

DATED 1st September 2022

(1) MID-SUFFOLK DISTRICT COUNCIL

(2) SUFFOLK COUNTY COUNCIL

(3) PROGRESS POWER LIMITED

**DEVELOPMENT CONSENT OBLIGATION
DEED OF VARIATION**

**MADE PURSUANT TO SECTION 106 OF THE
TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO LAND AT THE FORMER EYE
AIRFIELD, MID-SUFFOLK**



Pinsent Masons

THIS DEED is made on 1st September

2022

BETWEEN:-

- (1) **MID SUFFOLK DISTRICT COUNCIL** of 131 High Street, Needham Market, Suffolk IP6 8DL (the "District Council");
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX (the "County Council"); and
- (3) **PROGRESS POWER LIMITED** (No 08421833) whose registered office is at 33 Cavendish Square, London W1G 0PW (the "Landowner")

(together, the "Parties").

WHEREAS:-

- (A) The Principal Agreement was entered into in relation to the Development (as defined in the Principal Agreement).
- (B) The Councils are the local planning authorities for the purposes of the 1990 Act for the area in which the Site (as defined in the Principal Agreement) is situated and by whom the obligations contained in this Deed are enforceable. The County Council is also the education authority and the highways authority for the area in which the Site is situated and is therefore interested in this Deed.
- (C) The Landowner is now the freehold owner of the Site (as defined in the Principal Agreement).
- (D) The Progress Power (Gas Fired Power Station) Order 2015 was made on 23 July 2015 and came into force on 14 August 2015 (defined as the "DCO" in the Principal Agreement). The DCO was amended by the Progress Power (Gas Fired Power Station) (Amendment) Order 2020 which was made on 27 July 2020 and came into force on 28 July 2020.
- (E) The Landowner has the benefit of the DCO. The Landowner is also the "Developer" as defined in the Principal Agreement.
- (F) Commencement of Development (as defined in the Principal Agreement) took place on 13 August 2021.
- (G) The Parties wish to amend to amend the Principal Agreement as set out in this Deed.
- (H) This Deed is supplemental to the Principal Agreement and varies the Principal Agreement only to the extent set out in this Deed.

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 All words and phrases defined in the Principal Agreement have the same meaning in this Deed unless explicitly stated otherwise.
- 1.2 The provisions of the Principal Agreement shall apply with similar effect to this Deed (construed with such consequential amendments as are necessary).
- 1.3 This Deed shall be read in conjunction with the Principal Agreement.

- 1.4 In this Deed where the context so admits the following expressions shall have the following meanings:-

"the Principal Agreement" means the planning obligation dated 13 January 2015 entered into between (1) Mid Suffolk District Council (as the District Council), (2) Suffolk County Council (as the County Council), (3) Progress Power Limited (as the Developer) and (4) Elizabeth Anne Moore and Harry Charles Moore (as Landowner)

- 1.5 Unless the context otherwise requires:-

- 1.5.1 reference in this Deed to any Recital, Clause, paragraph, Schedule or Appendix is a reference to the Recital, Clause, paragraph, Schedule or Appendix in this Deed so numbered;
- 1.5.2 words importing the singular meaning include the plural meaning and vice versa;
- 1.5.3 words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner;
- 1.5.4 any reference to an Act of Parliament shall include any modification, extension or amendment of that Act or Statutory Instrument (as applicable) or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or Statutory Instrument or deriving validity from it;
- 1.5.5 references to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Councils the successors to their statutory functions;
- 1.5.6 headings where they are included are for convenience only and are not intended to influence the interpretation of this Deed; and
- 1.5.7 words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction.

2. **LEGAL BASIS**

- 2.1 This Deed is made pursuant to Section 106A of the 1990 Act, Section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 so as to vary the Principal Agreement in the manner set out in this Deed and the Landowner's obligations and covenants contained in this Deed:-

- 2.1.1 are covenants and planning obligations to which these statutory provisions apply; and
- 2.1.2 relate to the Site in the manner set out in this Deed; and
- 2.1.3 are enforceable by the District Council and the County Council.

3. **COMMENCEMENT**

- 3.1 This Deed shall come into effect upon the date of this Deed.

4. **VARIATION TO PRINCIPAL AGREEMENT**

4.1 The Principal Agreement is varied as follows and shall be read and construed and take effect as if:-

4.1.1 In clause 1 "DEFINITIONS AND INTERPRETATION" of the Principal Agreement the definition of "Education and Employment Scheme" is replaced with the following definition:-

"Education and Employment Scheme" means a scheme which sets out the initiatives (which may include the provision of financial contributions towards initiatives) to provide:-

(a) training opportunities and/or apprenticeships and/or other programmes for local residents to enable them to obtain knowledge, skill, experience, confidence and the opportunity to gain employment in the construction of the Development; and

(b) a programme of education to explain the Development and how it fits within the provision of energy for the United Kingdom;

4.1.2 Schedule 1 of the Principal Agreement is replaced with Schedule 1 to this Deed.

5. **COVENANTS**

5.1 The Landowner covenants to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement as varied by this Deed.

5.2 The District Council and the County Council where and if applicable covenant to observe and perform the covenants, restrictions and obligations on their parts contained in the Principal Agreement as varied by this Deed.

6. **LOCAL LAND CHARGE**

This Deed shall be registered as a local land charge by the District Council, and the District Council shall immediately after the date of this Deed register it as such.

7. **SEVERANCE**

If any provision in this Deed shall in whole or in part be held (for whatever reason) to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected or impaired.

8. **WAIVER**

No waiver (whether expressed or implied) by either of the Councils or the Landowner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent either of the Councils or the Landowner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

9. **NO FETTERING OF DISCRETION**

This Deed shall not fetter prejudice or affect the exercise of any statutory or regulatory power duty or discretion of either of the Councils.

10. **LEGAL COSTS AND MONITORING FEE**

10.1 On completion of this Deed, the Developer shall pay to each Council their reasonable legal costs properly incurred, in the negotiation preparation and completion of this Deed (inclusive of any such

reasonable costs properly incurred by external lawyers appointed by the Councils in relation to the negotiation preparation and completion of this Deed).

- 10.2 On Completion of this Deed the Developer shall pay to the County Council its reasonable fee for monitoring compliance with the obligations contained within the Principal Agreement (as varied) in the sum of £824 (eight hundred and twenty-four pounds).

11. JURISDICTION AND LEGAL EFFECT

- 11.1 This Deed shall be governed by and interpreted in accordance with the law of England and Wales.
- 11.2 The provisions of this Deed (other than this Clause 11.2 which shall be effective in any event) shall be of no effect until this Deed has been dated.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

SCHEDULE 1

EDUCATION AND EMPLOYMENT SCHEME

1. Prior to Commencement of the Development, the Developer shall submit the Education and Employment Scheme to the County Council for approval.
2. The Developer will work with the County Council and its Work Inspiration brokerage scheme to establish, and where agreed between the Developer and County Council provide financial contributions (as set out in the Education and Employment Scheme) towards, initiatives which aim to provide a programme of education set out within the Education and Employment Scheme for a period of five years from the Commencement of the Development.
3. As part of the Education and Employment Scheme in order to assist local people to secure employment opportunities, the Developer shall work with the County Council and any appropriate and reasonable organisations that may be notified to the Developer by the County Council from time to time to:-
 - 3.1 develop strategies, which may include the provision of financial contributions (as set out in the Education and Employment Scheme), to improve training and employment opportunities and initiatives for the County Council's administrative area in jobs, professional and vocational, related to the Development;
 - 3.2 identify opportunities to work with, which may include the provision of financial contributions (as set out in the Education and Employment Scheme) to, other existing infrastructure training and skills programmes within the vicinity of the Development;
4. The Developer shall not Commence the Development unless and until it has implemented the approved Education and Employment Scheme and the Developer shall thereafter carry out the approved Education and Employment Scheme until the end of the construction period **EXCEPT THAT** in the event the construction period ends before the expiry of five years from Commencement of the Development the Developer shall continue that part of the Education and Employment Scheme being the programme of education until the expiry of the period of five years from the Commencement of the Development.
5. The Developer shall use reasonable endeavours to ensure contractors constructing the Development assist in the implementation of the Education and Employment Scheme.
6. The Developer shall review the Education and Employment Scheme on an annual basis until the Education and Employment Scheme is no longer carried out pursuant to paragraph 4.
7. Within 20 Business Days following the review of the Education and Employment Scheme pursuant to paragraph 6, the Developer shall produce a written report summarising the outcome of the review and submit the same to the County Council.
8. The Developer shall be entitled to vary the Education and Employment Scheme, such variation to be agreed between the Developer and the County Council in accordance with the requirements of Clause 7.1.2 of this Deed.

Executed as a Deed (but not delivered until the date of this Deed) by affixing the common seal of **MID-SUFFOLK DISTRICT COUNCIL** in the presence of



Full Name of Authorised Officer

Officer



Common Seal

Executed as a Deed (but not delivered until the date of this Deed) by affixing the common seal of **SUFFOLK COUNTY COUNCIL** in the presence of

Full Name of Authorised Officer

Signature of Authorised Officer



Executed as a Deed (but not delivered until the date of this Deed) by **PROGRESS POWER LIMITED** acting by its attorney:

Full Name of Attorney

Signature of Attorney as Attorney on behalf of Progress Power Limited

In the presence of:

Full Name (Witness)

Signature of Witness

Address (Witness)

