
 S T A T U T O R Y I N S T R U M E N T S

201X No.**INFRASTRUCTURE PLANNING****The Rookery South (Resource Recovery Facility) Order 201X**

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

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Whereas an application has been made to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 made under sections 37, 42, 48, 51, 56, 59 and 232 of the Planning Act 2008 (the “Act”)() for an Order under sections 37, 55, 115, 120,121, 122 and 140 of the Act;

And whereas the application was examined by an examining authority appointed by the Infrastructure Planning Commission pursuant to Chapter 4 of the Act;

[And whereas the examining authority, having considered the national planning statements relevant to the application and concluded that the application accords with these statements as set out in section 104(3) of the Act;]

And whereas the examining authority, having considered the objections made and not withdrawn and the application with the documents that accompanied the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change in the proposals;

And whereas notice of the decision-maker’s determination was published [];

Now, therefore, as the decision-maker in exercise of the powers conferred by sections 114, 115, 120, 121, 122 and 140 of the Act the Secretary of State makes the following Order:

Citation and commencement

1. This Order may be cited as the Rookery South (Resource Recovery Facility) Order 201X and shall come into force on [] 201X.

Interpretation

2.—(1) In this Order—

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

(a) 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.

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

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

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

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

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

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (authorised project) and any other works authorised by the Order and which are not development within the meaning of section 32 of the 2008 Act;

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

“the authorised project” means the authorised development and the ancillary works authorised by this Order;

“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;

“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;

“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;

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- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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).
- (e) 2008 c.29.

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

“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 plan within which the authorised project may be carried out;

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

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

“relevant planning authority” means the planning authority for each of the areas in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Part 3 of Schedule 1 (requirements) to this Order;

“rights of way plan” means the plan certified as the rights of way plan 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;

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

“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;

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

“undertaker” means Covanta Rookery South Limited or any other person who has the benefit of this Order in accordance with section 156 of the 2008 Act for such time as that section applies to that person;

“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 rights over land include references to rights to do or to place and maintain, anything in, on order under land or in the air-space above its surface.

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

(4) The expression “includes” shall be construed without limitation.

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements Part 3 of Schedule 1 the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

(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.

to be carried out within the Order limits.

(2) The development authorised by this Order shall be constructed in the lines or situations shown on the works plans and in accordance with the drawings specified in the requirements.

(3) The numbered works comprised in the authorised development shall 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 deposited sections—
 - (i) in respect of any structure not being beneath the stack or boiler house comprised in Work No. 1 to any extent not exceeding 5 metres upwards provided that the stack shall not be lower in height than 135.25 metres above ordnance datum;
 - (ii) to any such extent downwards as may be necessary, convenient or expedient.

Maintenance of authorised project

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

(2) Subject to paragraph (4), the power to maintain the authorised project 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, including mains, sewers, drains and cables;
- (b) works to alter, such offices and to alter, erect and construct such buildings, engines, machinery, apparatus, structures and other works, and conveniences as the undertaker sees fit;
- (c) all such embankments, aprons, abutments, retaining walls, culverts and other such works as the undertaker thinks fit;
- (d) works to alter the course of, or otherwise interfere with, a watercourse;
- (e) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the schedule works; and
- (f) works for the benefit or protection of premises affected by the schedule works.

(3) Subject to paragraph (4), the undertaker may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction and operation of the authorised development.

(4) Paragraphs (2) and (3) shall only authorise the carrying out or maintenance of works within the Order limits.

Operation of Generating Station

5.—(1) The undertaker is hereby 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 license under any other legislation that may be required from time to time to authorise the operation of a generating station.

Consent to transfer benefit of Order

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

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

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

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

(4) The provisions of articles 9, 10, 15 to 22 and 29 shall have effect solely for the benefit of the person named as the undertaker in this Order.

(5) The powers of the undertaker referred to in paragraph (4) shall only be capable of transfer or lease if a person who is also the transferee or lessee of the land occupied by Work No. 1 and, in respect of Works No. 6A to 6H, a person who holds a licence under the Electricity Act 1989.

Defence to proceedings in respect of statutory nuisance

7.—(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 shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project 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 project 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 project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25; or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

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

(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.

Street works

8.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

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

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

(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

9.—(1) With effect from the date upon which authorised development is first begun 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 shall be 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 the public rights of way specified in columns (1) and (2) of Part 2 of Schedule 3 have been improved to the standard defined in the implementation plan the public right of way in question shall be 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 local highway authority for the improvement of the public right of way in question; and

“local highway authority” has the same meaning as in the section 329(1) of the 1980 Act.

Temporary stopping up of streets

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

- (a) divert the traffic from the street or right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or right of way.

(2) The undertaker shall 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 streets or rights of way specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) 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 shall not temporarily stop up, alter or divert—

- (a) any street or right of way specified as mentioned in paragraph (3) without first consulting the local highway authority; and

- (b) any other street or right of way 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 shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

11. The undertaker may, for the purposes of the authorised project—

- (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 (access to works); 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 project.

Agreements with street authorities

12.—(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 8(1) (street works).

(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

13.—(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 project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

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

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

(5) The undertaker shall 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.

(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.

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991^(a) (offences of polluting water).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency (interpretation), an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

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

(9) This article shall have effect in relation to watercourses or drains that are created or to be created as part of the low level restoration scheme.

Authority to survey and investigate the land

14.—(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 project and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

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

(a) shall, if so required entering the land, produce written evidence of their authority to do so; and

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

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

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

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

(a) 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) of Part 1 of Schedule 21 to S.I. 2007/3538.

Compulsory acquisition of land

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

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

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

(4) This article is subject to article 23 (temporary use of land for carrying out the authorised project).

Power to override easements and other rights

16.—(1) Any authorised activity which takes place on land within the Order Limits (whether the activity is undertaken by the undertaker, by its statutory successor, by any person deriving title under them or by any of their servants or agents) is authorised by this Order if it is 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 or 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 and any natural right to support.

(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 shall be 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, abrogated or discharged in pursuance of this article, compensation—

- (a) shall be payable under section 63 or 68 of the Lands Clauses Consolidation Act 1845 or under section 7 or 10 of the Compulsory Purchase Act 1965; and
- (b) shall 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 those acts; or
 - (ii) the injury arises from the execution of works on or use of land acquired under those acts.

(6) Nothing in this article shall 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) of this article.

(7) This article shall not apply in respect of any matter contained in a deed made pursuant to section 106 of the 1990 Act.

Time limit for exercise of authority to acquire land compulsorily

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

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

(2) The authority conferred by article 23 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory Acquisition of Rights

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

(3) Subject to section 8 of the 1965 Act as substituted by article 21 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be 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 shall be 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

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

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

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

“(1) Before making a declaration under section 4 with respect of 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.

”.

-
- (a) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.
 - (b) 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.

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

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

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

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

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

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

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

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

Acquisition of subsoil only

20.—(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 15 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) shall not prevent article 21 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

(4) Nothing in the provision shall require the undertaker to acquire any estate, right or interest in the corpus of any adopted highway.

Acquisition of part of certain properties

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

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

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

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

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

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

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

the owner shall be required to sell the land subject to the notice to treat.

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

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

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

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

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

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

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

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

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

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

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

Rights under or over streets

22.—(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 project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land 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, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised project

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) 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 shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) 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.

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

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

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

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

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

- (a) acquiring new rights over any part of that land under article 18 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 20 (acquisition of subsoil only).

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

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

Temporary use of land for maintaining authorised project

24.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, 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 project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

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

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

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

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage rising 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, shall be determined under Part 1 of the 1961 Act.

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

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

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

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

Statutory undertakers

25. The undertaker may—

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

- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Railway undertakings

26.—(1) Subject to the following provisions of this article, the undertaker may not under article 8 (street works) 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 or tramway undertakers; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

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

(2) Paragraph (1) shall 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 shall not be unreasonably withheld or delayed.

Application of landlord and tenant law

27.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project 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 project, or any part of it,

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

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

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

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

Operational land for purposes of the 1990 Act

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

Felling or lopping of trees

29.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

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

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

Certification of plans etc

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

- (a) the book of reference;
- (b) the land plans;
- (c) the works plans;
- (d) the sections; and
- (e) any other plans or documents referred to in this Order,

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

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

Protective provisions

31. Schedule 7 shall have effect.

Arbitration

32. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to an arbiter 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.

SCHEDULES

SCHEDULE 1 Authorised Project

PART 1 Authorised Development

In Central Bedfordshire

A nationally significant infrastructure project as defined in sections 14 and 15 of the 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 stacks;
- (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/2010/08;

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/2010/08;

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 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 Works No. 5A and No. 5B;

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

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

Work No. 6D A grid connection consisting of one or more cables laid in trench on Green Lane Stewartby and connecting Work No. 6C to a point at the junction of Green Lane and Woburn Road, Wootton;

Work No. 6E A grid connection consisting of one or more cables laid in trench from the junction of Green Land and Wootton Road, Marston Moretaine to the junction of Wootton Road and the existing A421 Trunk Road;

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

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

Work No. 6H A grid connection consisting of one or more cables laid in trench from the junction of Woburn and the existing A421 Trunk Road to the existing Marston Road Primary Substation;

Work No 7A A work for the improvement of the entrance to the Marston Vale Millennium 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 West 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/2010/08];

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 consisting of 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 further associated development including—

- (a) weighbridges and security gatehouse(s);
- (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; and
- (h) water supply works, foul drainage provision, surface water management systems and culverting.

PART 2

Ancillary Works

The demolition of all or part of the redundant conveyor structure within the Order Limits.

PART 3

Requirements

Interpretation

1. In this Part of this Schedule—

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

“the 2008 Act” means the Planning Act 2008;

“the approved development plans” mean the plans submitted with the application on [date] and listed at requirement 7 below;

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

“code of construction practice” means the code of construction practice dated [] and annexed to the environmental statement;

“commence” means beginning to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised project 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, the temporary display of site notices or advertisements and “commencement” shall be construed accordingly;

“commercially operate” means the operation of 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;

“design and access statement” means the document bearing that title submitted with the application for the Order;

“the environmental statement” means the document certified as the environmental statement by the decision-maker for the purposes of this Order and submitted with the application on 30 July 2010;

“the highway authorities” means Central Bedfordshire Council and Bedford Borough Council;

“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 5th June 2009 and bears statutory reference number BC/CM/2010/08;

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

“the relevant planning authorities” means Central Bedfordshire Council and Bedford Borough Council.

Time limits

2. The authorised development shall commence no later than the expiration of five years beginning with the date of this Order comes into force.

Type of waste to be treated

3. The waste permitted to be treated in the energy from waste facility comprised in Work No. 1 shall be limited to waste categorised as residual municipal waste and residual commercial and industrial waste and materials derived therefrom.

Commencement

4. Notice of commencement of the authorised development shall be given to the relevant planning authorities not later than seven days after the date that the authorised development is commenced.

Commercial operation

5. Notice of commercial operation of the authorised development shall be given to the relevant planning authorities not later than seven days after the date that the authorised development is first commercially operated.

Detailed design approval

6. Except where the authorised development is carried out in accordance with the plans listed in requirement 7, no authorised development shall commence until details of the layout, scale and external appearance of Works No. 1, 2, 5A, 5B, 7A and 7B comprised in the authorised development have, after consultation with the relevant planning authority, been submitted to and approved by the decision-maker. The authorised development must be carried out in accordance with the approved details.

7.—(1) The authorised development shall be carried out in accordance with the approved plans submitted with the application and bearing references 2.12 to 2.35 (unless otherwise approved in writing by the decision maker and the altered development accords with the principles of the design and access statement and falls within the Order limits) as follows:

[List of final version plans to be inserted here]

(2) Where any alternative details are approved pursuant to this requirement and requirement 6, those details shall be deemed to be substituted for the corresponding approved details set out above.

BREEAM Rating

8.—(1) The authorised development shall not be commenced until 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. The results of that consultation shall be provided to the Commission.

(2) The authorised development shall be carried out in accordance with the results of the pre-construction stage consultation provided to the Commission to achieve the Building Research Establishment Environmental Assessment Methodology (BREEAM) rating identified for the authorised development. Any variation of the BREEAM rating shall be agreed by BRE and submitted to the Commission for approval.

Provision of landscaping

9.—(1) No authorised development shall be commenced until a written landscaping scheme and associated working programme (which accords with the landscape strategy submitted with the application) shall, after consultation with the relevant planning authorities, be submitted to the Commission for approval.

(2) The landscaping scheme shall provide for:

- (a) the location, number, species, size and planting density of any proposed planting;
- (b) any importation of materials and other operations to ensure plant establishment;
- (c) Proposed finished ground levels;
- (d) planting and hard landscaping within the operational areas of the authorised development and the vehicular and pedestrian access, parking and circulation areas;
- (e) minor structures such as signage, refuse or other units, and furniture, the details of which may be subject to modification as a result of the BREEAM assessment;
- (f) proposed and existing functional services above and below ground, including power and communications cables and pipelines, manholes and supports;
- (g) the specific standard to which the works will be undertaken;
- (h) a timetable for the implementation of all hard and soft landscaping works;
- (i) the retention of existing vegetation along the route of Work No. 5A specified in that scheme;
- (j) a detailed planting design in the vicinity of the attenuation pond and site access proposals within the Order land; and
- (k) signage and cycle parking facilities to be provided to the site access on Green Lane.

Implementation and maintenance of landscaping

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

(2) The landscaping works must be carried out in accordance with implementation timetables approved under requirement 9.

(3) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the Commission, 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 Commission.

Highway accesses

11.—(1) The highway access comprised in Work No. 5A and Work No. 5B (including the pedestrian crossing that forms part of the junction comprised in those Works) shall be constructed to base course prior to commencement of Work No. 1. The access shall be laid out in accordance with the approved access plans set out in Requirement 7. The extent of the works necessary to construct the access to base course shall be agreed with the Commission prior to any works under this Requirement being commenced. No works associated with the provision of the access shall be required on the access road to the authorised development beyond ten metres from its junction with Green Lane.

(2) The highway access shall be completed to the appropriate standard in complete accordance with the approved access plans set out at requirement 7 as certified by an appropriate certifying professional prior to commercial operation of the authorised development.

Fencing and other means of enclosure

12.—(1) The authorised development shall not be commercially operated until written details of all proposed permanent fences, walls or other means of enclosure including the acoustic fence adjacent to the ramp serving the tipping hall comprised in Work No. 1 have, after consultation with the relevant planning authorities, been submitted to and approved by the Commission. Such means of enclosure shall be implemented as approved.

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

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

Surface water drainage

13.—(1) Except where the authorised development is constructed in accordance with the approved drainage strategy, written details of the surface and foul water drainage system (including means of pollution control) have, after consultation with the relevant planning authority and the sewerage and drainage authority, been submitted to and approved by the Commission. Unless otherwise agreed in writing by the Commission, such details shall accord with the principles of the drainage strategy submitted with the application, making provision for the construction of Work No. 3, and be implemented as approved.

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

Land stability

14.—(1) No authorised development shall commence until a written scheme to deal with land stability within the Order limits has, after consultation with the relevant planning authorities and the Environment Agency, been submitted to and approved by the Commission.

(2) The scheme shall include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authorities, 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) Remediation and land stabilisation must be carried out in accordance with the approved scheme.

Contamination and groundwater

15.—(1) No authorised development shall commence until a written scheme to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the relevant planning authorities and the Environment Agency, been submitted to and approved by the Commission.

(2) The scheme shall include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authorities, 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.

Archaeology

16.—(1) No authorised development shall commence until a written scheme of archaeological investigation has been submitted to and approved in writing by the Commission. The archaeological investigation shall be carried out in complete accordance with the approved scheme.

Code of Construction Practice

17. All construction works shall be undertaken in accordance with the code of construction practice submitted with the application and annexed to the environmental statement, unless otherwise agreed in writing by the Commission.

Control of noise during construction and operational phase

18. During construction the daytime free field noise level as a result of the construction of the authorised development at any residential location shall not exceed 65 dB $L_{Aeq, 1 \text{ hour}}$. If required, night-time levels of construction noise shall set with reference to BS 5228: 2009 and agreed with the relevant planning authorities and shall not be exceeded as a result of any such works.

19. Except in case of an emergency, or with the prior written agreement of the relevant planning authorities, the Rating Level of the noise emitted from the operation of the authorised development shall not exceed the free field noise levels listed below.

<i>Location</i>	<i>Daytime (0700-2300) dB $L_{Aeq, 1 \text{ hour}}$</i>	<i>Night-time (2300-0700) dB $L_{Aeq, 5 \text{ minutes}}$</i>
Station Road, Marston Moretaine	35	35
Stewartby Way, Stewartby	35	35
How End Road, How End	35	35
South Pilling Farm	39	35
Pilling Farm Cottages	35	35

Compliance with these limits shall 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 shall be calculated for these locations in accordance with the propagation methodology in ISO 9613 and agreed with the relevant planning authorities.

20. The operation of the development shall not commence until a written scheme of details has, after consultation with the relevant planning authorities, been submitted to and approved in writing by the Commission for the monitoring of noise generated during the construction and operation of the development hereby permitted. The scheme shall specify the locations from which noise will be monitored and the method of noise measurement (which shall be in accord with BS 4142, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances). The scheme shall be implemented to establish baseline noise conditions. This monitoring programme shall be subject to periodic reviews to establish the frequency of noise monitoring and the need for continued monitoring. Throughout the operational lifetime of the development the monitoring programme shall be reviewed following any change in plant, equipment or working practices likely to affect the baseline noise conditions and any such change shall be notified in writing to the relevant planning authorities; or following a written request by the relevant planning authorities in relation to a noise related complaint. Such review shall be submitted to the relevant planning authorities for its written approval within 4 weeks of the notification or request.

21. In any incidence where the noise levels specified in requirement 19 or agreed in requirement 20 above are exceeded because of an emergency the Company shall notify, the relevant planning authorities in writing of the nature of the emergency within 2 working days, the reasons for exceeding the noise limit and its expected duration. If the period of excess noise is expected to last for more than 24 hours then the undertaker shall inform the Community Liaison Panel or any other consultative body established as a result of the development permitted, the relevant planning authorities and adjoining occupiers or land users. Notification of the excess, the reasons therefor and its expected duration shall also be posted on the undertaker's internet web site.

22. Except in an emergency, the undertaker shall give at least 2 working days' written notice to the relevant planning authorities of any proposed operation of emergency pressure valves or similar equipment. In any incidence where steam purging is to take place, the undertaker shall give 2 working days' prior written notice to local residents and businesses by informing the 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 therefor and its expected duration shall also be posted on the undertaker's internet web site.

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

24. Prior to the commencement of construction for the building envelope to contain Work No. 1 an acoustic design report shall be submitted for written approval by the relevant planning authorities. The report shall detail the noise control measures that are proposed to be included in the design of the building envelope; acoustic barriers; predicted sound power levels and noise emissions from the air cooled condensers; and acoustic attenuation measures for internal plant and equipment. Such measures shall be installed in accord with the approved scheme prior to commencement of operation of the authorised development and thereafter retained and maintained in accord with the manufacturers' specifications unless the relevant planning authorities give their written consent to any variation. The acoustic design report shall demonstrate compliance with requirements 19 and 20 above.

Construction hours

25.—(1) Construction work (which for the purpose of this condition shall not include non-intrusive activities such as electrical installation and internal fit out works) shall 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 by the Commission.

(2) Nothing in paragraph (1) precludes a start-up period from 0630 to 0700 and a shut down period from 1900 to 1930 on weekdays and start up period from 06.30 to 07.00 and a shut down period from 13.00 to 13.30 on Saturdays (excluding public holidays).

Combined Heat and Power

26. A facility shall be provided and maintained within the authorised development 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.

Flue Gas Treatment

27. Flue gas treatment residues produced by the generating station comprised in the authorised development shall be transported from the authorised development in sealed containers to authorised sites.

Delivery Hours and Traffic Management

28.—(1) No heavy goods vehicle transporting municipal household waste shall enter or leave the authorised development at any time on a Sunday, Christmas Day, New Year's Day or on Easter Day (unless otherwise approved in writing by the Commission following consultation with the relevant planning and highway authorities).

(2) No heavy goods vehicle transporting household municipal waste shall enter or leave Work No. 1 except on Monday to Saturday between the hours of 05:00 - 23:00.

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

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

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

(4) The provision of this requirement shall apply 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 the relevant planning authorities.

Heavy Goods Vehicles

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

Restoration

30. On the 32nd anniversary of the commencement of operation of the development or upon the permanent cessation of the operation of the development whichever is the earlier, details of a scheme of restoration and aftercare of the site shall be submitted for approval in writing by the Commission. The scheme shall include any proposed future uses for the site; details of structures and buildings to be demolished or retained; details of the means of removal of materials of demolition; phasing of demolition and removal; details of restoration works and phasing thereof. The scheme shall be implemented as approved following the permanent cessation of the operation of the development.

Amendments to approved details

31. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the Commission, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the Commission.

LLRS

32. No authorised development shall commence until the works comprising phase 1 of the low level restoration scheme, which has been authorised as a part of the review of old minerals permission granted on 9 December 2010 with reference number BC/CM/2000/08 by the Bedford Borough Council and Central Bedfordshire Council have been carried out so as to provide an engineered site for the authorised development.

IBAA Processing and Storage

33. No incinerator bottom ash or other combustion residues produced at any other generating station shall be accepted at or processed in the materials recovery facility comprised in Work No. 2 of the authorised development.

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

35.—(1) The materials recovery facility comprised in Work No. 2 shall not be commercially operated until after consultation with the relevant planning authority, a written scheme for the management and mitigation of dust emissions has been submitted to and approved by the Commission.

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

Lighting Strategy

36.—(1) No authorised development shall be commenced until a written lighting strategy (which accords with the lighting strategy in the design and access statement) has, after consultation with the relevant planning authorities, been submitted to the Commission for approval.

(2) The lighting scheme shall be implemented as approved before and maintained during commercial operation of the authorised development.

Connection to the national grid

37.—(1) No waste shall be burnt at the energy from waste plant comprised in the authorised development, apart from during commissioning, until the grid connection comprised in Work Nos. 6A, 6B, 6C, 6D, 6E, 6F, 6G and 6H has been installed and is capable of transmitting electricity generated by the energy from waste plant comprised in the authorised development. Thereafter no waste shall be processed at the authorised development unless electricity is being generated by the authorised development except during periods of maintenance, inspection or repair or at the direction of the person responsible for transmission of electricity from the authorised development to the national grid.

SCHEDULE 2

Article [8]

Streets Subject to Street Works

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Street subject to street works</i>
Bedford Borough	Green Lane, Stewartby between a point at its junction with Footpath 4 to the south of Stewartby and its junction with the existing A421(T) Trunk Road Green Lane Level Crossing, Stewartby Woburn Road, Wootton from its junction with Green Lane, Wootton to its junction with the existing A421(T) Trunk Road
Central Bedfordshire	Footpath 72 from its junction with Green Lane or west of Green Lane Level Crossing and its junction with Woburn Road, Wootton
Bedford Borough and Central Bedfordshire	The existing A421(T) Trunk Road within the Order limits

SCHEDULE 3

Article 9

Public Rights of Way

PART 1

Public Rights of Way Extinguished

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Right of way extinguished</i>	<i>Extent to which extinguished</i>
Central Bedfordshire	Footpath No. 4 west of Rookery South Pit	Existing footpath between points X1 and X2

Footpath No. 17 East of the western boundary of the Marston Vale railway line	Existing footpath between points X3 and X4
All footpaths, bridleways and other rights of way affecting the area of the Rookery shown shaded [grey] on the rights of way plans	Within the area shaded grey on the rights of way plans

PART 2

Rights of Way Created or Improved

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Existing or new right</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

Article 10

Streets to be Temporarily Stopped Up

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>
Bedford Borough and Central Bedfordshire	Green Lane, Stewartby	Within the Order limits
	Woburn Road, Wootton	Within the Order limits

SCHEDULE 5

Article 11

Access to Works

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

SCHEDULE 6

Article 23

Article 24

Land of which temporary possession may be taken

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Number of land shown on land plan</i>	<i>Purpose for which temporary possession may be taken</i>	<i>relevant part of the Authorised project</i>
	52, 72, 73, 74, 75, 76, 77	Carrying out and maintaining landscaping, tree planting and ecological improvements	
	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

Article 31

Protective Provisions