix 1 – 98/35897/OUT – Relevant Planning History, of Joint Local Impact Report</u>
LIR-007	<u>Stafford Borough Council and Staffordshire County Council – Appendix 1 – 08/09601/FUL – Relevant Planning History, of Joint Local Impact Report</u>
LIR-008	<u>Stafford Borough Council and Staffordshire County Council – Appendix 1 – 14/21379/EXTO – Relevant Planning History, of Joint Local Impact Report</u>

LIR-009	<u>Stafford Borough Council and Staffordshire County Council - Appendix 1 – 08/10097/REM - Relevant Planning History, of Joint Local Impact Report</u>
LIR-010	<u>Stafford Borough Council and Staffordshire County Council - Appendix 1 – S.14 07 - Relevant Planning History, of Joint Local Impact Report</u>
LIR-011	<u>Stafford Borough Council and Staffordshire County Council - Appendix 2 - The Plan for Stafford Borough, of Joint Local Impact Report</u>
LIR-012	<u>Stafford Borough Council and Staffordshire County Council - Appendix 3 - Staffordshire and Stroke-on-Trent Joint Waste Local Plan, of Joint Local Impact Report</u>
LIR-013	<u>Stafford Borough Council and Staffordshire County Council - Appendix 4 – List Descriptions, of Joint Local Impact Report</u>
LIR-014	<u>Stafford Borough Council and Staffordshire County Council - Appendix 5 – Conservation Area Appraisals, of Joint Local Impact Report</u>
Additional Submissions	
AS-001	<u>Warwickshire County Council - Correspondence submitted during the pre-examination stage and accepted by the Examining Authority</u>
AS-002	<u>National Grid Gas Plc - Correspondence submitted during the pre-examination stage and accepted by the Examining Authority</u>
AS-003	<u>Environment Agency - Correspondence submitted during the pre-examination stage and accepted by the Examining Authority</u>
AS-004	<u>NATS LTD - Correspondence submitted during the pre-examination stage and accepted by the Examining Authority</u>
AS-005	<u>Network Rail - Correspondence submitted during the pre-examination stage and accepted by the Examining Authority</u>
AS-006	<u>Meaford Energy Limited - Updated Book of Reference – Clean (version 1), submitted during the pre-examination stage</u>
AS-007	<u>Meaford Energy Limited - Updated Book of Reference – Track changes (version 1), submitted during the pre-examination stage</u>
AS-008	<u>Ministry of Defence - Correspondence submitted during the pre-examination stage and accepted by the Examining Authority</u>

AS-009	<u>Fulcrum Pipelines Limited - Correspondence submitted during the pre-examination stage and accepted by the Examining Authority</u>
AS-010	<u>Western Power Distribution - Additional submission giving an update on ongoing negotiations with the applicant over protective provisions. Published on 13 November 2015</u>
Events and Hearings	
Preliminary Meeting – 20 August 2015	
EV-001	<u>Audio recording</u>
EV-002	<u>Preliminary Meeting Note</u>
Site Visit (Unaccompanied) – 04 June 2015	
EV-003	<u>Examining Authority's note of an Unaccompanied Site Inspection</u>
Site Visit (Accompanied) – 22 September 2015	
EV-004	<u>Itinerary for Accompanied Site Inspection</u>
Issue Specific Hearings and Compulsory Acquisition Hearing on 11 and 12 November 2015	
EV-005	<u>Notice of provisional agenda for the Compulsory Acquisition and Issue Specific Hearings</u>
EV-006	<u>Audio recording of the Issue Specific Hearing on environmental matters, held on 11 November 2015 – Part 1 of 2</u>
EV-007	<u>Audio recording of the Issue Specific hearing on environmental matters, held on 11 November 2015 - Part 2 of 2</u>
EV-008	<u>Audio recording of the Issue Specific hearing on the draft Development Consent Order, held on 12 November 2015 - Part 1 of 2</u>
EV-009	<u>Audio recording of the Issue Specific hearing on the draft Development Consent Order, held on 12 November 2015 - Part 2 of 2</u>
EV-010	<u>Audio recording of the Compulsory Acquisition hearing held on 12 November 2015</u>
Representations	

Deadline 1 – 20 August 2015

Deadline for receipt of:

- Notification of wish to speak at an open floor hearing
- Nominations of locations to be inspected during accompanied site inspections, the features to be observed there, with reasons for each nomination

REP1-001 [National Trust - Site visit location nomination](#)

REP1-002 [Meaford Energy Centre - Applicant response to Rule 6 letter](#)

REP1-003 [Meaford Energy Centre - Suggested Site Visit Itinerary](#)

REP1-004 [Edmund Kuhn on behalf of Meaford Residents Association - Late Submission made regarding the Accompanied Site Inspection and accepted by the Examining Authority](#)

REP1-005 [Western Power Distribution - Late Submission made regarding the Accompanied Site Inspection and accepted by the Examining Authority](#)

Deadline 2 – 28 September 2015

Deadline for receipt of:

- Notification from statutory parties, or a local authority without direct responsibility in the proposed development area, of a wish to be considered an interested party
- Comments on relevant representations (RRs)
- Summaries of all RRs exceeding 1500 words
- Written representations (WRs) by all interested parties
- Summaries of all WRs exceeding 1500 words

- [Local Impact Report](#) from any local authorities
- Statements of Common Ground requested by ExA Responses to ExA's first written questions
- Notification of wish to speak at an issue specific hearing
- Notification of wish to speak at a compulsory Acquisition hearing
- Any other information requested by the ExA
[View the documents received relating to this deadline](#)

REP2-001	GTC
REP2-002	Office of Rail and Road
REP2-003	Edmund Kuhn on behalf of Meaford Road Residents Association
REP2-004	Edmund Kuhn on behalf of Meaford Road Residents Association - Further evidence
REP2-005	Historic England - Update on the agreed Statement of Common Ground with the applicant
REP2-006	Environment Agency - Response to Examining Authority's first round of questions
REP2-007	Highways England - Response to Examining Authority's first round of questions and letter updating position on their relevant representation
REP2-008	Stafford Borough Council - Response to Examining Authority's first round of questions
REP2-009	Staffordshire County Council - Response to Examining Authority's first round of questions
REP2-010	Staffordshire County Council - Written Representation
REP2-011	Western Power Distribution - Written Representation
REP2-012	Meaford Energy Limited - Cover letter

REP2-013	<u>Meaford Energy Limited - 10.1 Response to Relevant Representations</u>
REP2-014	<u>Meaford Energy Limited - 10.2 Response to Examining Authority's first written questions</u>
REP2-015	<u>Meaford Energy Limited - 10.3 Statement of Common Ground between the applicant and Environment Agency</u>
REP2-016	<u>Meaford Energy Limited - 10.4 Statement of Common Ground between the applicant and Historic England</u>
REP2-017	<u>Meaford Energy Limited - 10.5 Statement of Common Ground between the applicant and Natural England</u>
REP2-018	<u>Meaford Energy Limited - 2.2 Land Plan – Revision 1 in response to Examining Authority's question – DCO6</u>
REP2-019	<u>Meaford Energy Limited – Statement of Common Ground between the applicant and; Staffordshire County Council and Stafford Borough Council. Late Submission for Deadline 2, received 21 October 2015</u>
Deadline 3 – 22 October 2015	
Deadline for receipt of:	
<ul style="list-style-type: none"> • Comments on Local Impact Reports • Comments on WRs and responses to comments on RRs • Comments on responses to ExA's first written questions • Any other information requested by the ExA 	
REP3-001	<u>Edmund Kuhn on behalf of Meaford Residents Association – Response to the applicant's comments on their Relevant Representation</u>
REP3-002	<u>Edmund Kuhn on behalf of Meaford Residents Association – Comments on the Local Impact Report</u>
REP3-003	<u>GTC – Other submission for Deadline 3</u>
REP3-004	<u>Network Rail – Response to the applicant's comments on Relevant Representations and an update regarding protective provisions</u>

REP3-005	<u>Meaford Energy Limited – Cover letter for Deadline 3 submissions</u>
REP3-006	<u>Meaford Energy Limited - 10.7 Comments on the Local Impact Report</u>
REP3-007	<u>Meaford Energy Limited - 10.8 Comments on Written Representations and responses to the Examining Authority's first written questions</u>
REP3-008	<u>Meaford Energy Limited - 3.1 Draft Order for the MEC – rev 1, October 2015 (Updates to the DCO)</u>
REP3-009	<u>Meaford Energy Limited - 3.1 Draft Order for the MEC - rev 1, October 2015 (Updates and comparison with version 0)</u>
REP3-010	<u>Meaford Energy Limited - 3.2 Explanatory Memorandum to Draft Order for the MEC - rev 1, October 2015 (Updates)</u>
REP3-011	<u>Meaford Energy Limited - 3.2 Explanatory Memorandum to Draft Order for the MEC - rev 1, October 2015. (Updates and comparison with version 0)</u>
Deadline 4 – 19 November 2015	
Deadline for receipt of:	
<ul style="list-style-type: none"> • Updated Statements of Common Ground • Post-hearing documents including written summaries of oral cases, of any evidence or documents presented, or amendments requested by the ExA • Revised draft DCO from the applicant taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions) • Any further information requested by the ExA 	
REP4-001	<u>Meaford Energy Limited - Covering email for Deadline 4 Submission</u>
REP4-002	<u>Meaford Energy Limited - 3.1 Draft Order for the MEC - rev 2, Nov 2015 - clean</u>
REP4-003	<u>Meaford Energy Limited - 3.1 Draft Order for the MEC - rev 2, Nov 2015 - Comparison version</u>

REP4-004	<u>Meaford Energy Limited - 3.2 Explanatory memorandum to Draft Order for the MEC - Rev 2, Nov 2015 (comparison version)</u>
REP4-005	<u>Meaford Energy Limited - 3.2 Explanatory memorandum to Draft Order for the MEC - Rev 2, Nov 2015 (clean)</u>
REP4-006	<u>Meaford Energy Limited - 6.4.2 ES Appendix 7.11 - Draft Construction Traffic Management Plan - Rev 1 (clean)</u>
REP4-007	<u>Meaford Energy Limited - 6.4.2 ES Appendix 7.11 - Draft Construction Traffic Management Plan - Rev 1 (comparison version)</u>
REP4-008	<u>Meaford Energy Limited - 6.3.6 Vol 3 ES Figure 7.3 - Inbound Construction Traffic Route - Rev 1</u>
REP4-009	<u>Meaford Energy Limited - 6.3.6 Vol 3 ES Figure 7.4 - Outbound Construction Traffic Route - Rev 1</u>
REP4-010	<u>Meaford Energy Limited - 10.10 - Written Summary of Meaford Energy Ltd's Oral Case at the Compulsory Acquisition Hearing on 12 November 2015</u>
REP4-011	<u>Meaford Energy Limited - 10.11 Signed Statement of Common Ground between Meaford Energy Limited and the National Trust</u>
REP4-012	<u>Meaford Energy Limited - 10.12 - Written summary of Meaford Energy Limited's oral case at the issue-specific hearing, 11 November 2015</u>
REP4-013	<u>Meaford Energy Limited - 10.13 - Written summary of Meaford Energy Limited's oral case at the draft DCO Hearing, 12 November 2015</u>
REP4-014	<u>GTC - Other Submission for Deadline 4</u>
REP4-015	<u>Meaford Road Residents Association - Written summary of oral case made at the Issue Specific Hearing on Environmental Matters on 11 November 2015</u>
REP4-016	<u>Meaford Road Residents Association - Further Representation accepted by the ExA as a late submission</u>
Deadline 5 – 10 December 2015	
<ul style="list-style-type: none"> • Responses to ExA's second written questions 	

REP5-001	Meaford Energy Limited - Deadline 5 covering letter
REP5-002	Meaford Energy Limited - 10.14 Response to Examining Authority's second round of written questions
Deadline 6 – 22 December 2015	
<ul style="list-style-type: none"> • Updated Statements of Common Ground • Post hearing documents arising from hearings including written summaries of oral cases put, of evidence and of any documents or amendments requested by the ExA • Revised draft DCO taking account of issues raised and comments into account (clean and track-change) • Revised Book of Reference taking into account all issues raised at hearings and in RRs/WRs (including both clean and track-change versions) • Any further information requested by the ExA for this Deadline 	
REP6-001	Meaford Energy Limited - Deadline 6 covering letter
REP6-002	Meaford Energy Limited - 10.15 Approximate Locations From Which Meaford Road Residents Association Took Deadline 4 Photographs
Deadline 7 – 14 January 2015	
<ul style="list-style-type: none"> • Comments on responses to ExA's second written questions. 	
No Documents were received for this Deadline	
Other Documents	
OD-001	Regulation 24 Transboundary Screening document
OD-002	Meaford Energy Limited - Certificates of compliance with Reg 13, s56 and s59
OD-003	Meaford Energy Limited – Notice of hearings: date, time and place of issue specific and compulsory acquisition hearings

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AA	Appropriate Assessment
AGI	Above Ground Installation
AOD	Above Ordnance Datum
AONB	Area of Outstanding Natural Beauty
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CAA	Civil Aviation Authority
CCA	Canal Conservation Area
CCGT	Combined Cycle Gas Turbine
CCR	Carbon Capture Ready
CCS	Carbon Capture and Storage
CEMP	Construction Environment Management Plan
CHP	Combined Heat and Power
CIA	Cumulative Impact Assessment
CO ₂	Carbon Dioxide.
CTMP	Construction Transport Management Plan
DCLG	Department for Communities and Local Government
DCLG compulsory acquisition guidance	'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land', Department of Communities and Local Government, September 2013
DCO	Development consent order (made or proposed to be made under the Planning Act 2008 (as amended))
DECC	Department of Energy and Climate Change
DIO	Ministry of Defence – Defence Infrastructure Organisation
EA	Environment Agency
EEA	European Economic Area
EIA	Environmental Impact Assessment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
EMF	Electro Magnetic Field
EN-1	The Overarching National Policy Statement for Energy
EN-2	National Policy Statement for Fossil Fuel Electricity Generating Infrastructure
EN-4	National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines
EN-5	National Policy Statement for Electricity Networks Infrastructure
EPR	Examination Procedure Rules
ES	Environmental Statement
ExA	Examining Authority
ha	Hectare
Habitat Regulations	The Conservation of Habitats and Species Regulations 2010
HE	Historic England
HPA	Health Protection Agency

Abbreviation or usage	Reference
HRA	Habitat Regulations Assessment
IP	Interested Party
ISH	Issue Specific Hearing
JWLP	Staffordshire and Stoke-on-Trent Joint Waste Local Plan
km	Kilometer
LDF	Local Development Framework
LIR	Local Impact Report
LPA	Local Planning Authority
LTS	Local Transmission Network
LVIA	Landscape and Visual Impact Assessment
m	Meter
MBP	Meaford Business Park
MEC	Meaford Energy Centre
MoD	Ministry of Defence
MW	Megawatt
MWe	Megawatt electric
NAR	Northern Access Road
NATS	National Air Traffic Services
NE	Natural England
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
PA2008	Planning Act 2008
PRoW	Public Right of Way
PSB	Plan for Stafford Borough (Local Plan)
Ramsar	The Ramsar Convention on Wetlands
RIES	Report on the Implications for European Sites
SAC	Special Area of Conservation
SBC	Stafford Borough Council
SCC	Staffordshire County Council
SNCB	Statutory Nature Conservation Body
SNCBs	Statutory nature conservation bodies – a collective reference
SOCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area
SSSI	Sites of Special Scientific Interest
ZTV	Zone of theoretical visibility

APPENDIX D: RECOMMENDED DCO

201X No. XXX

INFRASTRUCTURE PLANNING

The Meaford Energy (Gas Fired Power Station) Order 201[X]

Made - - - - 201*

Coming into force - - 201*

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for an Order under sections 37, 114, 115, 117(4), 120 and 140 of the Planning Act 2008^(b) (“the 2008 Act”).

The application was examined by a single appointed person appointed by the Secretary of State pursuant Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010^(c).

The single appointed person, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83 of the 2008 Act, made a report and recommendation to the Secretary of State.

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

The Secretary of State, in exercise of the powers conferred by sections 103, 114, 115, 120 and 140 of the 2008 Act, makes the following Order—

(a) S.I. 2009/2264, as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012/635, the Public Bodies (Abolition of the Commission for Rural Communities) Order 2012/2654, the Local Policing Bodies (Consequential Amendments No 2) Regulations 2012/2732 and the Infrastructure Planning (Prescribed Consultees) (Amendments) Regulations 2013/522.

(b) 2008 c.29.

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

PART 1

PRELIMINARY

Citation and commencement

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

Interpretation

2.—(1) In this Order—

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

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

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

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- (a) 1961 c.33. Section 1 was amended by paragraphs 37(a) and (b) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Sections 2 and 3 were repealed by paragraph 38 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 4 was amended by paragraphs 39(a), (b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307. There are other amendments to the 1961 Act which are not relevant to this Order.
- (b) 1965 c.56. Sections 7, 9, 12, and 22, paragraph 2 of Schedule 2 and paragraphs 2(3) and 7(2) of Schedule 4 were amended by section 9(3) and paragraph 5 of Schedule 3 to the Gas Act 1986 (c.44), section 245(4) of the Town and Country Planning Act 1990 (c.8), section 151(5) and paragraph 2(1) of Schedule 18 to the Water Act 1989 (c.15), section 13(2) of the Local Government (Miscellaneous Provisions) Act 1976 (c.57), section 7(1)(b) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), section 30(1) of the Acquisition of Land Act 1981 (c.67) and section 129 of the Local Government Act 1972 (c.70), words of enactment omitted under authority of section 3 of the Statute Law Revision Act 1948 (c.62); Section 8 was amended by paragraphs 62(a), (b) and (c) of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 9 was also amended by section 52(10)(a) of the Land Compensation Act 1973 (c.26), section 13(3) and paragraphs 4 and 5 to Schedule 3 of the Agriculture (Miscellaneous Provisions) Act 1968 (c.34) and paragraph 16(1) of Schedule 2 to the Telecommunications Act 1984 (c.12); Section 10 was amended by paragraph 63 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307 and paragraphs 13(2)(a) and (b) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11); Section 11 was amended by paragraphs 14(3)(a) and (b) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 No.1, section 3 and Schedule 1 Part 1 to the Housing (Consequential Provisions) Act 1985 (c.71) and paragraph 64 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 12 was also amended by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), paragraph 16(1) of Schedule 2 to the Telecommunications Act 1984 (c.12); Section 12(3) was also amended by section 56(2) and Part I of Schedule 9 to the Courts Act 1971 (c.23); Section 13 was amended by section 139 (5), (6), (7), (8), (9), paragraph 28(2) of Schedule 13 and paragraph 1 of Schedule 23(3) to the Tribunals, Courts and Enforcement Act 2007 (c.15); Section 20 was amended by paragraph 4 of Schedule 15(I) to the Planning and Compensation Act 1991 (c.34) and paragraph 70 of Schedule 1 to the Transfer of Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 22 was also excluded by section 10(3) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), extended by paragraph 16(1) of Schedule 2 to the Telecommunications Act 1984 (c.12) and modified by paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34). Paragraph 2 of Schedule 2 was also modified by section 13(3) and paragraphs 4 and 5 of Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1968 (c.34), section 10(2) of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66), paragraph 14 of Schedule 3A to the Town and Country Planning Act 1968 (c.72) and Schedule 2, Appendix A to the Land Commission (Dissolution) Act 1971 (c.18).
- (c) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

“the 1984 Act” means the Road Traffic Regulation Act 1984(a);

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

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

“the 2008 Act” means the Planning Act 2008(d);

“the access rights of way plan” means the plan identified with document reference number 2.4 and certified as the access rights of way plan by the Secretary of State for the purposes of this Order;

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

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- (a) 1984 c.27. Section 1 was amended by section 45 of the Local Transport Act 2008 (c.26) and paragraph 7 of Schedule 11 to the Transport Act 2000 (c.38). Section 9 was amended by paragraphs 23(2), (3) and (4) of Schedule 8 (II) to the New Roads and Streets Works Act 1991 (c.22), paragraph 24 of Schedule 4 to the Road Traffic Act 1991 (c.40) and sections 1, 2 and 8(1) and paragraph 5(4) of Schedule 5 to the Local Government Act 1985 (c.51); and Section 22BB was amended by section 72 of the Natural Environment and Rural Communities Act 2006 (c.16).
- (b) 1990 c.8. Section 56 was amended by paragraph 10(1) and (2) of Schedule 7 and paragraph 10 of Schedule 6 to the Planning and Compensation Act 1991 (c.34), paragraph 2(a) and (b) of Schedule 12 to the Localism Act 2011 (c.20) and section 40(2)(a) of the Planning and Compulsory Purchase Act 2004 (c.5).
- (c) 1991 c.22. Section 48 was amended by section 142(2) of the Local Transport Act 2008 (c.26); Section 50 was amended by section 124(3) of the Local Transport Act 2008 (c.26); Section 51 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 54 was amended by the transitional provisions specified in article 6(1)-(3) and (5) of SI 2007/3174 and by section 49(1) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 55 was amended by section 51(9) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18), and subject to transitional provisions specified in article 6(4) and (5) of SI 2007/3174 and section 49(2) of the Traffic Management Act 2004 (c.18); Section 56 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18), and wording was amended subject to transitional provisions specified in article 5 of SI 2007/3174 by section 43 of the Traffic Management Act 2004 (c.18); Section 56A was inserted subject to transitional provisions specified in article 4 of SI 2007/1890, article 5 of SI 2007/3174 and to Section 44 of the Traffic Management Act 2004 (c.18); Section 57 was amended by section 52(3) and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 58 was amended subject to transitional provisions specified in article 7 of SI 2007/3174, article 6 of SI 2007/1890, and paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 58A was inserted subject to transitional provisions specified in article 7 in SI 2007/1890, article 8 in 2007/3174 and section 52(1) of the Traffic Management Act 2004 (c.18); Section 59 was amended by section 42 of Traffic Management Act 2004 (c.18); Section 60 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 64 was amended by section 52(4) of the Traffic Management Act 2004 (c.18) and by paragraph 12 of Schedule 7 to the Road Traffic Act 1991 (c.40); Section 65 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 66 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 67 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 68 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 69 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 70 was amended subject to transitional provisions specified in article 9 in SI 2007/3174 by section 54 of the Traffic Management Act 2004 (c.18) and by section 40(3) of that same Act; Section 71 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 74 was amended by sections 256(3)(a), (3)(b), (4), (5), (6) and (7) of the Transport Act 2000 (c.38) and by sections 40(4) and 52(5) of the Traffic Management Act 2004 (c.18); Section 74A was amended by section 255(1) of the Transport Act 2000 (c.38) and section 40(4) of the Traffic Management Act 2004 (c.18); Section 74B was amended by section 255(1) of the Transport Act 2000 (c.38); Section 79 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 83 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 88 was amended by sections 52(6) and 40(5) of the Traffic Management Act 2004 (c.18); Section 89 was amended by section 52(7) of the Traffic Management Act 2004 (c.18) and by paragraph 57(1) of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60); Section 92 was amended by paragraph 1 of Schedule 1 to the Traffic Management Act 2004 (c.18); Section 93 was amended by section 49(3) of the Traffic Management Act 2004 (c.18); Section 94 was amended by paragraph 32(1) of Schedule 7(1) to the Local Government (Wales) Act 1994 (c.19); Section 95A was inserted subject to transitional provisions specified in article 3 of SI 2007/1890, article 3 of SI 2007/3174 and by section 41(1) of the Traffic Management Act 2004 (c.18); Section 106 was amended by section 41(2) of the Traffic Management Act 2004 (c.18). There are other amendments to the 1991 Act which are not relevant to this Order.
- (d) 2008 c.29. Section 14 was amended by article 2(2) of the Infrastructure Planning (Waste Water Transfer and Storage) Order 2012/1645; Section 37 was amended by paragraph 5(2) and (3) and section 137(5) of the Localism Act 2011 (c.20); Section 103 was amended by paragraph 48(4) of Schedule 13(1) and paragraph 1 of Schedule 25(20) to the Localism Act 2011 (c.20); Section 104 was amended by paragraphs 49(2), (3)(a), (3)(b), (3)(c), (4), (5)(a), (5)(b), (6) and (7) of Schedule 13(1) to the Localism Act 2011 (c.20), as well as by section 58(5) of the Marine and Coastal Access Act 2009 (c.23). Section 114 was amended by paragraphs 55(2)(a), (2)(b) and (3) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 115 was amended by paragraph 1 of Schedule 25(2) to the Localism Act 2011 (c.20); Section 117 was amended by paragraph 58(3)(a), (3)(b), (4) and (5) of Schedule 13(1) to the Localism Act 2011 (c.20) and by paragraph 58(3)(a) of Schedule 13(1) to the same Act; Section 120 was amended by section 140 and paragraph 60(2) and (3) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 122 was amended by section 140 and paragraph 62 of Schedule 13(1) to the Localism Act 2011 (c.20); Section 127 was amended by section 23(2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013, c.27 and by paragraph 64(2) of Schedule 13(1) to the Localism Act 2011 (c.20); Section 134 was amended by 142(2)(a) and (3) and paragraph 1 of Schedule 25(21) to the Localism Act 2011 (c.20); Section 138 was amended by section 23(4)(a), (b) and (c) of the Growth and Infrastructure Act 2013 (c.27); Section 152 was amended by paragraph 293 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307.

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

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

“the book of reference” means the book of reference with document reference number 4.3 and 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;

“electronic transmission” means a communication transmitted—

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

“design and access statement” means the design and access statement submitted under regulation 5(2)(q) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 with document reference 5.3 and certified as such by the Secretary of State for the purposes of this Order;

“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 by the Secretary of State as the environmental statement for the purposes of this Order;

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

“highway” and “highway authority” have the same meaning as in the 1980 Act and in respect of the latter, will be Staffordshire County Council unless otherwise stated;

“the land plan” means the plan submitted as revision 1 dated September 2015 and certified as the land plan by the Secretary of State for the purposes of this Order;

“the lease” means in the context of article 23 (private rights) only, the lease to be entered into by the undertaker pursuant to an option agreement dated 31 March 2015 made between (1) St Modwen Properties I Sarl; and (2) Meaford Land Limited as for a term of no less than seventy five years certain or such other lease as may be entered into from time to time for the benefit of the undertaker to construct, operate and maintain the authorised development;

“limits of deviation” means, in respect of numbered works 1 to 7 inclusive the outer limits of the corresponding numbered area shown on the works plans;

“maintain” includes to inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct any part (but not the whole), replacement of any part (but not the whole), and improve but not so as to vary from the description of the authorised development in Schedule 1 and only to the extent assessed in the environment statement and any derivative of “maintain” shall be construed accordingly;

“Meaford Energy Limited” means Meaford Energy Limited (Company Registration Number 08575649) whose registered office is at Park Point, 17 High Street, Longbridge, Birmingham B31 2UQ;

“National Grid” means National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“this Order” means the Meaford Energy (Gas Fired Power Station) Order 201[*];

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

“Order limits” means the limits shown on 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 (interpretation)(a);

“relevant planning authority” means Stafford Borough Council as the planning authority for the area in which the authorised development is situated;

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

“SP Manweb” means SP Manweb Plc (company number 02366937) whose registered office is at 3 Prenton Way, Prenton CH43 3ET;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and shall include a public communications provider as defined by the Communications Act 2003(b);

“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 Meaford Energy Limited, which is the named undertaker, or any other person who for the time being has the benefit of this Order in accordance with article 7 of this Order;

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

“the works plans” means the plans with document reference number 2.3 and certified as the works plans by the Secretary of State for the purposes of this Order; and

“WPD” means Western Power Distribution (West Midlands) Plc whose registered office is Avonbank, Feeder Road, Bristol BS2 0TB.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictions are references to restrictions over land which interfere with the interests or rights of another and are for the benefit of land over which rights are created and acquired under this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access rights of way plan are taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”), is a reference to the work so designated in Schedule 1 and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1E inclusive, a reference to “Work No.2” or “numbered work 2” means numbered works 2A and 2B inclusive and reference to “Work No.5” and “numbered work 5” means numbered works 5A and 5B inclusive.

(a) 1981 c.67. Section 4 was amended by paragraph 150 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307; Section 7 was amended by section 70 and paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34), paragraph 52 of Schedule 13 to the Local Government Finance Act 1992 (c.14), paragraph 53 of Schedule 1 to the Fire and Rescue Services Act 2004 (c.21), paragraph 9 of Schedule 15(1) to the Planning and Compensation Act 1991 (c.34), paragraph 54(2) of Schedule 1(1) to the Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001/1149, paragraph 110(a) and (b) of Schedule 12(3) to the Postal Services Act 2011 (c.5), section 100(3) of the Planning and Compulsory Purchase Act 2004 (c.5) and paragraph 23 of Schedule 3 to SI 1990/776. Part 2 of Schedule 2 was amended by section 67(1)(3), and paragraphs 2(1)(xiii) and 2(10)(d) of Schedule 7 and paragraph 33 of Schedule 8 to the Gas Act 1986 (c.44), section 190 and paragraph 1(2) and (10) of Schedule 25 to the Water Act 1989 (c.15), sections 112(1)(3), paragraph 2(2)(9)(g) of Schedule 16 and paragraphs 33 and 35(1) of Schedule 17 to the Electricity Act 1989 (c.29). Part 3 of Schedule 2 was amended by paragraph 151 of Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307.

(b) 2003 c.21.

- (5) The expression “includes” is to be construed without limitation.
- (6) All areas described in square metres in the book of reference are approximate.
- (7) References to any statutory body include that body’s successor bodies as from time to time have jurisdiction over the authorised development.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

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

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

(3) In constructing each numbered work, the undertaker may deviate within the corresponding numbered area 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 generating station comprised in the authorised development.

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

Benefit of Order

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to—

- (a) numbered work 2A(i) and numbered work 2A(ii) for which consent is granted by this Order for the benefit of the undertaker and National Grid; and
- (b) numbered work 3 for which consent is granted by this Order for the benefit of the undertaker and WPD.

Consent to transfer benefit of Order

7.—(1) Subject to paragraph (4), the undertaker, and National Grid in relation to numbered work 2A(i) and numbered work 2A(ii) and WPD in relation to numbered work 3, 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 between the undertaker, National Grid or WPD (as the case may be) and the transferee; or

- (b) grant to another person (“the lessee”) for a period agreed between the undertaker, National Grid or WPD (as the case may be) 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 a transfer, or grant, has been made in accordance with paragraph (1) references in this Order to the undertaker or National Grid or WPD (as the case may be), except in paragraph (3) include references to the transferee or lessee.

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

(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 the holder of a licence under section 6 of the Electricity Act 1989(a) or section 7 of the Gas Act 1986(b); or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any claim that no compensation shall be payable.

Application and modification of legislative provisions

8. Subject to the modifications set out in Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

Defence to proceedings in respect of statutory nuisance

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

- (a) 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

(a) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), and section 6(10) amended by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to the section that are not relevant to this Order.

(b) 1986 c.44. Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to the section that are not relevant to this Order.

(c) Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(a);

- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

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

PART 3

STREETS

Power to alter layout, etc. of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Schedule 4 (streets subject to permanent 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 paragraphs (3) and (4), 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; and
- (b) make and maintain passing place(s).

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

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

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

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

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 5 (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) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;

(a) 1974 c.40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3) of the Electricity Act 1989 (c.29); Sections 61 and 65 were amended by section 133 and Schedule 7 to the Building Act 1984 (c.55), section 120 and Schedule 24 to the Environment Act 1995 (c.25) and section 162 and Schedule 15 to the Environmental Protection Act 1990 (c.43). There are other amendments not relevant to this Order.

- (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 sections 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).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Temporary prohibition or restriction of use of streets

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

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

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

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access, and ensure that relevant provision is made for residents to park and for services to access properties which may be affected by the temporary alteration, diversion, prohibition or restriction of a street under this article.

(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 6 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

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

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

(6) If a street authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent under paragraph (5)(b) that street authority is deemed to have granted consent.

Traffic Regulation

13.—(1) Without limiting the scope of the specific powers conferred by article 12 but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to when the authorised development first becomes operational—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
- (b) make provision as to the direction or priority of vehicular traffic on any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers of article 12 in respect of prohibition or restrictions relating to vehicular traffic on a road and paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 12 or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)(a).

(4) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

(5) If the traffic authority fails to notify the undertaker of its decision within eight weeks of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

Access to works

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

- (a) form and layout the permanent means of access, or improve existing means of access, in the location specified in Schedule 4 (streets subject to permanent alteration of layout); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

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

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

(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

(a) 2004 c.18. There are amendments to this Act not relevant to this Order.

- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

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

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

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

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) This article does not authorise any water discharge activities or groundwater activities for which a licence is required pursuant to regulation 12(b) of the Environmental Permitting (England and Wales) Regulations 2010(**b**).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(**c**) (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(**d**) have the same meaning as in that Act.

Authority to survey and investigate the land

17.—(1) The undertaker may for the purposes of this Order enter on any part of Order land identified in Part I of the book of reference or on any land which may be affected by the authorised development and—

- (a) survey or investigate the land;

(a) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b),(5)(c) and 36(2) of the Water Act 2003 (c.37).

(b) S.I. 2010/675, to which there are amendments not relevant to this Order.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

(d) 1991 (c.57) as amended by S.I. 2009/3104.

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

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

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

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

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

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) If either the highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within eight weeks of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of the highway authority; or
- (b) under paragraph (4)(b) in the case of the street authority,

that authority is deemed to have granted consent.

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of rights

18.—(1) The undertaker may create and acquire compulsorily the rights over the Order land and impose the restrictions affecting the Order land described in Part 1 of the book of reference and shown on the land plan.

(2) Subject to section 8 of the 1965 Act (provisions as to divided land), as substituted by paragraph 5 of Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights) to this Order, where the undertaker creates and acquires a right over land or imposes a restriction under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights) has 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 or the imposition of a restriction.

(4) In any case where the creation and acquisition of rights or the imposition of a restriction 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 create and acquire such rights or impose such restrictions to the statutory undertaker in question.

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

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

(3) In section 3 (preliminary notices), for subsection (1) there 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 must include the particulars specified in subsection (3) in a notice which is—

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

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

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

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

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

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

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

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

Time limit for exercise of authority to acquire rights compulsorily

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

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and

(a) 1981 (c.66).

- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 25 (temporary use of land for carrying out the authorised development) must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Statutory authority to override easements and other rights

21.—(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(1) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

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

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

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

caused by the carrying out or use of the authorised development 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 applies to the construction of paragraph (2) (with any necessary modifications).

Acquisition of subsoil or airspace only

22.—(1) The undertaker may acquire compulsorily such rights in the subsoil of, or the airspace over, the Order land referred to in paragraph (1) of article 18 (compulsory acquisition of rights) as may be required for any purpose for which rights or restrictions over that Order land may be created and acquired or imposed under that provision instead of acquiring any greater interest in that land.

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

Private rights

23.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to the compulsory creation and acquisition of rights or the imposition of restrictions under this Order are suspended and are unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenants, extinguished insofar as in either case their continuance would be inconsistent with the exercise by the undertaker of the right acquired or the burden of the restriction imposed—

- (a) as from the date of the creation and acquisition of the right or the benefit of the restriction 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 earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over the Order land and which is either—

- (a) leased by the undertaker pursuant to the lease; or
- (b) subject to rights by agreement for the benefit of the undertaker,

are suspended and are unenforceable in so far as their continuance would be inconsistent with any activity authorised by this Order.

(3) Subject to the provisions of this article, all private rights and restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for so 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.

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

(5) This article does not apply in relation to any right to which article 26 (statutory undertakers) applies.

(6) Paragraphs (1), (2) and (4) shall have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the creation and acquisition of rights or the imposition of restrictions over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's 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, in so far it relates to the authorised development, at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested, belongs or benefits.

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right or restrictive covenant is vested, belongs or benefits; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(8) References in this article to private rights and restrictive covenants over land includes any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

Rights under or over streets

24.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace 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 the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) must 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) The undertaker must repair and make good at its own expense and to the reasonable satisfaction of the street authority any damage caused to a street or to any bridge apparatus, highway structure or street furniture in the street belonging to the street authority by virtue of its occupation and appropriation of the subsoil of, or airspace over, the street under this article.

(5) Subject to paragraph (6), 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.

(6) Compensation is not payable under paragraph (5) 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

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

- (a) enter on and take possession of so much of the land specified in columns (1) and (2) of Schedule 9 (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;
- (b) remove any fences, debris and vegetation from that land; and
- (c) construct any works specified in relation to that land in column (3) of Schedule 9, or any other mitigation works.

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

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

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

(8) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in part 1 of the book of reference under article 18 (compulsory acquisition of rights); or

- (b) acquiring any right in the subsoil or of airspace over any part of the Order land identified in part 1 of the book of reference under article 22 (acquisition of subsoil or airspace only) or article 24 (rights under or over streets).

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

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

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 9.

Statutory Undertakers

26. Subject to the provisions of Schedule 7 (protective provisions), the undertaker may—

- (a) extinguish or suspend the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plan and described in the book of reference; and
- (b) create and acquire compulsorily the rights or impose restrictions over land belonging to statutory undertakers as shown on the land plan and described in Part 1 of the book of reference.

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

27. Where a street is temporarily altered or its use is temporarily prohibited or restricted under article 10 (power to alter layout, etc of streets), article 12 (temporary prohibition or restriction of use of streets) any statutory utility whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 7 (protective provisions), as if this Order had not been made.

Recovery of costs of new connection

28.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 26 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 26 (statutory undertakers) any person who is—

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

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

(3) In this paragraph—

“public communication 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
MISCELLANEOUS AND GENERAL

Felling or lopping of trees

29.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

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

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

Application of landlord and tenant law

30.—(1) This article applies to—

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

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

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

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

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

Operational land for purposes of the 1990 Act

31. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land).

Protective provisions

32. Schedule 7 (protective provisions) has effect.

Certification of plans etc.

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

- (a) the book of reference;
- (b) the land plan;
- (c) the works plans;
- (d) the access rights of way plan;
- (e) the environmental statement;
- (f) the design and access statement;
- (g) the illustrative landscaping plan;
- (h) the illustrative foul and surface water drainage plan; and
- (i) the illustrative cross sections drawing,

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

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

Service of notices

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

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

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

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

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the 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 any 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 name or 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 a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

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

(a) 1978 c.30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

- (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 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 electronic transmission given 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 to be final and is to take effect on a date specified by the person in the notice but that date must not be less than seven 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

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

(2) Schedule 8 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements in Schedule 2 (requirements).

(3) The procedure set out in paragraph 3 of Schedule 8 (procedure for discharge of requirements) has effect in relation to any other consent, agreement or approval required under this Order.

Arbitration

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

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

Address
Date

Signed
Title
Department

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Staffordshire and the Borough of Stafford—

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act comprising—

Work No. 1A development comprising—

- (a) one gas turbine building with up to two gas turbines and one steam turbine building with one steam turbine, each connected to its own generator with a combined rated electrical output of up to 299 MWe;
- (b) up to two exhaust gas emission flue stacks;
- (c) up to two Heat Recovery Steam Generator buildings with up to two Heat Recovery Steam Generators (HRSGs);
- (d) air cooled condenser; and
- (e) switchgear room.

Work No. 1B development comprising—

- (a) a workshop;
- (b) telemetry apparatus;
- (c) auxiliary distilled fuel oil generator;
- (d) a water treatment system;
- (e) a raw/fire water storage tank and up to two water storage tanks; and
- (f) a natural gas pressure regulating installation (PRI) (also known as a gas receiving station and gas treatment compound) within the power station complex containing—
 - (i) full bore 450mm nominal bore manually and remotely actuated isolation valves;
 - (ii) bypass valves and isolation valves;
 - (iii) a gas filter;
 - (iv) liquid separator;
 - (v) 2 x 100% gas compressors (max rating circa 3000 kW);
 - (vi) gas meter(s);
 - (vii) non-return and relief valves;
 - (viii) control and instrument kiosks;
 - (ix) electricity supply kiosk;
 - (x) a section of isolated pipe suitable for receiving a pressure inspection gauge (PIG) (also known as PIG launching/receiving facility); and
 - (xi) high pressure steel pipeline with a nominal bore of 450mm.

Work No. 1C development comprising—

- (a) an administration/control building; and
- (b) heat network interface building.

Work No. 1D development comprising—

- (a) a 132kV switchyard containing plant required to manage the transmission of electricity to the distribution network; and
- (b) up to three transformer compounds with up to three transformers.

Work No. 1E development comprising—

- (a) security infrastructure, including cameras, perimeter fencing, fencing, gate and a gatehouse;
- (b) site lighting infrastructure, including perimeter lighting columns and lights;
- (c) internal roadways, car parking, pedestrian network, cycle parking and hardstanding;
- (d) foul, surface water and trade effluent drainage;
- (e) waste management infrastructure;
- (f) electricity, water, wastewater and telecommunications and other services;
- (g) site preparation works, including earthworks and enabling works and tree removal;
- (h) landscaping including tree planting, other boundary treatments and ecological mitigation;
- (i) high voltage and low voltage cabling, equipment and controls and telemetry and electrical protection auxiliary cabling;
- (j) part of underground gas pipeline connection;
- (k) other ancillary equipment; and
- (l) construction compound.

Work No. 2A development comprising site preparation and an above ground installation (AGI) (also referred to as a minimum off-take connection compound) containing—

- (a) connection to the local gas transmission system (LTS) with 400mm nominal bore all welded pipe;
- (b) an additional full bore isolation valve and intermediate vent valve;
- (c) other emergency control valves as required;
- (d) a gas meter;
- (e) galvanic isolation between the LTS and the new gas connection;
- (f) a section of isolated pipe suitable for the launch of a pipeline inspection gauge (PIG) (also referred to as a PIG launching/receiving facility);
- (g) perimeter fencing and fencing;
- (h) tree removal;
- (i) other ancillary equipment;
- (j) construction compound; and
- (k) a high pressure steel pipeline connection of approximately 30m in length with a nominal bore of 450mm.

Work No. 2B development comprising—

- (a) connection to the local gas transmission system (LTS) with 400mm nominal bore all welded pipe;
- (b) a high pressure steel pipeline connection of approximately 760m in length and with a nominal bore of 450mm between numbered work 2A and numbered work 1B underground between line A-A and line B-B (approximately 10m in length), overground between line B-B and line C-C (approximately 140m in length) and underground between line C-C and line D-D (approximately 610m in length). Comprising—
 - (i) pipeline marker posts;
 - (ii) cathodic protection and test system;

- (iii) below ground drainage works;
- (iv) tree removal;
- (v) preparation and resurfacing of bridge deck(s) necessary for the construction and operation of the pipeline;
- (vi) installation of pipeline support plinths to support the parts of the pipeline between lines B-B and C-C;
- (vii) security infrastructure including perimeter fencing with gates, fencing, security cameras; and
- (viii) any necessary control or telemetry cables;
- (c) repair of the northern bridge parapet of canal bridge 101 (Malkin's Bridge) as marked on the works plans by replacing coping stones.

Work No. 3 development comprising a 132kV underground electricity connection of up to 200m in length for the import and export of electricity from/to the existing Barlaston substation boundary comprising up to three underground high voltage electrical cables and associated telemetry and electrical protection auxiliary cabling.

Work No. 4 development comprising—

- (a) alteration of the existing site access (known as the northern access road) off the east side of Meaford Road; and
- (b) resurfacing of the northern access road between the existing site access off Meaford Road and Work No. 1, including road widening, infilling, lighting infrastructure including lighting columns and lights and drainage.

Work No. 5A development comprising temporary construction laydown and car parking area comprising—

- (a) fencing;
- (b) tree removal;
- (c) lighting infrastructure including lighting columns and lighting;
- (d) signage;
- (e) security kiosk;
- (f) weighbridge; and
- (g) staff welfare cabins.

Work No. 5B development comprising—

- (a) creation of a construction laydown and car parking area comprising—
 - (i) fencing;
 - (ii) tree removal;
 - (iii) lighting columns and lights;
 - (iv) concrete batching plant;
 - (v) signage;
 - (vi) security kiosk;
 - (vii) weighbridge; and
 - (viii) staff welfare cabins.
- (b) an operational and maintenance laydown area comprising—
 - (i) hardstanding;
 - (ii) landscaping and ecological mitigation;
 - (iii) lighting columns and lights; and
 - (iv) fencing.

Work No. 6 development comprising—

- (a) replacement, maintenance or refurbishment of existing surface water drainage comprising—
 - (i) underground pipework;
 - (ii) access chambers; and
 - (iii) outfall to River Trent.
- (b) tree removal;
- (c) landscaping and ecological mitigation;
- (d) construction and maintenance of a 1500m³ surface water retention pond and vortex flow control to limit the discharge rate into the River Trent to a maximum of 15.1 litres per seconds;
- (e) foul, surface water and trade effluent drainage; and
- (f) a below ground foul water pump station.

Work No. 7 development comprising 10 metre screening vegetation buffer including tree planting, other boundary treatments and ecological mitigation,

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 Schedule—

“commence” means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development excluding permitted preliminary works and the words “commencement” and “commenced” and cognate expressions shall be construed accordingly;

“the design objectives statement” means the design objectives contained within the summary of design objectives at chapter 2 of the design and access statement;

“illustrative cross sections drawing” means the illustrative cross sections through planting strip adjacent to canal drawing with drawing number 5105324-MEA-DRG-086 Rev 0 dated 24 September 2015 that was submitted as an appendix to Document 10.7 (Applicant’s comments on the Local Impact Report) dated 22 October 2015;

“illustrative foul and surface water drainage plan” means the illustrative foul and surface water drainage strategy plan with reference number 2.5.5 and submitted with the application and regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009;

“illustrative landscaping plan” means the illustrative landscaping plan with reference number 2.7.2 and submitted with the application under regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009;

“permitted preliminary works” means the intrusive ground investigation works carried out pursuant to requirement 6 (ground investigation); and

“start-up and shut-down” means the periods of 30 minutes before the opening up of construction sites (start-up) and 30 minutes following the end of the working day (shut-down), during which the arrival of workers, changing into and out of work wear, pre-job briefing and leaving the site prior to closing and securing the site take place.

Time limits

2. The authorised development must be commenced within five years of the date that this Order is made.

Detailed design

3.—(1) The authorised development must be carried out in accordance with—

- (a) the approved plans listed in Table 1 below inclusive of any limits of deviation; and
- (b) 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 19(1))—

Table 1

works plans	Submission document reference number 2.3
access rights of way plan	Submission document reference number 2.4

(2) The authorised development must not exceed the maximum parameters specified in Table 2 and Table 3 below (as the same may be amended by approval of the relevant planning authority under requirement 19(1))—

Table 2

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres) above a site level of approximately 99 metres AOD</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Gas turbine building (part of numbered work 1A)	25 metres	45 metres	60 metres	Maximum height 124m AOD
Each Heat Recovery Steam Generator Building (part of numbered work 1A)	35 metres	13 metres	25 metres	Maximum height AOD 134 metres
Each exhaust gas emission flue stack (part of numbered work 1A)	50 metres	—	—	Maximum height AOD 149 metres Maximum diameter 6.5 metres
Steam turbine building (part of numbered work 1A)	21 metres	26 metres	45 metres	—
Air cooled condenser (part of numbered work 1A)	26 metres	48 metres	48 metres	—
Switchgear room (part of numbered work 1A)	5 metres	10 metres	15 metres	—
Raw/fire water storage tank (part of numbered work 1B)	20 metres	—	—	Maximum diameter 15 metres

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres) above a site level of approximately 99 metres AOD</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Each water storage tank (part of numbered work 1B)	20 metres	–	–	Maximum diameter 5 metres
Water treatment system (part of numbered work 1B)	10 metres	25 metres	20 metres	–
Workshop (part of numbered work 1B)	10 metres	20 metres	30 metres	–
Natural gas pressure regulating installation (PRI) (part of numbered work 1B)	5 metres	25 metres	35 metres	–
Administration/control building (part of numbered work 1C)	10 metres	10 metres	20 metres	–
Heat network interface building (part of numbered work 1C)	15 metres	20 metres	30 metres	–
Each transformer compound (part of numbered work 1D)	8 metres	15 metres	15 metres	–
132kV switchyard (part of work numbered 1D)	10 metres	42 metres	72 metres	–

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres) above a site level of approximately 99 metres AOD</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Perimeter fencing (part of numbered work 1E)	2.5 metres	–	770 metres	–

Table 3

<i>(1) Element of authorised development</i>	<i>(2) Maximum height (metres) above the existing site level</i>	<i>(3) Maximum width (metres)</i>	<i>(4) Maximum length (metres)</i>	<i>(5) Other parameters</i>
Above Ground Installation (numbered work 2A)	2.5 metres	13 metres	13 metres	–
Pipeline inspection gauge facility (part of numbered work 2A)	1.6 metres	1 metre	5.5 metres	–
Perimeter fencing (part of numbered work 2A)	2.5 metres	–	52 metres	–
Pipeline support plinth including crown of pipe (part of numbered work 2B)	2 metres	0.8 metres	1.4 metres	–

(3) To the extent that design objectives relating to any numbered work are set out in the design objectives statement, that numbered work must be designed substantially in accordance with the relevant design objective set out therein.

(4) Numbered works 1, 2 and 4 may not commence until, for that numbered work, written details of the following have been submitted to and approved by the relevant planning authority (in consultation with the National Trust regarding the external appearance and the colour of all permanent buildings and structures)—

- (a) the siting, design, external appearance, dimensions and floor levels of all permanent buildings and structures; and
- (b) the colour, materials and surface finishes of the pipeline and all permanent buildings and structures.

(5) The details to be submitted for approval under sub-paragraph (4) must include appropriately scaled plans and sectional drawings.

Provision of and implementation and maintenance landscaping

4.—(1) No authorised development may commence until a landscaping scheme incorporating a written statement and plans has been submitted to and approved by the relevant planning authority. The landscaping scheme must be substantially in accordance with the illustrative landscaping plan and the illustrative cross sections drawing and must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) site restoration cultivation, importing of materials including topsoil and subsoil handling and storage in accordance with BS 3882:2007 and other landscape reinstatement operations in accordance with BS 4428 Code of Practice for general Landscape Operations, and the earthworks specification to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) an arboricultural method statement including details of existing trees and tree groups identified for retention, management and reinforcement with the type and extent of protection to be in accordance with BS 5837: 2012;
- (h) implementation timetables for all landscaping works;
- (i) a 10 metre screening vegetation buffer as shown on the indicative landscaping plan;
- (j) surface water attenuation pond designed to incorporate native marginal planting;
- (k) the locations of low fertility (where applicable) for invertebrates; and
- (l) butterfly bank planting.

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

(3) The landscaping works must be carried out in accordance with implementation timetables approved under sub-paragraph (1).

(4) Any tree or shrub planted as part of the 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.

(5) The landscaping works must be managed and maintained throughout the life of the MEC to ensure the long term adequacy of the approved landscaping scheme.

Construction and Environment Management Plan

5.—(1) No authorised development may commence until a construction and environmental management plan has been submitted to and approved by the relevant planning authority. The construction and environmental management plan must be substantially in accordance with the draft construction environment management plan set out in appendix 17.1 to volume 4 of the environmental statement and must include the following—

- (a) the mechanism for ensuring that all relevant environmental controls and mitigation are incorporated into a construction method statement;
- (b) confirmation that no explosive blasting will be carried out during any demolition;
- (c) environmental objectives and targets;
- (d) environmental monitoring;

- (e) roles and responsibilities;
- (f) means of communication, record keeping, reporting, auditing and review;
- (g) complaints procedures;
- (h) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, lighting, noise and vibration);
- (i) details of construction lighting to protect potential foraging/commuting features;
- (j) habitats protection measures, including fencing to delineate the Trent and Mersey Canal Local Wildlife Site, protection zones for retained trees and bat roosts, means of escape for badgers and other small mammals;
- (k) measures to minimise the spread of invasive species;
- (l) site waste management plan;
- (m) surface and ground water protection measures (including bunding potential contaminate sources);
- (n) construction drainage strategy;
- (o) pre-construction works otter survey to be undertaken beneath Canal Bridge 101 (Malkin's Bridge);
- (p) methodology for using harvested water where possible;
- (q) ecology, landscape and visual impact mitigation (covering protection of trees to be retained and minimising visual intrusion of construction works); and
- (r) protocol in the event that unexpected contaminated land is identified during ground investigation or construction.

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

(3) The undertaker may submit for approval by the relevant planning authority a construction and environment management plan for each of numbered work 1, numbered work 2, numbered work 3, numbered work 4, numbered work 5, numbered work 6 and numbered work 7 individually, and, in such a case, only those parts of the authorised development forming the numbered work the subject of the construction and environment management plan may be commenced following the approval of such a construction and environment management plan.

Ground investigation

6.—(1) Numbered work 1 may not commence until an intrusive ground investigation has been undertaken.

(2) A geo-environmental interpretative report detailing all investigative works and sampling undertaken pursuant to this requirement, together with the results of the analysis, risk assessment to any receptors and a proposed remediation strategy (if required) must be submitted to the relevant planning authority for approval prior to any remediation commencing.

(3) If during any works, contamination is encountered which has not previously been identified under sub-paragraph (1) then the additional contamination must be fully assessed and an appropriate remediation scheme submitted to and approved by the relevant planning authority.

(4) Upon completion of the works, a closure report must be submitted to and approved by the relevant planning authority, such closure report to include the following—

- (a) details of the remediation works;
- (b) details of any post remediation sampling and analysis to show the site has reached the required clean-up criteria; and
- (c) any necessary documentation detailing what waste materials have been removed from site.

(5) Any remediation strategy approved under sub-paragraph (2) and any remediation scheme approved under sub-paragraph (3) must be implemented in accordance with the approved details.

Piling

7.—(1) No piling may commence until a piling strategy has been submitted to and approved by the relevant planning authority, such strategy to include a piling risk assessment, the results of such assessment and the piling techniques to be used in carrying out the authorised development.

(2) Piling must be carried out in accordance with the approved details.

Fencing and other means of enclosure

8.—(1) No authorised development may commence until details of the proposed means of enclosure for the authorised development have been submitted to and approved by the relevant planning authority.

(2) Fencing and other means of enclosure must be carried out in accordance with the approved details.

(3) The undertaker may submit for approval by the relevant planning authority details of the proposed means of enclosure for each of numbered work 1E, numbered work 2A, numbered work 2B, numbered work 5A and numbered work 5B individually and, in such a case, only those parts of the authorised development forming the numbered work the subject of the details of the proposed means of enclosure may be commenced following the approval of such details.

Habitat management plan

9.—(1) No authorised development may commence until a written habitat management plan, reflecting the survey results and ecological mitigation and enhancement measures, together with ecological monitoring and management included in the environmental statement, has been submitted to and approved by the relevant planning authority.

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

(3) The undertaker may submit for approval by the relevant planning authority a written habitat management plan for each of numbered work 1E, numbered work 5B, numbered work 6 and numbered work 7 individually and, in such a case, only those parts of the authorised development forming the numbered work the subject of the written habitat management plan may be commenced following the approval of such a written habitat management plan.

Construction traffic

10.—(1) No authorised development may commence until a construction traffic management plan has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The construction traffic management plan must be substantially in accordance with the draft construction traffic management plan set out in appendix 7.11 to volume 4 of the environmental statement and must include the following—

- (a) details of a plan to encourage car sharing between construction workers travelling to the site;
- (b) construction vehicle routing plans and the reasonable mechanisms to be put in place to enforce compliance;
- (c) details of a HGV vehicle booking management system;
- (d) site access plans and 24 hour access arrangements;
- (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 together with the staggering of construction workers start and finish times;
- (g) route assessment is undertaken before abnormal indivisible loads are brought to the site to assess the need for street furniture removal, if required, and its reinstatement and that pre-

notification of deliveries involving abnormal indivisible loads and details of where police escorts would be required;

- (h) proposals for temporary warning signs and banksman and police escort details;
- (i) details of the on-site parking arrangements for construction plant and vehicles; and
- (j) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during construction of the authorised development.

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

(3) The undertaker may submit for approval by the relevant planning authority a construction traffic management plan for and, in such a case, only those parts of the authorised development forming the numbered work the subject of the construction traffic management plan may be commenced following the approval of such a construction traffic management plan.

(4) During the operation 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.

Travel plan during operational phase

11.—(1) Prior to the date of final commissioning a written operational travel plan must be submitted to and approved by the relevant planning authority. Such operational travel plan to include—

- (a) objectives and targets; and
- (b) measures and initiatives to promote sustainable travel.

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

Construction hours

12.—(1) Construction work for the authorised development must not take place outside the hours of—

- (a) 07:00 to 19:00 on Monday to Friday; and
- (b) 07:00 to 13:00 Saturdays,

except with the prior written approval of the relevant planning authority.

(2) Nothing in sub-paragraph (1) precludes a start-up period from 06:30 to 07:00 and a shut-down period from 19:00 to 19:30 on weekdays (excluding public holidays) and start-up period from 06:30 to 07:00 and a shut-down period from 13:00 to 13:30 on Saturdays.

Foul and surface water drainage

13.—(1) Numbered work 1 must not commence until written details of the surface and foul water drainage system and sustainable drainage systems, including the subsequent maintenance and management of the system for the operation of the authorised development has been submitted to and approved by the relevant planning authority. The surface and foul water drainage system must be substantially in accordance with the illustrative foul and surface water drainage strategy plan.

(2) The surface and foul water drainage system for the authorised development must be constructed in accordance with the approved details.

Artificial lighting

14.—(1) Prior to the date of final commissioning written details of the control of artificial lighting during maintenance and operation of the authorised development must be submitted to and approved by the relevant planning authority, such details to include measures to keep external lighting to the minimum necessary for operational safety and security reasons, incorporating cut-offs to reduce light pollution.

(2) The artificial lighting for the authorised development must be implemented in accordance with the approved details.

(3) The undertaker may submit for approval by the relevant planning authority written details of the artificial lighting during maintenance and operation of the authorised development for each of numbered work 1E, numbered work 5A and numbered work 5B individually forming the numbered work the subject of the written details of the control of artificial lighting and, in such a case, only those parts of the authorised development may be commissioned following the approval of such details.

(4) Prior to the date of final commissioning the exhaust gas emission flue stack(s) must be fitted, if reasonably required with infra-red light fitted at the highest practicable point of the structure.

(5) No authorised development may commence until the undertaker has notified the Defence Geographic Centre (or any successor organisation to the same) with the following information—

- (a) precise location of development;
- (b) date of commencement of construction;
- (c) anticipated date of completion of construction;
- (d) the height above ground level of the tallest structure;
- (e) the maximum extension height of any construction equipment; and
- (f) details of aviation warning lighting fitted to the structure(s).

Emergency Access

15. The undertaker must not use the existing closed access (marked N-O on the access and rights of way plan) unless and until an emergency access strategy has been submitted to and approved by relevant planning authority, such strategy to include details of—

- (a) how the existing closed access is to be secured at all times (save in an emergency event as outlined in (1)(b)); and
- (b) how and when the existing closed access may be opened in the event of an emergency.

Bridge plinths

16.—(1) No pipeline support plinths forming numbered work 2B(b)(vi) must be installed on canal bridge 101 (Malkin's Bridge) as marked on the works plans.

(2) The crown of the pipeline over canal bridge 101 must not protrude above the repaired parapet by more than 150mm in height.

(3) Numbered work 2B(c) may not commence until a method statement detailing the extent and nature of the repairs for the parapet of Canal Bridge 101 (Malkin's Bridge) has been submitted to and approved by the relevant planning authority.

Highway works

17.—(1) For any highway work in a street for which the highway authority is the street authority, prior to the carrying out of any such work authorised pursuant to article 4 (maintenance of the authorised development), article 10 (power to alter layout, etc. of streets) or article 11 (street works) of this Order, the undertaker must submit all necessary technical specifications required for that work for the prior approval of the highway authority.

(2) The highway work must be carried out in accordance with the approved technical specification.

Local economic benefit

18.—(1) No part of the authorised development must commence until a scheme for the promotion of local economic benefit from the authorised development in the area of Staffordshire

has been submitted to and approved by the relevant planning authority. Such scheme must include—

- (a) a commitment on the undertaker to invite to tender companies with addresses in Staffordshire as the relevant planning authority may notify to the undertaker in writing;
- (b) a methodology for the use of local people and local businesses, where appropriate, in relation to the construction of the authorised development; and
- (c) a strategy for the provision of training opportunities for local companies (who are successful under sub-paragraph (a)) or local people who are employed to work on the authorised development under sub-paragraph (b).

(2) The authorised development must be carried out in accordance with the scheme approved under sub-paragraph (1).

Amendments to approved details

19.—(1) Save in respect of the approved plans specified in requirement 3(1), the undertaker may submit to the relevant planning authority for approval any amendments to the parameters in Tables 2 and 3 of requirement 3(2), plans, drawings, documents, details, schemes, statements or strategies which require approval by the relevant planning authority pursuant to any requirement (the “Approved Plans, Details or Schemes”). Following any such approval by the relevant planning authority the Approved Plans, Details or Schemes are to be taken to include the amendments approved pursuant to this sub-paragraph(1).

(2) Approval under paragraph 19(1) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought 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).

Combined heat and power

20.—(1) Prior to the date of final commissioning, a review of potential opportunities for the use of heat from the authorised development must be submitted to and approved by the relevant planning authority.

(2) The review shall provide for the on-going monitoring and full exploration of potential opportunities to use heat from the authorised development and for the provision of subsequent reviews of such opportunities as necessary.

(3) Where viable opportunities for the use of heat are identified, a scheme for the provision of the necessary plant and pipework to the boundary of Work No. 1 shall be submitted to and approved by the relevant planning authority; any plant and pipework installed up to the boundary of Work No.1 to enable the use of heat shall be installed in accordance with the agreed details.

Decommissioning strategy

21.—(1) Subject to obtaining the necessary consents and unless otherwise agreed with the relevant planning authority, within twenty four months of the Order land 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 Work No. 1 must be submitted to the relevant planning authority.

(2) The demolition and removal of Work No. 1 must be implemented in accordance with the approved scheme.

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

Requirements for written approval, etc.

22.—(1) Where under any of the above requirements the approval or agreement of the relevant planning authority or any other party is required, that approval or agreement must be provided in writing.

(2) Where under any of the above requirements a written scheme is required it shall be accompanied by such illustrations as are necessary and appropriate in the circumstances.

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restriction as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (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 is 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 is 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 paragraphs (a) and (b) there is substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there is substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there are substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right, by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition 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;
- (b) the restrictive covenant imposed or to be imposed;
- (c) the land over which the right is or is to be exercisable; or
- (d) the land over which the restrictive covenant is or is to be applied.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restriction with the modifications specified in the following provisions of this Schedule.

(a) 1973 c.26.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard is 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 restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that 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 Meaford Energy (Gas Fired Power Station) Order 201[] (the Order) ceases, in relation to that person, to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section must be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily created and acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is 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 or restrictive covenant it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the 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 is modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is 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 created and acquired and to continue to be entitled to the benefit of the restrictive covenant imposed, subject to compliance with that section as respects compensation.

SCHEDULE 4

Article 10

STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT

Table 4

<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 Borough of Stafford	Northern Access Road	From line A-B to points C and D as shown on the access and rights of way plan improvements to the existing access (the bellmouth of the Northern Access Road with Meaford Road as shown at line A-B on the access rights of way plan), removal of existing traffic island, improved visibility splays to provide a safer entrance and exit flow and widening and resurfacing of the Northern Access Road

SCHEDULE 5

Article 11

STREETS SUBJECT TO STREET WORKS

Table 5

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of street works</i>
In the Borough of Stafford	Meaford Road	Street works to facilitate the replacement, maintenance and/or refurbishment of the existing surface water drainage pipe in relation to numbered work 6 between lines E-F and G-H as shown on the access rights of way plan
In the Borough of Stafford	Northern Access Road	Street works to upgrade the existing access (the bellmouth of the Northern Access Road with Meaford Road as shown between line A-B on the access rights of way plan) and to upgrade and widen the Northern Access Road between line A-B and points C and D on the access rights of way plan

SCHEDULE 6

Article 12

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF
STREETS

Table 6

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
In the Borough of Stafford	Meaford Road	<p>Prohibition/Restriction: Between lines J-K and L-M on the access rights of way plan being approximately 130 metres</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of no more than half the width of Meaford Road at any time in order to carry out numbered work 6</p>
In the Borough of Stafford	Northern Access Road	<p>Prohibition/Restriction: Between line A-B and points C and D on the access rights of way plan.</p> <p>Purpose of the Prohibition/Restriction: Temporary closure of no more than half the width of the Northern Access Road at any time in order to carry out numbered work 4</p>

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID

Application

1. For the protection of National Grid as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include the use and maintenance of the authorised development;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“National Grid” means National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

[“specified work” means so much of any of the authorised development that will or may be situated 15m (measured in any direction) of, or which may affect, any apparatus.]

3. Except for paragraphs 4 (apparatus in streets subject to temporary prohibition or restriction), 8 (retained apparatus: protection), 9 (expenses) and 10 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary prohibition or restriction

4. Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary prohibition or restriction of use of streets), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

5.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Schedule shall prevail.

Removal of apparatus

6.—(1) If, in the exercise of the agreement reached in accordance with paragraph 5 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (3) to (6) inclusive.

(2) As a condition of agreement between the parties in paragraph 6(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (4) afford to National Grid to their satisfaction (taking into account paragraph 7(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (3), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(5) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(6) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (3) or (4), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to National Grid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), article 36 (arbitration) of the Order shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

8.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 6(3) (removal of apparatus) the undertaker must submit to National Grid a plan and seek from National Grid details of the apparatus belonging to or maintained by National Grid.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant ;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended

from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services" as the same may be replaced from time to time.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9.

Expenses

9.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by that undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 6(4) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;

- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 36 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any material damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and

- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision shall not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (b) shall be subject to the full terms of this Schedule including this paragraph 10 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

11. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

12.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 6(3) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

Access

13. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Save for differences or disputes arising under paragraph 6(3), 6(5), 7(1) and 8 any difference or dispute arising between the undertaker and National Grid under this Schedule shall, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 36 (arbitration) of the Order.

PART 2
FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE
UNDERTAKERS

15. For the protection of the utility undertakers referred to in this part of this Schedule (save for National Grid which is protected by Part 1 of this Schedule), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

16. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(b);
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
 - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);
 - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

(a) 1989 c.29.

(b) 1991 c.56. Section 51A to the 1991 Act was inserted by section 92(1) of the Water Act 2003(c.37).

(c) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

17. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

18. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

19. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

20.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 36 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 36 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling

around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

21.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 36 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

22.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 20(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 15 to 21 apply as if the removal of the apparatus had been required by the undertaker under paragraph 20(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

23.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 20(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 36 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 20(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

24.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 20(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

25. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF RAILWAY INTERESTS

26. The following provisions of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 40, any other person on whom rights or obligations are conferred by that paragraph.

27. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (registered company no. 2904587) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

28.—(1) Where under this part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements arising from those procedures; and

(a) 1993 (c.43).
(b) 2006 (c.46).

- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

29.—(1) The undertaker must not exercise the powers conferred by article 17 (authority to survey and investigate the land), article 18 (compulsory acquisition of rights), article 22 (acquisition of subsoil or airspace only), article 23 (private rights), article 25 (temporary use of land for carrying out the authorised development), article 29 (felling or lopping of trees) or the powers conferred by section 11(3) of the 1965 Act as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers and electronic code communications operators: preliminary notices) or article 26 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

30.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

31.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 30(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 30;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

32. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

33. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

34.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 30(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 35(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

35. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 30(3) or in constructing any protective works under the provisions of paragraph 30(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

36.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 30(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (4)(a), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 30(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 30(1) has effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised tramway comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 31.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 40(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 35(a) any modifications to Network Rail's apparatus under this paragraph must be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 36 (arbitration) to the Institution of Civil Engineers must be read as a reference to the Institution of Electrical Engineers.

37. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

38. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and

any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

39. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

40.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer must not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand must be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs must, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

41. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this part of this Schedule (including the amount of the relevant costs mentioned in paragraph 40) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this part of this Schedule (including any claim relating to those relevant costs).

42. In the assessment of any sums payable to Network Rail under this part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this part of this Schedule or increasing the sums so payable.

43. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans and land plan and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

44. Nothing in this Order, or in any enactment incorporated with or applied by this Order, must prejudice or affect the operation of Part I of the Railways Act 1993.

45. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

46. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 33 (certification of plans) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 4
FOR THE PROTECTION OF THE CANAL AND RIVER TRUST

Interpretation

47.—(1) For the protection of the Trust the following provisions of this Part 4 of Schedule 7, have effect unless otherwise agreed in writing between the undertaker and the Trust.

(2) In this Schedule—

“authorised works” means the construction of numbered work 2B as authorised by this Order;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 12 months from the completion of that work,

and “construct” and “constructed” have corresponding meanings;

“detriment” means any material damage to the waterway or any other property of the Trust and, without limitation on the scope of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to materially damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water to it, or drainage of water from it;
- (f) any material harm to the ecology of the waterway (including any material adverse impact on any site of special scientific interest comprised in the Trust’s network); and
- (g) any interference with the exercise by any person of rights over the Trust’s network;

“the engineer” means an engineer appointed by the Trust for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” are to be construed accordingly;

“protective work” means a work constructed under paragraph 52(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“towing path” means the towing path forming part of the waterway;

“the Trust” means the Canal & River Trust;

“the Trust’s network” means the Trust’s network of waterways; and

“the waterway” means the Trent and Mersey Canal, and includes any works, lands or premises belonging to the Trust, or under its management or control, and held or used by the Trust in connection with that waterway only.

Powers requiring Canal & River Trust consent

48.—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Trust.

(2) The undertaker must not exercise the powers conferred by article 12 (temporary prohibition or restriction of use of streets) in relation to any way over land comprised in the waterway unless such exercise is with the consent of the Trust.

(3) The undertaker must not exercise any power conferred by this Order in such a way as to interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Trust.

(4) The undertaker must not exercise the powers conferred by section 271 of the Town and Country Planning Act 1990, in respect of any right of access to the waterway, unless such exercise is with the consent of the Trust.

(5) The consent of the Trust under sub-paragraphs (1) to (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 16 (discharge of water) may include conditions—

- (a) specifying the maximum volume of water which may be discharged in any period; and
- (b) authorising the Trust on giving reasonable notice (except in an emergency, when the Trust may require immediate suspension) to the undertaker to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of the Trust.

Vehicles, plant and machinery

49. The undertaker must not use any land or property of the Trust forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer whose consent must not be unreasonably withheld or delayed; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 53 (design of works).

Fencing

50. Where so required by the engineer the undertaker must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may reasonably require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

Survey of waterway

51.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must appoint a qualified engineer (“the surveyor”), to be approved by the Trust and must bear the reasonable cost of the carrying out by the surveyor of a topographical survey (including a dip-survey to measure the depth of the waterway) (“the survey”) of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

- (2) For the purposes of the survey the undertaker must—
- (a) on being given reasonable notice (except in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and to existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
 - (b) supply the surveyor as soon as reasonably practicable with all such information as the surveyor may reasonably require with regard to such existing works of the undertaker and to the specified works or the method of their construction.
- (3) The reasonable costs of the survey are to include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.
- (4) Copies of the report of the survey must be provided to both the Trust and the undertaker at no cost to the Trust.

Approval of plans, protective works etc.

52.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Trust proper and sufficient plans of that work and such further particulars available to it as the Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 28 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to the Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by the undertaker or by the Trust at the undertaker's request without unnecessary delay and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

(4) The undertaker must pay to the Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3), and of carrying out any additional dredging of the waterway necessitated by the exercise of any of the powers of this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving must be set off against any sum payable by the undertaker to the Trust under this paragraph 52.

(5) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Trust may, if it is reasonably required in order to avoid detriment, construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

53. Without affecting its obligations under the provisions of this part of this Schedule the undertaker must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by the Trust on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of the specified works,

and must have regard to such views as may be expressed by the Trust to the extent that these accord with the requirements of the relevant planning authority in response to such consultation pursuant in particular to the requirements imposed on the Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995(a) and to the interest of the Trust in preserving and enhancing the environment of its waterways.

Notice of works

54. The undertaker must give to the engineer 28 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Trust's network.

Lighting

55. The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Construction of specified works

56.—(1) Any specified or protective works must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this part of this Schedule and with any requirements made under paragraph 52(3) (approval of plans) and paragraph 54 (notice of works);
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Trust.

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent passage of any vessel which is of a kind (as to its dimensions) for which the Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(b) to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

(a) 1995 c.i.
(b) 1968 c.73.

Prevention of pollution

57. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution of the waterway or the deposit of materials in it and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work: provision of information

58.—(1) The undertaker on being given reasonable notice must—

- (a) at all times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Trust on being given reasonable notice must—

- (a) at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Trust under this Schedule during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Trust's reasonable costs in relation to the supply of such information.

Maintenance of works

59. If at any time after the completion of a specified work or a protective work, not being a work vested in the Trust, the Trust gives reasonable notice to the undertaker informing it that the state of maintenance of the work appears to the Trust such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment and the Trust must afford the undertaker such access as is required in order for the undertaker to carry out any such works.

Repayment of Canal & River Trust fees, etc.

60. The undertaker must repay to the Trust all fees, costs, charges and expenses reasonably incurred by the Trust—

- (a) in constructing any protective works under the provisions of paragraph 52(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Trust's network.

Making good of detriment; compensation etc.

61.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Trust) must make good such detriment and pay to the Trust all reasonable expenses to which the Trust may be put, and compensation for any loss which the Trust may sustain, in making good or otherwise by reason of the detriment.

(2) The undertaker is responsible for and must make good to the Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by the Trust—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work.

(3) The fact that any act or thing may have been done under the engineer's supervision or in accordance with any directions or awards of an arbitrator does not (if it was done without negligence on the part of the Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) The Trust must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

Arbitration

62. Any difference arising between the undertaker and the Trust under this Schedule (other than a difference as to the meaning or construction of this Schedule) is to be referred to and settled by arbitration in accordance with article 36 (arbitration).

PART 5
FOR THE PROTECTION OF OPERATORS OF ELECTRONIC
COMMUNICATIONS CODE NETWORKS

63.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)(b) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(c);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

64.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 36 (arbitration).

(a) 2003 c.21.

(b) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(c) See section 106.

65. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

66. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 6

FOR THE PROTECTION OF SP MANWEB

67. The following provisions of this Schedule have effect for the benefit of SP Manweb, unless otherwise agreed in writing between the undertaker and SP Manweb.

68. Nothing in this Order must prevent SP Manweb from accessing its apparatus known as Tower MW-PK3.

PART 7

FOR THE PROTECTION OF BT GROUP PLC

69.—(1) For the protection of BT Group Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and BT Group Plc.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“BT apparatus” means all boxes, cables, poles and plant, associated cabling or ducting or such other electronic communications apparatus as is owned by BT Group Plc;

“BT apparatus map” means a map prepared by BT Group Plc showing the location of BT apparatus in or on the Order land;

“BT Group Plc” means British Telecommunications Public Limited Company (Company Registration Number 01800000) whose registered office is at 81 Newgate Street, London, EC1A 7AJ which is an electronic communications code operator;

“Click Before You Dig” means the team within BT Group Plc charged with providing assistance to members of the general public in order to locate BT apparatus on land and includes any successor team within BT Group Plc with the same remit;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“the highway” includes carriageways, verges, footpaths etc; and

“Network Alterations team” means the team within BT Group Plc charged with carrying out planned diversion and protection works to BT apparatus and includes any successor team within BT Group Plc with the same remit.

70.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any BT apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of BT Group Plc; or

(b) there is any interruption in the supply of the service provided by BT Group Plc,

the undertaker must bear and pay the cost reasonably incurred by BT Group Plc in making good such damage or restoring the supply and make reasonable compensation to BT Group Plc for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of BT Group Plc, its officers, servants, contractors or agents.

(3) BT Group Plc must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(a) 2003 c.21.

(b) See section 106.

(4) Any difference arising between the undertaker and BT Group Plc under this part of this Schedule must be referred to and settled by arbitration under article 36 (arbitration).

71. This part of this Schedule does not apply to—

- (a) any BT apparatus in respect of which the relations between the undertaker and BT Group Plc are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

72. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and BT Group Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

73. The undertaker must not enter into any underground structures owned by BT Group Plc without authorised BT Group Plc personnel.

74. The undertaker must confirm the location and nature of works arising from the construction of the authorised development which, in the undertaker's reasonable opinion, are likely to affect BT apparatus within or immediately adjacent to the Order land by contacting the Network Alterations team with detailed plans of the works and to check what alterations to BT apparatus (if any) may be required.

75. Prior to any works commencing or the moving of heavy plant or equipment over BT apparatus within or immediately adjacent to the Order land, the undertaker must confirm details of such BT apparatus with a representative from Click Before You Dig who will provide a map(s) showing the location of BT apparatus within or immediately adjacent to the Order land.

76. In the event that any BT apparatus within or immediately adjacent to the Order land is likely to be placed at risk, either temporarily or permanently because of the movement of plant or equipment or both pursuant to the authorised development, the undertaker must contact a Network Alterations team representative.

77. In the event that works undertaken by the undertaker pursuant to the authorised development necessitate a change in level of the frames and covers comprised within BT apparatus, the undertaker must seek consent from a Network Alterations team representative to carry out such works.

78. Where the BT apparatus map(s) show(s) BT apparatus within or immediately adjacent to the Order land, the undertaker must contact Click Before You Dig before commencing works on or moving plant or equipment onto the Order land, to ensure that any sub-surface BT apparatus can be located and marked up by BT Group Plc.

79. Protection measures for BT apparatus within or immediately adjacent to the Order land and which may be affected by the authorised development must be approved in advance by Click Before You Dig. In carrying out the authorised development, the undertaker must take reasonable care in the protection of BT apparatus comprising optical fibre or co-axial cabling or both and use reasonable endeavours to avoid disturbing BT apparatus.

80. Prior written notice must be provided to Click Before You Dig of any excavating or backfilling proposed by the undertaker around BT apparatus, so that BT Group Plc representatives can attend the Order land if necessary. Unless alternative protection is agreed with Click Before You Dig or a Network Alterations team representative in advance, the normal depth of cover for BT apparatus underground of 350mm in footways and 600mm in carriageways must be maintained by the undertaker. Where the undertaker considers that it can not maintain the relevant depth of BT apparatus, the undertaker must provide written notice to Click Before You Dig, and BT Group Plc may, if reasonable in all the circumstances, within 14 days notify the undertaker in writing that it requires the undertaker to divert the BT apparatus at the undertaker's expense.

81. All excavation works undertaken by the undertaker immediately adjacent to BT apparatus within or immediately adjacent to the Order land is to be carried out by hand until the extent and

location of the BT apparatus is known. Mechanical borers or excavators or both must not be used within 1 metre of BT Apparatus (2 metres if it is a pole) without the prior approval of a BT Group Plc representative.

82. To prevent any movement of BT apparatus within or immediately adjacent to the Order land during any excavation as part of the construction of the authorised development, structural support is to be used as directed by Click Before You Dig or the Network Alteration team if the excavation is—

- (a) deeper than the immediately adjacent BT apparatus;
- (b) within 1 metre of BT apparatus in stable soil; or
- (c) within 5 metres of BT apparatus in unstable soil.

83. The undertaker must notify Click Before You Dig in advance of carrying out any of the following methods of construction or site preparation as part of the authorised development on or in Order land that is immediately adjacent to BT apparatus or on or in Order land within which there is BT apparatus—

- (a) pile driving within 10 metres of BT apparatus;
- (b) using explosives within 20 metres of BT apparatus; or
- (c) using laser equipment within 10 metres of BT apparatus.

84. The undertaker will keep clear and unobstructed access to BT Group Plc manhole and joint box chambers within the Order land.

85. In the event of any damage to BT apparatus, the undertaker must immediately inform a BT Group Plc representative.

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

1.—(1) Where an application has been made to the relevant 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 authority must give notice to the undertaker of their decision on the application within a period of eight 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 authority in writing.

(2) In the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) 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 authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that it considers such further information to be necessary the relevant authority must, within twenty eight 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 authority does not give such notification within this twenty eight day period it is deemed to have sufficient information to consider the application and thereafter is not entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph 2 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 1(1)(b) and this paragraph 2.

Appeals

3.—(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses an application for any consent, agreement or approval required by an article or 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 authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any requirement consultee;
- (b) the Secretary of State must appoint a person as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent;
- (c) the relevant authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty six days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within twenty six days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within forty days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

The appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within twelve days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant authority and any requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within fourteen days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c) to (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 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 take into account written representations that have been sent outside of the relevant time limits but the appointed person must proceed to a decision within the time limits set by this Schedule.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 1 (authorised works) of this Order as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any guidance which may from time to time replace it.

4. In this Schedule—

“relevant authority” means the relevant planning authority, relevant highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain as may be appropriate to the consent, agreement or approval sought; and

“Secretary of State” means the Secretary of State for Communities and Local Government.

SCHEDULE 9

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 7

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Rail Bridge 104, located to the east of Meaford Business Park, comprising approximately 110.94 sqm of rail bridge and bridge deck	GC3	Temporary use to facilitate construction for numbered work 2B	Numbered work 2B
Canal Bridge 101 (Malkin's Bridge), located on the Trent and Mersey Canal, located to the east of Meaford Business Park, comprising approximately 52.72sqm of canal bridge and bridge deck	GC5	Temporary use to facilitate construction for numbered work 2B	Numbered work 2B

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Meaford Energy Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station of up to 299 MW. The Order would permit the undertaker to acquire, compulsorily or by agreement, rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 33 of this Order (certification of plans) may be inspected free of charge during working hours at [**].