



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

**The Planning Act 2008**

**Millbrook Power**

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

**Secretary of State for Business, Energy and Industrial Strategy**

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**Examining Authority**

**Jonathan Green**

**13 December 2018**

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## **Examining Authority's findings and conclusions and recommendation in respect of the Millbrook Power project**

### **File Ref EN 010068**

The application, dated 20 October 2017, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 23 October 2017. The applicant is Millbrook Power Limited.

The Proposed Development comprises a gas fired peaking power generation plant of up to 299MW with associated development including gas and electrical connections.

The application was accepted for examination on 20 November 2017. The examination of the application began on 13 March 2018 and was completed on 13 September 2018.

### **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 by Millbrook Power Limited (the Applicant) for a development consent order (DCO) was received by the Planning Inspectorate on behalf of the Secretary of State on 23 October 2017 [APP-001].<sup>1</sup> The application was accepted for examination on 20 November 2017 [PD-001].
- 1.1.2 The application is for the construction operation and maintenance of an open cycle gas fired 'peaking' power generating plant with a capacity of up to 299 MWe with an access road and temporary construction laydown area on land at and in the vicinity of Rookery South pit located near Stewartby, Bedfordshire. As such it is a Nationally Significant Infrastructure Project (NSIP) as defined in section 14(1)a and section 15 of the Planning Act 2008 as amended (PA 2008). A pipeline connection to bring gas to a gas receiving station at the generation plant from an above ground installation (AGI) connected to the national gas network, a substation with an underground electrical cable for the export of electricity and sealing end compounds (SECs) to connect to the National Grid Electricity Transmission Network (NETS) are specified as associated development. The geographic location is shown in Figure 1.1 to the Environmental Statement (ES) with details of the proposed site layout in Figure 1.2 [APP-049].
- 1.1.3 The Applicant is an energy development company established for this Proposed Development and recently acquired from Watt Power Limited by Drax Group plc (Drax). Drax is responsible for generating 7% of the UK's electricity, principally from its power station in Selby. It is committed to helping reduce carbon emissions, displacing coal, providing system support for intermittent renewables and boosting security of supply. It has three other peaking power plants under development. Progress Power and Hirwaun Power received development consent in 2015. The application for development consent for Abergelli Power was accepted for Examination by the Planning Inspectorate on 21 June 2018. Stag Energy Development Co. Ltd provides resources to the Applicant through a management services agreement.
- 1.1.4 The application is Environmental Impact Assessment (EIA) development as defined by Regulation 2(1) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended). It was accompanied by an ES [APP-033] which in my view complies with these Regulations. The ES and associated appendices

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<sup>1</sup> References such as APP-001, PD-001 are to documents listed in the Examination Library set out in Appendix B.

[APP-033 to APP-048] were compiled following consultation on an earlier Scoping Report and take into account the views of the Secretary of State set out in a Scoping Opinion published in July 2014 [APP-035]. Although the 2009 EIA Regulations were superseded by new regulations in May 2017, regulation 37(2) of the 2017 Regulations states that where a scoping opinion has already been submitted or an application or ES submitted before the commencement of the new EIA Regulations, the previous regulations and regime will continue to apply.

- 1.1.5 Following acceptance of the application I, Jonathan Green, was appointed as Examining Authority (ExA) by the Secretary of State on 19 December 2017.
- 1.1.6 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 20 Relevant Representations (RRs) were received from interested parties (IPs) [RR-001 to RR-020]. I accepted three additional submissions received before the Preliminary Meeting (PM) from parties not registered as IPs [AS-001 to AS-003] and two submissions from parties not registered as IPs at deadline 1 [REP1-006 and REP1-007]. Written representations (WRs) were received from the Applicant and IPs during the course of the examination.
- 1.1.7 On 12 February 2018 I gave notice of the PM to be held at The Forest Centre, Marston Moretaine, Bedfordshire on 13 March 2018. On 20 March 2018 I issued my timetable for the Examination and my first list of written questions [PD-005 and PD-006]. I issued a further set of written questions on 31 May 2018 [PD-008]. A revision to the application was submitted as a non-material change on 11 July 2018 [REP5-002]. I requested comment on this change and put a further question to the Applicant under Rule 17 [PD-009]. I issued a procedural decision accepting the revised application as constituting a non-material change on 9 August 2018 [PD-010].
- 1.1.8 Local Impact Reports (LIRs) were received from Central Bedfordshire Council (CBC) [REP2-024] and Bedfordshire Borough Council (BBC) [REP2-032].
- 1.1.9 A Habitats Regulations Assessment [APP-032] was carried out by the Applicant and this is considered in Chapter 6.
- 1.1.10 A first issue specific hearing (ISH) to consider issues relating to the draft DCO was held on 13 March 2018. Further ISHs on matters arising from the ES and the draft DCO were held on 1 May and 3 May 2018. A compulsory acquisition hearing (CAH) was held on 3 May 2018. There was no request for an open floor hearing and one was not held.
- 1.1.11 I carried out an accompanied site inspection (ASI) on 2 May 2018 during which I saw the location of the three main elements in the

Proposed Development - the generation plant, and the connections to the national gas and electricity networks - and the view of the site from a number of locations in the vicinity. I also carried out unaccompanied site visits and viewed the site from points with public access. A list of events in the Examination is set out in Appendix A.

- 1.1.12 The Planning Statement submitted with the application contains a list of other consents that would be required in order for the Proposed Development to be constructed and operated [APP-056]. These include an electricity generation licence under the Electricity Act 1989, commercial agreements with National Grid relating to gas supply and transmission of electricity and an environmental permit (EP) under the Environmental Permitting (England and Wales) Regulations 2016 as amended.
- 1.1.13 In accordance with sections 83(1)(b)(i) and (ii) of PA 2008, this report sets out my findings and conclusions in respect of the application and my recommendation to the Secretary of State on the decision to be made on the application.

## **2 MAIN FEATURES OF THE PROPOSAL AND SITE**

### **2.1 SITE LOCATION**

- 2.1.1 The project site is partially located within 'The Rookery' which lies in the Marston Vale between Milton Keynes and Bedford. This is shown in Figure 1.1 of the ES [APP-049]. This location contains two former clay pits, Rookery North and Rookery South, covering an area of some 210ha separated by an east-west spine of unexcavated clay. The site is to the south of the village of Stewartby and to the east of the village of Marston Moretaine.
- 2.1.2 The generating equipment site, laydown area and parts of the access road, gas connection and electrical connection would be located within the Rookery South pit which is approximately 95ha in area and is bounded by steep clay banks that are varied in nature and substrate. The pit base varies between approximately 10m and 15m below the surrounding ground level (mbgl). It includes open water, reed beds, pools and bare clay. The land that remains at the original ground level around the Rookery South pit is approximately 42m above ordnance datum (AOD). This land is predominately bare ground that has been cleared of vegetation and maintained in this state for the last 30 years.
- 2.1.3 The electricity substation and gas receiving station would be adjacent to the power generation plant and the gas and electrical connections would extend from the Rookery South pit into farmland to the south made up of large arable fields, small areas of woodland, hedgerows and a number of drainage ditches. Part of the access road would lie within the Rookery North pit. The location of each of the elements of the project is shown in Figure 1.2 and Figure 3.1 of the ES [APP-049] and in the indicative site layout plans [APP-007]. The maximum and minimum dimensions for the main elements of the Proposed Development are set out in Table 3.1 of the ES [APP-033].
- 2.1.4 Powers of compulsory acquisition (CA) or temporary possession (TP) are sought over all of the land within the Order limits apart from a section of highway at the northern access to the site.
- 2.1.5 Land around Stewartby, including the Rookery, has been worked for clay which was used in the Stewartby Brickworks until its closure in 2008. The clay working sites have been or are in the process of being restored for a variety of uses including water based recreation and commercial uses.
- 2.1.6 The Rookery is the subject of an ongoing low level restoration scheme (LLRS). This is being undertaken by the landowner O&H Limited (O&H) under planning permission BC/CM/2000/8 in order to restore the former clay workings to low level agricultural land with measures included in the restoration to enhance biodiversity and landscape. This restoration work is independent from the Proposed Development but there is a five year option agreement between the Applicant and

the landowner, (extendable to seven years), to ensure that elements of the LLRS are completed prior to the commencement of the Proposed Development.

2.1.7 The LLRS elements to be completed are:

- the re-profiling of the base of the pit involving the extraction of soils and clays from the permitted extraction area on the southern side with regrading of the base of the pit to an approximate level of 15mbgl;
- implementation of surface water drainage measures and construction of an attenuation pond and pumping station in order to facilitate a managed surface water drainage strategy;
- a landscape strategy to include planting on the boundary of the Rookery South pit and the margins of the attenuation pond;
- provision of buttresses to the southern, eastern and northern slopes to ensure the long-term stability of those slopes, and regrading through excavation;
- provision of a series of permissive footpaths around the perimeter of Rookery North pit and around the attenuation pond within Rookery South pit;
- provision of an access ramp into Rookery South pit from Rookery North pit which connects to Green Lane, Stewartby via an existing track along the western side of Rookery North pit. Note that the ramp and existing track are both of an agricultural standard; and
- provision of a further, smaller access track into and out of Rookery South pit from the south side of the pit connecting with Station Lane, near Millbrook Station.

2.1.8 The EIA baseline assessments, as presented in the ES [APP-033], assume that the LLRS works have been completed.

2.1.9 To the north of the Rookery there are the remains of the former buildings and chimneys of the Stewartby Brickworks and the settlement of Stewartby part of which is a conservation area. Nearby residential areas include Houghton Conquest, 1.5km to the east of the project site, Marston Moretaine, 1.2km to the west and Millbrook 400m to the south.

2.1.10 The Proposed Development is within the Forest of Marston Vale. This is a developing community forest running south west from the towns of Bedford and Kempston towards the M1. It is operated by the Marston Vale Trust, a registered charity. It is one of 12 community forest projects in the United Kingdom. The total area covered is 158km<sup>2</sup>. There are incentives for landowners to plant trees and the target for community forests in general is to reach 30% tree cover.

2.1.11 The principal public open space in the Forest is the Marston Vale Millennium Country Park which lies to the west of the Proposed Development and is separated from it by the Marston Vale rail line. This provides habitat conservation and indoor and outdoor community

amenities. It is also the site of a wind turbine. The Forest Centre within the Country Park provides a focal point for community activities. The Millbrook proving ground, a vehicle testing ground covering 285ha, is located to the south-west of the proposed electrical connection.

- 2.1.12 Road access to the generating equipment site is from the north near Stewartby via the A421 Bedford Road and Green Lane. An access track leads from Green Lane to the Rookery South pit and the generating equipment site and would need to be upgraded. The gas and electricity connection sites would be partly accessed through this route and partly from the A421, northwards along the A5141, westwards then southwards for approximately 7km along the B530 to Millbrook Road (for the gas connection) then along Houghton Road and Station Lane to access the electrical connection.
- 2.1.13 There is a level crossing on the Marston Vale rail line 70m to the west of the junction between Green Lane and the access road. The Kimberley Sixth Form College is located to the north of Green Lane, 400m to the west of the proposed site access.
- 2.1.14 The 400kv Sundon to Grendon overhead power line runs east to west to the south of the Rookery South pit. There are a number of public footpaths in and around the project site providing links to Marston Vale. A number of permissive footpaths are proposed within the LLRS site.
- 2.1.15 The Mill Brook watercourse flows in a northerly direction along the western side of the Rookery South pit within the project site joining Mill Brook at the south end of the site.
- 2.1.16 The nearest residential dwelling to the generation plant site is South Pillinge Farm approximately 130m to the west of the site boundary and separated from it by a small deciduous woodland.
- 2.1.17 The location of the site in relation to the transport network and other local features can be seen in Figure 11.2 of the ES (APP-049).

## **2.2 PRINCIPAL WORKS**

### **The power generation plant**

- 2.2.1 The proposed power generation plant is a single unit open cycle gas turbine (OCGT) with output of up to 299MW measured at the terminals of the generation equipment with associated equipment and one exhaust gas flue 32.5m to 35m in height and constitutes an NSIP. In addition to the gas turbine the generation plant would include:
- air inlet filter house;
  - air inlet duct;
  - exhaust diffuser;
  - auxiliaries including:

- lube oil system;
- air dryers;
- fuel gas filter package;
- instrument air system;
- compressor washing; and
- A stack with an exhaust silencer.

2.2.2 In addition to the generation plant the generating equipment site would include:

- raw / fire water tank: the fire water storage tank would be designed to comply with the relevant fire regulations and would be installed together with fire pumps, hose reels, fire hydrants and portable extinguishers;
- demineralised water tank: required to store demineralised water for the generating equipment (used for e.g. blade washing);
- control Room / office / workshop building: required in order to monitor the plant operation and house plant controls;
- gatehouse: needed to provide security and maintain a log of site attendance, deliveries etc.;
- electrical transformer compound: required to connect the electrical infrastructure from the generating equipment to transformers before export to the substation which is part of the NETS. This would also include a generator step-up transformer, unit and other transformers, an overhead line gantry and associated equipment;
- natural gas receiving station: required to ensure that gas coming from the National Gas Transmission System (NTS) feeds into the generating equipment site at the right flow and pressure conditions. This would include a pipeline inspection gauge (PIG) receiving facility, isolation valves, metering, heating, filtering, compression, pressure regulation equipment, electricity supply kiosks, emergency generator including fuel storage tank, Joule-Thompson boilers and auxiliary control and instrumentation kiosks;
- fin-fan coolers to provide cooling to the generating equipment;
- telemetry apparatus including electrical cabinets;
- emergency generator: A small diesel fired generator to provide power for the safe shutdown of the gas turbine generator and running of essential security systems in emergency situations;
- maintenance compound: an area of hard standing for use during maintenance procedures.

2.2.3 A temporary laydown area would be provided adjacent to the generating equipment site. An agricultural access track from the Rookery South pit to Green Lane would be upgraded to provide access to the site.

2.2.4 It is intended that the plant would only operate at times of peak demand and would run for a maximum of 2,250 hours in a year and be limited to a five year rolling annual average of 1,500 hours of operation.

## **The gas and electrical connections**

- 2.2.5 The gas and electrical connection works including the electrical substation and the natural gas receiving station are classified as associated development linked to the generating plant which is classified as an NSIP.
- 2.2.6 An AGI would be constructed to provide a connection to the NTS. This would comprise a minimum offtake connection facility (MOC) with remotely operable valve (ROV), control and instrumentation kiosk and electrical supply kiosk and a PIG facility with emergency control valve, isolation valve, control, instrumentation and electrical supply kiosks. The layout for the AGI is shown in Figure 2 of the indicative site layout plans [APP-007].
- 2.2.7 The AGI would be connected to the natural gas receiving station adjacent to the generation plant through an underground pipeline. This would be approximately 1.8km long, principally across agricultural land.
- 2.2.8 The electrical connection is necessary to allow power to be exported from the generating equipment to the NETS. A new substation would be located adjacent to the generating equipment. This could either be air or gas insulated (AIS or GIS). The Applicant considered that the AIS option was suitable given the location within the Rookery South pit. A 500m underground cable would connect the substation to the existing NETS Sundon to Grendon transmission line. 12 cables would be buried in four trenches each 5m apart and would connect to the NETS through sealing end compounds. One new transmission tower would be required which would replace an existing tower. Following discussion with National Grid Electricity Transmission plc (NGET) it is proposed that there should be two sealing end compounds one on either side of the existing transmission line.

## **2.3 OTHER DEVELOPMENTS**

- 2.3.1 The land directly to the north of the generating equipment site is allocated for the development of a Resource Recovery Facility comprising an electricity generating station fuelled by waste and a post-combustion materials recovery facility to treat incinerator bottom ash. The Rookery South (Resource Recovery Facility) received development consent under PA 2008 in November 2011 although the order did not come into force until 28 February 2013. This project is being undertaken by Covanta Rookery South Limited (Covanta) and is referred to here as the Covanta RRF. Work on this development commenced in January 2018 (AS-009).
- 2.3.2 The Proposed Development would require sharing the access road from Green Lane to the Covanta RRF and would require access across land included in the Rookery South (Resource Recovery Facility) Order 2011 (the Rookery South Order) to reach the Applicant's generation equipment site. At the time that the application was submitted it was

not clear whether the access road for the Covanta RRF would be completed or whether the Applicant would need to construct its own access road to carry out the Proposed Development.

- 2.3.3 Provision is made in the application for CA of rights across the Covanta site. The draft DCO also contains protective provisions for both the Applicant and Covanta which are intended to allow for the coexistence of the two adjacent developments. These provisions are considered in detail in the relevant sections of this report.
- 2.3.4 Further residential and employment development is planned in the area, including in Marston Moretaine and Stewartby, as part of the Northern Marston Vale Growth Area.

## **2.4 THE APPLICATION AT THE CLOSE OF EXAMINATION**

- 2.4.1 A number of revisions to the draft DCO were submitted during the course of the Examination. The revisions submitted in track change and clean versions at Deadline 2 [REP2-010 and REP2-015] and Deadline 3 [REP3-003 and REP3-006] contained changes in response to my first written questions and to issues raised by IPs, in particular by CBC, BBC, Covanta and statutory undertakers. These changes, which are considered in detail in the Chapter on the draft DCO, do not, in my view constitute material changes to the application.
- 2.4.2 The draft DCO submitted with the application contained two options for Work No.2 providing access to the generating equipment site [APP-012]. Option 2A provided for the construction of a junction with Green Lane and the construction of an access road from Green Lane to the Rookery South pit. The Explanatory Memorandum (EM) [APP-013] explained that this option would be adopted in the event that numbered work 5A set out in the Rookery South Order (the access road from Green Lane) was not implemented prior to the implementation of the Proposed Development. If that work on the access road was completed by Covanta then Option 2B would provide access from the road as constructed through to the generation equipment site (the short access road). The application for CA included all of the land over which rights would be required if Option 2A, the more extensive option in terms of land required, were to be implemented.
- 2.4.3 At the CA hearing the Applicant reported that Covanta expected to complete work on the construction of the access road from Green Lane by the end of June 2018 and that the Applicant might wish to amend the application to reflect this development [REP3-012]. That could lead to a change in the extent of CA that it would be seeking.
- 2.4.4 At Deadline 5 in the Examination the Applicant reported that the access road had been completed (with the exception of the junction with Green Lane) and in these circumstances, as set out in the original application documents, it only proposed to construct the short access road into the generating equipment site.

- 2.4.5 It submitted a revised suite of documents which, as set out in the revised EM [REP5-012], provide for the construction of the junction with Green Lane if this work is not completed by Covanta and the construction of an access road of up to 1.4km in length connecting the new access road to the generating equipment site. The requirement for CA was reduced and revisions of plots 4\_PGP and 5\_PGP are shown on the revised Land Plans [REP5-007].
- 2.4.6 Revision 3 of the draft DCO submitted for Deadline 5 contained changes to reflect the completion by Covanta of the access road from Green Lane [REP5-010 and REP5-011]. Option 2B in the original draft DCO was deleted and a revised version of Option 2A was inserted to allow for the completion of the junction between the access road and Green Lane and for the construction of a road from the Covanta access road to the generating equipment site. Revised documentation reflecting these changes was also submitted.
- 2.4.7 On 16 July 2018 I issued a letter under Rule 17 of PA 2008 seeking comments on whether the changes submitted at Deadline 5 constituted a material change to the application such that I should not accept them [PD-009]. I also asked the Applicant to explain why it was seeking CA powers over the whole of plot 4\_PGP which appeared to be larger than was required to provide the proposed access route.
- 2.4.8 Responses were received from Natural England (NE) [REP6-001], Historic England [REP6-003], Covanta [REP6-002] and CBC [REP6-006] indicating that they had no objection to the changes. I considered that sufficient consultation had been carried out in relation to the changes in the interests of fairness and I concluded that the changes as set out in paragraphs 2.4.4 to 2.4.6 were not material and the application (as changed) could continue to be examined [PD-010].
- 2.4.9 The Applicant also provided an explanation of the extent of plots 4\_PGP and 5\_PGP [REP6-005] which I consider further in the chapter on CA.

## **3 LEGAL AND POLICY CONTEXT**

### **3.1 LEGISLATION AND GUIDANCE**

3.1.1 The application includes a Planning Statement which sets out the Applicant's view of the policy context for the Proposed Development [APP-056]. Additional information on local planning policies was provided by CBC and BBC in their LIRs [REP2-024 and REP2-032].

#### **Planning Act 2008 as amended**

3.1.2 The Proposed Development of a gas fired 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).

#### **National Policy Statements**

3.1.3 The Overarching NPS for Energy (EN-1) published in July 2011 sets out the Government's policy for delivery of major energy infrastructure.<sup>2</sup> It was accompanied by five technology-specific NPSs for the energy sector. The NPS for Fossil Fuel Electricity Generating Infrastructure (EN-2), Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) and Electricity Networks Infrastructure (EN-5) are relevant to this application.

3.1.4 EN-1 states that the UK 'needs all the types of energy infrastructure covered by the NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions.' That includes fossil fuel plants such as the Proposed Development. It also states that applications for development consent should be assessed 'on the basis that the Government has demonstrated that there is a need for those types of infrastructure.'

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<sup>2</sup> Overarching National Policy Statement for Energy (EN-1).

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/37046/1938-overarching-nps-for-energy-en1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37046/1938-overarching-nps-for-energy-en1.pdf)

National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/37047/1939-nps-for-fossil-fuel-en2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/37047/1939-nps-for-fossil-fuel-en2.pdf)

National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/37049/1941-nps-gas-supply-oil-en4.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/37049/1941-nps-gas-supply-oil-en4.pdf)

National Policy Statement for Electricity Networks Infrastructure (EN-5)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/37050/1942-national-policy-statement-electricity-networks.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/37050/1942-national-policy-statement-electricity-networks.pdf)

- 3.1.5 Fossil fuel generation is recognised as playing a vital role in providing reliable energy supplies and providing flexibility in response to changes in supply and demand and diversity in the energy mix. EN-1 recognises that fossil fuel plants produce carbon dioxide (CO<sub>2</sub>) and sets a requirement that new plant over 300MW 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. The maximum capacity of the proposed plant is 299MW, defined in the draft as the gross electrical power as measured at the terminals of the generator.
- 3.1.6 EN-2 recognises that fossil fuel generating stations are large and would have an impact on the surrounding landscape and visual amenity. It states that it is not possible to eliminate the visual impacts associated with a fossil fuel generating station. The purpose of mitigation measures is therefore to reduce the visual intrusion of the buildings in the landscape and minimise impact on visual amenity as far as reasonably practical. If the location is deemed appropriate and the plant has been designed sensitively to minimise harm to landscape and visual amenity then 'the visibility of a fossil fuel generating station should be given limited weight.'
- 3.1.7 EN-1 and EN-2 both recognise the contribution that combined heat and power (CHP) can make to reducing emissions and full exploration of the potential for CHP is a requirement of applications for thermal generating stations.
- 3.1.8 The NPSs identify the contribution that good design can make to producing sustainable infrastructure and to mitigating adverse impacts of projects.
- 3.1.9 EN-1 sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. Generic impacts of particular relevance to this application include impacts on air quality and emissions, biodiversity, historic environment, landscape and visual, traffic and transport. Environmental, social and economic benefits and adverse impacts at national, regional and local levels should be considered. Account should be taken of:
- The potential benefits of the Proposed Development to meeting the need for energy infrastructure, job creation and any long term or wider benefits; and
  - Potential adverse impacts, including any long-term and cumulative adverse impacts, as well as measures to avoid, reduce or compensate for any adverse impacts.
- 3.1.10 Additional specific considerations for fossil fuel generation are set out in EN-2, and for the associated development of gas and electricity infrastructure in EN-4 and EN-5.
- 3.1.11 EN-1 states that the decision maker should start with a presumption in favour of granting consent to applications for energy NSIPs. At the PM

an IP argued that due to the rapid change in technology in renewable energy and battery storage there was no need for the type of gas fired peaking plant proposed [EV-001 and EV-002]. I raised the question of whether, given changes in technology since the publication of the energy NPSs, there was any flexibility around the interpretation of the NPS. The Applicant responded that the need for additional fossil fuel generating capacity had been established in the NPS EN-1 and that under s104 of PA 2008 the Secretary of State had to decide the application in accordance with any NPS. It was open to the Secretary of State to revise the NPS but he had not chosen to do so.

- 3.1.12 Part 3 of EN-1 sets out principles to be followed in decision taking on NSIP applications. The NPS states that *'the UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security .... The Government does not consider it appropriate for planning policy to set targets for or limits on different technologies.'* The NPS identifies the role that can be played by a range of different generating technologies including gas and other fossil fuel generation. It states that applications should be assessed *'... on the basis that the Government has demonstrated that there is a need for those types of infrastructure ....* Taking these principles into account I agree with the Applicant's interpretation of the application of the NPS in this case and I do not consider that the choice of technology is an issue that I should address in the Examination.

### **The Infrastructure Planning (Decisions) Regulations 2010**

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

## **European Requirements and Related UK Regulations**

- 3.1.16 The EU Withdrawal Act provides for the position after 29 March 2019 where existing Regulations will remain unless specifically changed. This report has been completed before that date and the relevant European legislation operational during the Examination has been taken into account.

### ***The Air Quality Directive (Council Directive 2008/50/EU)***

- 3.1.17 The Air Quality Directive on ambient air quality and cleaner air for Europe entered into force on 11 June 2008. It sets limit values for compliance and establishes control actions where the limit values are exceeded for ambient air quality with respect to sulphur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>) and mono-nitrogen oxides (NO<sub>x</sub>), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), lead, benzene and carbon monoxide. The Air Quality Standards Regulations 2010 give statutory effect to the Directive. The most recent Air Quality Policy was published in October 2018 to give effect to the regulations.

### ***The EIA Directive (Council Directive 2011/92/EU)***

- 3.1.18 The EIA Directive defines the procedure by which information about the environmental effects of a project is collected and taken into account by the relevant decision-making body before consent is granted for a development. It sets thresholds for projects that require an EIA and outlines the impacts on the environment that need to be assessed. The Directive was amended in 2014 and is now implemented through the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. These regulations provide for developments which had requested a scoping opinion before the 2017 regulations came into force to be assessed in line with the 2011 Directive and associated regulations. Since the scoping report for the Proposed Development was submitted in June 2014, the ES has been undertaken in line with the 2011 EIA Directive.

### ***The Industrial Emissions Directive (Council Directive 2010/75/EU)***

- 3.1.19 The Industrial Emissions Directive (IED) of 2010 brought together a number of directives relating to industrial emissions including the Integrated Pollution Prevention and Control Directive and the Large Combustion Plant Directive. The IED sets out requirements relating to the permitting, compliance and enforcement regimes adopted by Member States. The IED has been implemented in England and Wales by the Environmental Permitting (England and Wales) Regulations 2016.

***Habitats Directive (Council Directive 92/43/EEC) and Wild Birds Directive (Council Directive 2009/147/EC)***

***The Conservation of Habitats and Species Regulations 2017***

- 3.1.20 The Habitats Directive and the Wild Birds Directive form the cornerstone of Europe's nature conservation policy. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) are the principal means by which the Habitats Directive is transposed in England and Wales.
- 3.1.21 The Habitats Regulations came into force on 30 November 2017. They consolidated the Conservation of Habitats and Species Regulations 2010 (the 2010 Habitats Regulations) with subsequent amending instruments, and made minor modifications reflecting changes to related legislation.
- 3.1.22 The Applicant provided a report under the 2010 Habitats Regulations, which concluded that there would be no significant effects from the Proposed Development. This is considered further in Chapter 6 of this report.

***Natural Environment and Rural Communities Act 2006***

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

**Other Legal and Policy Provisions**

***National policy and legislation***

- 3.1.24 The National Planning Policy Framework (NPPF) published in 2012 set out the Government's planning policies for England and how these are expected to be applied.<sup>3</sup> This was taken into account by the Applicant in preparing the ES. The NPPF does not contain specific policies for NSIPs for which particular considerations apply. These are determined in accordance with the decision-making framework set out in PA 2008 and relevant NPSs for major infrastructure, as well as any other matters that are considered both important and relevant (which may

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<sup>3</sup> National Planning Policy Framework DCLG, March 2012.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)

include the NPPF). The NPPF contains guidance on conserving and enhancing the natural and historic environments and sets out particular issues to take into account in determining planning applications. That guidance is in similar terms but is not identical to the guidance on the natural and historic environments in EN-1. A new version of the NPPF was published in July 2018 but I do not consider that this raised new issues that needed to be taken into account in the Examination.<sup>4</sup>

- 3.1.25 National Planning Practice Guidance (PPG) was published in 2014 to replace previous guidance documents and support the application of the NPPF. It is updated on a rolling basis. Relevant PPG guidance as at September 2017 has been taken into account by the Applicant in preparing the ES. I do not consider that any changes to PPGs published during the course of the Examination need to be taken into account.

### **3.2 LOCAL IMPACT REPORTS**

- 3.2.1 S104 and s105 of PA 2008 state that in deciding the application the Secretary of State must have regard to any LIR within the meaning of s60(3).

- 3.2.2 LIRs have been submitted by CBC and BBC [REP2-024 and REP2-032]. The LIRs both set out the historical background of the area which for more than a century was a major centre for clay extraction and brickmaking providing local employment but accompanied with a high level of air pollution. Production of bricks finally ceased in 2008. Some of the areas from which clay had been extracted were subsequently used for landfill but that activity is running down. The area is now subject to restoration with the creation of lakes for nature conservation and recreation, grassing over of landfill sites and the development of the Forest of Marston Vale as a Community Forest.

- 3.2.3 The LIRs set out the principal local planning policies and other policies relevant to the Proposed Development and identified areas of concern.

### **3.3 DEVELOPMENT PLANS**

- 3.3.1 The relevant planning policies adopted by CBC are contained in the Core Strategy and Development Management Policies Development Plan Document adopted in November 2009 and the Emerging Local Plan of 2018 which was at pre-submission stage. CBC also drew attention to the Forest of Marston Vale Plan of 1995 which set out objectives for the Community Forest and the Marston Vale Strategy launched in 1993, a partnership initiative involving the local authorities and landowners in the Vale. Two housing developments in

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<sup>4</sup> National Planning Policy Framework MHCLG, July 2018.  
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

the vicinity of the Proposed Development were identified as having the potential to be indirectly affected by noise and vehicle movements associated with the Proposed Development. A development south of Wixams had permission for 1,000 dwellings and 5ha of employment land on which work had not yet started. Work had begun on a development at Marston Moretaine with 125 dwellings and the possibility of a further 320 dwellings.

- 3.3.2 CBC set out local concerns about the possible impact of the Proposed Development. Concern was expressed about economic and social impacts (where there might be both positive and negative effects); environmental impacts, particularly on noise and air quality; ecology, with particular reference to the Forest of Marston Vale, the Millennium Country Park and the Rookery Clay Pit County Wildlife Site; the historic environment with potential impact on designated heritage sites and archaeological remains; traffic and transport, with concern about the impact of heavy loads on local roads; and health effects taking into account the past history of health effects from the brickworks that were now closed.
- 3.3.3 The relevant policies adopted by BBC are the Core Strategy and Rural Issues plan adopted in 2008, the Allocation and Designations Plan of 2013 and development briefs and design guides for three nearby housing and associated developments at Stewartby, Wootton and The Wixams. The Stewartby development has outline permission for 700 dwellings, employment development, shops and open space. The Wootton development has permission for 1,000 dwellings spread over three sites with employment development, a lower school, shops and open space. This is under construction. The Wixams on which construction has started will eventually comprise 4,500 dwellings, a town centre, schools, employment area and open space.
- 3.3.4 EN-1 notes (paragraph 4.1.5) that local development plans may be important and relevant to decisions on NSIPs but that in the event of any conflict between these plans and an NPS the NPS prevails for the purpose of decision taking on the NSIP.
- 3.3.5 Statements of Common Ground (SOCGs) between the Applicant and each of the Councils have been submitted [REP2-009 and REP2-039] in which it is agreed that the concerns raised by each of the Councils are adequately addressed in the ES and through provisions in the draft DCO.

#### **THE SECRETARY OF STATE'S POWERS TO MAKE A DCO**

- 3.3.6 As outlined in section 2.4 changes were made to the application in respect of the access to the power generation site and the land subject to CA. I have considered whether these changes to the application meant that the application had changed to the point where it was a different application and whether the Secretary of State would therefore have power under s.114 of PA2008 to make a DCO having regard to the development consent applied for.

- 3.3.7 The 'Planning Act 2008: Guidance for the examination of applications for development consent' (March 2015), provides guidance in relation to changing an application post acceptance. S114(1) of PA 2008 places the responsibility for making a DCO on the decision maker, and does not limit the terms in which it can be made.
- 3.3.8 In exercising this power the Secretary of State may wish to take into account my views on the proposed changes to the application:
- the changes proposed all fall within the original Order limits and reduce the extent of land subject to CA;
  - I consulted on the changes [PD-009] and issued a procedural decision [PD-010] that the proposed changes to the scheme were not 'material' and should be accepted as part of the proposed development;
  - I do not consider that accepting these changes would result in any person being deprived of the opportunity to be consulted on the impact of the development.
- 3.3.9 Given this, and having regard to the fact that information on the changes was made available to interested parties, I recommend that the Secretary of State should accept the changes for consideration in the Examination as part of the proposed development.

## **4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES**

### **4.1 MAIN ISSUES IN THE EXAMINATION**

4.1.1 My initial assessment of the principal issues based on my consideration of the application documents and RRs received was circulated prior to the PM [PD-004]. The issues are in alphabetic order and should not be taken to imply an order of importance.

**Compulsory Acquisition**, including issues related to:

- the need for the land to be subject to compulsory acquisition
- the need to establish a compelling case in the public interest
- financial arrangements

**Design, Layout and Visibility**, including issues related to:

- the design of the power station and associated development
- landscape and visual impact
- landscaping and screening

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

- powers acquired through the DCO
- requirements
- protective provisions
- amendment and modification of the Rookery South DCO

**Economic and Social impacts**, including issues related to:

- the impact on the local economy including tourism
- the impact on local services and facilities
- the impact on housing and employment

**Environmental Impact Assessment**, including issues related to:

- the adequacy of the assessment of its potential impacts
- cumulative effects
- mitigation measures

**Environmental Issues**, including issues related to:

- airborne emissions and air quality
- water quality and flooding
- noise, lighting, dust and vibration

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

- the impact on European and other protected sites and species
- impacts on habitats and on biodiversity

**Historic Environment**, including issues related to:

- impact on heritage assets and historic landscapes

**Operational**, including issues related to:

- completion of the low level restoration scheme
- limitations on use of plant
- environmental permitting

**Transport and Traffic**, including issues related to:

- construction traffic movement and routeing
- road safety

4.1.2 At the PM it was suggested that the provision of CCS as part of the Proposed Development should be considered during the examination and I agreed to this [EV-002]. It was also suggested the generating technology chosen by the Applicant should be considered as an issue. As discussed at paragraph 3.1.12, I did not accept that this was an issue that should be considered in the Examination.

#### **4.2 ISSUES ARISING IN LOCAL IMPACT REPORTS AND REPRESENTATIONS FROM INTERESTED PARTIES**

4.2.1 The principal issues identified as areas of potential concern to CBC and BBC in their LIRs include:

- landscape and historic environment
- habitats, ecology and nature conservation
- transport
- air quality
- noise
- economic and social impact

4.2.2 A number of representations were received from local residents expressing concern about the possible impact of the development on the environment, air quality, health and safety. [RR-001, -003, -004, -005, -006]. One resident set out detailed objections based on the adverse effect on listed buildings and the substantial development of new housing in the area. He argued that the case for gas fired generation was losing or had lost its validity and peaking power should be provided from battery storage linked to generation from renewable sources. He also objected to the lack of provision for CCS in the proposal [RR-016 and REP2-038].

4.2.3 Representations were received from The Forest of Marston Vale Trust which is leading on the creation of the Forest of Marston Vale [REP2-034 and -035]. This is one of 12 nationally designated Community Forests. The NPPF recognises that the development of these Community Forests may be a relevant consideration in considering planning applications. One of the Trust's objectives is that new developments should contribute to the target of 30 per cent of

woodland cover by 2031 with on-site planting or a contribution to planting off-site.

- 4.2.4 Representations were received from Marston Moreteyne Parish Council [RR-019]. The Council was concerned about emissions of NO<sub>2</sub> from the stack and the detrimental impact this would have on environmental habits both for humans and wildlife. The Council was also concerned about the effect of construction traffic on the village and requested that consideration should be given to ensuring that construction traffic exited the A421 dual carriage way at the Marsh Leys interchange and not the Beancroft Road roundabout at Marston Moretaine. This would ensure that there was no disruption to local traffic and protect the amenity of local residents from vibration and noise.
- 4.2.5 National Grid identified a gas transmission pipeline (Feeder 09 - Peterborough to Whitwell) and an overhead electricity transmission line (ZA 400kV - Sundon to Grendon) as lying within the Order limits. (RR-009 and REP2-030). National Grid was concerned that its rights to retain this equipment and its rights of access to this equipment should not be restricted [RR-009]. Protective provisions were subsequently agreed between the Applicant and National Grid and National Grid withdrew its representations [REP2-042].
- 4.2.6 Network Rail set out concerns about work on the access road to the site for the generation plant [REP2-037]. This road is adjacent to the Bletchley to Bedford Line (also referred to in this Report as the Marston Vale rail line). Network Rail was also concerned about the impact on the safe operation of the level crossing at Green Lane. Network Rail was seeking the inclusion of protective provisions in the draft DCO and an asset protection agreement. Discussions took place between Network Rail and the Applicant leading to agreement between the two parties. I consider this further in the chapter on the draft DCO.
- 4.2.7 The Ministry of Defence (MoD) requested that the height of the stack at the power station should be properly recorded in aeronautical charts and mapping records. It set out the information that should be provided [RR-011]. It also requested that aviation warning lighting should be attached to the stack. The Applicant agreed to inclusion of a requirement in the draft DCO covering the provision of information relating to air safety but did not accept that there was a need for lighting on the stack.
- 4.2.8 The Environment Agency (EA) considered that the ES presented a well-informed conceptualisation of the site but disagreed on some points of interpretation particularly in respect of protection of groundwater [RR-013]. The EA agreed a SoCG with the Applicant covering air quality, water quality and resources and ground conditions [REP2-041]. The assessment and mitigation measures were agreed to be appropriate, subject to possible future work which might

be required to investigate contamination and groundwater under requirement 8 of schedule 2 in the draft DCO.

- 4.2.9 The EA also provided information on the permitting process for the type of balancing OCGT being proposed [REP2-033]. This would be one of the first permits granted for this type of plant under the provisions of the Industrial Emissions Directive (IED) and the Government's Best Available Technology Conclusions document (BATc). Normally the conditions imposed in the permit would not be more stringent than those set out in BATc and the IED. The EA's approach would be for permitted operating hours to be limited to 2,250 hours in any one year subject to a five year rolling average of 1,500 hours. The Applicant had applied for its operating permit. The application was under consideration by the EA during the course of the Examination.
- 4.2.10 NE noted that the Proposed Development would not have significant adverse impacts on designated nature conservation areas in the vicinity and had no objection to the development. It highlighted mitigation measures which should be taken to ensure this outcome. NE agreed a SoCG with the Applicant which set out all of the potential areas of concern on which agreement had been reached [REP2-040]. This covered air quality, ecology, ground conditions, landscape and visual and the relevant wording in the draft DCO. The assessments and mitigation measures were considered appropriate. There were no outstanding issues.
- 4.2.11 Historic England set out its concerns about the possible effect on the setting and significance of three highly designated heritage assets in the vicinity of the Proposed Development [RR-018]. Historic England subsequently agreed a SoCG with the Applicant which indicated that agreement had been reached on the substantive issues relating to the historic environment subject to agreement of final wording in the draft DCO [REP3-009]
- 4.2.12 A SoCG between the Applicant and Highways England was submitted covering the issues relating to traffic and transport covered in the ES [REP1-003]. It was agreed that the assessment of these issues in the ES was appropriate and that the mitigation measures proposed were adequate in their nature and scale to address potential issues.
- 4.2.13 Because the land required for the Proposed Development overlaps with the land which is the subject of the Rookery South Order, the Applicant has included protective provisions for both the Applicant and Covanta concerning interactions between the two developments. Parts of these protective provisions have the effect of amending the Rookery South Order. Covanta stated that its preferred approach was to have an interface agreement between the two operators to govern the interaction between the two developments [RR-015, AS-008 and -009, REP2-018]. I consider this further in the chapter on the draft DCO.

### **4.3 THE PRINCIPLE OF THE DEVELOPMENT**

- 4.3.1 As noted earlier the Proposed Development qualifies as an NSIP and consideration of the proposal is subject to the general guidance on Energy Projects in EN-1 and the specific guidance on Electricity Generating Infrastructure in EN-2, Gas Supply Infrastructure and Gas and Oil Pipelines in EN-4 and Electricity Network Infrastructure in EN-5.
- 4.3.2 The Applicant has provided an ES [APP-033] which I am satisfied meets the requirements of PA 2008 and the EIA Regulations in terms both of scope and methodology. It also covers specific issues and mitigation measures to address adverse effects as identified in the NPS.

#### **Consideration of alternatives**

##### ***Location***

- 4.3.3 EN1 and EN-2 do not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option but applicants are required to include in their ES information about the main alternatives they have studied. The ES sets out the criteria that the applicant had applied in choosing the site at Millbrook for a peaking plant of the type proposed. These include proximity to the national gas and electricity transmission systems, location within areas that are net importers of electricity and compatible land use designation.
- 4.3.4 A large number of potential sites had been identified across the UK. This had been narrowed down using the Applicant's selection criteria and four sites had been chosen for development. In addition to Millbrook, developments of similar plant at Eye in Suffolk (Progress Power) and Hirwaun in South Wales (Hirwaun Power) had received DCOs and an application for a further plant at Abergelli was submitted in June 2018.

##### ***Generation plant***

- 4.3.5 A range of options for the power generation plant had been considered. OCGT technology was considered the most suitable for the flexible operation required from peaking plant with the ability to manage rapid start up and shut down. Compared with combined cycle gas turbines (CCGT) the OCGT plant required a shorter stack resulting in less visual intrusion. With air cooling the OCGT plant required significantly less water than a CCGT. Consideration had been given to options using between one and five turbines. A single turbine generator with a single stack had been chosen as the preferred option.
- 4.3.6 The Applicant provided a report on the feasibility of operating the development as a CHP plant [APP-039]. This concluded that there was no existing regional heat market and no suitable heat users of the right scale nor heat users who would be able to accept the

unpredictable supply of heat available either now or in the future. The intermittent and peaking modes of operation of an OCGT were incompatible with the likely demands of heat users for continuous supply. The report concluded that there was no need to undertake further investigation of CHP and the Proposed Development should not be required to be constructed as 'CHP ready'. There were no suggestions from IPs for any uses for heat from the Proposed Development.

- 4.3.7 EN-1, section 4.7, sets out a requirement for CCS on new coal fired generation capacity and for other fossil fuelled generation to be designed as carbon capture ready (CCR) so that CCS could be retrofitted at a later date. But the requirement to be CCR only applies to new fossil fuelled generating capacity of 300MW or more. This application is for a generating station with a gross rated electrical output of up to 299MW. The definition of gross rated electrical output included in the draft DCO is in the same terms as the definition accepted by the Secretary of State in his decisions on the Progress Power and Hirwaun Power Station Orders which were not required to be CCR.

### ***Gas and electricity connection***

- 4.3.8 At the early scoping stage of the Proposed Development a gas connection 'opportunity area' was identified. This was refined down to two options which were put out to consultation. The final location for the AGI and the route of the gas connection was chosen as the most direct and shortest connection to the NTS. Account was taken to avoid, as far as possible, the sterilisation of agricultural land.

- 4.3.9 At an early stage an electrical connection 'opportunity area' was identified for the necessary sub-station and connection to the NETS. The location of the sub-station within the Rookery South pit adjacent to the generation plant was chosen as having less visual impact and reduced effect on agricultural land. Four options were considered for the connection from the sub-station to the existing NETS. Two involved new overhead transmission lines and up to four new towers, two involved underground cables to connect to the NETS and either a single or double SEC. Taking into account local concerns and the potential adverse effect of new pylons on landscape and visual amenity, the Applicant decided to adopt an underground cable option. The option with two sealing end compounds was chosen for technical and financial reasons.

### **Design evolution**

- 4.3.10 A Design and Access Statement for the preferred alternative was provided as part of the application [APP-057]. This set out the context for the development in terms of its location, local planning design guidance and policies and environmental assessments in the ES. General design and access principles were set out and an indicative design response for each of the main elements in the development

was provided. Key design responses to mitigate the impact of the development include:

- site plan arrangement of the various plant components to minimise the visual impact;
- introduction of planted trees/hedgerows/shrubs linking with the already established mature planting; and
- colour strategy on various plant components reflecting surrounding near and distant landscapes.

4.3.11 Concerns expressed by IPs about landscape and visual impact effects are considered further in Chapter 5.

#### **Conclusion on the principle of the development**

4.3.12 I am satisfied that the proposed OCGT generation plant with associated development to provide a gas supply and to provide for the export of electricity to the national electricity transmission network would contribute to meeting the need for new generation capacity identified in EN-1. I accept the Applicant's assessment that the intermittent and peaking modes of operation of the Proposed Development are incompatible with the likely demands of heat users for continuous supply and that the plant should not be required to be constructed so as to be 'CHP ready'.

4.3.13 I am satisfied that the capacity of the Proposed Development as defined in the draft DCO is below the threshold at which it should be designed to be CCR. I am also satisfied that consideration has been given to design and to alternatives to the development as required by EN-1. I consider specific impacts of the Proposed Development in the following chapter before reaching my conclusions on the Application as a whole.

## **5 FINDINGS AND CONCLUSIONS IN RELATION TO ENVIRONMENTAL IMPACTS**

### **5.1 INTRODUCTION**

5.1.1 This chapter considers the environmental impacts of the Proposed Development. The principal issues considered are the impacts on:

- air quality;
- noise;
- water quality, resources, ground conditions and flood risk;
- ecology;
- landscape and visual aspects;
- traffic and transport;
- heritage and historic assets;
- socio-economic factors;
- public health and amenity.

### **5.2 AIR QUALITY**

#### **Policy considerations**

5.2.1 Guidance in EN-1 indicates that air quality considerations should be given substantial weight where a project would lead to deterioration in air quality in an area or lead to breaches of national air quality limits. EN-1 states that the planning and pollution control systems are separate but complementary. The Examination should work on the assumption that the relevant pollution control regime will be properly applied and enforced by the relevant regulator. EN-2 notes that emissions from fossil fuel generating stations are regulated by the EA.

#### **The Applicant's case**

5.2.2 In order to establish a baseline for air quality the Applicant collated information from monitoring carried out by CBC and BBC. CBC has a real time analyser at Sandy, approximately 18km from the site of the Proposed Development, monitoring NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub>. There is a network of NO<sub>2</sub> diffusion tube monitors in the area. The nearest diffusion tube was 4.5km from the project site but ceased monitoring in 2015. Background concentrations were defined using national pollution maps published by Defra. Existing nitrogen and acid deposition rates were determined from the Air Pollution Information Service website. Potential effects on air quality from the operation of the electrical and gas connection were ruled out in the Scoping Opinion prior to submission of the application for the DCO [APP-035].

5.2.3 The Applicant's study of effects on air quality from dust during construction and decommissioning followed guidance from the Institute of Air Quality Management (IAQM) which provides screening criteria for effects on human and ecological receptors from the impact of dust. The screening distances applied to assessing impacts on human receptors were - within 350m of the boundary of the project

site, within 50 m of routes used by construction vehicles on the public highway and within 500m of the site entrance. For ecological receptors the screening distances applied were - within 50m of the boundary of the project site, within 50m of routes used by construction vehicles on the public highway and within 500m of the site entrance.

- 5.2.4 The study area that was applied for the assessment of effects during operation of the generating equipment was 10km from the centre of the site as specified in Government guidance on risk assessment of emissions to air. The maximum concentration of pollutants was considered to be likely to be within 1km of the site boundary and human receptors were most likely to be affected within this distance. For ecological receptors a study area of 10km was taken for internationally designated sites and 2km for nationally designated sites.
- 5.2.5 The volume of construction traffic generated by the Proposed Development would be below the threshold of 200 heavy duty vehicle annual average daily traffic movements specified in the Department of Transport's Design Manual for Roads and Bridges (DMRB). The effects of construction vehicle emissions were therefore scoped out of the assessment by the Applicant.

### ***Construction and decommissioning***

- 5.2.6 The study area for the assessment of dust and PM<sub>10</sub> during the construction of the generating plant was considered to be of low sensitivity. The Proposed Development is located in an area of light industrial development and agricultural land with few nearby residential properties. Isolated roadside residential properties are situated within 150m of the site boundary and the closest groups of residential developments are over 500m from the site. Two County Wildlife Sites (CWS) are within 50m of the site but were considered by the Applicant to be of low sensitivity since they were not nationally or internationally designated. No demolition works would be required prior to construction and dust emissions during decommissioning were expected to be low given the limited number of buildings on the site many of which would be metal and prefabricated.
- 5.2.7 The risk of emissions affecting the nearby residential properties and the CWS was assessed, using the IAQM guidance, as negligible for the construction and decommissioning activities and low from the earthworks and track-out during construction [Table 6.13, APP-033]. Appropriate mitigation for this level of risk is included in the draft Construction Environment Management Plan (CEMP) [APP-038]. Assessment of the impacts of the construction of the gas and electrical connections reached similar conclusions.
- 5.2.8 The draft CEMP provides a framework from which a final CEMP will be produced prior to construction of the Proposed Development. The purpose of the CEMP is to secure mitigation for potentially adverse

construction impacts on environmental resources, local residents and businesses. It would form the management framework for the planning and implementation of construction activities in accordance with the environmental commitments identified as part of the application. Submission of the final CEMP and its approval by the relevant planning authorities would be secured through a requirement in the draft DCO.

### **Operation**

- 5.2.9 In order to assess the impact on air quality from operation of the generating plant human and ecological receptors within 2km of the site were identified. These included the nearby settlements of Stewartby and Marston Moretaine and a number of isolated dwellings. Two SSSIs and 12 CWS were included as ecological receptors [APP-033, section 6.6].
- 5.2.10 The principal impact of the operation of the plant on air quality would come from emissions of NO<sub>2</sub> and carbon monoxide (CO) from the power plant stack. Modelling was carried out to assess the dispersion of NO<sub>2</sub>. The optimum stack height was determined such that the maximum predicted annual NO<sub>2</sub> concentration was less than the long term objective of 40µg/m<sup>3</sup> and the maximum predicted hourly NO<sub>2</sub> concentration was less than 10% of the objective of 200µg/m<sup>3</sup>. The modelling set out in the ES indicates that these targets can be met with a minimum stack height of 32.5m [APP-033, table 6.14].
- 5.2.11 This minimum stack height was used to model both the short and long term levels of NO<sub>2</sub> and CO at each of the nearby human receptors resulting from the operation of the power generation plant and the addition this would make to existing levels of emissions. These were compared with the assessment levels of emissions set out in the Air Quality Standards Regulations 2010. The maximum predicted ground level concentrations with a stack height of 32.5m were all insignificant when compared to the assessment levels [APP-033, tables 6.18 - 6.20].
- 5.2.12 The impacts on ecological receptors were assessed for 15 nearby sites. Direct effects from airborne pollutants and chemical changes resulting from deposition on soil were considered. For each of the ecological receptors the annual mean process contribution from NO<sub>x</sub> was less than 1% of the assessment level and no breaches of critical levels were expected when this was combined with existing background concentrations. The predicted daily mean concentrations of NO<sub>x</sub> were not insignificant but combined with background levels would not breach the critical level. All of the predicted nitrogen and acid deposition rates for the habitats considered were insignificant when compared to the critical loads for these sites [APP-033, tables 6.21 - 6.24].

## **Views of interested parties**

- 5.2.13 RRs from local residents and from the Marston Moreteyne Parish Council raised concerns about the impacts of the Proposed Development on air quality [RR-001, -003, -004, -005, -016, -019]. The Parish Council expressed particular concern about emissions of NO<sub>x</sub> and the detrimental effect this would have on environmental habitats and human life and wildlife.
- 5.2.14 The written representation from the EA set out how emissions from the generating plant would be regulated under a permit issued under the EPR [REP2-033]. The Applicant had made an application for an EPR permit and this was still being assessed by the EA at the close of the Examination. The permit would be based on a worst case of 2,250 hours of operation in a year. The assessment would take into account all relevant factors including downwash from buildings, topography, critical loads on SSSIs and European sites and emissions from the adjacent Energy from Waste plant.
- 5.2.15 A SoCG between the Applicant and the EA was submitted [REP2-041]. The EA agreed that the assessment in the ES of the effects on air quality during construction, operation and decommissioning of the Proposed Development were appropriate. The embedded mitigation measures proposed were adequate.
- 5.2.16 A SoCG between the Applicant and NE was submitted [REP2-040]. NE agreed that the assessment in the ES of the effects of the Proposed Development on air quality was appropriate and that the mitigation measures proposed were adequate.
- 5.2.17 The LIR from CBC [REP2-024] noted the concerns that had been raised in representations about the impact of the development in terms of pollution, including air quality. The LIR from BBC [REP2-032] indicated that the Council had no objection to the Proposed Development on grounds of its impact on air quality.
- 5.2.18 In the SoCG between the Applicant and CBC [REP2-039] CBC agreed that the assessment in the ES of air quality was appropriate and that the embedded and additional mitigation measures proposed were adequate.
- 5.2.19 In the SoCG between the Applicant and BBC [REP2-009] BBC agreed that the assessment in the ES of air quality and the embedded and additional mitigation measures proposed were adequate.

## **Assessment and conclusions on air quality**

- 5.2.20 I have considered the analysis in the ES of the impact of the Proposed Development on air quality. I have taken into account concerns raised on these issues by IPs and the guidance set out in EN-1 and EN-2. I am satisfied that, with the proposed stack height of a minimum of 32.5m, the emissions of NO<sub>2</sub> and CO would be insignificant compared with the assessment levels set out in the Air Quality Standards

Regulations 2010 and would not breach critical levels. I am satisfied that there would be no significant impact on human or ecological receptors or on habitats. The minimum stack height is specified in table 2 of schedule 2 of the draft DCO. Dust created during construction would be adequately controlled through provisions in the CEMP. Compliance with the CEMP will be ensured through requirement 10 in the draft DCO.

- 5.2.21 Emissions to air will be controlled through an EP issued by the EA. The application for this permit was being considered by the EA during the course of the Examination. Taking into account the proposed embedded design features, the ES did not identify any significant adverse effects on air quality. On the basis of the evidence before me and without prejudice to any future consideration by the EA, I do not have any reason to believe that an EP for the generation plant would not be granted.
- 5.2.22 I conclude that, subject to the mitigation measures identified in the ES and my consideration in Chapter 8 of specific provisions included in the draft DCO, there should not be any significant adverse effects on air quality from the Proposed Development.

## **5.3 NOISE**

### **Policy considerations**

- 5.3.1 EN-1 states that a noise impact assessment should include:
- a description of the noise generating aspects of the development proposal leading to noise impacts, including the identification of any distinctive tonal, impulsive or low frequency characteristics of the noise;
  - identification of noise sensitive premises and noise sensitive areas that may be affected;
  - the characteristics of the existing noise environment;
  - a prediction of how the noise environment will change with the proposed development;
  - in the shorter term such as during the construction period;
  - in the longer term during the operating life of the infrastructure;
  - at particular times of the day, evening and night as appropriate.
  - an assessment of the effect of predicted changes in the noise environment on any noise sensitive premises and noise sensitive areas; and
  - measures to be employed in mitigating noise.
- 5.3.2 EN-2 reiterates the guidance on the assessment of noise impacts set out in EN-1.

### **The Applicant's case**

- 5.3.3 The Applicant's assessment of noise set out in the ES took into account the guidance in NPS EN-1 and EN-4 and British Standard BS 4142:2014 for rating and assessing industrial and commercial sound,

and BS 5228 -1 and -2 (updated in 2014), which set out codes of practice for noise and vibration control on construction and open sites.

- 5.3.4 A 350m study area around the site boundary was considered in assessing the impacts of noise from the Proposed Development. Five noise sensitive receptors (NSR) were identified within this area - four dwellings and a camp site at the nearby water sports club. These locations are shown in Figure 7.1 in the ES [APP-049]. All of these sites could be affected by noise during construction and decommissioning but only two, South Pilling Farm and Pilling Cottages would be affected during operation and maintenance of the proposed development. Surveys were carried out to establish the baseline level of noise at the two sites closest to the proposed development - South Pilling Farm and Lower Farm. Four noise measures -  $L_{A10,T}$ ,  $L_{A90,T}$ ,  $L_{Aeq,T}$ , and  $L_{AFmax}$ , - were considered.<sup>5</sup>
- 5.3.5 In 2014 two noise surveys were carried out. During the second survey work was taking place on the LLRS but the evening, night time and weekend noise levels, when LLRS work was not taking place, were considered typical conditions. The principal noise sources were road traffic, trains on the Midland Main line to the east and (to a lesser extent) on the Marston Vale line to the west, wildlife, farm animals and farm vehicles. In the 2017 survey noise from the LLRS was no longer audible.
- 5.3.6 The weekday noise levels measured in 2014 were between 48 and 54dB  $L_{Aeq,10h}$  at South Pilling Farm (the higher figure including noise from the LLRS) and 54dB  $L_{Aeq,10h}$  at Lower Farm. Weekend noise levels were between 47 and 49dB  $L_{Aeq,10h}$  at South Pilling Farm and 53dB  $L_{Aeq,10h}$  at Lower Farm [APP-033, tables 7.10 - 7.13].

### ***Construction and decommissioning***

- 5.3.7 As a worst case scenario it was assumed in the ES that all construction activities for the generating plant would take place at the same time although in practice this was considered unlikely to happen. Noise and vibration levels from construction were taken from the indicative plant noise and vibration levels set out in the annexes to BS 5228. Noise levels during decommissioning were considered to be similar to those occurring during construction.
- 5.3.8 The combined noise from all construction activities for the generating plant is estimated to be an  $L_{Aeq,10h}$  of 52dB at South Pilling Farm and 49dB at Pilling Cottages, the nearest NSRs [APP-033, table 7.14]. This worst case assumes an attenuation of 10dB through the use of

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<sup>5</sup>  $L_{A10,T}$  is the sound level in decibels (dB(A)) exceeded for 10% of the time T.  
 $L_{A90,T}$  is the sound level in decibels (dB(A)) exceeded for 90% of the time T.  
 $L_{Aeq,T}$  is the continuous sound level equivalent to intermittent noise over time T.  
 $L_{AFmax}$  is the maximum sound level measured over a 1 second interval.

acoustic screening and enclosures as provided for in the draft CEMP. These noise levels are in the range at or below 55dB which, according to the guidance in BS 5228, are considered as having a neutral effect. The effect of noise from construction traffic would be greatest at the campsite at the Stewartby Water Sports Club. Here too the noise levels would be below 55dB and were considered to be neutral in effect.

- 5.3.9 Noise from the combined activities associated with the construction of the substation, laying of underground cables and the electrical connection works was predicted, after allowing for 10dB attenuation, to be 61dB at South Pillinge Farm, 60dB at Pillinge Cottages and 54dB at Moreteyne House, the nearest NSRs [APP-033, tables 7.17 - 7.21]. These effects were considered to be slight adverse at the Farm and Cottages and neutral at Moreteyne House. Noise from construction activities for the gas connection was considered to be slight at Lower Farm, with a combined level of 59dB, and neutral at other NSRs.
- 5.3.10 If construction of the Proposed Development were to take place at the same time as construction of the Covanta RRF project the combined noise at the nearest NSRs could be up to 63dB. This worst case was considered by the Applicant to have a slight and not significant effect. Decommissioning work was expected to have similar or lower levels of noise to those resulting from construction work.

### ***Operation***

- 5.3.11 The gas turbine generator, which is the item of plant which generates the most noise has been located as far away as possible from the nearest residential receptor. Acoustic enclosures form part of the design of the plant in order to limit operational noise. Modelling of noise from the operation of the gas turbine generator, the stack and the fin fan coolers indicated a noise level of 38dB [APP-033, table 7.15 and 7.16]. This is below the measured background noise levels of 46dB in daytime and 39dB at night. This was assessed as having a low and not significant impact.
- 5.3.12 Noise from the combined operation of the Proposed Development and the Covanta RRF was estimated to be below the background level during daytime and 1dB above the background level at night and was not considered to have a significant effect. There would be no significant operational noise from the electrical and gas connections.

### ***Control of noise***

- 5.3.13 The original draft DCO contained a requirement (requirement 12) for the provision of a written noise scheme for the control of noise during the operation of the plant to be approved by the local authority [APP-012]. During the course of the Examination the Applicant agreed to the inclusion of an additional requirement 13 for the provision of a monitoring scheme for noise during the construction period to be approved by CBC [REP2-013 and REP2-015].

### **Views of interested parties**

- 5.3.14 One local resident raised concerns about the impacts of the Proposed Development on noise [RR-016]. CBC also identified noise as an issue in its RR [RR-017] and in its LIR [REP2-024] but in a later submission agreed that its concerns could be addressed through the requirements on the control of noise in the draft DCO [REP2-023].
- 5.3.15 In the SoCG between the Applicant and BBC [REP2-009] BBC agreed that the assessment in the ES of noise and vibration was appropriate and that the embedded and additional mitigation measures proposed were adequate.

### **Assessment and conclusions on noise**

- 5.3.16 Taking into account the considerations set out in EN-1 and the type of generating equipment to be installed, I consider that the noise levels from the power generation plant during its operation will be below the measured level of background noise and will not have a significant effect on nearby residents. Noise levels will be higher during the construction phase and, in the immediate vicinity, will exceed existing daytime background levels. Provisions governing the control of noise during construction and operation are included as requirements in the final draft DCO [REP7-002] but these do not set specific noise limits. These provisions have been accepted as adequate by CBC. But it is likely from the estimates provided in the ES that there will be some adverse effects during the construction period at the two properties nearest to the Proposed Development.
- 5.3.17 I conclude that, subject to the mitigation measures identified in the ES and my consideration in Chapter 8 of specific provisions included in the draft DCO, noise from the Proposed Development would be at acceptable levels during operation of the plant. But I conclude that there would adverse effects in the immediate vicinity of the Proposed Development during the construction phase.

## **5.4 WATER QUALITY AND RESOURCES**

### **Policy considerations**

- 5.4.1 EN-1 notes that applications should set out the impact of the proposed project on water quality, water resources, the water environment, water bodies and protected areas. EN-2 includes further guidance on the abstraction and use of water for cooling. Since the Proposed Development would use air cooling this guidance is not applicable. EN-1 states that a Flood Risk Assessment (FRA) should be carried out to consider the risk of flooding arising from the project in addition to the risk of flooding to the project. The FRA should take the effects of climate change into account.

## **The Applicant's case**

- 5.4.2 There is the potential for the Proposed Development to affect water quality and water resources during construction and from surface water run-off from the access road and the power generation site. There is also the potential for the development to affect the existing surface water drainage regime and to be affected by flooding from the watercourse adjacent to or in the vicinity of the site. The nearby watercourses and areas of standing water are shown in Figure 9.1 in the ES [APP-049].
- 5.4.3 The Mill Brook flows to the north close to the western boundary of the Rookery South pit. It is joined by a small tributary to the east of South Pilling Farm. A hydraulic model of the Mill Brook and its tributary was used to estimate water levels associated with flood events of different magnitude.
- 5.4.4 The Applicant has assumed in the ES that the LLRS has been completed before construction work on the Proposed Development begins. The LLRS includes:
- excavation to form an attenuation pond within the north west area of Rookery South pit, sized to provide sufficient storage to accommodate the 1 in 100 year rainfall event (plus climate change) and cater for a 1 in 10 year (plus climate change) event following within one week of the 1 in 100 year (plus climate change) rainfall event;
  - re-profiling of the base of the pit such that surface water run-off sheds towards the attenuation pond;
  - in addition to re-profiling the base of the pit, an interceptor channel will have been constructed to intercept surface water run-off and convey it to the attenuation pond;
  - surface water run-off that collects within the Rookery South pit attenuation pond will be pumped to Rookery North pit as a strategic attenuation facility at a rate of 100 litres/second (l/s) and to Mill Brook at a rate of 23 l/s in accordance with an existing Consent to Discharge (surface water flows). Water will be discharged from Rookery North pit back to the attenuation pond in Rookery South pit at a rate of no more than 23 l/s; and
  - the normal water level within Rookery North pit will have been drawn down from 36 m to 35 m AOD to allow Rookery North pit to be used as a strategic attenuation facility.
- 5.4.5 Taking this LLRS work into account, it is the Applicant's view that that part of the Rookery South pit in which the power generation plant would be sited would not be affected by flooding in either the 1 in 100 year or the 1 in 100 years plus climate change scenario.
- 5.4.6 Construction activities for the generation plant have the potential to increase water run-off into the Rookery South pit but the LLRS drainage system offers adequate capacity to accommodate these flows. Any potential for contamination from spillages during

construction would be managed through the measures set out in the ground conditions section of the draft CEMP. The construction of the gas pipeline would involve the crossing of a field drain and the Mill Brook tributary. Standard techniques would be used for pumping around the crossing for the duration of open cut works.

- 5.4.7 Each of the elements of the Proposed Development would increase the impermeable area within the site with a resulting increase in run-off of water during the operational phase. At the generating plant and the sub-station, which are within the Rookery South pit, this run-off would be managed within the capacity of the LLRS drainage system. There would be some potential for contamination from the flushing of silts and hydrocarbons from areas of hardstanding and oil leakages from electrical apparatus. At the AGI and the SEC there would be increased run-off into the Mill Brook tributary. This would be managed by the use of soakaways within the perimeter of the AGI. The EA will set limits on the quality of water discharged from the site through the EP.
- 5.4.8 On the basis of the modelling of water flows and the mitigation measures proposed the Applicant expected that the Proposed Development would not result in any likely significant effects on water quality either as a standalone project or cumulatively with other projects.

#### ***Ground conditions***

- 5.4.9 The Proposed Development has the potential to affect ground conditions from the release of pollution during construction and decommissioning activities and the introduction of new pathways between groundwater aquifers during installation of foundations. There could also be effects on groundwater within the underlying strata which may be under artesian pressure. This is considered in section 10 of the ES [APP-033].
- 5.4.10 The generation plant would be sited within the Rookery South pit where there is a layer of remaining Oxford Clay which was unsuitable for brickmaking. This would be built up where necessary as part of the LLRS to provide a level base across the pit using Oxford clay from the surrounding area. Engineered fill would be placed at thicknesses of 1m-2m but may be up to 3m in places.
- 5.4.11 The main water bearing formations below the generation plant site are the Blisworth Limestone Formation (classified as a Principal Aquifer by the EA) and to a lesser extent the Cornbrash Formation and the Kellaway Sands (classified as Secondary A aquifers by the EA). Clay formations present (Oxford Clay, Kellaway Clay and Blisworth Clay) are of low permeability and act to retain the groundwater in the underlying water bearing strata. Site specific assessment and published information indicate that the permeability of the aquifers is low and the quality of the groundwater is generally poor. The aquifers are not considered to be a significant source for water abstraction.

- 5.4.12 Ground investigation of the Rookery South pit was carried out in 2009. No visual or olfactory evidence of contamination was found. Samples were tested for contaminants and there was no evidence of elevated concentrations when compared with the relevant assessment criteria.
- 5.4.13 The locations for the gas and electrical connections have not been the subject of separate ground investigations but these locations which have not previously been developed are expected to have similar underlying geological and hydrogeological conditions as the Power Generation Plant site.
- 5.4.14 On-site construction workers have the potential to be affected by unstable slopes during excavations during construction and by contamination from water and soil. These risks would be managed through procedures specified in the draft CEMP. There is the potential for mixing of aquifer bodies through the creation of new pathways as a result of piling extending through different geological strata. A requirement to carry out a Foundation Works Risk Assessment would be included in the CEMP.
- 5.4.15 High piezometric groundwater levels may have the potential to result in ground heave if piezometric pressures exceed the confining pressures from the overlying structures. This could result in the uncontrolled release of groundwater. With the installation of the engineered low permeability fill across the base of the pit as part of the LLRS widespread heave is not expected to occur but this could not be confirmed by the Applicant until further ground investigations had been undertaken. These would form part of the ground investigations that would be secured, along with any necessary remedial measures, through Requirement 8 in the final draft DCO [REP7-002].

### ***Flood risk***

- 5.4.16 A separate FRA was provided [APP-029]. This had been prepared in accordance with the NPPF following consultation with the EA, the Bedfordshire and River Ivel Internal Drainage Board and CBC as the Lead Local Flood Authority. The FRA reviewed the Proposed Development within the context of the LLRS drainage strategy and modelled the storage volume required to cater for various extreme weather events. The LLRS includes the implementation of a surface water drainage strategy for the entire area of the Rookery South Pit. The attenuation pond being built as part of the LLRS and sited to the north of the generation plant outside the Order limits would provide water storage in the event of flooding from neighbouring watercourses. The modelling estimated the water storage volume required to cater for a 1 in 100 year rainfall event with a 30% addition to allow for climate change effects and for this level of rainfall followed by a 1 in 10 year rainfall event with a 30% climate change addition. Water would be pumped from the Rookery South pit to the attenuation pond. The capacity of the attenuation pond at 216,005m<sup>3</sup> would be adequate to store water from the most extreme of these events and also take some overspill from the Mill Brook. The FRA concluded that

flood risk considerations did not constitute a barrier to the granting of a DCO for the Proposed Development.

- 5.4.17 During the course of the Examination I sought clarification on how provision and maintenance of the attenuation pond which formed part of the LLRS and which was essential for flood control purposes would be secured since this lies outside of the Order limits for the Proposed Development. The Applicant responded to my written questions [REP2-016, section 1.0.6] and at the ISH on environmental matters [REP3-004] that completion of the elements of the LLRS which formed the baseline for the ES, including the attenuation pond would be secured through a requirement in the draft DCO. This is reflected in requirement 20 in the final draft DCO [REP7-002].
- 5.4.18 Ongoing maintenance of the LLRS works would remain the responsibility of O&H. The terms of the property transfer between the Applicant and the landowner would place an obligation on the landowner to ensure that the pumping station and attenuation pond are maintained with step-in rights for the Applicant in the event of a breach of this contractual obligation. Such step-in rights apply beyond the redline boundary of the project site. The right to enter on to land will benefit the land to be acquired by the Applicant and will therefore also apply to the Applicant's successors in title. Requirement 7 in the final draft DCO ensures that the Applicant will not be able to commence certain works until the surface and foul water drainage strategy has been submitted to and approved by CBC. This strategy will include elements of how the attenuation pond drainage is carried out and maintained.

#### **Views of interested parties**

- 5.4.19 The LIR from CBC [REP2-024] noted the concerns that had been raised about the impact of the Proposed Development on ground water. In the SoCG between the Applicant and CBC [REP2-039] CBC agreed that the assessment in the ES of effects on water quality and resources was appropriate and that the embedded and additional mitigation measures proposed were adequate.
- 5.4.20 In response to my first written questions the EA commented that it did not accept the Applicant's assessment that the permeability of the Blisworth Limestone Formation was relatively low and the quality of the groundwater within the strata was generally poor [REP2-033]. It commented that the Blisworth Limestone does have resource potential in other areas. Until a full site investigation had been undertaken it was not possible to make an assumption about its quality. The Applicant amended requirement 8 in the draft DCO on contamination and groundwater to include reference to groundwater baseline monitoring and assessment [REP7-002].
- 5.4.21 A SoCG between the Applicant and the EA was submitted [REP4-003]. The EA agreed that the assessment in the ES of the effects on water quality and resources during construction, operation and

decommissioning of the Proposed Development were appropriate. The mitigation measures proposed were adequate. To the extent that further mitigation measures might be necessary this was provided for in Requirement 8 in the draft DCO concerning contamination and groundwater.

### **Assessment and conclusions on water quality and resources**

- 5.4.22 Requirement 8 in the draft DCO provides for investigation and, if necessary, remediation of contamination of groundwater. I am satisfied from the information provided by the Applicant and the provisions in requirement 8 that the Proposed Development should not have an adverse effect on water quality and resources or groundwater during construction, operation and decommissioning.
- 5.4.23 I am satisfied that an appropriate FRA meeting the requirements of EN-1 has been carried out and that the provisions for water storage in the attenuation pond are adequate to retain the flood water in the most extreme conditions considered. The attenuation pond forms part of the LLRS which, under requirement 20 must be completed prior to commencement of any part of the authorised development. It lies outside the area covered by the DCO and its operation and maintenance would be covered by a contractual arrangement between the Applicant and a third party who is the landowner. It is my understanding that the Applicant and any subsequent successor in title would have step-in rights to enter the land in the event of a breach of this contractual arrangement. Approval of the surface and foul water drainage strategy, including elements of the LLRS drainage strategy, is covered in requirement 7 in the draft DCO.
- 5.4.24 I conclude that, subject to the mitigation measures identified in the ES and my consideration in Chapter 8 of the specific provisions in requirements 7 and 20 included in the draft DCO, there should be no adverse effects on water quality and resources from the Proposed Development and that adequate provision has been made to contain flood water in the case of very extreme rainfall.

## **5.5 ECOLOGY**

### **Policy considerations**

- 5.5.1 EN-1 sets out the importance of assessment in the ES of the effects of the Proposed Development on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity.

### **The Applicant's case**

- 5.5.2 An assessment of the likely ecological effects of the Proposed Development is set out in section 8 of the ES [APP-033].

- 5.5.3 A number of surveys were carried out at the site of the Proposed Development in 2014 to identify the nature of the habitat and any protected or notable species present in the area. An ecological walkover survey was carried out in 2017 to confirm the nature of the habitats within the site.
- 5.5.4 It is assumed in the ES that the site for generating equipment will be left free of ecological constraints following the re-profiling of the pit during the LLRS. The LLRS includes measures such as newt fencing to keep ecological features out of the pit. It is assumed that the LLRS will be completed before construction of the Proposed Development commences and this was included as a requirement in the draft DCO during the course of the Examination [REP2-016].
- 5.5.5 The survey in 2014 confirmed that the base of the Rookery South pit comprised sparsely vegetated ground, swamp vegetation and bare ground. The surrounds of the pit comprised a patchy mosaic of bare ground, species-poor neutral grassland and woodland/scrub habitats that had developed since clay extraction had ceased. This mix was confirmed in the 2017 walkover with some development of short term vegetation on the southern bank of the pit.
- 5.5.6 There are no European sites within 10km of the site. NE agreed with the Applicant that the Proposed Development was unlikely to result in any significant effects on the integrity of any European site and that a Habitats Regulations assessment was not required. The Applicant submitted a No Significant Effects Report recording this assessment [APP-032]. This is considered further in Chapter 6 of this Report. There is one SSSI (Coopers Hill) within 2km of the site. The predicted nitrogen and acid and dust deposition rates for this site would be insignificant.
- 5.5.7 The Rookery Clay Pit CWS comprises both the Rookery North and Rookery South pits. The Rookery South pit will be directly affected by the construction of the power generation plant but the principal effects will come from the completion of the LLRS prior to construction of the Proposed Development. It is assumed in the ES that the area will have been cleared of Great Crested Newts (GCN) and other reptiles with measures in place to prevent re-colonisation. The re-profiling of the pit as part of the LLRS will result in a habitat which is of negligible nature conservation value for protected or notable species. The access track along the western side of the Rookery North pit comprises ephemeral vegetation and young trees. This had been partly cleared in 2017 in preparation for construction of the access road for the Covanta RRF. There are 11 other non-statutory designated sites within 2km of the Proposed Development. The Applicant did not consider that there would be any direct or indirect impact on these sites.
- 5.5.8 Trapping and relocation of GCN has been carried out as part of the LLRS with newt fencing in place to prevent recolonisation and it is assumed that the Rookery South pit will be free of GCN at the time of construction. There is potential for harm to GCN on the access road

alongside Rookery North pit and during the construction of the gas and electrical connections. Appropriate management measures would be required.

- 5.5.9 65 species of breeding birds were identified in the 2014 surveys. The most valuable habitats for breeding birds will have been lost as a result of implementation of the LLRS. The areas proposed for the gas and electrical connections were considered to be of limited value for breeding birds.
- 5.5.10 Nine species of bats were recorded on the site. These were all relatively common and widespread species and the habitats in the site are typical of the surrounding area. Badger activity was recorded in 2014 but no setts were identified.
- 5.5.11 There would be direct habitat loss as a result of the construction of the generation plant in the Rookery South pit. This would be limited to the loss of any new habitat that would have been created as part of the LLRS in the absence of the Proposed Development. The area on which the generation plant would be located is described in the LLRS as 'base of pit, levelled, graded and grassed.' This would be of negligible ecological value. There would also be removal of some vegetation along the access route adjacent to the Rookery North pit.
- 5.5.12 The outline Landscape and Ecology Mitigation and Management Strategy (LEMMS) [APP-045] would ensure that habitats of ecological value that would have been created as part of the LLRS would be incorporated into the design of the proposed development. This would include the creation of new habitats through tree and hedgerow planting and new ponds. Requirement 3 of the draft DCO submitted with the application provides for a written strategy substantially in accordance with the outline LEMMS to be approved by CBC [APP-012].
- 5.5.13 Indirect effects during construction - eg from spillages - would be controlled through provisions in the CEMP. The effects of emissions during operation have been considered under the heading of Air Quality and are not considered to be significant given the height proposed for the stack. No significant impacts on ecology are expected from traffic during operations. No significant impacts on ecology have been identified from the Proposed Development cumulatively with the Covanta RRF.

#### **Views of Interested Parties**

- 5.5.14 In its RR NE confirmed that it had no objection to the Proposed Development [RR-020]. It would not have significant impacts on the Chiltern Beechwoods SAC, the Upper Nene Valley SPA, the Upper Nene Valley Gravel Pits Ramsar site, the Kings Wood and Glebe Meadows SSSI and the Coopers Hill SSSI. NE recommended that mitigation measures proposed in the ES should be implemented to reduce impacts on protected species including bats, breeding birds and GCN. Pre-commencement surveys would be required for GCN with

provisions for the continued installation of new fencing during construction.

- 5.5.15 In its SoCG NE agreed that the assessment of the impact on ecology in the ES during construction, operation and decommissioning of the Proposed Development was appropriate [REP2-040]. It agreed that the embedded mitigation measures incorporated in the design of the Proposed Development and in operational procedures were adequate. NE agreed that the outline CEMP included mitigation measures for potential Ecology effects during construction. A GCN Licence issued by NE and any subsequent licence revisions would govern any activities which might affect GCN.

### **Assessment and conclusions on ecology**

- 5.5.16 I have considered the analysis in the ES of the impact of the Proposed Development on ecology and I consider that this adequately covers the issues identified in EN-1. I have taken into account concerns raised on these issues by NE and mitigation measures proposed by the Applicant. Mitigation measures include measures embedded in the design of the main elements of the development and adoption of the LEMMS and CEMP which would be secured through requirements 3 and 10 of the final draft DCO [REP7-002]. These measures will ensure that there would not be any significant effects on ecological receptors.
- 5.5.17 I conclude that, subject to the mitigation measures identified and my consideration of specific provisions included in the draft DCO, there would not be any significant adverse effects on ecological receptors. I consider the possible effect on European sites and whether there is a need for a Habitats Regulations assessment in Chapter 6 of this Report.

## **5.6 LANDSCAPE AND VISUAL IMPACT**

### **Policy considerations**

- 5.6.1 EN-1 notes that all proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites and that it will be necessary to judge whether the visual effects, after allowing for mitigation measures, outweigh the benefits of the project. EN-2 notes that it is not possible to eliminate the visual impacts associated with a fossil fuel generating station. Attention should be paid to the design of the generating station so as to reduce visual impacts. Provided that the location is appropriate for the project and it has been designed sensitively, the visibility of a fossil fuel generating station should be given limited weight. EN-5 sets out guidance for the assessment of new overhead lines and the undergrounding of cables to reduce visual impact.

### **The Applicant's case**

- 5.6.2 The Proposed Development has the potential to affect the landscape and landscape character of the area and to affect views and visual

amenity. Effects which would arise both during construction and decommissioning and during operation are set out in section 11 of the ES [APP-033]. The Applicant confirmed in its response to the Secretary of State's scoping opinion that there would be no visible plume from the Power Generation Plant [APP-033, Section 11, Table 11.1].

- 5.6.3 A zone of theoretical visibility (ZTV) was created based on a maximum height of the stack of 35m above the floor of the Rookery South pit. A further ZTV was created based on the 49m high replacement electrical tower. The ZTV were used to guide the selection of representative viewpoints to include in the visual impact assessment and to define a study area of a 15km square centred on the power generation plant site.
- 5.6.4 Eighteen viewpoints nearby and at a distance from the site, all at publically accessible locations, were assessed [APP-045]. These included views that would be seen by pedestrians, footpath and cycle route users, users of public open spaces and parks, people living and working in nearby settlements and isolated properties and users of roads and railways. The different landscape features of the area were taken into account. Photographs showing existing views and photomontages showing the Proposed Development were provided for fifteen of these viewpoints [APP-051 to APP-053].
- 5.6.5 The construction phase for the power generation plant is expected to last 22 months. Most of the activity would take place within the Rookery South pit which is 15m below the surrounding ground level. The principal activities would be excavation, site levelling and potentially piling. Cranes would be used to install the gas turbine generators. This work is considered to have limited potential for visual impacts. Landscape effects would be limited to the power generation plant site and some inter-visibility with adjacent areas.
- 5.6.6 The principal visual effect from the power generation plant during operation would be from the 35m stack which would be visible from the viewpoints close to the site and from farther afield, particularly to the south and south east of the site where there is higher ground. The stack would be seen in the context of the existing wind turbine at the Marston Vale Millennium Country Park, existing railway equipment, the transmission towers on the 400kV Sundon to Grendon line and the four remaining chimneys from the former brickworks at Stewartby. Landscape effects would also result from limited loss of existing vegetation on-site and indirect effects from inter-visibility with adjacent areas. There would be new planting associated with the Proposed Development but this would only have a significant effect on the landscape after 15 years.
- 5.6.7 The construction of the gas connection would have some visual impact from vehicle movements and construction activities but these would mostly be screened by hedgerows and landform. There would be some removal of hedgerows but replanting would take place. The AGI

would be a relatively small structure and would incorporate screen planting.

- 5.6.8 The electrical connection from the transformers at the generating equipment site to the sealing end compounds connecting to the existing Sundon to Grendon overhead line would be underground. The construction of the electrical connection would involve the use of high vehicles including cranes for erecting the temporary and permanent transmission towers, dismantling the existing tower and constructing the SECs. This would result in some adverse visual effects at nearby viewpoints and public footpath. Clearance of some woodland and coppicing of more would be required and one public footpath would need to be diverted temporarily.
- 5.6.9 During operation the views of the SEC would be limited to the local area. The upper part of the new tower would be visible in the context of the existing tall structures. Additional new woodland and scrub would be planted and the coppiced area would be allowed to regrow.
- 5.6.10 Overall the Proposed Development was assessed by the Applicant as having a significant effect during construction at seven of the viewpoints, three in the immediate vicinity and four more distant views to the south east of the site. There would continue to be significant effects on the three nearby viewpoints on completion but these would be mitigated at all but one of the viewpoints after 15 years when new planting had become established.
- 5.6.11 No significant effects were expected for any Landscape Character Area. Local effects were expected to be confined to loss of woodland trees and hedgerows during construction which would only be offset after new planting had matured.
- 5.6.12 The effect of night time lighting at the site would be limited with lighting designed to avoid upward light spillage. Most lighting would only be used when required, for example when unplanned maintenance is needed. Most views towards the site are from recreational areas which would not generally be used at night and would be seen in the context of other lighting from nearby settlements. In the Applicant's opinion, the scale of the lighting required and its infrequent use should not have any significant landscape effects.

### ***Cumulative effects***

- 5.6.13 Section 11.9 of the ES included an assessment of the cumulative effect of the Proposed Development together with the Covanta RRF. It acknowledged that there were some differences in the methodologies adopted and the scope of the assessments carried out for the two projects and that some developments, such as the nearby wind turbine, had been completed since the Covanta RRF assessment.
- 5.6.14 The cumulative effects of the two projects were considered for each of the viewpoints. Incremental effects - ie the additional effect

attributable to the Proposed Development - were considered to be negligible at all but one of the viewpoints. Where both developments would be visible, the Covanta RRF would appear as a large built form and the Proposed Development would generally sit below the height of the main mass of the Covanta RRF. Only at the viewpoint to the south of the site of the Proposed Development was the incremental effect considered to be significant.

- 5.6.15 The combined effects of the two projects were also considered. The combined visual effects on views were considered to be adverse and significant for all but two of the viewpoints. However the detailed assessment concluded that the greatest proportion of the combined visual effects was generated by the Covanta RRF. Cumulative landscape effects were not considered to be significant apart from the immediate effects on woodland trees and hedgerows which would be offset over the years by new planting.

### **Views of interested parties**

- 5.6.16 In their LIRs and SOCGs both BBC and CBC indicated that they had no objection to the Proposed Development on grounds of the effect on landscape and visual impacts [REP2-009, -024, -032, -039]. In its written representation CBC noted that generally the LVIA was of an acceptable standard [REP2-023]. It suggested that greater weight should be given to the view from the Marston Vale Millennium Country Park but accepted that it was not uncommon to have some variance of judgement regarding the findings of the LVIA.
- 5.6.17 The Forest of Marston Vale Trust set out its aim that the Proposed Development should contribute to the Trust's target of 30 per cent of woodland cover by 2031. Taking into account land already built on and open water this target required new developments to include planting on 39% of the gross development area or contribute to equivalent planting off-site. The Trust noted that the Applicant supported this target but could not specify the details of planting at this stage. This was confirmed by the Applicant [REP3-001]. A s106 agreement was signed by both parties under which the Applicant would provide new planting on site up to 39% of the area of land where there would be permanent above ground development. If that target could not be met then the Applicant would provide a financial contribution to off-site planting by the Trust.

### **Assessment and conclusions on landscape and visual impact**

- 5.6.18 I have considered the assessment of landscape and visual impact effects of the Proposed Development as set out in the ES. I have also had the benefit of the accompanied and unaccompanied site visits during which I visited nine of the eighteen viewpoints used in the assessment and was able to see nearby and distant views of the site. I am satisfied that taking into account the embedded and additional mitigation measures proposed, including new planting, the Proposed Development would not have a significant visual impact at eleven of

the eighteen viewpoints. But there would be significant visual effects at seven viewpoints which are set out in Table 11.13 of the ES [APP-033]. Four of these would only be affected during the construction phase but three would be affected on completion of construction and the impact would only partly be offset by new planting over a number of years.

- 5.6.19 There would also be significant effects on the landscape, as shown in Table 11.14 of the ES. Woodland trees and hedges and public rights of way would be affected during construction and woodland trees and hedges after completion. In the longer term there would be beneficial effects from new planting including a contribution to the development of the Forest of Marston Vale.
- 5.6.20 The combined cumulative landscape and visual impact with the Covanta RRF would be significant. I accept that most of this impact comes from the Covanta RRF but there would be an incremental contribution from the Proposed Development.
- 5.6.21 I conclude that there would be adverse landscape and visual impacts from the Proposed Development both taken on its own and in combination with the Covanta RRF and these would not be fully offset by the proposed mitigation measures.

## **5.7 TRAFFIC AND TRANSPORT**

### **Policy considerations**

- 5.7.1 EN-1 notes that the consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development and that, as far as possible, adequate mitigation measures should be proposed to reduce the impact on the transport infrastructure to acceptable levels.

### **The Applicant's case**

- 5.7.2 A Transport Assessment (TA) was carried out and is included as an appendix to the ES [APP-046]. This considered the effect of traffic flows during construction, operation and decommissioning. Traffic counts were carried out on the roads adjacent to the site to establish a baseline for the assessment. The significance of any increase in traffic was based on professional guidance taking into account both the sensitivity of particular receptors and the magnitude of the impact.
- 5.7.3 The road network in the vicinity of the Proposed Development is set out in Figures 12.1 and 12.2 of the ES [APP-049]. Access to the Generating Equipment site would be through an access road running south from Green Lane, a rural single carriageway road. Green Lane links with the C94 Bedford Road to the west and Stewartby Way and the B530 to the east. A level crossing on the Marston Vale rail line is located on Green Lane 70m west of the access road. The C94 connects to the new A421 dual carriageway at grade separated junctions the nearest of which are 3.2km north and 2km south of the access road.

There is a footway with street lighting on the northern verge of Green Lane between Stewartby to the east and Kimberley College - a Sixth Form College - to the west. There is also a lit footway on the eastern side of the C94 between the junction of Green Lane and Marston Moretaine.

5.7.4 Access to the site for the gas connection could be through the Rookery South pit (accessed from Green Lane) for the northern sections of the work and from Houghton Lane for the southern section of the work. The latter access point would involve traffic being routed from the A421, northwards on the A5141 and then south for 7km along the B530. Routings are shown in Figure 12.2 to the ES [APP-049]. Footways only exist on parts of this route. A number of footpaths cross the line of the gas connection.

5.7.5 Access for the electrical connection would be through the Rookery South pit for the northern section and for the southern section along the same route as for the southern section of the gas connection then extending from Houghton Lane along Station Road. There is no footway along Station Road.

#### ***Construction traffic***

5.7.6 The peak period of traffic during construction of the generating plant would occur over one or two days in the first quarter of the construction period. This would result from the delivery of ready-mixed concrete to form the main foundation for the plant. It is anticipated that this will require 125 loads to be delivered resulting in 250 traffic movements. This would result in an increase of around 15% to 20% in HGV movements on the C94 but a threefold increase in HGV movements along Green Lane which has a very low baseline of HGV traffic.

5.7.7 Although the level of traffic movements is below the threshold for concern set out in professional guidance it is considered in the ES that there could be a slight adverse impact on pedestrian amenity for students attending Kimberley Sixth Form College during this short time period. During the rest of the construction period the highest quarterly traffic flow would be a daily average of around 30 HGVs and around 100 other vehicles arriving at the site. These are below the levels at which there could be perceived adverse effects and the impact is considered to be negligible and neutral. Effects at specific locations were considered to be local, short term and with a low likelihood of occurrence.

5.7.8 Traffic flows associated with the construction of the gas and electrical connections would be much lower than those at the generation equipment site and were not considered as likely to have any impact.

#### ***Traffic during operation***

5.7.9 During operation of the Power Generation Plant there would be up to 4 members of staff on site at any one time with three shifts providing 24

hour cover. The Applicant stated that shifts would be timed to avoid peak hour travel. There would be occasional HGV deliveries. During annual maintenance there could be up to 40 additional staff and additional HGV deliveries. These levels of traffic during the operational period are well below the threshold at which the changes would be perceived to have an effect and are not considered to be significant.

- 5.7.10 The gas and electrical connections would both be unmanned after construction and would receive infrequent service and maintenance visits. Effects from traffic during operation of these sites were scoped out of the assessment.

### ***Cumulative impact***

- 5.7.11 The ES also considered the cumulative effects of the Proposed Development in conjunction with the Covanta RRF and the Broadmead Road residential development which is to the north of Green Lane. These projects are expected to generate significant levels of traffic and the addition of traffic from the Proposed Development was not expected to make a difference to the effects already expected from these two developments. The cumulative effect of the Proposed Development was not considered to be significant.

- 5.7.12 The Construction Traffic Management Plan (CTMP), secured through requirement 11 in the draft DCO, provides for a traffic management scheme for the Proposed Development [APP-012]. Timing of construction traffic movements would be arranged so that they did not coincide with the peak of deliveries for the Covanta RRF. The requirement for the CTMP was amended during the Examination to include proposals for traffic management controls (such as temporary signals) to ensure the safe operation of Green Lane level crossing [REP3-003].

### **Views of interested parties**

- 5.7.13 BBC in its LIR [REP2-032] had no objection to the Proposed Development on transport grounds. The levels of traffic generated could be accommodated on the road network and would not have a significant effect on the A421 but a routing plan should be agreed with BBC as a requirement in the DCO.
- 5.7.14 CBC in its LIR [REP2-024] stated that consideration should be paid to the cumulative impact on traffic, construction traffic movement, road safety, routing and footpath management with the Covanta RRF. It also drew attention to concerns about traffic and traffic noise that had been raised by Marston Moreteyne Parish Council.
- 5.7.15 Both BBC and CBC agreed in their SoCGs that the assessment of traffic and transport effects in the ES was adequate and that the mitigation measures proposed were appropriate [REP2-009 and REP2-039].

- 5.7.16 Marston Moreteyne Parish Council in its RR [RR-019] set out concerns about the need to safeguard the village from unnecessary and additional traffic and noise during the construction of the plant. It requested that significant consideration should be given to ensuring that the access route for construction traffic exits the A421 at Marsh Leys interchange and not Beancroft Road roundabout at Marston Moretaine. This would ensure that there is no disruption to local traffic and protect local residents from vibration and noise.
- 5.7.17 In response to the Parish Council's concerns the Applicant put forward an amendment to the requirement for a CTMP in the draft DCO to include specific reference to agreeing traffic routing in consultation with the highways authorities and the Parish Council prior to the commencement of the Proposed Development [REP3-003]. The Applicant noted that the traffic assessment in the ES had assumed an equal split of traffic between the two junctions on the A421. Given the relatively small number of construction traffic movements it did not anticipate that routing the majority of movements through the Marsh Leys junction would result in any likely significant effects. But given that that had not been specifically assessed in the ES, it took the view that it was not appropriate to fix the routing at this stage and that it was more appropriate for routing to be approved prior to construction in consultation with the Parish Council and others as proposed in the revised requirement.
- 5.7.18 Network Rail raised concerns about two aspects of the proposed development relating to traffic generated; the grant of powers to enable work on land adjoining the operational railway and the impact of the proposed development on the Green Lane level crossing [REP2-037]. These were narrowed down to the control of traffic using the access road and the installation of appropriate fencing and the impact of construction traffic on the level crossing at Green Lane. It held discussions with the Applicant with a view to agreeing changes to requirements in the draft DCO and the introduction of protective provisions for the benefit of Network Rail [REP4-005 and REP5-001].
- 5.7.19 The draft DCO submitted at Deadline 5 contained protective provisions for the benefit of Network Rail [REP5-010] which the Applicant stated in the revised EM were included to address concerns raised by Network Rail relating to the need to construct anti-dazzle fencing in the event that train operators report conflicts between the railway signals and the oncoming headlights of vehicles using the Access Road [REP5-013]. Network Rail responded setting out its concerns in more detail with suggested changes to the protective provisions and to the requirements relating to the CEMP and CTMP [REP6-004]. The principal concern was that matters relating to traffic and fencing adjacent to the railway and to traffic at the Green Lane level crossing should be subject to agreement by Network Rail before approval by the local planning authority. It also proposed a new requirement restricting the simultaneous construction of the Proposed Development and the Covanta RRF.

- 5.7.20 Further discussions took place between Network Rail and the Applicant and agreement was reached on revised requirements and protective provisions and Network Rail withdrew its earlier representation on the Proposed Development [REP7-010]. I consider the details of the agreed provisions in Chapter 8 on the draft DCO.

### **Assessment and conclusions on traffic and transport**

- 5.7.21 I have considered the assessment of traffic and transport resulting from the Proposed Development as set out in the ES. I am satisfied that taking into account requirement 11 in the draft DCO for a CTMP, the amendments to this requirement to address concerns about construction traffic at Marston Moretaine, on the access road and at the Green Lane level crossing and the associated protective provisions for Network Rail, there would be no significant adverse effects arising from traffic during construction and operation of the Proposed Development.
- 5.7.22 There would be a substantial level of traffic from the cumulative effect of the Proposed Development with the Covanta RRF and the Broadmead residential development but I am satisfied that the incremental contribution from the Proposed Development can be mitigated through the provisions of the CTMP and there would be no significant adverse cumulative effect.

## **5.8 HERITAGE AND HISTORIC ASSETS**

### **Policy considerations**

- 5.8.1 EN-1 identifies the construction, operation and decommissioning of energy infrastructure as having the potential to result in adverse impacts on the historic environment. This includes both designated and non-designated heritage assets. Consideration should be given to the significance of any heritage assets and whether the development would affect their setting. There should be a presumption in favour of the conservation of designated heritage assets. Loss affecting any designated assets should require clear and convincing justification. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development.

### **The Applicant's case**

- 5.8.2 In order to assess the impact of the Proposed Development on heritage and historic assets study areas were defined for different categories of assets:
- an inner study area with a radius of 1km from the boundary of the site of the Proposed Development for assessing direct physical effects on non-designated archaeological assets;
  - a wider study area with a radius of 5km for assessing indirect visual effects on Scheduled Monuments, Grade I and Grade II\* listed buildings, Conservation Areas and Registered Parks and Gardens; and

- a radius of 2km for assessing indirect visual effects on Grade II listed buildings.
- 5.8.3 Apart from crop marks identified in 1974 but not visible in later surveys, no features of archaeological or historic interest are recorded at the Power Generation Plant site in the Bedfordshire Historic Environment Record. The majority of the site lies within the Rookery South Pit and any features of archaeological interest would have been destroyed during clay extraction operations. The archaeological potential of the site was considered to be low.
- 5.8.4 Within the ZTV around the Power Generation Plant site there are:
- three scheduled monuments: Ampthill Castle, Houghton House and a long barrow near Bury Farm;
  - two Grade I and II\* listed buildings: The ruins of Houghton House, Houghton Park and Park House, Ampthill Park;
  - five Grade II listed buildings: South Pillinge Farm, Millbrook Station, Statue of a hound at Ampthill Park, 16 and 17 How End Road, two kilns and four chimneys at the Stewartby Brickworks;
  - two Conservation Areas: Stewartby and Ampthill; and
  - one Registered Park and Garden: Ampthill Park.
- 5.8.5 The archaeological potential of the gas and electrical connection sites outside the Rookery South Pit was also generally considered to be low apart from moderate potential for medieval and post-medieval agricultural remains at both sites and Iron Age and Romano-British remains of local significance at the site of the electrical connection. The locations within the ZTV listed above are also relevant to the gas and electrical connections.
- 5.8.6 The impact of the Proposed Development on the setting of historic and heritage assets would arise principally from visibility of the power plant stack and from tall structures such as cranes during construction and decommissioning. A detailed assessment was carried out for each of the locations identified above [APP-047]. For the majority of assets the Applicant considered that there would be a neutral effect but the stack would have a moderate adverse effect on the setting of South Pillinge Farm, Park House, Ampthill Park and Houghton House. It was recognised in the ES that setting contributed to the significance of the assets affected and that there would be some effect on setting from the Proposed Development. However it was argued that the Proposed Development would be at a distance from Houghton House and Ampthill Park House and only occupy a small section of the setting to the north west of both assets. When considered in the round, it was the Applicant's view that the change in setting would not materially reduce the significance of the assets.
- 5.8.7 The stack would be lower in height and similar in nature to existing structures in the vicinity - Marston Vale wind turbine, Stewartby chimneys and electricity pylons. The stack would be subservient in appearance to and in keeping with other existing structures.

- 5.8.8 The construction of the gas and electrical connections has the potential to disturb archaeological features with potential loss of significance. This was assessed as a slight adverse effect.

### ***Cumulative impact***

- 5.8.9 The ES for the Covanta RRF considered the impact of that project on designated assets in the vicinity. This concluded that there would either be no or a negligible impact at these locations, apart from Amphill Park House where the impact would be low. The cumulative effects of the Proposed Development together with the Covanta RRF were assessed and were predicted to have only slight adverse effects which were not significant.
- 5.8.10 The potential direct and indirect impacts on heritage assets were considered as part of the iterative design and assessment process and mitigation was inherent in the design proposals. No further mitigation measures were proposed for the Power Generation Plant. A programme of archaeological mitigation would be undertaken at the gas and electrical connection sites and this would be secured through a requirement in the draft DCO.

### **Views of interested parties**

- 5.8.11 In its RR Historic England summarised its concerns about the impacts which the Proposed Development would have on the setting and significance of the highly designated heritage assets, Houghton House, Amphill Castle and Amphill Park House [RR-018]. Historic England considered that the development would result in some harm to the significance of these heritage assets. It had concerns about the cumulative impact of the project when seen in conjunction with other previously consented schemes at the location. There was also need for a programme of archaeological works in relation to non-designated heritage assets within the development boundary.
- 5.8.12 A SoCG between the Applicant and Historic England set out the concerns that Historic England had raised at an earlier stage of the development of the ES, the Applicant's response to these concerns and Historic England's subsequent view [REP3-009]. An updated suite of photomontages and additional photographs had been provided to Historic England by the Applicant. The assessment of effects on heritage assets had been refined to ensure that assessments were based on specific factors and attributes of each asset and not just on their grading. Historic England agreed with the conclusions that the Applicant had drawn in the ES on the basis of this additional material. There would be some harm to the setting of the Houghton House, Amphill Castle and Amphill Park House but this would be less than substantial.
- 5.8.13 The Applicant and Historic England were in discussion about the details of wording the draft DCO. These discussions had not been completed by the time that I closed the Examination but the Applicant stated

(REP4-002) that it had received verbal confirmation from Historic England that it did not anticipate having any issues with the draft DCO but had yet to review the document in detail. Historic England had the opportunity to make further submissions during the Examination and I am not aware of any unresolved issues.

- 5.8.14 In its LIR CBC noted that representations had been made concerning the impact of the Proposed Development on designated heritage assets, such as listed buildings and parks [REP2-024]. In CBC's view, the gas and electricity connections were likely to impact archaeological remains outside Rookery South pit and mitigation was included in requirement 9 in the final draft DCO [REP7-002]. In its SoCG with the Applicant [REP2-039] CBC agreed that the assessment of effects on the historic environment in the ES was appropriate. The embedded and other mitigation measures, including the draft CEMP, were considered appropriate and adequate to address potential historic environment effects.
- 5.8.15 In its LIR BBC commented that it had no objection to the Proposed Development on heritage grounds but drew attention to the four remaining stacks of the former brickworks at Stewartby [REP2-032]. These were iconic structures with grade II listed status. In the SoCG between the Applicant and BBC agreement was not reached on the contribution of the setting of the chimneys to their significance as structures of architectural and historic significance [REP2-009]. However both parties agreed that there would be no harm from the Proposed Development on the setting and significance of those structures. The parties agreed that the assessment of effects on the historic environment in the ES were appropriate and that the mitigation measures proposed were adequate.

### **Assessment and conclusions on heritage and historic assets**

- 5.8.16 I have considered the assessment of effects on heritage and historic assets resulting from the Proposed Development as set out in the ES taking into account the guidance in EN-1. The construction works and the stack will be visible from a number of scheduled monuments, listed buildings and other designated assets. I have had the benefit of the accompanied and unaccompanied site visits during which I visited nine of the eighteen viewpoints used in the assessment and was able to see nearby and distant views of the site.
- 5.8.17 There is the potential for the loss of some archaeological remains from the construction of the gas and electrical connections. This is adequately addressed through requirement 9 in the draft DCO for a written scheme of investigation.
- 5.8.18 I am satisfied on the basis of the information provided in the ES and from my site visits to a number of locations that the Proposed Development will not have a substantial effect on the setting of these assets whether taken on its own or cumulatively with other developments. But there would be some adverse effects, classified as

less than substantial, on the setting of the scheduled monuments and listed buildings at Houghton House, Ampthill Castle and Ampthill Park House.

## **5.9 SOCIO-ECONOMIC IMPACT**

### **Policy considerations**

- 5.9.1 EN-1 notes that the assessment of the Proposed Development should consider all relevant socio-economic impacts including the creation of jobs and training opportunities, provision of additional local services and local infrastructure, effects on tourism, influx of workers and cumulative effects with other projects in the vicinity. Mitigation measures to address adverse effects should be considered.

### **The Applicant's case**

- 5.9.2 The potential for the Proposed Development to have socio-economic effects from increased investment in the local economy, increased demand for labour and increased pressure on the area's community infrastructure is considered in section 14 of the ES [APP-033]. A 60 minute drive time catchment area was taken as the principal area for labour market effects. More local study areas were also considered. The ES also considered the potential effect on tourism and recreational assets within a 10km radius of the site. Baseline levels of population demographics, employment and tourism activity were established.
- 5.9.3 Construction of the Proposed Development would last 22 months and the numbers of workers on site per month would vary from a low of 22 to a peak of 122. Over the whole of the construction period the work would amount to 92 temporary construction job years. The gross value added (GVA) associated with the construction work, based on the area average for this type of work, would be £6.4m. This is considered to be a minor beneficial effect on construction employment in the area and would not put any pressure on the local labour market or on demand for accommodation. Overall the effects on employment and GVA were not considered to be significant.
- 5.9.4 During the operational phase 10 full time equivalent jobs would be created providing a minor benefit and would not result in any pressure on the local labour market.
- 5.9.5 The effects of the construction and operation of the Proposed Development on tourism were assessed both for the main visitor attractions in the area and for cycle and promoted paths. Any adverse impact was considered to be minor or negligible except for the impact on the paths at the Forest Centre and Millennium Country Park where the adverse impact was assessed as moderate.
- 5.9.6 The cumulative effect of the Proposed Development was assessed taking into account other known potential developments. These included the Covanta RRF and 24 other projects, mostly for residential development. Construction for these other projects would require

6,734 person years of construction work to which the Proposed Development would add 92 person years. Some of the projects included may not be developed and it is unlikely that all of the projects would take place at the same time. The total requirement for all of the projects would account for less than 15% of total construction labour in the area and was not considered to have a cumulative impact on the wider labour market.

- 5.9.7 The separate assessments of effects on air quality, noise, LVIA and traffic all concluded that there would be no significant cumulative effects during construction and operation. As a result it was assumed that the cumulative effects on tourism, recreation and community infrastructure would also not be significant

### **Views of interested parties**

- 5.9.8 In its LIR CBC commented that there may be some positive impact on the local area in respect to the creation of jobs during construction and operation [REP2-024]. These positive impacts needed to be considered against any negative impacts on attracting new development to the area, on house prices and the ability to sell property and on the ongoing regeneration of the area from its industrial past to a greener cleaner future.
- 5.9.9 In its SoCG with the Applicant CBC agreed that assessments of socio-economic effects were appropriate and that the embedded and addition mitigation measures proposed, including the outline CEMP, were appropriate subject to provision being made in the s106 agreement for a local employment scheme at the construction stage [REP2-039].
- 5.9.10 In its LIR BBC indicated that no objection was raised by the Council to the development on socio-economic and community grounds [REP2-032]. It acknowledged that there would be jobs created during construction and operation. But due to the specialised nature of the construction work these may go to a temporary workforce from elsewhere rather than local residents. Fewer than 15 permanent jobs would be created and not all would be taken up by those already living locally. In its SoCG with the Applicant [REP2-009] BBC agreed that the assessments of socio-economic effects were appropriate and that the embedded and addition mitigation measures proposed were adequate.

### **Assessment and conclusions on socio-economic impact**

- 5.9.11 I have considered the assessment of the socio-economic effects of the project set out in the ES and the analysis of the likely impact on tourism and local facilities. There will be a small economic benefit to the area in terms of additional GVA and the additional employment can be met without putting a significant demand on the local labour market or on local accommodation. I note CBCs request for the provision of a local employment plan in a S106 agreement in order to

secure as much employment benefit as possible for the local community. There would be some minor adverse impact on local tourist facilities but I accept the Applicant's assessment that these are not significant and that additional mitigation beyond the provision of the local employment plan is not necessary.

- 5.9.12 Taking into account the small negative effects on tourism and the small positive effects on GVA and local employment, supported by the local employment plan, I conclude that the Proposed Development should, overall, have a neutral effect in socio-economic terms.

## **5.10 PUBLIC HEALTH AND AMENITY**

### **Policy considerations**

- 5.10.1 EN-1 notes that energy production has the potential to impact on the health and well-being of the population. The direct impacts on health may include increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation, and increases in pests. EN-1 also notes that generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which will constitute effective mitigation of them. EN-5 contains guidance on the assessment of the effects of EMFs with reference to the guidelines on exposure of people to EMFs published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP) which had been adopted in the UK.

### **The Applicant's case**

- 5.10.2 In addition to the potential environmental impacts considered above, section 15 of the ES [APP-033] also included an assessment of waste generated by the Proposed Development and the effects on human health, including the effect of electro-magnetic fields (EMF).
- 5.10.3 Only small amounts of waste would be generated during construction and management of this will conform with the waste hierarchy designed to minimise waste. Waste prevention and management would be secured through provisions in the CEMP. Only small amounts of waste would be generated during operations. Any hazardous wastes which required removal off-site would be handled by a licensed contractor. The ES concluded that the Proposed Development would not result in any likely significant environmental effects with respect to waste.
- 5.10.4 Significant effects on human health could potentially arise from exposure to excessive levels of noise, pollutants released during construction or operation and effects relating to EMFs.
- 5.10.5 An EMF report had been prepared for the Proposed Development [APP-048]. The proposed substation would be surrounded by an earthed metal fence and the electric field outside this fence would comply with the ICNIRP guidelines. Electric fields associated with the underground

cables would be contained by the sheath of the cable itself and the public would not be exposed to electric fields from these cables. There would be some magnetic fields from cables at the SEC but this short length of cable was not considered to give rise to public health issues.

- 5.10.6 Effects on air quality and noise and vibration from the Proposed Development have been considered above and are not expected to result in emissions at levels which would have effects on human health. Provisions in the CEMP would ensure that pollution and contamination from disturbance of existing contamination or from spillages are managed to ensure that there are no significant impacts on human health.
- 5.10.7 The ES considered the possibility of effects on residential amenity resulting from changes in views, noise and changes in air quality. There is no published guidance for assessing changes in views but the assessment was confined to properties within 0.75km of the Proposed Development in line with practice adopted in a number of public inquiries. Only one property - South Pilling Farm, was this close to the site. Taking into account intervening distance, screening by existing vegetation and orientation of views from the properties it was concluded that the potential impact on living conditions from views of the Proposed Development would be acceptable without mitigation planting. Proposed planting would have a noticeable additional screening effect after five years and achieve its full effect after 15 years.
- 5.10.8 Noise levels at the nearest residential receptor would be below the significant observed effect level and were considered unlikely to cause annoyance. Loss of amenity resulting from the effects on air quality during construction would be low given the embedded mitigation and the distance of receptors from the site. During operation emissions would be imperceptible.

#### **Views of interested parties**

- 5.10.9 Concerns about public health and loss of amenity were raised by a number of local residents [RR-001, -003, -004, -005, -016] Similar concerns were also raised in the submission from Marston Moreteyne Parish Council [RR-019]. CBC noted the concerns of local residents about impacts on public health in its LIR, linking this to the past history of emissions from the brickworks. CBC suggested that the consideration of these issues in the ES had done little to ameliorate the concerns of local residents in respect of potential health impacts of the Proposed Development. Public Health England indicated that it had no comments to make on the project [AS-002].

#### **Assessment and conclusions**

- 5.10.10 I recognise the concerns that have been expressed locally about possible impacts on health and amenity but I am satisfied that these issues have been fully explored in the ES. The provisions of the CEMP,

the limits on noise which are secured through requirements 12, 13 and 14 in the final draft DCO, and the limits on emissions which will be set in the EP are adequate to ensure that there would not be any significant adverse effects on health and amenity from the Proposed Development.

## **5.11 SECTION 106 AGREEMENT**

5.11.1 At Deadline 5 the Applicant submitted a draft s106 agreement between itself, CBC, BBC, O&H and the Forest of Marston Vale Trust [REP5-018]. A final version of this agreement in the form of a deed of development consent obligations signed by all the parties was submitted before the close of the Examination [AS-010].

5.11.2 The s106 agreement provides for:

- An Education Scheme with a programme of visits to local schools to explain the Proposed Development and how this fitted within the provision of energy policy in the United Kingdom.
- A Local Employment Scheme to be approved by CBC and BBC setting out details and mechanisms for securing the use of local labour, contractors, goods and services during the construction and operation of the Proposed Development. This Scheme would not apply to the main contracts for the design, engineering, procurement and construction of the Proposed Development, long term maintenance contracts or the works undertaken by NGET and National Grid Gas plc (NGG).
- Assessment of whether tree planting as provided for in the LEMMS meets the Forest of Marston Vale objective that tree planting within the site of the Proposed Development equates to tree coverage over a land area equivalent to 39% of the built area. If that objective is not met then a residual payment would be paid to the Forest of Marston Vale Trust for use for tree planting and woodland creation elsewhere.

5.11.3 I am satisfied that these provisions, which relate to activities outside the Order limits, provide additional mitigation for the effects of the proposed development, that they are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale and kind to the Proposed Development.

## **5.12 THE PLANNING BALANCE**

5.12.1 In Chapters 3 and 4 I considered the principal issues to be taken into account in assessing the application for the proposed development. I reviewed the need for the development, the consideration of alternatives and the development of the design. I concluded that the proposed development as outlined in the application would contribute to meeting the need for electricity generation identified in EN-1 and EN-2 and that adequate consideration has been given to design and to

alternatives to the development as required by EN-1. There is a case in principle in favour of granting a DCO for the proposed development.

- 5.12.2 In this Chapter I have considered the details of the proposed development and its possible impact on a wide range of considerations. I have taken into account the mitigation measures proposed in the original application and the additional measures that have been agreed during the course of the Examination.
- 5.12.3 I have concluded that, after taking into account the agreed mitigation measures, there should be no significant adverse effects which would weigh against granting the DCO from the following aspects of the proposed development:
- air quality (paragraphs 5.2.20 - 5.2.22);
  - water quality, resources, ground conditions and flood risk (paragraphs 5.4.22 - 5.4.24)
  - ecology (paragraphs 5.5.16 - 5.5.17);
  - traffic and transport (paragraph 5.7.21 - 5.7.22);
  - socio-economic characteristics (paragraphs 5.9.11 - 5.9.12);
  - public health and amenity (paragraph 5.10.10).
- 5.12.4 I have concluded that there would be adverse effects:
- from noise in the immediate vicinity during the construction period (paragraphs 5.3.16 - 5.3.17);
  - on landscape and visual impact both from the Proposed Development on its own and from the cumulative impact with the Covanta RRF at a number of viewpoints which would only be offset by new planting over a number of years (paragraphs 5.6.18 - 5.6.21).
  - on the setting of historic assets at Houghton House, Amptill Park and Amptill Park House both from the Proposed Development on its own and from the cumulative impact with the Covanta RRF. This effect is categorised as 'less than substantial' (paragraphs 5.8.16 - 5.8.18).
- 5.12.5 The assessment principles in EN-1 "start with a presumption in favour of granting consent for energy NSIPs ... unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused." Drawing on this guidance on the assessment of individual aspects of the development I consider that a high weighting should be given to the established need for the development of electricity generation facilities.
- 5.12.6 The Proposed Development delivers substantial positive benefits by meeting the national need for additional electricity generation capacity identified in EN-1. It will have adverse effects on noise during construction, landscape and visual impacts and on the setting of historic assets. These cannot be fully addressed by the proposed mitigation measures. But I do not consider that these localised

adverse effects outweigh the benefits of new fossil fuel generation identified in EN-1.

- 5.12.7 I conclude that the case for development consent has been made and that, taking into account the provisions of the signed s106 agreement relating to measures to be taken off-site, development consent should be given with the inclusion of the mitigation measures in the draft DCO which are considered in Chapter 8.

## **6 FINDINGS AND CONCLUSIONS IN RELATION TO THE HABITATS REGULATIONS**

### **6.1 POLICY AND LEGISLATIVE BACKGROUND**

- 6.1.1 This chapter of the report sets out the analysis, findings and conclusions relevant to assessment under the Habitats Regulations and will assist the Secretary of State as the competent authority in performing his duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as amended) (the Habitats Directive), as transposed in the UK through The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
- 6.1.2 As noted in paragraph 3.1.22 of this report, the Applicant's assessment concluded that the Proposed Development would not have a likely significant effect on any European sites or their features, either alone or in combination with any other plans or projects.<sup>6</sup>
- 6.1.3 I have been mindful throughout the Examination of the need to ensure that the Secretary of State has such information as may reasonably be required to carry out his duties as the competent authority. I have reviewed the evidence presented during the Examination concerning likely effects on European sites potentially affected by the Proposed Development both alone and in-combination with other plans or projects.
- 6.1.4 Consent for the Proposed Development may only be granted if, having assessed the potential effects on European sites, the competent authority considers it has met the relevant tests set out in the Habitats Regulations.
- 6.1.5 The Secretary of State for Business, Energy and Industrial Strategy is the competent authority for the purposes of the Habitats Directive and the Habitats Regulations for energy applications submitted under PA 2008.
- 6.1.6 Regulation 63 of the Habitats Regulations 2017 states that if a Proposed Development is likely to have a significant effect on a European site (either alone or in-combination with other plans and projects) and is not directly connected with or necessary to the management of the European site; then the competent authority must undertake an appropriate assessment of the implications for that site in view of its conservation objectives. Consent for the Proposed

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<sup>6</sup> European sites include Special Areas of Conservation (SACs), candidate SACs (cSACs) and Special Protection Areas (SPAs), which are protected under the Habitats Regulations. As a matter of policy, Government also applies the procedures of the Habitats Regulations to potential SPAs (pSPAs), Ramsar sites, and (in England) listed or proposed Ramsar sites and possible Special Areas of Conservation, and sites identified, or required, as compensatory measures for adverse effects on any of the above sites.

Development can only be granted if, having assessed the effects the project would have on European sites, the competent authority's appropriate assessment concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).

## **6.2 THE APPLICANT'S ASSESSMENT**

- 6.2.1 In accordance with Regulation 5(2)(g) of the APFP Regulations, the Applicant provided a Habitats Regulations screening assessment as part of the DCO application in its No Significant Effects Report (NSER) [APP-032].
- 6.2.2 A search area of 10km around the site of the Proposed Development was adopted to identify any European sites. This was extended for any sites which were hydrologically linked, eg via a watercourse. This study area was agreed with NE. It was considered that beyond 10km any potential effects would be so minimal as to have an imperceptible effect on European sites beyond this distance.
- 6.2.3 No European sites were identified within the 10km search area. The nearest European site is the Chiltern Beechwoods SAC, approximately 27km to the south west. The nearest SPA/Ramsar site is the Upper Nene Valley Gravel Pits SPA/Ramsar Site which is 28km to the north west. These locations are shown in Figure 1 in the NSER.
- 6.2.4 The NSER set out the results of its screening assessment as required under the Habitats Regulations in order to identify likely effects on any European sites. This is presented in tabular form. Matrices in the form set out in Planning Inspectorate Advice Note 10 were also submitted as part of the NSER. The NSER concluded that the Proposed Development would not result in any likely significant effects on the Chiltern Beechwoods SAC, the Upper Nene Valley Gravel Pits SPA or the Upper Nene Valley Gravel Pits Ramsar site. On the basis of this finding it concluded that no further assessment in the form of an appropriate assessment was necessary.
- 6.2.5 NE was consulted by the Applicant and agreed with the finding that there would be no likely significant effects on any European sites from the Proposed Development either alone or in combination with other plans or projects. Correspondence with NE is included in Appendix B of the NSER. NE's agreement was also confirmed in its SoCG with the Applicant [REP2-040].
- 6.2.6 The European Court of Justice judgement in the case of People over Wind and Sweetman v Coilte Teoranta (C-323/17) held that it is impermissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site (ie mitigation measures) at the screening stage. At the ISH on Environmental Issues I asked the Applicant to consider whether this judgment affected its conclusion that it was not necessary to carry out an appropriate assessment. In particular I drew attention to the

inclusion in the screening matrix in the NSER of measures to ensure that no contamination is allowed to enter waterbodies in the vicinity of the Proposed Development which would be secured through the CEMP.

- 6.2.7 In response the Applicant responded that the NSER does not rely on the implementation of any mitigation measures to conclude no likely significant effects on European sites. Although Table 4 of the NSER references mitigation measures, (eg the implementation of a CEMP for the Proposed Development), at no point is implementation of the CEMP relied upon, or necessary, to ensure that there are no likely significant effects. Table 4 of the NSER sets out *"There are no excavation requirements within the Chilterns Beechwoods SAC, or the Upper Nene Valley Gravel Pits SPA and Ramsar Sites. All excavation works that are required are confined within the Project Site. There are therefore no conceivable effect pathways due to excavations as a result of the Project"*.
- 6.2.8 Additionally, given the distance from the Project site, no disturbance to key species as a result of noise and vibration are anticipated, even in the absence of any mitigation. Table 4 in the NSER further goes on to conclude that *"No effects have been identified on the Chilterns Beechwoods SAC, or the Upper Nene Valley Gravel Pits SPA and Ramsar Sites as a result of the Project, so there is no requirement for specific avoidance or mitigation measures"*.

### **6.3 CONCLUSIONS**

- 6.3.1 Taking into account findings set out above, including the views of NE as the statutory nature conservation body, I am satisfied that there is sufficient evidence that no likely significant effects have been identified and that no mitigation measures are required to allow the Secretary of State to conclude that the Proposed Development is unlikely to have significant effects on any European site or their features, either alone or in combination with other plans and projects. This assessment takes into account the judgement from the European Court of Justice in the case of People over Wind and Sweetman v Coilte Teoranta.
- 6.3.2 I am satisfied that such information has been provided as is reasonably required for the Secretary of State to determine that an appropriate assessment is not required and that there are no HRA matters which would prevent the Secretary of State from making the DCO.

## **7 COMPULSORY ACQUISITION AND RELATED MATTERS**

### **7.1 THE REQUEST FOR COMPULSORY ACQUISITION POWERS**

- 7.1.1 The application includes provision for CA of freehold interest and private rights. It also contains provisions for temporary possession of land. A Statement of Reasons (SoR) [APP-014], Funding Statement [APP-015], Book of Reference (BoR) [APP-016] and Land Plans [APP-009] were provided with the application. A first revision to the BoR was submitted prior to the start of the Examination with a schedule of changes [AS-005 and AS-006]. This provided clarification on the list of affected persons.
- 7.1.2 As has been described at paragraphs 2.4.1 to 2.4.8, the application was amended at Deadline 5 to reflect the completion by Covanta of the access road for the Covanta RRF. Revised SoR [REP5-014 and REP5-015] and BoR [REP5-016 and REP5-017] were submitted in tracked change and clean versions. Revised Land Plans [REP5-007] were provided which show a reduction in the extent of the land identified as 4\_PGP and 5\_PGP providing access to the generating equipment site compared to the Land Plans submitted with the original application.
- 7.1.3 As set out in paragraph 2.4.8, I consulted on these changes and accepted these amendments as a non-material change to the application. My consideration of CA is based on the application as amended at Deadline 5.

### **7.2 THE PURPOSES FOR WHICH THE LAND IS REQUIRED**

- 7.2.1 The nature and scope of the proposed development has been described in Chapter 2 of this Report. The Order limits for the project are shown by the red line boundary on the key plan of the revised Land Plans. The Order land, (which includes all of the land within the Order limits apart from a section of the highway at Green Lane at the north of the site of the Proposed Development), covers an area of approximately 48ha divided into the sites for the power generation plant (PGP on the Land Plans), the electrical connection (EC) and the gas connection (GC).
- 7.2.2 CA powers are sought in respect of the freehold of land shown in pink on the Land Plans and in respect of acquisition of rights over land shown in blue on the Land Plans. In both cases it is proposed to extinguish easements, servitudes and other private rights. CA powers are provided through articles 19 to 26 in the draft DCO. Temporary use of land is also sought for the land shown in yellow on the Land Plans. This does not constitute CA and is authorised through articles 28 and 29 in the draft DCO. Where the Applicant is seeking CA of land or rights over land, it is also seeking temporary use of that land. The reason for seeking temporary use powers over this land is that it allows the Applicant to enter onto land for particular purposes,

including site preparation works, in advance of any vesting of the relevant land or rights.

- 7.2.3 CA of the freehold of land, shown pink on the Land Plans, is sought for the location of the generating equipment and associated equipment (1\_PGP), the SECs (6\_ and 9\_EC) and the AGI (12\_GC). The exact position of the SECs is not yet known and final design, layout and micro-siting will be carried out by NGET following any grant of consent for the Proposed Development. Plots 6\_ and 9\_EC include a degree of flexibility to accommodate the design of the SECs and allow for mitigation measures, including landscaping and planting. The amount of land to be subject to CA is, in the Applicant's opinion, the minimum necessary to construct, use and maintain the SECs. The Applicant also seeks new rights and restrictions over the remainder of these plots to facilitate the EC and the provision and maintenance of the proposed landscaping and planting.
- 7.2.4 CA of rights over land is sought for the land shown in blue on the Land Plans. These rights are required in order to provide access to the different parts of the Proposed Development, for the installation of cables and pipelines, landscaping and planting and ongoing maintenance.
- 7.2.5 The Applicant is also seeking power to impose restrictive covenants on the land subject to CA. The restrictions are required to protect the apparatus from becoming exposed, damaged or built over; to prevent operations which may obstruct, interrupt or interfere with the apparatus and the exercise of new rights; ensure that access for future maintenance can be facilitated; in the interests of safety; and to ensure that land requirements are minimised as far as possible. Use of land above the pipes and cables would be sterilised if this land had to be acquired.
- 7.2.6 Article 30 provides for the compulsory acquisition of land, extinguishment or suspension of existing rights or restrictions and creation of new rights and restrictions over land belonging to statutory undertakers within the Order land, subject to protective provisions in Schedule 10.
- 7.2.7 NGET, NGG, Eastern Power Networks plc (EPN), Anglian Water Services Limited (Anglian Water) and CLH Pipeline System Ltd (CLH) are statutory undertakers with rights to keep or access apparatus within the Order limits.<sup>7</sup> Protective provisions were agreed by EPN in advance of submission of the application [APP-013]. Representations were made by National Grid on behalf of NGET and NGG and by Anglian Water. Protective provisions were agreed with National Grid

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<sup>7</sup> CLH Pipeline System (CLH), formerly the Government Pipelines and Storage System (GPSS), provides services to several military facilities and some of the main airports in the United Kingdom. It is owned by Compañía Logística de Hidrocarburos.

and Anglian Water. These are set out in schedule 10 of the draft DCO and representations were withdrawn [REP2-020 and REP2-042].

- 7.2.8 An asset protection agreement between the Applicant and CLH was agreed and protective provisions for the benefit of CLH were not required [REP7-003 and REP7-004].
- 7.2.9 Protective provisions are also included in Schedule 10 for the benefit of Covanta and Network rail. These do not relate to requirements for CA or temporary possession and are considered separately in Chapter 8.
- 7.2.10 There are no Crown interests in the Order land and no Special Category land.
- 7.2.11 The Applicant is relying on articles 8, 9, 10, 11, 12, 14 and 27 of the draft DCO in order to enter onto streets and to lay and maintain apparatus in them, to construct means of access and to create temporary prohibitions and restrictions on the use of streets to carry out works. This principally applies to the access from Green Lane where a section of the road is included in the Order limits but does not form part of the Order land.

### **7.3 THE REQUIREMENTS OF THE PLANNING ACT 2008**

- 7.3.1 Sections 122 and 123 of PA 2008 allow for the inclusion in the DCO of a provision authorising CA if the Secretary of State is satisfied that certain conditions are met. Section 122 (2) states that the land must be:
- required for the development to which the development consent relates; and
  - required to facilitate or be incidental to it; or
  - be exchange land.
- 7.3.2 Guidance (the Guidance) states that the land to be taken must be no more than is reasonably required and that what is proposed is proportionate.<sup>8</sup>
- 7.3.3 Section 122(3) requires that there must be a compelling case in the public interest for compulsory acquisition. The Guidance states that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is acquired.
- 7.3.4 Section 123 requires that one of three conditions is met by the proposal. I am satisfied that the condition in s.123(2) is met because

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<sup>8</sup> Planning Act 2008. Guidance related to procedures for the compulsory acquisition of land. DCLG September 2013

the application for the draft 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 that 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 EXAMINATION OF THE CASE FOR COMPULSORY ACQUISITION AND OTHER POWERS**

### **The Applicant's case**

7.4.1 The Applicant's justification for seeking CA and other powers as set out in the SoR is that these are necessary in order to construct, operate and maintain the Proposed Development which is an NSIP for which there is a pressing national need. As noted at paragraphs 4.3.3 to 4.3.9, a range of alternative locations and site configurations have been considered.

7.4.2 The Applicant has contracts in place to acquire a substantial part of the land required for the Proposed Development from O&H. This covers the land labelled PGP on the Land Plans and part of the land labelled EC and GC. Negotiations for the purchase of other land, the acquisition of and/or the creation of easement rights and any other rights (including restrictive covenants) continued during the Examination.

7.4.3 Agreement was reached with Mr John Moran, in respect of temporary access over plots 1\_EC and 2\_EC [REP7-004]. The Applicant reported that all matters had been agreed in relation to a voluntary agreement with Mr and Mrs Parrish in respect of land required for the AGI and rights for the gas pipeline and that it was expected that this agreement would be executed prior to closure of the Examination [REP7-004]. Execution of the agreement was not reported before closure of the Examination.

7.4.4 Where the Applicant had an option agreement for the land or had to reached agreement with other landowners through private treaty it was nonetheless including this land within its proposals for CA and TP in order to ensure that land assembly and title to the land required for the Proposed Development could be secured with certainty and that any third party interests were acquired, overridden or extinguished thereby ensuring that the Proposed Development could be constructed, operated and maintained in accordance with powers sought under the draft DCO.

- 7.4.5 In seeking to include in article 22 a power to impose restrictive covenants over part of the land which is subject to CA the Applicant had had regard to Planning Inspectorate guidance in Advice Note 15 on the inclusion of restrictive covenants in draft DCOs.<sup>9</sup> This states that before deciding whether or not such a power is justified the Secretary of State will need to consider issues such as proportionality; the risk that use of land above or below a structure could be sterilised if it has to be acquired outright in the absence of a power to impose restrictive covenants; or whether there is for example a policy of establishing a continuous protection zone for the infrastructure network which could be secured more efficiently with the benefit of this power. The guidance advises that in order to enable the Secretary of State to consider whether the imposition of restrictive covenants is necessary for the purposes of implementing an NSIP and appropriate in human rights terms, applicants should be prepared to fully explain and justify the need for including such powers.
- 7.4.6 The Applicant considers the imposition of such a power to be justified and proportionate in the circumstances of this case, in order to protect and preserve the integrity of the EC and GC. These restrictions are required to protect the apparatus from becoming exposed, damaged or built over; preventing operations which may obstruct, interrupt or interfere with apparatus and the exercise of new rights required; ensure that access for future maintenance can be facilitated; in the interests of safety of persons using or present on the subject land; and to ensure that land requirements are minimised so far as possible. Use of the land would be sterilised if the land above the pipes or cables had to be acquired. The Applicant submitted that, in the absence of such a power, the imposition of the restriction was justifiable to protect the Proposed Development and its operation. The Applicant noted that similar powers had been granted in the context of NSIP gas fired power stations including the Meaford Gas Fired Generating Station Order 2016 (article 18) and the Wrexham Gas Fired Generating Station Order 2017 (article 18).
- 7.4.7 It was the Applicant's view that there was a compelling case in the public interest for the inclusion of CA powers as set out in the draft DCO to enable the Proposed Development to be constructed, operated and maintained.

#### **Availability and Adequacy of Funds**

- 7.4.8 A Funding Statement was included with the application [APP-015]. This set out details of the resources of Drax which would be available to fund the project including funding for CA. In my first written questions I asked the Applicant to consider including a provision to guarantee payments as had been done in other recent DCOs [PD-

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<sup>9</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2014/10/advice\\_note\\_15\\_version\\_1.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2014/10/advice_note_15_version_1.pdf)

006]. In response the Applicant included an additional article (article 43) in the revision to the draft DCO submitted at Deadline 2 [REP2-010 and REP2-015]. This article was based on the equivalent provision in the Wrexham Gas Fired Generating Station Order 2017. It requires a guarantee or alternative form of security approved by the Secretary of State to be put in place before exercising specified CA, temporary possession and other powers.

### **Objections to compulsory acquisition**

- 7.4.9 There was one objection to the provisions for CA and temporary possession. This was from Mr John Moran the owner of land surrounding the existing electricity pylon (plots 1\_EC and 2\_EC) [REP2-026]. A CA hearing was held on 3 May 2018. Mr Moran did not attend or make further representations setting out his case. The Applicant noted that it was only seeking temporary possession of these plots and, as reported in paragraph 7.4.3, it had reached agreement with Mr Moran.
- 7.4.10 Covanta was represented at the CA hearing and noted that it had an interest in some of the plots over which CA powers were being sought through a separate Option Agreement with O&H but did not wish to make any representations at the hearing [EV-010]. There was no overlap over the land to be acquired freehold; however, there are rights being granted by O&H which are common to the two schemes, for example the right of access from Green Lane.
- 7.4.11 In my first written questions [PD-006] I asked the Applicant to explain why it was seeking CA of rights over the whole of the area marked as 4\_PGP on the Land Plans. The notes on the plan state that a right of access of no more than 15m in width is required but the whole area had been included as a limit of deviation. I also asked the Applicant to set out its reasoning that the requirement for these rights meets the conditions in s122 of PA 2008, in particular that there is a compelling case in the public interest.
- 7.4.12 The Applicant responded that it would need to connect to the end of the access road used for the Covanta RRF, and in light of the fact that the precise location of such road is not specified in the Rookery South Order, there was a need to maintain flexibility until such time as the location of the access road for the Covanta RRF was constructed and completed with no ability for the road to be moved [REP2-016]. Whilst Covanta had submitted drawings to CBC in order to discharge its requirements, the possibility remained that these drawings could be amended prior to construction of the access road. There would be no certainty as to the location of the access road until it was actually constructed.
- 7.4.13 Subsequently, as noted in section 2.4, Covanta completed the access road and revised Land Plans were submitted with a reduction in the size of plots 4\_PGP and 5\_PGP. However the revised plot 4\_PGP still appeared to cover a wider area than was required to construct the

short access road to the PGP and I asked the Applicant to explain why it needed CA powers over the whole of this plot [PD-009].

- 7.4.14 In its response the Applicant stated that, as indicated on the revised Land Plans, it was seeking right of access of no more than 15m width and the right to construct a permanent access road of no more than 10m in width [REP6-005]. This would connect to the access road to Green lane which had been constructed by Covanta. As the limits of deviation relating to work numbers 1 and 2 of the Rookery South Order (the generating station and the materials recovery facility) allow those works, which are not yet under construction, to be built up to the eastern margin of the limits of deviation, which includes Plot 4\_PGP, the Applicant maintained that to accommodate this uncertainty about the final location it was necessary for Plot 4\_PGP to be wider than the land needed to provide the right of access and construct the access road. Similarly, work number 5A of the Rookery South Order, being the access road, can be built up to the limits of deviation. The location of work numbers 1 and 2 of the Rookery South Order has not yet been finalised. The final location will determine whether any additional elements of work number 5A need to be added to the already constructed access road. The undertaker of the Rookery South Order may also request a certain distance to be kept between the edge of its work numbers 1 and 2 and the Applicant's access road. Until these elements have been finalised the Applicant needed to retain flexibility within Plot 4\_PGP.
- 7.4.15 The Applicant stated that should the Rookery South RRF be constructed in accordance with the road layout as currently approved, then the size of Plot 4\_PGP will allow the most direct access road to be constructed between the terminus of the existing access road and the power generation plant site without sterilising any land unnecessarily. This scenario is shown by the indicative layout of the short access road within the Indicative Layout Plans (Revision 1) submitted by Millbrook Power Limited at Deadline 5 (REP5-006).
- 7.4.16 At the CA hearing I asked the Applicant to clarify the requirement for a number of other specific plots of land [EV-010 and REP3-012].
- Plot 12\_EC is a spur of land proposed for access to the site for the electrical connection. Since there already appeared to be access to the site from Station Lane, why was this additional access required? The Applicant responded that it was seeking permanent rights of access over plot 12\_EC in order to maintain the SECs. This will also provide a secondary emergency access and egress route to be used in the event that there was a problem with the Access Road from Green Lane. Plot 12\_EC forms part of the LLRS secondary access track which is already permitted as part of the LLRS planning permission.
  - Plots 13\_EC and 14\_EC provide access along the length of the overhead line to the southeast beyond the site of the SEC. Why was CA required along this stretch of the line? The Applicant responded that the work that would be needed on the

transmission lines had to take place between two tension towers. The nearest tension tower to the south east was in plot 14\_EC. Access was therefore required over both plots 13\_ and 14\_EC for this purpose. It was only seeking temporary possession for this purpose.

- Plots 2\_, 3\_, 4\_ and 6\_GC appear to provide additional points of access to the line of the gas connection. Since this can be accessed from the north and south of the site why are these additional plots of land required? The Applicant responded that plot 2\_GC is an existing access track as part of the LLRS and would provide secondary access between the electrical connection site and the site for the generating plant. Plots 3\_, 4\_ and 6\_GC were required for landscaping. Although CA rights were being sought over the length of the gas connection (plots 7\_, 8\_ and 9\_GC, and the length of the electrical connection (plot 8\_EC) these were for maintenance purposes and would be over agricultural land. They would not be used as access tracks between the different elements of the proposed development.

### **Temporary possession**

- 7.4.17 Articles 28 and 29 of the draft DCO set out powers to take temporary possession of land to carry out the authorised development. The powers of temporary possession are not CA powers and accordingly the tests under sections 122 and 123 are not applicable. However, the use of the power must be justified in order to enable the proposed development to be implemented and maintained, the inevitable interference with human rights must be justified and there must be adequate compensation provisions in place for those whose land is affected.
- 7.4.18 During the course of the Examination article 28 was amended to disapply the provisions of the Neighbourhood Planning Act 2017 relating to temporary possession on the grounds that these had not yet come into force and regulations governing the operation of the Act had not yet been laid [REP2-010 and REP2-013]. The Applicant took the view that it was not currently possible to understand or accurately reflect the temporary possession provisions as intended by Government in respect of DCOs. As such, the Applicant considered that it was appropriate to apply the 'tried and tested' temporary possession regime which had been included in numerous DCOs including the Silvertown Tunnel, Eggborough CCGT and Tilbury 2.
- 7.4.19 The land which would be subject to the powers of temporary possession and the use to be made of it is listed in Schedule 9 of the draft DCO. Justification for the use of temporary possession powers is set out in the Statement of Reasons. The powers are required in order to facilitate the use of land by the Applicant and all persons authorised on its behalf during the construction and maintenance periods of the project.

- 7.4.20 In addition to the land listed in schedule 9, the Applicant is also seeking temporary use of the land which would be subject to CA of freehold or of rights. This would allow the Applicant to enter on to land for particular purposes, including site preparation works in advance of any vesting of the relevant land or rights.
- 7.4.21 The Applicant considered that adequate compensation for temporary possession of land was provided for through the funding arrangements described above.

### **Human Rights Act considerations**

- 7.4.22 A key issue in formulating a compelling case is consideration of the potential interference with human rights which may occur if CA and temporary possession powers are granted and exercised.
- 7.4.23 The Applicant acknowledged in the SoR that the DCO could engage a number of the articles of the European Convention on Human Rights which have been incorporated into UK legislation through the Human Rights Act 1998:
- Article 1 of the First Protocol protects the rights of everyone to peaceful enjoyment of their possessions and that no one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws and principles.
  - Article 6 entitles those affected by CA powers sought for the project to a fair and public hearing of their objections.
  - Article 8 protects private and family life, home and correspondence.
  - No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.
- 7.4.24 In the SoR the Applicant noted that it had sought to minimise the amount of land over which it required CA powers. It considered that there would be a significant public benefit from the grant of the DCO which could only be realised if the DCO was accompanied by the grant of CA powers. It concluded that the significant public benefits outweighed the effects on persons who own property within the Order land.
- 7.4.25 In relation to Article 6 the Applicant stated that there have been opportunities to make representations during the preparation of the application and owners of land had been consulted. There had been the opportunity to make representations during the course of the Examination. There would also be the opportunity for any aggrieved person to challenge the grant of a DCO in the High Court.
- 7.4.26 In the Applicant's view any infringement of the Convention rights as a result of the inclusion of CA powers in the DCO was proportionate and legitimate and in accordance with national and European law. There

was a compelling case in the public interest for the exercise of these powers of CA. The Applicant concluded that it would appropriate and proportionate for the Secretary of State to make the DCO, including the grant of CA powers.

## **7.5 CONCLUSIONS ON COMPULSORY ACQUISITION AND TEMPORARY POSSESSION**

- 7.5.1 The draft DCO authorises the development and provides CA powers. The case for CA powers must be consistent with the view that I have taken about the need for the development as a whole.
- 7.5.2 In Chapter 5 I concluded that the case for the development had been made and that development consent should be given subject to the inclusion of specific mitigation measures in the DCO. I have considered the specific requests for CA and temporary possession powers in the light of this conclusion on the development as a whole.
- 7.5.3 Although much of the land could be acquired through commercial agreement or private treaty I am satisfied that the Proposed Development can only be achieved with certainty and expeditiously with the exercise of the proposed CA and temporary possession powers.
- 7.5.4 The CA of rights includes provision to impose restrictive covenants. The Applicant has explained that this is necessary to preserve the integrity of the electricity and gas connections. This is a less onerous provision than acquiring the freehold of the land which would sterilise stretches of agricultural land. I agree with the inclusion of this provision as being a proportionate way of ensuring that it is able to maintain the integrity of the underground works.
- 7.5.5 Rights of statutory undertakers would be affected by the proposals for CA. I am satisfied that adequate attention has been given to the protection of these rights as set out in the Protective Provisions in Schedule 10 of the draft DCO and the asset protection agreement with CSH. All of the objections by statutory undertakers to the earlier drafts of these provisions have been withdrawn.
- 7.5.6 NPS EN-1, EN2, EN-4 and EN-5 set out the national need for the development of new electricity generating capacity and associated infrastructure and I am satisfied that the Proposed Development would contribute to meeting that need. This constitutes a compelling case in the public interest for the use of these powers. I am satisfied that adequate provision is made in the draft DCO to provide compensation to affected parties.
- 7.5.7 I have considered the Applicant's submission on the need for the acquisition of rights over the whole of plot 4\_PGP. I acknowledge that the Rookery South Order provides limits of deviation for work numbers 1 and 2 which includes all of plot 4\_PGP and that until the location of those works has been finalised the exact location of the short access road to the Proposed Development cannot be specified. There may

also be a request from the undertaker for the Rookery South Order for the access road to be a minimum distance from the works permitted under that Order. I also acknowledge that it is specified on the Land Plans (Revision A) [REP5-007] that the Applicant is seeking a right of access of no more than 15m in width during construction and the right to construct, use and maintain a permanent access road of no more than 10m in width. These Land Plans are included in the list of documents and plans to be certified by the Secretary of State in Schedule 14 of the draft DCO.

- 7.5.8 Taking into account the uncertainty about the final location of the works under the Rookery South Order I accept that the exact location of the access road for the proposed development cannot be fixed at this stage. Plot 4\_PGP is larger than is necessary for construction of the access road itself. However construction of the access road will be limited to the dimensions specified in the approved and certified Land Plans and, given the uncertainty about the final location of the access road, CA of rights over the whole of plot 4\_PGP is required to facilitate the final development thus meeting the test in s122(2)(b) of PA 2008.
- 7.5.9 I am satisfied therefore that all of the Order land which is the subject of the request for CA of freehold or rights as listed in the revised BoR and shown on the Land Plans, including all of Plot 4\_PGP, meets the requirements of section 122(2) as either being required for the development or required to facilitate that development and that there is a compelling case in the public interest for CA.
- 7.5.10 I also conclude that the case has been made for the inclusion of temporary possession powers in the DCO which can be exercised over the land identified in the revised BoR, the revised Land Plans and in Schedule 9 of the draft DCO.

## **8 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **8.1 INTRODUCTION**

- 8.1.1 A draft DCO (the application DCO) with an EM was submitted with the application [APP-012 and APP-013]. A first ISH on the draft DCO was held on 13 March 2018 immediately after the Preliminary Meeting. A first revision of the DCO with an EM was submitted for Deadline 2 [REP2-015 and REP2-017]. This draft took into account points raised at the ISH and in my first written questions. It also took into account discussions between the Applicant and CBC and other drafting changes identified by the Applicant [REP2-013]. A second revision was submitted at Deadline 3 [REP3-006] with an explanation of changes made [REP3-011].
- 8.1.2 As set out in Chapters 2 and 7 the application was revised at Deadline 5 to take into account the completion of the access road by Covanta. After consultation I accepted this as a non-material change (paragraph 2.4.8) and I have recommended that the Secretary of State should accept the changes for consideration in the Examination as part of the Proposed Development (paragraph 3.3.9). A third revision of the DCO was submitted at this stage [REP5-011] with an explanation of changes made to the draft DCO and associated documents [REP5-019]. This also included protective provisions in a new part 7 of Schedule 10 for the benefit of Network Rail and also took into account the coming into force of the Housing and Planning Act 2016, requiring consequential amendments to the compulsory acquisition provisions. Further suggested amendments to the protective provisions for Network Rail were submitted by Network Rail at Deadline 6 [REP6-004]. Following discussions between the Applicant and Network Rail changes to part 7 of Schedule 10 and to the requirement for the CTMP were agreed and included in a further revision of the draft DCO [REP7-002 and REP7-005]. This is the final version of the draft DCO submitted during the Examination. A marked up version showing changes between the application DCO and this final version was also provided [REP7-007]
- 8.1.3 The main changes made to the application DCO during the Examination were to the Interpretation section in Part 1, Principal Powers in Part 2, the requirements in Schedule 2 and the Protective Provisions in Schedule 10. Some of these reflect drafting changes to reflect current practice, others of a substantive nature are discussed below. A novel feature of the draft DCO is the inclusion of article 38 which provides for modifications to and amendments of the Rookery South (Resource Recovery Facility) Order 2011 as set out in Schedule 11. This is the first case of one DCO being used to amend another and I consider the legal basis for this in my consideration of article 38 and Schedule 11.

## **8.2 ARTICLES**

8.2.1 The articles set out in the DCO either follow the Model Provisions (which are no longer binding) or, where different, an explanation has been provided in the EM.<sup>10</sup>

### **Part 1 - Interpretation**

8.2.2 Article 2 of the draft DCO has been subject to a number of amendments during the course of the Examination. These have principally been made in order to clarify definitions such as 'date of final commissioning' which has been expanded to make it clear that this excludes generation during commissioning and testing. Subject to my comments below I accept these changes.

8.2.3 The definitions of the LLRS works have been amended during the Examination to make it clear that these relate to an existing planning permission. A definition of the LLRS baseline works was added which links through to requirement 22 in schedule 2 which was added at my suggestion. In revision 3 of the draft submitted at Deadline 5 the definition of the LLRS drainage works and permitted preliminary works were deleted from the draft DCO. This followed confirmation from CBC that the drainage channel covered by these works could be constructed under the terms of the LLRS planning permission.

8.2.4 I note that the definition of gross rated electrical output is consistent with the definition recommended to and accepted by the Secretary of State in the Hirwaun Power and Progress Power DCOs. This determines how the maximum output of 299MW is defined.

8.2.5 At my suggestion the definition of 'undertaker' was amended to make it clear that this only referred to the Applicant and National Grid. A definition of Network Rail was added following the inclusion of references to Network Rail in the requirements and in Schedule 10.

8.2.6 In the final draft DCO references to the various documents submitted with the application, some of which were amended during the Examination, are linked to the list of documents and plans to be certified set out in Schedule 14. This identifies the final versions of the relevant documents and was provided in response to my suggestion at the first ISH.

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<sup>10</sup> Infrastructure Planning (Model Provisions) (England and Wales) Order 2009

## **Part 2 - Principal powers**

## **Part 3 - Streets**

## **Part 4 - Supplemental powers**

## **Part 5 - Powers of acquisition**

## **Part 6 - Operations**

- 8.2.7 A number of drafting changes were made to these articles. These ensured the correct reference to the relevant local authorities, the Order land and Order limits. Changes were made stemming from the coming into force of the provisions of the Housing and Planning Act 2016. The proposed wording followed the drafting included in the M20 Junction 10a Order 2017 and the Silvertown Tunnel Order 2018. As considered in paragraph 7.4.18, changes were made to articles 28 and 29 relating to temporary possession to dis-apply the provisions of the Neighbourhood Planning Act 2017. Article 34 relating to railway undertakings was deleted as it was not required with consequential renumbering of later articles. I consider the changes to these articles to be acceptable.

## **Part 7 - Miscellaneous and general**

- 8.2.8 Article 38 in the final draft DCO (originally article 39) provides for the amendment of the Rookery South Order for the purposes of this Order only, as set out in Schedule 11. The effect of Schedule 11 is to insert a new Part 2 into Schedule 7 of the Rookery South Order and make the necessary amendment to article 33 of that Order to give effect to the insertion. Schedule 11 regulates the operation of the powers in both DCOs in respect of the access road and makes the exercise of powers in specified articles of the Rookery South DCO subject to the prior written consent of the Applicant. Other provisions relate to cooperation between the parties and provide protection for Covanta in respect of any consequential breach of requirements in the Rookery South DCO. This is the first instance of a provision in one DCO being used to amend an earlier DCO.
- 8.2.9 In its EM the Applicant stated that the modifications to the Rookery South Order were being made pursuant to the powers in s120(5) of PA 2008 which permit the amendment of statutory provisions in certain circumstances [APP-013]. The proposed modifications, in the Applicant's view, fell within the terms specified in s120(5) and were the means by which conflicts between the works and powers contained in the two DCOs were to be avoided.
- 8.2.10 Covanta objected to the proposed amendment of the Rookery South DCO and suggested that interactions between the two developments should be covered by an interface agreement [AS-008]. Covanta submitted Counsel's opinion on the use of the s120(5) powers [AS-009]. In this it was argued that the nature of the amendments to the Rookery South Order exceeded the scope of the powers in s120(5)(a)

which could not be used to amend provisions in a statutory instrument. For the Secretary of State to use his powers in s120(5)(b) he must be satisfied that to do so would be necessary and expedient both as regards the principle and the details of the amendments. It was argued that the application failed to make the case for the exercise of the section 120(5)(b) powers.

- 8.2.11 The Applicant submitted its own Counsel's opinion [REP2-016, Appendix H]. In this, drawing on the Office of Parliamentary Counsel Drafting Guidance (2017), it was argued that the word 'modify' as used in s120(5)(a) was wide and encompassed both textual and non-textual modification. The amendment to Article 33 was a textual amendment. The remaining provisions of Schedule 11 were non-textual modifications which did not alter the powers in the Rookery South DCO. It was argued that the textual amendment of inserting a new Part 2 into Schedule 7 of the Rookery South DCO makes a number of non-textual modifications to the effect of the articles in that DCO. This 'fell full-square' within the definition of modifications as set out in Parliamentary Counsel's Drafting Guidance.
- 8.2.12 Counsel for the Applicant also considered the use of s120(5)b as the basis for amending the Rookery South Order. Under this provision the Secretary of State must be satisfied that the amendment is necessary or expedient. In its EM (Revision 1) submitted at Deadline 2 the Applicant set out its reasons why this test was met [REP2-017]. The amendments were necessary to ensure that the proposed development could be constructed, used and maintained without impediment. In particular it was argued that if the Rookery South Order was not amended then the Order land would be sterilised preventing not just the Proposed Development but also any other NSIP or other form of development from being constructed on the land. Counsel described these arguments as compelling. The Applicant also argued that an interface agreement with Covanta would not bind successors to either of the Orders and would not provide sufficient protection to ensure that the authorised development could be constructed, used and maintained without impediment.
- 8.2.13 Counsel addressed the issue raised in my written questions [PD-006] as to why, taking into account the principle of *lex specialis*, it was appropriate to use the powers in s120 to modify the Rookery South DCO rather than using the powers in s153 and Schedule 6 of PA 2008 which makes provision for changes to existing DCOs. Counsel argued that the use of s153 and Schedule 6 was no more *lex specialis* in this context than the use of s120(5). Both are specific provisions in PA 2008 that allow the Secretary of State to modify a DCO. The principal difference is that s120(5) requires an applicant to be promoting a second DCO whereas s153 and Schedule 6 do not. In so far as the principle of *lex specialis* is applicable it indicates that in the current circumstances s120(5) is more appropriate as the Applicant is promoting a separate DCO.

- 8.2.14 Counsel pointed to the Secretary of State's view set out in his decision letter on the Hinckley Point C Connection DCO that
- "..it would be possible for a future DCO to vary an existing DCO, if necessary for the later project. That decision, though, is for consideration in the context of the later project, when all details of that later project are known."*
- 8.2.15 Taking into account the submissions I have received I am satisfied that s 120(5) does provide an appropriate mechanism for a new DCO to amend an existing DCO. I find persuasive the arguments that the changes proposed to the Rookery South Order meet the definition of modifications set out in the Parliamentary Counsel Drafting Guidelines and that it would be appropriate to use s120(5)(a) as the basis for making the changes. It is also open to the Secretary of State to make the modification on the basis of the powers in s 120(5)(b) and I am satisfied that the Applicant has made the case that such changes are necessary and expedient. I agree with the Applicant's view that, in order to provide certainty, it is necessary to make these changes through provisions in the DCO rather than, as Covanta prefers, through an interface agreement. I consider the details of the protective provisions for Covanta and the Applicant contained in these provisions in my assessment of Schedules 10 and 11.
- 8.2.16 At Deadline 2 article 39(formerly article 40) was amended at my suggestion to include additional plans and other documents to be certified by the Secretary of State. It was subsequently further amended to reference the relevant documents set out in Schedule 14.
- 8.2.17 As already considered at paragraph 7.4.8, a new article 43 was added at my suggestion. This article provides for a guarantee or other form of security approved by the Secretary of State to be put in place before the exercise of the powers of CA and temporary possession provided in the Order. This is in line with provisions in other recent Orders and the drafting was based on the wording used in the Wrexham Gas Fired Generating Station Order 2017.
- 8.2.18 New article 44 was added by the Applicant to replace a similar provision originally included as a requirement in Schedule 2. This article states that in complying with an article under the Order or a requirement in Schedule 2, the undertaker shall not be in breach of any condition contained in the LLRS planning permission. In its response to my first questions [REP2-016] the Applicant stated that the overlapping nature of the LLRS planning permission and the draft DCO meant that there was a need for such a provision. Article 44 ensures that the Applicant does not inadvertently breach the LLRS planning permission through compliance with a requirement in the DCO. Different landscaping requirements were cited as an example of an area where there might be a conflict between the requirements of the LLRS planning permission and the DCO. This provision had been agreed in principle by CBC subject to its being included in the main

body of the DCO rather than as a requirement in Schedule 2. I agree with that approach.

## **8.3 SCHEDULES**

### **Schedule 1 - Authorised Development**

- 8.3.1 The only change made to the description of the authorised development as set out in Schedule 1 was to work No. 2 following the completion by Covanta of its own access road from Green Lane. The reasons for this change have been set out in paragraphs 2.4.2 - 2.4.8 and I have accepted this as a non-material change.

### **Schedule 2 - Requirements**

- 8.3.2 Changes were made throughout Schedule 2 to make it clear whether responsibility for approval of provisions under a requirement lay with both BBC and CBC ('the relevant planning authorities') or with one of these authorities named individually. Where no substantive changes other than these have been made to requirements during the course of the Examination and no other issues have been raised I have not commented further.

### **Requirement 2**

- 8.3.3 Apart from a minor drafting change the list of plans in Table 1 were not changed during the Examination. However the details of these plans to reflect the non-material change described above have been amended. The relevant final versions of the plans are listed in Schedule 14. The parameters of the project as set out in Table 2 of this requirement were not changed during the Examination.

### **Requirement 5**

- 8.3.4 This requirement was amended during the course of the Examination to reflect the completion by Covanta of the access road but the continuing need for the construction of the junction with Green Lane. Work on the power generation plant and associated gas and electrical infrastructure (numbered work 1) must not commence until these road works have been completed to a suitable standard.
- 8.3.5 A further amendment was proposed by Network Rail to require a speed limit of 10 mph on the Rookery South access road. It argued that this was necessary to minimise the risks of accidents involving construction traffic in proximity to the railway and of distraction to train drivers [REP6-004]. The provisions for speed limits in the CEMP were not specific and were not subject to approval by Network rail. Following discussions between Network Rail and the Applicant a speed limit of 15 mph with associated signage was agreed and included in the provisions for the CTMP set out in revised Requirement 11 submitted at Deadline 7 [REP7-002].

### **Requirement 6**

- 8.3.6 This requirement for fencing was amended during the Examination to include a provision that the creation of the junction with Green Lane and maintenance of the access road between Green Lane and the Rookery South pit (numbered work 2A in the final revision to Schedule 1) should not commence until details of any proposed permanent fence had been approved by CBC in consultation with Network Rail.
- 8.3.7 In its submission at Deadline 6 Network Rail objected to this wording. It was not adequate for Network Rail to be consulted by CBC. It must have the final say on the adequacy of fencing that is required for the safe operation of the railway. It submitted that Network Rail should be consulted on and approve the fencing before it was submitted to CBC for its approval. It proposed an amendment to Requirement 6 to this effect. Following discussions between Network Rail and the Applicant the amendment to this requirement requiring the approval of Network Rail was agreed and included in the final draft DCO submitted at Deadline 7 [REP7-002].

### **Requirement 7**

- 8.3.8 This provides for details of the surface and foul water drainage strategy, including appropriate elements of the LLRS drainage strategy, to be approved by CBC prior to commencement of work on the main above ground elements of the proposed development. The surface and foul water drainage system must be completed before the operational phase commences. This requirement is one of the measures by which protection against an extreme flood event would be ensured.

### **Requirement 8**

- 8.3.9 This requirement on contamination and groundwater was amended to ensure that the assessment report to be carried out should include groundwater baseline monitoring and assessment as requested by the EA.

### **Requirement 11**

- 8.3.10 This requirement for the approval of the CTMP was amended to include a provision for consultation with Marston Moreteyne Parish Council and Network Rail. It was also amended to include proposals for traffic management to ensure the safe operation of the Green Lane level crossing. The requirement was further amended at Deadline 5 to include a requirement to provide details of any comments made by Network Rail pursuant to the protective provisions in Schedule 10 and how such comments had been taken into account.
- 8.3.11 The inclusion of the provision for consultation with Marston Moreteyne Parish Council was included in response to the Council's request that construction traffic exiting the A421 should use the Marsh Leys interchange and not Beancroft Road roundabout at Marston Moretaine.

This would ensure that there is no disruption to local traffic and protect local residents from vibration and noise. I have considered this in my assessment of traffic and transport in Chapter 5 and am satisfied that the proposed consultation would ensure that there are no significant adverse effects arising from traffic during construction or operation of the proposed development.

- 8.3.12 Network Rail objected to the wording of this requirement. It submitted that the safe operation of the Green Lane level crossing at all times was the overriding priority [REP6-004]. Network Rail must have the final say on measures in the CTMP that relate to the level crossing. It was inappropriate for the final say on such matters to rest with the local authority. It proposed changes to Requirement 11 (and to the protective provisions in Schedule 10) so that Network Rail must approve the relevant traffic management measures before they are submitted to the relevant planning authorities and that those measures must be complied with.
- 8.3.13 Following discussions between Network Rail and the Applicant revised wording to meet Network Rail's concerns and requiring its approval of the CTMP were agreed [REP7-002]. As noted at paragraph 8.2.23 a speed restriction on the access road of 15 mph was included in this requirement with cross reference to the protective provisions in Part 7 of Schedule 10. Provision was also included such that the scheduling and timing of movements of heavy goods vehicles for the Proposed Development should take into account the scheduling and timing of such vehicles for the construction of the Covanta RRF. I consider Network Rail's proposed changes to the protective provisions in my assessment of Schedule 10 below.

#### **New Requirement 13; Old Requirement 16**

- 8.3.14 A new requirement covering noise monitoring during construction was added to the draft DCO. This would set noise limits which must be in accordance with BS5229:2009. Further clarification of the relevant noise measures was provided following discussion at the ISH on environmental matters [REP3-011]. This requirement was agreed with CBC.
- 8.3.15 Requirements 13 and 14 in the application DCO were renumbered as Requirements 15 and 16. Requirement 16 in the application DCO relating to travel plan during operation was deleted on the recommendation of CBC on the grounds that there was no need for mitigation measures for traffic during the operational phase. Following the deletion of this requirement the numbering of subsequent requirements remained the same as in the application DCO.

#### **Requirement 17**

- 8.3.16 In the application DCO this requirement set limits on the number of hours that the gas turbine generator can operate setting a maximum of 2,250 hours in any one year subject to a rolling five year average

not exceeding 1,500 per calendar year. The EA stated that these were the maximum levels of operation it expected to set in the EP for the plant based on the requirements of the IED and the Government's BATc guidance. These are also the levels of operation that have been taken as the maximum output for the purposes of assessment in the ES.

8.3.17 Following discussion at the ISH on environmental matters the Applicant proposed the deletion of this provision on the grounds that the operating hours for the plant would be regulated through the EP and provisions in the DCO should not duplicate that regulation with the potential for conflicting controls. I agree that duplication with the EP should be avoided but I remain concerned that, although the EA was proposing to include the limits set out above in the EP, it was possible that at some point in the future it could set different limits, including limits that were higher than those assessed in the ES. In those circumstances the plant would be permitted to operate in ways which had not been subject to assessment in the ES.

8.3.18 The Applicant agreed to reinstate Requirement 17 in a form which stipulates that it is not permitted to operate the generating station for a greater number of hours than that assessed in the ES and I accept that this wording addresses my concern.

#### **Requirement 19**

8.3.19 This requirement which provides for amendment to approved details was clarified during the examination to make it clear that it applied to any changes to details submitted pursuant to any other requirement.

#### **Requirement 20**

8.3.20 This requirement originally dealt with interaction between the DCO and the LLRS planning permission. As discussed at paragraph 8.2.18 this provision has now been moved to become new article 44. A new Requirement 20 was introduced at my suggestion stating that no part of the proposed development may commence until the LLRS baseline works have been completed. The LLRS baseline works, which include the construction of an attenuation pond and pumping station in order to facilitate a managed surface water drainage strategy required for flood protection, are assumed to be completed in setting the baseline for the assessment of the impact of the proposed development in the ES but were not completed at the closure of the Examination. This requirement ensures that the proposed development does not commence before the LLRS works assumed in the ES have been completed.

#### **Requirement 21**

8.3.21 A new requirement was added at the request of the MOD Defence Infrastructure Organisation requiring the submission of specified details of the proposed development to be submitted to the Defence Geographic Centre. As the proposed stack is less than 50m high I

agree with the Applicant that it is not necessary to include in this requirement provision for any aviation warning lighting.

### **Requirement 22**

- 8.3.22 In its submission at Deadline 6, Network Rail expressed concern about the possible overlap in the construction of the proposed development and the Covanta RRF [REP6-004]. It argued that it was possible that the construction periods could overlap. This had not been assessed in the ES which only assessed the cumulative effect of the operation of the Covanta RRF and the peak construction period of the proposed development.
- 8.3.23 If construction activities for both schemes took place at the same time without a full barrier crossing having been completed for the Green Lane level crossing, this would result in unacceptable impacts on this crossing. Such impacts may not be capable of being adequately mitigated by measures in a CTMP and could result in a risk of accidents occurring.
- 8.3.24 Network Rail proposed the addition of a new requirement 22 stating that construction works on the proposed development should not take place at the same time as any construction work on the Covanta RRF unless a full barrier has been installed and was operational at the Green Lane level crossing. Following discussions between Network Rail and the Applicant, further agreed provisions relating to the scheduling and timing of movements of heavy commercial vehicles for both developments to be approved by Network Rail were included in Requirement 11 with cross reference to Schedule 10. Requirement 22 as proposed by Network Rail at Deadline 6 was not included in the final draft DCO submitted at Deadline 7.
- 8.3.25 In a joint statement between the Applicant and Network Rail submitted at Deadline 7 the parties agreed on the wording of Requirements 6 and 11 in the final draft DCO and on the revised wording of the protective provisions in Part 7 of Schedule 10. On the understanding that these requirements and the revised protective provisions would be included in the final DCO, Network Rail withdrew the representations on the Application that it had made earlier in the Examination [REP7-010].

### **Conclusion on requirements**

- 8.3.26 I am satisfied that the requirements included in the draft DCO as amended during the course of the Examination provide mitigation for potential adverse effects identified in the ES and address issues raised by myself and IPs during the course of the Examination.

### **Schedules 4, 5, 6 and 8**

- 8.3.27 Schedules 4, 5 and 6 have been amended to take into account the completion by Covanta of the upgrading and widening of the access road as shown on the Rights of Way, Streets and Access Plans

(Revision 1) [REP5-009] and the revised work No 2A as described at paragraph 2.4.6.

- 8.3.28 Schedule 8 has been revised to reflect drafting in recently made Orders stemming from the coming into force of the provisions of the Housing and Planning Act 2016. These follow on from the changes made to a number of articles referred to at paragraph 8.2.7.

### **Schedule 10**

- 8.3.29 This schedule contains protective provisions for a number of parties whose assets may be affected by the proposed development. Parts 1 and 2 provide protection for electricity, gas, water and sewerage undertakers and for operators of electronic communications code networks. These follow standard provisions updated, in the case of operators of electronic communications code networks, to take account of recent legislative changes.
- 8.3.30 Part 3, for the protection of National Grid, covers both the electricity and gas supply activities of National Grid. Following agreement on these provisions National Grid withdrew the representations that it had made prior to the Examination [RR-009 and REP2-042]. Part 4, for the protection of EPN, follow standard provisions. At the second ISH on the draft DCO the Applicant confirmed that a side agreement was entered into between the Applicant and EPN on 30 November 2017 and that the provisions for the protection of EPN in Schedule 10 were agreed [REP3-005]. No representations were received from EPN during the Examination. Part 5, for the protection of Anglian Water, was agreed by Anglian Water subject to a small amendment which was accepted by the Applicant [REP2-020].
- 8.3.31 Part 6 for the protection of Covanta has been developed by the Applicant in recognition of overlaps between the land or rights over land required for the Proposed Development and the Covanta RRF. The Applicant's approach to addressing these overlaps is set out in an appendix to its Planning Statement [APP-056, appendix 5]. The original application contained option 2A under which the Applicant would construct the access road from Green Lane to the site of the Covanta RRF and its own access from the Covanta RRF to the site for the power generation plant and option 2B to cover the situation where Covanta had constructed its own access road, which would be shared and the Applicant would construct the further access from this road to the site for power generation plant. As described at paragraphs 2.4.2 to 2.4.6 Covanta completed its access road during the course of the Examination but had not completed the junction with Green Lane. In the final draft the references to options 2A and 2B have been removed and replaced with reference to work 2A, the junction with Green Lane.
- 8.3.32 The provisions of Part 6 provide for cooperation between the Applicant and Covanta during the construction of the two projects and were the subject of discussion between the two parties during the Examination. A number of amendments were agreed. In particular the

requirements on the Applicant to consult with Covanta before submitting the written details of specified works for approval by the relevant planning authorities and before exercising powers under articles 9 (street works), 10 (construction and maintenance of new or altered means of access and 11 (temporary prohibition or restriction of use of streets) were strengthened to be subject to obtaining Covanta's written consent. In addition provision was made for arbitration on any dispute with a set of arbitration rules being introduced in Schedule 13. The final version of Part 6 submitted at deadline 6 was agreed by Covanta [REP6-002].

- 8.3.33 Part 7 for the protection of Network Rail was introduced at Deadline 5 following discussions between the Applicant and Network Rail [REP5-010]. The provisions provided for the construction of anti-dazzle fencing on written request from Network Rail. A written request should only be made if train drivers had reported to Network Rail that they were experiencing conflicts between railway signals and oncoming traffic headlights on the access road. This draft of Part 7 also provided for consultation with Network rail on the CTMP.
- 8.3.34 In a submission for Deadline 6 Network Rail objected to the wording of the protective provisions which allowed for the installation of anti-dazzle fencing only after problems had been reported by train drivers. Network Rail submitted that it must be able to require this fencing to be constructed before its drivers had experienced dazzle from vehicles on the access road. Dazzle could result in an accident occurring and Network Rail could not accept a requirement which limited its ability to require appropriate fencing until after problems had arisen. Details of proposed fencing and an assessment of glare from vehicle headlights should be submitted before the access road was brought into use. The protective provisions should also require Network Rail to approve traffic management measures in the CTMP before they are submitted to the relevant planning authority for approval. A revised draft of Part 7 was submitted to reflect Network Rail's proposals and was agreed by the Applicant and Network Rail [REP7-005 and REP7-010].
- 8.3.35 At the second ISH on the draft DCO the Applicant noted that the CLH oil pipeline would be affected by the proposed development and that it was in discussion with CLH. The Applicant reported that CLH would prefer an asset protection agreement as opposed to protective provisions in the DCO. In the unlikely event that the asset protection agreement was not agreed before the end of the Examination then protective provisions will be added to the draft DCO for the benefit of CLH [REP3-005]. In its submission for Deadline 7 the Applicant stated that an asset protection agreement had been agreed with CLH and that, consequently, protective provisions were not required [REP7-004]. This was confirmed by CLH which had no further objections to the Proposed Development [REP7-003].
- 8.3.36 I am satisfied that Schedule 10 as included in the final draft of the DCO provides all of the necessary protection for statutory undertakers

and that the objections by statutory undertakers to the earlier drafts of these provisions have been withdrawn.

### **Schedule 11**

- 8.3.37 Article 38 provides for the amendment of the Rookery South Order only as set out in Schedule 11. I have considered the legal basis for the modification of an existing Order in this way at paragraphs 8.2.8 to 8.2.15 and I have accepted that the powers in s120(5) can be used for this purpose. I have also accepted that, in order to provide certainty, it is appropriate for the interactions between the two developments to be addressed in the Order rather than, as Covanta would prefer, in an interface agreement.
- 8.3.38 The purpose of Schedule 11, as described by the Applicant in the final EM, is to provide protective provisions governing the interaction between the Proposed Development and the development authorised by the Rookery South Order [REP7-013]. The effect of Schedule 11 is to insert a new Part 2 into Schedule 7 of the Rookery South Order for the protection of the Applicant as a prospective statutory undertaker alongside the existing provisions for the protection of Network Rail. The new Part 2 amends article 33 of the Rookery South Order to give effect to the insertion of the new Part 2. This is the only amendment to the articles in that Order. The new provisions in Part 2 of Schedule 7 to the Rookery South Order modify the effect of the substantive provisions in that Order for the protection of the Applicant.
- 8.3.39 Paragraph 24 in the new Part 2 regulates the operation of powers in the Rookery South Order in respect of the access road (defined by reference to the Land Plans) to the Applicant's generating equipment site. The effect is to restrict the application of Covanta's powers over this land so as to permit the Applicant to construct, use and maintain the access road. The Applicant notes that arbitration of any differences under paragraph 25 is provided for under the arbitration provisions of the Rookery South Order.
- 8.3.40 Paragraph 25 provides for Covanta not to exercise its power under specified articles of the Rookery South Order over the Order land (excluding the access road) in the draft DCO without the prior written consent of the Applicant. The Order land as defined for this provision does not include any of the land required for the Covanta RRF itself.
- 8.3.41 Paragraphs 26 and 27 require Covanta to exercise its powers to cooperate with the Applicant and use reasonable endeavours to avoid any conflict between carrying out the two projects.
- 8.3.42 Paragraphs 28 to 30 provide a defence for Covanta in the circumstance where compliance with paragraph 25 put it in breach of a requirement under Part 2 of Schedule 1 of the Rookery South Order.
- 8.3.43 Covanta worked with the Applicant during the course of the Examination on the detailed wording of Schedule 11 (and of Part 6 of Schedule 10 which contains provisions for the protection of Covanta).

Without prejudice to its view that an interface agreement was more appropriate it agreed to the revised wording in Part 6 of Schedule 10 and in Schedule 11 proposed by the Applicant [REP4-004 and REP6-002].

- 8.3.44 I am satisfied that Schedule 11 as included in the final draft of the DCO provides necessary protection for the Applicant through this amendment of the Rookery South Order and that these provisions are not onerous for Covanta.

#### **Schedule 14**

- 8.3.45 The table in this schedule sets out all of the documents and plans that need to be certified by the Secretary of State for the purposes of the Order identifying the final draft of each of the relevant documents or plans. This is a helpful summary. For the purposes of this Report an annotated version of this table is set out below with the inclusion of the Examination Library reference for each document.

<b>DOCUMENTS AND PLANS TO BE CERTIFIED</b>				
<b>Document name</b>	<b>Document reference</b>	<b>Revision number</b>	<b>Date</b>	<b>Examination Library reference</b>
Access road visibility splay plan (contained in appendix 2.1 of appendix 12.1 of the environmental statement)	Drawing reference 31116/2001/008	B	April 2018	REP2-012
Book of Reference	4.3	3	August 2018	REP7-009
Design principles statement	10.2	0	October 2017	APP-057
Environmental Statement, Main statement	6.1	0	October 2017	APP-033
Appendix Volume A: 1.1 Glossary	6.2	0	October 2017	APP-034
Appendix Volume B: 1.2 Scoping Report and Scoping Opinion	6.2	0	October 2017	APP-035
Appendix Volume C: 2.6-2.14 Legislation and Policy	6.2	0	October 2017	APP-036
Appendix Volume D: 3.1 Mitigation Roadmap	6.2	0	October 2017	APP-037
Appendix Volume E: 3.2 Outline CEMP	6.2	2	July 2018	REP5-003
Appendix Volume F: 5.1 CHP Statement	6.2	0	October 2017	APP-039
Appendix Volume G: 6.1-6.3 Air Quality	6.2	0	October 2017	APP-040
Appendix Volume H: 7.1 Noise	6.2	0	October 2017	APP-041
Appendix Volume H: 7.2 and 7.3 Noise	6.2	1	April 2018	REP2-007
Appendix Volume I: 8.1-8.5 Ecology	6.2	0	October 2017	APP-043
Appendix Volume J: 10.1 Ground Conditions	6.2	0	October 2017	APP-044
Appendix Volume K: 11.1 and 11.2 LVIA	6.2	0	October 2017	APP-045
Appendix Volume K: 11.3 LVIA	6.2	1	April 2018	REP2-004

Appendix Volume L: 12.1 TA (save in respect of Appendix 2.1)	6.2	0	October 2017	APP-046
Appendix Volume L: Appendix 2.1 of the TA	6.2 Drawing reference 31116/2001/0008	B	April 2018	REP2-012
Appendix Volume M: 13.1-13.3 Historic Environment	6.2	0	October 2017	APP-047
Appendix Volume N: 15.1 Electric and Magnetic Fields Assessment Report	6.2	0	October 2017	APP-048

Figures (save in respect of Figure 11.1)	6.3	0	October 2017	APP-049
Figure 11.1	6.3	1	April 2018	REP2-006
Non-technical summary	6.4	0	October 2017	APP-050
The indicative site layout plans	2.3	1	July 2018	REP5-006
Land plans	2.5	1	July 2018	REP5-007
The low level restoration scheme baseline works plan	Drawing reference: J0008128-409	0	April 2018	REP2-011
The outline construction environment management plan (contained in Appendix 3.2 of the Environmental Statement)	6.2	2	July 2018	REP5-003
The outline landscape and ecological mitigation and management strategy (contained in Appendix 11.2 of the Environmental Statement)	6.2	1	April 2018	REP2-004
The outline lighting strategy (contained in Appendix 11.3 of the Environmental Statement)	6.2	0	October 2017	APP-045

The outline travel plan(contained in Appendix 12.1 of the Environmental Statement)	6.2	0	October 2017	APP-046
The rights of way, streets and access plan	2.7	2	August 2018	REP7-011
Works plans	2.6	1	July 2018	REP5-008

## **9 SUMMARY OF FINDINGS AND CONCLUSIONS**

### **9.1 SUMMARY OF FINDINGS AND CONCLUSIONS**

9.1.1 The application is for development consent for the construction operation and maintenance of an open cycle gas fired 'peaking' power generating plant with a capacity of up to 299 MWe with an access road and temporary construction laydown area on land at and in the vicinity of Rookery South pit located near Stewartby, Bedfordshire. As such it is an NSIP as defined in section 14(1)a and section 15 of the Planning Act 2008 as amended (PA 2008). A pipeline connection to bring gas to a gas receiving station at the generation plant from an AGI connected to the national gas network, a substation with an underground electrical cable for the export of electricity and SECs to connect to the NETS are specified as associated development.

9.1.2 I have carried out this Examination of the application in accordance with the general principles and specific guidance set out in EN-1, EN-2, EN-4 and EN-5. I have also had regard to the LIRs submitted by BBC and CBC.

#### **Principal issues**

9.1.3 My findings and conclusions on the principle of the proposed development have been set out in section 4 of this report. I am satisfied that the proposed OCGT generation plant with associated development to provide a gas supply and to provide for the export of electricity to the national electricity transmission network would contribute to meeting the need for new generation capacity identified in EN-1. I accept that the plant should not be required to be constructed so as to be 'CHP ready' and that the proposed capacity of as defined in the draft DCO is below the threshold at which it should be designed to be CCR. I am also satisfied that consideration has been given to design and to alternatives to the development as required by EN-1.

9.1.4 My findings and conclusions on the case for the development taking individual issues into account are set out in section 5. I have concluded that, after taking into account the agreed mitigation measures, there should be no significant adverse effects which would weigh against granting the DCO from the following aspects of the proposed development:

- air quality;
- water quality, resources, ground conditions and flood risk;
- ecology;
- traffic and transport;
- socio-economic characteristics; and
- public health and amenity.

9.1.5 I have concluded that there would be an adverse effect:

- from noise in the immediate vicinity during the construction period;
- on landscape and visual impact both from the Proposed Development on its own and from the cumulative impact with the Covanta RRF at a number of viewpoints which would only be offset by new planting over a number of years.
- on the setting of historic assets at Houghton House, Ampthill Park and Ampthill Park House both from the Proposed Development on its own and from the cumulative impact with the Covanta RRF.

9.1.6 The assessment principles in EN-1 "start with a presumption in favour of granting consent for energy NSIPs ... unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused." I do not consider that the localised adverse effects I have identified outweigh the benefits of new fossil fuel generation set out in EN-1 and I consider the application is in accordance with the relevant NPSs.

9.1.7 I have had regard to the LIRs submitted by BBC and CBC as required by s104(2) of PA 2008 and I received no evidence that acceptance of the development would be in conflict with international obligations as set out in s104(4) of PA 2008

9.1.8 I am satisfied that all of the Order land which is the subject of the request for CA of freehold or rights as listed in the revised BoR and shown on the Land Plans meets the requirements of section 122(2) as either being required for the development or required to facilitate that development and that there is a compelling case in the public interest for CA.

9.1.9 I have also concluded that the case has been made for the inclusion of temporary possession powers in the DCO which can be exercised over the land identified in the revised BoR, the revised Land Plans and in Schedule 9 of the draft DCO.

## **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 conclude that the case for the development has been made and that development consent should be given through a DCO in the form attached at appendix D.

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## APPENDIX A: EVENTS IN THE EXAMINATION

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority (ExA).

Date	Examination Event
13 March 2018	Preliminary Meeting  Issue Specific Hearing on draft Development Consent Order
20 March 2018	Issue by the Examining Authority (ExA) of: <ul style="list-style-type: none"> <li>• Examination Timetable</li> <li>• The ExA's Written Questions</li> </ul>
27 March 2018	<b>Deadline 1</b>  Deadline for the receipt of: <ul style="list-style-type: none"> <li>• Notification of wish to speak at a Compulsory Acquisition Hearing</li> <li>• Notification of wish to speak at an Issue Specific Hearing</li> <li>• Notification of wish to speak at an Open Floor Hearing</li> <li>• Notification of wish to attend an Accompanied Site Inspection (ASI), suggested locations and justifications</li> <li>• Notification by statutory parties of wish to be considered as an Interested Party</li> <li>• Notification of wish to have future correspondence electronically</li> </ul>
03 April 2018	Any notification of hearings
17 April 2018	<b>Deadline 2</b>  Deadline for receipt of: <ul style="list-style-type: none"> <li>• Comments on Relevant Representations (RRs)</li> <li>• Written Representations (WRs)</li> <li>• Summaries of all WRs exceeding 1500 words</li> <li>• Local Impact Reports (LIR) from any local authorities</li> <li>• Statements of Common Ground (SoCG) requested by the ExA</li> </ul>

## APPENDIX A: EVENTS IN THE EXAMINATION

	<ul style="list-style-type: none"> <li>• Responses to the ExA's Written Questions</li> <li>• Post hearing submissions including written submissions of oral case</li> </ul>
01 May 2018	Issue Specific Hearing on Environmental Matters
02 May 2018	Accompanied Site Inspection
03 May 2018	Issue Specific Hearing on the draft Development Consent Order
03 May 2018	Compulsory Acquisition Hearing
17 May 2018	<p><b>Deadline 3</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on WRs and responses to comments on RRs</li> <li>• Comments on LIRs</li> <li>• Comments on responses to the ExA's First Written Questions</li> <li>• Revised draft DCO from Applicant</li> <li>• Post hearing submissions including written submissions of oral case</li> <li>• Responses to any further information requested by the ExA</li> </ul>
31 May 2018	The ExA's Further Written Questions
14 June 2018	<p><b>Deadline 4</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Responses to the ExA's Further Written Questions</li> <li>• Comments on Applicant's revised draft DCO</li> <li>• Comments on Post hearing submissions including written submissions of oral case</li> </ul>

## APPENDIX A: EVENTS IN THE EXAMINATION

11 July 2018	<b>Deadline 5</b>  Deadline for receipt of: <ul style="list-style-type: none"><li>• Comments on responses to the ExA's Further Written Questions</li><li>• Applicant's revised draft DCO</li><li>• Responses to further information requested by the ExA</li><li>• Post hearing submissions including written submissions of oral case</li></ul>
16 July 2018	ExA's request under Rule 17 for further information and for comment on the Applicant's proposed changes to the Application
31 July 2018	<b>Deadline 6</b>  Deadline for receipt of: <ul style="list-style-type: none"><li>• Comments on the draft DCO</li><li>• Responses to the ExA's Rule 17 request</li></ul>
07 August 2018	ExA's procedural decision to accept changes to the Application
23 August 2018	<b>Deadline 7</b>  Deadline for receipt of: <ul style="list-style-type: none"><li>• Responses to comments on the draft DCO</li><li>• Responses to further information requested by the ExA</li><li>• Final draft DCO to be submitted by the Applicant in the statutory instrument (SI) template with the SI template validation report</li></ul>
13 September 2018	<b>CLOSE OF EXAMINATION</b>

## **Millbrook Power Examination Library**

**Updated – 19 November 2018**

This Examination Library relates to the Millbrook power 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 Infrastructure's Planning website 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 Examination 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.

**EN010068 – Millbrook Power****Examination Library - Index**

<b>Category</b>	<b>Reference</b>
<a href="#">Application Documents</a>  As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
<a href="#">Adequacy of Consultation responses</a>	AoC-xxx
<a href="#">Relevant Representations</a>	RR-xxx
<a href="#">Procedural Decisions and Notifications from the Examining Authority</a>  Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
<a href="#">Additional Submissions</a>  Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
<a href="#">Events and Hearings</a>  Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
<b><a href="#">Representations – by Deadline</a></b>	
<a href="#">Deadline 1:</a>  <i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses	REP1-xxx
<a href="#">Deadline 2:</a>	REP2-xxx

<p><i>State what type of submissions was requested for this deadline in the heading</i> Includes R17 responses</p>	
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**EN010068 – Millbrook Power****Examination Library****Application Documents**

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APP-002	<a href="#">Millbrook Power Limited</a> 1.2 Application form
APP-003	<a href="#">Millbrook Power Limited</a> 1.3 Copies of Newspaper Notices
APP-004	<a href="#">Millbrook Power Limited</a> 1.4 Project Glossary
APP-005	<a href="#">Millbrook Power Limited</a> 2.1 Site Location Plans
APP-006	<a href="#">Millbrook Power Limited</a> 2.2 Existing Site Layout Plans
APP-007	<a href="#">Millbrook Power Limited</a> 2.3 Indicative Site Layout Plans
APP-008	<a href="#">Millbrook Power Limited</a> 2.4 Indicative Elevation Drawings
APP-009	<a href="#">Millbrook Power Limited</a> 2.5 Land Plans
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APP-012	<a href="#">Millbrook Power Limited</a> 3.1 Draft Development Consent Order
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APP-056	<a href="#">Millbrook Power Limited</a> 10.1 Planning Statement
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APP-058	<a href="#">Millbrook Power Limited</a> 10.3 Statement of Proposed Heads of Terms for an Agreement Pursuant to s106 of the TCPA 1990
<b>Adequacy of Consultation Responses</b>	
AoC-001	<a href="#">Borough Council of Wellingborough</a>
AoC-002	<a href="#">Central Bedfordshire Council</a>
AoC-003	<a href="#">Buckinghamshire County Council</a>
AoC-004	<a href="#">St Albans City &amp; District Council</a>
AoC-005	<a href="#">Luton Borough Council</a>
AoC-006	<a href="#">Dacorum Borough Council</a>
AoC-007	<a href="#">Aylesbury Vale District Council</a>
AoC-008	<a href="#">Bedford Borough Council</a>
AoC-009	<a href="#">Milton Keynes Council</a>
<b>Relevant Representations</b>	

RR-001	<a href="#">Elaine Randall</a>
RR-002	<a href="#">Wynns Limited</a>
RR-003	<a href="#">Louise Ward</a>
RR-004	<a href="#">Tracey Dowers</a>
RR-005	<a href="#">Ken Worf</a>
RR-006	<a href="#">Mr Clive Baker</a>
RR-007	<a href="#">The Coal Authority</a>
RR-008	<a href="#">Anglian Water Services Ltd</a>
RR-009	<a href="#">National Grid</a>
RR-010	<a href="#">Civil Aviation Authority</a>
RR-011	<a href="#">Ministry of Defence</a>
RR-012	<a href="#">Bedford Borough Council</a>
RR-013	<a href="#">Environment Agency</a>
RR-014	<a href="#">Network Rail</a>
RR-015	<a href="#">Hogan Lovells International LLP on behalf of Covanta Rookery South Limited</a>
RR-016	<a href="#">Jeremy Ramsden</a>
RR-017	<a href="#">Central Bedfordshire Council</a>
RR-018	<a href="#">Historic England</a>
RR-019	<a href="#">Marston Moreteyne Parish Council</a>
RR-020	<a href="#">Natural England</a>
<b>Procedural Decisions and Notifications from the Examining Authority</b>	
PD-001	<a href="#">Notification of Decision to Accept Application</a>
PD-002	<a href="#">Section 55 Checklist</a>
PD-003	<a href="#">Notice of the Appointment of the Examining Authority</a>
PD-004	<a href="#">Rule 6 - Notification of the preliminary meeting</a>
PD-005	<a href="#">Rule 8 letter - Notification of timetable for the examination</a>
PD-006	<a href="#">Written Questions</a>
PD-007	<a href="#">Notification of Hearings and Accompanied Site Inspection</a>
PD-008	<a href="#">Further Written Questions</a>
PD-009	<a href="#">Rule 17 Letter – Invitation for Comments on Proposed Changes</a>
PD-010	<a href="#">Rule 17 Letter</a> The ExA's Procedural Decision into the changes to the Application.
PD-011	<a href="#">Notification of Completion of ExA's Examination</a>
<b>Additional Submissions</b>	
AS-001	<a href="#">Borough Council of Wellingborough</a>
AS-002	<a href="#">Public Health England</a>
AS-003	<a href="#">Health and Safety Executive</a>
AS-004	<a href="#">Millbrook Power Limited</a> Additional Submission- Accepted at the discretion of the Examining Authority: 1.1 Introduction to the Applicant and Guide to the Application
AS-005	<a href="#">Millbrook Power Limited</a> Additional Submission - Accepted at the discretion of the Examining Authority: 4.3 Book of Reference clean
AS-006	<a href="#">Millbrook Power Limited</a> Additional Submission - Accepted at the discretion of the Examining Authority: 4.3 Book of Reference Schedule of Changes

AS-007	<a href="#">Millbrook Power Limited</a> Additional Submission - Accepted at the discretion of the Examining Authority: 4.3 Book of Reference_track changes
AS-008	<a href="#">Covanta Rookery South Limited</a> dated 9 March 2018
AS-009	<a href="#">Covanta Rookery South Limited</a> dated 7 March 2018
AS-010	<a href="#">Millbrook Power Limited</a> Certified Deed of Development Consent Obligations dated 12 September 2018
<b>Events and Hearings</b>	
<b>Preliminary Meeting – 13 March 2018</b>	
EV-001	<a href="#">Recording of Preliminary Meeting</a>
EV-002	<a href="#">Preliminary Meeting Note</a>
<b>Issue Specific Hearing on draft DCO – 13 March 2018</b>	
EV-003	<a href="#">Recording of Issue Specific Hearing on draft DCO</a>
<b>Accompanied Site Visits and Hearings</b>	
EV-004	<a href="#">Agendas for Hearings in May 2018</a>
EV-005	<a href="#">Accompanied Site Inspection Itinerary</a>
EV-006	<a href="#">Recording of Issue Specific Hearing on Environmental Matters - Part 1</a>
EV-007	<a href="#">Recording of Issue Specific Hearing on Environmental Matters - Part 2</a>
EV-008	<a href="#">Recording of Issue Specific Hearing on the draft Development Consent Order - Part 1</a>
EV-009	<a href="#">Recording of Issue Specific Hearing on the draft Development Consent Order - Part 2</a>
EV-010	<a href="#">Recording of Compulsory Acquisition Hearing</a>
<b>Representations</b>	
<b>Deadline 1 – 27 March</b>	
<ul style="list-style-type: none"> <li>• Notification of wish to speak at Compulsory Acquisition Hearing</li> <li>• Notification of wish to speak at an Issue Specific Hearing</li> <li>• Notification of wish to speak at an Open Floor Hearing</li> <li>• Notification of wish to attend an Accompanied Site Inspection (ASI), suggested locations and justifications</li> <li>• Notification by statutory parties of wish to be considered as an Interested Party</li> <li>• Notification of wish to have future correspondence electronically</li> </ul>	
REP1-001	<a href="#">Millbrook Power Limited</a> Deadline 1 Submission - Covering Letter
REP1-002	<a href="#">Millbrook Power Limited</a> Deadline 1 Submission - Proposed Accompanied Site Inspection Itinerary and Viewpoints
REP1-003	<a href="#">Millbrook Power Limited</a> Deadline 1 Submission - Statement of Common Ground between Millbrook Power Limited and Highways England
REP1-004	<a href="#">Millbrook Power Limited</a>

	Deadline 1 Submission - Updated Guide to the DCO Application Documents
REP1-005	<a href="#">Network Rail</a> Deadline 1 Submission
REP1-006	<a href="#">Public Health England</a> Deadline 1 Submission
REP1-007	<a href="#">Forest of Marston Vale</a> Deadline 1 Submission - Request for the Forest of Marston Vale Trust to be registered as a formal stakeholder for the Millbrook Power application and the attached letter of 14 November 2014.
<b>Deadline 2 – 17 April 2018</b> <ul style="list-style-type: none"> <li>• Comments on Relevant Representations</li> <li>• Summaries of all Written Representations exceeding 1500 words</li> <li>• Local Impact Reports from any local authorities</li> <li>• Statements of Common Ground (SoCG) requested by the ExA</li> <li>• Responses to the ExA’s Written Questions</li> <li>• Post hearing submissions including written submissions of oral case</li> </ul>	
REP2-001	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Covering Letter
REP2-002	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Written Summary of the Issue Specific Hearing on DCO
REP2-003	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Outline Construction Environmental Management Plan (Revision 1)
REP2-004	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Outline Landscape and Ecology Mitigation and Management Strategy (Revision 1)
REP2-005	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Statement of Common Ground between Millbrook Power Limited and National Grid Electricity Transmission plc
REP2-006	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Figure 11.1 ZTV Percentage Heights (Revision 1)
REP2-007	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Baseline Noise Survey Report and Operational Plan Noise Impact Assessment Report (Revision 1)
REP2-008	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Statement of Common Ground between Millbrook Power Limited and National Grid Gas plc
REP2-009	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Statement of Common Ground between Millbrook Power Limited and Bedford Borough Council
REP2-010	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Draft Development Consent Order (Revision 1) (Tracked Changes)
REP2-011	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Additional Submission on The Current Status of Low Level Restoration Scheme Baseline Works for Millbrook Power

REP2-012	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Plan 31116/2001/008 – Revision B
REP2-013	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Explanation of Amendments made to the Draft Development Consent Order and other Application Documents
REP2-014	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Comments on Relevant Representations
REP2-015	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Draft Development Consent Order Clean Version
REP2-016	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Responses to the Examining Authority's First Round of Written Questions with relevant supporting evidence and other documentation appended
REP2-017	<a href="#">Millbrook Power Limited</a> Deadline 2 Submission - Explanatory Memorandum (Revision 1)
REP2-018	<a href="#">Covanta Rookery South Limited</a> Deadline 2 Submission - Covering Email
REP2-019	<a href="#">Covanta Rookery South Limited</a> Deadline 2 Submission - Work Plans
REP2-020	<a href="#">Anglian Water</a> Deadline 2 Submission - Written Representations
REP2-021	<a href="#">Anglian Water</a> Deadline 2 Submission - Water Asset Plan
REP2-022	<a href="#">Central Bedfordshire Council</a> Deadline 2 - Summary of Written Representations
REP2-023	<a href="#">Central Bedfordshire Council</a> Deadline 2 Submission - Written Representations
REP2-024	<a href="#">Central Bedfordshire Council</a> Deadline 2 Submission - Local Impact Report
REP2-025	<a href="#">Central Bedfordshire Council</a> Deadline 2 Submission - Proposed Written Response to Examining Authority's Written Questions
REP2-026	<a href="#">Central Bedfordshire Council</a> Deadline 2 Submission - Plan 1 Rookery Pit and Surrounding Area
REP2-027	<a href="#">Central Bedfordshire Council</a> Deadline 2 Submission - Plan 2 Sites that fell under the 1980-81 clay permissions
REP2-028	<a href="#">Central Bedfordshire Council</a> Deadline 2 Submission - Plan 3 The Forest of Marston Vale
REP2-029	<a href="#">National Grid</a> Deadline 2 Submission - Response to ExA's Written Questions
REP2-030	<a href="#">National Grid</a> Deadline 2 Submission - Written Representation
REP2-031	<a href="#">Ministry of Defence</a> Deadline 2 Submission - MOD Safeguarding Letter
REP2-032	<a href="#">Bedford Borough Council</a> Deadline 2 Submission - Local Impact Report and Plans
REP2-033	<a href="#">Environment Agency</a> Deadline 2 Submission - Response to ExA's Written Questions
REP2-034	<a href="#">Forest of Marston Vale</a>

	Deadline 2 Submission
REP2-035	<a href="#">Forest of Marston Vale</a> Deadline 2 Submission - Woodland Model Figures
REP2-036	<a href="#">John Moran</a> Deadline 2 Submission
REP2-037	<a href="#">Network Rail</a> Deadline 2 Submission - Written Representation
REP2-038	<a href="#">Jeremy Ramsden</a> Deadline 2 Submission - Written Representation
<b>Late Deadline 2 Submission accepted at the discretion of the Examining Authority</b>	
REP2-039	<a href="#">Millbrook Power Limited</a> Statement of Common Ground between Millbrook Power Limited and Central Bedfordshire Council
REP2-040	<a href="#">Millbrook Power Limited</a> Late Deadline 2 Submission accepted at the discretion of the Examining Authority – Statement of Common Ground between Millbrook Power Limited and Natural England
REP2-041	<a href="#">Millbrook Power Limited</a> Late Deadline 2 Submission accepted at the discretion of the Examining Authority - Statement of Common Ground between Millbrook Power Limited and Environment Agency
REP2-042	<a href="#">National Grid</a> Deadline 2 Submission - Confirmation of the withdrawal of Relevant Representation
<b>Deadline 3 – 17 May 2018</b>	
<ul style="list-style-type: none"> <li>• Response to Written Representations</li> <li>• Comments on Response to Examining Authority FWQ</li> <li>• Draft Development Consent Order</li> <li>• Written Summaries of Oral Case for, Environmental, DCO and Compulsory Acquisition <ul style="list-style-type: none"> <li>• Statement of Common Ground</li> </ul> </li> </ul>	
REP3-001	<a href="#">Millbrook Power Limited</a> Applicants response to Written Representations
REP3-002	<a href="#">Millbrook Power Limited</a> Applicants comments on Responses to Examining Authority FWQ
REP3-003	<a href="#">Millbrook Power Limited</a> Draft Development Consent Order - Tracked
REP3-004	<a href="#">Millbrook Power Limited</a> Written Summary of the Applicants Oral Case – Environmental
REP3-005	<a href="#">Millbrook Power Limited</a> Written Summary of the Applicants Oral Case – DCO
REP3-006	<a href="#">Millbrook Power Limited</a> Draft Development Consent Order – Clean
REP3-007	<a href="#">Millbrook Power Limited</a> Applicants comments of Bedford Boroughs Council’s Local Impact Report
REP3-008	<a href="#">Millbrook Power Limited</a> Guide to the Applicants DCO / Cover Letter
REP3-009	<a href="#">Millbrook Power Limited</a> SoCG for Applicant and Historic England

REP3-010	<a href="#">Millbrook Power Limited</a> Applicants comments on Central Bedford Council's Local Impact Report
REP3-011	<a href="#">Millbrook Power Limited</a> Explanations of Amendments to Draft DCO
REP3-012	<a href="#">Millbrook Power Limited</a> Written Summary of the Applicant's Oral Case – Compulsory Acquisition
<b>Deadline 4 – 14 June 2018</b>	
<ul style="list-style-type: none"> <li>• Responses to the ExA's Further Written Questions (if required)</li> <li>• Comments on Applicant's revised draft DCO (if required)</li> <li>• Comments on Post hearing submissions, including Written Submissions of Oral Case</li> </ul>	
REP4-001	<a href="#">Millbrook Power Limited</a> Cover Letter / Guide to the Applicants DCO
REP4-002	<a href="#">Millbrook Power Limited</a> Applicant's response to ExA's SWQ's
REP4-003	<a href="#">Millbrook Power Limited</a> Statement of Common Ground produced jointly by Millbrook Power and Environment Agency
REP4-004	<a href="#">Covanta Rookery South Limited</a> Covanta's response to deadline 4
REP4-005	<a href="#">Network Rail Infrastructure Limited</a> Network Rail's response to deadline 4
<b>Deadline 5 – 11 July 2018</b>	
<ul style="list-style-type: none"> <li>• Comments on responses to the ExA's Further Written Questions (if required)</li> <li>• Applicant's revised draft DCO</li> <li>• Responses to further information requested by the ExA</li> <li>• Post hearing submissions including written submissions of oral case</li> </ul>	
REP5-001	<a href="#">Network Rail</a> Network Rail's response to deadline 5
REP5-002	<a href="#">Millbrook Power Limited</a> Millbrook Power Limited Deadline 5 Covering Letter
REP5-003	<a href="#">Millbrook Power Limited</a> MPL Outline CEMP Revision 2 for Deadline 5 FINAL
REP5-004	<a href="#">Millbrook Power Limited</a> 2.1 Site Location Plan Low RES FINAL
REP5-005	<a href="#">Millbrook Power Limited</a> 2.2 Existing Site Layout Plan Rev D FINAL
REP5-006	<a href="#">Millbrook Power Limited</a> 2.3 Indicative Layout Plans Rev 1 FINAL
REP5-007	<a href="#">Millbrook Power Limited</a> 2.5 Land Plans Rev 1 FINAL
REP5-008	<a href="#">Millbrook Power Limited</a> 2.6 Works Plans Rev 1 FINAL
REP5-009	<a href="#">Millbrook Power Limited</a> 2.7 Access Plans Rev 1 FINAL
REP5-010	<a href="#">Millbrook Power Limited</a> 3.1 DCO Rev 3 Tracked FINAL
REP5-011	<a href="#">Millbrook Power Limited</a>

	3.1 DCO Rev 3 Clean FINAL
REP5-012	<a href="#">Millbrook Power Limited</a> 3.2 DCO Explanatory Memorandum Clean Rev 2 FINAL
REP5-013	<a href="#">Millbrook Power Limited</a> 3.2 DCO Explanatory Memorandum Tracked Rev 2 FINAL
REP5-014	<a href="#">Millbrook Power Limited</a> 4.1 Statement of Reasons Tracked Rev 1 FINAL
REP5-015	<a href="#">Millbrook Power Limited</a> 4.1 Statement of Reasons Clean Rev 1 FINAL
REP5-016	<a href="#">Millbrook Power Limited</a> 4.3 Book of Reference Rev 2 CLEAN FINAL
REP5-017	<a href="#">Millbrook Power Limited</a> 4.3 Book of Reference Rev 2 TRACKED FINAL
REP5-018	<a href="#">Millbrook Power Limited</a> Draft S106 Agreement (Deadline 5 Submission Version) FINAL
REP5-019	<a href="#">Millbrook Power Limited</a> Schedule of Amendments at Deadline 5
<b>Deadline 6 – 31 July 2018</b>	
<ul style="list-style-type: none"> <li>• Comments on the draft DCO (if required)</li> <li>• Responses to Rule 17 Letter dated 16 July 2018</li> </ul>	
REP6-001	<a href="#">Natural England</a> Response to Rule 17 Letter dated 16 July 2018
REP6-002	<a href="#">Covanta Rookery South Limited</a> Response to Deadline 6
REP6-003	<a href="#">Historic England</a> Response to Rule 17 Letter dated 16 July 2018
REP6-004	<a href="#">Network Rail Infrastructure Limited</a> Response to Deadline 6
REP6-005	<a href="#">Millbrook Power Limited</a> Deadline 6 Covering Letter
REP6-006	<a href="#">Central Bedfordshire Council</a> Response to Rule 17 letter dated 16 July 2018
<b>Deadline 7 – 23 August 2018</b>	
<ul style="list-style-type: none"> <li>• Responses to comments on the draft DCO (if required)</li> <li>• Responses to further information requested by the ExA</li> <li>• Final draft DCO to be submitted by the Applicant in the statutory instrument (SI) template with the SI template validation report</li> </ul>	
REP7-001	<a href="#">Millbrook Power Limited</a> Deadline 7 Submission - Explanatory Memorandum Rev 3 – Tracked Changes
REP7-002	<a href="#">Millbrook Power Limited</a> Deadline 7 Submission - Final Draft DCO Rev 4 - Clean
REP7-003	<a href="#">CLH Pipeline System</a> Deadline 7 Submission - CHL Pipeline System Response
REP7-004	<a href="#">Millbrook Power Limited</a> Deadline 7 Submission - Covering Letter
REP7-005	<a href="#">Millbrook Power Limited</a> Deadline 7 Submission - Draft DCO Rev 4 vs Rev 3 - Tracked Changes
REP7-006	<a href="#">Millbrook Power Limited</a>

	Deadline 7 Submission - Book of Reference Rev 3 - Tracked Changes
REP7-007	<a href="#">Millbrook Power Limited</a> Deadline 7 Submission - Draft DCO Rev 4 - Tracked Changes
REP7-008	<a href="#">Millbrook Power Limited</a> Deadline 7 Submission - Explanation of Amendments Rev 4
REP7-009	<a href="#">Millbrook Power Limited</a> Deadline 7 Submission - Book of Reference Rev 7 - Clean
REP7-010	<a href="#">Millbrook Power Limited</a> Deadline 7 Submission - Joint Statement with Network Rail
REP7-011	<a href="#">Millbrook Power Limited</a> Deadline 7 Submission - Rights of Way Streets and Access Plans Rev 2
REP7-012	<a href="#">Network Rail</a> Deadline 7 Submission - Network Rail Response
REP7-013	<a href="#">Millbrook Power Limited</a> Deadline 7 Submission - Explanatory Memorandum Rev 3 - Clean
<b>Other Documents</b>	
OD-001	<a href="#">Millbrook Power Limited</a> Certificates of compliance with s56 and s59 of the Planning Act 2008 and Regulation 13 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
OD-002	<a href="#">Section 56 Notification</a>

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
2009 EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment Regulations 2009 (as amended))
AGI	Above Ground Installation
AIS	Air Insulated Switchgear
AOD	Above Ordnance Datum
APFP	The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009
ASI	Accompanied Site Inspection
BATc	Best Available Technology Conclusions Document
BBC	Bedford Borough Council
BoR	Book of Reference
CA	Compulsory Acquisition
CAA	Civil Aviation Authority
CAH	Compulsory Acquisition Hearing
CBC	Central Bedfordshire Council
CCGT	Combined Cycle Gas Turbine
CCR	Carbon Capture Ready
CCS	Carbon Capture and Storage
CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
CTMP	Construction Traffic Management Plan
CWS	County Wildlife Site
dB	Decibel
DCLG	Department for Communities and Local Government
DCO	Development Consent Order (made or proposed to be made under the Planning Act 2008 (as amended))
DEFRA	Department for the Environment, Food and Rural Affairs
DMRB	Design Manual for Roads and Bridges
EA	Environment Agency
EH	English Heritage
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EMF	Electro-magnetic Field
EN-1	Overarching National Policy Statement for Energy (EN-1)
EN-2	National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2)
EN-4	National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)
EN-5	National Policy Statement for Electricity Networks Infrastructure (EN-5)
EP	Environmental Permit
EPR	Examination Procedure Rules
ES	Environmental Statement
EU	European Union

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
ExA	Examining Authority
FRA	Flood Risk Assessment
GIS	Gas Insulated Switchgear
Habitats Directive	Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
HRA	Habitat Regulations Assessment
IAQM	Institute of Air Quality Management
ICNIRP	International Commission on Non-Ionizing Radiation Protection
IED	Industrial Emissions Directive
ISH	Issue Specific Hearing
km	Kilometre
kv	Kilovolts
LA	Local Authority
LEMMS	Landscape and Ecology Mitigation and Management Strategy
LIR	Local Impact Report
LLRS	Low Level Restoration Scheme
LPA	Local Planning Authority
LVIA	Landscape and Visual Impact Assessment
mbgl	Metres below ground level
m	Metres
MoD	Ministry of Defence
MW	Megawatt
NE	Natural England
NETS	National Electricity Transmission System
NGET	National Grid Electricity Transmission plc
NO <sub>2</sub>	Nitrogen dioxide
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
NSR	Noise Sensitive Receptor
NTS	National Transmission System
OCGT	Open Cycle Gas Turbine
PA2008	Planning Act 2008
PIG	Pipeline Inspection Gauge
PM	Preliminary Meeting
PPG	Planning Practice Guidance
Ramsar	The Ramsar Convention on Wetlands
RIES	Report on the Implications for European sites
ROV	Remote Operating Valve
RR	Relevant Representation
RRF	Resource Recovery Facility
SAC	Special Area of Conservation
SEC	Sealing End Compound

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SPA	Special Protection Area
SSSI	Sites of Special Scientific Interest
TA	Traffic Assessment
TP	Temporary Possession
WR	Written Representation
ZTV	Zone of theoretical visibility

**201\* No.**

**INFRASTRUCTURE PLANNING**

**The Millbrook Gas Fired Generating Station Order 201[\*]**

*Made* - - - - [\*\*\*] 201\*  
*Coming into force* - - [\*\*\*] 201\*

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An application under section 37 (applications for orders granting development consent) of the Planning Act 2008(a) (the “2008 Act”) has been made to the Secretary of State for an order granting development consent.

The application has been examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 (the single appointed person procedure) 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(b). The single appointed person has submitted a report and

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(a) 2008 c.29: The relevant provisions of the 2008 Act are amended by Chapter 6 of Part 6 of, and schedule 13 to, the Localism Act 2011 (c. 20) and by sections 22-27 of the Growth and Infrastructure Act 2013 (c. 27). Transitional provisions are contained in S.I. 2013/1124.

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

recommendation to the Secretary of State under section 83 (single appointed person to examine and report on application) of the 2008 Act<sup>(a)</sup>.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009<sup>(b)</sup> and has had regard to the documents and matters referred to in section 104(2) (decisions in cases where national policy statement has effect) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

In accordance with section 127 (statutory undertakers' land) of the 2008 Act <sup>(c)</sup>, the Secretary of State has applied the relevant tests and is satisfied that they have been met.

Accordingly, the Secretary of State, in exercise of the powers in sections 114 (grant or refusal of development consent order), 115 (development for which development consent may be granted), and 120 (what may be included in order granting development consent) of the 2008 Act, makes the following Order—

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(a) 2008 c.29. Section 83 was amended by paragraphs 35(2) and 35(3) of schedule 13(1) and paragraph 1 of Part 20 of section 25(20) to the Localism Act 2011 (c.20).

(b) S.I. 2009/2263. Regulation 3 was amended by S.I. 2012/635 and S.I. 2012/787. S.I. 2009/2263 was revoked by S.I. 2017/572, but continues to apply to this application for development consent by virtue of transitional provisions contained in Regulation 37(2) of that instrument.

(c) 2008( c.29), Section 127 was amended by sections 23, (2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013 (c.27) and by paragraphs 64(1) and (2) of Schedule 13(1) and paragraph 1 of Schedule 25 to the Localism Act 2011 (c.20).

# PART 1

## PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Millbrook Gas Fired Generating Station Order 201\* and comes into force on [X] 201[X].

### Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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

“the access road visibility splay” means the visibility splay shown hatched in purple on the access road visibility splay plan;

“access road visibility splay plan” means the plan identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified by the Secretary of State as the access road visibility splay plan for the purposes of this Order;

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

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

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

“book of reference” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“commence” means beginning to carry out any material operation, as defined in section 155 (when development begins) of the 2008 Act, comprised in or carried out for the purposes of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

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- (a) 1961 c.33.
  - (b) 1965 c.56.
  - (c) 1980 c.66.
  - (d) 1984 c.27.
  - (e) 1990 c.8.
  - (f) 1991 c.22.
  - (g) 2008 c.29.

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis but excluding the generation of power during commissioning and testing;

“design principles statement” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and certified as such by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

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

“the environmental statement” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as such by the Secretary of State for the purposes of this Order;

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

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

“gas turbine generator” means one gas turbine which drives a single electricity generator for the purposes of generating electricity including air inlet filter house, air inlet duct, exhaust diffuser, and auxiliaries such as lube oil system, air dryers, fuel gas filter package, instrument air system and compressor washing;

“gross rated electrical output” means the aggregate of gross electrical power as measured at the terminals of the generator in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2016;

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

“land plans” means the plans identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which are certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means, in respect of numbered works 1A, 1B, 1C, 1D, 2A, 2B, 3A, 3B, 4A, 4B, 5, 6, 7, and 8 the outer limits of the corresponding numbered area shown on the works plans;

“low level restoration scheme agricultural track” means an access track into Rookery South Pit from Green Lane which is in part existing and in part to be constructed in accordance with the planning permission for the low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8);

“low level restoration scheme baseline works” means the works permitted by the planning permission for the low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8) and shown on the low level restoration scheme baseline works plan;

“low level restoration scheme baseline works plan” means the plan identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the low level restoration scheme baseline works plan by the Secretary of State for the purposes of this Order;

“low level restoration scheme drainage strategy” means the drainage strategy to be approved pursuant to conditions 8 and 9 of the planning permission for the low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8);

“low level restoration scheme secondary access track” means an access track into Rookery South Pit from Station Lane which is to be constructed in accordance with the planning permission for the low level restoration scheme of Rookery South Pit (reference number BC/CM/2000/8);

“maintain” includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development and “maintenance” and “maintaining” are to be construed accordingly;

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

“Network Rail” means Network Rail Infrastructure Limited (Company Registration Number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans and described in the book of reference;

“Order limits” means the limits shown on the works plans;

“outline construction environment management plan” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the outline construction environment management plan by the Secretary of State for the purposes of this Order;

“outline construction traffic management measures” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the outline construction traffic management measures by the Secretary of State for the purposes of this Order;

“outline landscape and ecological mitigation and management strategy” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the outline landscape and ecological mitigation and management strategy by the Secretary of State for the purposes of this Order;

“outline lighting strategy” means the document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the outline lighting strategy by the Secretary of State for the purposes of this Order;

“outline travel plan” means document identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the outline travel plan by the Secretary of State for the purposes of this Order;

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

“Millbrook Power Limited” means Millbrook Power Limited (Company No. 08920458) whose registered office is at Drax Power Station, Drax, Selby, North Yorkshire YO58 8PH;

“relevant planning authority” means Central Bedfordshire Council in relation to land in its area and Bedford Borough Council in relation to land in its area, and “the relevant planning authorities” means both of them;

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

“rights of way, streets and access plan” means the plan identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the rights of way, streets and access plan by the Secretary of State for the purposes of this Order;

“Rookery South access road” means the access road comprising numbered work 5A pursuant to The Rookery South (Resource Recovery Facility) Order 2011(b);

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

“street” means a street within the meaning of section 48 (streets, street works and undertakers) 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 (street works in England and Wales) of the 1991 Act;

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(a) 1981. c.67.  
(b) S.I. 2013/680.

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

“undertaker” means

- (a) in respect of the authorised development, Millbrook Power Limited; and
- (b) in respect of numbered works 3A, 5, 6 and 7, Millbrook Power Limited and National Grid;

“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; and

“works plans” means the plans identified in Table 11 of Schedule 14 (documents and plans to be certified) to this Order and which is certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictions are references to restrictive covenants over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in 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 plan and rights of way, streets and access plan are to be taken to be measured along that work.

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

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference to numbered work 1 means 1A to 1D (inclusive), a reference to numbered work 2 means 2A and 2B (inclusive), a reference to numbered work 3 means 3A and 3B (inclusive), and a reference to numbered work 4 means 4A and 4B (inclusive). References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the rights of way, streets and access plan.

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

(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 to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

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

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

#### **Maintenance of authorised development**

**4.**—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

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

## Operation of authorised development

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

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

## Benefit of this Order

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

(2) Paragraph (1) does not apply to numbered works 3A, 5, 6 and 7 for which development consent is granted by this Order for the benefit of Millbrook Power Limited and National Grid.

## Consent to transfer benefit of the Order

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

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

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

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

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

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

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state —

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(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 this 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.

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
  - (b) subject to paragraph (7), the date on which the transfer will take effect;
  - (c) the powers to be transferred or granted;
  - (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
  - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.
- (7) The date specified under paragraph 7(6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.
- (8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

## PART 3

### STREETS

#### **Power to alter layout etc. of streets**

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

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

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

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

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

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

#### **Street works**

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

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

(2) The authority given by paragraph (1) is a statutory right for the purposes of 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).

### **Construction and maintenance of new or altered means of access**

**10.**—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (access) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (access) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 8(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 (access) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

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

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

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

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

### **Temporary prohibition or restriction of use of streets**

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

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

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

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

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets specified in columns (1) and (2) of Schedule 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.

### **Stopping up of Streets**

**12.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 7 (streets to be stopped up for which a substitute is to be provided) to the extent specified, by reference to the letters and numbers shown on the rights of way, streets and access plan, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 7 (streets to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article is subject to article 31 (apparatus and rights of statutory undertakers in streets).

### **Access to works**

**13.**—(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 locations specified in Part 1 of Schedule 3 (streets subject to permanent and temporary alteration of layout);

- (b) form and layout the temporary means of access in the locations specified in Part 2 of Schedule 3 (streets subject to permanent and temporary alteration of layout); and
- (c) with the approval of the relevant planning authorities 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**

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

- (a) the construction of any new street including any structure carrying the street;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;
- (d) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order; or
- (e) the carrying out in the street of any of the works referred to in article 10(1) (construction and maintenance of new or altered means of access).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Traffic Regulation**

**15.**—(1) 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 the construction of the authorised development or any other development necessary for the authorised development that takes place within the Order limits, 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 under 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 subparagraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 11 (temporary prohibition or restriction of use of streets) 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 (power of local authorities to provide parking places) 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 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(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.

## 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 (right to communicate with public sewers) of the Water Industry Act 1991(b).

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

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

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

(5) 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 an environmental permit would be required pursuant to regulation 12(1) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(c).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964(d), an internal drainage board, a

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

(b) 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).

(c) S.I. 2016/1154.

(d) 1964 c.40. Paragraph 9B was inserted into Schedule 2 paragraph 9 of Schedule 3 of by the Transport and Works Act 1992 (c.42). There are other amendments to the 1964 Act that are not relevant to this Order.

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<sup>(a)</sup> have the same meaning as in that Act.

### **Authority to survey and investigate the land**

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

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

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

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

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take onto 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) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

### **Removal of human remains**

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

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

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

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(a) 1991 c.57.

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

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

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

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

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

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

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

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

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

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

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

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(a) 1857 c.81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in SI 2014/2077 Sch.1 paras 1 and 2).

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

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

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

#### **Statutory authority to override easements and other rights**

**20.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, 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 (benefit of order granting development consent) 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 (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

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

#### **Time limit for exercise of authority to acquire land compulsorily**

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

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

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

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(a) 1981 c. 66.

### **Compulsory acquisition of rights etc.**

**22.**—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In respect of such parts of the Order land that are shown edged red and shaded blue on the land plans, the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights and impose the restrictions described in the book of reference and shown on the land plans.

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

(4) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) is to have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restriction.

(5) In any case where the acquisition of new rights or the imposition of a restriction under paragraph (1) or (2) 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.

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

(7) Subject to the modifications set out in Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) 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.

### **Private rights**

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

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions under this Order are

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(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

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

whichever is the earliest.

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

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

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

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 30 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land,
  - (ii) the undertaker's appropriation of it,
  - (iii) the undertaker's entry onto it, or
  - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs are not to apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested, belongs or benefits.

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

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

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

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

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

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of act) for subsection 2 there is substituted—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

- (5) Section 5A (time limit for general vesting declaration) is omitted.
- (6) In section 5B (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Millbrook Gas Fired Generating Station Order 201[ ]”.
- (7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 25(3) (acquisition of subsoil only) of the Millbrook Gas Fired Generating Station Order 201[X], which excludes the acquisition of subsoil only from this Schedule”.
- (10) 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 (and as modified by article 26 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

- 25.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 19 (compulsory acquisition of land) and paragraphs (1) and 22(2) of article 22 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.
- (2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.
- (3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—
- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.
- (4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Modification of Part 1 of the Compulsory Purchase Act 1965**

- 26.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.
- (2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent),

the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Millbrook Gas Fired Generating Station Order 201[X].”

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in section (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 21 (time limit for exercise of authority to acquire land compulsorily) of the Millbrook Gas Fired Generating Station Order 201[X].”

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 25(3) (acquisition of subsoil only) of the Millbrook Gas Fired Generating Station Order 201[X], which excludes the acquisition of subsoil only from this Schedule”; and

(b) after paragraph 29, insert—

“PART 4

#### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 28 (temporary use of land for carrying out the authorised development) or article 29 (temporary use of land for maintaining the authorised development) of the Millbrook Gas Fired Generating Station Order 201[X].”

### **Rights under or over streets**

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

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

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

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

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

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

### **Temporary use of land for carrying out the authorised development**

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

- (a) enter on and take possession of—

- (i) 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;
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of Schedule 9 (land of which temporary possession may be taken), or any other mitigation works.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
  - (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) 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 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or any debris removed under this article.
- (5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of 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 (determination of questions of disputed compensation) of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).
- (9) 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 22 (compulsory acquisition of rights etc.); or

- (b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 25 (acquisition of subsoil only) or article 27 (rights under or over streets)

(10) 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.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act 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 (application of compulsory acquisition provisions) of the 2008 Act.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 9 (land of which temporary possession may be taken).

(13) The provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup> do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development.

### **Temporary use of land for maintaining the authorised development**

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

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

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

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

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

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

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

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

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

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

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(a) 2017 c.20

(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 (refusal to give possession to acquiring authority) of the 1965 Act 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 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning except where the authorised development is landscaping where “the maintenance period” means such period as set out in the landscape and ecological mitigation and management strategy which is approved by Central Bedfordshire Council pursuant to Requirement 3 beginning with the date on which that part of the landscaping is completed provided that such period shall not exceed 10 years.

(12) The provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup>, do not apply insofar as they relate to temporary possession of land under this article in connection with the maintenance of the authorised development.

### **Statutory undertakers**

**30.** Subject to the provisions of Schedule 10 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to statutory undertakers on, under, over or within the Order land; and
- (c) create and acquire compulsorily the rights and/or impose restrictions over any Order land belonging to statutory undertakers.

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<sup>(a)</sup> 2017 c.20

### **Apparatus and rights of statutory undertakers in streets**

**31.**—(1) Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 10 (construction and maintenance of new or altered means of access) or article 11 (temporary prohibition or restriction of use of streets) or where a street is stopped up under article 12 (stopping up of streets) any statutory undertaker 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 10 (protective provisions), as if this Order had not been made.

### **Recovery of costs of new connections**

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

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

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

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

(3) This article does not have effect in relation to apparatus to which article 31 (apparatus and rights of statutory undertakers in streets) or Part 3 (water supply) of the 1991 Act applies.

(4) In this article—

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

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

## **PART 6 OPERATIONS**

### **Felling or lopping of trees and removal of hedgerows**

**33.**—(1) The undertaker may fell or lop any tree or shrub 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) and paragraph (4), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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(a) 2003 c. 21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations 2011/1210

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

(4) The undertaker may, for the purposes of the authorised development subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development.

(5) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(a).

## PART 7

### MISCELLANEOUS AND GENERAL

#### Application of landlord and tenant law

**34.**—(1) This article applies to—

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

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

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

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

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

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

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

#### Defence to proceedings in respect of statutory nuisance

**36.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(b) (in relation to a nuisance falling within paragraph (g) (noise emitted from premises so as to be prejudicial to health or a nuisance) of section 79(1) of that Act 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—

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(a) S.I. 1997/1160.

(b) 1990 c.43. 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. There are other amendments not relevant to this Order.

- (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 section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(a); or
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) 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 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protective provisions**

37. Schedule 10 (protective provisions) has effect.

### **Modifications to and amendment of statutory provisions**

38. The Rookery South (Resource Recovery Facility) Order 2011 is to be modified and amended for the purposes of this Order only as set out in Schedule 11 (modifications to the Rookery South (Resource Recovery Facility) Order 2011).

### **Certification of plans etc.**

39.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in Table 11 of Schedule 14 (documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

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

### **Service of notices**

40.—(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.

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(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), paragraphs 33 and 35(1) of Schedule 17, and paragraph 1(1)(xxvii) of Schedule 16 to the Electricity Act 1989 (c.29); Section 61 was amended by section 133(2) and Schedule 7 to the Building Act 1984 (c.55), paragraph 1 of Schedule 24 to the Environment Act 1995 (c.25), and section 162(1) of and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c.43). There are other amendments not relevant to this Order.

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

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

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

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

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

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

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

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

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

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

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

### **Procedure in relation to certain approvals**

**41.**—(1) Where an application is made to or a request is made of the relevant planning authorities, highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 10 (protective provisions) for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements but including the protective provisions contained in Schedule 10), such consent, agreement or

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(a) 1978 c.30. Section 7 was amended by section 144 and paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 12 (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) Save for applications made pursuant to Schedule 12 (procedure for discharge of requirements) and where stated to the contrary if, within eight weeks after the application or request has been submitted to an authority, beneficiary of protective provisions or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed with the undertaker in writing) it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(4) The procedure set out in paragraph 1(3) of Schedule 12 (procedure for discharge of requirements) has effect in relation to any refusal by an authority, beneficiary of protective provisions, or an owner as referred to in paragraph (1) of this article to any consent, agreement or approval required under this Order, including such as may be required pursuant to the protective provisions contained within Schedule 10 (protective provisions).

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (3).

## **Arbitration**

**42.**—(1) 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.

(2) Should the Secretary of State fail to appoint an arbitrator under paragraph (1) within 14 days of the application, the referring party may refer to the Centre of Effective Dispute Resolution for appointment of an arbitrator.

## **Funding**

**43.**—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security and the amount of that security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant power in relation to that land.

(2) The provisions are—

- (a) article 19 (compulsory acquisition of land);
- (b) article 22 (compulsory acquisition of rights etc);
- (c) article 23 (private rights);
- (d) article 25 (acquisition of subsoil only);
- (e) article 27 (rights under or over streets);
- (f) article 28 (temporary use of land for carrying out the authorised development);
- (g) article 29 (temporary use of land for maintaining the authorised development); and
- (h) article 30 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

#### **Low Level Restoration Scheme**

44. Insofar as compliance with any article of this Order or any requirement in Schedule 2 (requirements) prevents the undertaker from complying with any condition contained in the planning permission granted under the Town and Country Planning Act 1990 for the low level restoration scheme for Rookery South Pit (reference number BC/CM/2000/8), the undertaker shall not be in breach of that condition.

Signed by the authority of the Secretary of State for Business, Energy and Industrial Strategy

	<i>Name</i>
Address	Secretary of State
Date	Department for Business, Energy and Industrial Strategy

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

In Central Bedfordshire—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, and associated development under section 115(1)(b) of that Act consisting of a generating station with a gross rated electrical output of up to 299MWe comprising all or part of—

**Work No. 1A** development comprising a generating station including—

- (a) 1 gas turbine generator;
- (b) 1 exhaust gas emission flue stack; and
- (c) external fin fan cooler(s),

**Work No. 1B** development comprising a generating station and gas and electrical infrastructure including—

- (a) a control room/office/workshop;
- (b) telemetry apparatus;
- (c) a fire water tank;
- (d) a demineralised water storage tank;
- (e) an emergency generator including fuel storage tank;
- (f) gas pipeline and telemetry cabling and cathodic protection test/ transformer rectifier unit;
- (g) a natural gas receiving station and gas treatment compound containing—
  - (i) a pipeline inspection gauge (PIG) receiving facility;
  - (ii) isolation valves, metering, heating, filtering, compression, pressure regulation equipment;
  - (iii) electricity supply kiosks;
  - (iv) emergency generator including fuel storage tank;
  - (v) Joule-Thomson boiler(s); and
  - (vi) control and instrumentation kiosks,

**Work No. 1C** development comprising a generating station and electrical infrastructure including a transformer compound, generator step up transformer, unit and other transformers, overhead conductor gantry, overhead conductors and other plant and structures required to manage the transmission of electricity,

**Work No. 1D** development comprising a generating station including—

- (a) security infrastructure, including cameras, perimeter fencing and a gatehouse;
- (b) site lighting infrastructure, including perimeter lighting columns;
- (c) internal roadways, car parking, pedestrian network, cycle parking, hardstanding and water treatment trailers;
- (d) a maintenance compound including hardstanding and welfare and administration facilities;
- (e) site drainage and waste management infrastructure, including relocation of existing infrastructure as required;

- (f) electricity, water, wastewater and telecommunications and other services including high voltage and low voltage cabling, equipment and controls and associated telemetry and electrical protection auxiliary cabling;
- (g) landscaping including tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation; and
- (h) other ancillary equipment.

**Work No. 2A** development comprising the creation of a junction with Green Lane, maintenance of an existing access road between Green Lane and Rookery South Pit, including permanent road surface and kerb stones, fencing, safety barrier(s), signing and road markings works, footway, drainage (including culverts), electricity and telecommunications connections and other services and other incidental works,

**Work No. 2B** development comprising a new means of access, including permanent road surface and kerb stones, safety barrier(s), signing and road markings works, footway, drainage (including culverts), electricity and telecommunications connections and other services and other incidental works,

**Work No. 3A** development comprising gas infrastructure including—

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

**Work No. 3B** development comprising creation of a permanent access and a construction access from an existing agricultural track into numbered work 3A, upgrading of an existing agricultural track and junction between Houghton Lane and numbered work 3A, including permanent road surface and kerb stones, signing and road markings works, drainage (including culverts), electricity and telecommunications connections and other services and other incidental works,

**Work No. 4A** development comprising a gas pipeline including—

- (a) a new underground gas pipeline connection and telemetry cabling, approximately 1.8km in length connecting Work No. 1B to Work No. 3A;
- (b) pipeline field marker posts and cathodic protection test/ transformer rectifier unit;
- (c) below ground drainage works;
- (d) works required in order to protect existing utilities infrastructure;
- (e) tree and hedge removal;
- (f) landscaping including tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation; and
- (g) creation of construction access from Houghton Lane,

**Work No. 4B** development comprising a construction laydown area including areas of hardstanding and site and welfare offices and workshop;

**Work No. 5** development comprising an electrical substation and electrical infrastructure including—

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

**Work No. 6** development comprising works to construct a 400kV electrical connection between transmission towers ZA377 and ZA379 and Work No.5 and mitigation works for Work Nos. 1, 3, 5, 6 and 7 including—

- (a) 400 kV sealing end compounds (including downleads to connect to the new transmission tower);
- (b) underground or ducted high voltage electrical cables and associated telemetry and electrical protection auxiliary cabling and below ground drainage works;
- (c) security infrastructure including perimeter fencing with gates, security cameras, site lighting infrastructure, including perimeter lighting columns;
- (d) permanent means of access from the low level restoration scheme secondary access to numbered work 6(a), taking the form of an agricultural hard-core track not more than 6 m wide and creation of permanent diversion of the low level restoration scheme secondary access;
- (e) temporary means of access;
- (f) landscaping including bunds, tree planting, temporary and permanent fencing and other boundary treatments and ecological mitigation;
- (g) site drainage;
- (h) a new transmission tower (including downleads to connect to the sealing end compounds); and
- (i) removal of transmission tower ZA378,

**Work No 7** development comprising works to, and installation of, transmission towers and mitigation works for Work Nos. 1, 3, 5, 6 and 7 including—

- (a) erection and later removal of temporary transmission tower(s);
- (b) erection and later removal of scaffolding, stringing of conductors forming a temporary diversion of the existing 400kV transmission line;
- (c) erection and later removal of scaffolding, re-stringing of conductors in the alignment of the existing 400 kV transmission line;
- (d) tree, hedge and fence removal;
- (e) security infrastructure including temporary perimeter fencing with gates, security cameras and site lighting; and
- (f) landscaping including tree planting, fencing and ecological mitigation,

**Work No. 8** development comprising a construction laydown area(s) including areas of hardstanding and site and welfare offices and workshops,

and such other buildings, structures, 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 they are 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

### Time limits

1. The authorised development must commence no later than the expiration of five years beginning with the date this Order comes in to force.

### Detailed design approval

2.—(1) The authorised development must be carried out in accordance with the approved plans listed in Table 1 below, inclusive of any limits of deviation, and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authorities pursuant to any requirement (as the same may be amended by approval of the relevant planning authorities pursuant to requirement 19)—

**Table 1**

Works plans
Rights of way, streets and access plan
The access road visibility splay plan

(2) The authorised development must be carried out in accordance with the parameters specified below (as the same may be amended by approval of the relevant planning authorities pursuant to requirement 19)—

**Table 2**

<i>Building or structure</i>	<i>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i>	<i>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i>	<i>Maximum length (metres)</i>	<i>Minimum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum width (metres)</i>
The gas turbine generator (including gas turbine, generator, air inlet filter house, air inlet duct, exhaust diffuser, and	27	—	50	—	40	—

<b><i>Building or structure</i></b>	<b><i>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></b>	<b><i>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></b>	<b><i>Maximum length (metres)</i></b>	<b><i>Minimum length (metres)</i></b>	<b><i>Maximum width (metres)</i></b>	<b><i>Minimum width (metres)</i></b>
auxiliaries such as lube oil system, air dryers, fuel gas filter package, instrument air system, compressor washing) (Part of numbered work 1A)						
The exhaust gas emission flue stack (part of numbered work 1A)	35	32.5	12	–	12	–
Control room/office/workshop (part of numbered work 1B)	7	–	45	–	25	–
Emergency generator (part of numbered work 1B)	6	–	13	–	5	–
Raw/fire water tank (part of numbered work 1B)	15	–	15	–	15	–
Demineralised water tank (part of numbered work 1B)	5	–	5	–	5	–
Gas receiving	10	–	70	–	50	–

<b><i>Building or structure</i></b>	<b><i>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></b>	<b><i>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></b>	<b><i>Maximum length (metres)</i></b>	<b><i>Minimum length (metres)</i></b>	<b><i>Maximum width (metres)</i></b>	<b><i>Minimum width (metres)</i></b>
station (including compression station, emergency generator, Joule-Thompson boilers and other auxiliary control cabinets) (part of numbered work 1B)						
Fin Fan Cooler(s) (part of numbered work 1A)	10	–	28	–	14	–
Transformer compound (including generator step up transformer, unit and other transformers, overhead line gantry and associated equipment) (part of numbered work 1C)	15	–	65	–	60	–
Gatehouse (part of numbered work 1D)	4.5	–	9	–	8	–
Above ground	3	–	85	–	35	–

<b><i>Building or structure</i></b>	<b><i>Maximum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></b>	<b><i>Minimum height (metres above existing site level of approximately 31.5 metres AOD unless otherwise stated)</i></b>	<b><i>Maximum length (metres)</i></b>	<b><i>Minimum length (metres)</i></b>	<b><i>Maximum width (metres)</i></b>	<b><i>Minimum width (metres)</i></b>
installation (numbered work 3A)*						
Pipeline inspection gauge facility (part of numbered work 3A)*	3	–	35	–	30	–
Minimum offtake connection (part of numbered work 3A)*	3	–	35	–	35	–
Substation (including the auxiliary building) (part of numbered work 5)	14	–	200	–	150	–
Each sealing end compound (part of numbered work 6)**	17	–	45	–	35	–
Transmission tower (part of numbered work 6)**	49	–	40	–	30	–
Each temporary tower or mast (part of numbered work 7)**	55	–	47	–	32	–

\* Existing site level is approximately 70m AOD

\*\* Existing site level is approximately 49m AOD

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

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

### **Provision of landscaping and ecological mitigation**

3. Each of numbered works 1, 2, 3A, 4, 5, 6 and 7 of the authorised development must not commence until, for that numbered work, a written strategy substantially in accordance with the outline landscape and ecological mitigation and management strategy has been submitted to and approved by Central Bedfordshire Council. The strategy must include details of all proposed hard and soft landscaping works and ecological mitigation measures and include details of—

- (a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) bunds and proposed finished ground levels;
- (d) hard surfacing materials;
- (e) measures for the management of the ecological resources that will remain within the Order land on completion of the authorised development.

### **Implementation and maintenance of landscaping and ecological mitigation measures**

4.—(1) All landscaping works and ecological mitigation measures must be carried out in accordance with the strategy approved under requirement 3.

(2) The landscaping works and ecological mitigation measures must be carried out in accordance with implementation timetables approved in the strategy approved under requirement 3.

### **Highway accesses**

5.—(1) Numbered work 1 of the authorised development must not commence until either the Rookery South access road and numbered work 2B have been completed to a suitable standard for construction or the junction with Green Lane (comprising part of numbered work 2A) and numbered work 2B have been completed to a suitable standard for construction.

(2) Each of numbered works 2, 3 and 6 of the authorised development must not commence until for that numbered work, written details of the siting, design and layout (to the extent either not provided as part of or differing from, the details contained in Schedule 1, the works plans or Table 1 of requirement 2) of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic has been submitted to and approved by the relevant planning authorities (in consultation with the highway authority).

(3) The highway accesses must be constructed in accordance with the approved details.

(4) Following the completion of construction of numbered work 2, unless the Rookery South access road is constructed pursuant to the Rookery South (Resource Recovery Facility) Order 2011, the access road visibility splay must be kept clear at all times of obstructions, buildings and vegetation that may obstruct or impair visibility from or to Green Lane to or from numbered work 2.

### **Fencing and other means of site perimeter enclosure**

6.—(1) Each of numbered works 1, 3A, 4, 5, 6 and 7 of the authorised development must not commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure for that numbered work have been submitted to and approved by Central Bedfordshire Council.

(2) Numbered work 2A of the authorised development must not commence until written details of any proposed permanent fence or other means of enclosure for that numbered work have been submitted to and approved by Central Bedfordshire Council (and approved by Network Rail in accordance with paragraph 68 of Schedule 10).

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

(4) The fencing and other means of enclosure must be constructed and maintained in accordance with the approved details.

### **Surface and foul water drainage**

7.—(1) Each of numbered works 1, 2, 3A, 5 and 6 must not commence until, for that numbered work, written details of the surface and foul water drainage strategy, which shall incorporate appropriate elements of the low level restoration scheme drainage strategy where applicable, for the construction and operational phases of the authorised development have been submitted to and approved by Central Bedfordshire Council.

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

### **Contamination and groundwater**

8.—(1) Each of numbered works 1 to 8 must not commence until, for that numbered work, a scheme (which may be included in the construction environment management plan) to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to persons or significant pollution of controlled waters or the environment and ground conditions relevant to foundation design and ground stability has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by Central Bedfordshire Council, to include groundwater baseline monitoring and assessment and to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) The scheme must include an investigation and assessment report to identify ground conditions and ground stability matters and must identify appropriate foundation design measures.

(4) Remediation must be carried out in accordance with the approved scheme.

(5) Foundation design measures must be carried out in accordance with the approved scheme.

### **Archaeology**

9.—(1) Each of numbered works 3A, 4A, 6 and 7(a) of the authorised development must not commence until, for that numbered work, a written scheme of archaeological investigation has been submitted to and approved in writing by Central Bedfordshire Council. The submitted written scheme of archaeological investigation must include the following –

- (a) provision to be made for a programme of excavation fieldwork and post-excavation assessment should significant archaeological remains be encountered, and where warranted post-excavation analysis;

- (b) provision to be made for publication and dissemination of the results of any assessment made pursuant to sub-paragraph (a), including for public benefit and understanding, should the nature of the archaeology warrant it; and
  - (c) provision to be made for the deposition of the finds assemblage and the site archive.
- (2) The archaeological investigation must be carried out in accordance with the approved scheme.

### **Construction Environment Management Plan**

**10.**—(1) Each of numbered works 1 to 8 of the authorised development must not commence until a construction environment management plan covering that numbered work has been submitted to and approved by the relevant planning authorities. The final construction environment management plan must be substantially in accordance with the outline construction environment management plan and must include the following—

- (a) the construction and phasing programme;
- (b) liaison procedures to discuss and agree all relevant construction aspects with the relevant planning authorities;
- (c) complaints procedures;
- (d) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, lighting, noise and vibration);
- (e) waste management;
- (f) an assessment of the site specific risks to and mitigation measures designed to protect controlled waters (surface and groundwaters) including pollution incident control;
- (g) procedure for crossing watercourses (by reference to best practice methods);
- (h) landscape and visual impact mitigation (specifically the protection of trees and hedgerows to be retained in accordance with BS 5837: 2012 (or its updates) and a scheme to minimise visual intrusion of the construction works);
- (i) security measures;
- (j) measures for the maintenance of construction equipment;
- (k) restoration of site following completion of construction; and
- (l) liaison procedures with all other contractors working within Rookery Pit regarding programmed construction movements and processes.

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

### **Construction traffic management plan**

**11.**—(1) Each of numbered works 1 to 8 of the authorised development must not commence until, for that numbered work, a construction traffic management plan has been submitted to and approved by the relevant planning authorities in consultation with the relevant highway authorities and Marston Moretaine Parish Council (and approved by Network Rail in accordance with paragraph 70 of Schedule 10). The construction traffic management plan must be substantially in accordance with the outline construction traffic management measures and must include the following—

- (a) construction vehicle routing plans;
- (b) site access plans;
- (c) measures to ensure the protection of users of any footpath within the Order limits which may be affected by the construction of the authorised development;
- (d) proposals for the management of junctions to and crossings of highways and other public rights of way;

- (e) proposals for the scheduling and timing of movements of heavy commercial vehicles (as defined in section 138 of the 1984 Act) relating to the construction of the authorised development including details of abnormal indivisible loads and, if applicable, taking into account the anticipated scheduling and timing of movements of any heavy commercial vehicles (as defined in section 138 of the 1984 Act) relating to the construction of the development authorised by the Rookery South (Resource Recovery Facility) Order 2011;
  - (f) details of escorts for abnormal indivisible loads;
  - (g) proposals for temporary warning signs and banksman and escort details;
  - (h) details of any temporary or permanent improvements to highways;
  - (i) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during any of the activities, operations or works associated with the creation or upgrading of any permanent or temporary means of access pursuant to this Order;
  - (j) proposals for traffic management controls (such as temporary signals) to ensure the safe operation of Green Lane level crossing;
  - (k) proposals for signage at suitable intervals along the Rookery South access road or numbered work 2A (as appropriate) restricting the speed of vehicles using the Rookery South access road or numbered work 2A (as appropriate) in connection with the construction of the authorised development such speed limit to be no more than 15 miles per hour; and
  - (l) details of any amendments required by Network Rail pursuant to paragraph 70(4) of Part 7 of Schedule 10 (protective provisions) and an explanation of how such amendments have been taken into account.
- (2) The construction traffic management plan must be implemented as approved.

### **Control of noise during operation**

**12.**—(1) Prior to the date of final commissioning a written noise scheme providing for the control of noise generated during the operation of the authorised development must be submitted to and approved by Central Bedfordshire Council. The noise scheme must include the following:

- (a) the locations at which noise will be monitored;
- (b) the defined representative background sound level at South Pillinge Farm house;
- (c) the method of noise measurement (which must be in accord with BS 4142:2014, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances) and when such measurements will be carried out; and
- (d) a complaints procedure.

(2) Except in the case of an emergency, noise (in terms of the BS 4142:2014 rating level) emitted from the operation of the authorised development must be no greater than the defined representative background sound level as approved in the noise scheme submitted pursuant to sub-paragraph (1).

(3) The noise scheme must be carried out as approved.

### **Control of noise during construction**

**13.**—(1) No part of the authorised development may commence until a written construction noise monitoring scheme providing for the monitoring of noise generated during the construction of the authorised development has been submitted to and approved in writing by Central Bedfordshire Council. The construction noise monitoring scheme must include the following:

- (a) the locations at which the noise will be monitored;
- (b) the frequency of noise monitoring corresponding to the construction programme and the change in plant, equipment and working practices likely to affect noise conditions during the construction programme;
- (c) the defined representative background sound level at South Pillinge Farm house;
- (d) the method of noise measurement and establishment of noise limits (which must be in accordance with BS 5228:2009, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances);
- (e) a procedure for the periodic review of the construction noise monitoring scheme relating to the frequency of noise monitoring and the need for continued monitoring corresponding to the construction programme; and
- (f) a complaints procedure.

(2) The construction noise monitoring scheme must be carried out as approved.

### **Construction hours**

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

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

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

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

### **Lighting strategy**

**15.**—(1) Each of numbered works 1, 3A and 5 must not commence until a written scheme for the management and mitigation of artificial light emissions for that numbered work which is substantially in accordance with the outline lighting strategy has been submitted to and approved by Central Bedfordshire Council.

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

### **Construction Travel Plan**

**16.**—(1) Each of numbered works 1 to 8 of the authorised development must not commence until, for that numbered work, a construction worker travel plan has been submitted to and approved by the relevant planning authorities. The construction worker travel plan must be substantially in accordance with the outline travel plan (other than the measures which relate to the operational phase).

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

### **Operating hours**

**17.** Subject to requirement 19, the undertaker is not permitted to operate the generating station comprised in the authorised development for a greater number of hours than that assessed in the environmental statement.

### **Decommissioning strategy**

**18.**—(1) Subject to obtaining the necessary consents and unless otherwise agreed with Central Bedfordshire Council, 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 numbered work 1 must be submitted to Central Bedfordshire Council.

(2) The demolition and removal of numbered work 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 Central Bedfordshire Council of the same.

### **Amendments to approved details**

**19.**—(1) Subject to paragraph (2), with respect to the approved plans specified in requirement 2(1), the parameters specified in requirement 2(2), any details requiring compliance within any other requirement and any other plans, details or schemes which require approval by the relevant planning authorities pursuant to any other requirement (the “Approved Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authorities for approval any amendments to the Approved Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authorities the Approved Plans, Parameters, Details or Schemes is to be taken to include the amendments approved pursuant to this subparagraph.

(2) Approval under sub-paragraph (1) must not be given except where it has been demonstrated to the satisfaction of the relevant planning authorities 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).

### **Low Level Restoration Scheme**

**20.** No part of the authorised development may commence until the low level restoration scheme baseline works have been completed to the reasonable satisfaction of Central Bedfordshire Council.

### **Air Safety**

**21.**—(1) Numbered work 1A(b) of the authorised development must not commence until the following details have been submitted to the Defence Geographic Centre:

- (a) the precise location of numbered work 1A(b);
- (b) the date of commencement of construction of numbered work 1A(b);
- (c) the anticipated date of completion of construction of numbered work 1A(b);
- (d) the height above ground level of the tallest structure; and
- (e) the maximum extension height of any construction equipment.

SCHEDULE 3

Article 8

STREETS SUBJECT TO PERMANENT AND TEMPORARY  
ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

**Table 3**

<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>
Central Bedfordshire Council	Green Lane	Installation of signage and markings between the points marked A and B on the rights of way, streets and access plan to facilitate the construction and operation of numbered work 2.
Bedford Borough Council	Green Lane	Installation of signage and markings between the points marked A and B on the rights of way, streets and access plan to facilitate the construction and operation of numbered work 2.
Central Bedfordshire Council	Green Lane	Creation of new access comprising part of numbered work 2A including the lowering of the levels of the kerb between the points marked C and D on the rights of way, streets and access plan to provide permanent access to numbered works 1 and 5.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	Creation of new access comprising part of numbered work 2A including the lowering of the levels of the kerb between the points marked E and F on the rights of way, streets and access plan to provide permanent access to numbered works 1 and 5.

<i>(1)</i> Area	<i>(2)</i> Street subject to alteration of layout	<i>(3)</i> Description of alteration
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	Creation of new access comprising part of numbered work 2 between the points marked G and I on the rights of way, streets and access plan to provide permanent access to numbered works 1 and 5.
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Upgrading the existing access comprising numbered work 3B between the points marked MM and NN on the rights of way, streets and access plan to provide permanent access to numbered work 3A.
Central Bedfordshire Council	Houghton Lane	Upgrading the existing access comprising numbered work 3B between the points marked OO and PP on the rights of way, streets and access plan to provide permanent access to numbered work 3A.
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Creation of new access comprising part of numbered work 3B between the points marked QQ and RR on the rights of way, streets and access plan to provide permanent access to numbered work 3A.
Central Bedfordshire Council	low level restoration scheme secondary access track	Creation of new access comprising part of numbered work 6 within the area shown on the rights of way, streets and access plan with orange hatching to provide permanent access to numbered work 6(a).

**PART 2**  
**TEMPORARY 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>
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Creation of new access comprising part of numbered work 3B between the points marked RR and NN on the rights of way, streets and access plan to provide construction access to numbered work 3A.
Central Bedfordshire Council	Houghton Lane	Creation of new access comprising part of numbered work 4A between the points marked GG and HH on the rights of way, streets and access plan to provide construction access both north and south of Houghton Lane.

SCHEDULE 4

Article 9

STREETS SUBJECT TO STREET WORKS

**Table 5**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to Street Works</i>	<i>(3)</i> <i>Description of the street works</i>
Central Bedfordshire Council	Green Lane	Works to enable the creation of an access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked A and B and C and D on the rights of way, streets and access plan.
Bedford Borough Council	Green Lane	Works to enable the creation of an access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked A and B on the rights of way, streets and access plan.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	Works to enable the creation of an access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked E and F on the rights of way, streets and access plan.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	Works to maintain the existing access and to place and maintain apparatus (comprising numbered work 2A) for use during construction and operation between the points marked F and G on the rights of way, streets and access plan.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to Street Works</i>	<i>(3)</i> <i>Description of the street works</i>
Central Bedfordshire Council	Established agricultural access tracks between South Pillinge Farm and Rookery South Pit	Works for numbered work 6 to be installed in the street between the points marked J and K on the rights of way, streets and access plan.
Central Bedfordshire Council	Established agricultural access tracks between South Pillinge Farm and Rookery South Pit	Works for numbered work 6 to be installed in the street between the points marked L and M on the rights of way, streets and access plan.
Central Bedfordshire Council	Public Footpath 65	Works for numbered work 4A to be installed in the street between the points marked O and P on the rights of way, streets and access plan.
Central Bedfordshire Council	Houghton Lane	Works for numbered work 4A to be installed under the street between the points marked GG and HH on the rights of way, streets and access plan.
Central Bedfordshire Council	Public Footpath 7	Works for numbered work 4A to be installed in the street between the points marked JJ and KK on the rights of way, streets and access plan.
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Works to upgrade the existing access (comprising numbered work 3B) and to place and maintain apparatus for use during construction and operation and works for numbered work 4A to be installed in the street between the points marked MM and NN on the rights of way, streets and access plan.
Central Bedfordshire Council	Houghton Lane	Works to upgrade the existing junction (comprising numbered work 3B) for use during construction and operation between the points marked OO and PP on the rights of way, streets and access plan.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street Subject to Street Works</i>	<i>(3)</i> <i>Description of the street works</i>
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Works to enable the creation of an access (comprising numbered work 3B) for use during operation between the points marked QQ and RR on the rights of way, streets and access plan.
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	Works to enable the creation of an access (comprising numbered work 3B) for use during construction between the points marked RR and NN on the rights of way, streets and access plan.
Central Bedfordshire Council	low level restoration scheme secondary access track	Works for numbered work 4A to be installed in the street between the points marked BB and CC on the rights of way, streets and access plan.
Central Bedfordshire Council	low level restoration scheme secondary access track	Works for numbered work 4A to be installed in the street between the points marked CC and DD on the rights of way, streets and access plan.
Central Bedfordshire Council	low level restoration scheme secondary access track	Works to enable the creation of an access (comprising part of numbered work 6) within the area shown on the rights of way, streets and access plan with orange hatching to provide permanent accesses to numbered work 6(a).
Central Bedfordshire Council	Houghton Lane	Works to enable the creation of an access (comprising part of numbered work 4A) for use during construction between the points marked GG and HH on the rights of way, streets and access plan.

SCHEDULE 5

Article 10

ACCESS

PART 1

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

**Table 6**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
Central Bedfordshire Council	Green Lane	The signage and markings installed in the area hatched blue between points A and B as shown on the rights of way, streets and access plan.
Bedford Borough Council	Green Lane	The signage and markings installed in the area hatched magenta between points A and B as shown on the rights of way, streets and access plan.
Central Bedfordshire Council	Houghton Lane	The upgraded access constituting part of numbered work 3B and shown on the rights of way, streets and access plan hatched blue between points OO and PP.

## PART 2

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

**Table 7**

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of access</i>
Central Bedfordshire Council	Green Lane	The access constituting part of numbered work 2A and shown on the rights of way, streets and access plan hatched red between points C and D.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	The access constituting part of numbered work 2A and shown on the rights of way, streets and access plan hatched red between points E and F.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	The access constituting part of numbered work 2A and shown on the rights of way, streets and access plan hatched red between points F and G.
Central Bedfordshire Council	Access Road serving Rookery North and South Pits	The access constituting part of numbered work 2B and shown on the rights of way, streets and access plan hatched red between points G and I.
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	The access constituting part of numbered work 3B and shown on the rights of way, streets and access plan hatched red between points MM and NN.
Central Bedfordshire Council	low level restoration scheme secondary access track	The access to the sealing end compounds constituting part of numbered work 6 to be provided within the area shown on the rights of way, streets and access plan hatched orange.

### PART 3

#### THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

**Table 8**

<i>(1)</i> Area	<i>(2)</i> Street subject to alteration of layout	<i>(3)</i> Description of alteration
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	The creation of a temporary access comprising part of numbered work 3B and shown on the rights of way, streets and access plan hatched red between points marked RR and NN to provide temporary access to numbered work 3A.
Central Bedfordshire Council	Houghton Lane	Creation of temporary access comprising part of numbered word 4A between the points marked GG and HH on the rights of way, streets and access plan to provide construction access both north and south of Houghton Lane.

SCHEDULE 6

Article 11

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS

Table 9

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	Green Lane	<p><b>Prohibition/Restriction:</b> From the points marked A to B on the rights of way, streets and access plan being approximately 250m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Bedford Borough Council	Green Lane	<p><b>Prohibition/Restriction:</b> From the points marked A to B on the rights of way, streets and access plan being approximately 250m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and partial restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	Access Road serving Rookery North and South Pits including footpath(s)	<p><b>Prohibition/Restriction:</b> From the points marked E to F on the rights of way, streets and access plan being approximately 33m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and partial restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Central Bedfordshire Council	Access Road serving Rookery North and South Pits including footpath(s)	<p><b>Prohibition/Restriction:</b> From the points marked F to G on the rights of way, streets and access plan being approximately 844m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of part of the street and partial restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Central Bedfordshire Council	Established agricultural access tracks between South Pillinge Farm and Rookery South Pit	<p><b>Prohibition/Restriction:</b> From the points marked J to K on the rights of way, streets and access plan being approximately 132m.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
		<p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered works 5, 6 and 7.</p>
Central Bedfordshire Council	Established agricultural access tracks between South Pillinge Farm and Rookery South Pit	<p><b>Prohibition/Restriction:</b> From the points marked L to M on the rights of way, streets and access plan being approximately 100m</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered works 5, 6 and 7.</p>
Central Bedfordshire Council	Public Footpath 65	<p><b>Prohibition/Restriction:</b> From the points marked N to O on the rights of way, streets and access plan being approximately 10m</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Public Footpath 65	<p><b>Prohibition/Restriction:</b> From the points marked O to P on the rights of way, streets and access plan being approximately 30m.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
		<p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Public Footpath 65	<p><b>Prohibition/Restriction:</b> From the points marked P to Q on the rights of way, streets and access plan being approximately 10m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Layby on Station Road	<p><b>Prohibition/Restriction:</b> From the points marked R to S on the rights of way, streets and access plan being approximately 25m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction and then removal of numbered work 7.</p>
Central Bedfordshire Council	Station Lane	<p><b>Prohibition/Restriction:</b> From the points marked T to U on the rights of way, streets and access plan being approximately 195m.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
		<p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction of the use of the street (including the use of traffic management measures) in order to facilitate the construction and then removal of numbered work 7.</p>
Central Bedfordshire Council	Public Footpath 7 and low level restoration scheme secondary access track	<p><b>Prohibition/Restriction:</b> From the points marked V to W on the rights of way, streets and access plan being approximately 20 m</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and public footpath and restriction of the use of the street and public footpath in order to facilitate the construction and then removal of numbered work 7 and the construction of numbered work 6.</p>
Central Bedfordshire Council	Public Footpath 14	<p><b>Prohibition/Restriction:</b> From the points marked X to Y on the rights of way, streets and access plan being approximately 168m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction and then removal of numbered work 7 and the construction of numbered work 6.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	low level restoration scheme secondary access track	<p><b>Prohibition/Restriction:</b> From the points marked BB to DD on the rights of way, streets and access plan being approximately 260m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the track and restriction of the use of the track (including the use of traffic management measures) in order to facilitate the construction of the authorised development.</p>
Central Bedfordshire Council	Established agricultural access track adjacent to plantation leading from Station Lane	<p><b>Prohibition/Restriction:</b> From the points marked EE to FF on the rights of way, streets and access plan being approximately 140m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered works 6 and 7.</p>
Central Bedfordshire Council	Houghton Lane	<p><b>Prohibition/Restriction:</b> From the points marked GG to HH on the rights of way, streets and access plan being approximately 30m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered work 4A.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	Public Footpath 7	<p><b>Prohibition/Restriction:</b> From the points marked II to JJ on the rights of way, streets and access plan being approximately 32m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Public Footpath 7	<p><b>Prohibition/Restriction:</b> From the points marked JJ to KK on the rights of way, streets and access plan being approximately 35m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>
Central Bedfordshire Council	Public Footpath 7	<p><b>Prohibition/Restriction:</b> From the points marked KK to LL on the rights of way, streets and access plan being approximately 12m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the public footpath and restriction of the use of the public footpath in order to facilitate the construction of numbered work 4A.</p>

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of streets
Central Bedfordshire Council	Access track leading from Houghton Lane to Park Farm	<p><b>Prohibition/Restriction:</b> From the points marked MM to NN on the rights of way, streets and access plan being approximately 155m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street in order to facilitate the construction of numbered work 3 and numbered work 4.</p>
Central Bedfordshire Council	Houghton Lane	<p><b>Prohibition/Restriction:</b> From the points marked OO to PP on the rights of way, streets and access plan being approximately 25m.</p> <hr/> <p><b>Purpose of the Prohibition/Restriction:</b> Temporary closure(s) of all or part of the street and restriction on the use of the street (including the use of traffic management measures) in order to facilitate the construction of numbered work 3.</p>

SCHEDULE 7

Article 12

STREETS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
Central Bedfordshire Council	low level restoration scheme secondary access track	From the points marked Z to AA on the rights of way, streets and access plan being approximately 110m.	Commencing at point Z and finishing at point AA using a route within the area marked with orange hatching on the rights of way, streets and access plan.

**MODIFICATION OF COMPENSATION AND COMPULSORY  
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS  
AND IMPOSITION OF NEW RESTRICTIONS**

*Compensation enactments*

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

**2.—**(1) Without limitation to the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(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 5(3)—

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

**3.—**(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A (5A) (relevant valuation date) of the 1961 Act, for (a) and (b) substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Millbrook Gas Fired Generating Station Order 201[X]; and
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the Millbrook Gas Fired Generating Station Order 201[X]) to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

*Application of Part 1 of the 1965 Act*

**4.—**(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 26 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the acquisition of land under article 19 (compulsory acquisition of land etc.), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 22 (compulsory acquisition of rights)—

- (a) with the modification specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

**5.—**(1) The modifications referred to in paragraph 4(1)(a) are as follows.

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(a) 1973 c.26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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

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

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

(5) Section 11 (powers of entry) of the 1965 Act is modified as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 19 (compulsory acquisition of land), 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; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on a specified date), 12(c) (penalty for unauthorised entry) and 13(d) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 26(3) (modification of Part 1 of the Compulsory Purchase Act 1965) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

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(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).  
(b) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).  
(c) Section 12 was amended by section 56(2) of and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).  
(d) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).  
(e) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

(8) For schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

**Introduction**

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Millbrook Gas Fired Generating Station Order 201[X] in respect of the land to which the notice to treat relates.

(2) But see article 25(3) (acquisition of subsoil only) of the Millbrook Gas Fired Generating Station Order 201[X] which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

**Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

**Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

**Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

**11.** In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 9

Article 28

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 10**

<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>
Land forming part of disused clay pit (Rookery Pit) situated to the south of Green Lane and east of South Pilling Farm, Millbrook	1A_PGP	Temporary use (including the installation and use of site office and welfare facilities) to facilitate numbered work 8	Numbered work 8
Land forming part of disused clay pit (Rookery Pit) situated to the south of Green Lane and north east of South Pilling Farm, Millbrook	1B_PGP	Temporary use (including the installation and use of site office and welfare facilities) to facilitate numbered work 8	Numbered work 8
Land forming part of disused clay pit (Rookery Pit) situated to the south of Green Lane and north east of South Pilling Farm, Millbrook	5A_PGP	Temporary use to facilitate construction for numbered work 2A	Numbered work 2A
Land and access track situated to the west of premises known as Moreteyne House and south of Station Lane crossing, Millbrook	1_EC	Temporary use to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 7
Land forming part of electricity compound overhead transmission lines and pylon situated to the south of premises known as Moreteyne House, Millbrook	2_EC	Temporary use (including the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line)to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 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>
Land forming part of Millbrook Vehicle Proving Ground and electricity transmission lines situated south of premises known as Moreteyne House, Millbrook, Millbrook	3_EC	Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 7
Land forming part of public adopted highway known as Statin Lane, part lay-by and overhead electricity transmission lines situated to the east of the Millbrook Vehicle Proving Ground and south of Pillinge Cottages, Millbrook	4_EC	Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 7
Land forming part of agricultural land and overhead electricity transmission lines and pylon situated to the east of Station Lane and south of South Pillinge Farm, Millbrook	5_EC	Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 7
Land forming part of disused clay pit (Rookery Pit) situated to the east of South Pillinge Farm, Millbrook	10_EC	Temporary use to facilitate construction for numbered works 5 and 6	Part of numbered works 5 and 6

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Land forming part of disused clay pit (Rookery Pit) and overhead electricity transmission lines and access track situated to the east of South Pillinge Farm, Millbrook	11_EC	Temporary use (including the erection and use of scaffolding, the installation and use of a cable winch, the oversailing for the temporary diversion of the existing 400kV transmission line and the passing and re-passing of users of public footpaths) to facilitate construction for numbered works 6 and 7	Part of numbered work 6 and 7
Land forming part of agricultural land, part of public footpath 14, overhead electricity transmission lines and pylon situated to the east of Station Lane, Millbrook	13_EC	Temporary use (including the installation and use of a cable winch, the oversailing for the temporary diversion of the existing 400kV transmission line and the passing and re-passing of users of public footpaths) to facilitate construction for numbered works 6 and 7	Part of numbered work 6 and 7
Land forming part of agricultural land, CLH pipeline system, overhead electricity transmission lines and pylon situated to the north east of Station Lane, Millbrook	14_EC	Temporary use (including the installation and use of a cable winch and the oversailing for the temporary diversion of the existing 400kV transmission line) to facilitate construction for numbered works 6 and 7	Part of numbered works 6 and 7
Land forming part of disused pit (Rookery Pit), tracks, woodland and part of public footpath 15 situated to the west of Midland Main Line Railway north of public footpath 15, Millbrook	1A_GC	Temporary use (including the passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A

<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>
Land forming part of disused pit (Rookery Pit), tracks , woodland and part of public footpath 15 situated to the west of Midland Main Line Railway north of public footpath 15, Millbrook	1B_GC	Temporary use (including the passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A
Land forming part of agricultural land, overhead electricity transmission lines and CLH pipeline system situated to the north east of Lower Farm, Millbrook	7A_GC	Temporary use (including installation and use of welfare facilities, use as a construction compound and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A
Land forming part of agricultural land, overhead electricity transmission lines and CLH pipeline system situated to the north east of Lower Farm, Millbrook	7B_GC	Temporary use (including installation and use of welfare facilities, use as a construction compound and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A
Land forming part of agricultural land and part of public footpath 7 situated to the north east of Lower Farm, Millbrook	9A_GC	Temporary use (including the installation and use of welfare facilities and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A

<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>
Land forming part of agricultural land and part of public footpath 7 situated to the north east of Lower Farm, Millbrook	9B_GC	Temporary use (including the installation and use of welfare facilities and passing and re-passing of users of public footpaths) to facilitate construction for numbered work 4A	Part of numbered work 4A
Land forming part of access track situated to the east of Lower Farm, Millbrook	9C_GC	Temporary use to facilitate construction for numbered works 3 and 4	Part of numbered works 3 and 4
Land forming part of agricultural land situated to the south east of Lower Farm, Millbrook	12A_GC	Temporary use (including the installation and use of site office and welfare facilities) to facilitate construction for numbered works 3 and 4	Part of numbered works 3 and 4
Land forming part of agricultural land situated to the south east of Lower Farm, Millbrook	12B_GC	Temporary use (including the installation and use of site office and welfare facilities) to facilitate construction for numbered works 3 and 4	Part of numbered works 3 and 4

## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

**1.** For the protection of the utility undertakers referred to in this part of this Schedule (save for National Grid which is protected by Part 3 of this Schedule, EPN which is protected by Part 4 of this Schedule, Anglian Water which is protected by Part 5 of this Schedule and Covanta which is protected by Part 7 of this Schedule), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

**2.** 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 (agreements to adopt water main or service pipe at future date) 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) (adoption of sewers and disposal works) of that Act(c) 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 (general interpretation) 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

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(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) and amended by sections 10(2)(a), 10(2)(b) and 10(2)(c) of the Water Act 2014 (c.21).

(c) 1991 c.56. Section 102(4) was amended by sections 96(1)(a), 96(1)(b), 96(1)(c), 96(1)(d) and 96(1)(e) of the Water Act 2003 c.37 and paragraph 90 of Schedule 7 to the Water Act 2014 c.21.

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(a);
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 (preliminary) 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.

**3.** 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 (street works in England and Wales) of the 1991 Act.

**4.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (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.

**5.** 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.

**6.—(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

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(a) 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), Section 48 was amended by paragraph 2(1) of Schedule 6 to the Utilities Act 2000(c.27).

agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (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 42 (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.

**7.**—(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 42 (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.

**8.**—(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 (3), 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 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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.

**9.**—(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 6(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 42 (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 6(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.

**10.**—(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 6(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.

**11.** 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 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**12.**—(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);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 (electronic communications apparatus, lines and structures) of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 (electronic communications code) and Schedule 3A (the electronic communications code) of the 2003 Act(b);

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code;

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) (application of the electronic communications code) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide;

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network.

**13.** The exercise of the powers of article 30 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of Schedule 3A of the 2003 Act.

**14.**—(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.

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(a) 2003 c.21.as amended by the Digital Economy Act 2017 (c.30)

(b) added by Schedule 1 of the Digital Economy Act 2017 (c.30)

(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 42 (arbitration).

**15.** 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 (street works in England and Wales) 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.

**16.** 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 3

### FOR THE PROTECTION OF NATIONAL GRID

#### **Application**

17. 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**

18. In this Part of this Schedule—

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

“apparatus” means

- (a) electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid;
- (b) mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

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

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the promoter to submit for the undertaker’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

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

“National Grid” means either—

- (a) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; or
  - (b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH,
- as the context shall require.

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(a) 1989 c.29.

19. Except for paragraphs (20) (apparatus in streets subject to temporary prohibition or restriction), (24) (retained apparatus: protection of National Grid as Gas Undertaker), (25) (retained apparatus: protection of National Grid as Electricity Undertaker), (26) (expenses) and (27) (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**

20.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 12 (stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 11 (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**

21.—(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.

(3) Any agreement or consent granted by National Grid under paragraph 24 (retained apparatus: protection of National Grid as Gas Undertaker) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 21(1).

#### **Removal of apparatus**

22.—(1) If, in the exercise of the agreement reached in accordance with paragraph 21 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker

shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 23(1) below) the necessary facilities and rights for—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

### **Facilities and rights for alternative apparatus**

**23.**—(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 under paragraph 31 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 42 (arbitration) of the Order shall apply.

### **Retained apparatus: protection of National Grid as Gas Undertaker**

**24.**—(1) Not less than 56 days before the commencement of any authorised development authorised by this Order that involves activities or works specified in National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" that are within the proximities described therein to any apparatus the removal of which has not been required by the undertaker under paragraph 22(2) or otherwise, the undertaker must submit to National Grid a plan.

(2) In relation to works which will be situated on, over, under or within 15 metres measured in any direction of any apparatus to which sub-paragraph (1) applies, or (wherever situated) impose any load directly upon any such apparatus or involve embankment works within 15 metres of any such apparatus, the plan to be submitted to National Grid under sub-paragraph (1) shall show—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22".)

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

(4) Any approval of National Grid required under sub-paragraph (3)—

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

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

(6) Works executed under sub-paragraphs (1) or (2) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub paragraph (4), 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), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (17) to (19) and (22) to (23) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

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

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

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

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

(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 26.

(13) The plans submitted to National Grid by the undertaker pursuant to paragraph 24(1) and/or paragraph 25(1) must be sent to Spencer Jeffries at [spencer.jeffries@nationalgrid.com](mailto:spencer.jeffries@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

### **Retained apparatus: protection of National Grid as Electricity Undertaker**

**25.**—(1) Not less than 56 days before the commencement of any authorised development under this Order that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 22(2) or otherwise and to which sub-paragraph (2)(i) or (2)(ii) applies, the undertaker must submit to National Grid a plan and

seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted under sub-paragraph (1) shall show—

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) shall be detailed including a method statement and describing in addition to the matters set out in sub-paragraph (2)—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
- (f) (written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

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

(5) Any approval of National Grid required under sub-paragraph (1), (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8);
- (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraphs (1), (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (2), (3) or (6), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1), (2), (3) or (6) (except in an emergency)

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (17) to (19) and (22) to (23) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

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

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

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

(13) This paragraph shall not apply to numbered work 7.

## **Expenses**

**26.**—(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 National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative 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 22(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with article 42 (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**

**27.**—(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 damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

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

manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

- (3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
  - (b) any authorised development and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 (benefit of order grating development consent) of the 2008 Act or under article 6 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section 3(b) shall be subject to the full terms of this Schedule including this paragraph (27) in respect of such new apparatus.

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

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph (27) applies. If requested to do so by the undertaker, National Grid shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph (27) for claims reasonably incurred by National Grid.

### **Enactments and agreements**

**28.** 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**

**29.** National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Schedule (including, for the avoidance of doubt, pursuant to paragraph 22(2) and paragraphs (24) or (28)) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party’s operations.

### **Access**

**30.** If in consequence of the agreement reached in accordance with paragraph 21(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**

**31.** Save for differences or disputes arising under paragraphs 22(2), 22(4), 23(1), 24 and 25 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 42 (arbitration) of the Order.

## PART 4

### FOR THE PROTECTION OF EPN

**32.** For the protection of EPN as referred to in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and EPN.

**33.** In this part of this Schedule—

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by EPN;

“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

“EPN” means Eastern Power Networks plc (Company No. 02366906) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP;

**34.** This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and EPN are regulated by the provisions of Part 3 of the 1991 Act.

**35.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), EPN is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**36.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**37.—**(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that EPN’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of EPN 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 EPN 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 EPN 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 EPN reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to EPN 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, EPN must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the

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(a) 1989 c.29.

necessary facilities and rights in the land in which the alternative apparatus is to be constructed provided that this obligation shall not require EPN to exercise any power it may have to acquire any land or rights by compulsory purchase order.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between EPN and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) EPN must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to EPN 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 EPN 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 EPN, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of EPN.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**38.**—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to EPN 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 EPN or in default of agreement settled by arbitration in accordance with article 42 (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 EPN 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 EPN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**39.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 37(2), the undertaker must submit to EPN 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 EPN for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and EPN is entitled to watch and inspect the execution of those works.

(3) Any requirements made by EPN 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 EPN in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (32) to (38) apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to EPN notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**40.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to EPN the reasonable expenses incurred by EPN in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 37(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (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 EPN by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 37(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to EPN 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 EPN any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**41.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 37(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of EPN, or there is any interruption in any service provided, or in the supply of any goods, by EPN, the undertaker must—

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

(b) indemnify EPN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from EPN,

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 EPN, its officers, servants, contractors or agents.

(3) EPN must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**42.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and EPN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 5

### FOR THE PROTECTION OF ANGLIAN WATER

**43.** For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

**44.** In this Part of this schedule—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of the Water Industry Act 1991 or an agreement to adopt made under section 104 (agreements to adopt a sewer, drain or sewage disposal works, at future date) of that Act(a),

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 (general interpretation) of that Act) and 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

“plan” includes sections, drawings, specifications and method statements.

**45.** This Part of this Schedule does not apply to apparatus to the extent that the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 (water supply) of the 1991 Act.

**46.—**(1) The undertaker must not interfere with, build over or near to any apparatus within the Order land or 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 the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus: 2.25 metres where the diameter of the pipe is less than 150 millimetres; 3 metres where the diameter of the pipe is between 150 and 450 millimetres; 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and 6 metres where the diameter of the pipe exceeds 750 millimetres, unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out the authorised development on behalf of the undertaker.

**47.** The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

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(a) 1991 c.56. Section 102(4) was amended by paragraph 90 of Schedule 7 to the Water Act 2014 (c.21) and section 96(1)(c) of the Water Act 2003 (c.37); Section 104 was amended by section 96(4)(a), (b), (c), (e) and (f), and paragraph 1 of Schedule 9(3) to the Water Act 2003 (c.37), section 42(3) of the Flood and Water Management Act 2010 and by sections 11(2)(a), 11(2)(b) and 11(2)(c) of the Water Act 2014 (c.21).

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010 (a) or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

**48.** In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which Apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Anglian Water has established to its reasonable satisfaction in a timely manner, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus or provide alternative apparatus.

**49.** Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 42 (arbitration).

**50.** If the undertaker is unable to create the new rights referred to in paragraph (49), Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible, use its reasonable endeavours to obtain the necessary rights.

**51.** If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

**52.** In consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

**53.** If for any reason or in consequence of the construction of any of the works referred to in paragraphs 46, 47 and 48 and 52 above 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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water,

by reason or in consequence of any such damage or interruption.

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(a) S.I. 2010/675

**54.**—(1) Nothing in paragraph 53 imposes any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Anglian Water, its officers' servants, contractors or agents.

(2) Anglian Water must give the undertaker reasonable notice of any claim or demand pursuant to paragraph 53 and must consider its representations before proceeding further in respect of the claim or demand.

(3) Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any claim, costs, expenses, loss, demands and penalties pursuant to paragraph 53. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how the claim has been minimised

**55.** Any difference or dispute arising between the undertaker and Anglian Water under this schedule must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 42 (arbitration).

## PART 6

### FOR THE PROTECTION OF COVANTA ROOKERY SOUTH LIMITED

**56.** For the protection of Covanta Rookery South Limited (Company No. 07094843) as referred to in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Covanta.

**57.** In this part of this Schedule—

“Covanta” means Covanta Rookery South Limited (Company No. 07094843) whose registered office is at 20-22 Bedford Row London WC1R 4JS;

“the Millbrook authorised development” means the development authorised by this Order;

“the respective authorised developments” means the Rookery authorised development and the Millbrook authorised development”

“the Rookery Order” means the Rookery South (Resource Recovery Facility) Order 2011;

“Rookery limits of deviation” means the areas of the Rookery Order land in respect of which the Rookery authorised development may be constructed, in accordance with Article 3(2) of the Rookery Order;

“the Rookery Order land” means the land or any part of it shown as falling within the Rookery Order limits; and

“the Rookery authorised development” means the development authorised by the Rookery Order.

#### Co-operation during construction

**58.** The undertaker shall not submit written details for numbered work 2A for approval to the relevant planning authorities in accordance with requirement 5(2) (highway access) without first obtaining the written consent of Covanta in respect of the route, siting and location of numbered work 2A.

**59.** The undertaker shall not exercise powers pursuant to articles 9 (street works), 10 (construction and maintenance of new or altered means of access) or 11 (temporary prohibition or restriction of use of streets) over land within the Rookery limits of deviation without first obtaining the written consent of Covanta.

**60.**—(1) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Covanta, that approval or consent shall be in writing (and subject to such reasonable terms and conditions as Covanta may require), but shall not be unreasonably withheld.

(2) In the event that Covanta does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, Covanta is deemed to have given its consent (without any terms or conditions).

**61.** Insofar as the construction of the Millbrook authorised development is or may be undertaken concurrently with the Rookery authorised development, the undertaker shall—

- (a) co-operate with Covanta with a view to ensuring—
  - (i) the co-ordination of construction programming and the carrying out of works; and
  - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Covanta and their respective contractors.
- (b) use reasonable endeavours to avoid any conflict arising between the carrying out of the respective authorised developments.

**62.** Insofar as the construction of the Millbrook authorised development gives rise to the need to modify any scheme secured by a requirement contained in Part 2 of Schedule 1 to the Rookery Order, the undertaker shall provide such assistance as is reasonably necessary to support Covanta in pursuing any such modification.

### **Arbitration**

**63.**—(1) Any difference or dispute arising between the undertaker and Covanta under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Covanta, be referred to and settled in arbitration in accordance with the Rules at Schedule 13 of this Order, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to appoint an arbitrator under paragraph (1) within 14 days of the application, the referring party may refer to the Centre of Effective Dispute Resolution for appointment of an arbitrator.

(3) Article 42 (arbitration) shall not apply to any difference or dispute under any provisions of the Part of this Schedule.

## **PART 7**

### **FOR THE PROTECTION OF NETWORK RAIL**

**64.** For the protection of Network Rail as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and Network Rail, have effect.

**65.** In this part of this Schedule—

“Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any associated company of Network Rail 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 (meaning of “subsidiary” etc.) of the Companies Act 2006) 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;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

**66.**—(1) Where under this Part Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement 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) Subject to subparagraph (1) where Network Rail is asked to give its consent, agreement or approval pursuant to this Part, such consent, agreement or approval must not be unreasonably withheld but may be given subject to reasonable conditions.

**67.** The undertaker shall include provisions relating to anti-dazzle fencing in the written details of any proposed permanent fence or other means of enclosure for numbered work 2A submitted pursuant to requirement 6 of Schedule 2 such provisions to be substantially in accordance with the equivalent provisions in the approved details submitted pursuant to paragraph 11 of Schedule 2 of The Rookery South (Resource Recovery Facility) Order 2011 unless otherwise agreed by Network Rail.

**68.**—(1) The undertaker shall not submit the written details of any proposed permanent fence or other means of enclosure for numbered work 2A to Central Bedfordshire Council in accordance with requirement 6 of Schedule 2 (Fencing and other means of site perimeter enclosure) without having first obtained the written approval of Network Rail in accordance with subparagraph (2).

(2) The undertaker shall provide Network Rail with a draft of the written details of any proposed permanent fence or other means of enclosure for numbered work 2A (including the proposed anti-dazzle fencing) for approval and Network Rail shall within a period of 28 days beginning with the date on which the written details are received by Network Rail serve written notice on the undertaker confirming that:

- (a) the written details are approved; or
- (b) the written details are approved subject to reasonable amendments as required by Network Rail; or
- (c) the written details are not approved and the reason for the non-approval; or
- (d) that further information is required in order for Network Rail to make its determination (in which case this paragraph 68(2) shall apply to such further information from the date of its receipt by Network Rail).

(3) In the event that Network Rail fails to serve written notice in accordance with paragraph 68(2) within 28 days of receipt Network Rail shall be deemed to have served a notice pursuant to paragraph 68(2)(a).

(4) The undertaker must include any amendments which are required by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to paragraph 68(2)(b) in the written details of any proposed permanent fence or other means of enclosure for numbered work 2A it submits to Central Bedfordshire Council in accordance with requirement 6 of Schedule 2 (Fencing and other means of site perimeter enclosure) and the undertaker shall not submit any such written details to Central Bedfordshire Council which have not been approved by Network Rail in accordance with paragraphs 68(2) or (3).

(5) In deciding whether to approve the written details or request any amendments Network Rail shall take into account any fencing approved or constructed pursuant to The Rookery South (Resource Recovery Facility) Order 2011.

(6) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph 68 shall:

- (a) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Asset Manager; and
- (b) contain a clear statement on its front page that Network Rail must respond within 28 days of receipt.

**69.** The undertaker shall not be obliged to construct the anti-dazzle fencing approved pursuant to requirement 6 of Schedule 2 in the event that anti-dazzle fencing has been constructed pursuant to The Rookery South (Resource Recovery Facility) Order 2011.

**70.**—(1) The undertaker shall not submit the construction traffic management plan to the relevant planning authorities in accordance with requirement 11 of Schedule 2 (construction traffic management plan) without having first obtained the written approval of Network Rail in accordance with subparagraph (2).

(2) The undertaker shall provide Network Rail with a draft of the construction traffic management plan for approval and Network Rail shall within a period of 28 days beginning with the date on which the draft construction traffic management plan is received by Network Rail serve written notice on the undertaker confirming that:

- (a) the draft construction traffic management plan is approved; or

- (b) the draft construction traffic management plan is approved subject to reasonable amendments as required by Network Rail; or
- (c) the draft construction traffic management plan is not approved and the reason for the non-approval; or
- (d) that further information is required in order for Network Rail to make its determination (in which case this paragraph 70(2) shall apply to such further information from the date of its receipt by Network Rail).

(3) In the event that Network Rail fails to serve written notice in accordance with paragraph 70(2) within 28 days of receipt Network Rail shall be deemed to have served a notice pursuant to paragraph 70(2)(a).

(4) The undertaker must include any amendments which are required by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to paragraph 70(2)(b) in the draft construction traffic management plan it submits to the relevant planning authorities in accordance with requirement 11 of Schedule 2 (construction traffic management plan) and the undertaker shall not submit any such written details to the relevant planning authorities which have not been approved by Network Rail in accordance with paragraphs 70(2) or (3).

(5) In deciding whether to approve the draft construction traffic management plan or request any amendments Network Rail shall take into account any funding received from any other third party in respect of upgrade works to the Green Lane level crossing (even if such upgrade works have not yet been completed by Network Rail) and any approval must not be conditional on the undertaker contributing funding towards a full barrier at Green Lane level crossing.

(6) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph 70 shall:

- (a) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Level Crossing Manager; and
- (b) contain a clear statement on its front page that Network Rail must respond within 28 days of receipt.

**71.**—(1) Any difference or dispute arising between the undertaker and Network Rail under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Network Rail, be referred to and settled in arbitration in accordance with the Rules at Schedule 13 of this Order, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to appoint an arbitrator under subparagraph (1) within 14 days of the application, the referring party may refer to the Centre of Effective Dispute Resolution for appointment of an arbitrator.

(3) Article 42 (arbitration) shall not apply to any difference or dispute under any provisions of the Part of this Schedule.

**72.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

**MODIFICATIONS TO AND AMENDMENTS OF THE ROOKERY  
SOUTH (RESOURCE RECOVERY FACILITY) ORDER 2011**

**Article 33 to the Rookery South (Resource Recovery Facility) Order 2011**

1. In the title to Article 33, after the words “Protection of Network Rail Infrastructure Limited” insert the words “and Millbrook Power Limited”.

2. After the words “Schedule 7” and before the words “Protection of Network Rail Infrastructure Limited” insert the words “Part 1”.

**Schedule 7 to the Rookery South (Resource Recovery Facility) Order 2011**

3. After paragraph 21 of Schedule 7 insert new Part 2—

**“Part 2**

**PROTECTION OF MILLBROOK POWER LIMITED**

**Application**

22. The following provisions of this Part of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Millbrook Power.

**Interpretation**

23. In this part of this Schedule—

“the Millbrook access road land” means the land shown as plots 4\_PGP, 5\_PGP, 5A\_PGP, 6\_PGP and 7\_PGP on the land plans and described in the book of reference as certified by the Secretary of State pursuant to the Millbrook Order;

“the Millbrook Order” means the Millbrook Gas Fired Generating Station Order 201\*;

“the Millbrook Order land” has the same meaning as the term “Order land” in Article 2(1) of the Millbrook Order but excluding the Millbrook access road land;

“Millbrook Power” means Millbrook Power Limited, (Company No. 08920458) whose registered office is at Drax Power Station, Drax, Selby, North Yorkshire YO58 8PH or any person having the benefit of the Millbrook Order pursuant to Article 6 and/or 7 thereof;

“the Order” means this Order; and

“the respective authorised developments” means the developments authorised by the Order and the Millbrook Order respectively.

**Regulation of powers over the Millbrook access road land**

24. (1) If as a consequence of the powers granted under this Order access (with or without vehicles plant and machinery) to the Millbrook Order land is obstructed the undertaker shall provide such alternative means of access to the Millbrook Order land as will enable Millbrook Power to construct, use and maintain the development authorised by the Millbrook Order no less effectively than was possible before such obstruction.

(2) Subject to Millbrook Power complying with paragraph 58 of Part 6 of Schedule 10 to the Millbrook Order the undertaker shall not exercise the powers granted under this Order

so as to hinder or prevent the construction, use or maintenance of numbered work 2 as authorised by the Millbrook Order without the prior written consent of Millbrook Power.

(3) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Millbrook Power, that approval or consent shall be in writing (and subject to such reasonable terms and conditions as Millbrook Power may require), but shall not be unreasonably withheld.

(4) In the event that Millbrook Power does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, Millbrook Power is deemed to have given its consent (without any terms or conditions).

### **Regulation of powers over the Millbrook Order land**

**25.**—(1) The undertaker shall not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the Millbrook Order land otherwise than with the prior written consent of Millbrook Power.

(2) The articles referred to in sub-paragraph (1) are—

- (a) Article 10 (street works);
- (b) Article 11 (public rights of way);
- (c) Article 12 (temporary stopping up of streets);
- (d) Article 13 (access to works);
- (e) Article 15 (discharge of water);
- (f) Article 16 (authority to survey and investigate land);
- (g) Article 17 (compulsory acquisition of land);
- (h) Article 18 (power to override easements and other rights);
- (i) Article 26 (temporary use of land for maintaining authorised development);
- (n) Article 27 (statutory undertakers); and
- (o) Article 31 (felling or lopping of trees).

(3) In the event that Millbrook Power withholds its consent pursuant to sub-paragraph (1) it shall notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

### **Co-operation**

**26.** Insofar as the construction of the respective authorised developments is or may be undertaken concurrently, the undertaker shall—

- (a) co-operate with Millbrook Power with a view to ensuring—
  - (i) the co-ordination of construction programming and the carrying out of works; and
  - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Millbrook Power and their respective contractors.
- (b) use reasonable endeavours to avoid any conflict arising between the carrying out of the respective authorised developments.

**27.** Insofar as the construction of the authorised development gives rise to the need to modify any scheme secured by a requirement contained in Schedule 2 to the Millbrook Order, the undertaker shall provide such assistance as is reasonably necessary to support Millbrook Power in pursuing any such modification.

## **Requirements**

**28.** Insofar as compliance with paragraph 25(1) of this Part prevents the undertaker from complying with any requirement contained in Part 2 of Schedule 1 to the Order, the undertaker shall not be in breach of such requirement for the time period specified in paragraph 25(3).

**29.** In the event that paragraph 28 applies, the undertaker shall provide the relevant planning authority with a copy of the reasons given by Millbrook Power for refusing consent and the time period pursuant to paragraph 25(3).

**30.** It shall be a defence for any person charged with an offence pursuant to section 161 of the Planning Act 2008 (Breach of terms of order granting development consent) to prove that they were not able to comply with a requirement contained in Part 2 of Schedule 1 to the Order due to the effect of paragraph 25 of this Part.

## **Arbitration**

**31.** —(1) Any difference or dispute arising between the undertaker and Millbrook Power under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Millbrook Power, be referred to and settled in arbitration, by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to appoint an arbitrator under paragraph (1) within 14 days of the application, the referring party may refer to the Centre of Effective Dispute Resolution for appointment of an arbitrator.

(3) Article 34 (arbitration) shall not apply to any difference or dispute under any provision of this Part of this Schedule.”

## **SCHEDULE 12**

Article 41

### **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 (8) weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the relevant authority in writing.

(2) Subject to sub-paragraph (3), 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.

(3) Where—

- (a) an application has been made to the relevant planning authorities for any consent, agreement or approval required by a requirement included in this Order; and

- (b) the relevant planning authorities do not determine such application within the period set out in sub-paragraph (1); and
- (c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved, then the application is to be taken to have been refused by the relevant planning authorities 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 (28) days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant planning authorities do not give such notification within this twenty eight (28) day period it is deemed to have sufficient information to consider the application and thereafter is not entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph 2 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 1(1)(b), paragraph 1(3) and paragraph 2.

### **Appeals**

3.—(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 1(3)) 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 article or requirement consultee (together with the undertaker, these are the “appeal parties”);
- (b) The Secretary of State must appoint a person within twenty (20) business days of receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent;
- (c) The relevant authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty (20) business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) The appeal parties must make any counter-submissions to the appointed person within twenty (20) business days of receipt of written representations pursuant to sub-paragraph (c) above; and

- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty (30) business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

The appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five (5) 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 ten (10) days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(e).

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant 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 2 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) The appointed person may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten (10) years’ experience.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) 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 circular or guidance which may from time to time replace it.

**4.** In this Schedule “relevant authority” means the relevant planning authorities, 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.

## SCHEDULE 13

### ARBITRATION RULES

#### **Primary Objective**

1. The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the Arbitrator is appointed pursuant to paragraph 63 of Schedule 10 of the Order.

2. The Arbitration shall be deemed to have commenced when a party ("the Claimant") serves a written notice of arbitration on the other party ("the Respondent").

#### **Time Periods**

3. All time periods in these Arbitration Rules will be measured in days and this will include weekends, but not bank or public holidays.

4. Time periods will be calculated from the day after the Arbitrator is appointed which shall be either:

- (1) the date the Arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (2) the date the Arbitrator is appointed by the Secretary of State.

#### **Timetable**

5. The timetable for the Arbitration will be that set out in Rules 6 to 8 below unless amended in accordance with Rule 22.

6. Within 14 days of the Arbitrator being appointed, the Claimant shall provide both the Respondent and the Arbitrator with:

- (1) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant's contentions as to those issues, the amount of its claim and/or the remedy it is seeking;
- (2) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

7. Within 14 days of receipt of the Claimant's Rule 6 statements by the Arbitrator and Respondent, the Respondent shall provide the Claimant and the Arbitrator with:

- (1) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, its contentions as to those elements of the Claimant's claim it does not accept;
- (2) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
- (3) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations for the objections.

8. Within 7 days of the Respondent serving its Rule 7 statements, the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with:

- (1) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

- (2) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (3) any expert report in response to the Respondent's submissions;
- (4) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent;
- (5) its written submissions in response to the legal and factual issues involved.

## **Procedure**

**9.** The parties' pleadings, witness statements and expert reports (if any) shall be concise. No single pleading will exceed 30 single-sided A4 pages using 10pt Arial font.

**10.** The Arbitrator shall make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

**11.** Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

**12.** Within 7 days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

**13.** Within 10 days of the Arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the Arbitrator shall direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing shall not be less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

**14.** A decision will be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

**15.** There will be no process of examination and cross-examination of experts, but the Arbitrator shall invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that:

- (1) At least 28 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);
- (2) If more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (3) The form and content of a joint report shall be as directed by the Arbitrator and must be provided at least 7 days before the hearing.

**16.** Within 14 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator shall take these submissions into account in the Award.

**17.** The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which he/she is appointed, unless both parties otherwise agree to an extension to the date for the award.

**18.** If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before him/her attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

19. The Arbitrator's award shall include reasons. The parties shall accept that the extent to which reasons are given shall be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.

### **Arbitrator's Powers**

20. The Arbitrator has all the powers of the Arbitration Act 1996, including the non-mandatory sections, save where modified by these Rules.

21. There shall be no discovery or disclosure, except that the Arbitrator shall have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

22. Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and/or procedure:

(1) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;

(2) only for such a period that is necessary to achieve fairness between the parties.

23. On the date the award is made, the Arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

### **Costs**

24. The costs of the Arbitration shall include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

25. Where the difference involves connected/interrelated issues, the Arbitrator will consider the relevant costs collectively.

26. The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

27. The Arbitrator will award recoverable costs on the general principle that costs follow the event, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

### **Confidentiality**

28. The parties agree that any hearings in this Arbitration shall take place in private.

29. The parties and Arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and shall not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts.

**SCHEDULE 14**  
**DOCUMENTS AND PLANS TO BE CERTIFIED**

**Table 11**

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
access road visibility splay plan (contained in appendix 2.1 of appendix 12.1 of the environmental statement)	Drawing reference 31116/2001/008	B	April 2018
book of reference	4.3	3	August 2018
design principles statement	10.2	0	October 2017
environmental statement, Main statement	6.1	0	October 2017
Appendix Volume A: 1.1 Glossary	6.2	0	October 2017
Appendix Volume B: 1.2 Scoping Report and Scoping Opinion	6.2	0	October 2017
Appendix Volume C: 2.6-2.14 Legislation and Policy	6.2	0	October 2017
Appendix Volume D: 3.1 Mitigation Roadmap	6.2	0	October 2017
Appendix Volume E: 3.2 Outline CEMP	6.2	2	July 2018
Appendix Volume F: 5.1 CHP Statement	6.2	0	October 2017
Appendix Volume G: 6.1-6.3 Air Quality	6.2	0	October 2017
Appendix Volume H: 7.1 Noise	6.2	0	October 2017
Appendix Volume H: 7.2 and 7.3 Noise	6.2	1	April 2018
Appendix Volume I: 8.1-8.5 Ecology	6.2	0	October 2017
Appendix Volume J: 10.1 Ground Conditions	6.2	0	October 2017
Appendix Volume K: 11.1 and 11.2 LVIA	6.2	0	October 2017
Appendix Volume K: 11.3 LVIA	6.2	1	April 2018
Appendix Volume L: 12.1 TA (save in respect of Appendix	6.2	0	October 2017

2.1)			
Appendix Volume L: Appendix 2.1 of the TA	6.2 Drawing reference 31116/2001/0008	B	April 2018
Appendix Volume M: 13.1-13.3 Historic Environment	6.2	0	October 2017
Appendix Volume N: 15.1 Electric and Magnetic Fields Assessment Report	6.2	0	October 2017
Figures (save in respect of Figure 11.1)	6.3	0	October 2017
Figure 11.1	6.3	1	April 2018
Non-technical summary	6.4	0	October 2017
the indicative site layout plans	2.3	1	July 2018
land plans	2.5	1	July 2018
the low level restoration scheme baseline works plan	Drawing reference: J0008128-409	0	April 2018
the outline construction environment management plan (contained in appendix 3.2 of the environmental statement)	6.2	2	July 2018
the outline construction traffic management measures (contained in the outline construction environment management plan and appendices 5.2 to 5.5 of appendix 12.1 of the environmental statement)	6.2	0	October 2017
the outline landscape and ecological mitigation and management strategy (contained in appendix 11.2 of the environmental statement)	6.2	1	April 2018
the outline lighting strategy (contained in appendix 11.3 of the environmental statement)	6.2	0	October 2017
the outline travel plan	6.2	0	October 2017

(contained in appendix 12.1 of the environmental statement)			
the rights of way, streets and access plan	2.7	2	August 2018
works plans	2.6	1	July 2018

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Millbrook Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the new section of highway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 39 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire SG17 5TQ.