

Order made by the Infrastructure Planning Commission subject to special parliamentary procedure, and laid before Parliament under section 1 of the Statutory Orders (Special Procedure) Act 1945 on 29 November 2011, together with the certificate or statement required by section 2 of that Act. The applicant's name and address is Covanta Rookery South Limited of West Point Mucklow Office Park, Mucklow Hill, Halesowen, West Midlands, B62 8DY, United Kingdom.

STATUTORY INSTRUMENTS

2011 No.

INFRASTRUCTURE PLANNING, ENGLAND

The Rookery South (Resource Recovery Facility) Order 2011

<i>Made</i>	- - - -	<i>22nd November 2011</i>
<i>Laid before Parliament</i>		<i>29th November 2011</i>
<i>Coming into force</i>	- -	***

CONTENTS

1. Citation and commencement
2. Interpretation
3. Development consent etc. granted by the Order
4. Procedure in relation to approvals etc. under requirements
5. Maintenance of authorised development
6. Operation of generating station
7. Benefit of the Order
8. Guarantees in respect of payment of compensation
9. Defence to proceedings in respect of statutory nuisance
10. Street works
11. Public rights of way
12. Temporary stopping up of streets
13. Access to works
14. Agreements with street authorities
15. Discharge of water
16. Authority to survey and investigate the land
17. Compulsory acquisition of land
18. Power to override easements and other rights
19. Time limit for exercise of authority to acquire land compulsorily
20. Compulsory acquisition of rights
21. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
22. Acquisition of subsoil only
23. Acquisition of part of certain properties
24. Rights under or over streets
25. Temporary use of land for carrying out the authorised development

26. Temporary use of land for maintaining authorised development
27. Statutory undertakers
28. Railway undertakings
29. Application of landlord and tenant law
30. Operational land for purposes of the 1990 Act
31. Felling or lopping of trees
32. Certification of plans etc.
33. Protection of Network Rail Infrastructure Limited
34. Arbitration

SCHEDULE 1 — AUTHORISED DEVELOPMENT AND REQUIREMENTS
PART 1 — AUTHORISED DEVELOPMENT
PART 2 — REQUIREMENTS
SCHEDULE 2 — STREETS SUBJECT TO STREET WORKS
SCHEDULE 3 — PUBLIC RIGHTS OF WAY
PART 1 — PUBLIC RIGHTS OF WAY EXTINGUISHED
PART 2 — RIGHTS OF WAY CREATED OR IMPROVED
SCHEDULE 4 — STREETS TO BE TEMPORARILY STOPPED UP
SCHEDULE 5 — ACCESS TO WORKS
SCHEDULE 6 — LAND OF WHICH TEMPORARY POSSESSION MAY BE
TAKEN
SCHEDULE 7 — PROTECTION OF NETWORK RAIL INFRASTRUCTURE
LIMITED

An application has been made to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for an Order granting development consent;

The application was examined by a Panel appointed by the Chair of the Infrastructure Planning Commission pursuant to Chapter 4 of Part 6 of the Planning Act 2008^(b) (“the 2008 Act”);

The Panel, having considered the representations made and not withdrawn and the application with the documents that accompanied the application, in accordance with section 104 of the 2008 Act has determined to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change in the proposals;

The Panel has sent a draft of the Order to the Secretary of State in accordance with subsection (2) of section 121 of the 2008 Act and the Secretary of State has not given a direction under subsection (3) of that section;

The Order authorises the compulsory acquisition of land which is the property of local authorities and of land which has been acquired by statutory undertakers for the purposes of their undertaking, representations have been made by the local authorities and statutory undertakers concerned about the application for the Order before the completion of the examination of the application, and the representations have not been withdrawn;

(a) S.I. 2009/2264.

(b) 2008 c.29.

The Order will not come into force until it has been laid before Parliament and has been brought into operation in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(a);

Accordingly, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, the Infrastructure Planning Commission makes the following Order:

Citation and commencement

1. This Order may be cited as the Rookery South (Resource Recovery Facility) Order 2011.

Interpretation

- 2.—(1) In this Order—

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

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

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

“the authorised development” means the development and associated development described in Part 1 of Schedule 1 and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the decision-maker 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;

(a) 1945 (9 & 10 Geo.6 c.18) and 1965 c.43.

(b) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.

(c) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 10 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1981 (c.23). Section 13 was amended by section 139 of the Tribunals Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). There are other amendments to the 1965 Act which are not relevant to this Order.

(d) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(e) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(f) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

“the code of construction practice” means the code of construction practice certified by the decision-maker as the code of practice for the purposes of this Order;

“commence” means begin to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, or the temporary display of site notices or advertisements and “commencement” is to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the decision-maker” has the same meaning as in section 103 of the 2008 Act;

“the design and access statement” means the design and access statement certified by the decision-maker as the design and access statement for the purposes of this Order;

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

“the land plans” means the plans certified as the land plans by the decision-maker for the purposes of this Order;

“limits of deviation” means the limits of deviation for the scheduled works comprised in the authorised development shown on the works plans;

“local highway authority” has the same meaning as in section 329(1) of the 1990 Act;

“maintain” includes maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace and improve and “maintenance” is to be construed accordingly;

“the Order land” means the land shown on the land plans which is within the Order limits and described in the book of reference;

“the Order limits” means the limits shown on the Order limits plan and works plans within which the authorised development may be carried out;

“the Order limits plan” means the plan certified as the Order limits plan by the decision-maker for the purposes of this Order;

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

“the 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;

“requirement” means a requirement set out in Part 2 of Schedule 1;

“the rights of way plan” means the plan certified as the rights of way plan by the decision-maker for the purposes of this Order;

“the scheduled works” means the works specified in Part 1 of Schedule 1, or any part of them as the same may be varied pursuant to article 3;

“the sections” means the sections certified as the sections by the decision-maker for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

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

“the undertaker” means, in relation to any provision of this Order, Covanta Rookery South Limited and any other person who has the benefit of that provision in accordance with article 7 or section 156 of the 2008 Act;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain and also includes the water body or water bodies contained in Rookery North Pit, Stewartby; and

“the works plans” means the plans certified as the works plans by the decision-maker for the purposes of this Order.

(2) References in this Order to a numbered Work are references to the Work so numbered in Part 1 of Schedule 1.

(3) 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.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

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) The authorised development may be constructed in the lines or situations shown on the works plans and, subject to the provisions of the requirements, in accordance with the drawings specified in the requirements.

(3) The works comprised in the authorised development may be constructed within the limits of deviation.

(4) In constructing or maintaining the scheduled works, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation; and
- (b) deviate vertically from the levels shown for those works on the sections to any such extent downwards as may be necessary, convenient or expedient provided that the stack shall not be lower in height than 135.25 metres above ordnance datum.

(5) Nothing in this Order or the Town and Country Planning (General Permitted Development) (England and Wales) Order 1995(a) in its application to the authorised development permits—

- (a) development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part III of the 1990 Act or any requirement otherwise than where expressly authorised by either Order;
- (b) any part of Work No. 1 (other than the stack comprised in that work) to exceed the height of the building shown on the plans listed in requirement 6.

Procedure in relation to approvals etc. under requirements

4.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);

(a) S.I. 1995/418.

- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989(a).

Maintenance of authorised development

5.—(1) Subject to the other terms of this Order, including the requirements, the undertaker may maintain the authorised development, except to the extent that an agreement made under this Order provides otherwise.

(2) Subject to paragraph (3) and the requirements, the power to maintain the authorised development includes the power to carry out and maintain such of the following as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction or operation of the authorised development, namely—

- (a) works to alter the position of apparatus below ground level, including mains, sewers, drains and cables including below ground structures associated with that apparatus within the Order limits;
- (b) works of decommissioning and demolition.

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

Operation of generating station

6.—(1) The undertaker is authorised to 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 other obligation under any other legislation that may be required to authorise the operation of a generating station.

Benefit of the Order

7.—(1) Except as provided for by this article, section 156(1) of the 2008 Act applies to the grant of development consent by this Order.

(2) The undertaker may—

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

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or lessee.

(a) 1989 c.29.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) 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.

(5) The consent of the Secretary of State, being the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order, is required for the exercise of the powers of paragraph (2) except where—

- (a) the transferee or lessee is—
 - (i) a statutory undertaker;
 - (ii) a principal council, a joint authority or a joint waste authority in England as defined in the Local Government Act 1972(a);
 - (iii) an authority designated under the Waste Regulation and Disposal (Authorities) Order 1985(b); or
 - (iv) a person having security over any part of the undertaking of the undertaker in respect of Work No. 1 in relation to contractual arrangements relating to a contract between the undertaker and a person referred to in sub-paragraphs (i) to (iii);
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of any such claim;
 - (iv) payment of compensation into court in lieu of settlement of any such claim has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation shall be payable; or
- (c) the transfer or lease relates to any part of the authorised development except Work No. 1.

(6) The provisions of articles 9 to 12, 14 to 25 and 30 have effect only for the benefit of Covanta Rookery South Limited and a person who is a transferee or lessee as referred to in paragraph (2) and is also—

- (a) the transferee or lessee of the land occupied by Work No. 1;
 - (b) in respect of Works No. 6A to 6H, a person who holds a licence under section 6(1) of the Electricity Act 1989, or who is not required to hold such a licence by virtue of an exemption order under section 5 of that Act;
 - (c) in respect of articles 15 and 18, the transferee or lessee of the land occupied by Work No. 2; or
 - (d) in respect of functions under article 10 relating to a street, a street authority.
- (7) Where a person who is the transferee or lessee as referred to in paragraph (2)—

- (a) is liable to pay compensation by virtue of any provision of this Order; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker in respect of Work No. 1.

Guarantees in respect of payment of compensation

8.—(1) The authorised development must not be commenced and the undertaker must not begin to exercise the powers of articles 17 to 27 of this Order unless either a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order or an alternative form of security for that purpose is in place which has been approved by the relevant planning authorities.

(a) 1972 c.70.
(b) S.I. 1985/1884.

(2) A guarantee given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable.

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Central Bedfordshire Council as described in requirement 19; or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (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) and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do 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.

Street works

10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 as is within the Order limits and may—

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

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

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

Public rights of way

11.—(1) With effect from the date upon which authorised development is first commenced the section of each public right of way specified in columns (1) and (2) of Part 1 of Schedule 3 and shown on the rights of way plan is extinguished to the extent specified in column (3) of that Part of that Schedule.

(2) With effect from the date of satisfaction by the local highway authority that a public right of way specified in columns (1) and (2) of Part 2 of Schedule 3 has been improved to the standard defined in the implementation plan, the public right of way in question is deemed to have the status specified in column (3) of that Part of that Schedule.

(3) In this article “implementation plan” means the written plan agreed between the undertaker and the local highway authority for the improvement of the public right of way in question.

Temporary stopping up of streets

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

(a) divert the traffic from the street; and

(b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the street specified in columns (1) and (2) of Schedule 4 to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.

(4) The undertaker must not temporarily stop up, alter or divert—

(a) the street specified as mentioned in paragraph (3) without first consulting the local highway authority; and

(b) any other street without the consent of the local highway authority which may attach reasonable conditions to any consent.

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

Access to works

13. The undertaker may, for the purposes of carrying out the authorised development—

(a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 5; and

(b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve 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) any stopping up, alterations or diversion of a street authorised by this Order; or

- (b) the carrying out in the street of any of the works referred to in article 10(1).
- (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.

Discharge of water

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

(3) The undertaker 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 such approval must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) 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.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by Regulation 38 of the Environmental Permitting Regulations (England and Wales) 2010(**b**) (offences of polluting water).

- (8) In this article—
 - (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and
 - (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(9) This article has effect in relation to watercourses or drains that are created or to be created as part of any restoration scheme applicable to Rookery South Pit and authorised by a review of old minerals permissions pursuant to section 96 of the Environment Act 1995(**c**) reference number BC/CM/2000/08.

Authority to survey and investigate the land

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

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.
 (b) S.I. 2010/675.
 (c) 1995 c.25.

- (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 with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes must 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 of the 1961 Act.

Compulsory acquisition of land

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

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

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

(4) This article is subject to article 25.

Power to override easements and other rights

18.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker, by its successor pursuant to a transfer or lease under article 7 of this Order, by any person deriving title under them or by any of their servants or agents) is authorised by this Order for the purposes of this article if it is authorised by the Order apart from this article and done in accordance with the terms of this Order, 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 the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or carrying out, or maintenance of any building or work on land;

- (b) the erection, construction, or maintenance of anything in, on, over or under land; or
- (c) the use of any land.

(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 and include restrictions as to the user of land arising by the virtue of a contract having that effect.

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge in pursuance of this article, compensation—

- (a) is payable under section 7 or 10 of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

(7) This article does not apply in respect of any agreement, restriction, obligation or other provision contained in a deed made pursuant to section 106 of the 1990 Act or section 278 of the 1980 Act.

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declarations may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(a) as applied by article 21.

(2) The authority conferred by article 25 ceases 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.

Compulsory acquisition of rights

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

(2) As from the date on which a compulsory acquisition notice is served or the date on which a new right is vested in the undertaker, whichever is the later, the land over which any new right is

(a) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are other amendments to the 1981 Act which are not relevant to this Order.

acquired is discharged from all rights trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act as substituted by article 23, where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

21.—(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 so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

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

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

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

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

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

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

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

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

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

Acquisition of subsoil only

22.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 17 as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent article 23 from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

(4) Nothing in this article requires the undertaker to acquire any estate, right or interest in any adopted highway.

Acquisition of part of certain properties

23.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner may be required to sell only the land subject to the notice to treat is, unless the undertaker agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

24.—(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 appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 6 for the purpose specified in relation to that land in column (3) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary or permanent works (including the provision of means of access) and buildings on that land.

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (2) of Schedule 6 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 20 of this Order.

(4) 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; but the undertaker is not required to replace a building 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 any power conferred by this article.

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

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

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker is not precluded from—

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

(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 22.

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

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

Temporary use of land for maintaining authorised development

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

(a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and

(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) 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 compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other

enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

27. The undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within the Order limits and described in the book of reference;
- (b) extinguish the rights of and remove or reposition apparatus belonging to statutory undertakers in, on or over land shown on the land plans and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Railway undertakings

28.—(1) Subject to the following provisions of this article, the undertaker may not under article 10 break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway undertakers; or
- (b) forms part of a level crossing belonging to any such undertakers or to any other person,

except with the consent of the undertakers or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld or delayed.

Application of landlord and tenant law

29.—(1) This article applies to—

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

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

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

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

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

Operational land for purposes of the 1990 Act

30. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees

31.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), 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.

(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 of the 1961 Act.

Certification of plans etc.

32.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference;
- (b) the code of construction practice;
- (c) the design and access statement;
- (d) the land plans including plan number 3052/SK013 showing areas of land subject to restrictive covenants;
- (e) the Residual Waste Acceptance Scheme dated 8 July 2011;
- (f) the rights of way plan;
- (g) the works plans;
- (h) the sections;
- (i) the Order limits plan;
- (j) the travel plan within the meaning of requirement 39(1),

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

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

Protection of Network Rail Infrastructure Limited

33. Schedule 7 has effect.

Arbitration

34. 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 decision-maker.

Signed by authority of the Infrastructure Planning Commission

Paul Hudson, Andrew Phillipson and Emrys Parry
Members of the Panel
Infrastructure Planning Commission

22nd November 2011

AUTHORISED DEVELOPMENT AND REQUIREMENTS

PART 1

AUTHORISED DEVELOPMENT

In Central Bedfordshire

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act comprising:

Work No. 1 An electricity generating station with a nominal gross electrical output capacity of 65 MWe fuelled by waste and including—

- (a) three waste processing streams each comprising a reciprocating grate, furnace, boiler and associated air pollution control system;
- (b) transformer compound;
- (c) an administration building;
- (d) a tipping hall;
- (e) refuse bunkering;
- (f) a flue gas treatment facility;
- (g) flues or stack;
- (h) turbines and turbine hall;
- (i) air cooled condensers;
- (j) a facility to enable steam pass-outs and/or hot water pass-outs; and
- (k) a visitor centre/education facility; and

associated development within the meaning of section 115(2) of the Act comprising—

Work No. 2 A post-combustion materials recovery facility for the purpose of treating incinerator bottom ash produced by the electricity generating station comprised in Work No. 1 and including—

- (a) a screened ash/aggregate yard;
- (b) buildings housing apparatus and necessary plant for separation of co-mingled metals from incinerator bottom ash and grading of such ash;
- (c) a separation lagoon;
- (d) an administration building;
- (e) a weigh bridge; and
- (f) a foul water pump house;

Work No. 3 A drainage channel to be constructed on an east - west alignment linking with a drainage channel to be constructed pursuant to a review of old minerals permissions bearing statutory reference number BC/CM/2000/08;

Work No. 4 An extension to the attenuation pond to be constructed pursuant to a review of old minerals permissions bearing statutory reference number BC/CM/2000/08;

In the Borough of Bedford and in Central Bedfordshire

Work No. 5A A new access road commencing at the north-east corner of Work No. 2 and running in a Northerly direction to a new junction with Green Lane, Stewartby;

Work No. 5B A new access road commencing at the north-west corner of Work No. 1 and running in a Northerly direction to a junction with Work No. 5A;

Work No. 6A A grid connection consisting of one or more cables laid in a trench commencing at a point on the Northern side of Work No. 1 and running in a Northerly direction to the vicinity of the new junction with Green Lane created as part of Work No. 5A;

Work No. 6B A grid connection consisting of one or more cables laid beneath the Marston Vale Railway Line and connecting with Works No. 6A and 6C;

Work No. 6C A grid connection consisting of one or more cables connecting Work No. 6B to Work No. 6D at a point on Green Lane in the vicinity of the existing access to Stewartby Water Sports Club;

Work No. 6D A grid connection consisting of one or more cables laid in a trench on Green Lane Stewartby and connecting Work No. 6C to Works No. 6E and 6G at a point at the junction of Green Lane and Copart Access Road, Marston Moretaine;

Work No. 6E A grid connection consisting of one or more cables laid in a trench from the junction of Green Lane and the Copart Access Road, Marston Moretaine to the junction of the Copart Access Road and the C94;

Work No. 6F A grid connection laid consisting of one or more cables connecting Work No. 6E to the proposed Marston Grid Substation west of the A421 Trunk Road in Marston Moretaine;

Work No. 6G A grid connection consisting of one or more cables laid in a trench from the junction of Green Lane and the Copart Access Road, Marston Moretaine to the existing Marston Road Primary Substation;

Work No. 6H A grid connection consisting of one or more cables laid in a trench from the junction of Works No. 6F and 6E to the existing Marston Road Primary Substation;

Work No. 7A A work for the improvement of the entrance to the Marston Vale Millennium Country Park to the West of the Green Lane Level Crossing;

Work No. 7B A work for the creation of new site access works, including new footways to the East of Green Lane Level Crossing;

Work No. 7C A work comprising a footway and cycleway link crossing the new access road comprised in Work No. 5A and linking Green Lane and the circular path passing around Rookery North Pit to be constructed pursuant to a review of old minerals permissions bearing statutory reference number BC/CM/2000/08;

Work No. 8A An improvement to Green Lane comprising the improvement of the carriageway and footway including the provision of facilities for cyclists West of Green Lane Level Crossing;

Work No. 8B An improvement to Green Lane comprising the improvement of the carriageway and footway including the provision of facilities for cyclists East of Green Lane Level Crossing; and

Work No. 9 An improvement to Green Lane Level Crossing including a widening of the carriageway, alterations to footways and the installation of full barriers and associated improvements to Green Lane, Stewartby;

and in connection with such works and to the extent that they do not otherwise form part of any such work, further associated development shown on the plans referred to in the requirements including—

- (a) weighbridges and security gatehouses;

- (b) internal site roads and vehicle parking facilities;
- (c) workshops and stores;
- (d) bunds, embankments, swales, landscaping and boundary treatments;
- (e) pipes for steam pass outs and/or hot water pass outs within the Order limits;
- (f) habitat creation;
- (g) the provision of footpaths, cycleways and footpath linkages;
- (h) water supply works, foul drainage provision, surface water management systems and culverting; and
- (i) whether or not shown on the plans referred to in the requirements, the demolition of all or part of the redundant conveyor structure within the Order limits.

PART 2 REQUIREMENTS

Interpretation

In this Part of this Schedule—

“the approved development plans” mean the plans submitted with the application on 4 August 2010 or later and listed at requirement 6;

“by-products” includes incinerator bottom ash aggregate and ferrous and non-ferrous metal compounds;

“commercially operate” means operate the authorised development for commercial processing of waste and production of electricity for transmission to the national electricity grid following completion of hot commissioning and “commercial operation” and “commercially operated” shall be construed accordingly;

“heavy goods vehicle” means—

- (a) a heavy goods vehicle of 7.5 tonnes gross vehicle weight or more; and
- (b) any other vehicle designed for the transport of waste including refuse collection vehicles;

“low level restoration scheme” means the scheme for the restoration of Rookery North and Rookery South Pits which has been developed as a part of the review of old minerals permissions application which was submitted to Bedford Borough Council and Central Bedfordshire Council on 5 June 2009 and bears statutory reference number BC/CM/2000/08.

Time limits

1. The authorised development may commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

Type of waste to be treated

2. The waste permitted to be incinerated in Work No. 1 must be limited to waste categorised as residual municipal waste and residual commercial and industrial waste and materials derived therefrom.

Commencement

3. Notice of commencement of the authorised development must be given to the relevant planning authorities within 7 days beginning with the date that the authorised development is commenced.

Incineration, operation, etc.

4. Notice of commencement of—

- (a) incineration at the authorised development, and
- (b) commercial operation of the authorised development,

must be given to the relevant planning authorities within 7 days beginning with the date that incineration commences and the authorised development is first commercially operated respectively.

Detailed design approval

5. Except where the authorised development is carried out in accordance with the plans listed in requirement 6, no authorised development may commence until details of the layout, scale and external appearance of Works No. 1, 2, 5A, 5B, 7A, 7B and 9 comprised in the authorised development so far as they do not accord with the approved development plans have been submitted to and approved by the relevant planning authorities. The authorised development must be carried out in accordance with the approved details.

6.—(1) The authorised development must be carried out in accordance with the approved development plans bearing references 2.1 to 2.4 and 2.11 to 2.35 and strategies listed in this requirement (unless otherwise approved in writing by the relevant planning authorities and the altered development accords with the principles of the design and access statement and falls within the Order limits)—

Application Site Plan/the Order limits plan (drawing number: 2807LO/Order/007) (application document reference 2.1)

Works Plan: Key Plan (drawing number 2807LO/Order/001) (application document reference 2.2)

Works Plan: 1 of 2 (drawing number 2807LO/Order/001.1) (application document reference 2.3)

Works Plan: 2 of 2 (drawing number 2807LO/Order/001.2) (application document reference 2.4)

The rights of way plan (drawing number: 3052LO/SK010) (application document reference 2.11 Rev A)

EfW Facility South Elevation (drawing number: B3250-P1100) (application document reference 2.12)

EfW Facility North Elevation (drawing number: B3250-P1101) (application document reference 2.13)

EfW Facility East Elevation (drawing number: B3250-P1103) (application document reference 2.14)

EfW Facility West Elevation (drawing number: B3250-P1103) (application document reference 2.15)

EfW Facility East Sectional Elevation (drawing number: B3250-P1104) (application document reference 2.16)

EfW Facility West Sectional Elevation (drawing number: B3250-P1105) (application document reference 2.17)

Secondary Buildings Elevations - MRF (drawing number: B3250-P1106) (application document reference 2.18)

RRF Tertiary Buildings Elevations (drawing number: B3250-P1107) (application document reference 2.19)

RRF North and South Elevations (drawing number: B3250-P1300) (application document reference 2.20)

RRF East and West Elevations (drawing number: B3250-P1301) (application document reference 2.21)

RRF Site Section (drawing number: B3250-P1302) (application document reference 2.22)

RRF Boundary Details (drawing number: B3250-P1310) (application document reference 2.23)

RRF Elevation & Section Key Plan (drawing number: B3250-P1320) (application document reference 2.24)

RRF Roof Plan (drawing number: B3250-P1330) (application document reference 2.25)

Proposed access road existing footpath width at level crossing (drawing number: 210010_18) (application document reference 2.26)

Proposed access road with proposed 2.5m, footpath at level crossing (drawing number: 210010_20) (application document reference 2.27)

Proposed access to The Rookery Resource Facility Proposed cross section (drawing number: 210010_19) (application document reference 2.28)

Level Crossing (drawing number: RX_DR_GL_LC_03) (application document reference 2.29)

Lighting Layout & Strategy Operational Area (drawing number: 9V3657-7003) (application document reference 2.30)

Landscape Strategy & Key Plan (drawing number: 2807LO/PA002RevB) (application document reference 2.31B)

Operational Area Masterplan and Green Lane Country Park & RRF Entrance (drawing number: 2807LO/PA/007) (application document reference 2.32)

Planting Strategy - Wider Site (drawing number: 2807LO/PA/004_RevB) (application document reference 2.33B)

Planting Strategy: Operations Area and Indicative Scheme Layout for Green Lane Country Park & RRF Entrance (drawing number: 2807LO/PA/005RevA) (application document reference 2.34A)

Trees to be removed/retained (drawing number: 2897LO/PA/008) (application document reference 2.35)

Surface Water Drainage Strategy (drawing number 21780/076/002 Rev B)

Foul Water Drainage Strategy (drawing numbers 21780/077/001 Rev C and 21780/077/002 Rev D).

(2) Where any alternative details are approved pursuant to this requirement and requirements 5 or 30, those details are to be deemed to be substituted for the corresponding approved details set out in this requirement.

BREEAM Rating

7.—(1) No part of the authorised development may commence until—

- (a) a pre-construction stage consultation with the Building Research Establishment (BRE) (in accordance with the BRE's requirements for such consultation) has been carried out; and
- (b) proposals identifying the range of options to achieve the BRE Environmental Assessment Methodology (BREEAM) rating specified in the consultation response, which must in any event (and in the absence of a consultation response) be of no less a standard than "good" have been submitted to and approved in writing by Central Bedfordshire Council.

(2) The authorised development must be carried out in accordance with the details approved pursuant to requirement 7(1). Any variation of the BREEAM rating must be agreed with BRE and submitted to Central Bedfordshire Council for approval in writing.

Provision of landscaping

8.—(1) No part of the authorised development may commence until a detailed landscaping scheme and associated working programme (which accords with the landscape strategy submitted with the application) has been submitted to and approved in writing by the relevant planning authorities.

(2) The landscaping scheme must include details of—

- (a) the location, number, species, size and planting density of proposed planting;
- (b) the retention of existing vegetation along the route of Work No. 5A specified in that scheme;
- (c) a planting design in the vicinity of the attenuation pond and site access proposals within the Order land;
- (d) any importation of materials and other operations to ensure plant establishment;
- (e) proposed finished ground levels;
- (f) planting and hard landscaping within the operational areas of the authorised development and the vehicular and pedestrian access, parking and circulation areas;
- (g) the green wall and brown roofs to be constructed as part of the authorised development, including the method of construction, plant types, sizing and spacing, and the measures proposed for maintenance of those walls and roofs;
- (h) minor structures such as signage, refuse or other units, and furniture;
- (i) signage and cycle parking facilities at the site access on Green Lane;
- (j) proposed and existing functional services above and below ground, including power and communications cables and pipelines, manholes and supports;
- (k) the specified standard to which the works will be undertaken; and
- (l) a timetable for the implementation of all hard and soft landscaping works.

Implementation and maintenance of landscaping

9.—(1) All landscaping works must be carried out in accordance with the detailed landscaping scheme approved under requirement 8 and to the specified standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) Any tree or shrub planted as part of the detailed landscaping scheme approved under requirement 8 that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

(3) The green wall that is part of the landscaping scheme approved under requirement 8(1) must be maintained in accordance with the approved landscaping scheme following its installation for the duration of the period of commercial operation of the authorised development.

Highway accesses

10.—(1) The highway works comprised in Works No. 8A and 8B to Green Lane, including the two pedestrian crossings and the footway running parallel to and south of Green Lane and the first 10 metres chainage of the access road comprised in Work No. 5A from its junction with Green Lane (including the pedestrian crossing that forms part of the junction in those Works), must be completed prior to the commencement of Works No. 1 and 2.

(2) The access road comprised in Work No. 5A (including the pedestrian crossing that forms part of the junction in those Works) must be constructed to base course for a minimum distance of 100 metres chainage from the section of the access road that has been completed in accordance with requirement 10(1) prior to the commencement of Works No. 1 and 2. The access road must

be laid out in accordance with the approved access plans. The remainder of the route of the access road must be surfaced with crushed stone or other temporary materials appropriate for the purposes of constructing the authorised development.

(3) The works comprised in Works No. 5A and 5B must be substantially completed to the standard specified in the Design Manual for Roads and Bridges and in accordance with the approved access plans (application document references 2.26 and 2.28) set out in requirement 6(1) as certified by an appropriate certifying professional prior to incineration of waste in Work No. 1.

(4) The commencement of Work No. 1 must not take place until a scheme to provide wheel cleaning facilities for heavy goods vehicles and provision for road cleaning in relation to construction of the authorised development has been submitted to and approved in writing by Central Bedfordshire Council. The scheme must include details of the measures and location for the wheel cleaning facilities and details of how cleaning of the highway will be secured so as to remove mud and other debris that may be carried on to it from the authorised development.

Fencing and other means of site perimeter enclosure

11.—(1) No part of the authorised development may commence until details of all proposed permanent fences, walls or other means of enclosure according with boundary details shown on drawing B3250-P1310 (application document reference no. 2.23) including the acoustic fence adjacent to the ramp serving the tipping hall comprised in Work No. 1 have been submitted to and approved in writing by Central Bedfordshire Council.

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

(3) All temporary fencing must be removed on completion of the authorised development.

(4) All perimeter fences, walls or other means of site perimeter enclosure for the authorised development approved in accordance with paragraph (1) must be completed prior to commencement of commercial operation in accordance with the approved details.

Surface and foul water drainage

12.—(1) Except where the authorised development is constructed in accordance with the approved drainage strategies, details of the surface and foul water drainage system (including means of pollution control and information demonstrating compliance with the best practice for sustainable drainage schemes) must be submitted to and approved in writing by Central Bedfordshire Council. Unless otherwise agreed in writing by Central Bedfordshire Council, such details must accord with the principles of the drainage strategy submitted with the application, making provision for the construction of Work No. 3, and must be implemented in accordance with the approved details.

(2) The drainage strategy must provide that all drains provided as part of the authorised development must, where necessary and appropriate, contain trap gullies or interceptors.

Land stability

13.—(1) No part of the authorised development may commence until a written scheme to deal with land 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 identify the extent of any land stability matters, and the remedial measures to be taken to render the land fit for its intended purpose.

(3) Land stabilisation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by Central Bedfordshire Council.

Contamination and groundwater

14.—(1) No part of the authorised development may commence until a scheme to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to

persons or pollution of controlled waters or the environment 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 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) Remediation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by Central Bedfordshire Council.

Archaeology

15.—(1) No part of the authorised development may commence until a written scheme of archaeological investigation has been submitted to and approved in writing by the relevant planning authorities.

(2) The archaeological investigation must be carried out in accordance with the approved scheme unless otherwise agreed in writing by the relevant planning authorities.

Code of construction practice

16. All construction works must be undertaken in accordance with the code of construction practice unless otherwise agreed in writing by the relevant planning authorities.

Control of noise during construction and operational phase

17. During construction the daytime free field noise level as a result of the construction of the authorised development at any residential location must not exceed 55 dB LAeq, 1 hour unless otherwise agreed in writing by Central Bedfordshire Council.

18.—(1) Except in case of an emergency, or with the prior written agreement of Central Bedfordshire Council, the Rating Level as defined in BS4142:1997 of the noise emitted from the operation of the authorised development must not exceed the free field noise levels listed in the following table—

<i>Location</i>	<i>Daytime (0700-2300) dB LAeq 1 hour</i>	<i>Night-time (2300-0700) dB LAeq 5 minutes</i>
Stewartby Way, Stewartby	35	35
South Pillinge Farm	39	35
Pillinge Farm Cottages	35	35

(2) Compliance with these limits must be demonstrated by noise measurements at locations closer to the Order limits selected to allow measurement of noise from the authorised development to be made without significant influence of noise from other sources. Noise levels must be calculated for these locations in accordance with the propagation methodology in ISO 9613 and agreed with the relevant planning authorities.

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

(2) The scheme must specify the locations at which noise will be monitored and the method of noise measurement (which must be in accord with BS 4142, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances).

(3) The scheme must be implemented to establish baseline noise conditions.

(4) This monitoring programme must be subject to periodic reviews to establish the frequency of noise monitoring and the need for continued monitoring.

(5) Throughout the operational lifetime of the development the monitoring programme must be reviewed following any change in plant, equipment or working practices likely to affect noise conditions and any such change shall be notified in writing to Central Bedfordshire Council; or following a written request by Central Bedfordshire Council in relation to a noise related complaint.

(6) Such review must be submitted to Central Bedfordshire Council for its written approval within 4 weeks of the notification or request.

20.—(1) In any case where the noise levels specified in requirement 18 or otherwise agreed in writing for monitoring locations is exceeded because of an emergency, the undertaker must notify Central Bedfordshire Council in writing of the nature of the emergency within 2 working days, the reasons for exceeding the noise limit and its expected duration.

(2) If the period of excess noise is expected to last for more than 24 hours then the undertaker must inform any community liaison panel or any other consultative body established as a result of the authorised development, the relevant planning authorities and adjoining occupiers or land users.

(3) Notification of the excess, the reasons for it and its expected duration must also be posted on the undertaker's internet web site.

21. Except in an emergency, the undertaker must give at least three working days' written notice to Central Bedfordshire Council of any proposed operation of emergency pressure valves or similar equipment. Where steam purging is to take place, the undertaker must give 3 working days' prior written notice to local residents and businesses by informing any community liaison panel or any other consultative body established in respect of the authorised development as well as the relevant planning authorities. Notification of the incident, the reasons for it and its expected duration must also be posted on the undertaker's internet web site.

22. So far as reasonably practicable, steam purging may only take place between the hours of 0900-1700 Mondays-Saturdays and not on any Sunday or Bank Holiday.

23.—(1) Prior to the commencement of construction for the building envelope to contain Work No. 1 an acoustic design report must be submitted to and approved in writing by Central Bedfordshire Council.

(2) The report must detail—

- (a) the noise control measures that are proposed to be included in the design of the building envelope;
- (b) acoustic barriers;
- (c) predicted sound power levels and noise emissions from the air cooled condensers; and
- (d) acoustic attenuation measures for internal plant and equipment.

(3) The measures must be installed in accord with the approved scheme prior to commencement of operation of the authorised development and retained and maintained afterwards in accordance with the manufacturers' specifications unless Central Bedfordshire Council gives its written consent to any variation.

(4) The acoustic design report must demonstrate compliance with requirements 18 and 19.

Construction hours

24. Construction work (which for the purpose of this requirement does not include non-intrusive activities such as electrical installation and internal fit out works) may not take place other than between 0700 and 1900 hours on weekdays and 0700 and 1300 hours on Saturdays, excluding public holidays, unless otherwise agreed in writing by Central Bedfordshire Council.

Combined Heat and Power

25. A facility must be provided and maintained within Work No. 1 to enable steam pass-outs and/or hot water pass-outs and reserve space for the provision of water pressurisation, heating and pumping systems for off-site users of process or space heating and its later connection to such systems.

Delivery hours and traffic management

26.—(1) No heavy goods vehicle transporting municipal waste or commercial and industrial waste may enter or leave the authorised development at any time on a Sunday, Christmas Day, New Year's Day or Easter Day (unless otherwise approved in writing by Central Bedfordshire Council).

(2) No heavy goods vehicle transporting municipal waste or commercial and industrial waste may enter or leave Work No. 1 except on Monday to Saturday between the hours of 0700 to 2300.

(3) No heavy goods vehicle transporting by-products may enter or leave Work No. 2 except on the following days and prescribed times—

(a) Monday to Friday between the hours of 0700 to 1800;

(b) Saturday between the hours of 0700 to 1400.

(4) No heavy goods vehicle may enter or leave the lorry park except between the hours of 0700 to 2300 on Monday to Saturday.

(5) This requirement applies except where such a movement as it describes is—

(a) an abnormal load;

(b) associated with an emergency; or

(c) carried out with the written approval of Central Bedfordshire Council.

CCTV

27.—(1) No part of the authorised development may commence until a scheme for the installation of a CCTV camera (or cameras) to monitor the entrance to the site from Green Lane has been submitted to and approved in writing by Central Bedfordshire Council. The scheme must include details of—

(a) the column(s) and camera(s) to be used;

(b) the viewing area covered;

(c) the capability for remote access viewing; and

(d) the ability to record live footage.

(2) The approved CCTV scheme must be installed prior to commencement of incineration of waste in Work No. 1 and must be operated afterwards in accordance with the approved scheme unless otherwise agreed in writing by Central Bedfordshire Council.

Loads to be covered

28. All heavy goods vehicles carrying bulk materials or waste into and out of the site of the authorised development during the construction, operational and decommissioning phases of development must be covered unless the load is otherwise enclosed, except when required to inspect incoming loads of waste.

Restoration

29.—(1) On the 32nd anniversary of the commencement of operation of the authorised development or on the cessation of the commercial operation of the development, whichever is earlier, the applicant must inform Central Bedfordshire Council as to whether it intends to

maintain the authorised development in its then current state, refurbish it or demolish the facility and restore the land.

(2) In the event that it is intended to refurbish the authorised development details of external changes must be submitted to Central Bedfordshire Council for approval in writing. Any such refurbishment must be implemented in accordance with the approved details.

(3) In the event that it is not intended to maintain the authorised development (whether by carrying out changes authorised under requirement 29(2) or otherwise) the authorised development must be removed.

(4) Prior to any demolition of the authorised development demolition details must be submitted to Central Bedfordshire Council for approval in writing.

(5) The details must include—

- (a) the structures and buildings to be demolished or retained;
- (b) the phasing of demolition and means of removal of demolition materials; and
- (c) the proposed condition of the land following restoration (including whether the land will be in the condition authorised by the Low Level Restoration Scheme approved under statutory reference BC/CM/2000/08) or an alternative scheme approved by Central Bedfordshire Council depending upon the condition of the land).

(6) The demolition must be carried out in accordance with the approved details following cessation of commercial operation of the authorised development unless otherwise agreed in writing by Central Bedfordshire Council.

Amendments to approved details

30. With respect to any requirement which requires the authorised development to be carried out in accordance with details approved by the relevant planning authorities or either of them, the approved details are to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authorities or either of them as the case may be.

Low level restoration scheme

31. No part of the authorised development may commence until the works comprising phase 1 of the low level restoration scheme, which has been authorised by Bedford Borough Council and Central Bedfordshire Council as a part of the review of old minerals permission with reference number BC/CM/2000/08, have been carried out so as to provide an engineered site for the authorised development.

Incinerator bottom ash processing and storage

32. No incinerator bottom ash or other combustion residues produced at any other generating station may be accepted at or processed in Work No. 2 of the authorised development.

33. No by-products stored at Work No. 2 comprised in the authorised development may exceed 10 metres in height from the surface of the yard comprised in Work No. 2.

34.—(1) Work No. 2 must not be commercially operated until a written scheme for the management and mitigation of dust emissions has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The approved scheme for the management and mitigation of dust emissions must be implemented and maintained for the duration of the operation of the authorised development.

Lighting strategy

35.—(1) No part of the authorised development may commence until a detailed lighting strategy (which accords with the approved lighting strategy listed in requirement 6(1) and described in the

design and access statement) has been submitted to and approved in writing by Central Bedfordshire Council.

(2) The approved lighting strategy must be implemented in accordance with the approved details prior to the commencement of incineration of waste in Work No. 1 of the authorised development and must be maintained afterwards for the duration of commercial operation of the authorised development.

(3) Where construction of Work No. 2 has not been completed prior to the incineration of waste in Work No. 1 the relevant elements of the approved lighting strategy relating to Work No. 2 must be implemented in accordance with the approved details prior to commercial operation of Work No. 2 and must be maintained afterwards for the duration of the operation of the authorised development.

Connection to the national grid

36.—(1) No incineration of waste in Work No. 1 may take place, apart from during commissioning, until a grid connection comprised in Works No. 6A, 6B, 6C, 6D, 6E, 6F, 6G and 6H has been installed and is capable of transmitting electricity generated by Work No. 1.

(2) No waste may then be incinerated in Work No. 1 unless electricity is being generated by Work No. 1 except during periods of maintenance, inspection or repair or at the direction of the holder of a licence under section 6(1)(b) or (c) of the Electricity Act 1989 who is entitled to give such direction in relation to transmission of electricity from Work No. 1 to the national grid.

Visibility requirements at Green Lane/C94 junction

37.—(1) No part of the authorised development may commence until a scheme which overcomes the substandard visibility splay to the left on exit at the junction of Green Lane with the C94 has been submitted to and approved in writing by Bedford Borough Council and implemented on site in accordance with the approved details.

(2) Visibility requirements at either the existing junction or any new or realigned junction must accord with the requirements set out in the Design Manual for Roads and Bridges.

Vehicle movements

38.—(1) The total number of heavy goods vehicles importing or exporting waste, incinerator bottom ash aggregate or flue gas treatment residues to and from the authorised development must not exceed 594 movements per day.

(2) Records of such vehicle movements must be kept by the undertaker and provided to Central Bedfordshire Council every 6 months.

(3) The records must specify the following—

- (a) number of vehicles both entering and leaving the authorised development; and
- (b) time and date of vehicles both entering and leaving the authorised development.

Travel plan

39.—(1) The authorised development may not be commercially operated except in accordance with the travel plan which, prior to the approval of the travel plan referred to in requirement 39(2), means the travel plan submitted with the application together with the addendum headed “Interim Travel Plan SoCG Appendix” unless otherwise agreed in writing by the relevant planning authorities.

(2) A full travel plan must be submitted to the relevant planning authorities for approval in writing prior to the expiration of 6 months from the date on which the authorised development is first commercially operated. Following such approval that travel plan must be implemented in accordance with the approved details.

(3) A review of the travel plan must be carried out on each anniversary of the date of commencement of commercial operation of the authorised development and an annual travel plan report including any revisions to the travel plan deemed necessary as a result of the review must be submitted to the relevant planning authorities for written approval. Following approval of the revisions to the travel plan by the relevant planning authorities the authorised development must be operated in accordance with the revised travel plan.

Ecological management scheme

40.—(1) No part of the authorised development may commence until a written ecological management scheme has been submitted to and approved in writing by the relevant planning authorities.

(2) The ecological management scheme must include details of—

- (a) the protection of species covered by wildlife legislation, including great crested newts and reptiles, from activities associated with the authorised development;
- (b) measures to sustain favourable conditions for stoneworts and invertebrate communities;
- (c) the control of quality and quantity of water released from the authorised development to the drainage channels and attenuation pond in Rookery South Pit;
- (d) the rotational management of water bodies and other wetland habitats within Rookery Pits;
- (e) the management of woodland and scrub planting to maximise the habitat mosaic so as to complement woodland objectives in the wider area;
- (f) how the lighting strategy referred to at requirement 35 avoids or minimises the use and effect of lighting;
- (g) a strategy for ecological management of vegetated surfaces to include brown roofs associated with the Work No. 1;
- (h) a programme for implementation of the proposed measures;
- (i) details of ongoing maintenance; and
- (j) an annual reporting protocol.

(3) The approved ecological management scheme must be implemented and maintained during commercial operation of the authorised development unless otherwise agreed in writing by the relevant planning authorities.

Residual Waste Acceptance Scheme

41.—(1) Incineration of waste in Work No. 1 must not take place except in accordance with the Residual Waste Acceptance Scheme dated 8 July 2011.

(2) On a date no later than the anniversary of the commencement of incineration of waste in Work No. 1 in each year, a written report in respect of a review of the effectiveness of the scheme must be submitted to Central Bedfordshire Council for approval in writing together with proposals for such revised, additional or substituted measures as appear to be necessary.

(3) Following approval of the alterations to the scheme by Central Bedfordshire Council incineration of waste in Work No. 1 must take place in accordance with the altered scheme.

(4) The purpose of altering the scheme is to ensure that the scheme continues to address changes in waste management, and that Work No. 1 is used only for the incineration of residual waste.

SCHEDULE 2

Article 10

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
Bedford Borough and Central Bedfordshire	Green Lane, Stewartby between a point at its junction with Footpath 4 to the south of Stewartby and its junction with the existing C94 Green Lane Level Crossing, Stewartby The Copart Access Road, Marston Moretaine from its junction with Green Lane, Marston Moretaine to its junction with the C94
Central Bedfordshire	The C94 within the Order limits Footpath 72 from its junction with Green Lane or west of Green Lane Level Crossing and its junction with the Copart Access Road, Marston Mortaine

SCHEDULE 3

Article 11

PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY EXTINGUISHED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Right of way extinguished</i>	<i>(3)</i> <i>Extent to which extinguished</i>
Central Bedfordshire	Footpath No. 4 west of Rookery South Pit Footpath No. 17 East of the western boundary of the Marston Vale railway line All footpaths, bridleways and other rights of way affecting the area of the Rookery shown shaded grey on the rights of way plan	Existing footpath between points X1 and X2 Existing footpath between points X3 and X4 Within the area shaded grey on the rights of way plans

PART 2
RIGHTS OF WAY CREATED OR IMPROVED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Existing or new right</i>	<i>(3)</i> <i>New status</i>
Central Bedfordshire	A new combined footpath and cycleway between points N1 and N2	Footpath with cycle rights
	A new combined footpath and cycleway between points N3 and N4	Footpath with cycle rights
	A new combined footpath and cycleway between points N5 and N6	Footpath with cycle rights
	Footpath 72 to be upgraded to include cycle rights between points I1 and I2	Footpath with cycle rights
Bedford Borough	Footpath to be upgraded to include cycle rights between points I8 and I9	Footpath with cycle rights
Bedford Borough and Central Bedfordshire	Footpath to be upgraded to include cycle rights between points I3 and, thence by a circular route via points I4-I7 to Point I3	Footpath with cycle rights

SCHEDULE 4
STREETS TO BE TEMPORARILY STOPPED UP

Article 12

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Bedford Borough and Central Bedfordshire	The Copart Access Road, Marston Moretaine	Within the Order limits

SCHEDULE 5
ACCESS TO WORKS

Article 13

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
Bedford Borough	An improved access to Green Lane Stewartby at or near to point A

SCHEDULE 6
LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Article 25

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Central Bedfordshire	52, 72, 73, 74, 75, 76, 77	Carrying out and maintaining landscaping, tree planting and ecological improvements
Bedford Borough and Central Bedfordshire	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 29/1, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63	Installation, retention and maintenance of electricity transmission line and the improvement of highways and public rights of way

SCHEDULE 7
PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

Article 33

1. The following provisions of this Schedule shall have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Schedule 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) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker shall not exercise the powers conferred by articles 16, 17, 18, 20 or 25 or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers and electronic code communications operators: preliminary notices), or article 27, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Prior to commencement of construction of the authorised project the undertaker and Network Rail shall, having regard to the undertaker’s timetable for development, agree in writing a programme for the implementation of any works approved by Network Rail to the railway crossing of the Bletchley Bedford railway line at Green Lane, Stewartby, Bedford and the undertaker will thereafter comply with the provisions of the programme.

(6) Where Network Rail is asked to give its consent or agreement pursuant to this paragraph, such consent or agreement shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants,

contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker shall—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the

construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker shall in the design and construction of the authorised development take all measures necessary to prevent EMI and shall establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker shall consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail shall make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail shall allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail shall not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) shall have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of commercial operation of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker shall afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of such EMI;
- (b) Network Rail shall afford reasonable facilities to the undertaker for access to Network Rail’s apparatus in the investigation of such EMI; and

- (c) Network Rail shall make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail shall allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 34 to an arbitrator to be agreed shall be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers to be agreed.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker shall indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

20. The undertaker shall give written notice to Network Rail where any application is proposed to be made by the undertaker for the decision-maker’s consent under article 7 of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the decision-maker to whom the application is to be made.

21. The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the decision-maker in accordance with article 32, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Covanta Rookery South Limited to construct, operate and maintain, an electricity generating station at Rookery South Pit, near Stewartby, Bedfordshire together with all necessary and associated development. For the purposes of the development that it authorises Covanta Rookery South Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land and to use land, as well as to override easements and other rights. The Order also authorises the making of alterations to the highway network, provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 32 of this Order may be inspected free of charge at the offices of Central Bedfordshire Council at Monks Walk, Chicksands, Shefford, Bedfordshire SG17 5TQ and Bedford Borough Council at Borough Hall, Cauldwell Street, Bedford MK42 9AP.