

PLANNING ACT 2008

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010**

**APPLICATION BY SEGRO PROPERTIES LIMITED FOR A
DEVELOPMENT CONSENT ORDER IN RESPECT OF EAST MIDLANDS
GATEWAY PHASE 2**

**WRITTEN SUMMARY OF ORAL SUBMISSIONS AT
ISSUE SPECIFIC HEARING 3**

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

This document provides a written summary of the oral submissions made by Hereward Phillpot KC ("**Counsel for Prologis**"), leading counsel instructed by Howard Bassford of DLA Piper UK LLP, on behalf of Prologis UK Limited and Prologis UK 121 Limited ("**Prologis**") at Issue Specific Hearing 3 held on 13 – 14 May 2026.

Please note that due to the alignment with East Midlands Airport ("**EMA**") on many of the matters discussed, where Jon Riley ("**Representative for EMA**") legal representative for EMA led on submissions with which Counsel for Prologis expressly agreed, those submissions are also summarised below for completeness.

These submissions are summarised with reference to the relevant Detailed Agenda Item under which they were discussed. Where no such items are included below, it can be assumed that Prologis had no submissions to make in relation to these items.

Agenda Item 3: Legal Basis of Determination

Section 104/105 split and the Environmental Statement

As per Action Point 39, copies of the relevant case law, examining authority recommendation reports and Secretary of State decisions referenced below in relation to this sub-item are available at Appendix 1.

- 1 The ExP raised the question of whether the split approach under sections 104 and 105 can be lawfully applied without risking distortion of the planning balance, given that the Environmental Statement aggregates the assessment of NSIP and non-NSIP highway works and does not disaggregate analysis as between parts of the scheme subject to different statutory regimes.
- 2 Counsel for Prologis submitted that the starting point is that there needs to be a separate determination in relation to Part 1 (business and commercial development, falling under section 105) and Part 2 (the highway NSIP, falling under section 104). That is because there is a different statutory context and a different planning context. The distinction is not without practical consequence, given the statutory presumption that applies under section 104.
- 3 The Highways NSIP must be determined following the 'highly structured' s.104 route as per *Acquind*¹, which requires an assessment of that particular development against the various requirements and tests set by the National Networks NPS. That includes requirements as to assessment of effects and of the effects themselves. If that cannot readily be done by reference to the ES, it is plainly inadequate to serve the function of in-forming practical decision-making (and informing the public sufficiently and needs either to be re-worked or to be supplemented by further information in the form of additional assessments.
- 4 It was submitted that the *EFW*² approach is the appropriate one to follow rather than the *Net Zero Teesside*³ approach. In *EFW*, the application comprised distinct elements subject to different legal regimes, and the court held that the section 35 direction could not enlarge the scope of a National Policy Statement. The utility of the *Net Zero Teesside* decision, or any other example of decision-making as a guide to what is appropriate needs to be considered having regard to the extent to which the decision-making process grappled with the point that the ExP has raised in this case. If an individual decision has grappled with the point, the ExP will need to review what was said and decide if it agrees. These are not legal precedents and will be of no assistance in the event the lawfulness of the decision comes to be tested in the courts.
- 5 As to whether the assessment could simply be considered entirely under one section: that cannot be done, because if everything is assessed under section 104, the section 105 elements would be given

¹ R (Aquind Ltd) v. SSBEIS [2023] EWHC 98 (Admin) see per Lieven J in at [94]-[102]

² R (on the application of Wheelabrator Technologies Inc) v Secretary of State for Business, Energy and Industrial Strategy [2021] EWCA Civ 63

³ Net Zero Teesside Order 2024

the benefit of a statutory presumption they do not have; and if everything is assessed under section 105, the section 104 elements would be robbed of that benefit. Counsel for Prologis endorsed the ExP's stated concern in that regard.

- 6 On the practical question of whether the Environmental Statement as submitted allows the ExP and the Secretary of State to apply the different statutory tests to the relevant parts of the scheme, the position was submitted to be that neither the Environmental Statement nor, as Counsel for Prologis understood it, the other supporting documents disaggregate their analysis in a way that is intended to allow, or would allow, the Panel, and the Secretary of State to apply the different statutory tests to the relevant parts of the DCO scheme.
- 7 The consequence is not principally about compliance with the requirement to ensure all elements of the project have been assessed. It is to do with the framework of decision-making, what that requires in practical terms, and what that then means as to the adequacy of the Environmental Statement – not just as a tool to inform the environmental impact assessment the Secretary of State must undertake, but also as a means of informing interested parties, affected persons and the public as to the proposal, its impacts and its merits.
- 8 By way of illustration, Chapter 19 of the Environmental Statement (climate change) assesses the DCO application as a whole and provides the potential impact of the whole DCO without distinguishing between the highway NSIP and the business and commercial NSIP. The same pattern is repeated through the Environmental Statement.
- 9 This matters for the section 105 elements in particular. The ExP should consider that without the benefit of the presumption under section 104, the balance may tip the other way when the section 105 elements are considered on their own merits, informed by a proper understanding of the environmental effects properly attributable to those elements. Counsel for Prologis drew the ExP's attention to EFW, in which the examining authority recommended development consent for one component but did not consider that the applicant had established the need for another, and recommended refusal of that aspect.

Agenda Item 4: Traffic and Transport

- 10 Three highways points raised orally by Prologis's transport advisers at ISH3 were, by agreement with the ExP, deferred to be dealt with in writing at Deadline 4:
- 10.1 the highway mitigation proposed in connection with the Joint Application;
 - 10.2 the proposed A453 dualling arrangements; and
 - 10.3 sustainable transport.

These matters are addressed in section 7 of Prologis's Deadline 4 Submission apart from 10.2 which is dealt with under Item 10 of this summary.

Agenda Item 10: Draft DCO

Requirement 27: Mezzanine Floorspace

- 11 Following a line of questioning from the ExP probing the feasibility of Requirement 27, which seeks to control the use of mezzanine floorspace within the development, Counsel for Prologis made the following supplementary observations on Requirement 27 :
- 11.1 In considering these points it must be kept firmly in mind that breach of a requirement is a criminal offence pursuant to section 161 of the PA 2008,. That offence is committed when any person fails to comply with the terms of the DCO. That would include the occupant of any unit within EMG2.

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- 11.2 Paragraph (1) relies on certain concepts which need to be teased out and their implications understood.
- 11.3 The mezzanines may only be used for storage, but this evidently does not embrace all types of storage which would otherwise be lawful under the DCO. If the storage use being undertaken anywhere on a mezzanine within any unit in the EMG2 development is of a type that increases the 'distribution capacity' of the authorised development as a whole, that may or may not be a breach.
- 11.4 First, the requirement refers to distribution capacity but it is not explained what that means. It is not a defined term in the dDCO, and it is not obvious how it is to be measured and against what benchmark.
- 11.5 It is not clear whether deciding what the distribution capacity is at any point in time, and how it is affected by storage on a mezzanine can be determined by a clear calculation or whether it involves any exercise of judgment.
- 11.6 In short, how can the occupant know if the type of storage use they are undertaking at any particular moment increases the distribution capacity of the EMG2 development as a whole?
- 11.7 Second, the requirement combines this limitation on lawful storage use on mezzanines with a limitation by reference to the 'vehicle trip generation' of the whole development as 'presented in the transport assessment'. It is not obvious whether that means it would be lawful to use the space for a type of storage use that does increase the distribution capacity but does not also increase trip generation above that presented in the TA, or whether it would be enough to trigger one of those obligations.
- 11.8 Either way, how is the occupant of an individual unit to know if the storage use they are undertaking on a mezzanine at any particular moment has this effect when considered in the context of EMG2 as a whole? Further, over what time frame is this vehicle trip generation to be considered – is it hourly, daily, monthly or yearly?
- 11.9 These issues are aggravated by other practical problems.
- 11.10 If trip generation as a whole exceeds what is presented in the TA, how will anyone decide what has led to this state of affairs, and in particular whether it is the wrong sort of storage use on a mezzanine in an individual unit, or a combination of units, or use not within mezzanines? Who is monitoring and reporting, what exactly are they monitoring and reporting and how is this meant to inform the conduct of individual unit occupiers? More generally, how can the occupier know whether the storage use they are carrying out of proposing to carry out any any particular time is a criminal offence before the offence is potentially committed?
- 11.11 The combined impact of these factors makes the draft requirement completely unworkable.

- 12 It was submitted that the fact that this is SEGRO's improved version, presumably prepared having read Prologis's critique of the previous one, suggests that the problems are not solvable by tinkering with the wording. The requirement has been put forward because National Highways relies on it to allay its concerns over the partial assessment undertaken in the Transport Assessment. The answer is to carry out the assessment properly, not to rely on an unworkable requirement.

Requirement 31: Safeguarded Land (Dualling)

- 13 The context for the assessment of Requirement 31 is the CA Guidance at paragraph 11, which specifically addresses land proposed to be subject to compulsory acquisition for the purposes of landscaping the project. The Guidance states that in such a case the Secretary of State will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired, and that the land to be taken is no more than is reasonably necessary for that purpose and that it is proportionate.

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- 14 SEGRO must therefore demonstrate in respect of the Prologis/MAG land to which this requirement relates that the proposed development can only be landscaped to a satisfactory standard if the land is used for this purpose on a permanent basis (justifying freehold acquisition), and yet also that the proposed development would still be landscaped to a satisfactory standard if that land is instead later used for dualling the A453. That is logically impossible, which may explain why SEGRO has so far made no proper attempt to demonstrate that both of those things are correct.
- 15 That fundamental logical flaw is readily apparent from sub-paragraphs (1) and (2) of the draft Requirement.
- 15.1 Sub-paragraph (1) prevents the undertaker doing anything on the land which would prejudice or adversely affect the ability of that land to be used for an A453 dualling scheme, but then immediately exempts the "permitted activities".
- 15.2 Sub-paragraph (2) defines the "permitted activities" as being the works in Schedule 1. That drafting necessarily requires the Secretary of State to ask the following question: when the dualling scheme comes forward, would the "permitted activities" potentially prejudice or adversely affect the ability of that land to be used for the A453 dualling scheme? That is because the draft requirement does not and could not bind the planning judgment of a future decision-maker who must decide if the impact of the proposed dualling is acceptable having regard to what it would displace on that land.
- 15.3 If it would, or might realistically, have that effect, the requirement simply would not achieve the desired objective. The dualling might be thwarted because the permitted activities have been exempted from the control.
- 15.4 If it would not, that necessarily means the landscaping of the proposed development would be acceptable without what is proposed on that land.
- 15.5 Effectively, therefore, the very structure of the first two parts of the draft requirement demonstrates why it is fundamentally flawed.

Requirement 32: Carbon Neutral Campus/Headquarters

- 16 Counsel for Prologis referred to the detailed submissions on the vires issue set out in section 2 of Prologis's Deadline 2 Submission, including the analysis at paragraphs 2.21 to 2.33 of that submission dealing with Requirement 32 as proposed at Deadline 1. The draft requirement does not and could not solve the vires issue. It is purely contingent and applies only if a campus comes forward. It does not secure the delivery of the element that was integral to the Section 35 Direction. It also fails to secure carbon neutral status, requiring only the submission of a scheme setting out measures to be taken "with a view to achieving carbon neutral construction". The term "carbon neutral" is not defined, nor does it have any established legal meaning. Moreover, it is limited to construction and does not deliver operational net zero emissions as promised when the Section 35 Direction was sought.
- 17 SEGRO indicated that it now proposes to bring forward a different and more onerous requirement. Prologis reserved its position on that revised requirement and will respond once it has been able to consider it.

Appendix 1

Appended in order are:

1. *Aquind* (judgment only)
2. *EFW* (judgment, examining authority report, and decision letter)
3. *Net Zero Teesside* (examining authority report, and decision letter)



Neutral Citation Number: [2023] EWHC 98 (Admin)

Case No: CO/755/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/01/2023

Before :

MRS JUSTICE LIEVEN

Between :

THE KING
(on the application of)
AQUIND LIMITED

Claimant

and

SECRETARY OF STATE FOR BUSINESS, ENERGY
AND INDUSTRIAL STRATEGY

Defendant

and

PORTSMOUTH CITY COUNCIL

Interested Party

Mr Simon Bird KC and Mr Hugh Flanagan (instructed by **Herbert Smith Freehills LLP**)
for the **Claimant**

Mr James Strachan KC and Mr Mark Westmoreland Smith (instructed by **Government**
Legal Department) for the **Defendant**

Ms Celina Colquhoun (instructed by **Portsmouth City Council**) for the **Interested Party**

Hearing dates: **22 and 23 November 2022**

Approved Judgment

This judgment was handed down remotely at 10.30am on 24 January 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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MRS JUSTICE LIEVEN

Mrs Justice Lieven DBE :

1. This is an application for judicial review under s.118(2) of the Planning Act 2008 (“PA”) of the decision of the Secretary of State for Business, Energy and Industrial Strategy (“SoS”) dated 20 January 2022 to refuse development consent for UK and UK marine elements of the AQUIND Interconnector.
2. The Claimant is AQUIND Limited, the promoter of the interconnector project. The project is a new 2,000MW subsea and underground bi-directional electric power transmission link between the south coast of England and Normandy in France. It would have the capacity to transmit up to 16,000,000MWh of electricity per annum, which equates to approximately 5% and 3% of the total consumption of the UK and France respectively.
3. Mr Bird KC and Mr Flanagan appeared for the Claimants, Mr Strachan KC and Mr Westmoreland Smith appeared for the Defendant, and Ms Colquhoun appeared for the Interested Party, Portsmouth City Council.
4. The application was considered by the Examining Authority (“ExA”) which produced a detailed report finding compliance with National Policy Statement (“NPS”) EN-1 and recommending approval. The ExA found that there was a need for the project and the harm found was outweighed by the need. The ExA considered alternatives which had been considered by the Claimant.
5. The Defendant considered the ExA report and made three Information Requests seeking further information on various issues. One of these related to the consideration that had been given to an alternative substation location at Mannington. Mannington, along with 9 other possible substations, had been considered by the Claimant at a much earlier stage, but had been rejected. The reasons for that rejection are contentious, but as a matter of fact, Mannington had been the substation which was intended to be used for a large offshore windfarm on the Solent called Navitus Bay. Navitus Bay was refused consent in September 2015.
6. The Defendant refused development consent for the interconnector on 20 January 2022. The sole ground for refusal was that the Claimant had failed to properly consider an alternative substation location at Mannington once Navitus Bay had been refused. The Defendant found that the Claimant had not properly considered alternatives and therefore the development should be refused.

Grounds of Challenge

7. The Claimant raises six grounds of challenge, the issues raised being whether in his determination to refuse development consent the Defendant:
 - (i) made or was misled by his officials into making a material error of fact as to the potential feasibility of Mannington as a grid connection point for the proposed development; (Ground 1a)
 - (ii) failed to take account of material evidence as to the feasibility of Mannington as a grid connection point; (Ground 1b)

- (iii) failed to comply with the approach to decision-making mandated by section 104 PA; (Ground 2)
- (iv) failed to apply his own NPS EN-1 policies to the proposed development; (Ground 3)
- (v) failed in breach of his duty to take reasonable steps to inform himself as to the feasibility of Mannington so as to be able to discharge the requirements of section 104 PA; (Ground 4)
- (vi) adopted a decision-making procedure which was procedurally unfair, causing the Claimant material prejudice; (Ground 5) and
- (vii) failed to give proper, adequate and intelligible reasons for his decision (Ground 6).

8. Mrs Justice Lang granted permission for judicial review on all grounds.

The Facts

- 9. The interconnector is intended to bring electricity from France to link into the UK network. The nature of the project is that neither end point is fixed. In broad terms the elements of the project are the exit point on the French coast; the subsea cable; the landfall site in the UK; and the substation which allows the interconnector to link into the UK high voltage power network. Two important considerations in the planning of the scheme were the cost of the cable, and therefore the desirability of minimising length; and the need to minimise the crossing of busy shipping lanes. These factors, amongst others, led to a location near Le Havre for the landfall in France.
- 10. This then led to a consideration of potential landfall locations and substations along the English south coast, roughly between Hastings to the east and Weymouth to the west. Self-evidently the substations are fixed locations on the existing high voltage national transmission lines. There is a line which runs roughly parallel to the south coast, with the closest substation to Hastings being Bolney; a substation at Lovedean, north of Portsmouth and just outside the South Downs National Park; Mannington, north of Bournemouth; and Chickerell, north of Weymouth.
- 11. In December 2014 the Claimant requested National Grid Electricity Transmission (“NGET”) to undertake a Feasibility Study of potential connections to the National Grid for the Claimant’s proposed interconnector. The NGET Feasibility Study has been treated as confidential throughout the process and neither the Defendant nor the Court has seen it. Information about the Feasibility Study was subsequently given by the Claimant through the development consent process.
- 12. On 11 September 2015 the Navitus Bay offshore windfarm was refused. Navitus Bay was a very large proposed windfarm located off the coast at Bournemouth and relied on a potential substation connection to the National Grid at Mannington.
- 13. In January 2016 the final version of the NGET Feasibility Study was produced. In February NGET made a connection offer to the Claimant in respect of Lovedean as the

connection point for the Project into the National Grid. Lovedean lies to the north of Portsmouth just outside the South Downs National Park.

14. In March 2016 NGET produced the Connection and Infrastructure and Options Note (“CION”).
15. On 14 November 2019 the Claimant applied for development consent under the PA. The application was for a landfall location at Eastney, which is on the coast at Portsmouth, and a connection to the Lovedean substation.
16. The application documents included the Environmental Statement (“ES”). Volume 1 Chapter 2 of the ES is the “Consideration of Alternatives”. This sets out the process by which the landfall and substation locations were arrived at. In relation to the substation location, 2.4.2.1 refers to the NGET Feasibility Study, meetings between the Claimant and NGET, and the criteria that were applied (2.4.2.2). These include the proximity of the substation to the South Coast so as to minimise onshore cable length and associated environmental disruption from the cable installation.
17. At Plate 2.2 ten substation connection sites are identified within the search area. 2.4.2.4 says NGET discounted seven of these, including Mannington, and says:

“2.4.2.4. Utilising the above outlined criteria for the assessment and selection of the substation connection options, NGET discounted seven of the ten substations. This discounting was based on the limited thermal capacity of substations and/or feasibility to extend them to provide the required thermal capacity, and difficulties with access for the marine cable onto the shore and/or potential onshore cable routes.”
18. Chapter 2 goes on to explain in more detail why Chickerell and Bramley were rejected.
19. Section 2.4.2 considers potential landfall sites. There are 29 locations considered, from Bognor Regis in the east to West Bay (near Bridport) in the west. These are ranked on various criteria. It is worth noting that the landfall locations were assessed at the point when three substations (Lovedean, Bramley and Chickerell) were still under consideration. One of the criteria for selection was distance between landfall and connection, and the preference being for no more than 35km. Given that Chickerell lies well to the west of Mannington, the list of possible landfall locations when Chickerell was still being considered was likely to be similar to the position if Mannington had still been subject to consideration. In other words, there would not have been additional potential landfall locations in play if Mannington had been under consideration.
20. In the light of the decision to proceed with Lovedean, the landfall search narrowed to six locations within 35km of Lovedean, those being between Lee and Selsey, all lying to the east of the Solent.
21. On 19 February 2020 Portsmouth City Council (“PCC”) submitted representations, including raising concerns about the consideration of alternatives, but not referring to any specific alternative locations.
22. On 6 October 2020 the Claimant submitted the ES Addendum-Appendix 3 Supplementary Alternatives (“the Supplementary ES”).

The Supplementary ES

23. This is a critical document in the case and a number of sections are relevant:

- a. 1.1.1.8 points to the linear nature of the project where the changing of one aspect impacts on another, with cross over between the choices of different elements;
- b. 2.2.1.10 states that the Claimant carried out the assessment of alternatives, but the decision took into account information provided by National Grid regarding connection points;
- c. Chapter 3 deals with the approach taken to the consideration of alternatives and 3.1.1.1 states the approach was whether there was a realistic prospect of delivering the same infrastructure capacity in the same timescale, mirroring the language in EN-1;
- d. 4.1.2.7 refers to the cables being the largest part of the capital expenditure for the project, and therefore minimising the cable length being an important consideration;
- e. 4.1.3 sets out initial discussions with NGET and 4.1.3.5 states:

“4.1.3.5 To the west of but within this search region, the 970MW Navitus Bay wind farm, off the Isle of Wight, was due to connect into Mannington substation. Further west, the FABLink 1400MW interconnector was due to connect into Exeter substation. NGET informed that the connection of a new interconnector in this region would have the effect of overloading the transmission lines, due to the power flows travelling from the west to east i.e. heading towards the major load centre of London.”

- f. Section 5 deals with the grid connection points (i.e. the substations) and the process of reaching Lovedean. Reference is made to the initial ten locations and at 5.1.1.4 it states three were selected to be taken forward to identify whether they were feasible connection points. 5.1.1.5 and 5.1.1.7 state:

“5.1.1.5. Whilst the position of NGET was that the other substations represented similar connection issues to the sites taken forward, save for Bolney which was excluded because that part of the NETS was already constrained due to existing and planned future connection, the Applicant’s preliminary views at the time on the suitability of the remaining substations were as follows:

...

Mannington – the shared connection point with the 970MW Navitus Bay wind farm raised technical concerns;

...

5.1.1.7. As mentioned above at paragraphs 4.1.3.5 and 5.1.1.5, a connection agreement for the 970MW Navitus Bay offshore wind farm was in place in relation to the Mannington substation when the feasibility study was carried out, and therefore it was not considered to be suitable for the proposed connection. Although that project was later abandoned, the connection agreement remained in place with the developers of Navitus Bay offshore wind farm for some time following the feasibility study, during which significant progress was made advancing the proposals for Proposed Development. As a result it was not reasonable for the Applicant to re-consider the potential for a connection at Mannington at that later stage, and this was not considered further.”

5.1.1.7 (above) is an important paragraph, which Mr Strachan heavily relies upon;

- g. There is then a detailed consideration of Chickerell, which included issues around landfall locations to serve that substation.

25 January 2021 letter from National Grid Electricity Systems Operator

- 24. On 25 January 2021 National Grid Electricity Systems Operator (“NGESO”), submitted a letter to the ExA in response to a written question “regarding NGESO’s limited scope of activities in relation to the Feasibility Study and subsequent Connections and Infrastructure Options Note (CION)”. In April 2019 National Grid’s role as the systems operator had been separated into NGESO. For the purposes of this case this simply means that NGET became NGESO.
- 25. The letter produced a transmission plan, similar but slightly larger than that in the ES. The letter then says:

“In the case of AQUIND Interconnector, the CION did not progress with 7 existing substations. Bolney, Botley Wood, Fawley, Marchwood, Nursling, Mannington and Fleet these substations were not taken forward to the next stage of the CION due to the following reasons:

- 1. Options to the West of Lovedean required all or nearly all the same network reinforcements as a connection at Lovedean plus additional reinforcements to either get the power to Lovedean or reinforcements to the west to Exeter substation and as far northwards as Minety.

...

With the above considerations in mind these 7 substations were not taken forward for further assessment. This is because these sites would likely have resulted in more overall reinforcements, which would therefore lead to more environmental impact, and increased costs to the GB consumer.

The extent of these additional works will vary from site to site but may involve new overhead lines or cables, additional operational equipment and multiple substation extensions in addition to the works identified for a connection at Lovedean.” [emphasis added]

26. On 1 March 2021 the Claimant submitted a Post Hearing Note to the ExA. This states it was produced in the context of on-going discussion with the South Downs National Park Authority to resolve outstanding queries in relation to the selection of Lovedean. The Note states:

“The Applicant understands that all of the sub-stations considered would have required system reinforcement because of the significant flows of power generated or imported in the South-West and South-East of England to load centres north of the “SC1” planning boundary (i.e. London) in any case and there was no connection location that would not have been encumbered by requirements for such additional works. While such additional works to be carried out by National Grid, would have been similar in nature, all substations, which were not taken for further assessment, would have presented their specific challenges and additional costs.”

27. It then refers to all the other 7 locations and states in respect of Mannington:

“Mannington sub-station may not be suitable for extension at all due to the position of existing Static Var Compensation (SVC) within the substation and because there are residential properties in close proximity on three sides. It is also relevant that Navitus Bay offshore wind farm of nearly 1GW capacity was planned to connect there. In the Applicant’s opinion, connecting to Mannington sub-station would have been deemed not feasible.”

28. Mr Strachan makes the valid point that the Note neither gives prices for reinforcement works nor specific reasons for rejection that go beyond the more generalised comments about Mannington, and the Navitus Bay issue. The Note ends:

“CONCLUSION

Among all the sub-substations along the south coast, Lovedean provides the most direct and least constrained route to evacuate power from AQUIND Interconnector towards consumption centres in the south as well as to the north, including London, as well as to supply AQUIND Interconnector with power since most generation is further north.

The selection of the other sub-stations would have resulted in the need for more extensive additional works which would increase the cost of such works to both the National Grid and the project and the time that it would take for the interconnector to become operational.”

29. It is worth noting, as part of the context, that Lovedean has a connection that runs north to Fleet substation and then north with connections into London and further afield.

Mannington is on the east-west South Coast line and does not have direct connectivity towards London.

30. On 8 June 2021 the ExA's report was sent to the SoS.

The Examining Authority's Report

31. The ExA recommended approval and the Examining Authority's Report ("ExAR") runs to 367 pages. The overall conclusion was "overall, the need case for the Proposed Development strongly outweighs the identified disbenefits" (12.2.1). The Report sets out the conclusions on each issue at the end of the relevant chapter. At each stage the ExA tested the proposal against the relevant National Policy Statement EN-1. Chapter 5 covers the need for the development and the consideration of alternatives; Chapter 9 has the conclusions on the case for development consent; Chapter 10 on compulsory acquisition, and Chapter 12 the overall summary of findings.

32. Chapter 5 records that:

- a. a number of objections ("Relevant Representations") argued that the ES did not provide a robust consideration of alternatives (5.4.15);
- b. NGESO confirmed the reasons behind discounting the other substations (5.4.24);
- c. At 5.4.31 the ExA said:

"The ExA is mindful of references to the consideration of alternatives in the NPS EN-1 including, at paragraph 4.4.3 (bullet 8), that where third parties are proposing an alternative, it is for them to provide the evidence for its suitability. In such instances it is not necessarily expected that the Applicant would have assessed every alternative put forward by another party. In this case, the Applicant has detailed a considered approach and provided additional commentary [REP1 – 152] to explain its position. Whilst offering criticism of the Applicant's approach, no party has offered substantive reasoned evidence to demonstrate that an alternative would be technically feasible or would lead to lesser environmental effects compared to the Proposed Development."
[emphasis added]

33. Ms Colquhoun makes the point that a number of the LAs impacted by the proposed development had raised the issue of alternatives, and whether they had been properly considered.
34. The ExA accepted the Claimant's need case, saying there was no substantive evidence to undermine that case (5.2.31). That case included that the proposed interconnector could transmit approximately 5% of the UK's current annual electricity consumption (5.2.10). The proposal complied with the Energy White Paper 2020, which supported

further interconnection with the European energy market, notwithstanding the UK's withdrawal from the EU.

35. Objections to the proposal had been raised in respect of a number of issues including traffic and highways; impact on heritage assets; impact on the South Downs National Park; and the impact on private interests by the use of compulsory acquisition powers. PCC were particularly concerned because the route of the connection between Eastney and Lovedean went through a densely populated area of Portsmouth. Although the connection itself is intended to be underground, there are structures at both ends, and the installation of the cables would have very material impacts during the construction phase.
36. In terms of negative impacts of the proposal the ExA concluded that there were:
- a. Temporary significant impacts on highways and traffic flows, which could be reduced to acceptable levels (9.2.17-19);
 - b. Some minor temporary noise and vibration effects (9.2.15);
 - c. A minor negative socio-economic effect (9.2.31);
 - d. Some adverse significant landscape and visual effects on the setting of the National Park and the landfall location. The ExA gave these impacts moderate weight (9.2.54);
 - e. Less than substantial harm to two heritage assets, to which the ExA gave considerable weight (9.2.62).
37. The ExA concluded on the planning balance:
- “9.3.10. The ExA is satisfied that the identified adverse effects would be mitigated as far as is reasonably practicable and that the necessary measures could be properly secured through the Recommended DCO and the associated control documents, such that the identified significant adverse effects would be largely time-limited and reversible.*
- 9.3.11. Taking into account all relevant policy, the ExA concludes that the matters that are identified as disbenefits do not outweigh the significant benefits that are described, either alone or when considered together. The ExA therefore considers that the final balance indicates strongly in favour of granting development consent.”*
38. The ExA fully considered the compulsory acquisition issues, including those raised by Mr and Mrs Carpenter who were subject to the proposed compulsory acquisition of 5.5ha of their land in the vicinity of Lovedean, and found that the compulsory acquisition was proportionate and justified.
39. In its final overall consideration of findings and recommendations at 12.2.1 the Report said:
- “overall, the need case for the Proposed Development strongly outweighs the identified benefits.”*

Third Information Request

40. The SoS made three requests for further information from the parties. The Third Information Request (“TIR”) dated 4 November 2021 is the one relevant to this case. The statutory deadline for taking the decision had been extended to 21 January 2022. The Request included:

“4. The Secretary of State notes that the document Environmental Statement Addendum-Appendix 3-Supplementary Alternatives Chapter states that ten existing substations were evaluated as part of a feasibility study carried out by National Grid Electricity Transmission. One of the substations which was assessed in the feasibility study was the substation at Mannington. That substation was not considered to be suitable for the proposed connection because, at the time of the feasibility study, there was already a connection agreement in place for the proposed Navitus Bay offshore wind farm. The Addendum notes that the Navitus Bay project was subsequently abandoned but the connection agreement remained in place “for some time following the feasibility study” during which “significant progress” was made on the AQUIND interconnector proposal meaning that it was not reasonable for the Applicant to re-consider the potential for a connection at Mannington at that later stage.

5. The Secretary of State is aware that the decision to refuse development consent for the Navitus Bay development was taken on 11 September 2015. He would be grateful for clarification from the Applicant in respect of how long the connection agreement for the Navitus Bay development remained in place following that refusal, what enquiries the Applicant made in respect of the potential use of the Mannington substation following the refusal of the Navitus Bay project and at what stage the development of the AQUIND interconnector project was when the connection agreement ended.”

41. The Claimant’s Response was dated 18 November 2021. It started by referring to the history of consideration of alternatives, as set out above. At 2.6 the substance of NGESO’s letter dated 25 January 2021 was set out verbatim and then 2.7 stated:

“In addition to NG ESOs reasons for why Mannington Substation was not taken forward for systems analysis, as is detailed at paragraph 5.1.1.5 of the Supplementary Alternatives Chapter the Applicant’s preliminary view at the time on the suitability of Mannington Substation was that the shared connection point with the 970MW Navitus Bay offshore wind farm raised technical concerns.”

42. At 2.11 the Claimant quoted the ES Supplementary Alternative Addendum para 5.1.1.7, as set out above at 23. The Response then went on:

“2.12. In this regard, having re-examined the precise chronology and to assist with explaining the Applicant’s position that it was not reasonable and/or necessary to further consider Mannington Substation following the connection agreement for Navitus Bay offshore wind farm being confirmed to no longer be in place, the timeline was that the connection

agreement remained for some time after the Feasibility Study request in December 2014.

2.13. During this period the significant progress made advancing the proposals for Proposed Development was the preparation of the Feasibility Study itself together with the optioneering work that was undertaken by the Applicant alongside this, and which is most clearly detailed in Chapter 5 of the Supplementary Alternatives Chapter in relation to assessment of the grid connection points and paragraph 2.4.3 of the Alternatives Chapter in relation to the consideration of the potential landfall sites.

2.14. Following the refusal of development consent for the Navitus Bay offshore wind farm, the Applicant made enquiries with NGET on 14th October 2015 regarding the impact of that refusal on the Feasibility Study which was being undertaken and known to be near completion. The Applicant has not been able to locate a response to this query, though it was understood by the Applicant that at this time that refusal would have been subject to the six week legal challenge period provided for by section 118 of the Act and as such the connection agreement for Navitus Bay would have remained in place.

2.15. At a meeting with NGET in January 2016, following the issue of the final version of the Feasibility Study report and prior to the further CION processes which led to the issue of the CION in March 2016, it was noted that the Navitus Bay offshore wind farm had formally been removed from the list of future connections. It was therefore at this point in time that the Applicant was aware that the connection agreement for Navitus Bay offshore wind farm to Mannington Substation was no longer in place.

2.16. As is noted above, the Feasibility Study including the cost benefit analysis exercise was completed in November 2015, with the final version of the Feasibility Study report issued in January 2016. To include Mannington Substation in the shortlist of grid connection points for the Feasibility Study at this stage would have required the Feasibility Study process to restart, resulting in a further 10-12 months of work and the Applicant would not have been able to progress with its regulatory and other submissions until the further process was complete. This would have meant that the place of the Proposed Development in the list of future connections would have been lost. In effect, the Proposed Development would have been significantly delayed and placed at a commercial disadvantage. It would also have resulted in the incurrence of significant cost in the form of NGET's fees and cost to the Applicant. The costs incurred to date for the Feasibility Study would also have become abortive.

2.17. It was the view of the Applicant that for it to be reasonable to restart the Feasibility Study exercise to further consider the potential for a connection to Mannington Substation, noting the significant delay and cost this would have incurred, there would have needed to be a convincing

justification for why Mannington Substation may have been preferable to Lovedean Substation.

2.18. As is noted above, NGET had already identified that Mannington Substation was not preferable to Lovedean, on the basis that additional reinforcements would have been required to either get the power to Lovedean or reinforcements to the west to Exeter substation and as far northwards as Minety and that this would have led to more environmental impact, and increased costs to the GB consumer.”

43. The SoS issued his decision letter on 20 January 2022. Between the receipt of the ExA Report and the issue of the decision letter there were a large number of internal departmental documents, which have been produced to this court pursuant to the duty of candour. Their detailed content is not relevant to the determination of the Court as to the lawfulness of the decision.
44. In the final submission to the SoS dated 14 January 2022 the Departmental officials set out four options. Option A was to agree to further consultation on a possible alternative substation at Mannington; Option B was a recommendation to grant consent for the interconnector. This followed the earlier submission dated 14 October 2021 which had recommended the grant of consent. Option C was to consent the entire scheme including the telecommunications equipment. Option D was to refuse consent for the entire project.

The Decision Letter

45. Section 1 of the Decision Letter (“DL”) sets out the procedural history. Section 3 is a summary of the decision. DL3.3 gives a correct summary of s.104 PA. DL3.4- 3.6 states:

“3.4. In relation to the Application, the Secretary of State has had regard to the Overarching National Policy Statement for Energy (“NPS EN-1”). The Secretary of State has made his decision on the basis that making the Order would not be in accordance with his obligations under the Planning Act 2008.

3.5. The Secretary of State notes that the ExA also considered at length the question of the planning balance under section 104(7) of the Planning Act 2008 i.e. whether the need for the proposed Development outweighed the planning harms inherent in the scheme and concluded that this was the case. The Secretary of State notes that the ExA identified planning harms associated with the scheme, which include less than substantial harm to the Fort Cumberland Scheduled Monument and the Grade II listed cottage known as Scotland, as well as impacts on tourism receptors, sports pitches and the Victorious Festival. The compulsory purchase powers sought by the Applicant would also result in private losses and could cause delay to the North Portsea Island Coastal Defence Scheme due to the overlapping of construction compound areas between this scheme and the proposed Development. The proposed development also has other potential adverse effects which are summarised in the ExA’s report in the consideration of the planning balance [ER 9.3]. The

Secretary of State agrees these adverse effects weigh against the proposed development.

3.6. The Secretary of State has had regard to the case law in relation to the consideration of alternatives and is of the view that the alternatives, and in particular the Mannington substation initially considered by the Applicant, is an important and relevant consideration under s104(2)(d) of the Planning Act 2008. Given the adverse effects arising from the project and which have been noted above, and in particular the combination of impacts that result from the proposed landfall in an urban location, the Secretary of State considers that in the circumstances of this particular application it is exceptionally necessary to consider whether sufficient consideration has been given to whether there are more appropriate alternatives to the proposed route. In particular, consideration needs to be given to the alternative substations initially identified by the Applicant (and therefore alternative onshore routes avoiding the above harms) and whether these were adequately considered to determine whether the potential harms caused by the development from the selected route could have been avoided or reduced. In this regard the Secretary of State disagrees with the ExA's conclusion in relation to the consideration of alternatives and, as set out below, considers that there was a failure to adequately consider the original alternatives identified by the Applicant, such that it is not possible to conclude that the need for and benefits of the proposed Development would outweigh its impacts."

46. Section 4 is headed "The Secretary of State's consideration of the Application". I note that all except the first paragraph actually deals with "the Consideration of Alternatives".

47. At DL4.2 two bullets from para 4.4.3 of EN-1 are set out verbatim. A summary is then given of the process of consideration of alternatives and at the end of DL4.5 it states:

"With regard to the location of the substation at Lovedean, the Secretary of State notes that National Grid Electricity System Operator's [sic] ("NGESO") submitted a representation to the examination confirming the reasons behind discounting the other substations [ER 5.4.24]."

48. DL4.7 records the ExA's conclusion that the Claimant had undertaken an adequate consideration of alternatives and met the requirements of EN-1 in this regard.

49. DL4.8-11 states:

"4.8. The Secretary of State disagrees with the ExA's conclusion on this matter and considers that in this instance insufficient consideration was given by the Applicant to the alternative connection point at Mannington substation. The Secretary of State notes that the document Environmental Statement Addendum-Appendix 3-Supplementary Alternatives Chapter states that ten existing substations were evaluated as part of a feasibility study carried out by National Grid Electricity Transmission ("NGET"). The Secretary of State understands that the Applicant submitted a request to NGET for a Feasibility Study in December 2014, and that the final

version of the *Feasibility Study* was issued in January 2016. The *Mannington Substation* was assessed as part of this *Feasibility Study*. The *Feasibility Study* notes that the substation was not considered to be suitable for the proposed connection because, at the time, there was already a connection agreement in place for the proposed *Navitus Bay* offshore wind farm. The *Addendum* notes that the *Navitus Bay* offshore wind farm project was subsequently abandoned but the grid connection agreement remained in place “for some time following the feasibility study” during which “significant progress” was made on the *AQUIND* interconnector project meaning that it was not reasonable, having regard to costs and delay, for the Applicant to re-consider the potential for a connection at *Mannington* at that later stage.

4.9. The decision to refuse development consent for the *Navitus Bay* development was taken by the Department of Energy and Climate Change on 11 September 2015. The Secretary of State requested information from the Applicant on 4 November 2021 in respect of how long the connection agreement for the *Navitus Bay* development remained in place following that refusal, what enquiries the Applicant made in respect of the potential use of the *Mannington* substation following the refusal of the *Navitus Bay* project, and at what stage the development of the proposed *AQUIND* Interconnector project was when the connection agreement ended.

4.10. The Applicant submitted their response to this request on 18 November 2021. At paragraph 2.6 of this response, the Applicant noted that the letter submitted by NG ESO on 25 January 2021 stated that “Options to the West of Lovedean required all or nearly all the same network reinforcements to either get the power to Lovedean or reinforcements to the west to Exeter substation and as far northwards as Minety”, and that “these sites would likely have resulted in more overall reinforcements, which would therefore lead to more environmental impact, and increased costs to the GB consumer”. At paragraph 2.7 of its response, the Applicant noted that in addition to these reasons from NG ESO as to why *Mannington Substation* was not taken forward for systems analysis, the shared connection point with the 970MW *Navitus Bay* offshore wind farm raised technical concerns around the suitability of *Mannington Substation* as well.

4.11. The Applicant advises that the connection agreement for the *Navitus Bay* offshore wind farm at *Mannington Substation* remained for some time after the *Feasibility Study* request in December 2014. The Applicant goes on to state at paragraph 2.14 of their response that, following refusal of development consent for the *Navitus Bay* offshore wind farm, the Applicant made enquiries with NGET on 14 October 2015 regarding the impact of that refusal on their *Feasibility Study* which was being undertaken and known to be near completion. However, the Applicant has not been able to locate a response to this enquiry, though the Applicant notes that it was understood that the refusal would have been subject to the six-week legal challenge period provided for by section 118 of the *Planning Act 2008* and as such the connection agreement for *Navitus Bay*

offshore wind farm would have remained in place. The Applicant was aware by January 2016 that the connection agreement was no longer in place (paragraph 2.15 of their response). The Application was submitted on 19 November 2019.”

50. At DL4.12-14 the SoS refers to the points raised by Interested Parties, including PCC, about the Claimant’s consideration of alternatives, and in particular its reference to Navitus Bay and the timing of that decision and the failure to reconsider Mannington. At DL4.13 it is recorded that Winchester City Council proposed that the SoS should ask NGET for information. The DL states:

“The Secretary of State considers that the Applicant has access to any relevant information relating to discussions between the Applicant and NGET, and therefore considers that the Applicant would have submitted all available and relevant information on this matter and that there is therefore no requirement to seek views from NGET. The Applicant has had the opportunity to address the issue of this alternative and could have sought any information it required from NGET. It is the Secretary of State’s view that it is not appropriate in the circumstances to further delay the decision for this purpose.”

51. DL4.16 to 21 states:

“4.16. The Secretary of State considers that at the point in the timeline (i.e. 11 September 2015) when consent for the Navitus Bay offshore wind farm was refused, that the Mannington Substation option should have been adequately explored. The Applicant states that it raised its enquiries with NGET around the impact of the refusal for Navitus Bay offshore wind farm on the Feasibility Study on 14 October 2015. At this point in time, the Feasibility Study had not yet been completed, and the six-week legal challenge period for Navitus Bay offshore wind farm was nine days away was expiry on 23 October 2015. The Secretary of State also notes that the Applicant’s inability to provide a response to the enquiries it raised with NGET on 14 October 2015 regarding the impact on the Feasibility Study, means that the Secretary of State is unable to review in full the discussions that took place regarding this matter at the time.

4.17. The Secretary of State notes the Applicant’s view that it was not reasonable or necessary to further consider Mannington Substation as the grid connection point for the proposed development following the completion of the Feasibility Study. However, the Secretary of State considers that the Applicant should have pursued further the option to include Mannington Substation in the Feasibility Study given that the Applicant was aware that consent had been refused for the Navitus Bay offshore wind farm. The Secretary of State notes that the Applicant understood the potential importance of the refusal of consent for Navitus Bay offshore wind farm at the time, as it raised queries with NGET regarding the impact of this on the Feasibility Study. The Secretary of State considers that the Applicant has provided insufficient detail as to why further investigation into Mannington Substation was not undertaken. Whilst the Secretary of State understands that this could have resulted in

further work for the Applicant, and the Applicant may not have been able to progress with regulatory and other submissions until that process was complete, the Secretary of State considers that the potential adverse effects of the proposed development (as identified by the ExA) necessitate the adequate consideration of those alternatives that the Applicant had identified. The Secretary of State also notes that the refusal of Navitus Bay was in September 2015 and the Application would not be made until over four years later.

4.18. As noted above, NPS EN-1 states that potential alternatives should be identified wherever possible before an application is made to the Secretary of State so as to allow appropriate consultation and the development of suitable evidence base in relation to any alternatives which are particularly relevant. However, the Secretary of State disagrees with the ExA's conclusion on this matter and considers that the failure to adequately consider the alternative of the Mannington Substation as a connection point is a material consideration. The Secretary of State considers that this weighs significantly against the proposed Development as he is unable to conclude that the proposed route is justified.

4.19. The Secretary of State also acknowledges the implications of the Applicant's consideration of alternatives and the compulsory acquisition powers it seeks as part of the Application. Blake Morgan LLP submitted comments to the Secretary of State on behalf of landowners the Carpenters on 15 December 2021 which raised the concerns around the possibility of an alternative connection point at Mannington Substation and the implications this has for the compulsory acquisition of the Carpenters' land. In their comments of 15 December 2020, Portsmouth City Council noted its concerns that the Applicant had not made any assessment of the private loss to be suffered in consequence of the different options available and had not weighed that loss against the public benefits of the proposed development.

4.20. The Secretary of State acknowledges that alternatives are material in exceptional circumstances only. The Secretary of State considers that this test is met given the combination of adverse impacts from the proposed route through a very densely populated urban area. He considers that the change in circumstances relating to Mannington Substation was known by the Applicant at a sufficiently early stage of the Feasibility Study, and that the change was of sufficient importance and scale. Therefore, further investigation should have been undertaken to ensure that sufficient evidence was available in its application documents to support the preferred choice of route taken forward by the Applicant.

4.21. The Secretary of State acknowledges that if the Applicant had investigated a connection at Mannington Substation further, it may have concluded that it was not a feasible option. However, in the absence of sufficient evidence on this matter, the Secretary of State cannot grant consent for the AQUIND Interconnector project taking into account the adverse effects identified by the ExA and the possibility that a connection

point at Mannington Substation might potentially have resulted in less adverse impact.”

52. In section 7 the SoS considered the planning balance.

- a. DL 7.1 correctly states that for applications under s.104 PA the primary consideration is the policy set out in the NPS;
- b. DL7.2 summarises the harm found by the ExA and agrees with their summary (Report 9.3.10), but then says “... a significant number of adverse effects remain. These remaining impacts, in the view of the SoS, make the consideration of alternatives exceptionally relevant to the SoS’s decision in this case.”
- c. DL7.3 and 7.4 state:

“7.3. In addition to these impacts identified by the ExA, the Secretary of State considers that the Applicant’s failure to adequately assess the feasibility of Mannington Substation as an alternative connection point, means that the planning balance weighs against the Order being made, given the proposed development’s obvious impacts on the City of Portsmouth and the possibility that a connection at Mannington Substation might have resulted in less adverse impact.

7.4. Although the ExA found that the benefits of the proposed development would outweigh its adverse effects, the Secretary of State disagrees with this conclusion, as the alternative of a connection to the Mannington Substation has not been properly assessed and therefore he cannot conclude that the proposed route has been justified and determine the need for and benefits of the proposed Development would outweigh its impacts.”

The law and policy

53. The development was accepted as nationally significant and therefore fell within s.35 PA.

54. All parties agree that s.104 PA applies:

“104 Decisions in cases where national policy statement has effect

(1) This section applies in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates.

(2) In deciding the application the Secretary of State must have regard to—

(a) any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”),

...

(d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

(3) The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.

(4) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.

(5) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment.

(6) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.

(7) This subsection applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits.

...”

55. There is a duty to give reasons under s.116 PA.

56. The relevant NPS is EN-1 *Overarching National Policy Statement for Energy*. At Part 3 this sets out strong support for energy infrastructure supported by the NPS. EN-1 is dated 2011 but remains the extant energy NPS. The Energy White Paper 2020, although not an NPS, provides specific support for interconnectors.

57. Part 4 of EN-1 sets out the assessment principles that the SoS (when EN-1 was drawn up this was the IPC) should apply in making a decision. 4.1.2 states:

“Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the IPC should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008 referred to at paragraph 1.1.2 of this NPS.”

58. Part 4.4 deals with the treatment of alternatives. 4.4.1 states:

“As in any planning case, the relevance or otherwise to the decision-making process of the existence (or alleged existence) of alternatives to the proposed development is in the first instance a matter of law, detailed guidance on which falls outside the scope of this NPS. From a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option.”

59. 4.4.2 states:

“However applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the applicant’s choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility; in some circumstances there are specific legislative requirements, notably under the Habitats Directive, for the IPC to consider alternatives. These should also be identified in the ES by the applicant; and in some circumstances, the relevant energy NPSs may impose a policy requirement to consider alternatives (as this NPS does in Sections 5.3, 5.7 and 5.9).”

60. 4.4.3 is critical in this case (I have added numbers to the bullet points for ease of reference):

“Where there is a policy or legal requirement to consider alternatives the applicant should describe the alternatives considered in compliance with these requirements. Given the level of urgency of need for new energy infrastructure, the IPC should, subject to any legal requirements (e.g. under the Habitats Directive) which indicate otherwise, be guided by the following principles when deciding what weight should be given to alternatives:

- 1. the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner;*
- 2. the IPC should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development;*
- 3. ...*
- 4. alternatives not among the main alternatives studied by the applicant (as reflected in the ES) should only be considered to the extent that the IPC thinks they are both important and relevant to its decision;*
- 5. as the IPC must decide an application in accordance with the relevant NPS (subject to the exceptions set out in the Planning Act 2008), if the IPC concludes that a decision to grant consent to a hypothetical*

alternative proposal would not be in accordance with the policies set out in the relevant NPS, the existence of that alternative is unlikely to be important and relevant to the IPC's decision;

6. *alternative proposals which mean the necessary development could not proceed, for example because the alternative proposals are not commercially viable or alternative proposals for sites would not be physically suitable, can be excluded on the grounds that they are not important and relevant to the IPC's decision;*

7. *alternative proposals which are vague or inchoate can be excluded on the grounds that they are not important and relevant to the IPC's decision; and*

8. *it is intended that potential alternatives to a proposed development should, wherever possible, be identified before an application is made to the IPC in respect of it (so as to allow appropriate consultation and the development of a suitable evidence base in relation to any alternatives which are particularly relevant). Therefore where an alternative is first put forward by a third party after an application has been made, the IPC may place the onus on the person proposing the alternative to provide the evidence for its suitability as such as the IPC should not necessarily expect the applicant to have assessed it."*

The Grounds

61. There is a good deal of overlap and inter-connection between all the Grounds. The background to each Ground is the way the Claimant in the application process, and the SoS in the decision making, approached the issue of Mannington as an alternative. I will therefore set out my analysis of the factual process and then relate that back into the analysis of each of the Grounds.
62. As is set out above, the Claimant commenced the development consent process under the PA with a conventional analysis of alternatives in the ES. This included a number of relevant selection criteria both for substation connection and landfall locations. The position was inevitably made more complicated by the fact that there is an interrelationship between those two elements of the scheme. So if the connection point changed, then the landfall might also change, and the cable length both undersea and on land would vary. The ES makes clear that cable length was a significant cost element of the scheme. The undersea cable location would in turn affect the impact on shipping lanes. It is immediately apparent that the analysis of ultimate route choice, and the rejection of alternatives, was a complex one, necessarily depending on a number of factors.
63. The ES Addendum is for that reason a complex document and has to be read as a whole to understand those interrelationships. I agree with Mr Strachan that Chapter 5 of that document, and 5.1.1.7 in particular, confuses the situation. It seems to suggest that the Navitus Bay connection was the factor which led Mannington not to be taken forward, and the fact the connection agreement remained in place for some time was what prevented Mannington being reconsidered. However, if one goes back to 4.1.3.5, set

out in 23(e), it is clear that the position was more complicated, and that the rejection of Mannington did not simply turn on the Navitus Bay connection.

64. However, during the course of the ExA Examination, NGESO (as they had become) made their position clear, or at least much clearer, in the letter dated 25 January 2021. They refer to the need for additional network reinforcements for any options west of Lovedean, which necessarily includes Mannington, and that being the reason why the other seven substations (including Mannington) were not taken forward. I accept that this response left open further possible questions, such as how much would further such reinforcements cost, and more detail on environmental impacts. However, the critical point is that NGESO made no reference to the Navitus Bay issue and made entirely clear that there were significant reasons for not progressing with connections west of Lovedean, independently of anything to do with a connection to Navitus Bay.
65. The Claimant's Technical Note of 7 March 2021 repeats these points. It brings back in the Navitus Bay issue, but that is independent of NGESO's view as set out in that Note.
66. The TIR Response repeats again the information in the NGESO letter of 25 January 2021. It then states in terms that "in addition" the Claimant's preliminary view at the time was that the connection to Navitus Bay raised technical concerns about Mannington. The rest of that Response does refer at length to Navitus Bay, and perhaps with the benefit of hindsight should have been clearer that regardless of Navitus Bay, there were strong reasons to reject Mannington. However, to a considerable degree the Response is framed by the questions in the SoS's Request, which themselves focus on Navitus Bay. At 2.18 the Response does return to the point that NGET had already identified Lovedean as being the preferable site.
67. This was the information before the SoS when he made the decision.

Ground One

68. Ground One (a) is that the SoS made a material error of fact. This Ground turns on DL4.8 and the reference to the Feasibility Study noting that Mannington was not suitable because at the time there was an agreement with Navitus Bay. Ground One (b) is that the SoS failed to take into account relevant evidence, namely that NGESO had identified that Mannington was not feasible for reasons unrelated to Navitus Bay and that there were a number of other reasons Mannington was not suitable.
69. The Claimant submits that the SoS in DL4.8 wrongly stated: "*The Feasibility Study notes that the substation was not considered to be suitable for the proposed connection because at the time, there was already a connection agreement in place for the proposed Navitus Bay offshore windfarm.*" In fact, the Feasibility Study, which was drawn up by NGET, did not rely on Navitus Bay and the SoS has confused the Feasibility Study with the Claimant's own work as set out in the Supplementary ES.
70. The Claimant says that this mistake meets the tests in E v SSHD [2004] QB 1044 at [66]. There are four limbs to that test:
 - a. There is a mistake on an existing fact;
 - b. The fact is uncontroversial;

- c. The claimant must not have been responsible for the mistake;
 - d. The mistake must have played a material part in the tribunal's reasoning.
71. The Claimant seeks to rely on two pieces of evidence that were not before the SoS. An email from NGESO dated 1 March 2022 together with a letter of 8 March 2022, and an email sent by the Claimant to NGET in October 2015. The SoS resists the admission of this material on the ground that it does not meet the test in Ladd v Marshall [1954] 1 WLR 1489.
72. The SoS accepts that the reference, in the sentence in DL4.8 quoted above, to the Feasibility Study is wrong, and it should be a reference to the Supplementary ES. Mr Strachan submits that this is a “referencing error” and that it is clear from reading the paragraph as a whole that the SoS was referring to the latter document. Further, and in any event, he submits that the other tests in E are not met.
73. In my view the real thrust of this Ground is not in the error in the sentence in DL4.8, but whether the SoS properly understood and took into account NGESO’s position on Mannington, as opposed to simply the Claimant’s process of consideration of Mannington.
74. I accept Mr Strachan’s argument that read reasonably benignly, the mis-reference in one sentence of DL4.8 could simply be a “referencing error”, rather than a material error. The SoS does carefully distinguish between the documents in the paragraph, but the sentence is in substance repeating what was said in the Supplementary ES at 5.1.1.7. Therefore, it makes more sense for the DL to have intended to refer to the ES, rather than the Feasibility Study, and therefore this being a simple mistake of giving the wrong reference to the documentation.
75. The additional documents which Mr Bird seeks to rely upon, do not change this conclusion. In any event, I do not consider that they pass the Ladd v Marshall test because the Claimant could have submitted them to the SoS if it had considered them particularly relevant.
76. I also accept that some at least of the fault for the apparent confusion was the responsibility of the Claimant. In particular, 5.1.1.7 is confusing by muddling the Feasibility Study (with no capitalisation and presumably referring to the NGET work) and the position of the Claimant. The true position can be worked out if one goes back to 4.1.3.5, and then appreciates that NGET’s position was that there would be an overloading of the transmission lines to the west of Lovedean. But even then, on the basis of that information, the degree to which that was independent of Navitus Bay was not entirely clear from reading the Supplementary ES alone.
77. Therefore, applying the tests in E with proper rigour, the Claimant has not made out limb (a) or limb (c) of the tests in that case.
78. However, Ground One (b) has more substance. The Claimant submits that where DL4.15 says that the Claimant “*should have undertaken further work to assess the grid connection point at Mannington*” once it became aware that Navitus Bay had been

refused, the SoS failed to take into account the material showing NGET/NGESO's broader reasons for not supporting Mannington.

79. The Claimant somewhat overstates its case by suggesting that NGESO had said in the Feasibility Study that Mannington was not "feasible" (Skeleton Argument para 33(a)). The SoS has not seen the Feasibility Study nor has the Court, so it is not known precisely what it says, or how the issues around Mannington are couched. However, NGESO had made clear in the letter of 25 January 2021 that there were significant issues with Mannington. Further, any fair reading of the Supplementary ES shows that if Mannington was chosen there would be a number of "knock-on" consequences such as the cost of longer cables; finding a suitable landfall; increased crossing of shipping lanes and crossing the IFA2 Interconnector. None of these problems are addressed by the SoS. This issue is very closely related to Ground (iv), the *Tameside* Ground (*Secretary of State for Education v Tameside MBC* [1977] AC 1014), and I will deal with it there. Even if the SoS was entitled in law not to take these problems with Mannington into account because he did not consider them to make Mannington an unrealistic alternative, he was in my view, obliged to make further inquiries pursuant to the principle in *Tameside* (and the subsequent caselaw) for the reasons I set out below.
80. Although DL4.5 refers to the NGESO submission, the SoS fails to show that he has taken into consideration the reasons for rejecting Mannington that had been put forward by NGET/NGESO quite independently of issues around Navitus Bay. This was a crucial issue in the decision-making process, and I therefore find that Ground 1(b) is made out.

Grounds Two and Three

81. Ground Two is that the SoS failed to comply with s.104 PA. Ground Three is that he failed to properly apply the NPS in EN-1. Much of the argument about s.104 turns on how the SoS approached EN-1, and I therefore deal with the two Grounds together.
82. The Claimant submits that the SoS failed to go through the structured analysis in s.104, and in particular failed to properly apply s.104(3) when setting out his reasoning in respect of EN-1.
83. Part 4 of EN-1 has a careful and highly structured approach to the assessment of projects. Mr Bird submits, and I agree, that the starting point is the presumption in favour of granting consent for energy NSIPs (4.1.2). The DL makes no reference to this presumption. This is all the more surprising given that the ExA had found that the need case "strongly outweighs" the identified disbenefits (ExA 12.2.1). Therefore, the ExA had found that the case being advanced by the Claimant went beyond the simple policy presumption in terms of the benefits of the project.
84. Part 4.4 of EN-1 sets out a very detailed policy approach to alternatives. 4.4.1 states that the relevance of alternatives is a matter of law. 4.4.2 requires (as a matter of policy) that all main alternatives considered by an applicant should be referred to in the ES (a reflection of EU law as it stood at the time). I note that Mannington was referred to and it is no part of the Claimant's case that Mannington was not a relevant consideration within the terms of the caselaw or the policy.

85. 4.4.3 sets out how the decision maker should decide what weight to give to alternatives. 4.4.3 has unnumbered bullets, but I ascribe them numbers for ease of reference. Bullet (2) states that the decision maker should be guided by whether there is a realistic prospect of the alternative delivering the same capacity in the same timescale. The SoS did not deal with this criterion in the DL.
86. Bullet (6) is that alternatives which mean the proposal could not proceed, because they are not commercially viable or not physically suitable, can be excluded. This is the criterion which makes it of imperative importance to understand what National Grid's position was in respect of Mannington. It is apparent from the letter of 25 January 2021 that NGESO considered there were material difficulties with a connection at Mannington (or the other locations west of Lovedean) because of the need to make further reinforcements to the network. That could reasonably have been interpreted as meaning that the sixth bullet point was not met. Again, the DL does not address this issue.
87. Mr Bird submitted that in the DL, having failed to properly address EN-1, the SoS then failed to apply s.104(3) PA. Section 104(3) requires detailed consideration of whether any specific and relevant policies of the NPS indicate consent should be refused. He submits that only by undertaking that exercise and giving his clear conclusion could the SoS rebut the presumption in favour of development in EN-1 4.1.2.
88. Mr Strachan submits that the DL properly records the s.104 tests at DL3.1, 3.3 and 7.1 and therefore it must be assumed that the SoS understood the statutory tests. The DL concluded that the proposal did not comply with the EN-1 policy on alternatives in DL 4.2 and 4.6-8 and as such the SoS properly conducted the balancing exercise in s.104(7).
89. Mr Strachan relies upon R (Clientearth) v Secretary of State for Business, Energy and Industrial Strategy [2021] EWCA Civ 43 at [104]:
- "First, the purpose of the balancing exercise in section 104(7) is to establish whether an exception should be made to the requirement in section 104(3) that an application for development consent must be decided "in accordance with any relevant national policy statement". The exercise involves a straightforward balance, setting "adverse impact" against "benefits". It is not expressed as excluding considerations arising from national policy itself. It does not restrain the Secretary of State from bringing into account, and giving due weight to, the need for a particular type of infrastructure as recognised in a national policy statement, and setting it against any harm the development would cause (see the judgment of Sales L.J. in Thames Blue Green Economy Ltd., at paragraph 16)."*
90. He submits that the obligation on the SoS was simply to apply a balance under s.104(7). There was no duty to start with the presumption under EN-1 para 4.1.2 because that paragraph expressly refers back to the provisions of the Planning Act 2008. The SoS did not disagree with the ExA's conclusions on need and he expressly took into account the benefits of the scheme at DL7.4.
91. Mr Strachan refers to R (Save Stonehenge World Heritage Site Limited) v Secretary of State for Transport [2021] EWHC 2161 (Admin) at [288] where Holgate J observed that policy in an NPS did not disapply the common law principles as to when

alternatives are capable of being a material consideration. At [269] he referred to the common law duty to consider alternatives in certain cases, as set out in *Trusthouse Forte v Secretary of State for the Environment* [1987] 53 P&CR 293, and that the policy does not seek to, nor could, displace that duty.

92. In my view, Mr Strachan's submissions rather miss the detail and the specificity of the issue in respect of alternatives. It is not being suggested that the SoS erred in law by referring to Mannington, nor that in principle he could not place weight upon it. Mr Strachan submits that the ExA had concluded that the Claimant had done enough in respect of Mannington but the SoS disagreed. That is simply a question of putting different weight on an issue, and as such, this falls within the SoS's lawful area of judgement.
93. However, that analysis is to ignore the requirements of the policy and of the statutory scheme. If the SoS was going to rely upon the failure to properly consider an alternative, as he did here, then he had to do so applying the policy approach in EN-1 4.4.3; or explaining why he intended to depart from the policy. It is a trite proposition that an applicant for development consent is entitled to rely on policy, particularly in this statutory scheme, an NPS, and if the decision maker wishes to depart from it, he has to explain why.
94. The SoS also had to properly apply s.104, which depends on at least considering whether the proposal was "in accordance with" the NPS, see s.104(3).
95. EN-1 para 4.1.2 creates a presumption in favour an energy NSIP, and therefore in principle in favour of this project. The ExA had found that the "need" case was very strong, and the SoS did not disagree with that conclusion. The DL makes no reference to the presumption in para 4.1.2. Save for the reference in DL3.4 that "*The SoS has made his decision on the basis that making the Order would not be in accordance with his obligations under the Planning Act 2008*", he does not make clear whether he considers the proposal to accord with EN-1 or not. Reading the DL as a whole, and considering the lengthy section on Alternatives, it may be fair to the SoS to assume that he did not consider EN-1 to be met, because of "*the possibility that a connection point at Mannington Substation might potentially have resulted in less adverse impact*" (DL4.21). However, he has not addressed and therefore apparently either has not applied the presumption in para 4.1.2, or alternatively stated why it does not apply.
96. Further, in placing weight, indeed on the facts of the case determinative weight, on the possibility of Mannington as an alternative, he has not applied the policy in EN-1 para 4.4.3, in respect of the consideration of alternatives. DL4.2 does refer to this paragraph and quotes two of the bullet points. In some cases such a reference would be sufficient to satisfy the Court that proper regard had been had to the policy. However, there are two reasons in this case why such a reference is not sufficient. First is the carefully crafted policy in EN-1 to guide the decision maker as to how to approach alternatives. The policy requires a decision maker to engage with 4.4.3 if weight is going to be placed on potential alternatives. A promoter of development is entitled to rely on that exercise being undertaken. Secondly, the consideration of Mannington was the determinative issue in the case. It was not a side issue, or even merely "a" principal important controversial issue, it was in the SoS's decision the determinative issue. It was therefore vital that the SoS properly applied the policy in this regard.

97. However, the SoS does not address whether there was a realistic prospect of Mannington delivering the same capacity in the same timescale. NGESO had said in clear terms (letter 25 January 2021) that Mannington, and the other six substations, would require additional reinforcements to the west and potentially more environmental impact and more cost to consumers. The SoS does not refer to this view of NGESO (Ground 1(b)), but also critically does not apply this to the policy test in 4.4.3 (second bullet). It would have been open to the SoS to say he gave little weight to this issue, but he had to address it if he was going to apply the policy lawfully.
98. Similarly, in regard to 4.4.3 (sixth bullet) he had to address whether Mannington was commercially viable or physically suitable. It was open to him to say that he did not know, and therefore required further information, but he had to address the policy test. The DL fails to do so.
99. In respect of Ground Two, on the facts of this case I consider the SoS had to make clear whether he considered the proposal accorded with EN-1 or not, pursuant to s.104(3). It is important for the Court not to be too mechanistic in its approach to planning decisions, and not to require an obstacle course of analysis which then needlessly trips up decision makers. However, s.104 imposes a very clear structure on the decision-making process. The scheme of the Planning Act 2008 is to give a particular status in the decision-making process to a National Policy Statement. Part 2 of the Act sets out the process for adopting NPSs and s.9 establishes the Parliamentary requirements, which then give an NPS a particular status different from any other government statement of planning policy. Therefore, an NPS is not simply another policy document which is weighed in the planning balance and to which the SoS can give more or less weight. The amount of weight is a matter for him, but that is subject to the presumption in s.104(3) and the specific matters in subsections (4) to (7).
100. On the facts of this case, I consider there was a duty on the SoS to make clear whether he considered the application was or was not in accordance with the NPS for the purposes of s.104(3). Mr Strachan relied upon *Clientearth* and submitted that Lindblom LJ's reference to the "balancing exercise" in s.104(7) meant that in such cases there was a simple planning balance to be applied. However, Lindblom LJ did not suggest that it was unnecessary to go through the statutory steps, including the application of s.104(3). In fact, in *Clientearth* the SoS in the DL had referred to the policy presumption in EN-1 para 4.1.2 (see [36]) and had carried out the s.104(3) analysis (see [42]).
101. In the present case, the ExA had concluded that there was a strong need case, and that it clearly outweighed any harm. Therefore, for the purposes of s.104(3) there was, in the view of the ExA, clear accordance with EN-1. The SoS simply went to s.104(7) and appears to have carried out an unconstrained planning balance. That is not what the statute requires him to do.
102. I reject Mr Strachan's submission that the SoS was applying the common law and was therefore entitled to take the prospect of Mannington as an alternative into consideration. The error of law here is not that the SoS took into account Mannington as a possible alternative, it is that he did not apply the statutory process set out in s.104 and that he did not apply the policy in the NPS when evaluating Mannington and deciding what weight to give it.
103. For these reasons I find that Grounds Two and Three are made out.

Ground Four

104. Ground Four is that the SoS failed to seek further information on the feasibility of Mannington and thus breached his duty to take reasonable steps to inform himself pursuant to the principle set out in Tameside. The Claimant submits that the SoS in the Third Information Request confined himself to asking about the connection agreement with Navitus Bay and what further inquiries the Claimant had made, but did not make the relevant inquiries, to the degree that he did not already have the information, about the feasibility of Mannington.

105. The test as set out by Lord Diplock in Tameside was as follows:

“the question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?”

106. The correct approach to a Tameside challenge was considered by the Divisional Court in R (Plantagenet Alliance) v Secretary of State for Justice [2014] EWHC Civ 1662, where, following R (Khatun) v Newham LBC [2005] QB 37, it was held that the approach to any Tameside challenge was that of Wednesbury irrationality. It is not for the court to decide upon the manner or intensity of inquiry to be undertaken. The law was helpfully summarised by the Court of Appeal in R (Balajigari) v Secretary of State for the Home Department [2019] 1 WLR 4647 at [70]:

“The general principles on the Tameside duty were summarised by Haddon-Cave J in R (Plantagenet Alliance Ltd) v Secretary of State for Justice [2014] EWHC 1662 (Admin) at paras. 99-100. In that passage, having referred to the speech of Lord Diplock in Tameside, Haddon-Cave J summarised the relevant principles which are to be derived from authorities since Tameside itself as follows. First, the obligation on the decision-maker is only to take such steps to inform himself as are reasonable. Secondly, subject to a Wednesbury challenge, it is for the public body and not the court to decide upon the manner and intensity of enquiry to be undertaken: see R (Khatun) v Newham LBC [2004] EWCA Civ 55, [2005] QB 37, at para. 35 (Laws LJ). Thirdly, the court should not intervene merely because it considers that further enquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the enquiries made that it possessed the information necessary for its decision. Fourthly, the court should establish what material was before the authority and should only strike down a decision not to make further enquiries if no reasonable authority possessed of that material could suppose that the enquiries they had made were sufficient. Fifthly, the principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but rather from the Secretary of State's duty so to inform himself as to arrive at a rational conclusion. Sixthly, the wider the discretion conferred on the Secretary of State, the more important it must be that he has all the relevant material to enable him properly to exercise it.”

107. Mr Bird submits that this case meets the high test of irrationality set out in the caselaw. He relies on the duty under s.104(3) PA and the need for the SoS to answer the statutory questions in s.104. If he did not accept the position of the Claimant and NGENSO as to Mannington, then the SoS needed to make enquiries about the feasibility of Mannington given the information that was before him and the policy and statutory schemes. The policy in EN-1, in particular para 4.4.3, sets out specific questions the SoS needed to address, and therefore the inquiries that any reasonable SoS had to make if he considered that he did not already have the relevant information.
108. Mr Strachan submits that the Claimant was given every opportunity to provide the relevant information on Mannington, particularly through the Third Information Request. The SoS acted rationally in concluding that the Claimant should have reconsidered Mannington in late 2015, particularly as the scheme of the PA is heavily frontloaded and thus requires developers to have undertaken extensive preparations before lodging an application.
109. I accept Mr Bird's submissions on this Ground. There are a number of reasons why the SoS's decision to refuse the application without making further inquiries about the feasibility of Mannington was irrational and was in breach of his Tameside duty.
110. Firstly, the ExA had found a strong need case in favour of the development which clearly outweighed the harm found. The consequence of this was that in the ExA's view there was a significant public interest in the development. It should be noted that the Claimant contended, and the ExA accepted, that the development could meet 4-5% of the UK's electricity need with the obvious public benefits that would follow. The level of this public benefit meant that any reasonable SoS would have inquired into the feasibility and viability of Mannington before rejecting the development on the purely speculative basis that it might provide an alternative to Lovedean.
111. The SoS refused development consent on the sole ground that there might be an alternative sub-station location. He expressly accepted at DL4.21 that the Claimant might have found that Mannington was not feasible. Given the scale of the public benefits that the ExA accepted, it is in my view irrational on this point alone for the SoS not to have made further inquiries.
112. Secondly, the consequence of that finding was that there was very clear policy support, in the NPS, for the development. I have already addressed the ways in which the SoS failed to apply the relevant policies in a lawful manner.
113. Thirdly, the SoS had the quite clear statement from NGENSO that there were difficulties, albeit unquantified ones, with using Mannington as the substation. Although NGENSO do not say in terms that Mannington was not feasible, any fair reading of their letter alerts the reader to the significant difficulties of proceeding with that site. If the SoS thought, despite this letter, that Mannington should not be ruled out pursuant to the policy in EN-1 para 4.4.3, then it was again irrational not to make further inquiries so that the SoS could make his decision on a properly informed basis. The highly speculative nature of Mannington being a realistic alternative again points strongly in favour of any rational SoS seeking further information.
114. Fourthly, Mr Strachan characterises the SoS's position as being that the Claimant had been given full opportunity to explain the position in respect of Mannington, and that

the Response to the Third Information Request did not state in terms that Mannington was not feasible. However, even if this was correct, the submission ignores the public interest which lies at the heart of the policy support for the project in EN-1. On the very stark facts of this case, the SoS should not be able to rely on the fact that the Response to the TIR could have been more clearly worded to reject a proposal which had the potential to make a very significant contribution to the UK's energy supply.

115. None of these factors mean that the SoS would have been obliged to allow the development if Mannington was not a feasible option. He was entitled to place weight on the harm from the development, subject only to Wednesbury irrationality principles. However, he was obliged, on the facts of this case, to ensure that he had the necessary information as to whether Mannington was indeed a feasible and viable alternative. It is important to note that the issue for any rational decision maker was not why the Claimant had rejected Mannington in 2016, and whether it should have re-evaluated the position after the Navitus Bay contract ended, but rather whether Mannington was in fact a feasible alternative in 2022.
116. In reaching this conclusion I take into account Ms Colquhoun's submissions on behalf of PCC as to the harm within Portsmouth and the surrounding area from connecting to the grid at Lovedean. The weight to be attached to that harm was a matter for the SoS, subject again only to rationality. However, whatever the weight given to the harm, the SoS still had to act rationally in his approach to any possible alternative sub-station.

Ground Five

117. The Claimant submits that the decision was procedurally unfair because the SoS did not give the Claimant a reasonable opportunity to respond to any unspoken view that Mannington was a potential feasible alternative. The TIR did not relate to the feasibility of Mannington and Claimant could not have reasonably anticipated that the SoS might require further information on that, given the information that had been provided both by the Claimant and by NGESO.
118. Mr Bird applied to amend his claim to add a ground that the SoS had breached regulation 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010. Regulation 19 (3) states:

“Procedure after completion of examination

19. ...

(3) If after the completion of the Examining authority's examination, the decision-maker—

(a) differs from the Examining authority on any matter of fact mentioned in, or appearing to the decision-maker to be material to, a conclusion reached by the Examining authority; or

(b) takes into consideration any new evidence or new matter of fact, and is for that reason disposed to disagree with a recommendation made by the Examining authority, the decision-maker shall not come to a decision which is at variance with that recommendation without—

- (i) notifying all interested parties of the decision-maker's disagreement and the reasons for it; and
- (ii) giving them an opportunity of making representations in writing to the decision-maker in respect of any new evidence or new matter of fact."

119. Mr Bird submits that the issue around the Navitus Bay connection impacting on Mannington was a new matter not raised before the ExA. As such, pursuant to reg 19, the SoS should have notified all the parties and given them an opportunity to make further representations.
120. Mr Strachan relies on the TIR and submits this was an opportunity for the Claimant to explain why Mannington was not an appropriate alternative. He also points to the fact that other interested parties responded to the request, understanding that they could refer to Mannington as a feasible alternative.
121. In my view, this Ground takes the Claimant's case no further forward. It was apparent in the TIR that the SoS was considering the relevance of Mannington as an alternative to Lovedean. He could only have been doing this on the basis that he was considering refusing the proposal on the ground of a possible alternative substation at Mannington and the Claimant's failure to reconsider it after Navitus Bay had fallen away. Otherwise, the SoS's interest in Mannington, and his reference to the Navitus Bay refusal makes no sense. I note Ms Colquhoun's submission that the LPAs, including PCC, had all understood the thrust of the SoS's questions about Mannington and Navitus Bay, and responded accordingly.
122. Therefore, the Claimant was given the opportunity to provide the SoS with information about why Mannington was not a feasible alternative. It is the essence of the Claimant's Ground 1(b) that it had provided the SoS with that information, in particular through the views of NGESO. This is therefore not a case which turns on any procedural unfairness, but rather with the SoS's failure to properly consider the information that he had been given.

Ground Six

123. The Claimant submits that the SoS failed to give proper and adequate reasons in the DL. The test for reasons in this context is set out in South Bucks v Porter [2004] UKHL 33 at [36]:

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable

disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

124. Mr Bird submits that the DL failed to explain how the s.104 PA duty was discharged and whether the proposal accorded with EN-1.
125. I agree with Mr Strachan that these grounds do not materially add to the substantive Grounds dealt with above. As I have set out, the SoS erred in law in his approach to both the s.104 duty and compliance with EN-1. It therefore necessarily follows that he did not properly explain his reasoning in the DL. However, there are no separate issues that arise under the reasons Ground.



Neutral Citation Number [2021] EWHC 2697 (Admin)

Case No: CO/1160/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/10/2021

Before :

THE HONOURABLE MR JUSTICE DOVE

Between :

EFW Group Limited
- and -
Secretary of State for Business, Energy and
Industrial Strategy

Claimant

Defendant

Michael Humphries QC and Mark Westmoreland Smith (instructed by Keystone Law) for
the Claimant

Ned Westaway (instructed by Government Legal Department) for the Defendant

Hearing dates: 13th and 14th July 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE DOVE

Mr Justice Dove :

1. This is an application for judicial review pursuant to section 118 of the Planning Act 2008 (“the 2008 Act”) seeking to quash the defendant’s decision dated 19th February 2021. The application before the defendant included two separate and discrete proposals. The first proposal was for the Wheelebrator Kemsley North (“WKN”) and the second was for the Wheelebrator Kemsley K3 (“K3”), both of which were proposals for energy from waste described in greater detail below. Whilst the name of the claimant company changed between the determination of the application and the commencement of these proceedings nothing turns on the fact that the claimant’s name has altered.

The Facts

2. The claimant is the developer and operator of a pre-existing waste-to-energy plant at Kemsley, Kent which was granted planning permission on 14th June 2019 and has been fully built out (“the Kemsley plant”). It supplies heat to an adjacent paper mill, and has permitted capacity of up to 49.9MW with a waste throughput of 550,000 tonnes per annum. It was commissioned in July 2020.
3. The claimant contemplated two further development projects. Firstly, K3, which amounted to a proposal to increase the generating capacity of the consented Kemsley plant from 49.9MW to 75MW, and increase the total waste tonnage throughput from 550,000 to 657,000 tonnes per annum. This project simply involved an increase in the permitted capacities of the facility and did not require any physical works in order to achieve them. The second proposal was WKN, which was a new waste-to-energy facility capable of processing 390,000 tonnes of waste and generating 42MW of electricity. WKN was intended to supply energy to the adjacent paper mill when the Kemsley plant was offline for maintenance and was designed to be combined heat and power (“CHP”) ready in order to take advantage of any future developments. The K3 project fell within the definition of a nationally significant infrastructure project (“NSIP”) as defined by section 15 of the 2008 Act (which is dealt with in greater detail below), on the basis that the final capacity for the Kemsley plant following the consenting of the K3 proposal would lead to a generating station which had a capacity in excess of 50MW. The WKN project did not satisfy that criterion and therefore did not fall within the definition of an NSIP.
4. As part of the preparation of the application for the projects, on 1st June 2018 the claimant wrote to the defendant to request that the defendant exercise the power under section 35 of the 2008 Act to direct that the WKN facility be treated as a development for which development consent is required, and thereby bring it within decision-making processes of the 2008 Act. The section 35 application explained that the WKN proposal was “an entirely stand-alone facility, and not an extension to [the Kemsley plant]”. Given the close physical proximity between the K3 and the WKN proposals, on the basis that they were proposed to be developed on adjacent sites, the application emphasised the added efficiency to the decision-making process which would arise were they to be considered as part of the same application for a Development Consent Order (“DCO”) for both proposals.
5. On 27th June 2018 the defendant granted the section 35 application. In doing so the defendant noted that the development did not currently fall within the definition of an

NSIP and therefore it was appropriate to consider use of the power in section 35 of the Act. The defendant was satisfied, on the basis that the WKN proposal sat on the same site as two significant applications, including the K3 proposed application, that cumulatively the developments located on the same site could “comprise a significant facility of national sustainable energy supply”. The defendant directed that an application for the form of development described in the request of 1st June 2018 was to be treated as a proposed application for which a DCO was required, and that any consultation carried out prior to the date of the section 35 direction was to be treated as complying with the consultation requirements under the 2008 Act notwithstanding that it had been carried out prior to the date of the direction.

6. On 11th September 2019 the claimant applied for a DCO in relation to both the K3 and the WKN projects. Although, as noted above, the projects were separate and distinct, in the application they were combined, as anticipated by the section 35 application, within an application for a single DCO. Pursuant to section 55 of the 2008 Act the application was accepted for examination on 8th October 2019. The examination began on 19th February 2020 and concluded on 19th August 2020.
7. The examination proceeded in the form of a series of written exchanges provided in accordance with a structure of eight Deadlines for the submission of material. One of the issues which the examination addressed was the question of whether or not there was sufficient waste arising in order to support the proposed facilities whilst complying with principles of the waste hierarchy and the proximity principle. Participants in the examination included Kent County Council (“KCC”) who are the waste planning authority for the area within which the proposals lie. KCC, assisted by BPP Consulting, who had provided them with advice in relation to the Early Partial Review of the Kent Minerals and Waste Local Plan (“the EPR”), presented submissions to the examination at the stage of Deadline 1 contending that there was no robust evidence to justify the need for the facilities in terms of the availability of appropriate waste to support the proposed energy from waste capacity. KCC contended that whilst the claimant’s evidence in relation to additional suitable waste capacity produced in support of the application stated it lay within a range of 495,540 tonnes per annum and 840,463 tonnes per annum, BPP Consulting had undertaken a sensitivity analysis using the Environment Agency’s WDI 2018 data and the claimant’s methodology and found that the range actually fell between -760,390 tonnes per annum and -373,473 tonnes per annum.
8. At Deadline 3 of the examination, the claimant submitted evidence disputing the validity of the sensitivity analysis produced by KCC and BPP Consulting. The claimant indicated that it had tried to replicate the BPP Consulting figures but was unable to do so. The claimant produced its own table which reproduced the two original analyses, firstly, produced by the claimant in support of the application and, secondly, produced by KCC at Deadline 1, and then added a further calculation based on the WDI 2018 data that showed a remaining level of need ranging between 306,554 tonnes per annum and 680,032 tonnes per annum. Whilst this showed a reduction over the original calculation supporting the application, the claimant contended that there was still a substantial need for residual waste treatment capacity even after both of the proposals had been consented.
9. Immediately after Deadline 3, on 23rd April 2020, the Inspector’s report on the examination of the EPR was published. As the name of the document implied, the

EPR contained a number of proposals to modify the Kent Minerals and Waste Local Plan adopted in 2016, including KCC's position that it was no longer proposed to produce a Waste Sites Plan following a reassessment of the need for waste facilities over the plan period. The evidence base for the EPR included a further assessment of need. The EPR Inspector set out the essence of that exercise and the conclusions arising in the following terms:

“20. The Capacity Requirement for the Management of Residual Non-Hazardous waste (CRRNH) has assessed the need for provision for residual non-hazardous waste arising in Kent, including Local Authority Collected Waste (LACW) and Commercial and Industrial (C&I) waste, as well as some waste originating from London. The calculation of need takes into account revised recycling rates which are based on government guidance and the actual rates achieved. The forecast requirement is based on continuing reductions in landfill.

21. The CRNNH considers the capacities of existing consented facilities and the extent to which they would satisfy identified need. A permitted facility at Barge Way has not been built. Irrespective of whether there is any uncertainty as to whether that facility will be provided, the strategy for waste management capacity does not depend on its provision. Waste arisings are forecast for intervals of 5 years up to the end of the Plan period in 2030/31. The proposed diversion of LACW and C&I waste from landfill is greater than that in the KMWLP. The proportions of those waste streams that are to be subject to other recovery instead of recycling/composting are greater in the EPR than in the KMWLP, taking into account the re-assessed recycling rates.

22. Since the adoption of the KMWLP, a significant new waste recovery facility has been built at Kemsley and is being commissioned. This provides capacity of 525,000 tonnes per annum (tpa). Policy CSW7 of the KMWLP identifies a recovery requirement of 562,500 tpa but this requirement has been re-assessed in the CRRNH having regard to the revised recycling rates and revised figures for diversion of waste from landfill.

23. Table 9 of the CRRNH shows that there is no gap in capacity for other recovery treatment of residual non-hazardous waste throughout the Plan period and demonstrates that the Kemsley facility together with the existing Allington facility will provide a surplus of other recovery capacity. On this basis there is no need to allocate sites. However, Policies CSW6 and CSW7 provide flexibility in that they are permissive policies that would allow for other recovery facilities to be developed should they be required.”

10. In its response at Deadline 4, KCC did not submit any further calculation in response to that produced by the claimant, but placed reliance on the endorsement by the EPR Inspector of the data reports produced to support the EPR by KCC in the form of the CRRNH. In response to earlier submissions made by KCC the examining authority (“ExA”) requested a copy of the representations made on behalf of the claimant to the EPR examination in support of the contention that the EPR was unsound.
11. In the claimant’s response at Deadline 5, the claimant again noted that KCC had offered no explanation for its position beyond reliance upon the EPR Inspector’s report. The claimant noted that the EPR report was very short and made no mention of third-party submissions, appearing to take the CRRNH at face value. The claimant made the observation that it was reasonable to assume that the inspector had not considered the analysis of empirical data in relation to need and waste available for incineration in detail at the examination of the EPR.
12. Within the material related to Deadline 5 and Deadline 7, KCC provided the claimant’s representations to the EPR, and also made further submissions in relation to waste types and waste data addressing the potential available feedstock for the facilities. Within their Deadline 8 submissions the claimant pointed out that they had responded to the submissions made in Deadline 5 by KCC, and consistently demonstrated throughout their representations to the examination of the DCO that the level of fuel of an appropriate character available to the proposed development would be sufficient to demonstrate a need for both of the proposed developments and indeed still leave even further available capacity for the recovery of waste.
13. By contrast, in its Deadline 8 representations, KCC contended that they had undertaken further analysis of the claimant’s data during the course of the examination and discovered that the quantity of waste reported as going to landfill that was suitable for incineration was a good deal less than the claimant had claimed. KCC submitted that no compelling evidence had been presented by the applicant to address their doubts in relation to the suitability or combustibility of the waste targeted by the proposals in the applicant’s assessment, and that given the EPR had been found to be sound, on the basis that its waste needs assessment was robust, there was clearly insufficient need to support the additional capacity proposed.
14. At Deadline 8 the final version of the Statement of Common Ground (“the SOCG”) was provided to the examination. Within the matters that were agreed in the SOCG the following appeared:

“2.2.3 ...

(b) KCC has undertaken an Early Partial Review (EPR) of the Kent Minerals and Waste Local Plan (KMWLP), which has been found sound with the addition of main modifications. The parties agree that the relevant local waste plan would be the Kent Minerals and Waste Local Plan Early Partial Review, should that be adopted by the KCC prior to the application being determined. In advance of adoption, increasing weight ought to be given to the EPR, given it has now been approved by the Examining Inspector.”

15. The SOCG also recorded matters which were not agreed. These matters included the relevance of national policy statements (“NPSs”) to WKN. The claimant’s position was that policies in NPS EN-1 and EN-3 (see below) were both “important and relevant” to the decision to be made in relation to WKN, firstly, because it was very close to having a capacity which would require it to be an NSIP, and, secondly, because its function, scale, and the nature of its impact was similar to that of K3. Further, it had been accepted by the defendant as being of national significance through the section 35 direction. KCC, by contrast, contended that the parts of the application which were not an NSIP should be determined in accordance with the development plan, and that those parts of the application included the expansion of waste throughput at K3 as well as the construction and operation of WKN.
16. On the 19th November 2020 the ExA completed his report, which contained a recommended decision, and it was passed to the defendant. The report is a lengthy and detailed document, and for present purposes what follows is a summary of those aspects of the report pertinent to this challenge. Within section 3 of the report, the “Legal and Policy Context”, the ExA noted the provisions of sections 104 and 105 of the 2008 Act (which are set out in detail below), and that in essence section 104 applies to applications for a DCO where an NPS has effect, and section 105 applies to decisions where no NPS has effect. Where section 104 is in play, then by virtue of section 104(3) the application must be determined “in accordance with any relevant national policy statement”, subject to a number of limited exceptions. By contrast, section 105 prescribes matters to which the defendant is to have regard to when making a decision without the statutory presumption set out in section 104(3). The ExA noted that the WKN proposal fell short of the threshold for it to be examined as an NSIP, a position which the ExA concluded was not altered by virtue of the section 35 direction. The ExA noted that neither NPS EN-1 nor EN-3 were worded to include a project subject to a section 35 direction. That said, the ExA noted that although the WKN did not meet the threshold for an NSIP, nonetheless the matters in NPS EN-1 and EN-3 could be taken into account in determining the WKN proposal to the extent that those matters were both important and relevant to the defendant’s decision. Thus, the ExA concluded that whilst in relation to the K3 proposal the NPSs formed the primary policy context for the examination given the statutory duty imposed by section 104 of the 2008 Act, with respect to the WKN proposal the following was noted:

“3.3.4 In relation to the WKN Proposed Development the NPSs are important and relevant matters to take into account in the view of the ExA, however the statutory duties as to the applicability of the NPSs do not apply in the same way as for development which is a nationally significant infrastructure project. The primary policy context is nevertheless found in the PA2008, namely s105 which requires the SoS to have regard to LIRs, matters prescribed by regulations in relation to development of the description to which the application relates; and other matters considered important and relevant which will include so far as relevant, the NPSs.”
17. The section went on to assess the relevant policy framework and reached conclusions in relation to the applicable policy. In relation to NPS EN-1 and EN-3, the ExA

concluded that the need for the K3 proposal was established through the NPSs, whereas the WKN proposal generally conformed to high-level policy in NPS EN-1 and EN-3. In relation to the development plan, at paragraph 4.6.4 of the report the ExA recorded as follows:

“4.6.4 There are no issues arising from development plan policies that necessarily conflict with relevant policy directions arising from NPSs. Whilst NPSs are the primary source of policy for a decision on an NSIP under PA2008 such as Project K3, development plan policies take precedence for a decision on Project WKN. None of the development plan policies indicate against the directions set in NPS EN-1 or NPS EN-3 and it follows that effect can be given to all relevant development plan policies in a manner which reinforces and adds local context and detail to NPS compliance where the NPSs apply.”

18. Within this section the ExA set out the competing contentions in relation to whether or not there was a need for the facility in terms of available waste suitable for incineration. The concern raised by KCC was that if there were not adequate quantities of waste arising within their administrative area this would undermine the waste hierarchy and lead to a diversion of waste into Kent, with the potential to undermine wider regional planning objectives and the proximity principle. The ExA introduced his conclusions in relation to the planning issues for the examination by noting as follows:

“4.10.96 In terms of the core decision-making section of NPS EN-3 (paragraph 2.5.70) it must be clear, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station would be in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England. I am not satisfied that this is the case with reference to the WKN Proposed Development because the increase in capacity which it would bring about would significantly increase the capacity gap already identified by KCC. For such provision to be made at this time for an additional 390,000 tonnes of waste per annum over the 50-year lifetime of the development would present a significant risk to meeting the waste hierarchy objectives set out in KMWLP as revised by the EPR, by pulling Kent waste that might otherwise be recycled down the hierarchy.

4.10.97 The EPR of the KMWLP has been found sound and the supporting Waste Needs Assessment is taken to be robust, and the arisings and forecasts are now reflected in the most recent Authority Monitoring Report released by KCC. Applying an assessment based on these values to the Proposed Development, the ExA is satisfied that the need for the additional capacity proposed to maintain net self-sufficiency in

Kent throughout the Plan period while making reduced provision for London's waste, does not exist.”

19. In relation to the principles of local policy, and the EPR in particular, the ExA noted that the adverse effects of creating a waste management facility that would be likely to draw waste in from further afield than Kent would include locking waste into feeding the plant that might otherwise be recycled, contrary to the waste hierarchy, as well as undermining the viability of more locally-based solutions which would accord better with the proximity principle. The ExA noted the strategy in the EPR to meet the area's objectively assessed needs. The ExA noted it was an important consideration that the EPR had dispensed with the preparation of a Waste Sites Plan, and that the purpose of this and the other provisions of the EPR were to avoid over provision of other recovery capacity which could discourage the development of recycling and composting capacity further up the waste hierarchy.

20. The ExA went on to consider the energy production issues and noted the following in that connection:

“4.10.120. Generally, the power produced by both projects would be a benefit to be considered in the overall planning balance.

4.10.121. However in the case of the WKN Proposed Development, the electricity generation is allied to the sourcing of some 390,000 tpa of waste fuel which is a significant amount in itself, the composition of which should be scrutinised to see whether overall the proposed generation is justified by reference to such matters as the biogenic to fossil carbon ratio and its energy content, the confidence that can be placed on the assumed biogenic content, comparisons with other methods of electricity generation, and whether avoided emissions from landfill would actually materialise. Within that process, consideration of harm to KCC's strategy that underpins its WLP is not excluded.”

21. The ExA then went on to consider the provisions of the Kent Minerals and Waste Local Plan Policy CSW4 and need and local capacity issues. The ExA's conclusions in relation to this issue were as follows:

“4.10.122. I am not persuaded that even assuming 65% recycling is achieved (which is acknowledged to be a higher target than is set out in the KMWLP or EPR) there remains a need for the Proposed Developments in particular Project WKN. The WHFAA [APP-086] sets out in Table ES2 Summary of Fuel Availability Assessment and sensitivities, a projected surplus in the remaining fuel available in the Study Area compared to future capacity likely to be delivered, including taking account of both projects within the Proposed Development.

4.10.123. There is an obvious difference between the lower and upper estimates. This is predominantly due to the substitution of shortlisted waste types disposed to landfill rather than all Household/Industrial/Commercial (HIC) waste disposed to landfill. Clearly in my view the use of the former category is more appropriate since, as is clarified in the WHFAA, the HIC category in the WDI contains certain waste types that would be inappropriate for combustion in the Proposed Development, the use of which would result in an over-estimation of available fuel. Thus, under the WHFAA ones arrives at a remaining level of fuel availability to the tune of 992,540 tpa, which would be taken up by the Proposed Development leaving a shortfall in capacity of facilities equivalent to processing the remaining figure of 495,540 tpa.

4.10.124. However KCC's alternative calculation, based on the same methodology, including an allowance of 27% recycling to achieve the CEP 2035 target, and using the EA's WDI 2018 data as set out in [AS-010] would result in fuel availability of between 420,000tpa and 123,500tpa, which latter figure takes account of shortlisted waste types disposed to landfill within Study Area. Applying the proposed capacity of both projects within the Proposed Development, one arrives at negative figures whether shortlisted waste types or HIC waste disposed of to landfill are applied, indicating a surplus capacity of facilities in the Study Area. I find it significant that KCC's waste needs assessment has underpinned the EPR under which the development of increased waste recovery capacity follows a sustainable pattern of waste management to achieve overall net self-sufficiency, an approach found to be sound in the Examination of the EPR [REP4-016].

...

4.10.126. Turning to the Applicant's criticism of the Inspector's EPR Report [REP4-016] there is no reason to suppose that the Inspector did not properly examine the evidence on the capacity requirement for non-hazardous waste. The Applicant made several representations against the proposed changes in the EPR based on the evidence and appeared at the examination hearings to convey these objections to the Inspector. I asked for these representations which were supplied in full [REP5-040]. They clearly show that the Applicant was critical of the evidence base underpinning the EPR, however the Applicant accepted (p2 [REP5-040], that its own representations were:

"not submitted as in-depth need assessments for waste management in Kent; this is a task for KCC in preparing its development policy plan."

...

4.10.128. Paragraph 23 of the Inspector's Report [REP4-016] accepts that the "CRRNH" (Capacity Requirement for the Management of Non-Hazardous Waste) shows that there is no gap in capacity for other recovery treatment of residual non-hazardous waste throughout the Plan period and demonstrates that the "Kemsley facility" (ie the Consented K3 Facility) together with the existing Allington facility will provide a surplus of other recovery capacity. Paragraph 23 ends:

4.10.129. *"Policies CSW6 and CSW7 provide flexibility in that they are permissive policies that would allow for other recovery facilities to be developed should they be required".* (My emphasis).

4.10.130. I also note that the BPP report, Waste Topic Report 8 concluded the following on the need for Energy from Waste (EfW) capacity: "... sufficient sites should be identified such that new capacity in EfW could be provided for an additional 562,000 tpa. However, only 437,500 tpa new EfW capacity should be permitted until monitoring indicates that the provision of only this amount of EfW capacity would result in non-hazardous landfill capacity in Kent being used up before the end of the plan period. This will need one site to be identified in Kent that would not need to be developed until the long term, if at all." This conclusion underpins Policies CSW7 and CSW8 of KWMLP.

4.10.131. KCC's analysis and data are also more focussed on the particular geographical source of waste accepted at locations to which waste is removed as well as a more localised approach to investigating capacity, which in my view is more important to analysing the geographical need for EfW additional waste treatment capacity. It was found to be sound by the EPR Inspector.

4.10.132. On balance I prefer KCC's assessment in KCC WNA 2018, Capacity Requirement for the Management of Residual Non-Hazardous Waste [REP4-020] of fuel availability and future capacity likely to be delivered, to that of the Applicant. This does not imply that in general future treatment capacity would no longer be necessary, however in the case of the WKN Proposed Development to grant consent for an additional 390,000 tpa throughput would in my judgment seriously undermine the local and regional strategy for managing waste development in Kent and the south east region. This would be contrary to KWMLP Policies CSW2, CSW4, CSW6, CSW7 and CSW8."

22. The ExA's overall conclusions in relation to waste hierarchy issues in respect of both of the proposals were expressed in the following terms:

**“Overall conclusions as to waste hierarchy related matters:
K3**

4.10.139. The evidence underpinning the KCC's revised development plan policies which was independently compiled, points to a capacity gap which at both the upper and lower ranges of estimates, produces a negative level of need to manage waste fuel available in Kent, even taking into account the capacities of the Proposed Development. This would be contrary to the Waste Needs Assessment produced by KCC to support the EPR which has now been found sound by the examining Inspector. This evidence base found no need exists in Kent for additional capacity for the Plan period.

4.10.140. However, although the Applicant's position is that both Project K3 and Project WKN are important, relevant and appropriate infrastructure projects that would meet net zero emissions goals and ensure waste is managed efficiently, there are differences between the two. Project K3 is a CHP facility, connected to the Kemsley Paper Mill with the benefits of increased heat export. That the WKN Proposed Development would provide a sustainable source of steam/heat to local customers for industry and housing within the area is uncertain as there is no clear agreement with any customer for this purpose, except perhaps arguably with DS Smith for the very limited occasions when K3 is undergoing maintenance. Therefore, whilst the benefits of co-location of both facilities to provide steam to the paper mill, remain unclear, increased weight should be given to the K3 Proposed Development in this respect.

4.10.141. The need for infrastructure covered by NPS EN-3 is assumed and must be accorded significant weight. Further, the increased capacity provided by the K3 Proposed Development would be a more modest increase than that of Project WKN, therefore the risk of prejudice to the principles of proximity and net self-sufficiency in local and regional strategies and plans is reduced. The ability to generate additional electricity without change to its design or increase in throughput would be an additional benefit.

**Overall conclusion as to waste hierarchy related matters:
WKN**

4.10.142. The generation of 42MW electricity would be a significant benefit having regard to the need for all types of infrastructure set out in NPS EN-1, although the energy generated would be partially renewable at best.

4.10.143. However, the Applicant has not provided a robust argument that justifies a concentration of a new waste management facility that would increase the capacity gap at this time. Although put forward as a regional facility, given that the waste recovery capacity is well catered for by the Consented K3 Facility and the EfW facility located at Allington, there is no proven need for the plant to be located in Kent. An alternative location outside Kent where the heat produced can be more effectively utilised, would appear to better serve the strategic purposes of member authorities of SEWPAG in order to comply with the aims set out in their respective WLPs, and in particular the KMWLP. Therefore, in this respect I find the WKN Proposed Development inconsistent with the KMWLP and EPR. Such a finding would be in accordance with upholding the role of the planning system as found in NPS EN-1 to provide a framework which permits construction of what Government as well as the market identify as the type of infrastructure needed “in the places where it is acceptable in planning terms (paragraph 2.2.4)”.

4.10.144. Further, the introduction of additional Other Recovery capacity of the scale proposed at this time with respect to the WKN Proposed Development would put at risk achievement of the revised recycling and composting targets in the revised KMWLP which would also be in conflict with National Planning Policy for Waste.”

23. In section 6 of the report the ExA set out the conclusions reached in relation to the DCO application. So far as relevant to this case those conclusions were as follows:

“6.2. CONSIDERATIONS IN THE OVERALL PLANNING BALANCE

Application of NPSs and development plan to the Proposed Development

6.2.1. The designated National Policy Statements (NPSs) NPS EN-1 and NPS EN-3 provide the primary basis for the Secretary of State (SoS) to make decisions on development consent applications for energy based Nationally Significant Infrastructure Projects (NSIPs) in England, which includes the K3 Proposed Development.

6.2.2. In terms of Project WKN the NPSs may be considered “alongside” other national and local policies, however as the adopted local plan for waste matters, I consider the development plan and in particular the Kent Minerals and Waste Local Plan (KMWLP) to be the primary policy against which this element of the Proposed Development should be determined. The presumption in favour of determining the application in accordance with the NPS is absent here although

the relevant NPSs are important and relevant matters to be considered.

6.2.3. I disagree with the Applicant's response [REP5-011] to ExQ3.6.2 [PD-014] that EN-1 and EN-3 are so germane to the assessment of the WKN Proposed Development that it would be irrational not to give them primacy for the reasons they give. As to the reasons given for this proposition, the NPPF is not dispositive of the issue, and the s35 direction does not override s105(2)(c) PA2008. S105 PA2008 does not stipulate that the NPSs take precedence viz a viz local plan policies (although as *The Queen (oao David Gate on behalf of Transport Solutions For Lancaster and Morecambe) v The Secretary of State for Transport v Lancashire County Council* [2013] EWHC 2937 (Admin) would suggest they are capable of being important and relevant matters).

6.2.4. The Applicant suggested further in its reply [REP5-011] to ExQ3.6.2 [PD-014], that local plan policies would otherwise take precedence by default. Indeed, whatever the reason behind the lack of definitive statutory or judicial clarity over the issue, it would be sensible in my view to apply the statutorily adopted development plan as the primary consideration to a project that, but for the s35 Direction, would have fallen to be considered on that basis.

6.2.5. That said, conclusions on the case for development consent set out in the application are reached in the context of the policies contained in the NPSs, according to how important and relevant are the matters contained therein.

Need for and benefits of the Proposed Development

Project K3

6.2.11. In relation to NPS EN-1 and NPS EN-3 which apply to the K3 Proposed Development I find that the need for infrastructure covered by these national policies is assumed and must be accorded significant weight. The recovery of energy from the combustion of waste forms an important element of waste management strategies in England. Furthermore, the ability to generate an increased amount of electricity without change to the design of the Consented K3 Facility is an additional benefit, as is the potential to generate that amount without necessarily increasing the throughput of waste feedstock. The adverse impacts as a result of increase in throughput are considered separately.

6.2.12. Although there are marked uncertainties as to what if any net carbon benefit would be achieved by comparison to other forms of waste management, it is reasonable to assume

that it would perform better in Greenhouse Gas (GHG) emission terms than had it not been linked to an integrated CHP facility to serve the adjoining DS Smith Paper Mill. This is a further positive benefit that would align with the aspirations of NPS EN-1 and EN-3.

Project WKN

6.2.13. Although the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, the generation of up to 42MW of electricity would be in accordance with those national policies and would be a benefit as such. As a fossil fuel generated supply, it could be brought online quickly when demand is high and shut down when demand is low, but the supply generated is not significantly high and the benefits would therefore be limited.

6.2.14. The economic impacts of the Proposed Development would be an additional acknowledged benefit, principally in the form of the anticipated job creation of up to 482 staff during the construction period and between 35 to 49 staff once the WKN Proposed Development is operational and would be a positive factor in support of the WKN Proposed Development.

6.2.15. Achievement of R1 recovery status is not guaranteed and would only be a positive factor insofar as the SoS considers it likely that R1 status would be achieved. The energy produced from the biomass fraction of waste is regarded as renewable under EN-3 although there is uncertainty as to the proportion of waste fuel that would be derived from this component.

6.2.16. However, recognising that EfW facilities have an important role to play in waste management, the key important and relevant matter contained in the relevant NPSs as far as concerns the WKN Proposed Development, is under EN-3: whether, with reference to the relevant waste strategies and plans, the proposed waste combustion generating station would be in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England.

6.2.17. I find on this issue that, as described in Chapter 4 and summarised further below, it has not been demonstrated that there is a need for the Proposed Development having regard to the WPA's Need Assessments and other evidence that has underpinned the formulation of KCC's revised development plan. The statutorily adopted development plan and relevant policies discussed, form part of the overall planning system adverted to in NPS EN-3, the role of which is to identify the types of infrastructure needed in the places where it is acceptable in planning terms.

Conformity with the Development Plan

6.2.18. As a preliminary matter it should be noted that it is likely that a final decision on adoption of the changes proposed by the EPR will have been taken by KCC at some point after the close of the Examination (see p2 KCC Closing Statement [REP8-016] which referred to its proposed meeting on 10 September 2020). Therefore, the SoS may wish to consider whether to confirm with KCC whether the changes discussed in this Report have been incorporated into the development plan and have now attained the same status as other development plan policies.

6.2.19. Both the K3 and the WKN Proposed Development would be in conflict with fundamental policies of the development plan, namely KMWLP Policy CSW6 which requires it to be: “demonstrated that waste will be dealt with further up the hierarchy... and where such uses are compatible with the development plan” and Policy CSW7 which would be permissive of new capacity to manage waste “provided that: 1. it moves up the Waste Hierarchy”.

6.2.20. In addition, KMWLP Policy CSW4 as revised through the EPR, incorporates revised targets for management of waste in Kent, however waste recovery capacity is sufficiently met by the Consented K3 Facility and the EfW facility at Allington, and there is no proven need for the plant to be located in Kent. This presents a serious risk of prejudice to the principles of proximity and net self-sufficiency which underpin Policy CSW4, and the wider regional strategy in SEWPAG's Memorandum of Understanding (MoU)/“Statement of Common Ground” would clearly be undermined through any significant increase in the capacity gap located in Kent.

6.2.21. The weight attached to the harm thereby caused is however assessed in light of the specific circumstances pertaining to each of the two projects. The increased capacity provided by the K3 Proposed Development would be markedly less than that of Project WKN.

...

Waste Hierarchy

6.2.25. The evidence underpinning KCC's revised development plan policies which was independently compiled, points to a capacity gap which at both the upper and lower ranges of estimates, produces a negative level of need to manage waste fuel available in Kent, even taking into account the capacities of the Proposed Development. This would be contrary to the Waste Needs Assessment produced by KCC to support the EPR

which has now been found sound by the examining Inspector. This evidence base found no need exists in Kent for additional capacity for the Plan period.

6.2.26. Therefore the Proposed Development would be in conflict with KMWLP Policy CSW6 which requires it to be: “demonstrated that waste will be dealt with further up the hierarchy... and where such uses are compatible with the development plan” and Policy CSW7 “provided that: 1. it moves up the Waste Hierarchy”.

6.2.27. However, although the Applicant’s position is that both Project K3 and Project WKN are important, relevant and appropriate infrastructure projects that would meet net zero emissions goals and ensure waste is managed efficiently, there are differences between the two. Project K3 is a CHP facility, connected to the Kemsley Paper Mill with the benefits of increased heat export. That the WKN Proposed Development would provide a sustainable source of steam/heat to local customers for industry and housing within the area is uncertain as there is no clear agreement with any customer for this purpose, except perhaps arguably with DS Smith for the very limited occasions when K3 is undergoing maintenance.

6.2.28. Therefore, whilst the benefits of co-location of both facilities to provide steam to the paper mill, remain unclear, increased weight should be given to the K3 Proposed Development in this respect.

6.2.29. The need for infrastructure covered by NPS EN-3 is assumed and must be accorded significant weight. Further, the increased capacity provided by the K3 Proposed Development would be a more modest increase than that of Project WKN, therefore the risk of prejudice to the principles of proximity and net self-sufficiency in local and regional strategies and plans is reduced. The ability to generate additional electricity without change to its design or increase in throughput would be an additional benefit.

6.2.30. As to the WKN Proposed Development, the generation of 42MW electricity would be a benefit having regard to the need for all types of infrastructure set out in NPS EN-1, although the energy generated would be partially renewable at best.

6.2.31. However, the Applicant has not provided a robust argument that justifies a concentration of a new waste management facility that would increase the capacity gap at this time. Although put forward as a regional facility, given that the waste recovery capacity is well catered for by the Consented K3 Facility and the EfW facility located at

Allington, there is no proven need for the plant to be located in Kent. An alternative location outside Kent where the heat produced can be more effectively utilised, would appear to better serve the strategic purposes of member authorities of SEWPAG in order to comply with the aims set out in their respective WLPs, and in particular the KMWLP.

6.2.32. Therefore, I find that the WKN Proposed Development would be inconsistent with the KMWLP and EPR. Such a finding would be in accordance with upholding the role of the planning system as found in NPS EN-1 to provide a framework which permits construction of what Government as well as the market identify as the type of infrastructure needed “in the places where it is acceptable in planning terms (paragraph 2.2.4).”

6.2.33. Further, the introduction of additional Other Recovery capacity of the scale proposed at this time with respect to the WKN Proposed Development would justifiably put at risk achievement of the revised recycling and composting targets in the revised KMWLP which would also be in conflict with National Planning Policy for Waste.

...

6.3. OVERALL CONCLUSIONS ON THE PLANNING BALANCE

...

Project K3

6.3.4. The public benefits of the Proposed Development can be identified in the context of NPS EN-1's recognition of the need for energy generating infrastructure and the presumption in favour of granting consent for energy NSIPs whilst recognising that Energy from Waste (EfW) facilities play a vital role in providing reliable energy supplies.

6.3.5. The potentially adverse impacts of Project K3 and the concerns raised in submissions on the application have been considered. The ES identifies that the practical effect of the K3 Proposed Development would have no significant effects from construction, operation and decommissioning activities on the environment, or that the potentially significant effects identified can be mitigated as far as practicable by the package of controls that are appropriately secured in the Recommended DCO.

6.3.6. I have found that, as with the WKN Proposed Development the Applicant has not provided a sufficiently robust assessment of fuel availability in relation to assessed

capacity in facilities for its treatment. Nevertheless, taking account of the positive benefits of Project K3 as described above, and mindful of the limited harms identified, I find that it would generally accord with the waste hierarchy and would be of an appropriate type and scale so as not to significantly prejudice the achievement of local or national waste management targets. Therefore, all harmful effects would be within the scope envisaged in the relevant NPSs as policy compliant.

6.3.7. In conclusion, I find that the identified harms in relation to the K3 Proposed Development would be outweighed by the benefits from the provision of energy to meet the need identified in NPS EN-1 and by the other benefits of the application as summarised above.

6.3.8. No HRA effects have been identified and there is no reason for HRA matters to prevent the making of the Order.

6.3.9. For the reasons set out in the preceding chapters and summarised above, I conclude that the K3 Proposed Development is acceptable, and that development consent should be granted therefor. This conclusion is taken forward in light of identified minor changes required to the DCO, described in Chapter 7 below.

Project WKN

6.3.10. Although the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, the generation of up to 42MW of electricity would be in accordance with those national policies and would be of some benefit. In addition, there would be some positive economic advantages through job creation during the construction and operational phases of the facility.

6.3.11. However, the prospect of Project WKN becoming a viable CHP facility is uncertain. The lack of a clear and immediate sustainable source of steam/heat to local customers contrasts unfavourably with Project K3. With no guaranteed heat offtake, the proposed incineration would not qualify as Good Quality CHP. In my view this is an important and relevant factor to weigh in the balance, not least having regard to the need to transition to a low-carbon electricity market, as underlined by the UNFCCC Paris Agreement and the June 2020 Progress Report which indicates that plants without CHP should not be regarded as supplying renewable energy.

6.3.12. Moreover, the Applicant's assessment of fuel availability in relation to assessed capacity for its treatment, compares unfavourably with the Waste Planning Authority's

own assessments of need and capacity that underpin its strategy in revising targets within the KMWLP which aim to ensure that new facilities demonstrate that waste will be dealt in a manner that clearly moves its management further up the waste hierarchy. Therefore, the WKN Proposed Development would be in conflict with key policies of KMWLP including Policy CSW4, Policy CSW6 and Policy CSW7.

6.3.13. I have had regard to the other benefits of the WKN Proposed Development set out by the Applicant that may comply with other provisions of the development plan including both the Swale Local Plan and KMWLP. However my conclusion is that the provision of too much waste capacity in conflict with the waste hierarchy, represented by the WKN Proposed Development, is a serious conflict that would result in conflict with the development plan as a whole, the adverse impacts arising from which in my view would clearly outweigh the benefits of the facility.

6.3.14. It would also be in conflict with National Planning Policy for Waste (NPPW) which expects applicants to demonstrate that waste disposal facilities not in line with the Local Plan, would not undermine its objectives through prejudicing movement up the waste hierarchy. The WKN Proposed Development is a non-NSIP proposal and where the NPSs do not apply as such, the more recent NPPW that sets out detailed waste planning policies should in my view carry considerable weight.

6.3.15. I have had regard to NPS EN-1 at paragraph 5.2, that CO₂ emissions are not reasons to place more restrictions on projects in the planning policy framework than are set out in the energy NPSs. However, as I have found that there is no need for the WKN Proposed Development, the GHG emissions would be an additional harm that would result, whether or not a conclusion could have been reached as to any net carbon benefit that would result.

6.3.16. To conclude, I find that the identified harms in relation to the WKN Proposed Development would outweigh its benefits from the provision of energy and by the other benefits of the application as summarised above.

6.3.17. For the reasons set out in the preceding chapters and summarised above, I therefore conclude that the WKN Proposed Development should not proceed at this time, and that development consent should not be granted, therefore.

6.3.18. However, should the SoS consider that the advantages of Project WKN outweigh the harm caused by the adverse effects as I have described, and is minded to grant consent, then

consideration should be given to the Alternative Recommended DCO set out at Appendix E, which is the subject of minor changes required to the Applicant's Preferred DCO, and as described in Chapter 7 below."

24. In the light of these conclusions the ExA's recommendation was that a DCO should be granted in respect of the K3 proposal, but that the WKN proposal ought to be refused.
25. On 19th February 2021, having considered the report of the ExA the defendant issued his decision. Having set out the provisions of sections 104 and 105 of the 2008 Act and the approach taken to them by the ExA the defendant observed as follows:

"4.6 The Secretary of State takes the view that the Application should be treated as a whole and determined under section 104 of the Planning Act 2008. This section, and section 105 would seem to be mutually exclusive and it would not be correct to determine different parts of the Application under different provisions. It is also noted that WKN is a type of generating station which would generally fall to be considered under EN-3 had it met the 50MW threshold by itself and was directed into the Planning Act regime on the basis of its combined significance with the WK3 project. In any event, the Secretary of State does not consider that determining the whole application under section 104 has a material impact on the overall outcome in this case. Section 104(2)(d) of the 2008 Act enables the Secretary of State to give consideration to any important and relevant matters appropriate to this aspect of the application as fully considered by the ExA."

26. In relation to the waste hierarchy and fuel availability the defendant set out a summary of the issues considered by the ExA, and then provided a summary of the ExA's conclusions together with the conclusions of the defendant as follows:

"Wheelabrator Kemsley K3 [ER.4.10.139 et seq]

4.18 While Kent County Council submits that there is no need in Kent for additional waste capacity for the period of the Kent Minerals and Waste Local Plan (up to 2030) and that neither WK3 nor WKN should benefit from the National Policy Statements' presumption in favour of energy development infrastructure, the Applicant submits that both projects are important and relevant to meeting a number of critical national needs including on net zero and waste management. The ExA notes that WK3 would, in addition to generating electricity, also provide steam and heat to local customers which is a factor in its favour. The ExA's overall conclusion is that the need for WK3 should carry significant weight in the decision-making process and the small increase in the proposed generating capacity with related increase in waste throughput would not

prejudice the principles of sourcing waste locally and aiming for self-sufficiency.

Wheelabrator Kemsley North [ER 4.10.142 et seq]

4.19 The project would contribute 42MW of electricity to the electricity grid. Whilst noting this, the ExA states that the Applicant has not provided robust arguments to support the new plant and that there is no proven need for it to be located in Kent. WKN would be inconsistent with the Kent Mineral and Waste Local Plan and the revisions to it that were the result of the ‘Early Partial Review’ carried out on the Plan. (The Early Partial Review is an independent report carried out by the Planning Inspectorate which checks whether local plans are ‘sound’.) The ExA considered that WKN did not accord with paragraph 2.5.70 of NPS EN-3 as it was not in compliance with the Kent Minerals and Waste Local Plan and there was no evidence provided as to why an exception should be made. Following on from that, WKN would not satisfy the statement in paragraph 2.2.4 of NPS EN-1 that the planning system should provide a framework which permits the construction of the infrastructure needed in the place where it is acceptable in planning terms. Finally, the ExA noted that WKN would be in conflict with the National Planning Policy for Waste because it would put at risk the achievement of revised recycling and composting targets in the Kent Minerals and Waste Local Plan.

4.20 The Secretary of State sees no reason to disagree with the ExA’s conclusions in this matter.”

27. The decision then records the defendant’s conclusion that in relation to the various environmental and infrastructural issues considered by the ExA there was no reason to depart from the ExA’s conclusions, nor any new information which justified a different approach. The defendant’s decision then turns to the consideration of the planning balance and the conclusions of the defendant in that respect are set out as follows:

“6. The Secretary of State’s Consideration of the Planning Balance

6.1 All nationally significant energy infrastructure developments will have some potential adverse impacts. In the case of WK3 and WKN, most of the potential impacts have been assessed by the ExA as being acceptable subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely. As set out above, the ExA determined that consent should be granted for WK3 only. The adverse impacts for the WK3 project did not outweigh the significant weight attaching to the need case established by the National Policy Statements.

6.2 However, the ExA's consideration of all the issues, particularly in respect of arguments about where the incineration of waste stood in the waste hierarchy and how this related to adopted policies in relevant local plans, led to the conclusion that WKN, while offering some benefits (particularly from the 42MW of electricity that would be generated), did not accord with the relevant provisions in the National Policy Statements, the National Planning Policy Framework and in relevant local plans. The ExA recommended, therefore, that WKN should not benefit from the grant of consent.

6.3 As set out in above, sections 104 and 105 of the Planning Act 2008 set out the procedures to be followed by the Secretary of State in determining applications for development consent where National Policy Statements have and do not have effect. In both cases, the Secretary of State has to have regard to a range of policy considerations including the relevant National Policy Statements and development plans and local impact reports prepared by local planning authorities in coming to a decision. However, for applications determined under section 104, the primary consideration is the policy set out in the National Policy Statements, while for applications that fall to be determined under section 105, it is local policies which are specifically referenced although the National Policy Statements can be taken into account as 'important and relevant considerations'.

6.4 The Secretary of State adopts a different approach to the ExA's in this matter and is of the view that the whole application (including the benefits and impacts of WKN) fall to be considered under section 104 of the Planning Act 2008. This means that in the consideration by the Secretary of State, more weight has been given to the National Policy Statements. However, the Secretary of State does not consider that this different approach to the planning process results in a different conclusion to that reached by the ExA, namely that development consent should not be granted for WKN and that the benefits of WKN are outweighed by the non-compliance with policies elsewhere, in particular, the policies regarding compliance with the NPS EN-1 and the policies referencing both the waste hierarchy and local waste management plans in NPS EN-3.

6.5 The determination of applications for development consent for nationally significant infrastructure projects is a balancing exercise and the weight afforded to different elements of the matrix of impacts and benefits may affect the overall conclusion. The ExA identifies that there are undoubtedly concerns that WKN would have adverse impacts on local and

regional targets for moving waste up the waste hierarchy. As noted, the ExA has had regard to these matters in framing its recommendation. However, the Secretary of State is not bound to follow that recommendation if he feels that the evidence presented to him can support a different conclusion.

6.6 The Secretary of State has considered the arguments in the ExA Report together with the strong endorsement of developments of the type that is the proposed Development. He notes the ExA's comments that WK3's anticipated provision of steam to nearby industrial facilities are a further benefit in its favour. He considers that the overall planning balance supports the grant of consent for the increase in generating capacity and an increase in waste-fuel throughput at WK3. As noted, whilst taking a different approach to the application of sections 104 and 105 of the Planning Act 2008 and consequently to the application of the planning balance in considering WKN, the Secretary of State nevertheless agrees with the ExA's conclusion that even though there are benefits from WKN, these do not outweigh the adverse impacts. The Secretary of State does not, therefore, consider that development consent should be granted for WKN."

28. The ultimate decision of the defendant was, therefore, that although he approached the decisions on the basis that section 104 of the 2008 Act applied to both the elements of the application, as distinct from the approach taken by the ExA (namely that K3 fell to be assessed under section 104 of the 2008 Act and WKN fell to be considered under section 105 of the 2008 Act), the substance of the decision which he reached would be the same, namely that a DCO should be granted for K3 but refused for WKN.

The Proceedings

29. The claimant brought these proceedings within the prescribed timescales and challenged the defendant's decision on the basis that, having correctly concluded that the application should be determined under section 104 because sections 104 and 105 of the 2008 Act were mutually exclusive, the defendant had failed to appreciate the fundamental difference that this made to decision-making, and ought to have unpicked the conclusions of the ExA prior to seeking to reach his own decision within the context of a different statutory framework. In particular, the decision failed to give effect to the conclusion that section 104 applied to the application as a whole in a variety of ways, which included a failure to properly reflect the presumption in favour of granting consent to applications falling within section 104 which accorded with NPS policies, in particular in the event of conflict with development plan policies. Other instances of the differences between the decision-making frameworks of sections 104 and 105 of the 2008 Act were also relied upon.
30. Four grounds of challenge were, and still are, advanced. Ground 1 is the failure to give proper effect to section 104 in the decision-making process and, in particular, the failure to give primacy to the relevant NPSs in accordance with section 104(3). It is alleged that the defendant allowed the primacy of the NPSs to be overtaken by the

application of the development plan's policies as an important and relevant consideration: the adoption of the conclusions of the ExA in their entirety, which were predicated upon primacy of the development plan policies not the NPS, demonstrates the defendant's error in this respect.

31. Ground 2 is the contention that the defendant failed to determine whether or not the WKN proposal complied with the NPSs judged as a whole, in particular, again, by adopting the ExA's conclusions which were made in the context of section 105 of the 2008 Act, without considering any conflict with the NPSs which the ExA found in the light of the section 104 duty to consider whether the application was in accordance with the NPS "judged as a whole". Ground 3 is the failure of the defendant to give adequate reasons in the context of his disagreement with the ExA. Ground 4 is the contention that the defendant failed to comply with the requirements of fairness: in the light of the fact that the defendant was proposing to make a decision on a different statutory footing to that which had been reached by the ExA, it was incumbent upon him to go back to the parties and invite their comments on the effect of such a change of approach.
32. In responding to the claim the defendant, having reflected on the position, concluded that the better view was that section 105 of the 2008 Act applied to WKN rather than section 104 and, therefore, that these sections were not mutually exclusive. In effect, therefore, the defendant conceded that he was at least arguably wrong in law to have solely applied section 104 of the 2008 Act to the whole application, and the approach of the ExA to these provisions was correct. However, the defendant went on to submit that this was not a material error of law, because in reality whilst the defendant had given more weight to the NPSs than the ExA in favour of the WKN proposal and the consideration of need, there was nothing to suggest that the defendant had in fact directly applied the policy provisions from NPS EN-1 or EN-3 to the WKN proposal, and therefore he had undertaken a lawful exercise in planning judgment. Further, it was submitted by the defendant that any legal error that may have occurred did not cause the claimant any prejudice and no relief should be granted as a matter of discretion. Further detailed submissions were advanced in relation to the claimant's grounds which it is unnecessary to rehearse fully at this point in the judgment.

The Law

33. The 2008 Act established a bespoke statutory code for addressing the granting of consent to certain types of project identified as NSIPs. It is an essential feature of the 2008 Act that a key part of the process for considering NSIPs is, as will have been gathered from the facts of the present case, the designation of NPSs. Section 5 of the 2008 Act gives power to the defendant to designate an NPS for the purposes of the 2008 Act if it is issued by the defendant and "sets out national policy in relation to one or more specific descriptions of development". Section 5(3) provides that prior to the designation of a statement as an NPS the defendant must carry out a sustainability appraisal of it, and section 5(4) provides that both specified consultation requirements and Parliamentary endorsement, in the form of the statement being approved by the House of Commons, have to be complied with prior to it being designated. Section 5(5) provides that an NPS may, in particular, set out in respect of a particular description of development "the amount, type or size of development of that description which is appropriate nationally or for a specified area".

34. NSIPs are defined by section 14 of the 2008 Act, and for present purposes they include, by virtue of section 14(1)(a), a project consisting of “the construction or extension of a generating station” and, by virtue of section 15(1)(c) such a project achieves NSIP status if the generating station when constructed or extended is expected to have a capacity of more than 50MW. Section 31 of the 2008 Act provides that consent under the 2008 Act is required for development to the extent that it is, or forms part of, an NSIP.
35. As set out above, the defendant made a direction under section 35 of the 2008 Act in relation to the WKN proposal. Section 35 of the 2008 Act provides as follows:

“35 Directions in relation to projects of national significance

- (1) The Secretary of State may give a direction for development to be treated as development for which development consent is required. This is subject to the following provisions of this section and section 35ZA.
- (2) The Secretary of State may give a direction under subsection (1) only if –
- (a) the development is or forms part of –
- (i) a project (or proposed project) in the field of energy, transport, water, water waste or waste, or
- (ii) a business or commercial project (or proposed project) of a prescribed description,
- (b) the development will (when completed) be wholly in one or more of the areas specified in subsection (3), and
- (c) the Secretary of State thinks the project (or proposed project) is of national significance, either by itself or when considered with –
- (i) in a case within paragraph (a)(i), one or more other projects (or proposed projects) in the same field;
- (ii) in a case within paragraph (a)(ii), one or more other business or commercial projects (or proposed projects) of a description prescribed under paragraph (a)(ii).”

36. Sections 104 and 105, as alluded to above, relate to the approach to be taken to decisions where an NPS has effect (when section 104 provides the decision-making framework) and where no NPS has effect (where section 105 provides the decision-making framework). These sections, so far as material to the issues in the present case, provide as follows:

“104 Decisions in cases where national policy statement has effect

- (1) This section applies in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates.
- (2) In deciding the application the Secretary of State must have regard to –
 - (a) any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”),
 - ...
 - (b) any local impact report (within the meaning given by section 60(3) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),
 - (c) any matters prescribed in relation to development of the description to which the application relates, and
 - (d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State’s decision.
- (3) The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.
- (4) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.
- (5) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment.
- (6) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.
- (7) This subsection applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits.
- (8) This subsection applies if the Secretary of State is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

...

105 Decisions in cases where no national policy statement has effect

(1) This section applies in relation to an application for an order granting development consent (if section 104 does not apply in relation to the application).

(2) In deciding the application the Secretary of State must have regard to –

(a) any local impact report (within the meaning given by section 60(3) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),

(b) any matters prescribed in relation to development of the description to which the application relates, and

(c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.”

37. The effect of the statutory provisions is to create a separate statutory regime in relation to certain identified types of project, freestanding from other statutory regimes of development control. Projects that are within the scope of the regime created by the 2008 Act require a DCO before they can be implemented. As set out above, a key feature of the regime created by the 2008 Act is the NPS, a form of policy designated pursuant to a specific statutory process which includes Parliamentary approval. The NPS is key to the 2008 Act's regime, as NPSs play an important role in the determination of applications for NSIPs. As Holgate J observed in paragraph 46 of his judgment in *R (Client Earth) v Secretary of State for Business, Energy and Industrial Strategy* [2020] EWHC 1303 (Admin); [2020] PTSR 1709, the content and merits of an NPS are the responsibility of the defendant who, in that connection, is accountable to Parliament. The statutory process of designation, alongside the statutory prescription of those matters which may be part of an NPS, underline the national character of such policy statements.
38. An important part of the significance of the NPS is the role that it plays under section 104 of the 2008 Act in the determination of DCO applications in respect of applications for which the NPS has effect. By virtue of section 104(2) the defendant “must have regard” to any NPS which has effect in relation to the development. As Holgate J observed in paragraph 48 of *Client Earth*, section 104(3) goes further in requiring that the defendant “must decide the application in accordance with any relevant national policy statement except to the extent that one or more of subsections (4) to (8) applies”. As was observed in the claimant's submissions, this decision-making framework is akin to that created in relation to planning permissions by section 38(6) of the Planning and Compulsory Purchase Act 2004. Obviously, in the context of the 2008 Act's regime there are the specific caveats contained within section 104(4) to (8), but the claimant was correct to observe that section 104(3)

creates a form of presumption in favour of a DCO which is in accordance with relevant NPSs.

39. In addition to these matters it is also to be noted that in the case of *R (Gate) v Secretary of State for Transport* [2013] EWHC 2937 (Admin) Turner J observed in relation to a challenge to a highway scheme for which there was no directly relevant NPS that, as a matter of the statutory construction of section 105(2)(c) of the 2008 Act, as well as common sense, a decision-maker is not precluded from taking into account matters incorporated within an NPS in determining an application to which section 105 applies, so long as they are both important and relevant to the decision under consideration. Turner J found there had been no legal error in that case arising from the ExA referring to NPSs in respect of ports and nuclear power generation where both a port and two nuclear power stations were matters of relevance to the decision being made (see paragraphs 55 to 58 of the judgment).
40. In relation to the claimant's grounds with respect to the defendant's reasons, it is to be noted that section 116 of the 2008 Act creates a requirement for the defendant to provide reasons when making a decision on a DCO application. In respect of the quality of those reasons, the claimant relies upon the well-known summary of the applicable legal principles contained within the speech of Lord Brown at paragraphs 35-36 in *South Bucks DC v Porter (No 2)* [2004] UKHL 33; [2004] 1 WLR 1953.
41. Turning to the requirements of fairness, whilst it is to be noted that a duty to reconsult the parties is provided by rule 19 of the Infrastructure Planning Examination Procedure Rules 2010, the circumstances giving rise to that duty do not apply in the present case, as the difference from the ExA arising in the defendant's decision did not relate to either a matter of fact, or any new evidence or new matter of fact, which gave rise to the defendant's reasons for disagreeing with the ExA. Rather, the claimant relies upon the principles of fairness within a process of this kind which was set out by the Court of Appeal in the case of *Hopkins Developments Ltd v SSCLG* [2014] EWCA Civ 470; [2014] PTSR 1145, in particular at paragraph 62.

Relevant Policy

42. There are two NPSs that are particularly relevant for the purposes of these proceedings. The first is EN-1, entitled Overarching National Policy Statement for Energy. It is important to appreciate that the document was published in July 2011, at which time the arrangements under the 2008 Act for decision-making were different from those at present. The version of the 2008 Act in force at that time provided that decisions on NSIPs were to be examined and determined by the Infrastructure Planning Commission ("the IPC"). The NPS notes at paragraph 1.3.1 that at the time of it being designated there were proposals in what was then the Localism Bill (which subsequently became the Localism Act 2011) proposing to abolish the IPC. Prior to the reforms of the Localism Act 2011, decisions where NPSs had effect were determined by the IPC pursuant to section 104 of the 2008 Act; where decisions were taken in relation to projects where there was not a designated NPS having effect, the decisions pursuant to section 105 of the 2008 Act were taken by the defendant. The reforms brought both types of decisions before the defendant for determination. Against that background, in paragraph 1.1.1 of the NPS it explains that the NPS has effect "on the decisions by the Infrastructure Planning Commission (IPC) on applications for energy developments that fall within the scope of the NPSs". At

paragraph 1.4.1 the NPS explains that it is part of a suite of NPSs dealing with energy and climate change. At paragraph 1.4.2 the NPS points out that the Act empowered the IPC to examine applications and make decisions on NSIPs in relation to energy generating stations generating more than 50MW of power which were onshore. This NPS is therefore only of application to proposals falling within the statutory definition of an energy NSIP.

43. Part 4 of EN-1 sets out Assessment Principles. In particular, so far as relevant to the present decision, these principles are expressed as follows:

“4.1.2 Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the IPC should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008 referred to at paragraph 1.1.2 of this NPS.

...

4.1.5 The policy set out in this NPS and the technology-specific energy NPSs is, for the most part, intended to make existing policy and practice of the Secretary of State in consenting nationally significant energy infrastructure clearer and more transparent, rather than to change the underlying policies against which applications are assessed (or therefore the “benchmark” for what is, or is not, an acceptable nationally significant energy development). Other matters that the IPC may consider both important and relevant to its decision-making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure.”

44. The other relevant NPS is EN-3 which is entitled National Policy Statement for Renewable Energy Infrastructure. This was designated in July 2011 at the same time as EN-1. In paragraph 1.2.1 of the document it explains that this NPS, alongside EN-1, provides “the primary basis for decisions of the Infrastructure Planning Commission (IPC) on applications it receives for nationally significant renewable energy infrastructure”. That relationship is emphasised in paragraph 1.3.1 in terms of the need and urgency for new energy infrastructure to be consented in order to make a contribution to sustainable development and to mitigate and adapt to climate change. EN-1 noted the need for specific technologies including the infrastructure to which EN-3 relates. At paragraph 1.8.1 the NPS points out that it covers renewable energy projects such as energy from biomass and/or waste in excess of 50MW. At paragraph 1.8.2 the NPS states that it “does not cover other types of renewable energy generation that are not at present technically viable over 50MW onshore”. Paragraph 2.1.2 observes that reading EN-3 and EN-1 together, the position for the IPC is that

they “should act on the basis that the need for infrastructure covered by this NPS has been demonstrated”.

45. Amongst the matters covered by the NPS in relation to biomass/waste impacts is the issue of waste management. The NPS notes that waste combustion generating stations need not disadvantage reuse or recycling initiatives where the proposed development accords with the waste hierarchy. In this connection it provides the following in relation to IPC decision-making:

“2.5.70 The IPC should be satisfied, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England and local, regional or national waste management targets in Wales. Where there are concerns in terms of a possible conflict, evidence should be provided to the IPC by the applicant as to why this is not the case or why a deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy.”

46. In terms of development plan policy, as noted above, reference in the decision-making process was made to the Kent Minerals and Waste Local Plan 2013-2030 which was adopted in September 2020 in an amended form as a result of the EPR process. Particular reference within the decision-making process was made to policies CSW6 and CSW7 which provide as follows:

“Policy CSW 6

Location of Built Waste Management Facilities

Planning permission will be granted for proposals that:

- a. do not give rise to significant adverse impacts upon national and international designated sites, including Areas of Outstanding Natural Beauty (AONB), Sites of Special Scientific Interest (SSSI), Special Areas of Conservation (SAC), Special Protection Areas (SPAs), Ramsar sites, Ancient Monuments and registered Historic Parks and Gardens. (See Figures 4, 5 & 6).
- b. do not give rise to significant adverse impacts upon Local Wildlife Sites (LWS), Local Nature Reserves (LNR), Ancient Woodland, Air Quality Management Areas (AQMAs) and groundwater resources. (See Figures 7, 8, 10 & 15)
- c. are well located in relation to Kent's Key Arterial Routes, avoiding proposals which would give rise to significant numbers of lorry movements through villages or on unacceptable stretches of road.

- d. do not represent inappropriate development in the Green Belt.
- e. avoid Groundwater Source Protection Zone 1 or Flood Risk Zone 3b
- f. avoid sites on or in proximity to land where alternative development exists/has planning permission or is identified in an adopted Local Plan for alternate uses that may prove to be incompatible with the proposed waste management uses on the site.
- g. for energy producing facilities - sites are in proximity to potential heat users.
- h. for facilities that may involve prominent structures (including chimney stacks)- the ability of the landscape to accommodate the structure (including any associated emission plume) after mitigation.
- i. for facilities involving operations that may give rise to bioaerosols (e.g. composting) to locate at least 250m away from any potentially sensitive receptors.

Policy CSW 7

Waste Management for Non-hazardous Waste

Waste management capacity for non-hazardous waste that assists Kent in continuing to be net self-sufficient while providing for a reducing quantity of London's waste, will be granted planning permission provided that:

1. it moves waste up the hierarchy,
2. recovery of by-products and residues is maximised
3. energy recovery is maximised (utilising both heat and power)
4. any residues produced can be managed or disposed of in accordance with the objectives of Policy CSW 2
5. sites for the management of green waste and/or kitchen waste in excess of 100 tonnes per week are Animal By Product Regulation compliant (such as in vessel composting or anaerobic digestion)
6. sites for small-scale open composting of green waste (facilities of less than 100 tonnes per week) that are located within a farm unit and the compost is used within that unit.

Where it is demonstrated that waste will be dealt with further up the hierarchy, or it is replacing capacity lost at existing sites, facilities that satisfy the relevant criteria above on land in the following locations will be granted consent, providing there is no adverse impact on the environment and communities and where such uses are compatible with the development plan:

1. within or adjacent to an existing mineral development or waste management use
2. forming part of a new major development for B8 employment or mixed uses
3. within existing industrial estates
4. other previously developed, contaminated or derelict land not allocated for another use
5. redundant agricultural and forestry buildings and their curtilages

Proposals on greenfield land will only be permitted if it can be demonstrated that there are no suitable locations identifiable from categories 1 to 5 above within the intended catchment area of waste arisings. Particular regard will be given to whether the nature of the proposed waste management activity requires an isolated location.”

Submissions and Conclusions

47. As set out above, the claimant’s ground 1 is the contention that the defendant failed to properly apply section 104 of the 2008 Act. As will be apparent from the history of both the decision-making and also the submissions in these proceedings, there is clearly a preliminary issue arising in relation to the question of whether or not section 104 and section 105 of the 2008 Act are mutually exclusive, or whether it is appropriate, as the ExA did, to apply those sections differentially where there are two freestanding and distinct projects within the scope of a single application for a DCO and the NPSs apply to one of those projects but not the other.
48. The claimant contends that, in principle, the defendant was correct in making his decision by applying section 104 of the 2008 Act to the application as a whole. The claimant advances this position on the basis of two principal lines of argument. The first is that the mutual exclusivity arises from the specific language of the statute. Both section 104 and section 105 of the 2008 Act refer to those sections applying “in relation to an application for an order granting development consent” (emphasis added). Thus, it is clear from the language of the legislation itself that where there is an application for which the NPS has effect it is to be decided within the section 104 framework.
49. Furthermore, the claimant submits that this language is to be contrasted with the language of section 14 of the 2008 Act which defines an NSIP in terms of being “a

project”, consisting of one of the types of infrastructure identified within section 14(1). The selection of the word “application” in section 104 and 105 of the 2008 Act is clear and deliberate, and has the effect of attracting the section 104 decision-making framework to applications like the present where there is more than one free-standing development or proposal comprised within the same application, albeit that one of those projects or developments is not one which falls within the definition of an NSIP for which an NPS has effect.

50. The second line of argument pursued by the claimant places reliance upon the section 35 direction which was given in the present case. The claimant submits that when section 35 of the 2008 Act provides that the defendant “may give a direction for development to be treated as development for which development consent is required” this is in the first place a reference back to section 31 of the 2008 Act, which provides as follows:

“31 When development consent is required

Consent under this Act (“a development consent”) is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.”

51. The claimant contends that when section 35(1) of the 2008 Act describes the effect of the direction as being that development subject to the direction is “to be treated as development for which development consent is required” it means what it says. In other words, the effect of the section 35 direction is to lift the development proposed into section 31, and thereafter to bring it within scope of section 104 of the 2008 Act, on the basis that it is to be treated as NSIP development. Thus, reading all of these provisions together, and observing the subtlety in the statutory language, where as here there are two projects falling within an application, and one of them falls within the definition of an NSIP, and the other does not but has been subject to a section 35 direction, then the application containing these two projects requires each of them to be determined applying the framework provided by section 104 of the 2008 Act.
52. Finally, the claimant contends that in effect the position for which the defendant argues reads words into section 104 of the 2008 Act, by treating it as if it included words to apply the provisions of section 104 to part only of an application.
53. As set out above, although the defendant disagreed with the ExA and approached his decision on the basis that sections 104 and 105 of the 2008 Act are mutually exclusive, the position which he now adopts is that the ExA was correct to apply section 104 and section 105 separately to the individual standalone proposals comprised within the application. The analysis presented in the defendant’s submissions commences from the observation that the 2008 Act creates a specific and bespoke statutory framework for approving particular kinds of development within what was intended to be a streamlined process of determination. A key feature of this bespoke statutory framework is the NPS which, pursuant to the broadly drafted provisions of section 5 of the 2008 Act, is specified in advance and has a special status and a particular process to produce it including Parliamentary approval.
54. Against this background the defendant submits, firstly, that the starting point for addressing the question of whether section 104 applies is to examine whether an NPS

applies to the project which is being evaluated. In this case a clear policy choice was made in the designation of the NPS that it should only apply to projects fulfilling the statutory definition of an NSIP, and therefore that it cannot apply to the WKN proposal. Once that is understood, if section 104 of the 2008 Act were to be deployed to determine the WKN proposal this would have the effect, in practice, of expanding the application of the NPS to a scale of project for which it had never been intended. Such an approach would be quite inconsistent with the centrality of the NPS within the statutory framework devised by the 2008 Act. As noted above, the contents of an NPS are not open to question within the decision-making process, and that includes the thresholds adopted for the application of the NPS in the policy.

55. Furthermore, the defendant submits that the section 35 direction in the present case does not assist the claimant. When section 35 speaks of treating the proposal as an NSIP that does not and could not have the effect of altering the terms of the NPS policy framework and the choices which have been made in designating the scale of proposals to which it will apply: it cannot give rise to an assumption that the proposal is bigger than in fact it is. The reference to section 31 is also contended to be of no avail to the claimant. Sections 31 and 35 are in a different part of the 2008 Act, Part 4, to the part of the Act containing sections 104 and 105, namely Part 6, and the purpose of section 35 is simply to bring qualifying proposals for which a direction is granted within the 2008 Act's decision-making processes.
56. In short, the defendant submits that sections 104 and 105 of the 2008 Act are mutually exclusive on the basis that the language of section 104 precludes its application to a proposal such as WKN which does not fall within the scale of projects to which the NPS specifically applies. This is as a result of the clear intention to be derived from the structure of the 2008 Act which places the NPS at the heart of the statutory framework as well as ensuring that NPSs are only applied within their identified scope. The defendant submits that section 105(1) can, in the context of the intent of the statutory framework, be read more broadly as including "where" or "to the extent that" section 104 does not apply to the proposal and so as to be consonant with the statutory purpose.
57. In my view the ExA was correct in his approach to sections 104 and 105 of the 2008 Act in the context of the present proposals. Clearly there is no dispute, firstly, that it is possible to include more than one project or development within the same application for a DCO and, secondly, that the K3 Project was one for which the NPS had effect, and therefore to which section 104 applied. Whilst I can see the force in the submissions of the claimant in relation to the use of the word "application" in both sections 104 and 105, the use of this word needs to be understood in the context of the statutory framework as a whole.
58. To suggest that by incorporating a project in respect of which the NPS has no effect within an application for a separate free-standing project which does fall within the scope of an NPS it is possible effectively to enlarge the scope of the NPS so as to include a project to which it was not designed to apply would clearly run contrary to the overall statutory scheme. That overall statutory scheme places the NPS at the heart of the decision-making process, and prescribes specific procedures, including endorsement by Parliament, prior to its designation. The contents of the NPS cannot be questioned in the decision-making process: so much is made clear in sections such as section 106(1) which applies in the decision-making context, and which entitles the

defendant to disregard representations which “relate to the merits of policy set out in a national policy statement”. Similar provisions are contained in section 87(3) respecting like representations to the ExA, and section 94(8) in relation to like representations made at hearings. It would be inconsistent with the centrality of the NPS within the statutory decision-making framework for its scope to be enlarged and its provisions bypassed by the manner in which an application has been formulated.

59. Whilst specific circumstances of the kind presented by the application in the present case may not have been directly foreseen by those framing the 2008 Act, it is clear that the overarching approach of the legislation is that decisions should be reached in relation to proposals for development in respect of which an NPS has effect deploying the framework within section 104 of the 2008 Act, whereas proposals for development within the statutory framework’s decision-making process for which there is no applicable NPS having effect are to be decided pursuant to the framework provided by section 105 of the 2008 Act. Such an approach clearly reflects the language of section 104(1) which refers to an NPS having effect “in relation to development of the description to which the application relates”. It is less consistent with a literal reading of section 105(1), but when that text is placed in the context of the purpose and structure of the legislation as a whole, it is clear that section 105(1) should be interpreted as applying to those discrete elements of an application which comprise proposals for development for which no NPS which has effect. I accept the submission of the defendant that section 105 of the 2008 Act should be interpreted as applying to free-standing parts of an application to the extent that “section 104 does not apply in relation to the application”. Such an approach reflects the purpose and intent of the legislation without unduly disturbing the effect of the statutory language. Thus, the ExA was correct to take the approach which he did.
60. The question arises as to whether or not the section 35 direction which was made in relation to WKN has the effect of bringing it within the scope of the decision-making framework pursuant to section 104. In my view it does not. I am unable to accept the submission that the terms of section 35(1) have the effect of turning a project or development which does not fall within the definition of NSIPs provided within sections 14 and 15 of the 2008 Act into a project which has such a designation. The words “be treated as development for which development consent is required” simply have the effect of making the proposed development subject to the decision-making framework contained within the provisions of the 2008 Act. They do not change the understanding of the proposal as not being within the definition of an NSIP, any more than they change the physical nature of what is comprised within the development. More particularly, they cannot have the effect of altering the scope of an NPS which has been drafted specifically to apply only to those projects that are within the definition of an NSIP.
61. There are clear advantages of the 2008 Act incorporating a provision like section 35, both procedurally in terms of the economy of dealing with projects which are not NSIPs alongside those which are leading to more efficient decision-making, as well as enabling a project of national significance which does not fulfil the definition of an NSIP to take advantage of the DCO regime, for instance in the form of the exemptions from other consenting processes comprised within section 33 of the 2008 Act. It is pertinent to the understanding of the intention of section 35 that it appears in the same Part of the 2008 Act as section 31 and 33 which all refer to the requirement

for development consent, rather than that part of the Act containing sections 104 and 105 which deals with the processes of deciding applications.

62. The cross reference made by the claimant to section 31 of the 2008 Act does not assist. It is clear that the purpose of section 35 is not to make a project which is not and does not form part of an NSIP into an NSIP. Its purpose is more modest, namely to enable the defendant to bring within the scope of the 2008 decision-making framework projects which satisfy the requirements of section 35(2), and are of a particular type of infrastructure which either by themselves or when considered with other specified types of project are of national significance. They are then able to take advantage of the streamlined decision-making processes as well as the available exemptions from other consenting regimes.
63. In the light of these conclusions it is clear that the defendant clearly did misdirect himself when issuing his decision in relation to the WKN project in relation to the statutory framework for determining that part of the application which related to it. Section 104 did not apply to the WKN project, unlike the K3 project, and the defendant ought to have assessed the WKN project deploying the section 105 decision making framework. In the light of these conclusions, albeit contrary to the claimant's submissions on the preliminary issue, the clear outcome is that the defendant has reached a decision incorporating a misdirection and an error of law. The defendant, however, contends that the error of law is not material and that relief should be refused as a matter of discretion. These are matters which are returned to below, following consideration of the claimant's grounds.
64. To deal with the balance of ground 1, it is contended on behalf of the claimant that the defendant ought, in applying section 104, to have accorded primacy to the NPS, accepted that need had been demonstrated for the WKN and, to the extent necessary, have unpicked the conclusions of the ExA in order to reach a lawful decision. In effect, this ground is predicated on the basis that the defendant was right to apply the section 104 decision-making framework to the WKN project, but that he failed to faithfully apply that framework in practice. In reality, in the light of the conclusions in relation to the applicability of section 105 to the WKN project this ground no longer arises. The claimant's ground 2 is similarly predicated upon the WKN proposal needing to be evaluated against the decision-making framework in section 104 of the 2008 Act. For the reasons which have been explained that is not the case. There was no need for the presumption in favour of the proposal pursuant to section 104(3) to be applied, nor was the NPS the primary decision-making tool in the assessment of the application, against which the WKN proposal was required to be judged as a whole. Although within ground 2 the claimant complains that the defendant found a conflict with the waste hierarchy provisions of paragraph 2.5.70 (by adopting the ExA's conclusions in that regard) but failed to judge that conflict against the NPS taken as a whole, in the light of the conclusion that section 104 did not apply to the appraisal of the merits of the WKN proposal there is no substance in this criticism.
65. Turning to ground 3 the claimant's contentions in relation to the failure to give reasons relate, firstly, to the failure of the defendant, when purporting to consider the WKN proposal within the context of section 104, to properly analyse the weight to attach to the need established through the NPS for the electricity which it would generate and the benefit that would bring. Adoption of the ExA's conclusions, forged through the application of section 105 of the 2008 Act was inappropriate, and the

difference between the ExA and the defendant was not properly explained. Again, in the light of the conclusions reached as to the applicable decision-making framework these criticisms are to some extent moot. They are criticisms which do not arise since the defendant was wrong to have sought to reach his decision by solely applying the framework derived from section 104 of the 2008 Act.

66. Further criticisms of the reasons provided by the ExA, giving rise to errors on behalf of the defendant, relate to, firstly, what is said to be a muddling or conflation of the issues in relation to electricity generation and the waste hierarchy. The claimant contends that in the ExA's report, in particular for example at paragraphs 6.2.11 and following, the reasoning of the ExA conflates two separate issues, namely energy need on the one hand, and compliance with the waste hierarchy or the need for further waste facilities on the other. This muddling of the benefits arising from meeting the need for further sustainable energy generation, with the impact on the waste hierarchy of the proposal occurs again in paragraphs 4.18–4.20 of the defendant's decision to accept the conclusions of the ExA on these matters.
67. Having examined these paragraphs, and the ExA's report as a whole, I am not satisfied that there is any legitimate complaint in relation to the reasons that are provided by the ExA in connection with these issues. It is important, obviously, for the ExA's report to be read in its entirety. Further, both in paragraphs 6.2.13–6.2.17, 6.2.25–6.2.33 as well as in paragraphs 6.3.10–6.3.17, the conclusions of the ExA are clear in relation to the benefit to be recognised from the energy generated by the WKN proposal but also (and bearing in mind the differences in the increase in capacity between the K3 proposal and the WKN proposal) the impact of the WKN proposal upon the interests of the waste hierarchy. The reflection of these conclusions in the decision letter again clearly identifies the assessments in relation to electricity generation and impact on the waste hierarchy. The issues are not in my judgment muddled: it was necessary in terms of the applicable policy for the ExA and the defendant to form conclusions in relation to the benefits of energy generation as well as any impact on the waste hierarchy since both are material issues in relation to the operation of the proposed facility. Both the ExA and defendant undertook an analysis of these considerations and then brought them into their analysis of the planning balance. The conclusions arrived at in the decision-making process with respect to these issues are clearly spelt out. They are treated separately, as they should be and as the policy framework required, in the light of the fact that they are both individual elements of the overall planning appraisal as well as integrally related to the operation of the facility which is under consideration.
68. The second aspect of the reasoning with which the claimant takes issue is that pertaining to the dispute set out above in respect of waste arisings and the availability of fuel for the application proposals. It is contended on behalf of the claimant that there was a clear issue joined between itself and KCC in relation to the volumes of waste arising which fell to be considered when examining the availability of fuel for the proposal. It is said by the claimant that the ExA, and thereafter the defendant, provided no reasons which grappled with this difference in the figures, nor did the ExA or the defendant provide any understanding as to why the claimant's analysis of the waste arisings had been rejected.
69. I am unable to accept these criticisms. In my view the basis upon which the ExA reached his interconnecting conclusions about, firstly, the evidence in relation to

available waste as fuel, secondly, the conclusions to be drawn from this evidence as to the proposal's impact on the waste hierarchy and, therefore, thirdly, the relationship between the proposals and the policies of the EPR and NPS EN-3 at paragraph 2.5.70 are all clearly expressed. In respect of the competing positions as to volumes of waste, and the available capacity of additional waste fuel, paragraphs 4.10.122-4.10.132 of the ExA's report quoted above provide clearly articulated conclusions resolving the issues. The ExA explains why he prefers the KCC assessment, noting that the EPR inspector had accepted KCC's consultant's analysis as a sound evidence base for the revised plan. These paragraphs also explain the relationship between these conclusions and, alongside paragraphs 4.10.139-4.10.144, their impact in relation to the merits of the WKN project upon the interests of the waste hierarchy. Subsequent paragraphs within the ExA's analysis of the overall planning balance further reflect these conclusions and explain them. In my judgment this material is more than adequate to clearly explain the reasons for the ExA's conclusion that the KCC assessment was to be preferred to that of the claimant, as well as the further consequences for the assessment of the merits of the WKN project against the relevant planning policies.

70. Ground 4 is the contention that in the light of the difference between the approach of the ExA and that of the defendant, fairness required the defendant to return to the parties for submissions on the impact that this change of approach would have upon the decision-making process. In particular, the claimant contends that submissions would have been made on the primacy of the NPS within the section 104 decision-making framework, together with the establishment by the NPS of the need for the electricity which was being generated. Further submissions could have been made on matters covered by section 104(7) of the 2008 Act on how these issues should be weighed in the overall balance to determine the merits of the proposal.
71. In my judgment, the difficulty with this submission is that it is necessary for the claimant, in reliance upon the principles of procedural fairness set out in *Hopkins Developments Ltd*, to establish there has been any relevant or material prejudice as a result of the failure to reconsult. As set out above, there was no requirement pursuant to the 2010 Rules to revert to the parties in these circumstances. The reality is that all of the matters which the claimant contends would have been raised upon the matter being referred back to them are matters which were already before the defendant: the claimant had emphasised the importance of the benefits arising from electricity generation at the WKN proposal, and the importance of the policies contained in the NPS. In any event, these matters pertained to the application by the defendant of the section 104 decision-making framework which for the reasons already given was not the correct approach to reaching a decision in connection with the WKN proposal. I do not consider, therefore, that there is any substance in the claimant's ground 4.

Relief

72. The defendant contends that the claimant should be deprived of relief, in particular in relation to the quashing of the decision, either in so far as it relates to the WKN proposal, or in its entirety. In order to evaluate this submission, it is important to start with the error of law which has been identified. In this case the error of law is the application by the defendant of section 104 of the 2008 Act to both the K3 and WKN proposals whereas, in accordance with the findings set out above, the defendant should have applied section 105 of the 2008 Act to the WKN proposal. Since this is

an application for judicial review the framework for considering this submission is set out in section 31(2A) of the Senior Courts Act 1981, and amounts to the question of whether or not it was highly likely that the outcome would not have been substantially different.

73. The approach to this question has been the subject of consideration in a number of cases in recent years and it is important to observe that it sets a high threshold to be overcome before relief can be withheld. It is less strict than that which applies in statutory reviews which requires that the court be satisfied that the decision would have been the same (see *Simplex GE (Holdings) Limited v Secretary of State for the Environment* [2017] PTSR 1041), albeit as Coulson LJ observed in the recent case of *R (on the application of Hudson) v Royal Borough of Windsor and Maidenhead* [2021] EWCA Civ 592 at paragraph 80, the precise formulation of the test whether in the terms of the section 31(2A) test, or the alternative test derived from the *Simplex* case that the decision would inevitably have been the same, may not matter in practice, save in a very unusual case.
74. The court must be cautious about straying into assessing the merits of the application in evaluating this question, which is the reserve of the defendant as decision-maker. This point has been observed in several of the relevant authorities dealing with the discretion to withhold relief both under section 31(2A) and also the *Simplex* jurisdiction: see *SSCLG v South Gloucestershire Council* [2016] EWCA Civ 74 at paragraph 25 and *R(Plan B Earth) v Secretary of State for Transport* [2020] PTSR 1446 at paragraph 273 for instance. Obviously, the proper evaluation of the question posed by section 31(2A) is one which will vary from case to case and no single analysis will be capable of resolving all of the many scenarios which courts will have to address. In addressing the question in the present case I have found the following approach helpful.
75. As the *South Gloucestershire* case demonstrates, it is useful, firstly, to clearly identify the error of law infecting the decision, and secondly, those findings or elements of the decision-making process or of the decision itself which are untainted by illegality. This can then enable an analysis of the decision to be undertaken which properly tests the proposition that the decision would have been the same, or would not have been likely to be substantially different. The *South Gloucestershire* case is a helpful illustration of the necessary analysis: in that case the Inspector's error related to the absence of a five-year housing land supply, but Lindblom LJ was satisfied that so strong were the considerations in favour of the grant of permission that even had the Inspector taken into account, as he should have done, that the local planning authority could demonstrate a five-year housing supply, he would still have granted consent as he did in the decision under challenge: see paragraph 26 of the judgment in particular.
76. In considering these questions in relation to the present case it is important to observe, firstly, that the contentions of the claimant in relation to any error of law in the ExA's report have not been upheld. Secondly, in relation to the waste hierarchy and fuel availability, the Secretary of State adopted the ExA's conclusions. He also adopted the ExA's conclusions in relation to all of the other environmental and infrastructure considerations which were examined, and in paragraphs 4.18-4.20 accepted the overall conclusions reached by the ExA in relation to each of the individual proposals. The defendant noted at paragraph 4.6 his view that determining the whole application under section 104 of the 2008 Act did not have a material impact on the overall

outcome in relation to the case. This observation is further justified at paragraphs 6.4-6.6 in which the defendant explains that whilst taking a different approach to the ExA and, as a result of considering both projects under section 104 of the 2008 Act according “more weight” to the NPS, nevertheless his balancing of the issues did not result in a different conclusion to that which was reached by the ExA, namely, that the benefits of the WKN project were outweighed by its non-compliance with policies in NPS EN-1 and EN-3 related to the issues associated with the waste hierarchy and local waste management plan policies.

77. The effect of the defendant’s conclusions set out above is that the defendant’s assessment of the planning balance did not favour the grant of consent for the WKN project whether it was considered under section 104 of the 2008 Act (with the additional weight being afforded to the NPS in assessing the merits), or whether it was assessed under section 105 of the 2008 Act. It follows that on the basis of the defendant’s assessment, the overall outcome of the application would have been the same even if he had adopted the decision-making framework contained within section 105 of the 2008 Act. That assessment is unsurprising because, as the defendant’s reasons explain, even applying greater weight to the NPS as required by section 104 of the 2008 Act, and adopting a more favourable approach to the balance than that afforded by the ExA, the adverse impacts of the WKN proposal would still outweigh its benefits. It follows that the decision of the defendant would have been the same, and certainly the outcome would not have been substantially different, without commission of the error of law which has been identified in his decision, and therefore I have formed the view that the claimant is not entitled to relief by way of the quashing of the decision.

Conclusions

78. For the reasons set out above whilst I am satisfied that there was an error of law in the defendant’s decision in relation to the application, in the very particular circumstances of this case I do not consider that the claimant is entitled to relief on the basis that the decision would have been the same, and certainly unlikely to have been substantially different, even if the error of law had not been committed by the defendant.



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Wheelabrator Kemsley Generating Station (K3)

and

**Wheelabrator Kemsley North (WKN) Waste to Energy
Facility**

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Department for Business, Energy & Industrial Strategy

Examining Authority

 BA (Hons), Solicitor HRA

19 November 2020

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OVERVIEW

File Ref: EN010083

The Applicant, WTI/EFW Holdings Ltd (WTI), made an application under section 37 of the Planning Act 2008 which was received in full by The Planning Inspectorate on 11 September 2019 (the Application).

The Application was accepted for examination on 8 October 2019.

The examination of the Application began on 19 February 2020 and was completed on 19 August 2020.

The Proposed Development comprises two projects. The first is to increase the generating capacity of Wheelabrator Kemsley (K3) generating station up to 75MW with a tonnage throughput of up to 657,000 tonnes per annum ("K3 Proposed Development" or "Project K3"). Secondly, Wheelabrator Kemsley North (WKN) would be a waste-to-energy generating station with a generating capacity of up to 42MW and an annual through put of up to 390,000 tonnes of waste. ("WKN Proposed Development" or "Project WKN"). The Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS) made a direction under Section 35 of the Planning Act 2008 to treat the Proposed Development as one for which development consent is required.

Together the two projects are referred to as the Proposed Development. It would be located adjacent to the DS Smith Paper Mill to the north of Kemsley in Sittingbourne, Kent.

The K3 grid connection is constructed as part of the construction of the K3 facility and both Project K3 and Project WKN would connect to an existing UK Power Networks electricity substation located within the DS Smith Paper Mill site.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should grant consent for the K3 Generating Station only and should make the Order in the form attached at Appendix D.

The Examining Authority recommends that the Secretary of State should withhold consent for the WKN generating station. If, however the Secretary of State decides to give consent, then the Examining Authority recommends that the Order should be in the form attached at Appendix E.

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**ERRATA SHEET – Wheelabrator Kemsley Generating Station (K3) and
Wheelabrator Kemsley North (WKN) Waste to Energy Facility – Ref. EN010083**

**Examining Authority’s Recommendation to the Secretary of State for the
Department for Business, Energy and Industrial Strategy dated 19 November
2020**

Corrections agreed by the Examining Authority prior to a decision being made:

Page No.	Paragraph	Error	Correction
1	1.1.4	“However, all references to the 2019 ES unless stated otherwise.”	“However, all references are to the 2019 ES unless stated otherwise.”
2	1.4.4	“...Hempstead House Hotel, London Road, ME9 9PP...”	“...Hempstead House Hotel, London Road, Sittingbourne ME9 9PP...”
3	1.4.7	“...exactly which matters are not agreed as well as those that are agreed...”	“...exactly which matters are not agreed as well as those that are agreed...”
3	1.4.11	“...but due to the outbreak of Covid 19 had to be cancelled.”	“...but, due to the outbreak of Covid 19, it had to be cancelled.”
3	1.4.14	“...Hempstead House Hotel, London Road, ME9 9PP...”	“...Hempstead House Hotel, London Road, Sittingbourne ME9 9PP...”
6	1.4.29	“Matters concerning MMO are dealt with...”	“Matters concerning the MMO are dealt with...”
9	1.6.1	“...for which a Habitats Assessment Regulations (HRA) Report has been provided.”	“...for which a Habitats Regulations Assessment (HRA) Report has been provided.”
11	1.8.2	“...to amend the K3 EP...”	“...to amend the K3 Environmental Permit (EP)...”
11	1.8.3	“and that “An application for the WKN Environment Permit is anticipated to made in April 2020”...”	“and that “An application for the WKN Environment Permit is anticipated to be made in April 2020”...”
18	2.4.8	“...an area is fenced off area containing...”	“...an area is fenced off containing...”
25	3.3.18	“Paragraph 2.5.9 notes that waste to energy generating stations would take fuel (waste) that would otherwise be sent or landfill...”	“Paragraph 2.5.9 notes that waste to energy generating stations would take fuel (waste) that would otherwise be sent for landfill...”
29	3.4.17	“Article 6 of the rFWD...”	“Article 6 of the rWFD...”
29	3.4.18	“Article 6 of the rFWD...”	“Article 6 of the rWFD...”

37	3.6.2	Formatting error	
43	4.4.5	"These documents the principle of..."	"These documents set out the principle of..."
49	4.10.2	Formatting error - shouldn't have a paragraph number.	
49	4.10.6	Formatting error - shouldn't have a paragraph number.	
50	4.10.7	"Member States of the EU are required by Article 4(1) of the to apply the hierarchy..."	"Member States of the EU are required by Article 4(1) of the Waste Framework Directive to apply the hierarchy..."
51	4.10.15	Formatting error - shouldn't have a paragraph number and should be italicised.	
61	4.10.68	"...not least as the data (except for local authority collected waste, or 'LACW'),..."	"...not least as the data (except for local authority collected waste, or 'LACW'), is very uncertain and is dependent on the accuracy of waste generators, carriers, operators and the regulator when completing relevant forms recording the amount of waste and its end destination."
62	4.10.70	"...the focus of Tolvik Review 2017..."	"...the focus of the Tolvik Review ..."
63	4.10.74	Formatting error	
67	4.10.90 (second sub bullet)	"...Committee of Climate Change's latest advice..."	"...UK Committee on Climate Change's latest advice..."
67	4.10.92	"In particular in the Applicant made comments [REP5-022] on Responses to D4 submissions..."	"In particular, the Applicant made comments [REP5-022] in reply to Responses to D4 submissions..."
68	4.10.98	"...the waste strategy and plans examined would nonetheless appropriate..."	"...the waste strategy and plans examined would nonetheless be appropriate..."
68	4.10.98	"...if the view were taken that Proposed Development provides too much waste capacity..."	"...if the view were taken that the Proposed Development provides too much waste capacity..."
74	4.10.129	Formatting error - shouldn't have a paragraph number.	

75	4.10.131	"It was found to sound by the EPR Inspector."	"It was found to be sound by the EPR Inspector."
75	4.10.133	"...travelling time from the facility, would also be contrary to..."	"...travelling time from the facility, it would also be contrary to..."
97	4.14.8	Formatting error - shouldn't have a paragraph number.	
97	4.14.12	"...to reduce greenhouse gas emissions s,..."	"...to reduce greenhouse gas emissions,..."
97	4.14.12	"(paragraphs 2.2.5 and 2.2.6)"	"(paragraphs 2.2.5 and 2.2.6)."
101	4.14.35	"... is predicted by WRATE be a GHG emissions reduction..."	"... is predicted by WRATE to be a GHG emissions reduction..."
102	4.14.43	"...since publication in 2011 of NPS EN-01 or NPS EN-03..."	"...since publication in 2011 of NPS EN-1 and NPS EN-3..."
106	4.14.60	"...in relation to the WKN Proposed Development neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations..."	"...in relation to the WKN Proposed Development, while neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations..."
125	4.17.27	"...in the DCO would comply with NPS EN-1, NPS EN-2 and the NPPF..."	"...in the DCO would comply with NPS EN-1, NPS EN-3 and the NPPF..."
139	4.18.79	"...used in the TA the Ratio of Flow to Capacity (RFC) and queue."	"...used in the TA were the Ratio of Flow to Capacity (RFC) and queue."
142	4.19.6	"NPS EN-2..."	"NPS EN-3..."
148	4.19.47	"NPS EN-2..."	"NPS EN-3..."
170	6.2.57	"...would comply with NPS EN-1, NPS EN-2 and the NPPF..."	"...would comply with NPS EN-1, NPS EN-3 and the NPPF..."
171	6.2.62	"... to impose a further restriction in these HGV movements."	"... to impose a further restriction on these HGV movements."
172	6.2.68	"...in accordance with EN-1, EN-2, the NPPF..."	"...in accordance with EN-1, EN-3, the NPPF..."
180	7.2.25	"Responses to the EXA's Preferred Changes..."	"Responses to the ExA's Preferred Changes..."
182	7.3.12	"In section 4.20 of this Report..."	"In section 4.18 of this Report..."
183	7.3.20	Formatting error - shouldn't have a paragraph number.	

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application for Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility (the Proposed Development) EN010083 was submitted by the Applicant to the Planning Inspectorate on 11 September 2019 under section 31 of the Planning Act 2008 (PA2008) and accepted for Examination under section 55 of the PA2008 on 8 October 2019.

1.1.2. The Proposed Development comprises:

- Consent to realise a generating capacity of 75MW and total tonnage throughput of 657,000 tonnes per annum at K3, a waste to energy facility. The physical works necessary for this facility have been completed and would not require a change to the external design;
- Wheelabrator Kemsley North (WKN) a new waste to energy plant, capable of processing 390,000 tonnes of waste per annum with a generating capacity of 42MW;
- Each facility would require: tipping hall, waste fuel bunker, boiler hall, flue gas treatment building, turbine hall housing steam turbine and generator, air cooled condenser, stack and associated emissions monitoring system, electricity substation, stores and utilities, administration office, fire water tanks, stores, weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps and diesel generators;
- Installation of grid connection;
- Construction of surface water outfalls; and
- Construction and alteration of private access and haul roads.

1.1.3. The completed K3 facility was commissioned on 16 July 2020 pursuant to planning permission Ref SW/19/501345 granted on 14 June 2019 by Kent County Council (KCC) pursuant to section 73 Town and Country Planning Act 1990 (TCPA1990) permitting the construction and operation of a generating station having a capacity of up to 49.9MW. This consented facility is known as the Consented K3 Facility in this Report.

1.1.4. The location of the Proposed Development is shown in the Environmental Statement (ES) Chapter 3.1 [APP-055] an updated version submitted at D2 [REP2-015], and Land Plans, an updated version of which was received as Additional Submission [AS-008]. The site lies within the administrative areas of KCC and Swale Borough Council (SBC) and is wholly in England. It should be noted that due to the nature of the Application comprising Project K3 and Project WKN an earlier version of the ES was submitted in respect of the former. However all references to the 2019 ES unless stated otherwise.

1.1.5. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) in its decision to accept the Application for Examination in accordance with section 55 PA2008 [PD-003].

- 1.1.6. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [APP-003] that the Proposed Development is an NSIP as it is for the construction of a generating station (K3), in England, is within s15 PA2008, and so requires development consent in accordance with s31 PA2008. The Proposed Development as a whole therefore meets the definition of an NSIP set out in s14(1)(a) PA2008.
- 1.1.7. Project WKN would not meet the requirements to be an NSIP due to the generating capacity of up to 42MW. The Secretary of State exercised their powers under s35 PA2008 to make a decision that this would be treated as development for which development consent is required under the PA2008 (see S55 Checklist, Item 2 [PD-003]).

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 31 October 2019, Grahame Kean was appointed as the Examining Authority (ExA) for the application under s61 of PA2008 [PD-004].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

- 1.3.1. The persons involved in the Examination were:
- Persons who were entitled to be Interested Parties (IPs) because they had made a Relevant Representation (RR) or were a statutory party who requested to become an IP.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.4.1. The Examination began on 19 February 2020 and concluded on 19 August 2020.
- 1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A.

The Preliminary Meeting

- 1.4.3. On 21 January 2020, The ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EP Rules) (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) and any other early hearing [PD-006], outlining:
- the arrangements and agenda for the PM;
 - notification of hearings to be held in the early stage of the Examination;
 - an Initial Assessment of the Principal Issues (IAPI);
 - the draft Examination Timetable;
 - availability of RRs and application documents; and
 - the ExA's procedural decisions.
- 1.4.4. The PM took place on 19 February 2020 at Hempstead House Hotel, London Road, Kent. An audio recording [EV-001] and a note of the

meeting [EV-002] were published on the Planning Inspectorate National Infrastructure website¹.

- 1.4.5. The ExA's procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-007], dated 26 February 2020.

Key Procedural Decisions

- 1.4.6. The procedural decisions set out in the Rule 8 Letter related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs. The decisions can be obtained from the Rule 8 Letter [PD-007] and so there is no need to reiterate them here.

- 1.4.7. However it is relevant to record here that insofar as the procedural decisions requested timely completion of the various Statements of Common Ground (SoCG) with the Applicant, that with Highways England (HE) was delayed to the end of the examination and was not completed. The concerns I expressed about this matter during the Examination can be seen in my commentary contained within ExQ3.13.7, ExQ3.13.9, ExQ3.14.1 and ExQ3.14.2. I explained that it was important to the ExA to have up to date draft versions of each SoCG so that matters in dispute could be clearly highlighted and explained. Finally, I stated in ExQ4.11.13:

"The intention in requesting such documents is not that parties should hold back from submitting them until they have agreed matters, but to assist the ExA by providing a continuous and candid explanation of exactly which matters are not agreed as well as those that are agreed. Please provide for D7 a SoCG with HE that fulfils this role"

- 1.4.8. The failure to produce a SoCG on traffic and transport matters had a material effect on the conduct of the Examination in rendering it more difficult for me to extrapolate the essential matters in dispute and how if at all such matters might be resolved.

Site Inspections

- 1.4.9. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.
- 1.4.10. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/wheelabrator-kemsley-generating-station-k3-and-wheelabrator-kemsley-north-wkn-waste-to-energy-facility/?ipcsection=overview>

technical considerations and / or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.

- 1.4.11. The ExA included an initial date for an ASI in its Rule 8 timetable issued on 15 April 2020 but due to the outbreak of Covid 19 had to be cancelled. An ASI (and further hearings) were scheduled for June 2020 but due to Covid 19 restrictions these events also had to be cancelled, and an amended Examination timetable was communicated to IPs on 22 May 2020 [PD-013].
- 1.4.12. The ExA has had regard to the information and impressions obtained during the Examination in all relevant sections of this Report.

Hearing Processes

- 1.4.13. Hearings are held in PA2008 Examinations in two main circumstances:
- To respond to specific requests from persons who have a right to be heard - in summary:
 - where persons affected by compulsory acquisition (CA) and/or temporary possession proposals object and request to be heard at a Compulsory Acquisition Hearing (CAH); and / or
 - where IPs request to be heard at an Open Floor Hearing (OFH).
 - To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.
- 1.4.14. The ExA held an Issue Specific Hearing (ISH) under s91 PA2008 on the "s51" version of the draft Development Consent Order (dDCO) [AS-002], at Hempstead House Hotel, London Road, ME9 9PP which is approximately 4 miles from the proposed site.
- 1.4.15. As is made clear in the Explanatory Memorandum (ExMemo) [APP-006, REP2-004] the land required for the Proposed Development is in the ownership of DS Smith Paper Limited (DS Smith), or that of subsidiary entities controlled by it. DS Smith owns and operates the Kemsley Paper Mill on immediately adjacent land to the west. Therefore no compulsory acquisition or temporary possession of land or interests is sought in connection with the application, and no Compulsory Acquisition Hearings were held.
- 1.4.16. There were no requests to be heard at an Open Floor Hearing.

Written Processes

- 1.4.17. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the Application and arising from the Examination. All this material is recorded in the Examination Library (Appendix B) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets []. For this reason, this Report does not contain

extensive summaries of all documents and representations, although full regard has been had to them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them.

1.4.18. Key written sources are set out further below.

Relevant Representations

1.4.19. Nine RR were received by the Planning Inspectorate [RR-001 to RR009]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered in Chapters 4 and 5 of this Report.

Written Representations and Other Examination Documents

1.4.20. The Applicant and IPs were provided with opportunities to:

- make written representations (WRs) (Deadline (D)1) 2 March 2020);
- comment on WRs made by the Applicant and other IPs (D2 18 March 2020);
- summarise their oral submissions at hearings in writing (D3 22 April 2020);
- make other written submissions requested or accepted by the ExA; and
- comment on documents issued for consultation by the ExA including:
 - A Report on Implications for European Sites (RIES) [PD-018] published on 15 July with comments by D7 5 August 2020;
 - The Schedule of Examining Authority's preferred changes to the Applicant's Development Consent Order [PD-017] published on 15 July with comments by D7 5 August 2020; and
 - Examining Authority's Draft K3 Development Consent Order [PD-016] published on 15 July with comments by D7 5 August 2020; and
- reply to the ExA's Written Questions and comment thereon.

1.4.21. All WRs and other examination documents have been fully considered by the ExA. The issues that they raise are considered in all relevant Chapters of this Report.

Local Impact Reports

1.4.22. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited and submitted to the ExA under s60 PA2008.

1.4.23. LIRs have been received by the ExA from the following relevant local authorities:

- Kent County Council [REP1-011].
- Swale Borough Council [REP1-012].

- 1.4.24. The LIRs have been taken fully into account by the ExA in all relevant Chapters of this Report.

Statements of Common Ground

- 1.4.25. A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them as well as matters in dispute.
- 1.4.26. By the end of the Examination, the following bodies had concluded SoCGs with the Applicant:
- Environment Agency (EA) dated 30 June 2020 [REP7-012] – Final;
 - Natural England (NE) dated 5 August 2020 [REP7-014] – Final;
 - Kent County Council (KCC) dated 12 August 2020 [REP8-013] – Final.
- 1.4.27. SoCGs that were submitted but unsigned or incomplete were as follows:
- Swale Borough Council [REP5-006] – Draft submitted at D5.
- 1.4.28. A SoCG was initially requested to be completed between the Applicant and, respectively Network Rail (NR). In its covering letter to submissions at D1 [REP1-001] the Applicant stated it was not aware of any direct impacts arising from the Proposed Development on NR assets or of any NR rights or covenants affected by the Application. Therefore, the Applicant did not consider a SoCG with NR was necessary. As set out in the Statement of Commonality of SoCGs [REP8-014], NR confirmed on 6 March 2020 that no SoCG was required as they did not believe they would be affected by the applied for and did not request any Protective Provisions to be included in the DCO.
- 1.4.29. Although one was not requested by the ExA the Applicant considered the need for a SoCG with the Marine Management Organisation (MMO), but concluded it was unnecessary. Matters concerning MMO are dealt with in Chapters 4 and 5 of this Report.

The SoCG with Highways England (HE)

- 1.4.30. In its covering letter sent at D7 [REP7-001] the Applicant acknowledged the importance to the ExA of receiving SoCGs between it and HE.
- 1.4.31. In its covering letter sent at D8 the Applicant stated it remained in discussion with HE regarding its SoCG; it had provided an update on those discussions in the Statement of Commonality of SoCGs [REP8-014] and in its responses to submissions at D7 and “*intended to provide a full position [sic] as soon as possible following Deadline 8*”. In the event no further submissions were made until 1655hrs on the last day of the Examination. For the reasons set out in its letter to the Applicant dated 21 August 2020 [PD-019] the ExA declined to accept these late submissions. No draft SoCG with HE whatsoever had been provided to the ExA prior to the time and date aforesaid. This matter is dealt with further in Chapter 4.

- 1.4.32. A Statement of Commonality of SoCGs which summarised the progress relating to the various SoCGs was last submitted at D8 [REP8-014]. This and the SoCGs and draft SoCG with SBC have been taken fully into account by the ExA in all relevant Chapters of this Report, and weight accorded to them as appropriate in the circumstances.

Written Questions

- 1.4.33. Due to the continuing restrictions related to the Covid 19 pandemic I consulted all IPs on 6 May 2020 when issuing ExQ2 Further Written Questions, [PD-012] regarding the process to be adopted in this Examination in light of the exceptional circumstances that have arisen due to the outbreak of Covid-19. The responses demonstrated a clear preference that the written procedure should be used in place of further Hearings. Taking all circumstances into account, I decided it would be expedient to follow the written process going forward.
- 1.4.34. The ExA asked 5 rounds of written questions, setting deadlines for replies and for comments thereon as follows.
- The ExA's first Written Questions (ExQ1) [PD-008] published on 26 February 2020: by D2 18 March 2020 with comments by D3 22 April 2020;
 - ExQ1a [PD-010] published on 9 April 2020: by D3 22 April 2020 with comments by D4 20 May 2020;
 - ExQ2 [PD-012] published on 6 May 2020: by D4 20 May 2020 with comments by D5 19 June 2020;
 - ExQ3 [PD-014] published on 3 June 2020: by D5 19 June 2020 with comments by D6 29 June 2020; and
 - ExQ4 [PD-015] published on 15 July 2020: by D7 5 August 2020 with comments by D8 12 August 2020.
- 1.4.35. All responses to the ExA's written questions have been fully considered and taken into account in all relevant Chapters of this Report.

Requests to Join and Leave the Examination

- 1.4.36. The following persons who were not already IPs requested that the ExA should enable them to join the Examination at or after the PM. In each case the request was granted for the summary reasons given as follows:
- South East Waste Planning Advisory Group (SEWPAG) on 1 March 2020 by its submission at D1 [REP1-016] requested to be an IP.
 - Its concern focussed on the Proposed Development's compliance with NPS EN-3 by reference to relevant waste strategies and plans, as in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England.
 - Royal Mail Group Limited made an additional submission [AS-014] and was accepted as an IP.

- Its concern was to protect its future ability to provide an efficient mail sorting and delivering service to the public, in light of the potential for the Proposed Development to cause disruption, road closures that might affect operations.
- Allyson Spicer made an additional submission [AS-015] and was accepted as an IP.
 - Her concern focused on the traffic impacts of the Proposed Development and was accepted as an IP. The matters she raised are considered further in Chapters 3 and 5.
- John C Twistleton made a submission at D1 [REP1-017] and was accepted as an IP.
 - His concern focussed on the impacts of the Proposed Development on the highway network.

1.4.37. During the Examination, as a consequence of discussion at hearings and/or discussions between relevant IPs/Other Persons and the Applicant, the following persons wrote to the ExA stating that their issues were settled, and their representations were withdrawn:

- On 19 June 2020 Royal Mail reached agreement with the Applicant regarding the Construction Traffic Management Plan (CTMP) [REP8-005] and withdrew its representation to the Examination. Royal Mail remained an IP for the duration of the Examination.

1.4.38. No other person wrote to me to formally record the settlement of their issues and the withdrawal of their representations.

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

1.5.1. An Environmental Impact Assessment (EIA) was undertaken as both the K3 Proposed Development and WKN Proposed Development are of a type listed in part 10 Schedule 1 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (hereafter the EIA Regulations). The EIA assesses potential significant effects the Proposed Development is likely to have on the environment to ensure these are fully taken into account before development may proceed. The findings of the EIA are summarised in the Non-Technical Summary (NTS) [APP-068] and reference is also made to the 2010 NTS [APP-069].

1.5.2. The 2010 ES was submitted in support of the original K3 planning application in 2010. The EIA for the Proposed Development comprises both the 2010 and 2019 ESs, as documented in the 2019 ES, given development consent is sought for the construction and operation of Project K3. The 2010 NTS [APP-069] summarises the findings of the 2010 ES.

1.5.3. Following the approval of the original consent for the K3 application non-material amendments and variations were made resulting in three addendums to the 2010 ES. These were: ES Addendum (Air Quality) (June 2013) [APP-076 ES]; ES Addendum (Hydrology and Flood Risk) (May 2017) [APP-077]; and ES – Addendum (May 2018) [APP-078].

- 1.5.4. On 11 October 2018 Condition 3 of the original planning permission for the Consented K3 Facility granted in 2012 Ref SW/10/444 (K3 Planning Permission) was varied to increase the number of heavy goods vehicle (HGV) movements permitted for the Consented K3 Facility to result in the 348 movements currently consented. The May 2018 ES Addendum was included with that application and includes an assessment of the transport and air quality implications of that change. These documents form part of the ES.
- 1.5.5. On 7 September 2018, the Applicant submitted a Scoping Report [APP-013] to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion (a Scoping Opinion) about the scope of the information in the ES. On 18 October 2018 the Planning Inspectorate provided a Scoping Opinion [APP-014]. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES.
- 1.5.6. On 9 December 2019 the Applicant provided the Planning Inspectorate with certificates confirming that the requirements of s56 and s59 PA2008 and Regulation 16 of the EIA Regulations had been met [OD-002].
- 1.5.7. Consideration is given to the adequacy of the ES and matters arising in Chapter 4 of this Report. The potential environmental effects have been assessed and set out in the ES. The ES includes details of measures proposed to mitigate likely significant effects identified by the Applicant.
- 1.5.8. I am satisfied that the ES met the requirements of Schedule 4 of the EIA Regulations and, together with the environmental information provided during the Examination, forms an adequate basis for decision making.

1.6. HABITATS REGULATIONS ASSESSMENT

- 1.6.1. The Proposed Development is development for which a Habitats Assessment Regulations (HRA) Report has been provided.
- 1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 5 of this Report.
- 1.6.3. Under Regulation 5(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations), where required, an application must be accompanied with sufficient information to enable the relevant SoS to meet their statutory duties as the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) (as amended).
- 1.6.4. The RIES summarised the available environmental information [PD-018]. It compiled, documented and signposted information provided within the application and subsequent information submitted throughout the Examination by both the Applicant and IPs, up to D6, 29 June 2020.

- 1.6.5. The RIES was issued on 15 July 2020 to all IPs. Comments on the RIES were requested for D7, 5 August 2020, as set out in the last iteration of the Examination timetable [PD-013].

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

- 1.7.1. The original planning permission for the Consented K3 Facility granted in 2012 Ref SW/10/444 (the K3 Planning Permission) is the subject of a s106 agreement (Appendix B, Planning Statement [APP-082]) between KCC, EoN Energy from Waste UK Limited, DS Smith (including its subsidiaries SRP New Thames Limited and Grovehurst Energy Limited) and the Royal Society for the Protection of Birds (RSPB). There are 3 main elements, summarised in the SoCG between the Applicant and KCC [REP8-013]:

- Reedbed habitat creation within the Harty Marshes on the Isle of Harty, now the responsibility of RSPB to maintain in accordance with the Maintenance Scheme as set out in the s106. The Applicant's position is that this element of the s106 has been satisfied and does not need to be transferred through to the DCO;
- Employment Strategy, included as an approved plan for the purposes of the DCO. The Applicant's position is that will ensure it continues to apply to the operation of the plant if consent is granted;
- Relocation scheme providing for measures including habitat creation and management to secure mitigation relating to reptiles, nesting and foraging birds, protection of bird breeding habitats, habitat creation for invertebrates and mitigation for Beard Grass. The latest version of the Ecological Mitigation and Management Plan (EMMP) pursuant to Application ref SW/10/444/R is included as an approved document within the DCO. The Applicant's position is that it will ensure the necessary mitigation measures are included within the DCO.

- 1.7.2. KCC is recorded in the SoCG as being satisfied with the Applicant's positions as set out in relation to each of these 3 elements of the s106 agreement.

- 1.7.3. By the end of the Examination, there were no other matters subject to any separate undertakings, obligations and / or agreements. All relevant considerations are addressed in this Report as bearing on the DCO.

1.8. OTHER CONSENTS

- 1.8.1. In addition to the consents required under PA2008 (which is the subject of this report), the Applicant identified in section 24 of the Application Form [APP-003] the following consents that the Proposed Development must obtain to construct operate and maintain the Proposed Development and would be sought separately.

- Amendment to existing Environmental Permit (K3);
- Environmental Permit (WKN); and
- MMO Licence amendment (WKN).

- 1.8.2. Section 10 of the Planning Statement [APP-082] refers to these matters. It stated applications to amend the K3 EP to reflect the K3 Proposed Development and to seek an EP for WKN would be submitted alongside the DCO application. In the ExA's Q3.12.1 [PD-014] it was noted the EP application was due to be submitted by 1 July 2020 [REP4-006], an update was requested for D5 and confirmation that a copy of the application would be provided to the Examination upon its submission.
- 1.8.3. In reply to Q3.12.1 [PD-014] the Applicant stated the WKN EP application was submitted to the EA on 13th June 2020 but declined to supply a copy as it had *"not yet been accepted by the Environment Agency as being duly made"*. The EA in the completed SoCG with the Applicant [REP7-012] stated that they *"see no reason why a new permit for the WKN Proposed Development should not be granted"* and that *"An application for the WKN Environmental Permit is anticipated to made in April 2020"* (despite the SoCG being signed and dated 30 June 2020). However it also stated:
- "The Environment Agency does not currently have any concerns about permitting and based on the information provided in the ES (including noise and air emissions) see no reason why a varied permit for the K3 Proposed Development and a new permit for the WKN Proposed Development should not be granted."*
- 1.8.4. In ExQ2 the ExA requested an update as to the progress of the WKN permit application which was by now expected to be submitted not later than 1 July 2020.
- 1.8.5. An MMO licence already exists for the discharge of clean surface water from the K3 lagoon into the Swale via an outfall which has already been constructed. No change is needed to that licence for the K3 Proposed Development. An additional outfall pipe would be added to discharge clean surface water from the proposed WKN lagoon, with an MMO licence already granted for that discharge activity.
- 1.8.6. In its submissions made at D5 [REP5-030] MMO stated:
- "2.15. With regard to section 5.6.8 – the Marine Licence was varied to include a second outfall. As mentioned in previous deadline responses the discharge of water is not a licensable activity under the 2009 Act and MMO has encouraged engagement with the EA. However, the MMO require further elaboration on why there will be no LSE from the discharge of water (using a worst-case scenario for the volumes that could be discharged). As noted above the introduction of freshwater into the marine environment may disturb sediment and alter the salinity of the area. This could have an adverse impact on the surrounding saltmarsh and/or mussel beds."*
- 1.8.7. In its submissions made at D6 [REP6-012] at paragraph 2.1 MMO stated:
- "2.1 With regard to point 2.4.6 - the MMO advises that the applicant incorrectly references the application reference (MLA/2017/00316) as the licence number. The applicant should amend this to the correct licence"*

reference (L/2017/00482/2). The MMO regulate compliance with the marine licence and do not control the outfall."

2.2. With regard to point 2.4.8. The MMO would like to highlight that the discharge of water is not a licensable activity under that Marine and Coastal Access Act ,2009 ("the 2009 Act"). The MMO advise that the applicant change the wording of the following section to clarify that the variation was for the construction of the outfall - "The MMO licence for the K3 outfall has been varied to permit the discharge of clean water from the WKN Proposed Development through a separate outfall to be located adjacent to the existing K3 outfall."

1.8.8. In its submissions made at D7 [REP7-033] MMO stated at paragraph 3.3 *"With regard to Schedule 2 (Part 1 – 4) – the MMO acknowledge that the applicant has confirmed that the decommissioning of the outfalls will be applied for by way of a separate marine licence and have no other comments to raise."*

1.8.9. In relation to the outstanding consents recorded above, the ExA has considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, has concluded that there are no apparent impediments to the implementation of the K3 Proposed Development or the WKN Proposed Development should the SoS grant consent for either or both the K3 Proposed Development and WKN Proposed Development.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the Application and the processes used to carry out the Examination and make this Report;
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects;
- **Chapter 3** records the legal and policy context for the SoS's decision;
- **Chapter 4** sets out the planning issues that arose from the Application and during the Examination;
- **Chapter 5** considers effects on European Sites and Habitats Regulations Assessment (HRA);
- **Chapter 6** sets out the balance of planning considerations arising from Chapter 4, in the light of the factual, legal and policy information in Chapters 1 to 3;
- **Chapter 7** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO); and
- **Chapter 8** summarises all relevant considerations and sets out my recommendations to the SoS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Events;
- **Appendix B** – the Examination Library;
- **Appendix C** – List of Abbreviations;

- **Appendix D** – the DCO as recommended by the ExA to be made by the SoS (the Recommended DCO); and
- **Appendix E** - the DCO as recommended to be made by the SoS should consent be granted for the K3 Proposed Development and WKN Proposed Development (the Alternative Recommended DCO).

1.9.3. Given that the application and Examination material have been published online, this report does not contain extensive summaries of all the representations although regard has been had to them in my conclusions. I have considered all important and relevant matters and set out my recommendations to the SoS against the PA2008 tests.

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

- 2.1.1. The Applicant submitted an application which is described in the Application Form [APP-003] as:

"the construction and operation of the Wheelabrator Kemsley (K3) and Wheelabrator Kemsley North (WKN) waste to energy generating stations in Kemsley, Sittingbourne, Kent.

Planning permission was granted for the K3 facility in 2012 by KCC and the facility is being constructed and is expected to be operational in late 2019, with a consented generating capacity of up to 49.9 MW and an annual throughput of up to 550,000 tonnes of waste. WTI have identified that K3 is capable, through internal efficiencies and upgrades, of generating an additional 25.1MW and through increased operational availability of the facility is capable of processing an additional 107,000 tonnes of waste per annum.

No physical works would be required to K3 to facilitate either the proposed increased generating capacity or the proposed increased waste tonnage throughput. The project cannot therefore be categorised as the extension of an existing generating station under the Planning Act 2008...consent is therefore being sought for the construction and operation of the K3 facility with a generating capacity of up to 75MW and a tonnage throughput of 657,000 tonnes per annum...

Wheelabrator Kemsley North (WKN) is a proposed waste to energy generating station with a generating capacity of up to 42MW and an annual throughput of up to 390,000 tonnes of waste. WKN is therefore not a nationally significant infrastructure project under...the Planning Act 2008. However on 27 June 2018 the Secretary of State for Business Energy and Industrial Strategy exercised his power under Section 35 of the Planning Act 2008 to direct that WKN is nationally significant and is therefore to be treated as a development for which development consent is required. The WKN development proposed is similar to that described in the WTI Section 35 request submitted to the Secretary of State and accordingly this application also seeks consent for the WKN project."

- 2.1.2. The location of the Proposed Development is identified as land at Kemsley, Sittingbourne, Kent, ME10 2TD.

2.2. THE APPLICATION AS EXAMINED

Principal Works

- 2.2.1. A full description of the K3 and WKN Proposed Developments is provided within ES Chapter 2 - Site Description and Proposed Development [APP-054]. The K3 and WKN Proposed Developments are split into a number of key works within the DCO boundary including areas where ancillary works are required for the construction and operation of the key works. A plan showing the DCO boundary and location of the key works are

provided as Doc 5.5 (a and b) submitted with the application [APP-094, APP-95].

- 2.2.2. The Proposed Development comprises the construction of K3 at its total generating capacity of up to 75MW (49.9MW consented + 25.1MW upgrade) together with its proposed tonnage throughput of up to 657,000 tonnes per annum (550,000 consented + 107,000 tonnage increase). It would combust post-recycled solid recovered fuel waste, commercial and industrial waste and pre-treated municipal solid waste to produce electricity which is exported to the national grid and steam which is supplied to the adjacent DS Smith Kemsley Paper Mill for use in the papermaking process. The Consented K3 Facility has been under construction and is now commissioned with effect from 16 July 2020.
- 2.2.3. Development consent is also sought for the proposed new WKN waste-to-energy facility, capable of processing 390,000 tonnes of waste per annum, with a generating capacity of 42MW. The electricity produced would be exported to the distribution network, owned and operated by UK Power Networks. The grid connection would be via the existing substation located within the DS Smith paper mill site to the immediate west.
- 2.2.4. The Applicant anticipates that (subject to a DCO being granted and a final investment decision being made) work would commence in 2021, with construction of the WKN Proposed Development expected to take 40 months.
- 2.2.5. The K3 and WKN Proposed Developments would each be expected to have an operating life of up to 50 years (paragraph 2.13.1, ES Chapter 2 [APP-054]).
- 2.2.6. The effect in reality of the K3 Proposed Development ('the practical effect') would retain the Consented K3 Facility but generate an additional 25.1MW together with being able to process an additional 107,000 tonnes of waste per year.
- 2.2.7. Throughout this Examination therefore the following terms are used to distinguish the two elements of the Proposed Development, namely the K3 Proposed Development and the WKN Proposed Development. In the DCO they are referred to as "Project K3" meaning Work No 1 and any other authorised development associated with that work; and "Project WKN" meaning Work No 2 and any other authorised development associated with those works, as defined in the DCO versions submitted.
- 2.2.8. Depending on the context of the particular assessment undertaken by the Applicant, the "Practical Effects" of the K3 Proposed Development are assessed alongside the effects of the WKN Proposed Development.
- 2.2.9. As described in the ES: Site Description and Proposed Development [APP-054] together with the Planning Statement [APP-082] and Works Plans [APP-094, APP-095] and the submission version of the dDCO [AS-003] the main plant items were:

- Work No 1 – Construction and operation of an onshore generating station with a generating capacity of up to 75MW and permissible waste throughput of 657,000tpa (the K3 Proposed Development);
 - 1A - Installation of grid connection for Work No 1;
 - 1B- Installation of steam connection for Work No 1;
 - 1C- Alteration of existing private access road to construct, use and maintain Work No 1;
 - 1D- Creation of a temporary construction compound and laydown area for the construction of Work No 1;
 - 1E- Construction and operation of a surface water outfall for Work No 1;
- Work No 2- Construction and operation of a waste-to-energy facility capable of processing 390,000 tonnes of waste per annum, with a generating capacity of up to 42MW (the WKN Proposed Development);
- Work No 3- Installation of a grid connection for Work No 2;
- Work No 4- Alteration of existing private access road to construct, use and maintain Work No 2;
- Work No 5- Temporary construction or alteration of existing private haul road for the construction of Work No 2;
- Work No 6- Creation of a temporary construction compound and laydown area for the construction of Work No 2; and
- Work No 7- Construction and operation of a new surface water outfall for Work No 2.

2.3. THE APPLICATION AT THE CLOSE OF THE EXAMINATION

2.3.1. Following the acceptance of the application the Applicant was provided with advice under s51 PA2008 (s51 Advice) by the Planning Inspectorate. A submission of amended documents was made on the 18 October 2019, prior to the expiry period for Relevant Representations, to address the points raised in the s51 Advice. A covering letter [AS-009] detailed the changes made to the application documents.

2.3.2. The following documents were submitted as part of the S51 pack and the Application Guide updated to reflect the latest versions of those documents where necessary:

- S51 Application Guide [AS-001];
- S51 Draft Development Consent Order [AS-002];
- S51 DCO Validation Report [AS-003];
- S51 Book of Reference (BoR) [AS-004];
- S51 Summary of Land Interests and Rights (replaces Statement of Reasons) [AS-005];
- S51 Summary of Applicant's Structure and Standing (replaces Funding Statement) [AS-006];
- Consultation Report [AS-007]; and
- S51 Land Plan (9812-0057-005) [AS-008].

2.3.3. At the request of the ExA on a without prejudice basis and to provide appropriate plans should only Project K3 be recommended for development consent, alternative plans and BoR were submitted (dealt with further in Chapter 7) as follows:

- ExA's K3 Alternative DCO Works Plan [REP7-024];
- ExA's K3 Alternative DCO Land Plan [REP7-025]; and
- BoR [REP7-009];

2.4. DESCRIPTION OF THE APPLICATION SITE AND SURROUNDING AREA

2.4.1. The K3 and WKN sites lie to the north-east of the village of Kemsley, which itself sits at the north-eastern edge of Sittingbourne in Kent. The K3 and WKN sites lie immediately to the east of the Kemsley Paper Mill, a substantial industrial complex which is operated by DS Smith Paper Limited (DS Smith).

2.4.2. Unless the context otherwise requires "Application Site" or the "Site" refers to the K3 site and WKN site within the DCO boundary on the Site Location Plan [APP-090].

Wheelabrator Kemsley (K3) Site

2.4.3. The site is located on land immediately to the east of the Kemsley Paper Mill, 0.8km east of Kemsley, a residential suburb in the north of Sittingbourne in Kent (hereafter the 'K3 Site'). It lies adjacent to The Swale to its east, with the Isle of Sheppey beyond and within the administrative areas of Kent County Council (KCC) and Swale Borough Council (SBC). To the south of the K3 Site lies a capped former landfill site which lies adjacent to the confluence between Milton Creek and The Swale.

Wheelabrator Kemsley North (WKN) Site

2.4.4. The site is located on land immediately north of the Consented K3 Facility (hereafter the "WKN Site"). The WKN Site is currently being used by the Applicant as a laydown and parking area for the construction of the adjacent K3 facility. It has been cleared of vegetation and laid to concrete or hardcore with a perimeter fence. To the east of the WKN Site lies The Swale with the Isle of Sheppey beyond. Immediately to the north lie the Kemsley Marshes beyond which lies the Kemsley Paper Mill anaerobic digester treatment works and to the north east a jetty operated by Knauf for the import of gypsum by barge.

2.4.5. The nearest statutory designation in proximity to the Sites with regard to ecological interest is the Swale Special Protection Area and Site of Special Scientific Interest (SSSI) which lies approximately 100m east of the Sites at its closest point. Milton Creek Local Wildlife Site (LWS) is also less than 400m and 550m respectively from the K3 and WKN Sites.

2.4.6. The WKN Site is currently is use as a car park, office and construction lay down area for K3 being constructed immediately to the south. The

proposed construction laydown area for the WKN Proposed Development to the north-east currently comprises an open area of rough vegetation and crushed gravel. An existing access lies to the west of the WKN Site (Work No.4) and is to be used as the site access during operational. An existing haul road lies to the north of the WKN Site and is to be utilised during construction for access (Work No. 5) to the construction laydown area (Work No. 6).

- 2.4.7. The majority of the WKN Site comprises a car park with a generally level surface primarily covered by hardstanding but with some areas covered by gravel. Along the western and southern border of the WKN Site are temporary construction offices and containers associated with the construction of K3 to the south.
- 2.4.8. A ditch runs along the northern boundary of the WKN Site. In the south western corner, an area is fenced off area containing a remote mixing station for mortar.
- 2.4.9. The smaller, eastern area of the WKN Site is separated from the car park by fencing and comprises a construction lay down area. This area appears to comprise of made ground and gravel/rubble although it is largely covered by construction materials and plant. No hardstanding is present in this area. The southern area of this eastern part of the WKN Site comprises an access track for plant to the K3 Site.

2.5. RELEVANT PLANNING HISTORY

- 2.5.1. The full planning history of the K3 and WKN development sites is provided in Appendix A of the Applicant's Planning Statement [APP-082]
- 2.5.2. The K3 development site does not have a planning history prior to consent first being obtained for the K3 facility in 2012, under reference SW/444/10. Appendix B [APP-082] contains the original decision notice and s106 obligation relating to that application, with the committee report provided as Appendix C to this Statement.
- 2.5.3. Subsequently the K3 site has an extensive planning history relating to a series of non-material amendments, applications to vary the terms of the original K3 Planning Permission and to discharge conditions relating to it. Separately the access road serving the K3 site, which runs along the eastern side of the Kemsley paper mill, was the subject of its own planning permission granted in 2012 which has also been the subject of further amendments.
- 2.5.4. The current operational consent for the K3 facility is SW/19/501345, granted on 14 June 2019. It resulted from an application to remove a planning condition under s73 TCPA1990, specifically Condition 11 which had required the provision and management of a buffer zone to the west of the K3 site. The decision notice is at Appendix D of the Applicant's Planning Statement [APP-082].
- 2.5.5. The only consent associated directly with the WKN proposal site was that granted in 2017 for the construction and operation of an incinerator

bottom ash recycling facility on the WKN site. That consent expired in February 2020.

- 2.5.6. An anaerobic digester was granted planning permission in 2012 to serve the DS Smith Kemsley Paper mill and is constructed on land to the north of the Jetty Road which would be used to access the WKN construction laydown area. DS Smith obtained development consent in July 2019 for the construction and operation of 'K4', a gas fired combined heat and power (CHP) plant within the Kemsley Paper Mill site to replace an existing CHP plant ('K1') and provide heat and steam to the paper mill.

2.6. CUMULATIVE EFFECTS

- 2.6.1. As set out in paragraph 1.2.6 ES Chapter 1 - Introduction [APP-053], the Applicant's formal Environmental Impact Assessment (EIA) of the K3 and WKN Proposed Developments in winter 2018 to summer 2019 considered the likely significant effects of the K3 and WKN Proposed Developments individually as well as cumulatively with each other and with other relevant consented and planned projects.
- 2.6.2. Cumulative effects with other projects in the locality are considered in Chapter 3 of the ES [APP-055] which also explains the approach to addressing such matters. Figures 3.2 a and b [APP-055] map projects which were considered for the purpose of assessing the effects of the Proposed Development with other schemes which are under construction, consented or for which planning permission is being sought.
- 2.6.3. ES Chapter 14 - Summary Tables [APP-066] provides a summary of the likely significant cumulative effects predicted to result from the K3 and WKN Proposed Developments in combination with other committed/proposed developments as set out in Chapter 3 ES [APP-055]:
- Table 14.5 - Baseline + K3 Proposed Development + other relevant cumulative developments within the zone of influence of the K3 Proposed Development;
 - Table 14.6 - Baseline + WKN Proposed Development + other relevant cumulative developments within the zone of influence of the WKN Proposed Developments; and
 - Table 14.7 - Baseline + K3 Proposed Development + WKN Proposed Development + other relevant cumulative developments within the zone of influence of the K3 and WKN Proposed Developments.
- 2.6.4. The methodology used in the cumulative assessment of projects was not in issue except partially in regard to the traffic and transport implications of the Proposed Development which are considered in Chapter 4.
- 2.6.5. Overall, and as set out in the ES – Non-Technical Summary [APP-069] following the implementation of the mitigation measures described in the relevant ES chapters, the K3 and WKN Proposed Development in combination with the other cumulative developments identified would result in a significant adverse effect on sequential views along the Saxon Shore Way public right of way, an inevitable effect of the quantum of

development permitted or proposed in this locality. However, the K3 and WKN Proposed Development is considered to make a slight contribution to the cumulative effect.

- 2.6.6. I consider that the projects listed in the assessment as described above are appropriate for consideration as part of any cumulative assessment. The issue of cumulative effects is considered further in the relevant sections of Chapter 4.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

- 3.1.1. This Chapter sets out the relevant legal and policy context for the application. I have taken this into account in the Examination of the Proposed Development and in presenting findings and making recommendations to the Secretary of State (SoS).
- 3.1.2. The legal and policy context, as understood by the Applicant, is described in Sections 11, 12 and 13 of the Planning Statement [APP-082]. There is set out an assessment of the Proposed Development against the policy requirements of National Policy Statements (NPSs) EN-1 and EN-3. Individual chapters of the ES provide specific background relating to particular topics.
- 3.1.3. The Local Impact Reports (LIRs) of KCC and Swale Borough Council (SBC) [REP1-011, REP1-012] set out the local authorities' respective positions with regard to development plan policies.

3.2. THE PLANNING ACT 2008

- 3.2.1. Inasmuch as the Proposed Development includes the K3 Proposed Development the Application is for a Nationally Significant Infrastructure Project (NSIP), qualifying under the Planning Act 2008 (PA2008). It is for the construction, operation and maintenance of the K3 Generating Station with a gross installed capacity of up to 75MW. It is thus an onshore generating station in England having a capacity of more than 50MW pursuant to section s14(1)(a) and s15(2) of PA2008.
- 3.2.2. The Application also comprises the WKN Proposed Development, to construct, operate and maintain the WKN Waste-to-Energy Facility with a gross installed capacity of up to 42MW. The Secretary of State for Business, Energy and Industrial Strategy (SoSBEIS) made a direction under Section 35 PA2008 to treat the WKN Proposed Development as one for which development consent is required.
- 3.2.3. Section 104 PA2008 applies to the Proposed Development because it is:
- "in relation to an application for an order granting development consent [where] a national policy statement has effect in relation to development of the description to which the application relates".*
- 3.2.4. Section 104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application. In summary, these include:
- any NPS which has effect in relation to development of the description to which the application relates (a '*relevant national policy statement*');
 - any LIR (within the meaning given by s60(3) of PA2008) submitted to the SoS before the specified deadline for submission;
 - the appropriate marine policy documents (if any), determined in accordance with s59 of the Marine and Coastal Access Act 2009;

- any matters prescribed in relation to the development of the description to which the application relates; and
 - any other matters which the SoS considers are both important and relevant to the decision.
- 3.2.5. Due to the “hybrid” nature of the Proposed Development consisting of two main projects only one of which is a nationally significant infrastructure project, it is necessary to examine the provisions of s104 in a little more detail.
- 3.2.6. Section 104 PA2008 applies to an application for an order granting development consent, specifically *“if a national policy statement has effect in relation to development of the description to which the application relates”*.
- 3.2.7. In such a case not only must the SoS have regard to any relevant NPS but under s104(3) *“must decide the application in accordance with any relevant national policy statement”* except to the extent that the SoS is satisfied that one or more of subsections (4) to (8) applies, namely that, in summary, doing so:
- would lead to the United Kingdom being in breach of its international obligations;
 - would lead to the SoS being in breach of any duty imposed on him under any enactment;
 - would be unlawful by virtue of any enactment;
 - the adverse impact of the proposed development would outweigh its benefits; or
 - would meet any condition prescribed for deciding an application otherwise than in accordance with a NPS.
- 3.2.8. For decisions in cases where no national policy statement has effect, that is if s104 does not apply in relation to the application, then by s105 the SoS must have regard to:
- any LIR duly submitted;
 - any matters prescribed in relation to development of the description to which the application relates; and
 - any other matters which the SoS thinks are both important and relevant to the decision.
- 3.2.9. An NPS sets out national policy “in relation to one or more specified descriptions of development” (s5 PA2008). By s5(5) among other things, the policy in an NPS may in particular relate specifically to “a specified description of development”.
- 3.2.10. The WKN Proposed Development falls short of the threshold for it to be examined as a nationally significant infrastructure project. The fact that the SoS made a direction under s35 PA2008 to treat the Proposed Development as one for which development consent is required, does not alter the position in that respect. Neither NPS EN-1 nor NPS EN-3 appear to be worded to include a project subject to a s35 direction.

- 3.2.11. However it has been held (in *The Queen (oao David Gate on behalf of Transport Solutions Fop Lancaster and Morecambe) v The Secretary of State for Transport v Lancashire County Council [2013] EWHC 2937 (Admin)*) that:

"common sense would in any event dictate, that the decision maker is not precluded from taking into account matters incorporated within national policy statements which are not directly applicable to the development so long as he considers that they are both important and relevant to his decision"

- 3.2.12. Therefore, although the WKN Proposed Development does not meet the threshold for a nationally significant infrastructure project, matters in NPS EN-1 and NPS EN-3 may be taken into account in relation to that element of the application according to the extent that those matters are both important and relevant to the SoS' decision. The s35 direction is relevant to assessing such importance and relevance.
- 3.2.13. Neither NPS EN-1 nor NPS EN-3 has been reviewed by the Government under s6 PA2008. However, also pertinent to the importance and relevance of an NPS to a project the subject of a s35 direction (in which s104(3) does not apply), would appear to be the degree to which there has been a significant change in circumstances between the time the statement was designated, on the basis of which the policies set out therein were formulated, and the time of making the decision whether to grant consent. Whether or not the SoS has undertaken a formal review of policies, such an eventual change in circumstances could be potentially capable of being relevant and important factors to take into account.
- 3.2.14. The remainder of this Chapter addresses the identification and application of relevant NPSs and the LIR, and identifies other legal and policy matters that are capable of being important and relevant considerations.

3.3. NATIONAL POLICY STATEMENTS

- 3.3.1. NPSs set out Government policy on different types of national infrastructure development. NPSs which are relevant to this application are:

- NPS EN-1: Overarching National Policy Statement for Energy; and
- NPS EN-3: National Policy Statement for Renewable Energy Infrastructure

- 3.3.2. These NPSs were produced by the Department of Energy and Climate Change (DECC), (now the BEIS) and designated by the SoS for Energy and Climate Change in July 2011.

K3 Proposed Development

- 3.3.3. In relation to the K3 Proposed Development these NPSs form the primary policy context for this Examination given the statutory duties placed on the decision maker by s104 PA2008. The purpose and broad content of these NPSs is summarised here with subject specific consideration of

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policy arising from them provided in the remainder of this Report, particularly in Chapter 4.

WKN Proposed Development

- 3.3.4. In relation to the WKN Proposed Development the NPSs are important and relevant matters to take into account in the view of the ExA, however the statutory duties as to the applicability of the NPSs do not apply in the same way as for development which is a nationally significant infrastructure project. The primary policy context is nevertheless found in the PA2008, namely s105 which requires the SoS to have regard to LIRs, matters prescribed by regulations in relation to development of the description to which the application relates; and other matters considered important and relevant which will include so far as relevant, the NPSs.

NPS EN-1: Overarching National Policy Statement for Energy

- 3.3.5. NPS EN-1 sets out the Government's policy for delivery of major energy infrastructure projects. Paragraph 3.1.1 states:
- "the UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions".*
- 3.3.6. It also states that applications for development consent should be assessed *"on the basis that the Government has demonstrated that there is a need for those types of infrastructure"* (paragraph 3.1.3). Paragraph 3.1.4 indicates that the SoS *"should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008"*.
- 3.3.7. Section 3.6 of NPS EN-1 acknowledges that fossil fuel generation plays a vital role in providing reliable energy supplies and providing flexibility in response to changes in supply and demand and diversity in energy mix. Government policy is that they must be constructed and operate in line with increasingly demanding climate change goals.
- 3.3.8. Paragraph 4.1.2 of NPS EN-1 indicates that the SoS should start with a presumption in favour of granting consent to applications for energy NSIPs, and that the presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. This presumption is subject to the requirements of s104(3) PA2008.
- 3.3.9. As set out in paragraph 4.1.3 of NPS EN-1, account should be taken of the potential benefits of the proposed development to meeting the need for energy infrastructure, job creation and any longer term or wider benefits. Account should also be taken of potential adverse impacts, including any long term and cumulative ones, as well as measures to avoid, reduce or compensate for them.

- 3.3.10. Whilst other policies, including those contained in the development plan for the area may constitute matters that the SoS may regard as important and relevant to the decision, the primacy of NPSs for NSIPs is clear. In the event of a conflict between policies contained in any other document and those in an NPS, those in the NPS prevail for the purposes of decision making on nationally significant infrastructure (NPS EN-1, paragraph 4.1.5).
- 3.3.11. The presumption in favour of granting consent to applications for energy NSIPs is acknowledged in the NPS itself (paragraph 4.1.2) to be predicated on “the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS”. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.
- 3.3.12. The urgency of the need for new electricity capacity is explained in terms of (paragraph 3.3.15) meeting our obligations for 2050, particularly low carbon energy, whilst it is noted (paragraph 3.3.16) that a failure to decarbonise and diversify energy sources could result in becoming locked into a system of high carbon generation, making it very difficult and expensive to meet 2050 carbon reduction target.
- 3.3.13. Paragraph 3.3.24 states that it is not the Government’s intention to set targets or limits on any new generating infrastructure to be consented in accordance with the energy NPSs.

NPS EN-3: – National Policy Statement for Renewable Energy Infrastructure

- 3.3.14. EN-3 sets out the specific policies relating to renewable energy infrastructure including energy from waste infrastructure. It covers generating stations that generate electricity using waste, including non-renewable sources of waste, as a fuel and that generate more than 50MW of electricity.
- 3.3.15. Paragraph 2.1.2 states that the starting point for decisions is that the need for the infrastructure covered by EN-3 has been demonstrated. Paragraph 2.3.3 states energy from waste generating stations are likely to require significant water resources and should consider how the plant will be resilient to increased risk of flooding and increase risk of drought affecting river flows as part of their ability to adapt to climate change.
- 3.3.16. Section 2.4 deals with good design for energy infrastructure.
- 3.3.17. Paragraph 2.5.2 recognises that the recovery of energy from the combustion of waste will play an increasingly important role in meeting the UK’s energy needs that will form an important element of waste management strategies in England.
- 3.3.18. Paragraph 2.5.9 notes that waste to energy generating stations would take fuel (waste) that would otherwise be sent to landfill and this waste can come from municipal or commercial and industrial sources.

- 3.3.19. Paragraph 2.5.10 states a proportion of the biodegradable waste may be classed as “renewable” for the purposes of Renewable Obligation Certificates (ROCs) eligibility but this is not an issue of relevance to the decision maker. Paragraphs 2.5.12 and 2.5.13 2.5.12 state the fuel throughput capacity of the combustion plant may vary widely. Throughput volumes are not, in themselves, a factor in decision-making but the increase in traffic volumes, any change in air quality, and any other adverse impacts as a result of the increase in throughput should be considered in accordance with the NPS and balanced against the net benefits of the combustion of waste and biomass described in paragraph 2.5.2 and in Section 3.4 of EN-1.
- 3.3.20. EN-3 identifies assessment principles specific to energy from waste (EfW) generating stations, however, these overlap with the generic impacts of EN1: national designations – relating to biodiversity and geological conservation, landscape and visual and historic environment; Green Belts – not relevant to the proposed developments; and Other Locational Considerations.
- 3.3.21. EN-3 also provides details on the potential impacts that are specific to energy from waste generating stations, which expand on some of the generic impacts of EN-1: Air Quality and Emissions; Landscape and Visual; Noise and Vibration; Odour, Insect and Vermin Infestation; Waste Management; Residue Management; and Water Quality and Resources.

3.4. EUROPEAN LAW AND RELATED UK REGULATIONS

Leaving the European Union (EU)

- 3.4.1. The UK has left the EU. The European Union (Withdrawal) Act 2018 provides that, subject to defined exceptions, EU law which is extant up to the point of exit will remain in force and be incorporated into UK law. This report has been drafted on the basis that relevant EU law (primarily environmental law) will be incorporated into UK law at the point when the SoS decides this application.
- 3.4.2. The UK government’s Guidance: Upholding environmental standards from 1 January 2021, states the government is committed to:

"maintaining environmental standards and international obligations [sic] from 1 January 2021. The UK will continue its aim set out in the 25 Year Environment Plan to be the first generation to leave the natural environment in a better state than it inherited it. Existing EU environmental laws will continue to operate in UK law. The following will also continue:

- *the UK’s legal framework for enforcing domestic environmental legislation by UK regulatory bodies or court systems*
- *environmental targets currently covered by EU legislation - they are already covered in UK legislation*
- *permits and licences issued by UK regulatory bodies*

From 1 January 2021, current legislation will be changed to:

- *remove references to EU legislation*
- *transfer powers from EU institutions to UK institutions*
- *make sure the UK meets international agreement obligations”*

The EIA Directive

3.4.3. Council Directive 2011/92/EU, amended by 2014/52/EU, on the assessment of the effects of certain public and private projects on the environment (the EIA Directive) defines the procedure by which information about the environmental effects of a project is collated and taken into account by the relevant decision-making body before consent is granted for a development. It applies to a wide range of defined public and private projects.

3.4.4. The Proposed Development falls to be considered under the UK legislation related to 2011/92/EU: The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations)

3.4.5. The Proposed Development falls within Schedule 2 paragraph 3(a) of the EIA Regulations. The location, scale and nature of the Proposed Development may have the potential to give rise to significant effects on the environment and is considered to be EIA development. The DCO application is therefore required to be accompanied by an ES prepared in accordance with the EIA Regulations.

Revised Waste Framework Directive (rWFD)

3.4.6. The rWFD came into force on 12 December 2008, establishing the overarching framework for the management of waste across the EU.

3.4.7. Article 4 of the revised EU Waste Framework Directive (Directive 2008/98/EC) sets out five steps for dealing with waste, ranked according to environmental impact - the 'waste hierarchy'. The definitions of each of the stages can be found in Article 3. It gives top priority to preventing waste. When waste is created, it gives priority to preparing it for re-use, then recycling, then recovery, and last of all disposal (e.g. landfill). A very key principle in the backdrop to the hierarchy is to pursue efficient use of resource.

3.4.8. Responsibility for compliance with the waste hierarchy lies with processors of waste whose compliance therewith is regulated and monitored by the Environment Agency (EA) (or other permitting authority if located elsewhere in the UK) through their respective Environmental Permits (EPs).

3.4.9. The rWFD enshrines compliance with the waste hierarchy into law, transposed into English law by the Waste (England and Wales) Regulations 2011 (2011 Regulations). Any entity which imports, produces, collects, transports, recovers or disposes of waste, or which as

a dealer or broker has control of waste is obliged to take *"all such measures available to it as are reasonable in the circumstances to apply the ..waste hierarchy as a priority order"*. They may depart from the priority order where this is justified by life-cycle thinking on the overall impacts of the generation and management of the waste so as to achieve the best overall environmental outcome.

- 3.4.10. The revised hierarchy inherent in the rWFD points up the preference for waste prevention. It also confirms that waste treatment involving energy generation is a recovery operation provided it achieves energy recovery efficiency expressed as R1 of 0.65 or more. The way in which the R1 criterion is calculated is set out in the rWFD. The Government has published guidance "Waste incinerator plant: apply for R1 status" on 4 October 2016.
- 3.4.11. To provide a consistent approach to report recycling rates at UK level under the rWFD Waste from Households was first published by the Department for Environment, Food and Rural Affairs (DEFRA) in May 2014, and includes waste from: Regular household collection, Civic amenity sites, 'Bulky waste' 'Other household waste'. It does not include street cleaning/sweeping, gully emptying, separately collected healthcare waste, or asbestos waste. It is a narrower measure than 'municipal waste' and 'council collected waste'.
- 3.4.12. Ratification of the Circular Economy Package (CEP) across the Member States means that a revised legislative framework on waste came into force on 4 July 2018, including changes to the rWFD, as set out in Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste (the '2018 Revised WFD'). The objectives of CEP measures are among other matters to reduce the adverse impacts of waste generation and the overall impacts of resource use by ensuring appropriate application of waste hierarchy by placing restrictions for landfilling and incineration, specifically:
- waste separately collected for preparing for re-use and recycling should not be landfilled or incinerated, with the exception of waste resulting from subsequent treatment operations of the separately collected waste for which incineration or landfill is the best environmental outcome.
- 3.4.13. Member States have two years in which to transpose the agreed amendments. The UK Government has indicated it will implement the changes in full. On 30 July 2020 it published its statement setting out the approach the UK will take to transposing the EU's 2020 Circular Economy Package (EU CEP) measures.
- 3.4.14. On 30 July 2020 the government re-affirmed its commitment to recycling 65% of municipal waste by 2035 and set out its approach to transposing the EU CEP into domestic law. It would be mainly the same as the EU CEP, including targets such as sending no more than 10% municipal waste to landfill by 2035. The EU CEP was approved in April 2018 but will no longer apply in the UK following Brexit.

- 3.4.15. Notwithstanding that the Government has in effect published its own CEP there is still a legal obligation to transpose rWFD because the measures became EU law before the UK left the EU. On 25 August 2020 the Waste (Circular Economy) (Amendment) Regulations 2020 were made which are intended in effect to transpose the 2020 CEP in England and Wales.
- 3.4.16. Specifically regarding the waste hierarchy the rWFD added a paragraph requiring Member States to make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy (rWFD Annex IVa). In responding to this requirement the Government asserted in its Circular Economy Package Statement (Annex I – Summary of 2020 CEP measures and proposed approaches to transposition) that *“this will be delivered through existing provisions and, where relevant, measures will be included in Waste Prevention Programmes”, therefore “no new measures are proposed”*.
- 3.4.17. Article 6 of the rFWD specifies when and how end of waste is achieved, as amended under the CEP set out in Our Waste, Our Resources: A Strategy for England 2018 (WRS). A condition found in the rWFD is that Municipal Waste must be collected separately unless it is not “technically, environmentally and economically practicable” (TEEP) to do so. This is transposed by the 2011 Regulations, in particular Regulation 13.
- 3.4.18. Article 10(4) rFWD requires that waste separately collected for preparing for re-use or recycling is not to be incinerated. This is a new addition that requires Member States to ensure that waste materials collected separately for preparing for re-use or recycling must not be incinerated, except for waste resulting from subsequent treatment operations of the separately collected waste for which incineration delivers the best environmental outcome. Measures must be taken to achieve this.
- 3.4.19. The precise proposed approach to meet this requirement is unclear but CEP Policy Statement 30 July 2020, Annex I – Summary of 2020 CEP measures and proposed approaches to transposition states that it:
- 3.4.20. *“Includes legislative changes to prevent waste separately collected for preparing for reuse or recycling from being accepted at waste incinerators”, whilst noting that “This approach will have a positive impact on recycling rates and help to deliver on ambitions ranging from the 25 YEP to climate change commitments.”*

Industrial Emissions Directive (IED)

- 3.4.21. The Industrial Emissions Directive (IED) 20/75/EU applies to all incinerators and other energy-from-waste (EfW) facilities. The directive has been implemented by the Environmental Permitting (England and Wales) Regulations 2016 (as amended) (EP Regulations). Incineration includes treatment techniques such as pyrolysis, gasification or plasma processes, and the use of waste as a fuel or for energy recovery.
- 3.4.22. The IED provides operational limits and controls which plant must meet, including emission limit values (ELVs) for pollutant releases to air. The K3 Proposed Development would fall under the Large Combustion Plant WHEELABRATOR KEMSLEY GENERATING STATION (K3) AND WHEELABRATOR KEMSLEY NORTH (WKN) WASTE TO ENERGY FACILITY: EN010083
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(LCP) requirements of the IED, being greater than 50MW in capacity. In addition, European Best Available Technique (BAT) reference documents (BREF) are published for each industrial sector regulated under the IED, and they include BAT-Achievable Emission Values to be met through the application of BAT. These values may be the same as those published in the IED, or they may be more stringent.

- 3.4.23. The application is considered against the EU Directive and other legislation relating to air quality matters in the relevant sections of Chapter 4 of this Report.

The Birds Directive

- 3.4.24. Council Directive 2009/147/EC on the conservation of wild birds (Birds Directive) is a European nature conservation legislative measure for the protection for all wild bird species naturally occurring in the EU. The Directive places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

The Habitats Directive

- 3.4.25. Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) is a European nature conservation legislative measure.
- 3.4.26. Habitat types requiring the designation of Special Areas of Conservation (SACs) are listed in Annex I of the Directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. SACs form part of the Natura 2000 network of protected sites. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species.

The Habitats Regulations

- 3.4.27. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) are the principal means by which the Habitats Directive and the Birds Directive are transposed into the law of England and Wales. Assessment processes taking place pursuant to these regulations are referred to as Habitats Regulations Assessment (HRA).
- 3.4.28. The types of European site relevant to the Application are as follows:
- SACs designated pursuant to the Habitats Directive;
 - SPAs designated pursuant to the Birds Directive; and
 - Ramsar sites designated under the Ramsar Convention on Wetlands of International Importance.
- 3.4.29. These Directives and Regulations are relevant to this application in view of the presence of European sites within the region of 10km distance

from the Application Site. Chapter 5 gives further detailed consideration to these matters.

The Air Quality Directive

- 3.4.30. Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the Air Quality Directive) requires Member States to assess ambient air quality with respect to sulphur dioxide (SO₂), nitrogen dioxide (NO₂), oxides of nitrogen (NO_x), particulate matter (PM₁₀ and PM_{2.5}), lead, benzene, carbon monoxide and ozone. The Directive aims to protect human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollutants. It sets legally binding concentration-based limit values (LVs) as well as target values to be achieved for the main air pollutants and establishes control actions where these are exceeded. It is transposed into UK statute through the Air Quality Standards Regulations 2010 made under the Environment Act 1995 (EA1995).

The UK Air Quality Strategy

- 3.4.31. EA1995 established a requirement for the production of an Air Quality Strategy (AQS) for improving ambient air quality. The AQS establishes a long-term vision for improving air quality and offers options to reduce the risk to health and the environment from air pollution. It sets UK air quality standards and objectives for the pollutants in the Air Quality Standards Regulations.
- 3.4.32. Individual plans prepared beneath the AQS provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and Air Quality Management Areas (AQMAs) where Air Quality Management Plans are prepared by local authorities aimed at reducing levels of the relevant pollutant.
- 3.4.33. As a consequence of decisions taken over a number of years to broadly promote the growth of diesel vehicles as a proportion of national fleets, combined with a divergence between regulatory and real environment outcomes in the testing of emissions from diesel vehicles, a number of European countries including the UK now experience issues with the achievement of NO₂ LV compliance. NSIP proposals giving rise to air emissions from combustion plant or significant changes to the volume or location of vehicle movements may have implications for the achievement of NO₂ LV compliance.
- 3.4.34. In response to litigation a revised draft Air Quality Plan for NO₂ was published by DEFRA on 26 July 2017² (AQP2017). This refers to Zone Plans for action in a large number of localities³. However, a High Court

² [Air quality plan for nitrogen dioxide \(NO₂\) in the UK](#), DEFRA (2017)

³ [Air Quality Plans for tackling roadside nitrogen dioxide concentrations in Tyneside](#) (UK Zone Plans), DEFRA (2017)

Order was made on 21 February 2018⁴ (ClientEarth No 3), providing that whilst the AQP2017 remains in force, it and its supporting Zone Plans are unlawful because they do not contain measures sufficient to ensure substantive compliance with the Air Quality Directive (AQD) in a number of local authority areas.

- 3.4.35. The remedy required was the production of a supplement to the 2017 plan ensuring necessary information and feasible compliance measures are in place. Following a consultation on possible measures to be included in this supplement in identified locations in May 2018⁵, the Government published the final version of its Clean Air Strategy in January 2019⁶.

The Water Framework Directive

- 3.4.36. Council Directive 2000/60/EC (as amended) establishing a framework for Community action in the field of water policy (the Water Framework Directive (WaterFD)) establishes a framework for water policy, managing the quality of receiving waters. Amongst other objectives, it seeks to prevent the deterioration of and to improve aquatic ecosystems by progressively reducing pollution and mitigating the effects of floods.
- 3.4.37. In implementing the WaterFD, NPS EN-1 states at paragraph 5.15.3 that an ES should describe existing physical characteristics of the water environment affected by the proposed project and any impact of physical modifications to these characteristics. It should also address any impacts of the proposed project on water bodies or protected areas under the WaterFD.
- 3.4.38. The WaterFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. This matter is addressed in the relevant sections of Chapter 4.

Environmental Permitting Regulations

- 3.4.39. The EP Regulations apply to all new installations and implement the EU Directive 2008/1/EC concerning Integrated Pollution Prevention and Control (the IPPC Directive). They define activities that require the operator to obtain an EP from the EA and transpose the requirements of the EU IED into UK legislation. As the Proposed Development falls within s1 Combustion Activity under the EP Regulations, an EP would be required before the Proposed Development commences operation.
- 3.4.40. The EP Regulations provide a regulatory system to ensure a high level of protection of environmental and health impacts, secured by

⁴ [R oao ClientEarth v SoS EFRA, SoST and Welsh Ministers](#) (ClientEarth No 3)

⁵ Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations: [a consultation](#), May 2018, DEFRA and DfT

⁶ Clean Air Strategy, January 2019, BEIS, DEFRA, DfT, DoHSC, HM Treasury, MHCLG.

demonstrating that the proposed approach used adopts BAT to prevent or minimise the effects of the activity on the environment, taking account of relevant local factors. Generating stations exceeding 50MW are covered by the IED and the EP Regulations.

- 3.4.41. As set out in section 1.8 of this Report, the Applicant has confirmed that an amendment to the existing Environmental Permit (K3) would be required, as would an Environmental Permit (WKN); and MMO Licence amendment (WKN) to construct, operate and maintain the Proposed Development and would be sought separately. This matter is addressed further in Chapter 4

3.5. OTHER LEGAL PROVISIONS

United Nations Environment Programme (UNEP) Convention on Biological Diversity 1992

- 3.5.1. Responsibility for the UK contribution to the Convention on Biological Diversity lies with DEFRA who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.5.2. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the UNEP Convention on Biological Diversity has to be taken into account in consideration of the likely impacts of the Proposed Development and of appropriate objectives and mechanisms for mitigation and compensation. The provisions on EIA and transboundary matters with regard to impacts on biodiversity referred to in this Chapter, satisfies the requirements of Article 14 of the Convention (Impact Assessment and Minimising Adverse Impacts).

The Wildlife and Countryside Act 1981

- 3.5.3. The Wildlife and Countryside Act 1981 (WACA1981) is the primary legislation which protects certain habitats and species in the UK. It provides for and protects wildlife, nature conservation, countryside protection, National Parks, and Public Rights of Way (PRoWs) including for the notification, confirmation, protection and management of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the statutory nature conservation bodies (SNCBs) in the UK. The SNCB for England is Natural England (NE).
- 3.5.4. WACA1981 contains provisions relevant to Ramsar sites, National Nature Reserves and Marine Nature Reserves. If a species protected under the Act is likely to be affected by the development, a protected species licence will be required from NE. Sites protected under the Act (including SSSIs) which are affected by the proposed development must also be considered. The effects of development on the PRoW network are also relevant.

- 3.5.5. WACA1981 is relevant to the application in view of the sites and species identified in relevant sections of the ES [APP-063, REP2-024, REP2-032]. Relevant considerations are discussed in Chapter 4 of this Report.

Natural Environment and Rural Communities Act 2006

- 3.5.6. The Natural Environment and Rural Communities Act 2006 (as amended) (the NERC Act) makes provision for bodies concerned with the natural environment and rural communities, including in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions have regard, so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with the biodiversity duty, regard must be had to the UNEP Convention on Biological Diversity.
- 3.5.7. I have had regard to the NERC Act and the biodiversity duty in all relevant sections of Chapters 4 and 5 of this Report.

National Parks and Access to the Countryside Act 1949

- 3.5.8. The National Parks and Access to the Countryside Act 1949 provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty. It also establishes powers to declare National Nature Reserves and for local authorities to establish Local Nature Reserves (LNRs).

The Countryside and Rights of Way Act 2000

- 3.5.9. The Countryside and Rights of Way Act 2000 (as amended) includes provisions in respect of PRow and access to land. The Act also improved provisions for the protection and management of SSSIs and other designations under the Wildlife and Countryside Act 1981.

The Planning (Listed Buildings and Conservation Areas) Act 1990

- 3.5.10. The Planning (Listed Buildings and Conservation Areas) Act 1990 empowers the SoS to maintain a list of built structures of historic or architectural importance and sets out the principal statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas.
- 3.5.11. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest which it possesses as set out in Chapter 4.

Ancient Monuments and Archaeological Areas Act 1979

- 3.5.12. The Ancient Monuments and Archaeological Areas Act provides for Scheduled Monuments to be protected and for the maintenance of a list of Scheduled Monuments. It also imposes a requirement for Scheduled Monument Consent for any works of demolition, repair, and alteration that might affect a designated Scheduled Monument. For non-designated archaeological assets, protection is afforded through the development management process as established both by the Town and Country Planning Act 1990 and the National Planning Policy Framework.

Marine and Coastal Access Act 2009

- 3.5.13. The Marine and Coastal Access Act 2009 (MCAA2009) introduced the production of marine plans and the designation of Marine Conservation Zones (MCZ) in United Kingdom waters. MCAA2009 provides for the preparation of the Marine Policy Statement (MPS) and Inshore and Offshore Marine Plans. PA2008 s104, subsection (2)(aa) requires the SoS to have regard to the appropriate marine policy documents (if any), determined in accordance with s59 of MCAA2009. The relevant policies for the purposes of s59 are the MPS and any marine plan adopted by the relevant SoS within the policy framework set by the MPS.
- 3.5.14. In 2013 the SoS for Environment, Food and Rural Affairs designated 27 MCZs, including The Swale Estuary MCZ. The implications of the Proposed Development on the MCZ are addressed in Chapters 4 and 5.

Environmental Protection Act 1990

- 3.5.15. Section 79(1) of the Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. Article 14 dDCO [REP7-003] contains provisions relating to proceedings in respect of statutory nuisance, discussed further in Chapter 7 of this Report.

Control of Pollution Act 1974

- 3.5.16. The Control of Pollution Act 1974 (CoPA) provides the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, a s60 notice may be issued by the local planning authority with instructions to cease work until specific conditions to reduce noise have been adopted. Section 61 of the CoPA provides a means for applying for prior consent to carry out noise generating activities during construction. Once prior consent has been agreed under s61, a s60 notice cannot be served provided the agreed conditions are maintained on-site. The legislation requires Best Practicable Means to be adopted for construction noise on any given site.

Noise Policy Statement for England

- 3.5.17. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise.

- 3.5.18. The Explanatory Note within the NPSE provides further guidance on defining 'significant adverse effects' and 'adverse effects'. One such concept identifies 'Lowest Observable Adverse Effect Level (LOAEL)', which is defined as the level above which adverse effects on health and quality of life can be detected. Other concepts identified are: Significant Observed Adverse Effect Level (SOAEL), which is the level above which significant adverse effects on health and quality of life occur, and No Observed Effect Level (NOEL), which is the level below which no effect can be detected.
- 3.5.19. When assessing the effects of development on noise matters, the aim should firstly be to avoid noise levels above the SOAEL, and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

Water Resources Act 1991, Flood and Water Management Act 2010, Water Acts 2003 and 2014, Land Drainage Act 1991

- 3.5.20. The above Acts set out the relevant regulatory controls that provide protection to waterbodies and water resources from abstraction pressures, discharge and pollution, and for drainage management related to non-main rivers. The application is considered against such matters in Chapter 4 of this Report.

The UK Biodiversity Action Plan

- 3.5.21. Priority habitats and species are listed in the UK Biodiversity Action Plan. The plan is relevant to the application given the biodiversity and ecological matters discussed in Chapters 4 and 5 of this Report.

Climate Change

- 3.5.22. PA2008 s10(3)(a) requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. This duty has been addressed throughout Chapter 4 of this Report. The Climate Change Act 2008 (CCA2008) also establishes statutory climate change projections and carbon budgets.

The Public Sector Equality Duty

- 3.5.23. The Equalities Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share and who do not share a protected characteristic. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making.

3.6. MADE DEVELOPMENT CONSENT ORDERS

3.6.1. The Applicant responded to a written question ExQ3.6.8 [PD-014] by referring to and supplying copies of the following made DCOs to support their position:

- Ferrybridge Multifuel 2 (FM2) Recommendation Report to Secretary of State, D5 Submission - Applicant's Response to ExA's Further Written Questions (ExQ3) Appendix E – [REP5-016];
- Ferrybridge Multifuel 2 (FM2) Decision of Secretary of State, D5 Submission - Applicant's Response to ExA's Further Written Questions (ExQ3) Appendix E –[REP5-017];
- North London Heat and Power Project (NLHPP) Recommendation Report to Secretary of State, D5 Submission, Applicant's Response to the ExA's Further Written Questions (ExQ3) Appendix G [REP5-018]; and
- North London Heat and Power Project (NLHPP) Decision of Secretary of State, D5 Submission, Applicant's Response to the ExA's Further Written Questions (ExQ3) Appendix G [REP5-019].

3.6.2. In addition the Applicant [REP2-009] in reply to Q1.1.2. [PD-008] referred to other applications where a direction was made under s35 PA2008:

- Triton Knoll Electrical System (offshore wind farm connection);
- Nautilus Interconnector (submarine electricity cable); and
- Aquind Interconnector (submarine electricity cable).

3.7. TRANSBOUNDARY EFFECTS

3.7.1. Under Regulation 32 of the EIA Regulations and on the basis of the information available from the Applicant, the SoS is not of the view that the Proposed Development is likely to have significant effects on the environment in another European Economic Area (EEA) state.

3.7.2. In reaching this view the SoS has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 – Transboundary Impacts and Process). Transboundary issues consultation under Regulation 32 of the EIA Regulations was therefore not considered necessary. It is stated in paragraph 6.2.12 of the Scoping Report [APP-013] that it was not considered that there is any potential for significant transboundary effects to occur as a result of the project.

3.7.3. The Inspectorate's Scoping Opinion [APP-014], paragraph 3.3.18, noted that the Scoping Report [APP-013] did note that for some chapters "*the matter will be reviewed following the results of the modelling exercises, which is welcomed. The final position should be clearly stated in the ES.*" The Response to PINS Scoping Opinion [APP-015] merely restated the views of the Inspectorate's Scoping Opinion. Although the final position does not appear to be clearly stated as requested, there is no evidence that the Proposed Development would be likely to have significant effects on another EEA State.

3.8. OTHER RELEVANT POLICY STATEMENTS

- 3.8.1. Other policies that give rise to important and relevant considerations for the SoS are referred to in Chapter 4 in the sections on policy considerations relevant to the particular issues examined.

3.9. THE NATIONAL PLANNING POLICY FRAMEWORK

- 3.9.1. The National Planning Policy Framework (NPPF) was originally published in 2012. A revised NPPF was published on 19 February 2019, which is an important and relevant matter. Paragraph 213 of the revised NPPF states that due weight should be given to existing policies according to their degree of consistency with the NPPF with the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.
- 3.9.2. The NPPF, together with the accompanying Planning Practice Guidance (PPG), contains statements of planning policy and practice and how these are expected to be applied. Paragraph 5 of the NPPF notes that it is not a source of individual or project-specific policy for NSIP decision-making.

3.10. LOCAL IMPACT REPORTS

- 3.10.1. Section 104(2) of PA2008 states that in deciding an application for development consent where a NPS has effect the SoS must have regard to any LIR within the meaning of s60(3) submitted to the SoS before the deadline specified in a notice under s60(2). By s105 and for decisions in cases where no national policy has effect, a similar duty applies.
- 3.10.2. Under s60(2) of PA2008 there is a requirement to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given in the Rule 8 Letter [PD-007].
- 3.10.3. LIRs were submitted at D1 by SBC [REP1-012] and KCC [REP1-011]. Their contents are considered in Chapter 4 of this Report.

3.11. THE DEVELOPMENT PLAN

- 3.11.1. As outlined in the Applicant's Planning Statement [APP-057] and the LIR [REP2-036], for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004, the development plan for the area of the Application Site comprises the Kent Minerals and Waste Local Plan 2013-30 (July 2016) (KMWLP) and Bearing Fruits 2031: The Swale Borough Local Plan (July 2017) (Swale Local Plan).
- 3.11.2. Development plan policies relevant to the Proposed Development are referred to in the various planning matters dealt with under Chapter 4.
- 3.11.3. Policies from neighbouring development plans are touched upon in the context of the Waste Hierarchy, considered further in Chapter 4. Apart from these issues, I consider that the Proposed Development would not give rise to important and relevant impacts in neighbouring local authority areas.

- 3.11.4. Paragraph 4.1.5 of NPS EN-1 states that if there is any conflict between development plan documents and an NPS then the NPS prevails “*given the national significance of the infrastructure*”. Where an NPS has effect in relation to development of the description to which the application relates, this precedence is given statutory effect in the PA2008.
- 3.11.5. However where an NPS does not have effect (in the case of the WKN Proposed Development) primacy should be accorded to the development plan as discussed further in Chapter 6 of this Report.
- 3.11.6. The SoCG between the Applicant and KCC [REP8-013] identified conflicts of views over compliance with development plan documents, and the draft SoCG between the Applicant and SBC [REP5-006] identify disputes related to air quality, traffic and transportation and climate change which potentially involve conflicts with development plan documents. These matters are considered further in Chapter 4.
- 3.11.7. Other non-statutory planning policy documents identified as relevant to the consideration of this application include:
- Memorandum of Understanding (SEWPAG) Appendix to [REP3-019]);
 - Local Transport Plan 4: Delivering Growth without Gridlock (2016-2031) section 4.2.36, ES Chapter 4 [APP-056]; and
 - SBC Climate and Ecological Emergency Action Plan (EEAAP) D4 Submission, Appendix 1 - Climate & Ecological Emergency Action Plan [REP4-026].

3.12. THE SECRETARY OF STATE’S POWERS TO MAKE A DCO

- 3.12.1. Consideration as been given throughout the Examination of whether changes to the application have rendered it a different application and whether the SoS would have power under s114 of PA2008 to make a DCO having regard to the development consent applied for.
- 3.12.2. The document entitled ‘*Planning Act 2008: examination of applications for development consent*’, (March 2015) published by the former Department for Communities and Local Government, provides guidance at paragraphs 109 to 115 in relation to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act, 2011 was that s114(1) places the responsibility for making a DCO on the decision-maker and does not limit the terms in which it can be made.
- 3.12.3. Being mindful of this context during the Examination, I am satisfied that there are no resulting material changes to that which was applied for. I am therefore of the view that the SoS has the power to make a DCO as recommended in Chapter 7 to this report.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

- 4.1.1. As required by section s88 of PA2008 and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EP Rules), as Examining Authority (ExA) I made an Initial Assessment of the Principal Issues (IAPI) arising from an initial assessment of the application and of the Relevant Representations (RRs) received. This was done within 21 days of the day after receipt of the s58 certificate of compliance with s56 of PA2008 provided by the Applicant [OD-002].
- 4.1.2. Annex B of the Rule 6 Letter published on 21 January 2020 [PD-006] set out the IAPI. The issues identified, which did not intend to imply an order of importance, were as follows:
- Environmental Impact Assessment
 - Air Quality
 - Archaeology and Cultural Heritage
 - Ecology
 - Habitats Regulations Assessment
 - Greenhouse Gases and Climate Change
 - Ground Conditions
 - Landscape and Visual Impact
 - Noise and Vibration
 - Traffic and Transport
 - Water Environment
 - Draft Development Consent Order (dDCO)
- 4.1.3. On 26 February 2020 in the Rule 8 - notification of timetable for the examination [PD-007], following the request of KCC at the Preliminary Meeting I decided to treat as important and relevant issues for the Examination matters relating to:
- Waste recovery capacity, management of waste hierarchy and related policy matters.
- 4.1.4. In addition to the planning issues arising from the IAPI, the remainder of this Chapter addresses other relevant matters that arose during the Examination. For each issue, the effect of the Proposed Development on that particular issue and any mitigation measures proposed are summarised. Comments are made on matters raised in RR, Written Representations (WR), Statements of Common Ground (SoCGs) and the Local Impact Reports (LIRs) on the planning issues. Where relevant, the Applicant's response to those comments are reported and conclusions drawn.
- 4.1.5. Matters relating to the dDCO are addressed in this Chapter within the framework of the individual planning issues to which they relate. The DCO itself is reported on in Chapter 7 of this Report.
- 4.1.6. In addition to the planning issues, this Chapter also addresses the following topics arising from the conduct of the Examination:
- issues arising in written and oral submissions;
 - issues arising in the LIR;
 - conformity with NPSs;

- conformity with the development plan;
- the application of other policies;
- the principle of development;
- consideration of previously made DCOs;
- Environmental Impact Assessment (EIA);
- HRA; and
- Environmental Permitting Regime.

4.1.7. Having set out responses to these matters in broad terms between Sections 4.2 to 4.9 of this Chapter, the planning issues identified in paragraph 4.1.2-3 above and the matters of detail arising from them are considered in Sections 4.10 to 4.19.

4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

Introduction

- 4.2.1. The application resulted in community concern exemplified by the relevant representations of individuals noted below in this section, and the submissions of Minster-on-Sea Parish Council (MSPC) the closest elected tier of local government to the community representing the interests of approximately 17,000 residents [REP1-018, REP4-024].
- 4.2.2. MSPC objected to the application on grounds of impact on traffic flow, what it saw as the effective doubling of the current level of waste coming into the area and the knock on effect on the highway network, especially Grovehurst A249 Junction and M2 junction during peak periods. Concern was also raised as to the public health implications of associated vehicular exhaust emissions plus air-borne toxic flue gas emissions.
- 4.2.3. John C Twiselton CEng MIMechE, a former MSPC councillor lodged independently a written submission [REP1-017] supporting MSPC's concerns at what was alleged would be an increase in traffic congestion at the two major pinch points, the Grovehurst A249 Junction and M2 junction.
- 4.2.4. Representations were received from KCC and SEWPAG contending that the Proposed Development was inappropriate in policy terms and opposition to it was maintained throughout the Examination.

Relevant Representations (RRs)

4.2.5. RRs [RR-001 to RR-009] were submitted as follows.

- Environment Agency [RR-001]
- Health and Safety Executive [RR-002]
- Public Health England [RR-003]
- Highways England [RR-004]
- Historic England [RR-005]
- Natural England [RR-006]
- Surrey County Council (SCC) [RR-007]
- Michael Vick [RR-008]
- Donna Clarke [RR-009]

- 4.2.6. SCC commented that it and other planning authorities in the south east are planning for waste on the basis of net self-sufficiency and not on the basis that Surrey's requirements will be met by facilities in Kent. It was producing a new Surrey Waste Local Plan (SWLP) with its Examination in Public in September 2019 and would be consulting on Main Modifications in January 2020. At D3 the Applicant in its Response to the Examining Authority's Further Written Questions (ExQ1A) provided Appendix 1.6 – Surrey Waste Plan 2008 [REP3-007] and Appendix 1.5, the Surrey 2 Hour Drive Time Map [REP3-006].

4.3. ISSUES ARISING IN THE LOCAL IMPACT REPORTS

- 4.3.1. Section 104(2) of PA2008 requires the SoS to consider the contents of an LIR when making a decision on an application.

- 4.3.2. SBC produced a LIR [REP2-036] which was submitted at D2. SBC had no adverse comments relating to the Proposed Development. However in referring to its LIR in further submissions made at D4 [REP4-025] SBC made further representations dated 5 May 2020, taking into account in particular the detailed submissions made by KCC. On the issues of highways impact and climate change, SBC therefore:

- supported KCC's objections relating to the highways impacts and the strategy for reviewing use of rail and water as alternative means for transportation; and
- in light of the SBC Climate and Ecological Emergency Action Plan (EEAAP) being approved by the Council's Cabinet on 22 April 2020 [REP4-026], is concerned that the Proposed Development would have significant adverse impacts upon carbon emissions within the Borough and is not required to meet waste requirements in the latest Waste Needs Assessment, which was based upon the policy of providing self-sufficiency for the disposal of waste in Kent;
- supported KCC's objection that the Proposed Development would not be compatible with its waste hierarchy and promotion of recycling; and
- is concerned HGV movements could increase through AQMAs and worsen air quality, contrary to Policy DM6 of the adopted Swale Local Plan.

- 4.3.3. In its LIR [REP1-011] KCC as the Local Highway Authority objected to the application, that:

- the Transport Assessment (TA) did not present a robust assessment of the traffic profile;
- the operation of the K3 Proposed Development and the construction and operation of WKN Proposed Development would not have a significant impact on the highway network and the lack of any mitigation proposed to redress the impacts
- therefore sought a requirement that no works to the WKN Proposed Development are commenced until both the M2 Junction 5 and A249/Grovehurst Road improvement works are completed.

- 4.3.4. In respect of mitigation of transport impacts as a government aim for sustainable development, KCC also noted the Applicant was in control of the contracts it accepts, and whilst waste would arrive from larger commercial waste operators, there should be greater collaboration with waste suppliers to provide local waste collection points to facilitate the sustainable transfer of waste.
- 4.3.5. As Waste Planning Authority (WPA) for the county of Kent, the Kent Minerals and Waste Local Plan (KMWLP) policy framework was predicated on a principle of 'net self-sufficiency' and the management of waste in accordance with the Waste Hierarchy, an approach found sound following independent examination by the Planning Inspectorate. The capacity gap identified in the adopted KMWLP was met with the implementation of planning permission SW/10/444 and the waste capacity to feed the K3 plant. The LIR looked forward to the Planning Inspector's report on the Early Partial Review) of the KMWLP (subsequently published and submitted by KCC at D4 [REP4-016].

4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS (NPSs)

Introduction

- 4.4.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with the relevant NPSs, identified in Chapter 3 above as being NPS EN-1 and NPS EN-3.
- 4.4.2. A distinction is drawn within the Proposed Development between Project K3 and Project WKN in terms of whether the application must be determined in accordance with any relevant NPSs. As I have set out in Chapter 3, whilst this is true of Project K3, there is no such obligation in relation to Project WKN.
- 4.4.3. Of relevance to the consideration of NPSs, and applicable to the Proposed Development, is the effect of s106 PA2008 by which the SoS has a discretion, if they consider that representations including evidence relate to the merits of a NPS, to disregard such representations or evidence.
- 4.4.4. In Section 3.2 of this Report I have set out the relationship between s104 and s105 PA2008 as they apply to the Proposed Development. In this section I assess whether in principle the Application conforms with the NPSs, however this is subject to the detailed considerations and weighing the balance of any adverse effects against benefits in Section 6 of this Report.

NPS EN-1 and NPS EN-3

- 4.4.5. The Applicant analysed the performance of the Proposed Development against relevant policies in NPS EN-1 and NPS EN-3 within its Planning Statement [APP-082]. These documents the principle of, and need for, the Proposed Development within the framework provided by NPSs.

- 4.4.6. NPS EN-1 makes clear that there is a need for the UK to move away from fossil fuels for electricity generation. Nevertheless, it recognises the urgent need for energy infrastructure to achieve energy security with substantial weight being given to the contribution which projects would make towards satisfying this need. Paragraphs 3.6.1 and 3.6.2 of NPS EN-1 state that there is also a need for a mix of energy sources including fossil fuels to meet demand in a flexible manner.
- 4.4.7. However and, as concluded in Chapter 7 of this Report, the assessment provided by the Applicant of conformity of the Proposed Development with the waste hierarchy is insufficiently robust, does not take into account Annual Monitoring Reports (AMRs) of relevant WPAs and consequently fails to demonstrate that it would not be contrary to the application of the waste hierarchy in Kent as required by NPS EN-3.

Conclusion on NPS Policy

- 4.4.8. The compliance of the Proposed Development has been examined against policy detail and tests applicable to individual planning issues as set out in relevant NPS paragraphs, and this analysis is carried out in sections 4.10 to 4.19 below.
- 4.4.9. Taking all relevant documents and policies into account, the need for the K3 Proposed Development is established through the NPSs. The WKN Proposed Development generally conforms to high-level policy in NPS EN-1 and NPS EN-3. In Sections 4.10 to 4.19 of this Report I analyse the generic impacts of the Proposed Development in light, amongst other things, of the NPS policies.

4.5. CONFORMITY WITH THE MARINE POLICY STATEMENT AND MARINE PLANS

- 4.5.1. Where a NPS has effect, the SoS in making their decision, must have regard to the appropriate marine policy documents (if any) determined in accordance with Section 59 of the Marine and Coastal Access Act 2009.
- 4.5.2. The MMO submission [REP3-017] pointed out that the South East Inshore Marine Plan (SEIMP) is now a material consideration following consultation with the SoS and the MMO expected a robust and comprehensive marine plan policy assessment to form part of this application. In ExQ2 [PD-012] I asked the Applicant to explain the extent to which and where in the application documents the Marine Plan had been addressed.
- 4.5.3. The Applicant responded [REP4-006], noting the status as a material consideration of the 'Draft for Consultation' version of the SEIMP which was released in January 2020. In its response the Applicant reviewed that accordingly in respect of the surface water outfall elements of the Proposed Development.
- 4.5.4. The review is set out at paragraphs 14.1.2 to 14.1.11 of [REP4-006], noting that the outfalls would not generate any significant impacts on

seascapes or the landscape under draft Policy SE-SCP-1, and draft Policy SE-CC-2 would be complied with in that the Proposed Development would be resilient to the impacts of climate change and coastal change. As the K3 and WKN outfalls would only discharge clean surface water draft Policy SE-WQ-1 would be complied with in that no deterioration of water quality would result, and would be controlled by any permit issued for WKN and amendment to the K3 permit.

- 4.5.5. Draft Policy SE-MPA-1 would be complied with as the Proposed Development was not considered to have the potential to impact on any element of the marine protected area, specifically the Swale Ramsar and Swale Estuary Marine Conservation Zone. Draft Policies SE-BIO-1, SE-BIO-2 and SE-BIO-3 were considered as to possible impacts on the distribution of priority habitats and priority species, on native species or habitat adaptation or connectivity or on coastal habitats/ecosystem functioning to demonstrate that they will follow the avoid, minimise, mitigate and compensation approach, however no such impacts were expected in the case of the outfalls.
- 4.5.6. Draft Policy SE-UWN-1 requires any proposal which would generate impulsive sound to contribute data to the UK Marine Noise Registry and SE-UWN-2 requires proposals which would result in the generation of impulsive or non-impulsive noise must demonstrate that they will follow the “avoid, minimise and mitigate” approach. There would be no noise effects arising from the operation of the outfalls but the construction of them using a vibro hammer technique does have the potential to create noise and a controlling condition requiring a soft start approach is therefore imposed within the Marine Licence. As such the proposals would accord with SE-UWN-1 and SE-UWN-2.
- 4.5.7. In respect of draft Policy SE-CE-1, there were no cumulative adverse effects identified with other proposals. It was concluded that the Proposed Development is not considered to conflict with any element of the emerging SEIMP.
- 4.5.8. In its D5 submission at point 2.30 [REP5-030] the MMO welcomed the Applicant’s consideration of the SEIMP. Matters of detail concerning the outfall are considered in Chapters 4 and 7, however no issue was taken by the MMO or other IP on the conformity of the draft SEIMP policies. Insofar as they are to be considered under s59 MCAA2009 or otherwise, I am satisfied the Proposed Development would generally be in conformity therewith.

4.6. CONFORMITY WITH DEVELOPMENT PLAN

- 4.6.1. This section sets out an over-arching analysis of the conformity of the Proposed Development with relevant development plan policies.
- 4.6.2. Sections 4.10 to 4.19 of this Report identify the development plan policies described by the Applicant in its Planning Statement [APP-082] and KCC and SBC in their LIRs [REP1-011, REP1-012] as relevant to the

assessment of the Proposed Development. The Examination was not referred to any relevant plan policies arising from Neighbourhood Plans.

4.6.3. I have reviewed the development plan policies thus identified. There are instances of policy support for the Proposed Development in relation to sustainable development and the drive towards a strong competitive economy. Furthermore, no instances of unaddressed policy conflict have been identified in respect of the relevant requirements of environmental protection, water quality, biodiversity conservation, landscape, transportation and archaeology policies which are met.

4.6.4. There are no issues arising from development plan policies that necessarily conflict with relevant policy directions arising from NPSs. Whilst NPSs are the primary source of policy for a decision on an NSIP under PA2008 such as Project K3, development plan policies take precedence for a decision on Project WKN. None of the development plan policies indicate against the directions set in NPS EN-1 or NPS EN-3 and it follows that effect can be given to all relevant development plan policies in a manner which reinforces and adds local context and detail to NPS compliance where the NPSs apply.

4.7. APPLICATION OF OTHER POLICIES

4.7.1. Other relevant sources of policy that give rise to important and relevant considerations for the SoS include policies raised and referred to by KCC and SBC in its LIRs [REP1-011, REP1-012], SEWPAG's Memorandum of Understanding (MoU) [REP2-043] and by the Applicant in its Planning Statement [APP-082].

4.7.2. Whilst NPSs are the primary source of policy for a decision on an NSIP under PA2008, such as Project K3 within the Proposed Development, other local policies are capable of being important and relevant considerations.

4.7.3. Project WKN within the Proposed Development is not an NSIP, so the NPSs are considered together with other policies. The Applicant's Planning Statement [APP-082] states at paragraph 13.1.2:

"In decisions made under Section 105, the presumption in favour of determining the application in accordance with the NPS is absent and the relevant NPS is considered to be important and relevant alongside other national and local policies."

4.7.4. However primacy is given to the statutorily adopted development plan in respect of the WKN Proposed Development.

4.7.5. Nothing arising from these or other relevant policies referred to that necessarily conflicts with relevant policy directions arising from NPSs and it follows that effect can be given to all relevant policies where they are applicable to the particular element of the Proposed Development.

4.8. ENVIRONMENTAL IMPACT ASSESSMENT

Introduction

- 4.8.1. This section addresses the documents comprising the ES. During the Examination the ES was amended and those changes that relate to the content of the ES are considered to constitute '*any other information*' as defined by the EIA Regulations. I have concluded that the amendments are relatively minor alterations, and that the overall environmental information submitted is sufficient for the SoS to take into consideration before making a decision in compliance with the EIA Regulations.
- 4.8.2. This section also records the environmental management documents proposed to be used by the Applicant in tandem with DCO provisions to secure the construction and operation of the Proposed Development and the application of mitigation within the worst-case parameters (the Rochdale Envelope) assessed in the ES.

The Submitted ES

- 4.8.3. An ES was provided as part of the application submission. The documents submitted are:
- Chapter 1 – Introduction;
 - Chapter 2 – Site Description, Proposed Development and Alternatives;
 - Chapter 3 – Methodology;
 - Chapter 4 – Traffic and Transport;
 - Chapter 5 – Air Quality;
 - Chapter 6 – Climate Change;
 - Chapter 7 – Human Health;
 - Chapter 8 – Noise and Vibration;
 - Chapter 9 – Ground Conditions;
 - Chapter 10 – Water Environment;
 - Chapter 11 – Ecology;
 - Chapter 12 – Landscape and Visual Impact;
 - Chapter 13 – Cultural Heritage;
 - Chapter 14 – Summary Tables;
 - Chapter 15 – Glossary;
- 4.8.4. The ES is accompanied by non-technical summaries [APP-068, APP-069] and appendices which supports the content and findings of the EIA:
- APP-020 Appendix 4.1 Transport Assessment Part 1
 - APP-021 Appendix 4.2 Transport Assessment Part 2
 - APP-022 Appendix 4.3 Transport Assessment Part 3
 - APP-023 Appendix 4.2 Draft Construction Traffic Management Plan
 - APP-024 Appendix 4.3 – Draft Travel Plan
 - APP-025 Appendix 5.1 – Air Quality – Construction Assessment Methodology
 - APP-026 Appendix 5.2 – Air Quality – Stack Height Determination
 - APP-027 Appendix 5.3 – Air Quality – Baseline
 - APP-028 Appendix 5.4 – Air Quality – Assessment of Impacts on Ecological Receptors
 - APP-029 Appendix 5.5 – Air Quality – Traffic Impacts
 - APP-030 Appendix 5.6 - Odour Assessment Methodology

- APP-031 Appendix 6.1 - Proposed Development Carbon Assessment
- APP-032 Appendix 6.2 - Proposed Development Carbon Assessment
- APP-033 Appendix 6.3 - Practical Effect Carbon Assessment
- APP-034 Appendix 7.1 - Noise Survey Results
- APP-035 Appendix 7.2 – Proposed Development Construction Noise Model Input Data
- APP-036 Appendix 7.3 - Proposed Development Construction Noise and Vibration Assessment
- APP-037 Appendix 7.4 - Operational Noise Model
- APP-038 Appendix 7.5 - Operational Noise Assessment
- APP-039 Appendix 8.1 – Human Health Baseline
- APP-040 Appendix 9.1 – Desk Study Ground Conditions Preliminary Risk Assessment
- APP-041 Appendix 10.1 – Flood Risk Assessment
- APP-042 Appendix 10.2 – Drainage Design Philosophy
- APP-043 Appendix 11.1 - Kemsley Ornithological Surveys
- APP-044 Appendix 11.2 – Habitats Regulation Assessment Report
- APP-045 Appendix 11.3 – Ecological Baseline Surveys 2007 - 2009
- APP-046 Appendix 11.4 – Ecological Mitigation and Management Plan
- APP-047 Appendix 11.5 – Ecological Mitigation Report
- APP-048 Appendix 11.6 – Natural England Discretionary Advice
- APP-049 Appendix 11.7 - Marine Licence Surface Water Outfall to Swale
- APP-050 Appendix 11.8 - External Lighting
- APP-051 Appendix 12.1 - LVIA Scoping Correspondence with KCC
- APP-052 Appendix 13.1 - Desk Based Heritage Assessment

- 4.8.5. Updated ES docs (which superseded the application versions) were submitted throughout the Examination; and Addendums [APP-069 to APP-078].
- 4.8.6. During the Examination there were no submissions raising concerns about the overall adequacy of the EIA process and the ES. Individual submissions raising subject-specific issues bearing on individual planning issues are addressed in 4.10 to 4.19 below as necessary.
- 4.8.7. The ES and associated information submitted by the Applicant during the Examination have provided an adequate assessment of the environmental effects of the Proposed Development which meets the requirements of the EIA Regulations. The ES adequately describes the Rochdale envelope approach to the Proposed Development and secures its delivery within that envelope through the DCO. Full account has been taken of all environmental information in the assessment of the application and in the recommendation to the SoS.

4.9. HABITATS REGULATIONS ASSESSMENT

- 4.9.1. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects on European sites and is therefore subject to HRA. It is a convention in ExA recommendation reports to inform SoS decisions prepared under the PA2008, with a separate record of considerations relevant to HRA to be provided. This has been set out in Chapter 5 of this Report below.

- 4.9.2. However it is appropriate here to record that I have considered all documentation relevant to HRA as required by Section 4.3.1 of NPS EN-1 and have taken it into account in the conclusions reached here and in the case for development consent (Chapter 6 below). There are no matters relevant to the HRA which require to be considered as part of the reasoning in respect of planning issues set out in this Chapter. Further, project design and mitigation proposals included in the ES and secured in the Recommended DCO and Alternative Recommended DCO have been fully considered for HRA purposes.

4.10. WASTE HIERARCHY AND FUEL AVAILABILITY

Policy Considerations

National Policy Statements

- 4.10.1. The NPS, both EN-1 and EN-3 identify energy from waste as a type of infrastructure that is needed. Paragraph 2.2.4 NPS EN-1 states that the:
- 4.10.2. *"role of the planning system is to provide a framework which permits the construction of whatever Government – and players in the market responding to rules, incentives or signals from Government – have identified as the type of infrastructure we need in the places where it is acceptable in planning terms."*
- 4.10.3. At paragraph 2.5.64, NPS EN-3 makes clear that waste combustion generating stations *"need not disadvantage reuse or recycling initiatives where the proposed development accords with the waste hierarchy."* NPS EN-3 makes clear that for waste combustion generating stations, there should be an *"assessment of the conformity with the waste hierarchy and the effect on relevant waste plans should be presented in a separate document to accompany the application"* (Paragraph 2.5.69).
- 4.10.4. The assessment should according to NPS EN-3 paragraphs 2.5.66-69.
- examine the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant waste plan or plans where a proposal is likely to involve more than one local authority.
 - set out the extent to which the generating station and capacity proposed contributes to the recovery targets set out in relevant strategies and plans, taking into account existing capacity.
 - The results of the assessment of the conformity with the waste hierarchy and the effect on relevant waste plans should be presented in a separate document to accompany the application
- 4.10.5. NPS EN-3 paragraph 2.5.70 requires that the ExA should be satisfied, with reference to the relevant waste strategies and plans, that:
- 4.10.6. *"the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England...Where there are concerns in terms of a possible conflict, evidence should be provided to the [ExA] by the applicant as to why this*

is not the case or why a deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy."

- 4.10.7. Member States of the EU are required by Article 4(1) of the to apply the hierarchy in a priority order 'in waste prevention and management legislation and policy'. This requirement remains following EU-wide agreement on the Circular Economy Package (CEP), see 2.1.4 Waste Hierarchy and Fuel Availability Assessment (WHFAA) [APP-086].

Government review of waste policy in England 2011

- 4.10.8. This document published on 4 June 2011 contains actions and commitments which together set a clear direction towards a zero-waste economy. It acknowledges that:
- 4.10.9. *"...while energy from waste has the potential to deliver carbon and other environmental benefits over sending waste to landfill, energy recovery also produces some greenhouse gas emissions. It is important to consider the relative net carbon impact of these processes, and this will depend on the composition of feedstocks and technologies used"*

Waste and Resources Strategy 2018 (WRS)

- 4.10.10. The WRS and the Evidence Annex [REP3-010, REP3-011] set out "how our stock of material resources by minimising waste, promoting resource efficiency and moving towards a circular economy". It aims to maximise the value of resource use and minimise waste and its impact on the environment. There are five strategic ambitions (page 17) to:
- Work towards all plastic packaging placed on the market being recyclable, reusable or compostable by 2025;
 - Work toward eliminating food waste to landfill by 2030;
 - Eliminate avoidable plastic waste over the lifetime of the 25 Year Environmental Plan;
 - Double resource productivity by 2050; and
 - Eliminate avoidable waste of all kinds by 2050.
- 4.10.11. And it recognises that
- "Energy from waste (EfW) technologies include the controlled combustion of municipal waste or products derived from municipal waste in specialised plant specifically to generate power and/or heat from waste feedstock. (fn21 p20)."*
- 4.10.12. Among the aims to promote UK-based recycling and export less waste to be processed abroad, is to "drive greater efficiency of Energy from Waste (EfW) plants". This includes a commitment (p77) to ensure all future EfW plants achieve recovery status. 'R1' Recovery status acts as a proxy for the energy-generating efficiency of facilities. Facilities which achieve the status are classed as a recovery operation for the purposes of the waste hierarchy and so are a level up from the bottom rung of 'disposal'.

- 4.10.13. WRS welcomes further market investment in residual waste treatment infrastructure" (p79). The "food surplus and waste hierarchy" (p103) places EfW as second bottom in preferences for treating food waste which are: redistribution for people to eat; production of animal feed or bio-material processing; or recycling by anaerobic digestion or composting.
- 4.10.14. Specific and relevant examples are eliminating biodegradable waste to landfill, recognising that *"growth in energy from waste (EfW) and alternative residual waste treatment infrastructure will divert further waste from landfill."* (WRS p20)
- 4.10.15. "Recycling makes the *material* content of products that can no longer be repaired or reused available to be used in new products. It spares the environment the carbon impacts of extracting and processing virgin materials, and of managing wastes through energy recovery or landfill."
(WRS p68)
- 4.10.16. The WRS at paragraph 8.1.6, p137 states:
- "Ensuring data on the composition of residual waste is regularly updated Residual waste is the mixed material that is typically incinerated for energy recovery or landfilled. Much of the products and materials contained in this waste could have been prevented, reused or recycled. This is inefficient not only because materials that hold value are being lost, but also incineration and landfill are the most expensive ways to treat waste."*

Waste Management Plan for England

- 4.10.17. The Waste Management Plan for England ('WMPE') December 2013 supports efficient energy recovery from residual waste of materials which cannot be reused or recycled (*"to get the most energy out of waste, not to get the most waste into energy recovery"*). Particular attention should be given to the location of the plant to maximise opportunities for heat use, and landfill or incineration without energy recovery should be the last resort for waste, particularly biodegradable waste.

EfW Debate Guide

- 4.10.18. Energy from Waste, A Guide to the Debate, 2014 (EfW Debate Guide) reflects that EfW needs to support, not compete with diversion from landfill and increased recycling, whilst not compromising waste reduction and reuse. Paragraph 150 states that in considering whether EfW is to be part of a waste strategy a key question is whether this would require new infrastructure or if sufficient capacity exists elsewhere. In relation to the "proximity principle" paragraph 152 states:

"The proximity principle arises from Article 16, "Principles of self sufficiency and proximity", of the revised Waste Framework Directive (2008/98/EC), the EU legislation that governs waste management. The principle is often over-interpreted to mean that all waste has to be managed as close to its source as possible to the exclusion of other considerations, and that local authorities individually need the

infrastructure required to do so. This is not the case. Indeed the final part of the Article itself states, "The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State". Clearly if not even the entire country needs to have the full range of facilities, a specific local authority does not have to. While there is an underlying principle of waste being managed close to its source, there is no implication of local authorities needing to be self-sufficient in handling waste from their own area."

- 4.10.19. The EfW Debate Guide notes that "typical conversion efficiency of waste fuel into usable electricity is 25% compared to >70% for natural gas to electricity in CCGT" (fn 80).
- 4.10.20. The 2014 revisions to the EfW Debate Guide stated principles that are likely to continue as key considerations for both government and the sector in the future. The first principle is "Energy from waste must support the management of waste in line with the waste hierarchy" so EfW should at least constitute recovery not disposal, and to be classed as recovery, EfW facilities must meet requirements set out in WFD, for example through attainment of R1 status such that an incineration plant taking mixed waste needs to be accredited to R1 status to not be regarded as "disposal". Further, the need to maintain economic energy from waste operation should not impede continuing improvements in prevention, reuse and recycling of the host community.
- 4.10.21. The National Planning Policy for Waste October 2014 highlights that positive planning plays a pivotal role in among other things, driving waste management up the waste hierarchy, and encourages co-location of waste management facilities utilisation of the heat produced as an energy source in close proximity to suitable potential heat customers.
- 4.10.22. Planning Practice Guidance (PPG) on Waste, October 2015, states (paragraph: 007 Reference ID: 28-007-20141016) that the aim of the self-sufficiency and proximity principles is for each WPA to manage all of its own waste, although there is no expectation that each local authority should deal solely with its own waste to meet these principles. Each WPA should manage its own waste, recognising that the ability to source waste from a range of locations/organisations:

"..helps ensure existing capacity is used effectively and efficiently, and importantly helps maintain local flexibility to increase recycling without resulting in local overcapacity."
- 4.10.23. Information on the available waste management capacity in the relevant area informs forward planning in local plans of waste infrastructure required to meet the future needs of the area. This requires an assessment of future requirements for additional waste management infrastructure, with reference to forecasts for future waste arisings.

Kent Minerals and Waste Local Plan (KMWLP)

- 4.10.24. The potential for waste management proposals to contribute towards local energy supply is expressly acknowledged in the KMWLP and specific policies address this:
- Policy CSW6 applies to all proposals for built waste management facilities and expects: "*g. for energy producing facilities - sites are in proximity to potential heat users.*";
 - Policy CSW7, relating to the provision of additional capacity, expects: "*3. energy recovery is maximised (utilising both heat and power)*"; and
 - Policy CSW8, relating to provision of additional energy recovery capacity, states:
 - "*Facilities using waste as a fuel will only be permitted if they qualify as recovery operations as defined by the Revised Waste Framework Directive. When an application for a combined heat and power facility has no proposals for use of the heat when electricity production is commenced, the development will only be granted planning permission if: 1. the applicant and landowner enter into a planning agreement to market the heat and to produce an annual public report on the progress being made toward finding users for the heat.*"
- 4.10.25. The above policies ensure any additional capacity that produces energy maximises the calorific value (CV) of the waste, harnessing as much of the energy produced as possible, as soon as possible. They remain unchanged by the Early Partial Review (EPR) of MWLP.
- 4.10.26. Policy CSW4 is proposed to be updated to incorporate revised recycling targets. The proposed revised policy states:
- "The strategy for waste management capacity in Kent is to provide sufficient waste management capacity to manage at least the equivalent of the waste arising in Kent plus some residual non-hazardous waste from London. As a minimum it is to achieve the targets set out below for recycling and composting and other forms of recovery."*
- 4.10.27. Other relevant policy extracts are set out in EPR of the KMWLP - Pre-Submission Draft 2018 [REP2-046]. In particular paragraph 6.3.1 of the EPR is proposed to be redrafted to state:
- "Kent currently achieves net self-sufficiency in waste management capacity. I.e. the annual capacity of the waste management facilities (excluding transfer) in Kent is sufficient to manage the equivalent quantity of waste to that predicted to arise in Kent. The continued achievement of net self-sufficiency and the management of waste close to its source are key Strategic Objectives of the Kent MWLP, because it shows that Kent is not placing any unnecessary burden on other WPAs to manage its waste. Net self-sufficiency recognises that existing (and future) waste management capacity within Kent may not necessarily be for the exclusive management of Kent's waste. Proposals that would result in more waste being managed in Kent than is produced may be acceptable if it is demonstrated that these would result in waste*

produced in Kent being managed at a higher level of the waste hierarchy. Achievement of net self-sufficiency can be monitored on an annual basis and will provide an indicator as to whether the policies in the Plan need to be reviewed.”

- 4.10.28. The waste hierarchy is addressed at Policies CSW2 and CSW4. Policy CSW2 in the EPR is unchanged from the adopted KMWLP. It states that in order to deliver sustainable waste management solutions for Kent, proposals for waste management must demonstrate how waste is being driven to ascend the waste hierarchy. Policy CSW4 is revised to incorporate targets for management of waste in Kent.
- 4.10.29. The Kent Joint Municipal Waste Management Strategy (KJMWMS) identifies a requirement to reduce the amount of untreated waste in order to meet ever stricter EU Directives, Government targets and Best Value Performance Indicators. The KJMWMS also promotes the use of waste as a resource.
- 4.10.30. NPPF at paragraph 27 advises that in order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more Statements of Common Ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these.

The Applicant's case

- 4.10.31. The Applicant's position is that the Proposed Development is wholly in accordance with the waste hierarchy, and not prejudicial to the achievement of national or local waste management targets.
- 4.10.32. In the WHFAA [APP-086] a travel time of about two hours for residual wastes is assumed in order to maintain viability of transport costs. This is applied to the Proposed Development to identify a study area (Study Area) for the purposes of the assessment.
- 4.10.33. In its WHFAA [APP-086] the Applicant sets out that operation of the Proposed Development would accord with the waste hierarchy in that it would move the management of residual wastes, predominantly arising in the south of England, away from landfill and up to recovery category. Further, it would address the lost opportunity to use refuse derived fuel (RDF) exported from the Study Area to generate renewable/low carbon energy within the UK.
- 4.10.34. Level of availability is identified by considering the shortlisted waste types disposed of to landfill in the Study Area (over 1.5m tonnes) and adding to it all the RDF removed from facilities in the Study Area that is exported overseas (over 1m tonnes), as shown in Table 3.7 WHFAA [APP-086]. Thus there is in the region of 2.5 million tonnes of fuel available to the Proposed Development and if the local authority collected waste (LACW) were discounted, there would still remain c.2 million tonnes of residual wastes and RDF available "as a renewable/low carbon fuel source" (WHFAA, Table ES1, paragraph 1.3.4). However the Applicant states (paragraph 3.4.2) that these wastes are suitable for

combustion in energy generating stations comprising the Proposed Development.

- 4.10.35. With 992,500 to 1.98 million tonnes of fuel available to the Proposed Development, the latter would not prejudice delivery of the waste hierarchy, or the future circular economy. (WHFAA [APP-086] paragraph 5.3.4, Table ES2, Summary of Fuel Availability Assessment and sensitivities).
- 4.10.36. Applying all the sensitivities (focussing on specific waste types, assuming very high additional recycling, and relying on non-operational facilities) there would still remain 495,500 tonnes of fuel available beyond that sought for the Proposed Development. It is unlikely that all of these variables would occur to the extent considered in the WHFAA so this outcome is considered to be very conservative (paragraph 3.5.5). However, it demonstrates there is substantial fuel availability to be sourced from wastes that would otherwise be disposed of to landfill or exported overseas. The Proposed Development would not prejudice options preferred in the waste hierarchy, and would play an important and appropriate role in delivering sustainable waste management.
- 4.10.37. New municipal waste recycling targets form a key element of the CEP up to 2030 that seek to achieve: 55% by 2025; 60% by 2030; and 65% by 2035. (paragraph 3.4.13). Household waste recycling data over the past seven years show that for all authorities significant improvement would need to be made to reach 65% recycling by 2035 (paragraph 3.4.16) and would need (paragraph 3.4.19) defined performance targets and substantial funding from central government. A conservative sensitivity test is applied, assuming the current recycling rate achieved for municipal waste in the Study Area is 38% (the commonest household recycling rate achieved within the Study Area). To reach 65% would require an additional 27% of wastes to be recycled, which (paragraph 3.4.21) would take some 682,500 tonnes out of the available fuel (Table 3.7) at 2017, thus reducing availability to over 1.8 million tonnes. However as much of the Commercial and Industrial (C&I) waste stream falls within the CEP description for municipal waste, the overall increase in recycling required to meet the CEP 2035 target of 65% across municipal wastes, is unlikely to be as great as 27%.
- 4.10.38. New treatment capacity potentially able to become operational in the Study Area could reduce the availability of fuels to the Proposed Development. The Environment Agency's (EA's) Waste Management 2017 in England Data Tables identify recovery facilities with an Environmental Permit, but not yet operational. Table 3.9 WHFAA [APP-086] shows those located in the Study Area, a total new capacity pipeline of over 2m tonnes.
- 4.10.39. Table 3.9 takes account of those facilities with a "reasonable prospect to become operational", namely the Consented K3 Facility and Beddington Energy Recovery Facility (Beddington ERF). Other facilities cannot "credibly be considered as likely to be delivered" (paragraph 3.4.26). Phase 1 Tilbury Green Power Ltd, noted at Annex D [APP-086] is an EfW

facility but permitted to receive 270,000 tonnes of waste wood, not a comparable project as a substantial amount of waste wood available for it can be gained from waste types not considered in assessing the fuel availability for the Proposed Development.

4.10.40. Assuming this new capacity takes wastes from the Study Area this would reduce the availability of fuels to nearly 1m tonnes (paragraph 3.4.21 [APP-086]) leaving 1,845,040 tonnes in 2017 after applying the CEP sensitivity. Subtracting 852,500 tonnes would leave 992,540 tonnes. Thus the "worst case scenario" is that there would still be 992,540 tonnes of fuel available to the Proposed Development (paragraph 3.4.33). This is illustrated in Tables 3.10 and ES2. With some 992,500 (row h) to 1.98m (row a) tonnes of fuel available to it, the Proposed Development, would not prejudice delivery of the waste hierarchy or the future circular economy.

4.10.41. The Proposed Development is appropriately located at the Application Site, making optimal use of a site already in use for waste management. The supply of steam to the Kemsley Paper Mill is a clear advantage in locating it at the Application Site and bringing waste to it. WHFAA at paragraph 4.2.14 states

"there is a demonstrated heat demand located adjacent to the Application Site. K3 will provide steam to the Kemsley Paper Mill, and WKN could provide back up and contingency energy as required, for example during maintenance. Further heat demands are being explored to expand WKN's role in the future."

4.10.42. The Study Area used in the WHFAA [APP-086] paragraph 3.1.5 comprises the following authority areas:

- East London, comprising Barking and Dagenham, Havering, Newham and Redbridge;
- East Sussex, including Brighton and Hove;
- Essex, including Southend-on-Sea and Thurrock;
- Kent, including Medway;
- South East London, comprising Bexley, Greenwich, Lewisham and Southwark;
- South London, comprising Bromley, Croydon, Merton, Kingston-upon-Thames and Sutton; and
- West Sussex.

4.10.43. The Carbon Assessment Reports [APP-031, APP-032, APP-033, APP-149, REP5-015] conclude that the carbon burden associated with the transport of fuel to the facilities is small compared to the overall benefits of diverting waste from landfill. In any event, transport related carbon burdens would be generated whichever final destination the fuels take. The Transport Assessment in ES Chapter 4.1 [APP-020, APP-021, APP-022], shows there is no unacceptable adverse impact caused by transporting waste to the Proposed Development from further afield than the county of Kent, as the transport routes are considered appropriate for the transport of fuel to the Application Site. Consequently there could

be no reasonable objection importing fuel to the Application Site from outside Kent (WHFAA, paragraphs 5.4.5-6).

- 4.10.44. In summary the Proposed Development would deliver key objectives of national and local policy through delivering the waste hierarchy; contributing to self-sufficiency (in terms of both energy recovery and sustainable waste management) at the national level; and being part of a network of facilities from which value would be recovered from appropriate residual wastes.

Examination

- 4.10.45. The ExA posed a number of questions mainly to the Applicant, KCC and SEWPAG, but with an opportunity for all IPs to comment thereon and on the respective responses, concerning waste recovery capacity and management of the waste hierarchy, including whether or not the Proposed Development could be regarded as compliant with national and/or local policies.
- 4.10.46. KCC and SEWPAG provided the principal objections to the Proposed Development.
- 4.10.47. SEWPAG's objections are set out in its initial submission [REP1-016], which was added to at D2 by its responses [REP2-043, REP3-019, REP4-032, REP7-036] to questions posed at ExQ1, ExQ1a ExQ2 and ExQ4 [PD-008, PD-010, PD-012, PD-015] in which it had an interest. In addition it made further comments [REP5-035] on the Applicant's response [REP4-008] to its own reply to ExQ1A [REP3-019].
- 4.10.48. SEWPAG seeks to co-ordinate the planning of waste management within the south east and includes the following WPA members:
- Bracknell Forest Council
 - Brighton & Hove City Council
 - Buckinghamshire County Council
 - East Sussex County Council
 - Hampshire County Council (incorporating Southampton City, Portsmouth City and New Forest National Park Waste Planning Authorities)
 - Isle of Wight Council
 - KCC
 - Medway Council
 - Milton Keynes Council
 - Oxfordshire County Council
 - Reading Borough Council
 - Royal Borough of Windsor and Maidenhead
 - Slough Borough Council
 - South Downs National Park Authority
 - Surrey County Council
 - West Berkshire Council
 - West Sussex County Council
 - Wokingham Borough Council

- 4.10.49. SEWPAG's objection to the Proposed Development, based on its submissions as noted above can be summarised:
- WHFAA [APP-086] does not consider the local policy on waste management in any of the areas of its members, whereas each has its own local waste planning policy concerned with arranging for an equivalent amount of waste arising in its area, and follows the MoU that includes the expectation that each WPA in the south east will plan for the management of waste on the basis of 'net self-sufficiency'.
 - Waste Local Plan (WLP) policies allocate suitable sites and the need for additional facilities in each WLP takes account of the need to manage waste in accordance with the Waste Hierarchy. AMRs provide the latest information on arisings and waste management capacity in each area. The WHFAA does not consider the WLPs of the areas from where waste will be sourced and does not meet the requirements of NPS EN-3 by adequately assessing "*that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England.*"
 - Without any assessment in accordance with EN-3 it is unclear whether the facility would result in excessive recovery capacity that would prejudice the achievement of recycling as planned for in WLPs. The WHFAA should clarify the source of the waste and assess impacts on affected WPA areas and the related WLP requirements for new waste infrastructure (including that needed to meet minimum recycling targets).
 - Member WPAs should be specifically consulted on the eventual detailed assessment which should show this proposal is consistent with their adopted and emerging WLPs.
- 4.10.50. KCC in its additional submission dated 4 December 2019 [AS-010] objected that there was a conflict of the Proposed Development with the Council's strategy for the management of waste in its KMWLP. It considered the proposal is not supported by robust evidence that justifies the development of increased waste recovery capacity in Kent, and undermines the adopted KMWLP strategy of net self-sufficiency and managing waste as far up the waste hierarchy as practical.
- 4.10.51. KCC further noted two conflicting waste needs assessments in the public domain, that supporting the Council's local plan strategy to support the EPR and another prepared for the Applicant (WHFAA [APP-086]), both of which were before the Inspector independently examining the EPR.
- 4.10.52. The term Other Recovery is commonly used to cover operations within the recovery class other than recycling or composting. For residual non-hazardous waste Other Recovery normally means thermal treatment with energy recovery i.e. EfW.
- 4.10.53. KCC noted that the WHFAA [APP-086] sought to justify up to 1.3m tonnes of additional Other Recovery waste capacity and that even with the Proposed Development capacity, there would be a further unmet requirement for capacity of up to 840ktpa, suggesting a need for
- WHEELABRATOR KEMSLEY GENERATING STATION (K3) AND WHEELABRATOR KEMSLEY NORTH (WKN) WASTE TO ENERGY FACILITY: EN010083
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additional energy from waste facilities within Kent over and above this proposal, not supported by national or local waste planning policy. The Applicant's assessment of need for further capacity appeared inflated, even allowing for the Applicant's wider approach to fuel availability assessment, since using the EA's Waste Data Interrogator (WDI) 2018 data and the Applicant's methodology, this would result in fuel availability of between 123,500tpa and 420,000tpa. As the proposal was for 490,000tpa tonnes, the analysis of the data shows that there is no justification for the proposal at the proposed scale. (WHFAA [APP-086] and Appendix 1, [AS-010]).

- 4.10.54. Further, KCC state the Proposed Development would encourage more waste to be managed contrary to the waste hierarchy, which places Other Recovery at one level above landfill, resulting in a longer commitment to Other Recovery, diverting resources from more sustainable solutions such as preparation for re-use and recycling.
- 4.10.55. In addition, the diversion of waste into the County had the potential to undermine the wider local plan making principles of other WPAs in the South East, part of SEWPAG whose MoU commits the WPAs to regional net self-sufficiency to be achieved and maintained as part of each authority's waste planning strategy.
- 4.10.56. KCC is also a waste disposal authority (WDA) with a statutory duty to seek provision for dealing with domestic waste disposal arisings in Kent. The WKN Proposed Development offered greater disposal capacity but this was not required by KCC nor did it expect there to be a need for this beyond current arrangements and existing long-term contracts. Kent household waste tonnages were running at 730,000 tonnes per annum, with some 50% being handled and converted to energy through the EfW at Allington, and the Council did not expect capacity demand to change by more than current predictions. Therefore, additional waste capacity is not required, or expected, during the existing contract period.
- 4.10.57. Written questions were put to the Applicant and other IPs in ExQ1, ExQ1A, ExQ2, ExQ3 and ExQ4 on various matters related to the waste hierarchy and relevant national and local planning policies eliciting points as follows.
- 4.10.58. Other DCO applications cited by the Applicant (Section 3.6 of this Report) noted that although the SoS had directed those projects were to be treated as development for which development consent is required, s104 does not apply and therefore there is not a designated NPS that has effect in relation to development of those descriptions.
- 4.10.59. Although not an adopted local plan document the SEWPAG MoU Appendix to [REP3-019]) is in effect a Statement of Common Ground envisaged by Paragraph 27 of the NPPF, dealing with waste management as a cross-boundary matter addressed through cooperation between WPAs in the South East. It recognises that waste crosses administrative boundaries for management and, to ensure its management is adequately provided

for, the principle of net self-sufficiency should be applied when WPAs are planning for its management.

- 4.10.60. The Applicant's Study Area is analysed by KCC [REP2-044] showing each waste planning area's commitment to net self-sufficiency, including the county of Surrey, not included in the Study Area but in the Applicant's indicative catchment for the facility (ie within two hours travel time). By extending its scope well beyond Kent boundaries to source mixed municipal waste, waste would be drawn in from up to two hours travelling time from the facility, which being located at the northern extremity of Kent would result in processing waste from out of county, contrary to the application of the proximity principle for mixed municipal waste arising from the source authorities.
- 4.10.61. The Applicant disputes this would be contrary to SEWPAG objectives as it states there is no policy that restricts waste from any one area going to another. It concludes (Appendix 1, [REP2-009]):
- "as a regional facility K3/WKN may well draw waste in from beyond Kent and beyond the SEWPAG area. This is a positive strategy, designed to deliver the waste hierarchy within the south east and to provide for the sustainable recovery of residual wastes, enabling their diversion from landfill."*
- 4.10.62. Additional capacity in the area is provided for by an appeal decision granting planning permission for an EfW plant in West Sussex, reducing the potential feedstock supply by c180,000 tpa (27 February 2020 APP/P3800/W/18/3218965, Brookhurst Wood EfW plant [REP5-039]).
- 4.10.63. SCC in its RR [RR-007] states that it and other authorities in the south east plan for waste on the basis of net self-sufficiency, not that its requirements will be met by facilities in Kent. I asked the Applicant about the implications of this policy for the Applicant's strategy to take in a significant proportion of waste fuel from the south-east region who replied (Appendix 2, Response to ExQ1.1.6 [REP2-009]) that essentially there was no policy requiring all planning authorities to provide all waste management needs within its area, so nothing to prevent facilities such as those proposed to be provided within other administrative areas.
- 4.10.64. ExQ1A.1.10 [PD-010] queried the WHFAA [APP-086] where it stated at paragraph 1.1.5 that there was no sensible reason to consider the waste hierarchy separately for each of Project K3 and Project WKN. The Applicant [REP3-004] stated both facilities would recover energy from residual wastes, operate at the same level of the waste hierarchy, are subject to similar policies and can be considered together or separately. If just one of the projects were granted consent, the remaining fuel would, it assumed, continue to be managed in the same way. The WHFAA [APP-086] assumes recycling will increase to meet 65% across the Study Area, demonstrating a need for the capacity of both projects to divert the residual wastes from landfill or make domestic use of the RDF. If just one project were granted consent, the fuel that would have otherwise been recovered in the other would remain to be disposed of to landfill or exported as RDF.

- 4.10.65. KCC responded [REP5-038] that whilst Project K3 would increase the power output of a waste fired power generation unit forming part of a combined heat and power (CHP) plant with a direct technical link to supply heat to the adjacent paper mill, and increase throughput to that plant, Project WKN is a waste fired power generation plant with no direct relationship to the adjacent paper mill. Both may be classed as Other Recovery, subject to confirmation of their R1 status, but there is sufficient difference between the proposals for each to be considered as occupying different places within the tier of Other Recovery. The expansion of input to the Consented K3 Facility merited a higher position being CHP, to WKN, reflecting guidance on applying the waste hierarchy June 2011, as set out in reply to ExQ1.1.1 [REP2-044].

SEWPAG

- 4.10.66. At D3 in responding to EXQ1A [PD-010] SEWPAG [REP3-019] considered the Applicant had not answered the issues posed at ExQ1.1.4 [REP2-009] namely how the approach in paragraphs 7.1 and 7.2 of the MoU [REP2-043] could be said not to be undermined by the Proposed Development without assessing the local policy on waste management in each (or save for KCC, any) of the local policies on waste management. In the final sentence of paragraph 1.25 the Applicant stated: "An assessment appropriate to understand the impact on waste management strategies across the Study Area has been undertaken." However no reference is provided to this assessment and SEWPAG was not aware of the submission of such an assessment.
- 4.10.67. At D7 SEWPAG provided figures for comparable additional recovery capacity in the south east (other than in KCC's area) permitted since 2017, relating to some areas not included in the Study Area but within a two-hour travel time:
- Hampshire: 4,300 tpa
 - Milton Keynes: MK Waste Recovery Park, Wolverton Application 13/00861/FULEIS approved on 12.07.2013 and operational since March 2018;
 - Oxfordshire: Cassington/Worton Farm, Anaerobic Digestion (AD) Kitchen/Green Waste 22,500tpa (now 48,500tpa) Permanent; Wallingford, AD Kitchen / Green Waste 20,000tpa (now 45000tpa) Permanent; and Ardley Energy Recovery Facility EFW incinerator, Residual Waste 26,300tpa (now 326,300tpa) end date 2049;
 - Surrey: Charlton Lane EcoPark – 55,000tpa – currently being commissioned; and
 - West Sussex: 320,000 tonnes of permitted recovery EfW capacity at Ford (not yet constructed) with an application being considered (WSCC/036/20) which, if permitted, would increase recovery capacity by an additional 135,000 tonnes.
- 4.10.68. The WHFAA did not seek to specify an exact level of need for the Proposed Development as *"this is not required by policy and would be a level of spurious precision that cannot be achieved, not least as the data (except for local authority collected waste, or 'LACW')"*, but uses publicly available data to identify the availability of fuels appropriate for

combustion in the Proposed Development, considering wastes disposed to landfill and exported from the UK.

- 4.10.69. The WRS refers (fn 112) to the Evidence Annex and the UK Residual Waste: 2030 Market Review Final November 2017 (Tolvik Review) [REP3-012] which (p78 evidence annexe) advises that significant additional residual waste energy recovery capacity *"would not necessarily be needed"* and that the Tolvik Review concluded that there would not be a gap in incineration capacity by 2030. The Applicant points (WHFAA, paragraph 4.2.18 [APP-086]) to uncertainty in forecasting future events, and states the views are consistent with NPS EN-1 in that that energy projects that have gained consent but not yet started construction cannot be relied upon and *"government policy consequently seeks to deliver a minimum level (of 59 GW) of new electricity capacity"*.
- 4.10.70. I note that the focus of Tolvik Review 2017 [REP3-012] is upon the UK market as a whole and detailed modelling of regional differences was beyond the scope of the review. Section 7.3 states that as larger scale EfW plants are developed and regional variations in landfill capacity arise, quality data on the geographical source of waste accepted at locations to which waste is removed is key to analysing the geographical need for all forms of additional waste treatment capacity, including EfW. In general the review highlights the sensitivity of the Residual Waste market to recycling assumptions and that future recycling levels will depend upon a complex range of factors.
- 4.10.71. The Applicant's responded at D3 [REP3-004] to the ExA's questions ExQ1A [PD-010] supplying Appendix 1.13a – UK Statistics on Waste, 19 March 2020 [REP3-008]. Key findings were:
- UK recycling rate for waste from households (WfH) including incinerator bottom ash (IBA) metal was 45.0% in 2018, decreasing from 45.5% in 2017. There is an EU target for the UK to recycle at least 50% of household waste by 2020;
 - The recycling rate for WfH decreased in all UK countries save Northern Ireland in 2018. The recycling rate for England was 44.7%, compared with 47.7% in Northern Ireland, 42.8% in Scotland, and 54.1% in Wales. The reduction for England was driven primarily by a reduction in 'other organics' such as green garden waste sent for recycling, linked to adverse weather conditions for plant growth;
 - UK biodegradable municipal waste (BMW) sent to landfill has fallen from approximately 7.4 million tonnes in 2017 (21% of the baseline 1995 value) to around 7.2 million tonnes in 2018 (20% of the baseline 1995 value). The UK was therefore still on track to meet the EU target to restrict BMW landfilled to 35% of the 1995 baseline by 2020;
 - Figures for 2017 show that 70.0% of UK packaging waste was either recycled or recovered compared to 71.4% in 2016. This exceeds the EU target to recycle or recover at least 60% of packaging waste;
 - Estimated generation of C&I waste in 2016 was 41.1m tonnes, of which 33.1m tonnes (around four fifths) was generated in England. The latest estimates for England only indicate that C&I waste

generation was around 36.1 million tonnes in 2017 and 37.2 million tonnes in 2018; and

- UK generated 221.0 million tonnes of total waste in 2016, with England responsible for 85% of the UK total.

4.10.72. Also, (p12 [REP3-008]), *“energy recovery showed the largest percentage change in tonnage, with the 2016 figure of 7.3 million tonnes being almost four times the 1.9 million tonnes treated in 2014. Larger tonnages of waste are now treated at energy recovery facilities than at incineration without energy recovery, coinciding with policies to divert waste away from landfill. While overall waste to landfill has not shown a corresponding decrease, the underlying Environment Agency (EA) data shows that increases in landfilled waste have largely come from materials such as soil and stone waste. However, local authority managed municipal waste to landfill has declined as more waste is diverted to other treatments higher up the waste hierarchy”.*

4.10.73. The WRS at p20 states:

“we have increased our rates of recovery and recycling and generated much more energy from waste. We want to shift away from waste towards resource efficiency, and will do this by focusing not just on managing waste, but, on managing the resources which become waste”.

Matters outstanding at close of Examination

SoCG with KCC

4.10.74. The Applicant submitted at D8 a completed SoCG with KCC [REP8-013] dealing with several matters as follows.

Local Policy Principles

4.10.75. The Applicant notes a change between the KMWLP and EPR in removing references in Policy CSW7 to specific waste management capacity needs (including that for additional recovery capacity), and the commitment to prepare a Waste Sites Plan identifying the preferred locations for delivery of this infrastructure. Accordingly the EPR remains in support of proposals for recovery of energy from residual waste where they divert waste from landfill; and as part of helping Kent to move its waste management up the waste hierarchy, the EPR does not restrict the movement of waste into or out of the county.

4.10.76. KCC point to a key change between the KMWLP and the EPR to introduce management targets in revised Policy CSW4, for the different waste streams for the Plan period, in preference to set tonnages for identified waste management capacity needs (including that for additional recovery capacity) set out in MWLP policy CSW 7. Removal of the commitment to prepare a Waste Sites Plan identifying the preferred locations for delivery of this infrastructure flows from this. Revised targets are incorporated into EPR Policy CSW4 to aid annual monitoring of the Plan (the Annual Monitoring Report (AMR)) so to identify shortfalls and provide clear guidance to developers and the WPA on the need for proposals for

additional capacity where it involves management through methods that fall below recycling, composting or reuse in the Waste Hierarchy. To avoid overprovision of Other Recovery capacity which may discourage the development of recycling and composting capacity further up the waste hierarchy, MWLP Policies CSW 7 and CSW 8 are to be modified to eliminate the stated waste recovery requirement to be planned for.

- 4.10.77. The EPR remains in support of proposals for the development of facilities for the recovery of energy from residual waste where they demonstrably divert Kent waste from landfill and/or move Kent waste up the hierarchy, maximise recovery of by-products and residues (in accordance with the Waste Hierarchy), maximise energy recovery including heat and power, and meet an identified need indicated by monitoring against the targets proposed for inclusion in EPR policy CSW 4. It does not restrict the movement of waste into or out of the county provided the overall objective of net self-sufficiency is being achieved. EPR at paragraph 6.3.1 states:

"Proposals that would result in more waste being managed in Kent than is produced may be acceptable if it was demonstrated that these would result in waste produced in Kent being managed at a higher level of the waste hierarchy."

Waste hierarchy

- 4.10.78. The Applicant states there is a financial imperative for wastes to be recovered via other material recovery facilities rather than be treated at energy recovery facilities or disposed of via landfill. Each party involved in waste management has a duty to implement the waste hierarchy; compliance lies with each holder of waste in the chain; and a mix of facility type and sizes are required to deliver the waste hierarchy, recognised at paragraph 6.5.1 of the KMWLP (adopted and emerging). Consequently, energy recovery facilities are just one element of a network of facilities necessary to ensure the sustainable management of wastes.
- 4.10.79. KCC emphasises compliance as a legal obligation that should be considered from the top down, rather than the bottom up, asking in effect why waste cannot be reused or recycled, rather than how can it be diverted from landfill. Therefore the burden is on the promoter of a waste incineration facility to demonstrate that use of the proposed feedstock waste as a fuel is preferable to recycling it, or that such use is not technically or economically feasible.
- 4.10.80. It also notes that given that the latest Waste Needs Assessment (WNA) demonstrates provision of Other Recovery capacity within the county in the form of the Allington EfW plant and the Consented K3 Facility, and that recycling/composting capacity should be sufficient to meet the proposed targets, there is no identified need for new Other Recovery capacity. However, given the need to apply the waste hierarchy in priority order, as stated in p11 [REP8-013], the EPR supports the provision of new capacity for management of waste through recycling or

preparation of waste for reuse or recycling, or for the provision of additional capacity for green and/or kitchen waste treatment.

Energy Production

- 4.10.81. The Applicant regards NPS EN-1 as directly applicable to Project K3 it being an NSIP due to its proposed generating capacity. EN-1 makes clear the urgent need within the UK for all types of energy infrastructure, which includes generating stations using waste to generate energy. Therefore the ability of Project K3 to generate additional electricity without any change to its design and without any increase in waste throughput is a significant benefit of the K3 proposed scheme
- 4.10.82. The Applicant accepts Project WKN is not an NSIP by virtue of its generating capacity, but needs development consent due to the s35 Direction. Therefore the Applicant says it is still nationally significant, EN-1 remains a key material consideration in its determination, and within that context the 42MW of electricity which would be generated by WKN is a significant benefit.
- 4.10.83. KCC accepts NPS EN-1 makes clear the urgent need within the UK for energy infrastructure to speed the transition to a low carbon economy. This includes generating stations that use waste only where the waste cannot be re-used or recycled with less environmental impact and would otherwise go to landfill (paragraph 3.4.3 [REP8-013]). However it also states:
- "The energy produced from the biomass fraction of waste is renewable" and therefore that portion of the energy output attributed to non-biomass based waste input cannot be considered renewable. This means such plants may only be considered partially renewable at best. It should be noted that as the composition of waste changes, and biodegradable food waste extracted for separate collection in accordance with Government Plans by 2023, the composition of residual waste can be expected to change with the biomass content potentially reducing further still."*
- 4.10.84. With regard to generating additional electricity without changes to the design of the Consented K3 facility and without any increase in waste throughput, KCC regards this as clarification that such a proposed change is independent to the stated intention to increase throughput. Given that the increase in generating capacity triggered the application as an NSIP, KCC considers that only this aspect of the application ought to be examined against EN-1, such that the increase in throughput ought to be considered in the same way as for Project WKN.
- 4.10.85. As to Project WKN it is not a NSIP and so KCC considers it ought to be determined against the development plan with EN-1 as a material consideration if appropriate. Seen in that context, the power produced by Project WKN would be a benefit to be considered in the overall planning balance, which would include consideration of harm to KCC's strategy underpinning its WLP.

Relevance of NPSs to WKN Proposed Development

- 4.10.86. The Applicant states EN-1 and EN-3 are both important and relevant to the SoS's decision since Project WKN is the construction of a generating station and were it to have 8MW more capacity, there would be no question that EN-1 and EN-3 would have effect. Secondly, the function, scale and nature of impacts of the WKN development are similar to that of Project K3, and it has been accepted by the SoS as nationally significant through the s35 direction, and to be treated as development for which development consent is required. Therefore EN-1 and EN-3 and the matters they address remain equally important and relevant considerations in any assessment of the WKN Proposed Development as they do to the K3 project, and that the WKN Proposed Development should be decided as such by the SoS.
- 4.10.87. KCC maintains that as part of the Proposed Development is not an NSIP, that part ought to be determined in accordance with the relevant development plan, as should the proposed expansion of throughput at the Consented K3 Facility, it being independent of the expansion of its generating capacity and independent of the construction of Project WKN which is essentially a waste incinerator with power generation.

Kent Minerals and Waste Local Plan Policy CSW4 and need and capacity issues

- 4.10.88. The Applicant asserts that the Proposed Development would deliver KMWLP Policies CSW2 and CSW4 (both as set out in the adopted KMWLP and the EPR) as demonstrated through the WHFAA [APP-086] which shows that, even assuming 65% recycling is achieved (a higher target than that set out in either KMWLP or EPR) there remains a need for the WKN Proposed Development and K3 Proposed Development. Both projects enable more of Kent's waste to move up the hierarchy, out of landfill and into recovery.
- 4.10.89. KCC states that, considering the targets of modified Policy CSW4 against the most current capacity assessment in the supporting WNA, there is a surplus of capacity already consented as Other Recovery in Kent. Given the quantities of waste produced in Kent identified in the WNA, and the practical limitations on diversion of all waste from landfill by virtue of its unsuitability for use as feedstock, the Other Recovery targets in modified Policy CSW4 have already been exceeded. Any additional waste management capacity developed in Kent that is intended to target waste going to landfill ought therefore to be positioned in the recycling/composting tier (or above) reflecting the application of the hierarchy in priority order, as set out in Policy CSW2.
- 4.10.90. KCC objected that the Proposed Development as summarised in its closing statement at D8 [REP8-016]:
- is for the wrong type of capacity being incineration that doesn't qualify as Good Quality CHP;
 - is in the wrong place, with no guaranteed heat offtake and in a county with more than ample EfW capacity provision;

- is brought forward at the wrong time in light of:
 - the WRS warning that a substantial amount of material is going into residual waste when it should be handled higher up the waste hierarchy;
 - release of the standing Committee of Climate Change's latest advice warning against further development of waste incineration capacity without Carbon Capture and Storage (CCS); and
 - imminent adoption of the EPR.

4.10.91. The Applicant maintained its position that there was a need for both the K3 Proposed Development and WKN Proposed Development that would deliver the waste hierarchy and contribute to self-sufficiency at the national level. Its evidence was that there remained 300,000 to 700,000 tonnes of fuel even after considering the combined capacity proposed for K3/WKN7 (Appendix A to the Applicant's comments [REP3-003] on responses to D2 Submissions).

4.10.92. In particular in the Applicant made comments [REP5-022] on Responses to D4 submissions, with regard to KCC's reply [REP4-015 and Appendices 1 to 7 [REP4-016, REP4-017, REP4-018, REP4-019, REP4-020, REP4-021, REP4-022], to ExQ1A.1.4 [PD-010] as to whether an assessment in accordance with NPS EN-3 is needed of local as well as national waste management targets and what information was available. In essence the Applicant criticised KCC's reliance on the Inspector's Report of the EPR [REP4-016] and that the need for new residual waste management capacity was taken at face value. The Applicant said that the Inspector "*working at the plan making level...did not need to consider the detail in the numbers*".

4.10.93. The Applicant's and KCC's analyses are presented alongside each other, by the Applicant in [REP3-003] at: Document 11.2 - Appendix A - Summary of WHFAR July 2019, BPP Sensitivity and WDI 2018 update. The Applicant notes a discrepancy in applying the correct recycling tonnage to the BPP Sensitivity tonnages such that KCC's analysis results in an excessive deduction but in any event states an additional 24% of wastes to be recycled should be substituted for the 27% calculated at paragraph 3.4.20 WHFAR [APP-086]. However the key divergence between the BPP Sensitivity and the Applicant's review of the 2018 WDI data is in rows a and b, leading to a difference of some 520,000 to 590,000 tonnes.

Conclusion

Introductory matters

4.10.94. Primacy is given to the statutorily adopted development plan in respect of the WKN Proposed Development. This matter is discussed further in Section 6.6 of this Report.

4.10.95. PPG on Waste, October 2015 (see paragraph 4.10.22 of this Report) implicitly recognises as an aim of that policy, to encourage local flexibility to increase recycling "*without resulting in local overcapacity*".

- 4.10.96. In terms of the core decision-making section of NPS EN-3 (paragraph 2.5.70) it must be clear, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station would be in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England. I am not satisfied that this is the case with reference to the WKN Proposed Development because the increase in capacity which it would bring about would significantly increase the capacity gap already identified by KCC. For such provision to be made at this time for an additional 390,000 tonnes of waste per annum over the 50-year lifetime of the development would present a significant risk to meeting the waste hierarchy objectives set out in KMWLP as revised by the EPR, by pulling Kent waste that might otherwise be recycled down the hierarchy.
- 4.10.97. The EPR of the KMWLP has been found sound and the supporting Waste Needs Assessment is taken to be robust, and the arisings and forecasts are now reflected in the most recent Authority Monitoring Report released by KCC. Applying an assessment based on these values to the Proposed Development, the ExA is satisfied that the need for the additional capacity proposed to maintain net self-sufficiency in Kent throughout the Plan period while making reduced provision for London's waste, does not exist
- 4.10.98. The Applicant has not accepted that there is a possible conflict and therefore does not provide evidence as to why this would not be the case or why a deviation from the waste strategy and plans examined would nonetheless appropriate and in accordance with the waste hierarchy. However in reply [REP4-006] to ExQ4.13.1 [PD-015] the Applicant stated that if the view were taken that Proposed Development provides too much waste capacity in conflict with the waste hierarchy as set out in local plan policy, that is not a conflict which would result in either Project K3 or Project WKN being in conflict with the development plan as a whole, any adverse impacts arising from such a conflict would not outweigh the clear benefits of the facilities under NPS EN-1 and NPS-3.
- 4.10.99. Such a risk is recognised in national policy which refers to the need when determining planning applications for planning authorities to expect applicants to:
- "...demonstrate that waste disposal facilities not in line with the Local Plan, will not undermine the objectives of the Local Plan through prejudicing movement up the waste hierarchy." (National Planning Policy for Waste, para 7 bullet 2).*
- 4.10.100. In the context of a non-NSIP proposal such as the WKN Proposed Development where the NPSs do not apply as such, this more recent national policy that sets out detailed waste planning policies is at least as important and relevant to consider than the NPSs.

Relevance of NPSs to Project WKN and the increased throughput proposed in Project K3

- 4.10.101. In my view the WKN Proposed Development is not subject to NPS EN-1 and EN-3 in the same way as the K3 Proposed Development. Neither NPS directly relates to Project WKN, as it is not a development with generating capacity of 50MW or above. That it is 8MW short of this threshold cannot make the NPSs apply in the same way as they do to those projects that meet or surpass the threshold. The effect of this as far as concerns the WKN Proposed Development must be considered firstly in relation to NPS EN-1 and then NPS EN-3.
- 4.10.102. Also, since the NPSs, a significant change in circumstances has been the UK's ratification of the Paris Agreement seeking stronger controls on the increase in global average temperature than agreed at the 2010 UN Climate Change Conference, as is the UK Parliament's declaration of an environment and climate emergency in May 2019 and changes to CCA2008 ensuring the UK carbon account for 2050 will be net zero.
- 4.10.103. NPS EN-1 does not set out any definitional, presumed need for EfW projects as such, which might otherwise override relevant development plan policies but does set out a presumption that there is a significant need for new major energy infrastructure generally which is undisputed.
- 4.10.104. However NPS EN-3 at paragraph 2.1.2 requires the decision-maker to act on the basis that the need for infrastructure covered by EN-3 has been demonstrated. Clearly this cannot apply to the WKN Proposed Development except in a generalised way. Further, paragraph 2.5.10 would remove from the decision-maker the ability to consider what if any proportion of biodegradable waste to be used, may be classed as "renewable" for the purposes of Renewable Obligation Certificates (ROCs). Although such matters are important and relevant to consider, in my view the prescriptive and presumptive elements of these policies must yield, where circumstances merit, to the matters listed in s105 PA2008, including where important and relevant, other national or local policies.
- 4.10.105. In this connection I note that at paragraph 2.5.65 of NPS EN-3 national, local and municipal strategies provide policy expectations for waste management at geographical levels and local authorities "will be responsible for providing an informative framework for the amount of waste management capacity sought". This informative function does not in my view preclude consideration of adopted development plan policies pertaining to the acceptability of EfW proposals in light of capacity and related issues.
- 4.10.106. Turning to the proposed increase in throughput to the Consented K3 Facility, I note that EN-3 at paragraph 2.5.13 states that throughput volumes are not, in themselves, a factor in decision-making as there are no specific throughput limits for different technologies or levels of electricity generation. This is a matter for the Applicant although the adverse impacts of increases in throughput should be considered and balanced against the net benefits of the combustion of waste and biomass.

- 4.10.107. Therefore, whilst it is true in a sense that expansion of throughput at the Consented K3 Facility would not in itself constitute a trigger for classification as an NSIP, the context of the Application so far as it concerns Project K3, clearly takes account of throughput. Any adverse impacts can be considered without qualifying the application of NPSs, but also taking account of other matters listed in s105 PA2008 such as LIRs, and other important and relevant matters including specific local policies germane to the issues.

Local Policy Principles

- 4.10.108. The 2018 WNA [REP4-020] recognised that for the K3 Proposed Development it was intended that the majority of the waste would be sourced from within Kent, with the balance from the South East and elsewhere in the UK including London. The EPR Report [REP4-016] at paragraph 18 recognises that part of the strategy for waste management capacity in the KMWLP is to maintain net self-sufficiency so sufficient facilities are provided in Kent to manage the equivalent quantity of waste as is produced in Kent with some provision for a reducing amount of London's waste. This recognises that in reality waste does cross county boundaries in accordance with the operation of the market. However the net self-sufficiency policy ensures that any outward flow of waste is offset by an inward flow so that each WPA manages an equivalent amount to that produced in its area. This is illustrated in KCC's reply to ExQ1A.1.1 [PD-010] whereby waste may travel from Surrey to Kent for management, as it does for EfW yet SCC is still expected to make provision for management of an equivalent waste in its WLP.
- 4.10.109. The adverse effects are likely to be drawing waste in from much further afield than indicated in the Applicant's WHFAA, the locking in of waste that may otherwise be recycled into several years supply contrary to the waste hierarchy, and the undermining of investment plans for the development of local facilities, by drawing away waste so that a critical mass cannot be guaranteed to justify the business case for building a smaller plant to serve a more local catchment (contrary to the proximity principle).
- 4.10.110. Q1A.1.7 In response to this question, at paragraph 1.7.1, the Applicant asserts that the "...Proposed Developments are not located in Surrey, and consequently the development plan policy for that administrative area is not relevant to consider further" However, this fails to recognise that by potentially drawing in waste from Surrey or any other WPA area, this could adversely affect the other WPAs own underlying strategy (to maximise recycling), and undermine the viability of more locally based solutions which would accord with the proximity principle (See KCC Response to Q1A.1.7 of the Examining Authority's Further Written Questions [REP4- 015]).
- 4.10.111. Thus the creation of such a significant point of demand would undermine the plans, strategies and markets across the Applicant's Study Area and the South East generally, undermining the net self-sufficiency and proximity principles set out in the development plan.

- 4.10.112. The strategy for provision of waste facilities in the EPR seeks to meet the area's objectively assessed needs. It is informed by agreements with other authorities and is positively prepared. A key question is, assuming there is surplus capacity, what would be the effects of permitting other recovery facilities to be developed where there is no demonstrable need arising within Kent and after making allowance for the need for other recovery capacity as described in the development plan? And what would be the effect on the wider strategic process adopted by the WPAs of whom, in the Inspector's words it is said:

"there has been active engagement on waste matters through the South East Waste Planning Advisory Group (SEWPAG). This has informed the EPR process through a greater understanding of cross-boundary movements of waste in the south-east" (paragraph 10 [REP4-016])

- 4.10.113. I find that the whilst the EPR version of the KMWLP would not specifically restrict movement of waste across county areas, it would support proposals for recovery of energy from residual waste where they divert waste from landfill and move waste management in the area up the waste hierarchy by maximising recovery of by-products and residues and maximise energy recovery including by CHP, and meet an identified need indicated by monitoring against the targets proposed for inclusion in EPR policy CSW4. It is an important consideration that the EPR would dispense with the preparation of a Waste Sites Plan. This has been accepted by the EPR Examining Inspector and is a consequence of new management targets in Policy CSW4 for different waste streams for the Plan period, in preference to set tonnages for identified waste management capacity needs. The purpose is clearly to avoid overprovision of Other Recovery capacity that could discourage development of recycling and composting capacity further up the waste hierarchy.
- 4.10.114. The revised targets are included in Policy CSW4 and AMRs are used to identify shortfalls. Thus clear guidance is given on the need for proposals for additional capacity where it involves management through methods that fall below recycling, composting or reuse in the Waste Hierarchy.

Energy production

- 4.10.115. NPS EN-1 directly applies to Project K3 due to its proposed generating capacity and makes clear the urgent need within the UK for all types of energy infrastructure, which includes EfW generating stations. The ability of Project K3 to generate additional electricity without change to its design or increase in waste throughput would be a significant benefit of the K3 proposed scheme.
- 4.10.116. Further, the generation of 42MW of electricity which the WKN Proposed Development would bring about, would be a significant benefit in itself having regard to the emphasis placed on the need for all types of energy infrastructure by NSP EN-1. That said, NPS EN-1 also highlights the urgent need to speed the transition to a low carbon economy and that (paragraph 3.4.3) only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be

used for energy recovery. It is not disputed that the portion of energy output attributed to non-biomass based waste input in either Project K3 or Project WKN cannot be considered renewable and therefore the plants would be partially renewable at best.

- 4.10.117. Clearly with the greater emphasis placed on changing the composition of waste for separate collection in accordance with policies that post-date the NPSs, the biomass content potentially reduces further. Particularly important in my view are the aims of the WRS to commit to ensure future EfW plants achieve 'R1' recovery status and to eliminate biodegradable waste to landfill. Residual waste is the mixed material typically incinerated for energy recovery but is inefficient as materials that hold value are being lost, and it is an expensive way to treat waste.
- 4.10.118. Assuming both projects in the Proposed Development achieve R1 status they would be classed as a recovery operation in the waste hierarchy and so be one level up from the bottom rung of 'disposal'. If not they would not be permitted as contrary to KMWLP Policy CSW 8 (and EPR) which requires that facilities using waste as fuel will only be permitted if they qualify as recovery operations defined by rWFD.
- 4.10.119. The Applicant in reply to ExQ4.1.3 [PD-015] said that R1 accreditation could not be gained at this time. As is clear from the Government's guidance on applications for R1 status, an application can be made based on design data, and before the plant is commissioned including before planning approval is sought or an Environmental Permit (EP) is applied for. I asked (Q1A.1.42 [PD-010]) whether the K3 and WKN projects, would meet this energy recovery performance threshold (R1). KCC noted the EA listing of qualified plants showed that the Consented K3 Facility currently undergoing commissioning trials was not included. The Applicant stated it has not operated long enough and, as a CHP plant delivering steam to the DS Smith facility, it would achieve R1 status. The response to ExQ4 [PD-015] Appendix A - K3 CHP R1 Supporting Information April 2019 [REP7-017] was based on assumptions on its design and performance used for the purposes of the R1 calculation which indicated energy recovery efficiency value was over 0.65.
- 4.10.120. Generally the power produced by both projects would be a benefit to be considered in the overall planning balance.
- 4.10.121. However in the case of the WKN Proposed Development, the electricity generation is allied to the sourcing of some 390,000 tpa of waste fuel which is a significant amount in itself, the composition of which should be scrutinised to see whether overall the proposed generation is justified by reference to such matters as the biogenic to fossil carbon ratio and its energy content, the confidence that can be placed on the assumed biogenic content, comparisons with other methods of electricity generation, and whether avoided emissions from landfill would actually materialise. Within that process, consideration of harm to KCC's strategy that underpins its WLP is not excluded.

KMWLP Policy CSW4 and need and local capacity issues

- 4.10.122. I am not persuaded that even assuming 65% recycling is achieved (which is acknowledged to be a higher target than is set out in the KMWLP or EPR) there remains a need for the Proposed Developments in particular Project WKN. The WHFAA [APP-086] sets out in Table ES2 Summary of Fuel Availability Assessment and sensitivities, a projected surplus in the remaining fuel available in the Study Area compared to future capacity likely to be delivered, including taking account of both projects within the Proposed Development.
- 4.10.123. There is an obvious difference between the lower and upper estimates. This is predominantly due to the substitution of shortlisted waste types disposed to landfill rather than all Household/Industrial/Commercial (HIC) waste disposed to landfill. Clearly in my view the use of the former category is more appropriate since, as is clarified in the WHFAA, the HIC category in the WDI contains certain waste types that would be inappropriate for combustion in the Proposed Development, the use of which would result in an over-estimation of available fuel. Thus, under the WHFAA one arrives at a remaining level of fuel availability to the tune of 992,540 tpa, which would be taken up by the Proposed Development leaving a shortfall in capacity of facilities equivalent to processing the remaining figure of 495,540 tpa.
- 4.10.124. However KCC's alternative calculation, based on the same methodology, including an allowance of 27% recycling to achieve the CEP 2035 target, and using the EA's WDI 2018 data as set out in [AS-010] would result in fuel availability of between 420,000tpa and 123,500tpa, which latter figure takes account of shortlisted waste types disposed to landfill within Study Area. Applying the proposed capacity of both projects within the Proposed Development, one arrives at negative figures whether shortlisted waste types or HIC waste disposed of to landfill are applied, indicating a surplus capacity of facilities in the Study Area. I find it significant that KCC's waste needs assessment has underpinned the EPR under which the development of increased waste recovery capacity follows a sustainable pattern of waste management to achieve overall net self-sufficiency, an approach found to be sound in the Examination of the EPR [REP4-016].
- 4.10.125. Moreover when account is taken of KCC's Appendix 4 KMWLP EPR Sensitivity on Recovery Requirement 08 10 2019 v5 [REP4-019] it is clear that KCC's strategic approach would withstand substantially lesser achievement in recycling without compromising the net self-sufficient management capacity for the equivalent tonnage of Kent residual waste. This is primarily attributable to the Other Recovery capacity operating in Kent in the form of Allington EfW (500ktpa) and (during 2020) at the Consented K3 Facility (525ktpa). I also note that (WHFAA [APP-086] Table 4), in the South East region 60 per cent of all local authorities increased their household recycling rate, which is significantly more than all other regions save for the south west.
- 4.10.126. Turning to the Applicant's criticism of the Inspector's EPR Report [REP4-016] there is no reason to suppose that the Inspector did not properly examine the evidence on the capacity requirement for non-hazardous

waste. The Applicant made several representations against the proposed changes in the EPR based on the evidence and appeared at the examination hearings to convey these objections to the Inspector. I asked for these representations which were supplied in full [REP5-040]. They clearly show that the Applicant was critical of the evidence base underpinning the EPR, however the Applicant accepted (p2 [REP5-040], that its own representations were:

"not submitted as in-depth need assessments for waste management in Kent; this is a task for KCC in preparing its development plan policy."

- 4.10.127. The Inspector's reference to Table 9 is to the table that can be found on p17 the WNA 2018 Residual NHW Management Needs Sept 2018 Update v1.4 [REP4-020]. If it were assumed that the projected management requirements for London Residual Waste Imports (Table 8) were also to be managed at EfW facilities rather than disposed of to landfill, then it could still be accommodated at consented EfW capacity, as illustrated in Table 10 [REP4-020]. The report states at paragraph 21:

"21. The CRRNH considers the capacities of existing consented facilities and the extent to which they would satisfy identified need. A permitted facility at Barge Way has not been built. Irrespective of whether there is any uncertainty as to whether that facility will be provided, the strategy for waste management capacity does not depend on its provision."

- 4.10.128. Paragraph 23 of the Inspector's Report [REP4-016] accepts that the "CRRNH" (Capacity Requirement for the Management of Residual Non-Hazardous Waste) shows that there is no gap in capacity for other recovery treatment of residual non-hazardous waste throughout the Plan period and demonstrates that the "Kemsley facility" (ie the Consented K3 Facility") together with the existing Allington facility will provide a surplus of other recovery capacity. Paragraph 23 ends:

- 4.10.129. *"Policies CSW6 and CSW7 provide flexibility in that they are permissive policies that would allow for other recovery facilities to be developed should they be required".* (My emphasis).

- 4.10.130. I also note that the BPP report, Waste Topic Report 8 concluded the following on the need for Energy from Waste (EfW) capacity: "...sufficient sites should be identified such that new capacity in EfW could be provided for an additional 562,000 tpa. However, only 437,500 tpa new EfW capacity should be permitted until monitoring indicates that the provision of only this amount of EfW capacity would result in non-hazardous landfill capacity in Kent being used up before the end of the plan period. This will need one site to be identified in Kent that would not need to be developed until the long term, if at all." This conclusion underpins Policies CSW 7 and CSW 8 of KWMLP.

- 4.10.131. KCC's analysis and data are also more focussed on the particular geographical source of waste accepted at locations to which waste is removed, as well as a more localised approach to investigating capacity, which in my view is important to analysing the geographical need for EfW

additional waste treatment capacity. It was found to sound by the EPR Inspector.

- 4.10.132. On balance I prefer KCC's assessment in KCC WNA 2018, Capacity Requirement for the Management of Residual Non Hazardous Waste [REP4-020] of fuel availability and future capacity likely to be delivered, to that of the Applicant. This does not imply that in general future treatment capacity would no longer be necessary, however in the case of the WKN Proposed Development to grant consent for an additional 390,000 tpa throughput would in my judgement seriously undermine the local and regional strategy for managing waste development in Kent and the south east region. This would be contrary to KMWLP Policies CSW2, CSW4, CSW6, CSW7 and CSW8.
- 4.10.133. By sourcing mixed municipal waste well beyond Kent boundaries and up to two hours travelling time from the facility, would also be contrary to the proximity principle and SEWPAG objective for mixed municipal waste arising from the source authorities.

Waste hierarchy

- 4.10.134. The Applicant has made it clear throughout the Examination that its view is that the waste hierarchy is delivered both through good intentions and market forces. In my view this approach fails sufficiently to recognise that compliance with the waste hierarchy is a legal obligation under the rWFD, as well as set out in NPS EN-3, notably in paragraph 2.5.66 (Section 4.10.4 of this Report) requiring an assessment of conformity of the scheme with the hierarchy and its effect on relevant waste plan or plans. Compliance is also a requirement of local policy and addressed in KMWLP Policies, including in Policy CSW2, unchanged in the EPR, requiring the proposal to demonstrate how it will help drive waste to ascend the Waste Hierarchy whenever possible.
- 4.10.135. As with other parties involved in waste management the Applicant has a duty to implement the waste hierarchy. The Proposed Development would be two projects among a mix of facility type and sizes required to deliver the waste hierarchy, as recognised in the KMWLP, and energy recovery facilities are among a network of other facilities that ensure sustainable management of wastes.
- 4.10.136. The Applicant's Response to Submissions at D7 [REP8-015] at paragraph 3.3.1 et seq, makes a case that KCC's assertion that "most" waste going to landfill by definition is not suitable for use as a feedstock in the proposed plants, is untenable. However there are several uncertainties in coming to any firm conclusion as to the exact proportion of waste that might be diverted from landfill. In the first place clearly there are some waste types unsuitable for combustion, this is amply demonstrated by the Applicant's WHFAA [APP-086]. Then there are uncertainties over what future proportion of waste arising could be expected to be recycled. And the future status of either the K3 Proposed Development or WKN Proposed Development is not guaranteed. There is no reliable information about the particular composition of feedstock used in the Consented K3 Facility in terms of post-recycled solid recovered fuel

waste, commercial and industrial waste and pre-treated municipal solid waste. The Applicant is unwilling to carry over into a DCO from the K3 Planning Permission as varied, a requirement for a minimum amount of annual waste throughput to be pre-treated.

- 4.10.137. With uncertainties come risks which in this case are twofold, namely the risk of underestimating the future capacity requirements to treat waste arisings necessary and desirable to be treated by EfW facilities, and the risk that by over providing facilities a more sustainable management of waste would be prejudiced for many years to come. The waste hierarchy has to be applied from the top down. The evidence does not lead me to conclude that there is a capacity gap clearly sufficient to justify assuming the risk of prejudicing a successful outcome to the implementation of the key development plan policies. Therefore the Proposed Development would be in conflict with KMWLP Policy CSW6 which requires it to be: "demonstrated that waste will be dealt with further up the hierarchy... and where such uses are compatible with the development plan" and Policy CSW7 "provided that: 1. it moves up the Waste Hierarchy".
- 4.10.138. Given that the latest WNA demonstrates provision of Other Recovery capacity within the county in the form of Allington EfW and the Kemsley Consented K3 Facility and recycling/composting capacity should be sufficient to meet the proposed targets, there is no identified need for new capacity. However, given the need to apply the waste hierarchy in priority order, as stated in paragraph 3.3.7, the EPR is supportive in principle of the provision of new capacity for management of waste through recycling or preparation of waste for reuse or recycling, or for the provision of additional capacity for green and/or kitchen waste treatment.

Overall conclusion as to waste hierarchy related matters: K3

- 4.10.139. The evidence underpinning KCC's revised development plan policies which was independently compiled, points to a capacity gap which at both the upper and lower ranges of estimates, produces a negative level of need to manage waste fuel available in Kent, even taking into account the capacities of the Proposed Development. This would be contrary to the Waste Needs Assessment produced by KCC to support the EPR which has now been found sound by the examining Inspector. This evidence base found no need exists in Kent for additional capacity for the Plan period.
- 4.10.140. However, although the Applicant's position is that both Project K3 and Project WKN are important, relevant and appropriate infrastructure projects that would meet net zero emissions goals and ensure waste is managed efficiently, there are differences between the two. Project K3 is a CHP facility, connected to the Kemsley Paper Mill with the benefits of increased heat export. That the WKN Proposed Development would provide a sustainable source of steam/heat to local customers for industry and housing within the area is uncertain as there is no clear agreement with any customer for this purpose, except perhaps arguably with DS Smith for the very limited occasions when K3 is undergoing maintenance. Therefore whilst the benefits of co-location of both facilities

to provide steam to the paper mill, remain unclear, increased weight should be given to the K3 Proposed Development in this respect.

- 4.10.141. The need for infrastructure covered by NPS EN-3 is assumed and must be accorded significant weight. Further, the increased capacity provided by the K3 Proposed Development would be a more modest increase than that of Project WKN, therefore the risk of prejudice to the principles of proximity and net self-sufficiency in local and regional strategies and plans is reduced. The ability to generate additional electricity without change to its design or increase in throughput would be an additional benefit.

Overall conclusion as to waste hierarchy related matters: WKN

- 4.10.142. The generation of 42MW electricity would be a significant benefit having regard to the need for all types of infrastructure set out in NPS EN-1, although the energy generated would be partially renewable at best.
- 4.10.143. However the Applicant has not provided a robust argument that justifies a concentration of a new waste management facility that would increase the capacity gap at this time. Although put forward as a regional facility, given that the waste recovery capacity is well catered for by the Consented K3 Facility and the EfW facility located at Allington, there is no proven need for the plant to be located in Kent. An alternative location outside Kent where the heat produced can be more effectively utilised, would appear to better serve the strategic purposes of member authorities of SEWPAG in order to comply with the aims set out in their respective WLPs, and in particular the KMWLP. Therefore in this respect I find the WKN Proposed Development inconsistent with the KMWLP and EPR. Such a finding would be in accordance with upholding the role of the planning system as found in NPS EN-1 to provide a framework which permits construction of what Government as well as the market identify as the type of infrastructure needed "in the places where it is acceptable in planning terms (paragraph 2.2.4)."
- 4.10.144. Further, the introduction of additional Other Recovery capacity of the scale proposed at this time with respect to the WKN Proposed Development would put at risk achievement of the revised recycling and composting targets in the revised KMWLP which would also be in conflict with National Planning Policy for Waste.

4.11. AIR QUALITY

Policy Considerations

- 4.11.1. NPS EN-1 at paragraph 5.2.1, states that infrastructure development can have adverse effects on air quality. The construction, operation and decommissioning phases can involve emissions to air which could lead to adverse impacts on health, on protected species and habitats, or on the wider countryside. Air emissions include particulate matter (for example dust) up to a diameter of ten microns (PM10) as well as gases such as sulphur dioxide, carbon monoxide and nitrogen oxides (NOx). Levels for pollutants in ambient air are set out in the Air Quality Strategy which in

turn embodies EU legal requirements. The SoS for the Environment Food and Rural Affairs is required to make available up to date information on air quality to any relevant interested party.

- 4.11.2. NPS EN-1 notes that emissions from combustion plants are generally released through exhaust stacks. Therefore the design of stacks, particularly height, is the primary driver in achieving optimal dispersion of emissions. It is assumed that the relevant pollution controls will be applied for and enforced and the NPS does not seek to duplicate those regimes in the decision making process.
- 4.11.3. Paragraph 5.2.10 of NPS EN-1 advises that account must be taken of any relevant statutory air quality limits. Air quality considerations are to be given substantial weight where a project would lead to a deterioration in air quality in an area, new breaches of national air quality limits or substantial changes in air quality levels even where no breaches occur.
- 4.11.4. NPS EN-3 provides details on the potential impacts that are specific to energy from waste generating stations, including air quality and emissions.
- 4.11.5. NPS EN-3 states that CO₂ will be assessed against the requirements of NPS EN-1. Compliance with the Waste Incineration Directive (WID) (subsequently replaced by the Industrial Emissions Directive) and the Large Combustion Plant Directive (LCPD) is controlled through the environmental permitting regime by the EA. Paragraph 2.5.43 states that where a waste combustion facility meets the requirements of the WID and will not exceed local air quality standards the SoS should not regard the proposed waste generating station as having adverse impacts on health.
- 4.11.6. Paragraph 181 of NPPF states that planning decisions should sustain and contribute to compliance with relevant limit values or national objectives for pollutants and the cumulative impacts from individual sites in local areas.
- 4.11.7. Policy ST1 of the Swale Local Plan seeks to achieve sustainable development, addressing the challenge of climate change through a range of measures including the management of emissions and efficient use of natural resources.

The Applicant's Case

- 4.11.8. Chapter 5 of the ES [REP2-020] provides a detailed assessment of the anticipated air quality impacts arising from the Proposed Development.

The 'practical effect' of the K3 Proposed Development

- 4.11.9. The 'practical effect' of the K3 Proposed Development would simply be K3, as constructed under its existing permission, being capable of generating an additional 25.1MW and processing an additional 107,000 tonnes of waste per annum. Granting development consent would not result in any additional external physical changes to K3 as consented and

the layout and appearance of the facility would remain as per its consented design.

WKN Proposed Development – Construction

- 4.11.10. The potential emissions of construction traffic in relation to the annual-mean NO₂, PM₁₀ and PM_{2.5} concentrations are assessed with the conclusion that the impacts from construction traffic were negligible and the impacts arising from dust emissions being low. A Construction Environmental Management Plan (CEMP) would contain best practices, including guidance provided by Institute of Air Quality Management (IAQM), to be followed and a Dust Mitigation Plan would be produced as part thereof. Whilst the impacts of dust emissions are low without mitigation, a number of mitigation measures would be included in the CEMP to ensure impacts remain low.

WKN Proposed Development – Operation

- 4.11.11. The WKN Proposed Development would operate in accordance with the Industrial Emissions Directive (IED) which sets limits for a range of pollutants. A Stack Height Determination (SHD) assessment [REP2-030] was undertaken as part of the ES to determine the minimum height of the stack which balances the need to achieve acceptable environmental performance against the costs and benefits of implementing it. It confirmed that a 90m stack would be required to ensure pollutant concentrations would be adequately dispersed before reaching ground level. Consequently air quality impacts as a result of the WKN Proposed Development would not be significant.
- 4.11.12. Dispersion modelling assumes that the higher the stack the less impact there is on air quality but the stack height is considered against the cost of building a taller stack and other environmental issues such as landscape and visual impact. Detailed design stage and appointment of an engineering, procurement and construction (EPC) contractor has not been reached. To enable flexibility in the DCO, a 9m buffer has been settled upon of between 90m and 99m. The ES assessments are based on a stack height of 90m and thus any changes in stack height would mean reassessing the environmental issues that it affects such as air quality and landscape and visual impact.
- 4.11.13. The exhaust emissions would be monitored by a Continuous Emissions Monitoring System (CEMS) strictly controlled and regulated by the EA under an Environmental Permit. An Operations and Management Team would ensure both facilities adhere to the regulations and would establish a planned preventative maintenance programme.
- 4.11.14. Operational traffic has been assessed as having a negligible impact.
- 4.11.15. Dust generating activities would include the delivery, sorting and handling of waste. Waste is deposited into the tipping hall where it is sorted, stored and handled within the building. The accepted best practice approach for the primary control of dust releases is containment within the building. Any potential dust would be drawn into the

combustion process along with the air in the building. Dust levels in the building would be in accordance with health and safety regulations.

- 4.11.16. The nearest high sensitivity receptor comprises residential properties on Swale Way, 770m to the south west of the site and upwind, therefore the risk of dust impacts is considered low.
- 4.11.17. R9 of the Preferred dDCO [REP7-003] would ensure details of the K3 Planning Permission are carried over into the dDCO and apply as approved. For the WKN Proposed Development R14 would secure the parameters of the stack between 90m and 99m until the final design is submitted for approval. R21 and R24 would require respectively the submission of a CEMP and a Construction Management Plan (CTMP).

Examination

- 4.11.18. Written questions were put to the Applicant and other IPs at ExQ1.3.1 to 1.3.24; and ExQ2.3.1 to 2.3.2. Key areas examined in this way were:
- agreement as to no sensitive ecological receptors within 50m of the Application Site boundary or the site traffic routes;
 - the potential for air quality effects on the Swale Marine Conservation Zone (MCZ) arising from the WKN Proposed Development;
 - use of the UK Air Pollution Information System (APIS) and potential increases in concentrations resulting from other plans or projects that have become operational since the last APIS update;
 - implications of assessment findings in relation to the tern population in the Medway Estuary & Marshes Special Protection Area (SPA);
 - categories of effect considered to constitute a significant effect for all construction dust and traffic-related emissions;
 - agreement as to interpretation of modelling results rendering effects as not significant for:
 - arsenic concentration Environmental Assessment Level (EAL) predicted to be exceeded in respect of the K3 Proposed Development, the K3 Practical Effect and WKN;
 - nickel concentration EAL predicted to be exceeded due to the K3 Practical Effect; and
 - IED short-term emission limit values (ELVs) in respect of stack emissions from WKN during operation, Table 5.38 [APP-057] indicating that the 15-minute averaging period SO₂ PC would equate to 10% of the relevant EAL which would be considered to represent a significant effect unless the 15-minute mean SO₂ is added to the 'future AC' of 56.5 µg.m⁻³, then the PEC would be 82.3µg.m⁻³, which is below the relevant EAL of 266 µg.m⁻³;
 - methodology applied to determine the level of pollutants emitted during operation;
 - why impacts associated with wet acid deposition are not assessed in Appendix 5.4 [APP-028];
 - need for further assessment given NO_x concentrations at the Medway Estuary and Marshes SPA and Ramsar site, the K3 and WKN PC

equate to 1% of the Critical Level (CL) and the PEC equates to 83% of the CL (Table 5.4.1 [APP-028]);

- the extent of any change in location of the maximum impact of the plume due to parameters set for the location of buildings and stack (that could vary by 5m);
- reconciliation of differences in the number of developments considered in the cumulative air quality and traffic assessments; and
- the need to provide a draft Dust Management Plan for consultation with IPs as part of the stated air quality mitigatory measures.

- 4.11.19. In its SoCG with the Applicant completed and submitted at D7 [REP7-014] Natural England (NE) agreed that the principal potential pathways for effects resulting from the K3 and WKN Proposed Developments are air quality from the stacks and vehicles, noise, water quality, recreation, visual disturbance and light spill during the construction, operational and decommissioning phases of the developments.
- 4.11.20. The SoCG [REP7-014] also agreed no likely significant effects from the construction of the K3 facility given its advanced stage of construction and that it was subject to its own assessment as part of the 2010 ES and consented with conditions, including an Ecological Mitigation and Management Plan (EMMP) and Construction Method Statement to protect adjacent habitats. It is agreed that "all relevant conditions of the extant planning permission have been discharged and complied with".
- 4.11.21. Subject to best practice construction methods to minimise dust, secured through R22 Preferred DCO, and in light of air quality modelling with regard to traffic emissions, NE further agreed the WKN Proposed Development would be unlikely to cause an adverse effect on the integrity of the Swale designations during construction.
- 4.11.22. As to the operation of K3 and WKN Proposed Developments, the issues raised by NE in their RR have been addressed as noted in the SoCG with the Applicant [REP7-014].
- 4.11.23. It is stated in para 4.4.1 of the SoCG with KCC [REP8-013] that KCC considered the Proposed Development might have a significant impact on users of the Saxon Shore Way Public Right of Way (PRoW) due to deteriorating air quality.
- 4.11.24. Further, the draft SoCG between the Applicant and SBC [REP5-006] was not completed by the end of the Examination. SBC highlighted its concern with the potential for operational traffic to pass through surrounding AQMAs, as set out in paragraph 3.1.6 [REP5-006]. In particular SBC was concerned as to the effect on AQMAs on the A2, fearing a worsening of air quality conditions in these areas which included the Newington, East Street, and Ospringe AQMA's, and a new AQMA currently under consideration at Keycol Hill, to the west of the junction with the A249 (Key Street).
- 4.11.25. However there was no evidence put forward that the WKN Proposed Development or the K3 Proposed Development would result in exceedances in local Air Quality Objectives in accordance with the Air

Quality Standards (England) Regulations 2010 alone or in-combination with other relevant proposed development. NPS EN-3 (paragraph 2.5.43) states that where a proposed waste combustion generating station would meet the requirements of WID and would not exceed the local air quality standards, the proposed waste generating station should not be regarded as having adverse impacts on health.

Conclusion

- 4.11.26. I am satisfied that, in terms of air quality, there would be no significant effects caused by the construction or decommissioning of the Proposed Development and a CEMP, secured through R22 of the Preferred DCO, would provide appropriate mitigation for the WKN Proposed Development to manage the dust impacts during construction. CO2 emissions are dealt with separately in Section 4.14 of this Report.
- 4.11.27. Emissions from the Proposed Development would be controlled by the EP regime, and would not be expected to exceed objectives or standards even when based on the worst-case assumptions within the assessment model. I am satisfied with the Applicant's determination of and reasoning for the height of the stack as set out in ES Appendix 5.2, Stack Height Determination [REP2-030].
- 4.11.28. Therefore ES Chapter 5 [REP2-020] and its Appendices [APP-025, REP2-030, APP-027, REP2-032, APP-029, APP-030] have robustly assessed the air quality as a result of the K3 and WKN Proposed Developments and appropriately concluded there would be no significant impacts arising. The IAQM guidance would be followed with regard to dust management and the dispersion modelling for the stack emissions of both K3 and WKN Proposed Developments demonstrate that the predicted contributions and environmental contributions of all pollutants would be negligible.
- 4.11.29. The ES assessed the impacts of the K3 and WKN Proposed Developments cumulatively with other developments both together and alone, concluded there would be no significant effects on air quality. Therefore, both the K3 and WKN Proposed Developments accord with both national and local policies with regard to air quality.

4.12. ARCHAEOLOGY AND CULTURAL HERITAGE

Policy Considerations

- 4.12.1. Paragraph 5.8.2 of NPS EN-1 describes the historic environment as including all aspects of the environment resulting from the interaction between people and places through time. It recognises that heritage assets are those elements of the historic environment that hold value through their historic, archaeological, architectural or artistic interest which may be any building, monument, site, place, area or landscape. The sum of an asset's heritage interest is referred to as its significance.
- 4.12.2. Paragraphs 5.8.8 to 5.8.10 require the applicant to assess the significance of the heritage assets affected by the proposed development.

The applicant should also ensure that the extent of the impact can be adequately understood from the application and supporting documents.

- 4.12.3. The NPS sets out a presumption in favour of conservation of designated heritage assets commensurate with the level of their significance. As set out in paragraph 5.8.18, where a proposed development may affect the setting of a heritage asset applications which preserve those elements of the setting that make a positive contribution to the significance of the asset, should be treated favourably.
- 4.12.4. Where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest NPS EN-1 states that the applicant should carry out appropriate desk-based assessments and if necessary, a field evaluation. Consideration should also be given to requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction.
- 4.12.5. The NPPF describes the setting of a heritage asset as the surroundings in which a heritage asset is experienced. A core planning principle in the NPPF is to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations (paragraph 184). When considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and the more important the asset, the greater should be that weight (paragraph 193). Any harm or loss of designated heritage assets requires clear and convincing justification (paragraph 194). An application should demonstrate all less harmful alternatives have been considered. If a proposal cannot be amended to avoid all harm, and the harm is less than substantial, this can be weighed against the public benefits of the proposal (paragraph 196).
- 4.12.6. Policies ST1, CP7, CP8 and DM14 of the Swale Local Plan seek to conserve and enhance the historic environment, whilst Policy DM34 seeks to prevent development which would adversely affect a Scheduled Monument and / or its setting.

The Applicant's case

- 4.12.7. Chapter 13 of the ES [APP-065] examines the effect of the Proposed Development on archaeology and cultural heritage. The assessment methodology identifies the study area and the effect on such heritage assets from the construction, operation and decommissioning of the Proposed Development.
- 4.12.8. The ES states that there are no designated heritage assets within the Application Site itself. The assessment, for the purpose of buried archaeology, focused on a study area of 1km around the Proposed Development Site and for the purpose of the setting of heritage assets a study area of 3km from the Site.

- 4.12.9. The ES identified no listed buildings or conservation areas within 1km of the Site and 15 listed buildings located between 1km and 2km of the DCO boundary, of these, 13 are listed at Grade II and two, the Church of the Holy Trinity and the Church of all Saints are listed at Grade I. Milton Regis High Street conservation area is located some 2.3 km south west of the DCO boundary.
- 4.12.10. There is one Scheduled Monument (SM) located within 1km of the DCO boundary, this is the Castle Rough medieval moated site, and one SM (Murston Old Church) between 1km and 2km of the DCO boundary.
- 4.12.11. The Site lies within a landscape which generally has a high potential to contain archaeological remains although the potential is low for the survival of significant coherent archaeological remains. The ES states that any buried remains are at most likely to be of low significance and the impact magnitude on any surviving remains is assessed as being high. As a result, the effect of the Proposed Development on buried remains would be minor adverse and not significant.
- 4.12.12. Castle Rough is some 500m south west of the DCO boundary and assessed as being of highest significance. It derives its significance from the rectangular earthwork island surrounded on four sides by a moat, and buried remains of the SM. There would be no physical impact on the SM from the Proposed Development and any impact would be on the setting.
- 4.12.13. Castle Rough is low lying and not readily visible from any distance away, although trees growing on it are seen, notably from the south-west against the background of the K3 built development and Paper Mill complex. The ES notes perception of the operational noise from the WKN Proposed Development is unlikely significantly to change existing ambient noise levels from Kemsley Paper Mill at the SM. Any additional lighting would be experienced in the context of an industrial site with external lighting.
- 4.12.14. Therefore, given the location and scale of the existing paper mill buildings, the impact magnitude on the SM is assessed as negligible. The significance of effect of the WKN Proposed Development on the SM would be minor adverse in the long term.
- 4.12.15. Of the two other SMs within 3km of the DCO boundary, High Street Old Church is some 1.6 km south of the DCO boundary and a WW2 anti-aircraft gun site (Thames South 2) is 3km north-west of the DCO boundary. The significance of effect of the WKN Proposed Development and Works No. 3 - 7 on the SM would be no change. In both cases, the impact magnitude is assessed as being no change and significance of effect of the WKN Proposed Development and Works No. 3 - 7 would be no change (paragraphs 13.8.17 and 13.8.46 [APP-065]).
- 4.12.16. In terms of the effects of the Proposed Development on listed buildings the ES indicates that no listed buildings within 3km of the Site would experience any greater than a minor adverse impact. Similarly, the ES

assesses the impact magnitude of the Proposed Development on Milton Regis High Street conservation area as negligible with the effect being minor adverse resulting in an effect that is not significant (paragraph 13.8.62 [APP-065]).

- 4.12.17. The ES [APP-065] states that the location, nature and design of the Proposed Development would help to mitigate any effects on the setting of designated heritage assets and accordingly no specific mitigation measures are required. In respect of the archaeological resource of the Site being unknown although unlikely to be significant, a programme of archaeological fieldwork to investigate and record any surviving archaeological remains is proposed by way of mitigation for construction effects. The ES envisages that there would be no significant adverse effects as a result of the Proposed Development following the implementation of the mitigation measures proposed.
- 4.12.18. The ES also assessed seriatim, the cumulative effects of the K3 Proposed Development, the WKN Proposed Development and both projects considered together with other relevant developments, concluding that whilst there may be some cumulative impacts on heritage assets as a result of the interaction of the proposed developments with other development schemes, these are not considered to be significant (paragraph 13.12.6 [APP-065]).

Examination

- 4.12.19. No significant matters of concern were raised by IPs in RRs and WRs in respect to archaeology and cultural heritage matters.
- 4.12.20. Through initial Written Questions (ExQ1) [PD-008] clarification was sought about Requirement 20 of the dDCO and whether the definition of “permitted preliminary works” (apart from the archaeologically related works described therein) which can be undertaken in advance of commencement of the authorised development, is compatible with the approval of the Written Statement of Investigation (WSI) which under Requirement 20 may be later in time.
- 4.12.21. In reply [REP2-009] the Applicant stated that largescale ground disturbance associated with permitted preliminary works would be contained substantially within modern made ground of no archaeological interest. The permitted preliminary works therefore had minimal potential to affect hitherto unrecorded archaeology. Nevertheless, an overarching WSI would be agreed with KCC before any permitted preliminary works took place, allowing archaeological fieldwork to be integrated with other preliminary works and for the potential effects of such work to be offset as far as reasonably practicable, in line with the mitigation proposed in ES Chapter 13 [APP-065].
- 4.12.22. In its RR [RR-005] Historic England (HistE) noted that the development was likely to be visible across a large area and could, as result, affect the significance of heritage assets at some distance. It previously identified that insufficient information had been submitted to assess the impacts of

the development on heritage assets, and with its particular remit of advising on designated heritage assets, it advised that further assessment of significance and impact would be required. Having reviewed the supporting information provided with the application HistE stated that ES chapters 12 (Landscape and Visual) and 13 (Archaeology and Cultural Heritage) [APP-064,APP-065], provide an appropriate assessment of the significance of designated heritage assets within the study areas with supporting baseline information and descriptions; and that an appraisal of the Proposed Development on the setting of heritage assets has been undertaken in accordance with HistE's guidelines on setting (GPA3 - The setting of heritage assets 2nd edition 2017).

- 4.12.23. The ES indicates that some impacts to designated heritage assets will occur, and although the new development would be visible from a number of designated heritage assets, HistE agreed with the ES that the impact would constitute a low level of harm to their intrinsic heritage significance. There would be some harm to designated heritage assets from construction of the Proposed Development through development within their setting, this impact would be of a low level and might therefore be found to be outweighed by the public benefit of the development scheme.
- 4.12.24. In their RR [AS-010] KCC confirmed its agreement with the proposal in paragraph 13.9.2 of Chapter 12 ES [APP-064] that archaeological mitigation could be addressed through a programme of archaeological work secured by an appropriate requirement in the DCO. KCC suggested that a Written Scheme of Investigation should be agreed with the KCC archaeological team.
- 4.12.25. A Requirement relating to archaeology was included in the submission version of the dDCO [APP-005]. The ExMemo [REP2-004] explained that the Requirement provided for a WSI to be submitted to and approved by the Relevant Planning Authority (RPA) prior to commencement of any part of the authorised development.

ExA Conclusion

- 4.12.26. This section has had regard to the likely significant effects resulting from the Proposed Development on heritage assets including buried archaeological sites, historic buildings and areas, and historic landscapes. It has considered the effects in terms of the potential for direct physical disturbance and indirect effects on settings in terms of the overall effect and the significance of the predicted effects.
- 4.12.27. Matters raised in HistE's comments prior to the submission of the application and by KCC in their RR and WR, as well as HistE's RRs, have been investigated.
- 4.12.28. The consent sought in respect of Project K3 would not result in any external changes to the facility currently permitted and I am satisfied that the 2010 ES which concluded that no significant effects would result from the completed K3 Proposed Development, remains valid. The

locality in which the Site lies has recognised potential to contain archaeological remains, although the specific characteristics of the Site suggest that potential for significant archaeological remains is unlikely. However, and in light of the submissions made by Highways England (HE) and KCC, it is appropriate to make provision for a suitable programme of archaeological works to take place to ensure that potentially significant adverse effects would be comprehensively mitigated. This would be effectively secured through R20 of the Applicant's Preferred DCO [REP7-003] as it relates to the WKN Proposed Development.

- 4.12.29. There would be no significant archaeological or cultural heritage related effects from the construction, operation or decommissioning of the Proposed Development either physically or on the setting of any SM, listed building or other designated heritage asset in the surrounding area. Consequently, there would be no harm to the significance of heritage assets. Similarly, there would be no significant cumulative archaeological or cultural heritage effects as a result of the Proposed Development.
- 4.12.30. On the basis of the evidence and the proposed mitigation as secured via the Preferred DCO [REP7-003], all impacts have been addressed in a manner that complies with the Historic Environment elements of NPS EN-1 and the development plan.

4.13. ECOLOGY

Introduction

- 4.13.1. This section considers the effect of the Proposed Development on biodiversity, ecology and the natural environment.
- 4.13.2. The effects on European sites in the context of the Habitats Regulations are considered in Chapter 5 of this Report. This section examines other potential biodiversity effects of the Proposed Development and the effects on European sites insofar as they relate to the EIA, including the effects of lighting on ecology.

Policy Considerations

- 4.13.3. NPS EN-1 sets out in paragraph 5.3.3 that where the development is subject to EIA the Applicant should ensure the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The SoS should ensure that appropriate weight is attached to these matters.
- 4.13.4. Paragraph 5.3.7 of NPS EN-1 recognises that development should aim to avoid significant harm to biodiversity interests including through mitigation and consideration of reasonable alternatives. The Applicant is also required to show how the project has taken advantage of opportunities to conserve and enhance biodiversity interests.

- 4.13.5. NPS EN-1 recognises that the most important sites for biodiversity are those identified through international conventions and European Directives with the Habitats Regulations providing statutory protection for them and with Ramsar sites receiving the same protection.
- 4.13.6. MCZs introduced under the Marine and Coastal Access Act 2009 are areas designated to conserve marine flora or fauna and marine habitats. Protected features are set out in the designation order which provides statutory protection, and duties in relation to MCZs need to be addressed as noted in NPS EN-1.
- 4.13.7. Paragraph 5.3.18 of NPS EN-1 indicates that the applicant should include appropriate mitigation measures as an integral part of the proposed development. It should ensure that construction activities are confined to the minimal area required and that best practice is followed to minimise the risks of disturbance or damage to species or habitats.
- 4.13.8. Section 5.6 of NPS-EN-1 deals with a range of emissions arising from energy infrastructure including artificial light indicating that the aim should be to keep impacts to a minimum and at a level that is acceptable.
- 4.13.9. The NPPF advises that the planning system should contribute to and enhance the natural and local environment including by minimising impacts on biodiversity. Paragraph 180 aims to ensure that new development is appropriate for its location taking into account the effects on the natural environment. The impact of light pollution from artificial light on nature conservation should be limited.
- 4.13.10. The KMWLP 2011-2031, Policy DM 2 sets out the protection for sites of international, national and local importance with waste developments required to ensure that there are no unacceptable adverse impacts on biodiversity interests.
- 4.13.11. Policy ST 1.11 of the Swale Local Plan seeks to achieve sustainable development through conserving and enhancing the natural environment. Policy CP7 seeks to ensure that there are no adverse effects from development on the integrity of Special Areas of Conservation (SACs), SPAs or Ramsar sites either alone or in combination. Policy DM28 requires proposals to conserve, enhance and extend biodiversity. The policies underpin the Swale Landscape Character and Biodiversity Appraisal published in 2011 as a Supplementary Planning Document.

The Applicant's case

- 4.13.12. The Applicant's case was set out principally in ES Chapter 11 – Ecology [APP-063] and has been updated at D2 in clean and tracked versions [REP2-024, REP2-025]. This is supplemented by ES Appendix 5.4: Assessment of Ecological Impacts [REP2-032, REP2-033].
- 4.13.13. The Application Site is some 0.16km east from The Swale SPA and Ramsar internationally designated ecological sites. There are a further six internationally designated sites with 10km of the Site as follows:

WHEELABRATOR KEMSLEY GENERATING STATION (K3) AND WHEELABRATOR KEMSLEY NORTH (WKN) WASTE TO ENERGY FACILITY: EN010083
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- Medway Estuary and Marshes SPA and Ramsar site;
 - Thames Estuary and Marshes SPA and Ramsar site;
 - Outer Thames Estuary SPA; and
 - Queendown Warren Special Area of Conservation.
- 4.13.14. The nearest nationally designated sites are: Swale Estuary Marine Conservation Zone (MCZ) some 0.02km to the south east, Swale Site of Special Scientific Interest (SSSI) approximately 0.13km south east, and Elmley National Nature Reserve (NNR) some 0.4km to the north east.
- 4.13.15. SSSI sites within 1km of the Site are:
- Medway Estuary and Marshes SSSI;
 - South Thames Estuary and Marshes SSSI;
 - Sheppey Cliffs and Foreshore SSSI; and
 - Queendown Warren SSSI.
- 4.13.16. The Milton Creek Local Wildlife Site (LWS) is a non-statutorily designated site within 2km of the Site.
- 4.13.17. The Proposed Development would not be within any designated sites and therefore there would be no direct impacts arising therefrom in terms of loss of habitat.
- 4.13.18. A Phase 1 Habitat Survey of the Site and its surrounds was undertaken and the results are presented in Figure 11.3.2 of ES Appendix 11.3 – Ecological Baseline Surveys 2007 - 2009 [APP-045] with the habitat types and descriptions recorded. As the Consented K3 Facility is operational this and its consented landscaping scheme (yet to be implemented) is taken as the baseline for the assessment.
- 4.13.19. For the WKN Proposed Development, the site is occupied by the K3 laydown area. In the absence of any consent for WKN that laydown area would be restored to its previous condition. Therefore, the ES is informed by previous surveys undertaken in 2007 and 2009 as part of the initial K3 application which assesses the worst-case scenario prior to the loss of habitat as part of the original site clearance for the WKN site.

The practical effect of the K3 Proposed Development

- 4.13.20. The practical effect of the K3 Proposed Development would be to generate additional electricity and process additional waste. The increase in emissions due to the increased tonnage throughput and vehicle movements is assessed as not resulting in any adverse impacts on designated sites or ecology in non-designated areas. The practical effect of the K3 Proposed Development would therefore not have any ecological impacts.

Effects of WKN construction

- 4.13.21. For the effects of construction of the WKN Proposed Development the ES assesses the likely effects on international sites within 10km from the Site. The ES concludes that at this distance there would not be any likely significant effects on the Medway Estuary and Marshes SPA and Ramsar

site, the Thames Estuary and Marshes SPA and Ramsar site and the Outer Thames Estuary SPA and Queendown Warren SAC. Therefore, the ES assesses the effects arising from the construction of WKN on The Swale SPA and Ramsar site.

- 4.13.22. The construction of the WKN development would not cause any direct impact on The Swale SPA and Ramsar site via habitat loss, given no part of either designated site falls within the site boundary.
- 4.13.23. Once construction commences, all hardstanding areas would drain eastward into a storage pond. Activities or items that may contaminate water entering The Swale SPA would be located more than 20m from the Site boundary and a strict waste management system would be established to avoid leachates. These measures, to be secured through the CEMP, would ensure there would be no adverse impacts on the SPA in relation to drainage and surface water.
- 4.13.24. A lighting scheme would be submitted as part of the CEMP that would follow best practice and ensure no direct lighting of any designated areas, use flood defences to prevent light spill, use low directional lighting where possible, and ensure construction compounds are appropriately located.
- 4.13.25. The Saxon Shore Way footpath is close to the Site. It is not anticipated that construction staff would access The Swale SPA/Ramsar site for recreational purposes, therefore, no impacts would be expected from recreational disturbance during construction.
- 4.13.26. Noise generated from piling, HGV movements and other construction activities would potentially disturb birds wintering in The Swale SPA/Ramsar site. The ES models noise impacts from the loudest activities (impact piling) which would be received by birds in the SPA/Ramsar site as 61.5 dB L_{Amax} , covering an area of some 9.6 ha within the 6,514 ha designated site. This is below the max 80 dB L_{Amax} threshold associated with the greatest disturbance to birds but above the screening threshold of 55 dB L_{Amax} . To mitigate this impact R28 and R29 Preferred dDCO [REP7-003] stipulates a piling risk assessment approved by the RPA consulting the EA, and prevents impact piling in January, February, or between April and August inclusive, with no more than 10 days of impact piling during November and December. Works for a new outfall into The Swale (Work No. 7) would follow methods and timing restrictions set out in the original Marine Licence to avoid disturbance impacts. No noise and vibration impacts which would have a significant effect on the designated sites are expected to arise from construction vehicles.

Disturbance from people and plant movements

- 4.13.27. Movement of people and plant in the construction phase may be visible to a small part of The Swale SPA/Ramsar site. However, the ES concludes that any disturbance would be limited as bird species are likely to be habituated to people due to the Knauf Jetty to the north of the Site,

the public footpath along the sea wall and the other industrial sites that are located in proximity to The Swale SPA/Ramsar site.

- 4.13.28. The Marsh Harrier is considered to be susceptible to disturbance, especially during breeding season. The ES states the population of the Marsh Harrier has increased in north Kent and they now occupy sites previously considered as unsuitable, such as the reedbed to the north of the Site. 2009 and 2016 surveys noted the Marsh Harrier used this reedbed despite the operation of the Knauf Jetty and during the construction of the K3 facility and the DS Smith AD Plant. The s106 agreement at the time of the K3 Planning Permission required the creation of a new reedbed at Harty Fen on the Isle of Sheppey to provide alternative habitat for the Marsh Harrier, completed in October 2018. Further, a 2.4m closed-board wooden fence would be erected around the laydown area as part of the mitigation in the original K3 application. Therefore the impacts from disturbance from people and/or plant are considered to have a slight effect that is not significant.
- 4.13.29. Overall, no likely significant effects on biodiversity in internationally designated sites would be expected during the construction of Project WKN.
- 4.13.30. The Swale MCZ is located approximately 15m to the east of the Application Site with the laydown area being the closest point, therefore the impacts on the MCZ would be similar as for The Swale SPA/Ramsar site.
- 4.13.31. The Swale SSSI covers the same area as The Swale SPA/ Ramsar site whilst the Elmley NNR occupies a smaller area within The Swale SPA/Ramsar site on the Isle of Sheppey. Given the conclusions made on The Swale SPA/Ramsar site there are no significant impacts identified on these sites.
- 4.13.32. The Milton Creek LWS, over 400m to the south east of the Application Site is the only regional or local site in proximity thereto. It comprises a mix of habitat types and could be considered an informal extension of The Swale SPA. The ES has concluded no likely significant impacts on the LWS as a result of construction of Project WKN.
- 4.13.33. The WKN Proposed Development would not affect any ancient woodland or protected trees.

Breeding Birds

- 4.13.34. Surveys undertaken for the original K3 application show no evidence of breeding birds on the WKN site. Its development would result in the loss of some landscaping proposed by the original K3 application that was to replace breeding bird habitat on the K3 site. In addition, some vegetation would be cleared to make way for the WKN laydown area and construction access road although this would be temporary.
- 4.13.35. The reedbed north of the WKN site has no international, national or local designation but supports three Schedule 1 breeding birds – Marsh

Harrier, Bearded Tit and Cetti's Warbler. The following impacts on this reedbed are considered:

- Drainage – to avoid any accidental release of pollutants to the reedbed all activities/items involving refuelling and maintenance of machines, oil storage tanks, chemical or fuel storage and on-site concrete batching plants would be located more than 20m from the site boundary;
- Light Spill – The construction lighting scheme submitted as part of the CEMP would minimise the lighting of the reedbed. The key reedbed is 50m from the WKN Proposed Development boundary at its nearest point so the impact of appropriately designed lighting would be low;
- Disturbance from people and plant movements – the disturbance to nesting birds is considered negligible given they generally nest towards the middle of the reedbed; and
- Noise – The loudest noise activity, impact piling, is restricted to certain times of the year by R29 to avoid the nesting bird season. The ES demonstrates that noise associated with HGV movements would be below the level where NE suggest further investigation is required.

Reptiles

- 4.13.36. The WKN Proposed Development site originally comprised a mix of habitats that may have supported reptiles cleared from the site prior to construction of the Consented K3 Facility. This habitat was due to be restored and therefore, to mitigate the habitat loss by the WKN Proposed Development new habitat will be created at the eastern end of the WKN site.
- 4.13.37. Reptile-proof fencing would be erected during the entire construction phase after which reptiles would colonise the new habitat. Therefore, it is considered that impacts on reptiles are temporary with enhanced habitat being created to replace the habitat that has been lost.

Operational impacts of WKN

- 4.13.38. For the operational effects of the WKN Proposed Development the ES assesses the likely effects on international sites up to 10km away. The ES concludes that due to the distance between the WKN Proposed Development and the designated sites there would not be any likely significant effects on the Medway Estuary and Marshes SPA and Ramsar site, the Thames Estuary and Marshes SPA and Ramsar site and the Outer Thames Estuary SPA and Queendown Warren SAC. Therefore, the ES only assesses the WKN operational effects on The Swale SPA and Ramsar site.

Operational Impacts: Drainage

- 4.13.39. The WKN Proposed Development would have two separate drainage systems. The first would collect clean surface water runoff, eg from building roof areas, storing it in the lagoon. The second would collect 'dirty' runoff, eg from the Flue Gas Treatment Plant (FGT) area, storing it in the 'dirty' water tank to be used as required, eg for ash quenching. The clean water in the lagoon would top up the 'dirty' water tank. If the

lagoon reaches the maximum acceptable capacity it would be discharged at a controlled rate into The Swale, as for K3. These measures would ensure that no adverse impacts in relation to drainage and surface water would affect the SPA.

4.13.40. Other operational impacts assessed are:

- Light Spill – an operational lighting scheme secured by R22 dDCO would ensure an ecologically sensitive lighting scheme is installed;
- Disturbance from people and plant movements would be of limited impact as bird species feeding on the intertidal areas of the SPA/Ramsar site are habituated to people using the public footpath and the existing industrial activity, screened by the sea wall, buildings and topographical features;
- Recreational disturbance would not be likely to be significant given a maximum of 50 operational staff at any one time and due to the Site's industrial nature access to the Saxon Shore Way and Swale Estuary would be restricted; and
- Noise and vibration – Operational noise would have a minimal impact on birds in the SPA/Ramsar site as operational noise levels would not be expected to exceed the 55 dB threshold.

4.13.41. Overall, no likely significant effects on biodiversity in internationally designated sites are expected at the operational stage of WKN.

4.13.42. For the reasons given in assessing the construction related impacts of the WKN Proposed Development, there would not be any likely significant effects arising from that development on The Swale MCZ, The Swale SSSI and the Elmley NNR, when operational. Similar conclusions are reached regarding the LWS and any ancient woodland or protected trees.

WKN Operational effects: Species

4.13.43. Without mitigation the operation of the WKN Proposed Development has the potential to impact breeding birds due to light spillage, disturbance, operational noise and mismanagement.

4.13.44. Although the 24 hour operating times means there is potential for light spill to impact nesting birds, the lighting scheme for the operational phase would ensure lighting on the site boundary would be appropriately sensitive to ecological receptors. The level of disturbance arising from people and plant movements would not be expected to be sufficient to disturb breeding birds, given they typically nest in the centre of the reedbed. The ES concludes that the operational noise would not have a significant impact on breeding birds within the reedbed. Therefore the ES assesses the impacts on Schedule 1 breeding birds to be negligible.

4.13.45. The main harm to reptiles would be from vehicle movements. Whilst reptiles may move across the site foraging and basking, the low speed of the vehicles and vibrations would enable reptiles to avoid vehicles. Therefore, operational impacts on reptiles would be low.

Biodiversity enhancement

- 4.13.46. The parameter plan [REP2-039] demarcates an area to be used to provide a surface water attenuation pond, hard and soft landscaping and biodiversity enhancement measures.
- 4.13.47. The approved landscaping plan for the Consented K3 Facility includes the planting of some 5,000 trees and shrubs. In addition, pursuant to the s106 obligation for the K3 Planning Permission a new bird nesting habitat on the Isle of Sheppey has been created, managed by the Royal Society for the Protection of Birds (RSPB); and creation of reptile translocation areas adjacent to the K3 site has taken place. The WKN site is smaller than the K3 site but would provide an element of landscaping in the eastern part of the site. R21 dDCO [REP7-003] would require a written ecological management and enhancement plan (EMEP) to be approved for the WKN site. (This has been retitled "Ecological Mitigation and Management Plan" (EMMP) in recommended changes to the DCO, see Section 7.3.50 of this Report).

dDCO Requirements

- 4.13.48. R9 dDCO would ensure details of the K3 Planning Permission are carried over into the DCO and apply as approved, including the K3 EMMP and Landscape Masterplan. R10 would provide for maintenance of the K3 landscaping and R21 would require the EMEP to be approved for the WKN site. (This has been retitled "Ecological Mitigation and Management Plan" (EMMP) in recommended changes to the DCO, see Section 7.3.50 of this Report). R15 provides for landscaping on the WKN site and R16 stipulates its retention and maintenance. Other Requirements deal with elements of WKN that could have effects on ecology such as R22, on the CEMP, R23 on external lighting and R29 on the timing of piling. R5 controls the storage of fuel on the K3 and WKN sites and R18 deals with surface water drainage.
- 4.13.49. Overall, therefore the ES has not identified any significant effects on designated sites, protected species and habitats or other species considered to be of principal importance for the conservation of biodiversity as a result of the K3 or WKN Proposed Developments.

Examination

- 4.13.50. In ExQ3.5 I requested the Applicant to provide a draft EMMP for the WKN Proposed Development due to concern that lack of such provision would affect the confidence with which it could be asserted that the required mitigation would be adequately secured and it appeared the Applicant would only prepare a draft if NE or KCC required it.
- 4.13.51. In ExQ4.5.1 I requested NE's view on the dEMMP [REP5-005]. NE responded [REP7-034]:

"The draft WKN Ecological Management and Mitigation Plan provides sufficient information on the measures that will be undertaken to avoid and mitigate impacts on relevant protected species. In particular, the document is helpful in setting out the mitigation measures to minimise impacts on breeding marsh harriers and wintering birds, which are

features of the nearby European sites. These measures accord with advice that Natural England has previously given in relation to the Habitats Regulations assessment of the proposals."

- 4.13.52. In its SoCG with the Applicant [REP7-014] NE agreed that the Proposed Development would not compromise the conservation objectives of the identified Natura 2000 sites and would not result in adverse effects on the respective sites' integrity.
- 4.13.53. NE agreed further that subject to best practice construction methods to minimise noise, secured by R4 dDCO and in the absence of impact piling (required for construction only), no adverse effect on the integrity of the Swale designations would occur during decommissioning of the facilities.
- 4.13.54. KCC in its SoCG with the Applicant [REP8-013] agreed with the position set out by the Applicant related to the status of the ecological elements of the original s106, thus:

"Reedbed habitat creation – in accordance with the S106 an area of reedbed was created within the Harty Fen on the Isle of Sheppey. The site is now the responsibility of the RSPB, who under the terms of the S106 is to maintain the land in accordance with the Maintenance Scheme set out within the S106. The Applicant's position is that this element of the S106 has been satisfied and does not need to be transferred through to the DCO; and

The relocation scheme element of the S106 provides for measures including habitat creation and management to secure mitigation relating to reptiles, nesting and foraging birds, protection of bird breeding habitats, habitat creation for invertebrates and mitigation for Beard Grass. The latest version of the Ecological Mitigation and Management Plan, subjected pursuant to application SW/10/444/R is included as an approved document within the DCO and the Applicant's position is that it will ensure the necessary mitigation measures are included within the DCO."

Conclusion

- 4.13.55. In considering ecology the ES did not identify any significant effects on designated sites, protected species and habitats or other species of principal importance for the conservation of biodiversity.
- 4.13.56. Various construction phase mitigation measures have been proposed which would be secured by Requirements set out within the Recommended DCO which in respect of Project K3 are carried forward from the K3 Planning Permission and approved variations.
- 4.13.57. The effect of the proposed mitigation measures would be that no residual likely significant effects are anticipated on any of the ecological receptors identified. Accordingly, both the K3 Proposed Development and the WKN Proposed Development would not result in significant harm to biodiversity conservation interests and would meet the aims of NPS EN-1, the NPPF and relevant development plan policies.

4.14. GREENHOUSE GASES AND CLIMATE CHANGE

Policy Considerations

- 4.14.1. The CCA2008 (as amended) commits the UK government to reducing greenhouse gas emissions by at least 100% of 1990 levels by 2050 (a net zero carbon target for the UK).
- 4.14.2. The 2011 Carbon Plan (Carbon Plan) is the UK's national strategy under CCA2008 for delivering emissions reductions through Carbon Budgets (2023-27) and preparing for further reductions to 2050. The Third, Fourth and Fifth Carbon Budgets, set through the Carbon Budget Orders 2009, 2011 and 2016, are set out in paragraph 6.2.2 of ES Chapter 6 [APP-058].
- 4.14.3. The Carbon Plan, pp93-99 describes a three-pronged strategy of: preventing waste arising; reducing methane emissions from landfill; and efficient energy recovery from residual waste. Paragraphs 2.130-2.132 describe energy from waste as a sustainable biomass source and low carbon heat source for large-scale CHP opportunities. Paragraph 2.224 states that *"efficient energy recovery from waste prevents some of the negative greenhouse gas impacts of waste in landfill and helps to offset fossil fuel power generation"*.
- 4.14.4. The Waste Management Plan for England, December 2013 (WMPE) states that the Government prioritises efforts to manage waste in line with the waste hierarchy and reduce the carbon impact of waste, and supports efficient energy recovery from residual waste – of materials which cannot be reused or recycled – to deliver environmental benefits, reduce carbon impact and provide economic opportunities.
- 4.14.5. The Clean Growth Strategy for the UK, 2017 (CGS) notes significant progress made in decreasing Greenhouse Gas (GHG) emissions from waste going to landfill and adopts goals of being a 'zero avoidable waste economy' by 2050 and diverting all food waste from landfill by 2030.
- 4.14.6. Although not adopted national policy the National Infrastructure Assessment, 2018 (NIA) recommends that more use of alternative treatment for food waste and plastic in particular is encouraged to reduce GHG emissions. On page 34 it states:

"The successful delivery of a low cost, low carbon energy and waste system requires... encouraging more recycling, and less waste incineration."
- 4.14.7. The UK Committee on Climate Change (UK CCC) has a statutory role to advise government under CCA2008. The Committee's 2017 and 2018

reports to Parliament⁷ identify significant policy gaps for meeting carbon budgets. On page 8 in the 2017 report, the Committee stated that:

- 4.14.8. *"New policies are needed across the economy. By 2030, current plans would at best deliver around half of the required reduction in emissions, 100-170 MtCO₂e per year short of what is required by the carbon budgets."*
- 4.14.9. The latest advice to Government regarding necessary actions for the UK to achieve the carbon emission reductions enshrined in law via the CCA2008 is the UK CCC's report: Reducing UK emissions: Progress Report to Parliament, was laid before Parliament on 25 June 2020 (June 2020 CCC Progress Report) [REP7-030]. It identifies for the first time the need to address emissions from waste incineration, warning against the continued 'dash for incineration' as it competes with recycling, and expressly advises:
- "New plants (and plant expansions) above a certain scale should only be constructed in areas confirmed to soon have CO₂ infrastructure available and should be built 'CCS1 ready' [Carbon Capture and Storage] or with CCS".*
- 4.14.10. Chapter 7 of the sectoral scenarios report from the UK CCC, p201 lists "incineration with energy recovery" among technology options for landfill waste diversion, as noted in [ES Chapter 6 [APP-058] paragraph 6.2.16.
- 4.14.11. The UK CCC's 2019 report states that electricity generation needs to be almost fully decarbonised by 2050 and that industry will require greater deployment of carbon capture, utilisation and storage (CCUS), use of hydrogen, and electrification. As to waste management it suggests that no biodegradable waste should be landfilled after 2025 and that recycling rates of 70% should be targeted, further reducing residual waste.
- 4.14.12. NPS EN-1 states that while:
- "the UK economy is reliant on fossil fuels, and they are likely to play a significant role for some time to come... the UK needs to wean itself off such a high-carbon energy mix: to reduce greenhouse gas emissions, and to improve the security, availability and affordability of energy through diversification" (paragraphs 2.2.5 and 2.2.6)".*
- 4.14.13. Paragraph 2.2.4 states that not all aspects of Government energy and climate change policy will be relevant to NSIP decisions or planning decisions by local authorities, and the planning system is only one of several vehicles that helps to deliver Government energy and climate change policy.

⁷ Committee on Climate Change (2017): Meeting Carbon Budgets: Closing the policy gap. 2017 Report to Parliament, London: Committee on Climate Change. Committee on Climate Change (2018): Reducing UK emissions. 2018 Progress Report to Parliament, London: Committee on Climate Change.

- 4.14.14. Paragraph 3.4.3 notes only that the energy produced in EfW facilities *"from the biomass fraction"* of residual waste is regarded as renewable. Section 4.6 supports CHP for thermal generating stations including (paragraph 4.6.8) on the grounds of the efficiency of displacing conventional fossil-fuelled separate heat and electricity generation.
- 4.14.15. Paragraph 5.2 states that:
- "CO2 emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). However, given the characteristics of these and other technologies, as noted in Part 3 of this NPS, and the range of non-planning policies aimed at decarbonising electricity generation such as EU ETS (see Section 2.2 above), Government has determined that CO2 emissions are not reasons to prohibit the consenting of projects which use these technologies or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR and, for coal, CCS requirements). Any ES on air emissions will include an assessment of CO2 emissions, but the policies set out in Section 2, including the EU ETS, apply to these emissions. The [decision making body] does not, therefore need to assess individual applications in terms of carbon emissions against carbon budgets and this section does not address CO2 emissions or any Emissions Performance Standard that may apply to plant."*
- 4.14.16. The EU emissions trading scheme (ETS) does not apply to waste combustion installations and paragraph 3.51 of the Budget 2018 states *"In the unlikely event no mutually satisfactory agreement can be reached and the UK departs from the EU ETS in 2019, the government would introduce a Carbon Emissions Tax to help meet the UK's legally binding carbon reduction commitments under the Climate Change Act. The tax would apply to all stationary installations currently participating in the EU ETS from 1 April 2019"*.
- 4.14.17. Low-carbon technologies are defined in the NPPF as *"...those that can help reduce emissions (compared to conventional use of fossil fuels)." A core planning principle of the NPPF is that the planning system should "...support the transition to a low carbon future in a changing climate"*. Paragraph 154 states that in determining planning applications for renewable and low carbon development:
- "local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions."*
- 4.14.18. KCC's MWLP states in its spatial vision at paragraph 3.0.2 that it aims to drive waste up the Waste Hierarchy and *"ensure that requirements such as a Low Carbon Economy (LCE) and climate change issues are incorporated into new development."* A strategic objective is to:
- "Ensure minerals and waste developments contribute towards the minimisation of, and adaptation to, the effects of climate change. This*

includes helping to shape places to secure radical reductions in greenhouse gas emissions and supporting the delivery of renewable and low carbon energy and associated infrastructure."

- 4.14.19. Policy DM 1 requires design proposals for waste development to minimise greenhouse gas emissions and other emissions. In addition the notes to Policy DM 12 state that climate change should be considered in the evaluation of significant cumulative effects on the environment.

- 4.14.20. SBC's Local Plan at paragraph 4.1.50 indicates the need to move beyond adaptation to the impacts of climate change, reducing greenhouse gas emissions where possible, by among other things:

"Encouraging the use of renewables and energy efficiency improvements (inc. micro-renewable energy and free-standing projects), identifying the potential for decentralised, renewable or low carbon energy supplies and for co-locating heat customers and suppliers."

- 4.14.21. Policy DM20 is generally permissive of development of renewable and low carbon energy sources subject to various environmental, planning and social criteria. Policy CP4 seeks to maximise opportunities for including sustainable design and construction techniques including the use of recycled and recyclable materials, sustainable drainage systems, carbon reduction and minimising waste.

- 4.14.22. Policy DM19.2 promotes waste reduction, re-use, recycling and composting, where appropriate, during both construction and the lifetime of the development and the location and design of development:

"to take advantage of opportunities for decentralised, low and zero carbon energy, including passive solar design, and, connect to existing or planned decentralised heat and/or power schemes".

- 4.14.23. Policy DM19 encourages measures to address and adapt to climate change, including:

"c. Recognition that retaining and upgrading existing structures may be more sustainable than building new whilst making the most of opportunities to improve water and energy efficiency in the existing stock."

The Applicant's case

- 4.14.24. ES Chapter 6 [APP-058] assesses the likely significant effects resulting from the K3 and WKN Proposed Developments as a consequence of GHG emissions and the resultant impact on climate change. It is supported by ES Appendices 6.1, 6.2 and 6.3 containing details of the GHG emissions calculations for respectively, the K3 Proposed Development, WKN Proposed Development and Practical Effect of K3 Proposed Development [APP-031, APP-032, APP-033].

- 4.14.25. The likely significant effects of GHG emissions from the K3 and WKN Proposed Developments have been assessed in ES Chapter 6 [APP-058]. The global atmospheric mass of relevant GHGs and consequent warming

potential, expressed in CO₂-equivalents, is considered a high sensitivity receptor affected by each of the K3 and WKN Proposed Developments.

- 4.14.26. Net total GHG emissions from operation of the K3 and WKN Proposed Developments have been calculated based on their waste throughput, combustion processes and treatment of residues. A particular feature of the assessment of these emissions is a comparison to baseline GHG emissions from landfill disposal of waste and from conventional electricity and heat generation.
- 4.14.27. Construction and decommissioning stage impacts have also been evaluated and are considered not to be material to the total GHG emissions over the K3 and WKN Proposed Developments' lifetimes, which are dominated by the combustion of waste and generation of energy. The K3 Proposed Development is in any case already largely constructed.
- 4.14.28. The significance of the impact of "net" GHG emissions from the K3 and WKN Proposed Developments has been evaluated with regard to change from the baseline and in the context of climate change and waste policy.
- 4.14.29. All calculations of GHG emissions were undertaken with the waste sector life-cycle analysis software tool 'WRATE'. The WRATE calculations are found in ES Appendices 6.1, 6.2 and 6.3. [APP-031, APP-032, APP-033]
- 4.14.30. Key uncertainties and limitations to the assessment concern the estimate of GHG emissions from landfill in the baseline scenario, the carbon intensity of marginal electricity generation in the baseline that is displaced, and the characteristics of the waste managed (its biogenic to fossil carbon ratio and its energy content), which affect both the baseline and the K3 and WKN Proposed Development scenarios.
- 4.14.31. The K3 Proposed Development is predicted by the WRATE analysis to cause total emissions of approximately 255 thousand tonnes of fossil carbon-dioxide equivalent (ktCO₂e) per year of operation. However, compared to the baseline of impacts from landfill waste disposal and electricity generation that it would avoid, the net effect of the K3 Proposed Development as a whole is predicted to be a reduction in GHG emissions of 232 ktCO₂e/annum, which would be a beneficial effect that is considered significant.
- 4.14.32. The practical effect of the K3 Proposed Development, increasing the energy output of the Consented K3 Facility and also increasing its waste throughput by 130,000 tonnes per annum, is predicted by the WRATE analysis to cause a net total GHG emissions reduction of approximately 60 ktCO₂e per year of operation. This is the balance of process emissions from waste combustion, transport and facility operation compared to the baseline of impacts from landfill waste disposal and electricity generation that it would avoid. The predicted 60 ktCO₂e per annum net GHG emission reduction would be a beneficial effect that is considered significant.
- 4.14.33. Although unavoidable uncertainties in the estimation of baseline waste management and displaced electricity generation emissions, limit the

certainty with which the net benefits of the K3 Proposed Development's practical effect (increases to the Consented K3 Facility waste throughput and electricity generation) can be predicted, the K3 Proposed Development as a whole can be said with higher confidence to perform well in GHG emission terms, due to its efficiency as CHP facility.

- 4.14.34. The WKN Proposed Development is predicted by the WRATE analysis to cause a total of approximately 163 ktCO₂e per year of operation.
- 4.14.35. However, compared to the baseline of landfill waste disposal and electricity generation that it would avoid, the net effect of the WKN Proposed Development is predicted by WRATE be a GHG emissions reduction of approximately 64 ktCO₂e per annum. This predicted 64 ktCO₂e per annum net GHG emission reduction would be a beneficial effect of the WKN Proposed Development that is considered significant.
- 4.14.36. There are unavoidable uncertainties in the estimation of baseline waste management and displaced electricity generation emissions which could affect the net GHG balance predicted for the WKN Proposed Development. Based on the WRATE analysis, a net GHG emissions reduction is considered more probable than a net emissions increase compared to the baseline, but the amount can only be stated with limited confidence as it is highly sensitive to the assumptions applied.
- 4.14.37. In the case of both the K3 and WKN Proposed Developments, potential further mitigation measures have been considered, but no additional mitigation for the operational phase, within the Applicant's control at the development site, has been proposed or is considered to be required.
- 4.14.38. Although construction-and-decommissioning stage emissions would be limited, good-practice measures to reduce GHG emissions are recommended for the WKN Proposed Development, consistent with guidance from the Institute of Environmental Management and Assessment (IEMA)
- 4.14.39. As GHG impacts are global, all cumulative sources are relevant: this is taken into account in the defined 'high' sensitivity of the receptor and statement that any additional GHG emissions may be considered significant. Additional cumulative effects of greater significance than reported, due to other specific local development projects or the combination of the K3 and WKN Proposed Developments, are not predicted.

Examination

- 4.14.40. In its ExQ3 questions [PD-014] and replies from the Applicant [REP5-011] KCC [REP5-036] and SBC [REP5-027] the ExA clarified the following matters. KCC also replied [REP7-027] to the Applicant's Response to ExAQ3 [REP5-011].
- 4.14.41. KCC states in its reply to ExQ1A.1.3 [REP4-015] that without knowing how much of the feedstock is anticipated to come from landfill as opposed to exported RDF, it is not possible to determine whether the

claimed carbon benefits of the WKN Proposed Development - in particular, those based upon avoided emissions from landfill - would actually materialise.

- 4.14.42. The table in the Appendix to KCC D5 Submission [REP5-042] suggests that the available feedstock going to landfill is substantially less than the RDF currently exported. This is said to be supported by the analysis set out by KCC in its D5 Comments [REP5-038] on the Applicants Response to ExQ1A.1.3 and D5 Response [REP5-036] to ExQ3, demonstrating for example that tonnages of waste types unsuitable for input to EfW are included in the generic category HIC, confirming that waste types are captured that would not be suitable for incineration with energy recovery, inflating the tonnage of waste that might be available for the proposed plants. Corrections to the starting dataset presented by the Applicant reduces the available waste to 0.65 Mt. (pages 3-6 [REP5-038]). Thus it was argued that the claimed carbon benefit for diversion from landfill would in fact be very limited, and the majority of material likely to be sourced would be RDF currently offshored.
- 4.14.43. As to whether there had been any circumstances related to climate change that had changed since publication in 2011 of NPS EN-01 or NPS EN-03 and the consequences thereof, the Applicant acknowledged the UK's ratification of the Paris Agreement in November 2016, seeking a more stringent control on the increase in the global average temperature than was agreed at the 2010 UN Climate Change Conference. The UK Parliament's declaration of an environment and climate emergency in May 2019 and amendment of the CCA2008 to ensure the net UK carbon account for 2050 is at least 100% lower than the 1990 baseline ("net zero").
- 4.14.44. In addition, the Applicant noted the Riverside Energy Park DCO (EN010093) granted on 9 April 2020 [REP5-013] showed that a development that accorded with the NPSs did not lead to the UK being in breach of its international obligations. Further, that *R (Client Earth) v The Secretary of State for Business, Energy and Industrial Strategy [2020] EWHC 1303 (Admin)* [REP5-014] confirms that the SoS is entitled to grant development consent for major energy projects, notwithstanding that they might have significant impacts in terms of greenhouse gas emissions.
- 4.14.45. SBC requested that a Requirement be included in the DCO to ensure the use of low or zero emission HGVs to negate air quality impacts. The Applicant and SBC then agreed that an appropriate number and specification of electric charging points should be provided to serve the WKN Proposed Development, to be reflected via an alteration to the dDCO. Further modelling of the carbon burden from the transportation of waste to the site [REP5-015] prompted the Applicant to reply that a significant adverse impact on carbon emissions in SBC's area was not considered likely, and so a requirement for the use of low or zero emission HGVs would not be necessary or reasonable and in any event there would be no direct control over vehicles used by transporters of the

waste fuel who had to comply with current EU HGV Emissions Standards which incentivise the use of zero and low emission vehicles.

- 4.14.46. KCC in its D2 Submission of 23 March 2020 [REP2-044] drew attention to the Brookhurst Wood appeal decision [REP5-039] in contrast to which the Proposed Development is being promoted as an energy scheme through the DCO process, rather than a waste management facility through the established local waste planning process. The appeal decision noted the precise mix of feedstock the scheme would handle could not be known, there was significant uncertainty around the credentials of the facility in terms of a low carbon technology. Electricity generated by a Combined Cycle Gas Turbine (CCGT) in baseload mode would represent a lower carbon source of electricity than the proposal and the low carbon credentials of the proposal were of little weight as the scheme was a waste management facility not an energy generating scheme, therefore NPSs were given little weight. The Inspector also noted that if not handled at the proposed facility, residual waste would likely be exported for recovery, not sent to landfill. Thus, KCC argues that as the WKN Proposed Development is not an NSIP, compliance with NPSs ought only to be given greater weight with respect to consideration of Project K3.
- 4.14.47. SBC in its LIR [REP1-012] supported objections by KCC that the Proposed Development was not necessary to meet waste requirements for Kent, and conflicted with policies of self-sufficiency and promotion of recycling. SBC is concerned that the development would result in significant carbon impacts and draw substantial HGV traffic into the borough with negative effects on climate change.
- 4.14.48. SBC in its D4 Submission dated 5 May 2020 and Appendix 1 - Climate & Ecological Emergency Action Plan [REP4-025, REP4-026], commented on climate change and potential air quality impacts arising from lorry routing. SBC declared a climate and ecological emergency in June 2019 and the Climate and Ecological Emergency Action Plan was approved by Cabinet on 22 April 2020, containing short and long term actions to achieve carbon reduction and borough-wide net zero carbon by 2030. SBC accepts the Proposed Development is a form of renewable energy under NPS EN-3, however states that it would have "significant adverse impacts upon carbon emissions" within the Borough, citing KCC's view as WPA that the development on the scale proposed is not required to meet waste requirements in the latest WNA, based on the policy of providing self-sufficiency for the disposal of waste in Kent. SBC supports KCC's objections and submits that the Proposed Development would result in unnecessary HGV movements into the borough and the wider Kent area on a significant scale, with subsequent negative effects on climate change. It supports KCC concerns relating to the carbon impacts arising from the development that the development is not compatible with its waste hierarchy and promotion of recycling.
- 4.14.49. Other outstanding matters at the close of the Examination appear from the Applicant's SoCG with KCC [REP8-013], primarily that the level of carbon benefit impact relating to the proposal is disputed and the

reliability of any claimed benefit in terms of reduced carbon emissions is disputed.

- 4.14.50. As to carbon balance the Applicant notes that the Consented K3 Facility in its operational state is a Good Quality CHP and would continue as such, at the increased generating capacity and tonnage throughput. Changes to efficiency criteria in the latest CHPQA guidance mean that the WKN Proposed Development would not be considered as Good Quality CHP. However, the Applicant's Carbon Assessment conservatively models an electricity only facility and the Applicant states that positive weight should be given to Project WKN given it would be CHP ready and located where there remains a good prospect of identifying customers for the heat produced. The Applicant states its carbon assessments adopt a conservative approach in assuming a biodegradable content of 45% and maintains that a far greater proportion of fuel for the Proposed Development would be derived from residual wastes currently disposed to landfill than from RDF.
- 4.14.51. KCC's position is that the carbon assessments are overoptimistic in terms of assumed biogenic content which skews the results, making the plant performance appear more favourable in terms of avoided carbon. The absence of a sensitivity analysis that takes a more conservative view in light of forthcoming changes in waste management practice flaws the assessment.
- 4.14.52. Further, the lack of guaranteed heat utilisation in Project WKN shows that the combined projects would not represent Good Quality CHP and therefore to grant consent would be contrary to national energy policy. The absence of evidence to indicate that the additional throughput to the Consented K3 Facility would contribute any additional heat over and above what could be supplied by that facility as permitted, means the same could be said of that proposal if taken as a stand-alone matter. The majority of waste is likely to come from onshoring RDF currently exported to CHP plants that would be classed as Good Quality. The Applicant's own Carbon Assessment demonstrates that this management route is preferable to burning the waste in a plant in the UK (in this case Kent) that will not be operating as Good Quality CHP as demonstrated by the Applicant's own evidence/CHP assessment.
- 4.14.53. Finally, the carbon contribution of waste incineration plants is identified as a focus of action by the statutory Climate Change Committee's most recent report to Parliament. From the above, and the lack of any carbon capture or storage proposals, the County Council considers that consenting the proposals would be contrary to the most current standing advice to national government on meeting the statutory carbon emission reduction targets of the CCA2008. It would also be contrary to the Government Resources and Waste Strategy that includes a specific action to improve the efficiency of EfW plants by encouraging use of the heat the plants produce.
- 4.14.54. The June 2020 CCC Progress Report identifies for the first time the need to address emissions from waste incineration, warning against the

continued 'dash for incineration' as it competes with recycling, and expressly advises that "New plants (and plant expansions) above a certain scale should only be constructed in areas confirmed to soon have CO₂ infrastructure available and should be built "CCS1 ready' or with CCS". It also confirms that the Government Contract for Difference support scheme to renewables is only available to Waste to Energy plants with CHP indicating that plants without should not be regarded as supplying renewable energy.

4.14.55. The Applicant also maintains there is no planning policy requirement to attain R1 status; it is a measure within the WFD to ensure energy recovery facilities achieve an appropriate level of efficiency and an industry standard that the Applicant meets and exceeds. The fuel for the Proposed Developments incorporates residual wastes currently sent to landfill and using these wastes instead to recover energy (even before the facilities achieve R1 status) would deliver the waste hierarchy.

4.14.56. KCC argues that management of waste at a plant simply able to recover some energy from waste does not automatically qualify as Other Recovery rather than disposal. For example landfills can recover energy via landfill gas engines yet are always defined as disposal facilities. The key test is that an incineration plant taking mixed waste needs to be accredited to R1 status to not be regarded as "disposal". That was the purpose of introducing the R1 formula, therefore, until a plant achieves R1 status, it ought to be regarded as a disposal facility. The EPR leaves unchanged MWLP Policy CSW8 which states "*Facilities using waste as a fuel will only be permitted if they qualify as recovery operations as defined by the Revised Waste Framework Directive*" which by virtue of the footnote refers to the need for such plants to achieve R1 status (Annex II of WFD).

4.14.57. KCC also cited in its closing submissions [REP8-016] the Court of Appeal judgement on Heathrow expansion *R (Friends of the Earth) v Secretary of State for Transport and Others [2020] EWCA Civ 214*, concerned with the formulation of the 'Airports National Policy Statement: new runway capacity and infrastructure at airports in the South East of England'. KCC considered it relevant in the context of the impact of carbon emissions that would result from the Proposed Development. However in that case it was held:

"We have not found that a national policy statement supporting this project is necessarily incompatible with the United Kingdom's commitment to reducing carbon emissions and mitigating climate change under the Paris Agreement, or with any other policy the Government may adopt or international obligation it may undertake"

Conclusion

4.14.58. Considering SBC's request for a new Requirement in the DCO to ensure the use of low or zero emission HGVs, I am persuaded by the Applicant's arguments that given the difficulty in enforcing such a requirement against third party contractors and the existing standards of emissions to which HGV operators are held, this would not be necessary or

reasonable. Otherwise, the Applicant has included in its Preferred DCO that an appropriate number and specification of electric charging points should be provided to serve the WKN Proposed Development which is suitable for the purpose

- 4.14.59. It is not in dispute that Project K3 and Project WKN are both facilities proposed for the incineration of waste with energy recovery, which if they achieved R1 status, would represent Other Recovery facilities for the purposes of the waste hierarchy which sit above 'disposal'. The decision whether R1 status is achieved or not, is a matter for the EA. I cannot with a high level of confidence assume that either project within the Proposed Development would achieve R1 status.
- 4.14.60. As noted elsewhere and in particular Section 3.11 and Section 6.6 of this Report, in relation to the WKN Proposed Development neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations but primacy is given to the development plan.

Level of carbon benefit

- 4.14.61. The conclusions of the Applicant's modelling of the practical effects of the K3 Proposed development claim that treatment of an additional 130ktpa of waste would:
- deliver carbon benefits over the current management methods due to increased diversion from landfill and improved energy efficiency performance of the facility;
 - avoid a net burden of between c59.5 and 63.3ktCO₂e in 2020 (depending on the composition and CV of the waste diverted from Landfill);
 - transporting process residues has a carbon burden but a small impact on the overall carbon benefits of diverting waste from landfill; and
 - Treatment of 657kt of waste would help minimise waste to landfill and generate additional renewable energy in heat for the DS Smith Kemsley Paper Mill and electricity for export to the national grid.
- 4.14.62. However it is inappropriate to take into account the full 657kt of waste in respect of the K3 Proposed Development since it is only the additional 130ktpa that would be processed as a result of an eventual successful application. An avoided carbon burden of 17.7ktCO₂e (or 26.9ktCO₂e applying the sensitivity analysis) associated with the processing of 527kt of waste at the Facility is presented as a net benefit but in reality this is an existing impact that is associated with the already Consented K3 Facility. Nevertheless there would, in the Applicant's terms be a net benefit to be derived from the additional 130ktpa that would result from the approval of the application.
- 4.14.63. Similar conclusions are found by the Applicant for the WKN Proposed Development in respect of the proposed treatment of an additional 390ktpa of waste at the Facility, save that the net avoided carbon burden is said to be between c63.8 and 98.3ktCO₂e in 2020. However it appears from the relevant carbon assessment [APP-032] that the more relevant figures to be taken forward for overall assessment of the WKN Proposed

Development are the burden of between 31.6ktCO₂e to 50.1ktCO₂e (paragraphs 4.1.2 and 3.2.1) associated with the processing of 390kt of waste at the Facility, itself a significant carbon burden, to which is added emissions from onward transportation of process residues from the facility, making an overall carbon burden of between c33.7ktCO₂e and c52.8ktCO₂e. For the K3 Proposed Development the practical effect of consent would be a carbon burden including an onward transportation burden, of between c15.6ktCO₂e and c24.4ktCO₂e.

- 4.14.64. The netting off of a proportion of GHG is not an unreasonable approach where there is a clear baseline alternative from which like can be compared with like with a high degree of confidence. However the levels of carbon benefit impact relating to the Proposed Development, as the Applicant accepts, is subject to several key uncertainties and limitations, such as the estimate of GHG emissions from landfill, the carbon intensity of marginal electricity generation and the proportions of waste types to be managed. All the available evidence casts considerable doubt on whether the "net benefit" can be ascertained with any great certainty, given it is highly sensitive to the assumptions applied.
- 4.14.65. It should also be borne in mind that (notwithstanding any definitional need for the facilities found in NPSs) if the Proposed Development is not necessary to meet waste requirements for Kent or the area covered by SEWPAG, the carbon burden resulting from the proposed facilities would needlessly increase that burden to no particular purpose. Yet at the same time it would contribute to an increased risk of failure to meet international commitments. This is obviously more so in the case of the WKN Proposed Development than in the case of Project K3, which on the Applicant's own analysis would be predicted to cause a total of approximately 163 ktCO₂e each year of operation from waste combustion and transport. This would be a considerably significant regular discharge of greenhouse gas in its own right over the lifetime of the development, expected to have an operating life of up to 50 years.
- 4.14.66. CO₂ emissions can be a significant adverse impact of waste combustion. Overall I conclude that given the level of uncertainty as to whether and if so what level of "net carbon benefit" would obtain in respect of the Proposed Development this should be accorded little weight. However there are material differences between the effects of the WKN Proposed Development and the practical effect of the K3 Proposed Development such that whilst the combined proposal would be inherently energy inefficient, the significant weight that should be given to the environmental burden of the WKN Proposed Development should not apply to the K3 Proposed Development.

Limited nature of diversion from landfill

- 4.14.67. The comparative scenario relating to landfilling of all waste that would otherwise be managed through the proposed facilities is also concerning, as KCC point out. The waste would arise in Kent where a significant proportion would be diverted from recycling rather than landfill, or further afield where it will have been planned for through Local Plan making processes. It is also commonly understood that emissions from

fossil sources would not occur with plastic waste stored in landfill which would not break down and result in GHG emissions for a considerable time, whereas recycling would ensure the carbon stored in fossil sources is not immediately emitted.

- 4.14.68. The RDF export scenario modelled as a sensitivity found that "*...carbon impacts could be up to circa 13ktCO₂e lower than the Proposal. This is predominately associated with the fact that the European WtE is modelled as CHP, whereas the Facility is conservatively modelled as electricity only.*" (page 15 ES Appendix 6.2 – WKN Proposed Development Carbon Assessment [APP-032]). Reviewing the available evidence I see no good reason why the Proposed Development would necessarily have a significantly lesser carbon impact than if the waste were managed via the European RDF export route or supplied to domestic EfW plants with CHP. By the same token it seems to me just as likely that without the Proposed Development, rather than waste being landfilled, it would compete with management through other routes, including other EfW plants and export as RDF.

Level of guaranteed heat utilisation: WKN Proposed Development

- 4.14.69. The Brookhurst Wood appeal decision [REP5-039] is significant because although consent was granted for an EfW plant with 230,000 tpa of C&I and/or Municipal Solid Waste (MSW) of which 50,000 tpa would be recycled, and 180,000 tpa residual waste being combusted to generate electricity and potentially heat, the Inspector found that as an electricity production scheme fired by fuel that is primarily fossil-derived material, it had poor carbon credentials, compared with other energy generators such as CCGT, and as a waste management scheme it had poor carbon credentials compared with export of RDF, the accepted alternative waste management solution for the proposed feedstock. This would suggest that the Proposed Development would struggle to demonstrate compliance with NPS commitments on carbon emission reduction or WLP objectives of securing low carbon solutions.
- 4.14.70. In turn this would make it difficult to adhere to the views concerning climate change adaptation expressed in NPS EN-1 (paragraph 4.8.1) and EN-3 (paragraph 2.3.1) that if new energy infrastructure is not sufficiently resilient against the possible impacts of climate change, it will not be able to satisfy the energy needs as outlined in the NPS.
- 4.14.71. Some matters of climate change adaptation overlap with other principal issues, and in Section 6.19 of this Report I have considered flood risk including in the context of climate change.
- 4.14.72. Neither facility is certain to meet the R1 energy efficiency test. However KMWLP policy, unchanged by the EPR, aims to secure that any additional capacity that produces energy maximises the CV of the waste, harnessing as much of the energy produced as possible, as soon as possible. Taking together both projects within the Proposed Development the proposal would be inherently energy inefficient, not meeting the test of Good Quality CHP, and not making best use of the CV of the proposed feedstock.

- 4.14.73. The need for the UK to continue to transition to a low-carbon electricity market is underlined by the 2015 United Nations Framework Convention on Climate Change ("UNFCCC") Paris Agreement and the importance of this cannot be overestimated. The June 2020 Progress Report, in confirming that the Government Contract for Difference support scheme to renewables is only available to EfW plants with CHP, is also a significant indicator that plants without CHP should not be regarded as supplying renewable energy.
- 4.14.74. However despite the uncertainties inherent in calculating the net carbon benefit of the K3 Proposed Development's practical effect, I recognise that the K3 Proposed Development as a whole could be said with higher confidence to perform better in GHG emission terms, due to its greater efficiency as a CHP facility. This is a positive benefit.
- 4.14.75. It would also comply with Swale Local Plan Policy DM19.c, concerned with adaptation to climate change, by retaining and upgrading an existing structure rather than building new.

4.15. GROUND CONDITIONS

Policy Considerations

- 4.15.1. In addressing land use matters Section 5.10 of NPS EN-1 notes that the reuse of previously developed land for new development can make a major contribution to sustainable development. It also advises that for developments on previously developed land applicants should ensure that they have considered the risk posed by land contamination.
- 4.15.2. Paragraph 178 of the revised NPPF states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities. The Framework also encourages the use of previously developed land. At the local level Swale Local Plan Policy ST1 applies national policy in respect of contaminated, unstable and previously developed land.

The Applicant's Case

- 4.15.3. Chapter 9 of the ES [APP-061] assessed the effect of the Proposed Development on ground conditions. The assessment was based on information relating to the history, geology, hydrology and hydrogeology of the Site as well as ground investigations previously undertaken in the vicinity of the Site.
- 4.15.4. No significant issues were raised by the key consultees as a result of the scoping exercise in relation to ground conditions. No specific ground investigation supported the WKN Proposed Development; the information used to determine the significance of potential effects of the Proposed Development focused on ES Appendix 9.1, Desk Study Ground Conditions

Preliminary Risk Assessment [APP-040], the 2010 EIA for the TCPA1990 K3 application and previous ground investigation data for the WKN and K3 Site [APP-073].

- 4.15.5. The ground conditions in relation to the construction of K3 were assessed as part of the EIA completed for the original TCPA application for the facility. No likely significant effects were identified in relation to ground conditions. All works pursuant to construction of the K3 and planning conditions in relation to ground conditions have been completed and discharged, including adherence to a CEMP. No further external construction work is required by way of consequence of the Practical Effect of the K3 Proposed Development. In the absence of any change in built form associated with the K3 Proposed Development, it is anticipated that there is no potential for further ground condition related effects.

Examination

- 4.15.6. No RRs or WRs received during the Examination raised concerns about ground conditions or land contamination issues. The EA's RRs [RR-001] included that baseline ground conditions have been addressed for the site previously under earlier permissions from KCC and under the relevant IED permit for energy plant; that additional assessment of ground conditions would be undertaken before, during and after operational activities under a new permit if/when issued; that the site geological setting is on strata that is not of significant sensitivity for groundwater protection and provided surface management and materials handling are undertaken in accordance with permit requirements, ground quality and associated controlled waters should not be at significant risk.
- 4.15.7. In the SoCG between the Applicant and EA, supplied at D7 [REP7-012], it was agreed that the K3 Proposed Development would not pose a risk to groundwater. K3 as consented was the subject of its own desk study and preliminary risk assessment and consented with conditions pursuant to the protection of groundwater from any existing land contamination. It was further agreed that all planning conditions of relevance to ground conditions have been discharged. Baseline ground conditions were also addressed for the K3 Site under the IED permit issued (permit no. EPR/JP3135DK). Additional assessment of ground conditions would be undertaken after operational activities under the environmental permit (or as amended by way of consequence of the K3 Proposed Development).
- 4.15.8. For the WKN Proposed Development it was agreed that the ES used an appropriate methodology with an appropriate baseline and makes an appropriate judgement as to the likely significant residual impacts in terms of contamination. The WKN Site's geological setting is on strata that is not of significant sensitivity for groundwater protection.
- 4.15.9. It is also agreed that R28 (piling risk assessment) and 19 (contaminated land and groundwater) of the Applicant's Preferred dDCO [REP7-003] would ensure the appropriate ongoing management of any contamination that might be present and that the risk of consequential environmental

impact is adequately mitigated and any risk as low as reasonably practical.

- 4.15.10. All demolition/decommissioning works for the Proposed Development would be undertaken in accordance with a Decommissioning Environmental Management Plan (DEMP) secured under R4 dDCO [REP7-003].
- 4.15.11. The dDCO as submitted with the application [APP-005] provided in R19 that ground investigations and other preliminary works may not take place until details of capping layer and ground gas protection measures have been submitted and approved by the RPA. R19 also makes provision for any contaminated land not previously identified to be dealt with appropriately.
- 4.15.12. In addition to R19 of the dDCO [REP7-003] dealing with land contamination and groundwater, other requirements of relevance to ground conditions comprise R22 which provides for a CEMP and R28 and R29 which relate to piling.

ExA Conclusion

- 4.15.13. I am satisfied that the Proposed Development accords with all relevant legislation and policy requirements and that ground condition matters are adequately provided for and secured in the DCO.

4.16. LANDSCAPE AND VISUAL IMPACT

Policy Considerations

- 4.16.1. Paragraph 5.9.1 of NPS EN-1 notes that the landscape and visual effects of energy projects will vary on a case by case basis according to the type of development, its location and the landscape setting of the proposed development. Exhaust stacks and their plumes are described as having the most obvious impact on landscape and visual amenity for thermal combustion generating stations. Paragraph 5.9.5 requires the applicant to carry out a landscape and visual assessment.
- 4.16.2. NPS EN-1 notes that virtually all nationally significant energy infrastructure projects will have effects on the landscape, and that projects need to take account of the potential impact. Having regard to siting, operational and other relevant constraints, the aim should be to minimise harm, providing reasonable mitigation where possible and appropriate.
- 4.16.3. Paragraph 5.9.18 of NPS EN-1 recognises that all proposed energy infrastructure is likely to have visual effects for many visual receptors around proposed sites and therefore it is necessary to judge whether the effects outweigh the benefits of the project.
- 4.16.4. Section 5.9 states:

"The landscape and visual assessment should include reference to any landscape character assessment and associated studies as a means of assessing landscape impacts relevant to the proposed project. The applicant's assessment should also take account of any relevant policies based on these assessments in local development documents in England and local development plans in Wales. The applicant's assessment should include the effects during construction of the project and the effects of the completed development and its operation on landscape components and landscape character. The assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity. This should include light pollution effects, including on local amenity, and nature conservation (Department of Energy and Climate Change (DECC), 2011a)."

- 4.16.5. Section 10(3)(b) PA2008 requires the SoS to have regard, in designating an NPS, to the desirability of good design. Section 4.5 of EN-1 sets out the principles of good design that should be applied to all energy infrastructure.
- 4.16.6. NPS EN-3 states at paragraph 2.4.2: *"Proposals for renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity, and in the design of the project to mitigate impacts such as noise and effects on ecology."*
- 4.16.7. NPS EN-3 states at paragraph 2.5.52: *"The IPC should expect applicants to seek to landscape waste/biomass combustion generating station sites to visually enclose them at low level as seen from surrounding external viewpoints. This makes the scale of the generating station less apparent, and helps conceal its lower level, smaller scale features. Earth bunds and mounds, tree planting or both may be used for softening the visual intrusion and may also help to attenuate noise from site activities (DECC, 2011b)."*
- 4.16.8. The KMWLP 2013 – 2030 was adopted in July 2016. Policy DM1, concerned with sustainable development, states that proposals should demonstrate that they have been designed to 'protect and enhance the character and quality of the Site's setting'.
- 4.16.9. The Swale Local Plan was adopted in July 2017. Policy ST1, 9e seeks to maintain the individual character, integrity, identities and settings of settlements, and 11b envisages using landscape character assessments to protect, and where possible, enhance, the intrinsic character, beauty and tranquillity of the countryside, with emphasis on the estuarine, woodland, dry valley, down-land and horticultural landscapes that define the landscape character of Swale.
- 4.16.10. SBC Local Plan Policy ST1 seeks to achieve sustainable development in Swale including protecting and where possible enhancing the intrinsic character and beauty and tranquillity of the countryside. Policy ST5 sets a strategy for Sittingbourne aiming to improve the quality of landscapes and ensure that development is appropriate to landscape character and

quality whilst Policy CP4 requires good design and Policy DM24 requires valued landscapes to be conserved.

The Applicant's Case

- 4.16.11. An assessment of the likely significant landscape, townscape and visual resource effects of K3 as consented was undertaken as part of the ES completed in 2010 pursuant to the K3 Planning Permission (2010 ES Non-Technical Summary, ES Chapter 8, and Appendices for ES Chapters 1 - 8 [APP-069, APP-070, APP-072]). This determined that there would be no significant impacts on landscape or townscape character or views. The effect of the completed development was considered to be minor adverse and not significant on both landscape and townscape character. Views of the K3 facility were considered to be prominent in near views, becoming barely discernible within the existing industrial context in mid to long distance views. The overall visual effect of the completed development was considered to be moderate/minor adverse and not significant.
- 4.16.12. Non-material amendments made since the K3 Planning Permission was granted included changes to the site layout, removal of the Incinerator Bottom Ash (IBA) facility and repositioning of surface water ponds, together with applications to form and improved access road and discharge planning conditions which did not change the overall conclusions of the assessment of effects on landscape, townscape and visual resources as found in the 2010 ES [APP-069, APP-070, APP-072]. The 2010 design and access statement for K3 as consented [APP-148] was also submitted
- 4.16.13. No structural modifications to the K3 facility are required pursuant to the practical effect of the K3 Proposed Development and therefore no additional effects are anticipated on landscape, townscape and visual resources beyond that identified previously. The effects from the K3 Proposed Development are not assessed further, however a cumulative scenario including the K3 Proposed Development is assessed.
- 4.16.14. ES Chapter 12 - Landscape and Visual Effects [APP-064] assesses the likely significant landscape and visual effects resulting from the WKN Proposed Development. Also of relevance in this context is the submitted Landscape Masterplan - Rev M [APP-124] and Site Photographs and Drone footage [REP5-021] and Drone videos [REP5-024, REP5-025 REP5-026]. See also the Design and Access Statement [APP-083].
- 4.16.15. ES Chapter 12 [APP-064] sets out the principal objectives of the assessment:
- to describe, classify and evaluate the existing landscape and townscape likely to be affected by the WKN Proposed Development during its construction, operational and future decommissioning development phases;

- to identify visual receptors with views of the WKN Proposed Development; and
- to identify the likely significant effects on landscape, townscape and views, considering measures proposed to reduce or avoid any effects.

- 4.16.16. The WKN Site currently comprises hardstanding and forms the K3 Site compound and storage area for the construction phase of K3. Large scale industrial buildings, energy infrastructure and chimneys form the southern and western site boundaries, separating the location from the residential districts of Sittingbourne to the west. This urban area is defined as the Sittingbourne Industrial/Commercial townscape character area. The urban character area has a poor quality and condition due to the extensive industrial buildings and infrastructure and the presence of disused and derelict land resulting in a low value.
- 4.16.17. There are no designated landscapes lying within the WKN Site. The North Kent Marshes Special Landscape Area (Area of High Landscape Value) (AHLV) (Kent Level) extends over the Swale and neighbouring coastal landscape. This area includes the Chetney and Greenborough Marshes which lie next to the WKN Site and extend along Milton Creek. This area is valued for the open character of its landscape. A further AHLV (Swale Level) lies inland of the marshes and includes the Teynham Fruit Belt.
- 4.16.18. The WKN Site is currently not visible in views from the majority of the settlement of Sittingbourne due to industrial development on the edge of the town and the restored landfill mound to the east on the banks of the Swale. To the east and north-east of the WKN Site the channel of the Swale and low-lying landscape of the Isle of Sheppey allow more open, longer distance views. Key visual receptors of high sensitivity and susceptibility to change in view as a result of the WKN Proposed Development include walkers using the Saxon Shore Way long distance footpath (ZU1/2) beside the Swale and Milton Creek. People using this path form the closest high sensitivity receptors and will ultimately form part of a national route, the England Coast Path. The greatest number of visual receptors with views towards the WKN Site would be occupiers of vehicles travelling on Swale Way.

Effects on Landscape and Townscape Character

- 4.16.19. In terms of effects on landscape and townscape character, the new buildings and infrastructure which form the WKN Proposed Development, although large in scale, would form an extension of the existing character of neighbouring development at Kemsley Paper Mill and the K3 development as consented. The townscape character of the WKN Site would be of low sensitivity to change through redevelopment. There would be no significant adverse, direct effects on townscape character during construction or when completed, either during the day or at night.
- 4.16.20. The surrounding rural landscape character areas of the Swale and the Isle of Sheppey are generally in good condition and have an intrinsically high value. There would be no direct effects on these rural and wild landscapes and their sensitivity to change through the indirect influence of the WKN Proposed Development would be medium or low. There

would be no significant adverse, indirect effects on landscape character during construction or operation during the day or at night.

Effects on Visual Receptors

- 4.16.21. Walkers using the Saxon Shore Way would experience a sequence of views that would include a more heavily developed cluster of energy infrastructure at Kemsley Paper Mill within a journey between Milton Creek and Ridham Docks. The assessment of individual viewpoints concludes that there would be either a moderate, slight or negligible effect on receptors at each individual location, which is not significant. The magnitude of change in view for receptors is reduced by the existing context of large-scale industrial development, particularly the neighbouring K3 which will obscure views of the WKN Proposed Development in many views. The expectation of a receptor using the Saxon Shore Way is that large scale industrial buildings will be encountered near the route, defining the character and nature of view towards Sittingbourne. Moderate adverse effects would be experienced by walkers using a relatively short section of the Saxon Shore Way located to the north of the WKN Site where K3 is likely to form a slightly larger group of buildings and infrastructure as a backdrop to the proposals.
- 4.16.22. As a result, the combined sequential effects on walkers is not considered sufficiently adverse to constitute a significant sequential visual effect. Plans to establish the England Coast Path by 2020 on the alignment of the Saxon Shore Way in the vicinity of the WKN Site, whilst not leading to an increase in the level of effect, could lead to an increase in numbers of walkers experiencing these effects in the future. There would also be no significant adverse effects on any other visual receptors within the study area during construction or when development is completed, during the day or at night.

Mitigation

- 4.16.23. The mitigation of effects on landscape, townscape and visual resources is generally achieved as set out in ES Ch 12, paragraph 12.7.1 [APP-064] through:
- provision of hard and soft landscape proposals to enhance the scheme and to screen it in views from neighbouring areas and the wider landscape; and
 - the design of the built environment and infrastructure to minimise the scale and massing of development, the appropriate use of form, surface materials and colours and the use of an appropriate lighting strategy.
- 4.16.24. Landscape proposals would form an integral part of the WKN Proposed Development to provide treatments for the perimeter and internal green spaces. A detailed landscape proposal scheme does not form part of the DCO application but will be secured by way of a Requirement attached to the DCO.

- 4.16.25. The architectural form of the WKN Proposed Development is largely dictated by its function. The stack height and diameter, the buildings scale and mass and the arrangement of infrastructure to achieve the energy generation process are determined through an iterative engineer lead design process. Maximum parameters have been identified for all elements of infrastructure. A lighting assessment has been undertaken to determine the likely type, number and location of luminaires. Detailed design of the WKN Proposed Development will take place following the DCO process.

Cumulative Effects on Landscape and Townscape Character

- 4.16.26. The proposed WKN Proposed Development and many of the relevant cumulative developments lie within the same urban character type comprising the Sittingbourne Industrial/Commercial townscape character area. The existing Kemsley Paper Mill site, neighbouring K3 and nearby industrial developments together with nine cumulative schemes would form a more developed context into which the WKN Proposed Development would be placed. The industrial and commercial characteristics of the northern part of Sittingbourne adjoining the Swale would be intensified within this townscape character area as a result of the addition of the 12 cumulative schemes and the WKN Proposed Development however, the intrinsic character and qualities of the area would remain the same. There would be a medium magnitude of change, leading to a slight adverse level of cumulative townscape effect in the day and at night. The WKN Proposed Development would make a negligible contribution to this cumulative effect.
- 4.16.27. The large cumulative business developments south of Kemsley Mill would lie predominantly within the neighbouring Chetney and Greenborough Marshes character area, considerably changing this landscape character area to that of urban Sittingbourne Industrial/Commercial. The direct cumulative effects of the business park and the indirect effects of the WKN Proposed Development would result in substantial adverse and significant cumulative effects during the day. The large residential schemes east and south of Iwade and west of Sittingbourne would change the rural character of the Iwade Arable Farmlands to an urban townscape of Sittingbourne Residential. The direct cumulative effects of the residential schemes and the indirect effects of the WKN Proposed Development would result in substantial adverse and significant cumulative effects during the day. The WKN Proposed Development would make a negligible contribution to these significant cumulative effects, which would occur even in the absence of the WKN Proposed Development.
- 4.16.28. When considered in combination the K3 and WKN Proposed Developments and the relevant cumulative developments within the Sittingbourne Industrial/Commercial townscape character area would result in a slight adverse level of cumulative townscape effects in the day and at night. The K3 and WKN Proposed Developments, due to their greater combined scale, would make a slight contribution to this cumulative effect. The indirect effects that the combined K3 and WKN

Proposed Developments would make to other landscape and townscape character areas within the study area would not be significant.

Cumulative Effects on Visual Receptors

- 4.16.29. Visual receptors within the study area would generally gain views of a more intensively developed industrial/commercial townscape within the same angle of view as the WKN Proposed Development. The scale and nature of the cumulative schemes would change the nature and character of some views, resulting in a more developed context at Kemsley for walkers using the Saxon Shore Way near Sittingbourne. Walkers using the Saxon Shore Way are receptors of high sensitivity. The magnitude of change in view in some locations would be medium and long term in nature, leading to a substantial adverse level of cumulative effect, which is significant. However, the WKN Proposed Development would make a slight or negligible adverse contribution to this cumulative effect.
- 4.16.30. The anaerobic digester facility and the wind farm on the ridge of high land within the centre of the Isle of Sheppey would be visible as distant, although prominent features on the skyline in successive cumulative views. These viewpoint locations are likely to coincide with the Saxon Shore Way (England Coast Path) and public rights of way within the marshes and the Swale bridge crossings. The cumulative schemes would also be prominent foreground features in views from the central high point on the Isle of Sheppey when looking towards the WKN Proposed Development. Many of these receptors would be of high sensitivity and would experience a negligible to large magnitude of change in view, depending on their proximity to the cumulative developments, resulting in a negligible to substantial adverse cumulative effect during the day and negligible to slight effect at night, which is significant. The WKN Proposed Development would make a negligible to slight adverse contribution to these cumulative effects.
- 4.16.31. When considered in combination the K3 and WKN Proposed Developments and the relevant cumulative developments would create a more intensively developed industrial/commercial townscape leading to substantial adverse levels of cumulative effect for high sensitivity walkers using the Saxon Shore Way, which is significant. However, the K3 and WKN Proposed Developments would make a moderate or slight adverse contribution to this cumulative visual effect.

Examination

- 4.16.32. No significant matters of concern were raised by IPs in RRs and WRs in respect to landscape or visual impact matters.
- 4.16.33. Through initial Written Questions (ExQ1) [PD-008] the following matters were examined:
- design specifications used to inform the assessment of likely significant effects;

- assumptions applied in assessment of visual impacts with regard to building materials and aesthetics; and in relation to the design, and with reference to relevant measures, how these assumptions will be secured in the DCO;
- clarification on construction activities, lighting and plumes and how potential effects resulting from these impacts have been assessed.
- seasonal variations in the visibility of the WKN Proposed Development, and visual representation thereof in the ES;
- conflict between no identification of significant landscape and visual residual effects in ES Chapter 12 with information contained in Table 14.7 in ES Chapter 14 [APP-066], where significant residual cumulative effects are identified;
- how visible plumes have been assessed and the potential for interaction with air quality, considered in ES Chapter 5 [APP-057]. considering the industrial nature of the surrounding developments, how have combined visual effects on receptors from plumes been considered within the assessment, and if they have not, please justify their omission from such assessment;
- lighting could have an effect on ecology, considered in ES Chapter 11 Ecology [APP-063];
- how the final operational lighting scheme would be secured in the DCO and how mitigation for effects of the lighting scenarios required throughout each of the different phases of the development would be secured in the DCO;
- confirmation that the LVIA is based on the parameters and dimensions in ES Chapter 2 [APP-054] and that this is reflected in the dDCO;
- clarity on discrepancies and omissions in the list of cumulative developments;
- how the proposed landscaping would mitigate the effects on landscape and visual receptors, and how if at all the landscaping proposals would serve other purposes such as biodiversity improvements, how these effects would change as the proposed planting matures, clarity on agreement on the planting specification/species mix with the relevant consultation bodies;
- need for summary of effects for Viewpoint 11;
- information on proposed maintenance of trees and shrubs for a period of 5 years under R11 dDCO, and proposed monitoring and remedial measures;
- in ES Appendix 12.1, LVIA Scoping Correspondence with KCC [APP-051], Viewpoints 13, 14 and 15 were agreed to be omitted from the assessment as unlikely to provide clear visibility of the proposals when the K3 Facility was completed. Please explain the reference to a view from Conyer which KCC considered more relevant and whether this has been included in the viewpoints and if not why not.

4.16.34. In ExQ2 the following issues were addressed:

- absence from the dDCO of architectural treatments or surface finishes; and

- how the maximum design parameters for the WKN Proposed Development, modelled as simple grey forms, fit with the good design principles set out in MHCLG's National Design Guide (2019).

4.16.35. In ExQ3 the following issues were addressed:

- how the Design Principles for National Infrastructure, February 2020, considered to be an important and relevant matter to take into account in the Examination, have been met by the Applicant;
- how opportunities have been taken to demonstrate good design of the WKN Proposed Development in terms of siting relative to existing landscape character, landform and vegetation as described in NPS ENS-1; and
- the approach in the WKN Design and Access Statement [APP-083] to have the building appear as a linked set of individual buildings, rather than elements located in an overall 'shell', and whether a similar design approach to that taken for K3, and R22 dDCO adequately secures the design objectives.

LIRs

4.16.36. As noted by SBC in its LIR [REP1-012] the external appearance of the K3 Proposed Development would be unchanged, its stack height is 90m and other elements of the building extend to just over 50m in height.

4.16.37. SBC's LIR [REP1-012] also states the Application Site is wholly in the Sittingbourne urban area and outside any landscape character area and therefore has no landscape character status. It is immediately surrounded by large scale buildings and stacks which sometimes have visible emissions. The open landscapes of the marsh and mudflats are sensitive to vertical built elements such as the proposed generating station and associated stack. As the Application Site is also within flat open ground, any middle or distant views towards the development from farm land and fruitbelt landscapes could render the building and stack visible. Sensitive receptors include users of the Saxon Shore Way and of other rights of way within Elmley National Nature Reserve and occupiers of some residential properties. The Proposed Development would be likely to be highly visible to these sensitive receptors, however (paragraph 6.1.10) the existing five stacks and existing large-scale buildings would render the Proposed Development as a part of the existing industrial scene.

4.16.38. No changes to scale, mass or external appearance are required pursuant to the practical effect of K3 Proposed Development. The approved plans denoting the form and appearance of the Consented K3 Facility are certified documents in the dDCO for the K3 Proposed Development. Any amendments to the approved plans would require consent from KCC under R7, dDCO.

4.16.39. The final height of the stack of the WKN Proposed Development is not determined. Table 1 of Requirement 14 of the dDCO provides a minimum height parameter of 90m and a maximum height parameter of 99m for Work No 2 (f) Stack. The intention is to provide some design flexibility

for its height whilst ensuring clarity for the purposes of the EIA by defining a lower limit for air quality modelling and an upper limit for assessing landscape and visual impacts.

- 4.16.40. The draft SoCG between the Applicant and SBC [REP5-006] submitted at D5, is not signed or dated by either party. It is clearly drafted by the Applicant. It states that the Applicant and SBC are in discussions regarding the application of Building Research Establishment Environmental Assessment Method (BREEAM) standards as an appropriate Requirement of the dDCO. Under Matters in Dispute, it states "Currently a number of matters remain under discussion between the parties. There are no matters which have not been agreed."
- 4.16.41. However SBC noted in its D4 submission [REP4-025] that it does not disagree with the conclusions in ES Chapter 12 [APP-064] that the development would be unlikely to result in significant adverse visual or landscape character effects.

Lighting

- 4.16.42. ES Chapter 12 [APP-064] paragraph 12.6.32, states lighting proposals are likely to include approximately 30 luminaires mounted on 6 or 8m high columns and 13 building mounted luminaires. This would extend existing well-lit conditions provided by lighting columns on adjacent industrial land at Kemsley Paper Mill into an unlit site but within the wider context of the existing building and tower mounted lights and lighting columns in industrial areas north of Sittingbourne and high-level mast mounted lights at Ridham Docks.
- 4.16.43. The lighting at the WKN Site would not change the existing character of the area, particularly given the measures adopted to ensure lighting is directional and that spillage is therefore controlled as far as practicable. There would be a negligible magnitude of change on a low sensitivity receptor. The significance of night-time effects on the existing and future baseline situation of the Sittingbourne Industrial/Commercial Area character area would be negligible adverse in the long term.
- 4.16.44. In respect of the K3 Proposed Development a lighting scheme for K3 as consented was approved under Condition 21 of the K3 Planning Permission, no changes are proposed, and the scheme forms a certified document in the dDCO. Amendments would require consent from KCC under R7, dDCO.
- 4.16.45. The large scale of the WKN Proposed Development and the lighting at night would be apparent as an intensification of baseline conditions in the context of similar infrastructure at the existing CHP facility (K1) and Consented K3 Facility.

Conclusion

- 4.16.46. An assessment of the likely significant landscape, townscape and visual resource effects of the Consented K3 Facility was undertaken as part of the ES completed in 2010 pursuant to the K3 Planning Permission

(Document 3.3 submitted with the Application [APP-070]). I am satisfied that there would be no significant impacts on landscape or townscape character or views. The effect of the completed development was considered to be minor adverse and not significant on both landscape and townscape character. Views of the K3 plant were considered to be prominent in near views, becoming barely discernible within the existing industrial context in mid to long distance views. The overall visual effect of the completed development was considered to be moderate/minor adverse and not significant.

- 4.16.47. Non-material amendments since the original consent have changed the site layout, removed the IBA facility and relocated the surface water ponds, which did not change the overall conclusions of the assessment of effects on landscape, townscape and visual resources originally stated in the 2010 ES. No structural modifications to the Consented K3 Facility are required and therefore no additional effects are anticipated on landscape, townscape and visual resources beyond those identified previously.
- 4.16.48. The assessment of the effect of the WKN Proposed Development on landscape character and visual receptors uses an appropriate methodology as set out in the Guidelines for Landscape and Visual Impact Assessment (GLVIA3) 2013 and accurately represents the potential effects of the WKN Proposed Development.
- 4.16.49. The proposed buildings and structures would only be visible in the context of being in front of or in the backdrop of existing large-scale industrial buildings at Kemsley Paper Mill and therefore the significance of any effect will be seen in that context.
- 4.16.50. Accordingly I consider that the conclusions of the landscape and visual assessment presented in ES Chapter 12 [APP-064] are an accurate reflection of the likely significant effects of the WKN Proposed Development both alone and in combination with the K3 Proposed Development and other developments taken into account.
- 4.16.51. For the WKN Proposed Development subject to the implementation of R23 dDCO (external lighting) the WKN Proposed Development will not have a detrimental visual effect pursuant to external lighting.
- 4.16.52. Moderate (not significant) adverse effects would be experienced by walkers using a relatively short section of the Saxon Shore Way located to the north of the WKN Site. I conclude there would be no significant landscape effects that would arise as a result of the WKN Proposed Development during the construction, operational or decommissioning phases.
- 4.16.53. Detailed design approval of the WKN Proposed Development would be effectively secured through R14 dDCO, [REP7-003]: *"No part of Work No 2 may commence until written details of: (a) the siting, layout, scale and external appearance (including colours, materials, and surface finishes) of all permanent buildings and structures have been submitted to and approved by the relevant planning authority"*

4.17. NOISE AND VIBRATION

Policy Considerations

- 4.17.1. Section 5.11 of NPS EN-1 refers to the Government's policy on noise as set out in the Noise Policy Statement for England (NPSE), recognising that excessive noise can have impacts on the quality of human life, health, and the use and enjoyment of areas of value and areas with high landscape quality. Noise resulting from a proposed development can also have adverse impacts on wildlife and biodiversity.
- 4.17.2. Factors which will determine noise impact include the operational noise from a development and its characteristics, the proximity of the development to noise sensitive premises and the proximity to quiet places and to designated biodiversity sites.
- 4.17.3. Paragraph 5.11.8 of NPS EN-1 requires projects to demonstrate good design through the selection of the quietest cost-effective plant available; containment of noise within buildings wherever possible; optimisation of plant layout to minimise noise emissions; and, where possible, utilise landscaping, or noise barriers to reduce noise transmission.
- 4.17.4. NPS EN-3 advises in addition, specific considerations to apply to biomass and EfW generating stations. Sources of noise and vibration may include:
- delivery and movement of fuel and materials;
 - processing waste for fuel at EfW generating stations;
 - the gas and steam turbines that operate continuously during normal operation; and
 - external noise sources such as externally-sited air-cooled condensers that operate continuously during normal operation.
- 4.17.5. NPS EN-3 also advises that the Applicant's ES should include a noise assessment of the impacts on amenity in case of excessive noise from the project as described in Section 5.11 in NPS EN-1.
- 4.17.6. Paragraph 180 of the revised NPPF advises that new development should take account of the likely effects of pollution on health, living conditions and the natural environment and in doing so should mitigate and reduce to a minimum adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life.
- 4.17.7. Planning Practice Guidance (PPG) – Noise, which reiterates guidance on noise policy and assessment methods, notes that:

"the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation".
Paragraph: 006 Reference ID: 30-006-20190722

The Applicant's Case

- 4.17.8. ES Chapter 7 - Noise and Vibration [APP-059] provides an assessment for the noise and vibration emissions from the construction and operation of the K3 Proposed Development; the practical effect of the K3 Proposed Development; and the WKN Proposed Development. The assessment is supported by:
- Appendix 7.1 - Noise Survey Results [APP-034];
 - Appendix 7.2 – Proposed Development Construction Noise Model Input Data [APP-035];
 - Appendix 7.3 - Proposed Development Construction Noise and Vibration Assessment [APP-036];
 - Appendix 7.4 - Operational Noise Model [APP-037]; and
 - Appendix 7.5 - Operational Noise Assessment [APP-038].
- 4.17.9. Table 7.10 [APP-059] indicated representative baseline sound levels determined from the 2016 survey to provide levels indicative of the quieter times during the survey period. This is considered to be a robust approach. The minimum representative daytime and night-time levels are used: for background sound levels: 39 dB $L_{A90,day}$ and 35 dB $L_{A90,night}$; and for the ambient sound levels: 47 dB $L_{Aeq,day}$ and 45 dB $L_{Aeq,night}$.
- 4.17.10. No significant vibration is transmitted beyond the footprint of the neighbouring industrial buildings, so existing vibration levels across the site and wider area are considered to be negligible. Assessment of vibration effects are compared against the absolute thresholds provided in Table 7.4 [APP-059], rather than vibration level change. Therefore, no measurement of baseline vibration is required.
- 4.17.11. Assumed traffic growth for the area, and traffic flow data for the existing measured baseline (2016) and assessment baseline year (2021) scenarios, predict sound levels to increase by less than 0.5 dB due to the natural increase in traffic flows on the local road network. This is not considered a significant change to the assessment procedure or representative baseline sound levels.

Examination

- 4.17.12. In ExQ1.5.4 clarification was sought on correct references and document locations in relation to modelling of HGV noise during construction, see Figures 11.5 and 11.5a (paras 11.6.10 and 11.7.21 ES Chapter 11 [APP-063]).
- 4.17.13. In ExQ1.8.14 clarity was sought on the means of securing mitigation measures for potential adverse effects from noise and/or visual disturbance on the integrity of features of The Swale SPA and Ramsar site.
- 4.17.14. In ExQ1.14.1 the ExA sought to clarify what if any potential negative impacts of the Proposed Development would be on Public Footpath ZU1/The Saxon Shore Way.
- 4.17.15. In ExQ2.5.9 the ExA sought to clarify the method of piling to be used for construction of the 2nd outfall.

- 4.17.16. The draft SoCG between the Applicant and SBC [REP5-006] addressed noise and disturbance effects during construction, operation and decommissioning.
- 4.17.17. For the K3 Proposed Development it states that it is agreed that no further construction is required pursuant to the practical effect of the K3 Proposed Development and therefore no further effects will occur. The practical effect of the K3 Proposed Development would not have any effect on the operational noise levels of the facility except for road noise which has been demonstrated to be negligible.
- 4.17.18. For the WKN Proposed Development it states that it is agreed that a draft CEMP [APP-012] (updated at D4 [REP4-013]) incorporates mitigation measures required to safeguard the noise environment during the construction period as set out in ES Chapter 7 [APP-059]. The CEMP would be finalised on appointment of the construction contractor and submitted to the RPA prior to commencement of development in accordance with R22 dDCO. Accordingly pursuant to the implementation of the CEMP no likely significant effects on the noise environment would occur.
- 4.17.19. The dSoCG also agrees the cumulative effect of the Proposed Development with other local development would not be significant pursuant to this mitigation, and the risk of significant noise effects during decommissioning will be as low as reasonably practical and will not be significant for the K3 and WKN Proposed Developments individually or in the unlikely event that decommissioning occurred concurrently.
- 4.17.20. Although the dSoCG was not completed in its response at D4 [REP4-025] SBC noted the content in ES Chapter 12 [APP-064] and stated it *"raised no objection, subject to the control measures relating to construction as set out in the draft DCO"*.
- 4.17.21. In its LIR [REP1-012] SBC noted the Local Plan policy DM 14 included a requirement (8) to cause no significant harm to amenity or to other sensitive uses or areas, and stated that *"the assessment of noise and vibration impacts in the applicant's submission is noted, and the Council has no adverse comments on it."*

Conclusion

- 4.17.22. I find that the assessment methodology for noise is acceptable [APP-059] and the residential noise sensitive receptors identified as representative of the wider area are appropriate.
- 4.17.23. No specific mitigation was identified in the ES as required to reduce the effects of construction noise or vibration. However the adoption of best practicable means and adherence to the CEMP would be secured through R22 Preferred DCO. I am satisfied that noise and vibration emissions would be minimised as far as reasonably practicable. R24 of the Preferred DCO requires the CTMP to be approved to manage the impact of construction traffic on the surrounding area.

- 4.17.24. R14(2) Preferred dDCO [REP7-003] requires detailed design to be approved and to be in accordance with the noise mitigation measures in ES Chapter 7 [APP-059] and R22(2)(e) [REP7-003] requires the CEMP to include a scheme for handling complaints from local residents, business and organisations relating to emissions of noise, odour or dust from the authorised development during its construction, which must include appropriate corrective action in relation to substantiated complaints relating to emissions of noise.
- 4.17.25. In addition R27 Preferred dDCO [REP7-003] specifies the hours for the construction of the WKN authorised development with exceptions for work associated with concrete laying and internal process works relating to mechanical and/or electrical equipment installation.
- 4.17.26. I find that noise and vibration arising from on-site construction activities, construction vehicle movements or decommissioning works are not expected to give rise to any significant effects for sensitive receptors.
- 4.17.27. No significant effects are predicted from vibration at any time or from noise during normal operating conditions. I conclude that a requirement for post construction noise and vibration monitoring is not necessary and has not been requested by any IP. The proposed controls regarding construction, secured through Requirements in the DCO would comply with NPS EN-1, NPS EN-2 and the NPPF in respect of noise and vibration.

4.18. TRAFFIC AND TRANSPORT

Policy Considerations

- 4.18.1. NPS EN-1 states that the transport of materials, goods and personnel to and from a project, during all project phases can have a variety of impacts on the surrounding transport infrastructure. At paragraph 5.13.2, it states that the consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development. Paragraphs 5.13.3 and 5.13.4 state that the Applicant should undertake a TA for any project likely to have a significant transport implication, and where appropriate the Applicant should prepare a Travel Plan (TP).
- 4.18.2. Where proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels requirements should be considered to mitigate the adverse impacts. Paragraph 5.13.8 advises that where mitigation is needed, possible demand management measures must be considered if feasible and operationally reasonable as a first measure. Water-borne or rail transport is also preferred over road transport at all stages of the project where cost-effective.
- 4.18.3. Paragraph 5.13.11 indicates that requirements may be attached to a consent including to control numbers of HGVs movements to and from the site in a specified period during its construction.
- 4.18.4. NPS EN-3 states at paragraph 2.5.13 that throughput volumes are not, in themselves, a factor in decision-making as there are no specific minimum

or maximum fuel throughput limits for different technologies or levels of electricity generation. However:

"the increase in traffic volumes, any change in air quality, and any other adverse impacts as a result of the increase in throughput should be considered by the IPC in accordance with this NPS and balanced against the net benefits of the combustion of waste...."

- 4.18.5. NPPF at paragraph 109 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 4.18.6. KCC's fourth Local Transport Plan (LTP4) covering the period 2016 to 2031 states that the A249 provides a primary north, south route for Kent. Capacity issues at M2 Junction 5 (M2J5), where the A249 meets, is a major barrier to growth in the Borough. HE is evaluating options to improve the M2J5 and consultation with the wider public on final proposed options was proposed for early 2017. A corridor study of the A249 was needed to define what improvements to the principal junctions (Grovehurst, Key Street and Bobbing) would be required to support the new allocations in the Swale Local Plan, with the A249/Grovehurst Road Junction already identified.
- 4.18.7. Swale Local Plan Policy CP2 promotes sustainable transport and Policy DM6 seeks to manage transport demand and impact. Local Transport Plan 4 aims to ensure that Swale delivers growth in a sustainable way.
- 4.18.8. The draft Swale Transportation Strategy 2014 – 2031 (dSTS) identifies key transport challenges for Swale relevant to the Application Site as:
- Congestion at M2 Junction 5 (M2J5) as a barrier to development;
 - Capacity improvements required at A49 Key Street and Grovehurst interchanges;
 - Public transport tends to be inaccessible for the mobility impaired;
 - Traffic congestion with school / employment commuting into Sittingbourne, causing rural rat runs in the south of town, and air quality issues;
 - Transport interchange between cycle routes, bus services, and train services is poor, therefore encouraging the use of cars to rail stations, which add to problems with parking and congestion; and
 - Constrained viability of new development to provide significant infrastructure contributions.
- 4.18.9. Target 1 of the dSTS states that Grovehurst Road traffic flows should be maintained at 15,400 vehicles per day.

The Applicant's Case

- 4.18.10. ES Chapter 4 Transport [APP-056] was updated at D2 [REP2-018]. It assesses the likely significant traffic and transport effects of each of the K3 Proposed Development, the practical effects of the K3 Proposed Development and the WKN Proposed Development, in terms of their

construction, operation and decommissioning, together with effects during their operation plus other cumulative sites.

- 4.18.11. The local policy documents refer to mitigation and in this sense a draft Travel Plan (dTP) ES Appendix 4.3 [APP-024] supported the Application and a draft Construction Traffic Management Plan (dCTMP) for the WKN Proposed Development was submitted as ES Appendix 4.2 [APP-023] and updated at D5 [REP5-003] and D8 [REP8-005].
- 4.18.12. Guidelines of the Institute of Environmental Assessment (IEA) (now IEMA) state the assessment of development traffic impacts should include 1: highway links where traffic flows will increase by more than 30% (or the number of HGVs will increase by more than 30%); and 2: other sensitive areas where total traffic flows have increased by 10% or more. These thresholds are referred to as Rule 1 and Rule 2.
- 4.18.13. Some roads are typically at or near capacity during the weekday AM (07:30 to 08:30) and PM (16:30 to 17:30) peak hours. These and other sources of driver delay for non-development traffic are considered and the magnitude of impact identified using professional judgement and the advice provided in IEMA guidance.
- 4.18.14. The traffic surveys, Department for Transport (DfT) and HE data for 2015, 2016 and 2017 are considered representative of current conditions. The route to be used by the Proposed Development (Barge Way, Swale Way, A249, M2) is an established HGV route. Construction details are informed by construction contractors and thus there is low uncertainty about some of the construction parameters adopted. The highway networks are described in paragraphs 4.4.2 to 4.4.8 of [APP-056] and Figure 4.1.
- 4.18.15. There is a good network of footways allowing pedestrians access between the Application Site and surrounding residential areas. The Saxon Shore Way is a long-distance footpath which follows the shore of the Swale to the east of the Kemsley Paper Mill and north to Chertney Marshes and Gillingham. To the south it links into Sittingbourne and continues east towards Faversham. The route is not lit and is not generally surfaced.
- 4.18.16. The Site is close to on and off-road cycle routes linking to the wider Kemsley and Sittingbourne area. The National Cycle Network Route 1 is a long-distance cycle route passing along the B2005 Grovehurst Road between Sittingbourne and Kemsley. National Cycle Network Route 174 links Route 1 to the Isle of Sheppey. Combined footway / cycleways on Barge Way and Swale Way provide cycle routes to surrounding areas.
- 4.18.17. Bus services near the Site are summarised in Table 4.5 [APP-056], the nearest stops are located on Ridham Avenue, c1km away, providing a direct link to Sittingbourne town centre. The journey time from Kemsley to Sittingbourne is approximately 20 minutes and the service operates 4 buses per hour throughout the day and 3 buses per hour on a Saturday. More bus stops are on Grovehurst Road some 2km from the Site.

- 4.18.18. Kemsley Railway Station is c 2km west of the Application Site on Grovehurst Road, having direct services to London with a journey time of approximately 1 ½ hour. Additional services to London require a change at Sittingbourne Railway Station with frequent train services to London Victoria, London St Pancras International, Ramsgate and Dover Priory.
- 4.18.19. Traffic flows were assessed along eleven links described in paragraph 4.4.28 and in Figure 4.1. The HGV route to the Application Site would be from the A249 to Swale Way and then Barge Way. No HGVs would route directly from the A2 using Castle Road and Swale Way south of the Barge Way roundabout; therefore, no assessment of the links on Castle Road has been undertaken. The complete traffic flow data is included within the Transport Assessment [APP-020, APP-021, APP-022].
- 4.18.20. Sections 7 - 13 TA Part 1 set out assessments of junction performance and impact at the following junctions:
- Swale Way / Barge Way Roundabout;
 - Fleet End / Barge Way Roundabout;
 - Barge Way / Site Access Roundabout; and
 - A249 / Grovehurst Road / Swale Way / B2005 Grade Separated Dumbbell Junction.
- 4.18.21. The assessments show that the Fleet End / Barge Way Roundabout and the Barge Way / Site Access Roundabout both currently operate within their design capacity and would do so in all assessment scenarios, so there are no concerns with the operation of these roundabouts. However the Swale Way / Barge Way roundabout and the A249 / Grovehurst Road / Swale Way / B2005 Grade Separated Dumbbell junction are predicted to operate in excess of their design capacity in some scenarios.
- 4.18.22. All road links are assessed against the Rule 1 threshold. The baseline for the K3 Proposed Development is 2021 when it is operational, and for the WKN Proposed Development it is 2021 for the construction phase and 2024 when the facility would become operational.
- 4.18.23. A future year baseline traffic scenario of 2021 / 2024 / 2031 for the K3 Proposed Development and WKN Proposed Development considers committed traffic only i.e. developments with planning permission but not yet generating traffic on the network. These developments and their highway and transport schemes are treated as committed within any future year scenarios. Other developments emerging at the same time are assessed against the baseline scenario for their cumulative impact and their cumulative highway and transport mitigation requirements.
- 4.18.24. Growth rates allow for background traffic growth and development growth and, in some cases, the application of growth rates and the addition of traffic flows from committed developments plus cumulative developments. The DfT Trip End Model Presentation Program (TEMPRO) is applied to understand the assumptions used for household and employment growth. As committed development is greater than the assumptions within TEMPRO, growth rates have not been applied to the surveyed traffic flows.

- 4.18.25. Table 4.7 [APP-056] shows local committed developments with planning permission (operational, or likely to be operational in the timescales of the Proposed Development) to see whether traffic generated by the developments would already be present in the surveys undertaken for each of Project K3 and Project WKN, or whether they should be added as committed developments in future baseline assessments.
- 4.18.26. The traffic flows generated by the committed developments are taken from their own TAs and set out in the TA at ES Chapter Appendix 4.1. The committed development traffic flows are added to the 2021 and 2024 base traffic and the resultant 2021 and 2024 baseline scenarios are at ES Appendix 4.1 [APP-020, APP-021, APP-022].
- 4.18.27. The assessments predict that the K3 Proposed Development, the practical effect of the K3 Proposed Development or the WKN Proposed Development would result in effects that are not significant, as would be the case with these elements combined, or if taken cumulatively with other emerging developments.
- 4.18.28. The combined Practical Effects of the K3 Proposed Development plus WKN Proposed Development are summarised in terms of their total two-way AM and PM peak hour traffic flow movements, by link, in Table 6.6 of Appendix 4.1 [APP-020]. It shows on Barge Way between Swale Way and Fleet End and Barge Way east of Fleet End:
- for the K3 Proposed Development the highest two-way vehicle movements would be 42 during each of the peak hours;
 - For the Practical Effects of the K3 Proposed Development the increase in two-way vehicle movements would be an additional 5 in the peak hours; and
 - For the WKN Proposed Development the highest two-way vehicle movements are predicted at 19 vehicle movements in the AM peak hour and 25 vehicle movements in the PM peak hour.

Effects of the construction and operation traffic flows generated by K3 Proposed Development

- 4.18.29. Condition 3 of the K3 Planning Permission was varied on 11 October 2018, Ref SW/18/503317 increasing HGV movements to 348. An ES Addendum included with that application assessed transport and air quality implications of the change [APP-078]. Flexibility was required in the size/type of vehicles importing the waste under "waste contracts secured to accommodate local refuse". There were no proposed changes to the throughput tonnage or operating capacity of the plant.
- 4.18.30. As to the effects of the operational traffic flows generated by the Practical Effects of the K3 Proposed Development, the modelling indicates that there would be only a small effect on the capacity of the roundabout and that the committed development traffic is having the greatest effect.

Construction and operational traffic flows from WKN Proposed Development

- 4.18.31. The modelling results indicate that the WKN Proposed Development has a minimal effect on the capacity of the roundabout and that the committed development traffic is having the greatest effect.

Operational traffic flows from K3 Proposed Development in conjunction with the construction and operational traffic flows from WKN Proposed Development

- 4.18.32. ES Appendix 4.1 - Transport Assessment Part 1 [APP-020] at Section 10 finds that the addition of the K3 Proposed Development operational traffic flows to the WKN Proposed Development construction traffic flows, leads to only a minor increase in the total vehicle traffic flow and thus the combined traffic flows would also not affect the operation of the roads of junctions along the access route.

Practical Effects of K3 Proposed Development and construction and operational traffic flows from WKN Proposed Development

- 4.18.33. To consider the effects of the traffic generated an assessment of traffic flow increases was undertaken to provide a context and an assessment of junction performance on the local junctions between the northern access and the A249 (Section 11 [APP-020]). The number of HGVs and the number of total vehicles associated with both the Practical Effects of the K3 Proposed Development operational and WKN Proposed Development construction traffic flows are shown to have a minimal impact on Swale Way. The addition of the Practical Effects of the K3 Proposed Development operational traffic flows to the WKN Proposed Development construction traffic flows leads to only a minor increase in the total vehicle traffic flow and thus the combined traffic flows would not affect the operation of the roads of junctions along the access route.
- 4.18.34. Table 11.7 [APP-020] shows further the predicted HGV movements generated by the K4 peak construction, K3 Proposed Development and WKN Proposed Development. Although all three are or would be accessed from Barge Way, K4 will have a different internal access road to the K3 Proposed Development and the WKN Proposed Development. Facilities are designed to be as efficient as possible so as to minimise vehicular queuing and delay. Tipping halls have sufficient bays to accommodate multiple waste vehicles simultaneously, whilst weighbridge layouts and procedures are designed to minimise processing time. Therefore operational queuing of the combined K3 Proposed Development, WKN Proposed Development and K4 within the site would not overspill onto Barge Way

K3 Proposed Development, Practical Effects, WKN Proposed Development and all identified cumulative developments

- 4.18.35. Section 12 [APP-020] assesses operational traffic flows generated by the K3 Proposed Development and the Practical Effects and the operational traffic flows generated by WKN Proposed Development and all cumulative developments identified above. KCC and SBC are completing a Housing Infrastructure Fund bid for the Grovehurst junction which will directly

enable delivery of some 6,341 homes phased for 2022-31 (paragraph 12.53 [APP-020]).

- 4.18.36. Overall, therefore the TA at Appendix 4.1 [APP-020] undertakes operational assessments of key junctions on the highway network. It concludes that the impact of the increased traffic flows as a result of any combination of the Practical Effects of the K3 Proposed Development, K3 Proposed Development and WKN Proposed Development are negligible upon junction performance and driver delay. However, when cumulative development traffic flows are added into the A249 Grovehurst roundabouts, whether on the 2024 or 2031 baseline scenarios, the performance of the junctions deteriorate and there is an increase in driver delay. The shift away from a negligible change is solely as a result of the cumulative development. The Swale Local Plan sets out improvements required to the A249 Grovehurst roundabouts to accommodate the cumulative developments, which would reduce driver delay to at best minimal amounts or to levels that are similar to those currently experienced. This is characterised as no change, ie negligible adverse.
- 4.18.37. Consequently, the analysis of the traffic volumes and impact demonstrates that the K3 Proposed Development and / or the WKN Proposed Development would not result in an unacceptable or severe impact on the operation of the transport network.

Examination

- 4.18.38. HE in its RR [RR-004] noted the potential for the Proposed Development to impact the safe and efficient operation of the strategic road network (SRN), particularly the A249 and the M2 in the vicinity of Sittingbourne.
- 4.18.39. Written questions were put to the Applicant and other parties at ExQ1 [PD-008], ExQ1a [PD-010], ExQ2 [PD-012], ExQ3 [PD-014], and ExQ4 [PD-015]. The Applicant's responses were supplied at D2, D3, D4 D5 and D7 respectively: [REP2-009, REP3-004, REP4-006, REP5-011, REP7-016].
- 4.18.40. ExQ1 questions explored the sensitivity testing for impacts on the Grovehurst/A249 junction as KCC noted in its Additional Submissions [AS-010]. The Future Year Junction Assessments for Swale Way/Barge Way showed this junction was operating beyond capacity in all future scenarios tested, with no mitigation being proposed and over capacity of the surrounding highway network was being experienced at J5 of the M2 and the Grovehurst junction. Details were sought of current movements and arrival/departure times for the current construction of the K3 plant as well as movements associated with the Applicant's operational Ferrybridge EfW facility, and the assumptions applied for assessing HGV trip generation.
- 4.18.41. ExQ1A questions explored: Trip End Model Presentation Program (TEMPRO). Including the additional traffic from committed developments but not additional growth from TEMPRO avoids double counting and the

methodology is agreed by KCC as set out in paragraph 7.4 of its LIR. Further, exchange of vehicle movement data with KCC was requested, as to the Applicant's site at Ferrybridge and the EfW facility in Allington

- 4.18.42. It emerged from the Applicant's reply to ExQ1A.11.7 that a contract has been entered with Fortis to manage and process IBA from the Consented K3 Facility and an application was being made for permission to develop a new IBA facility at Ridham Docks, 2km from the site. In the meantime they will be processing the IBA via their existing facility at the A303 Enviropark near Andover. The proposed new facility would have sufficient capacity to manage any IBA also produced from Project WKN.
- 4.18.43. Regarding the IBA facility application KCC [REP2-048] sought information from the Applicant on the consented number of IBA export movements and tonnage from K3, assumed to cater for 165,000 tonnes and how they were accounted for in that application, the expected IBA export movements and tonnage from the proposed K3 expansion and how they were accounted for in the application, the expected IBA export movements and tonnage from the WKN Proposed Development and how they were accounted for in the application, and the net expectation of export movements from all above sites that would now be assumed to come to this application as imports.
- 4.18.44. The Applicant in its reply to ExQ1A.11.5 declined to provide that information as it was not in the public domain but when so available it *"would review it and provide the relevant information at the next available deadline"*. However it considered the proposed IBA facility would not alter numbers of vehicle movements proposed for the K3 Proposed Development and WKN Proposed Development.
- 4.18.45. KCC had also pointed out that the applicant for the new IBA facility would use the Ridham Dock to export 50,000 tonnes of incinerator bottom ash aggregate (IBAA) metals which was welcomed but conflicted with paragraph 7.4 of the rail and water transportation strategy (RWTS) which stated an upgrade of facilities at the dock was needed *"to accommodate the additional freight necessary to make this a viable option and this would require significant investment."*
- 4.18.46. The Applicant stated there were no contracts in place making alternative means of transportation feasible or viable so regular reviews of the RWTS is appropriate and was used in the Ferrybridge Multifuel 2 (FM2) and North London Heat and Power (NLHPP) DCOs. *"Should a waste contract become available or be secured"* that allowed for waste transport by barge the use of Ridham Dock would *"need to be assessed and any upgrading of the existing facilities considered in respect of...viability"*.
- 4.18.47. ExQ2 and ExQ3 questions explored possible locations for my USI in relation to traffic and transport effects and possible provision of photographic and/or other video evidence to support IP's submissions. Other ExQ3 questions explored how HGV travel patterns could be monitored and enforced to ensure the A2 is not used by HGVs, and what

enforcement powers prevented an increase in HGV movements through AQMAs necessary in the interests of air quality.

- 4.18.48. The WKN RWTS [APP-089] notes land is potentially available in or around Ridham Dock from which a rail freight terminal might serve the EfW generating station at K3 and the WKN site, subject to viability. In ExQ3.6.9 and ExQ3.6.10 I enquired how an upgrade of the facilities might be progressed through requirements in a DCO. The Applicant said it should not be required to fund infrastructure, as the commercial sensitivities in waste contracts made it inappropriate to make information publicly available on any review of costs in providing such infrastructure. The Applicant also stated in reply to ExQ3.6.7 that the time to progress transport of waste via Ridham Dock would not be until *"a waste contract becomes available or secured which would allow for the transportation of waste using alternative means of transport to be feasible."*
- 4.18.49. ExQ4 questions explored how completion of any necessary highway improvement works before commencement, commissioning or as the case may be, operation of any part of the authorised development could be secured in the DCO. This related to possible restrictions on the WKN Proposed Development as to traffic flows generated during weekday peak hours or specified hours around peak hours, in advance of completion of (i) the M2/J5 and (ii) A249 Grovehurst improvement works.
- 4.18.50. In reply to ExQ3.6.8 the Applicant supplied the reports to and decisions of the Secretary of State in respect of the made DCOs (see Section 3.6 of this Report) for Ferrybridge Multifuel 2 (FM2) [REP5-016, REP5-017] and North London Heat and Power Project (NLHPP) [REP5-018, REP5-019]. They supported the Applicant's position in that they contained no requirement for transportation of waste fuel or ash by non-road modes.

Timing and volume of waste movements

- 4.18.51. KCC accepted that the explanations as to assumptions made within the baseline assessment have been clarified by the Applicant and now accepts the evidence presented. However it does not agree with the trip generation data submitted in the Applicant's TA ES Appendix 4.1 - Transport Assessment Part 1 [APP-020], as it has not been demonstrated that it represents a realistic profile of vehicle movements.
- 4.18.52. Time evidence reviewed from the existing EfW plants at Allington and Ferrybridge suggests that movements are generally between 07:00AM to 18:00PM with an evident larger proportion of movements in the AM and reducing in the PM. This was demonstrated by the Applicant in its Additional Submission - Ferrybridge HGV Movements dated 2 July 2020 [AS-019] in a graph showing the profile of HGV movements throughout the day, in particular that entitled Weekday Average. The profile of movements is not flat, as presented in the TA, therefore the impact on the morning peak would be expected to be significantly greater than has been presented.
- 4.18.53. The weight of waste arrivals is dependent on the contracts in place at any point in time. The data reviewed from the existing operations

suggests this could range from anywhere between 3 and 27 tonnes. The TA uses the expected trip generation from estimations and assumptions, even though there are similar operational facilities that could have been used to provide justification of loads. Detailed calculations demonstrating the average “assumed” loads used to calculate the expected movements remained outstanding.

HE’s position

- 4.18.54. HE in its RR [RR-004] points out the SRN is a critical national asset and, is concerned with proposals that could impact its safe and efficient operation, particularly the A249 and the M2 near Sittingbourne. HE’s position was to continue to engage with the Applicant to be satisfied either that there were no severe impacts (as per DfT C2/13 and NPPF) or that mitigation was agreed.
- 4.18.55. An “offline” dialogue between the Applicant and HE ensued towards the end of the Examination, HE’s position being reflected in its D7 submission in response [REP7-032] to questions at ExQ4 [PD-015] and the Applicant’s AS dated 2 July 2020 [AS-018]:
- The K3 Proposed Development would generate 550ktpa waste and 348 HGV movements per day when operational. The consented K3 traffic flows were factored into HEs modelling and HE do not seek restrictions to be applied to these (the existing consent restricts these movements to 348 HGV movements per day);
 - The K3 Proposed Development would generate increased tonnage of +107ktpa and 68 HGV movements per day. HE seeks peak hour and ‘shoulder’ restrictions to these HGVs until the M2J5 and Grovehurst improvements are complete;
 - WKN construction would generate up to 90 HGV movements per day with construction staff working hours outside of peak hours. HE seeks peak hour and ‘shoulder’ restrictions to these HGVs until the M2J5 and Grovehurst improvements are complete; and
 - WKN 390ktpa would generate 250 HGV movements per day plus up to 11 staff car movements during the peak hours. HE seeks peak hour and ‘shoulder’ restrictions to these vehicle movements until the M2J5 and Grovehurst improvements are complete.
- 4.18.56. The Applicant sees the mechanism to secure such restrictions as inherent in the WKN CTMP and TPs for the K3 and WKN projects within the Proposed Development submitted and agreed with the Highway Authorities, and secured by R24 (CTMP) and R10 and R26 (TPs) in its Preferred dDCO [REP7-003]. Such restrictions would be inserted to the outline CTMP and outline TPs during the Examination.
- 4.18.57. The Applicant also stated in [AS-018] journey time and/or traffic flow data could show that a half hour ‘shoulder’ on each side of the peak hours is sufficient to avoid the peak hour, and would accept such a restriction as opposed to an hourly ‘shoulder’.
- 4.18.58. In reply [REP4-029] to ExQ 2.14.2 asking again for a SoCG, HE referred to an email trail covering discussions with the Applicant and KCC and that

"the matter is now with the applicant". The email trail is within HE's Summary of on-going discussions involving applicant, Highways England and Kent County Highways [REP4-030], submitted at D4 and dated 20 May 2020 but the most recent of the email exchanges with the Applicant was 22 and 23 April 2020. (HE met with the Applicant on 28 January 2020 and promised a response to the issues discussed, not given until 24 March 2020). It reveals the following outstanding points:

- Some large allocations outwith the Swale Local Plan have been granted consent at appeal so HE needed to be satisfied that the figures used in the modelling are robust. All relevant sites that would impact the A249 needed to be considered;
- To clarify paragraph 6.53 of the TA [APP-020] stating "*a reasonable estimate of construction activity at the WKN Proposed Development will be 75% of that of the K3 construction*" and how vehicular trips relate to the construction of both facilities;
- HE agrees with KCC's response re WKN Construction that "*The TA demonstrates that a peak of 482 staff would be on site during months 24-40 of construction. 45 HGV deliveries or 90 movements. We request evidence from the existing K3 construction programme to evaluate that the level of HGV movements for that application are robust. Further to that, we request that the hourly number of deliveries is demonstrated through traffic count evidence for one week. The information will provide evidence that the assumptions that have been made are justifiable*".
- As to KCC's view that the submitted operational hourly movements averaged across the day had no justification, HE stated the SRN (particularly at the A249 Grovehurst and M2J5) is particularly sensitive to even small traffic increases so it is vital that the worst case situation is fully understood and evidenced. Given the potential peak hour impact of this proposal on the SRN, HE could not understand the potential peak hour impact without a fully evidenced breakdown of annual and daily inputs and outputs making it difficult to sense check the trip generation figures. Without this further evidence HE would concur with KCC conclusions and "*would potentially require a cap related to peak hour traffic generation*".

4.18.59. Subsequently HE's D5 submission Response to ExQ3.6.5 [REP5-029] confirms that from discussions with the Applicant, it is likely that the majority of site traffic will use the SRN ie M2 and then A249 to Grovehurst. However, traffic normally uses the most convenient route so some traffic could potentially use the KCC A2 between Medway and Sittingbourne to join HE A249 at Key Street and then leave at A249 Grovehurst. Equally if the M2 or A249 are congested or closed, traffic is likely to divert to other routes such as the A2. HE considers the final TP should include routing and monitoring details.

4.18.60. In reply to ExQ3.11.5 HE awaited data/analysis of exchange of vehicle movement data from the Applicant's site at Ferrybridge and the EfW site in Allington, to assist in assessing the application and agreement as to any required mitigation. At a telecon on 18 June, the Applicant indicated

that they had their information and were awaiting to exchange theirs with that being provided by KCC in the very near future.

- 4.18.61. In its reply to ExQ3.13.7 HE stated it had been working with the Applicant and KCC but there was still no agreed TA for the application. Therefore it was unable to determine whether the application with or without any requirements/ mitigation is capable of demonstrating that it complies with national policy and standards set out in DfT Circular 02/2013 (C2/13) and MHCLG NPS/NPPF. Our telecon on 18/6 provided a general update and agreed way forward to provide the up-to-date and hopefully complete TA via which mitigation and requirements can be agreed.
- 4.18.62. Pressed in ExQ3.13.9 to address precisely how HE wished to see its concerns secured in the DCO, it stated in its reply at D5 on 19 June 2020 [REP5-029] that given the M2J5 and A249 Grovehurst junctions have exceeded the limits of their practical capacity HE had had to recommend Grampian Conditions precluding occupation of sites until the planned improvements are open to traffic, as it was during AM and PM peaks that safety and congestion concerns most apply.
- 4.18.63. HE noted operational traffic for the Consented K3 Facility was accounted for in local traffic models but needed to understand the final figures for the WKN Proposed Development and K3 DCO uplift traffic and how the AM/PM SRN peaks could be protected until the M2/J5 and Grovehurst improvements were in place. It also noted the Applicant was considering if they could agree to prohibiting entry/exit from their sites during peak hours and a period either side so it could be guaranteed that site associated traffic would not be on the SRN during peak hours. It would *"look to agree requirements to be added to the DCO"* and awaited the updated TA and SoCG from the Applicant to cover all these matters.
- 4.18.64. ExQ4 questions requested any new requirement desired by HE to be inserted into the DCO, to secure the completion of highway improvement works before commencement, commissioning or operation of any part of the authorised development, to be precisely formulated and preferably agreed. In its D7 submission [REP7-032] HE proposed wording, considered further in Chapter 7.
- 4.18.65. HE was clear that the safety and congestion issues justifying the RIS1 improvement remain and the construction and operational phases of the Proposed Development if not mitigated, would impact on the safety, reliability and/or operation of the M2/J5. Together with SBC and KCC it applies a "Grampian approach" to applications to prevent occupation prior to the opening of the M2/J5 improvement to traffic. It added:

"Without a prohibition that is agreeable to Highways England ie one that protects the peak periods/shoulders on a daily basis, it will be necessary for the applicant to demonstrate an absence of harm to the SRN in accordance with DfT C2/13 and MHCLG NPPF2019 policy. Currently, although the submitted and addended TA is fulsome in length and highly detailed, much of the detail is not relevant, key aspects of evidence such

as assessing the impacts of the development on M2J5 are missing, and many elements that are relevant are not agreed. Hence the TA is not, as at 5/8/2020, agreed by Highways England. In contrast, our own assessment and experience tells us that if the prohibitions as proposed by Highways England are put in place, the SRN safety, reliability and operational efficiency will be secured, and the absence of an agreed TA will not be an issue for us."

- 4.18.66. HE states in its response at D7, 5 August 2020 [REP7-032], to ExQ4 [PD-015], that the transport evidence demonstrated (Inspector's Report paras 97-98) that the Local Plan would require mitigation of, inter alia, the A249 Key Street and Grovehurst junctions. The viability of development generally in the Borough cast doubt on any mitigation being fully funded through development contributions/ Community Infrastructure Levy (CIL). A successful bid led by SBC/KCC and supported by HE was made to the Housing Infrastructure Fund (HIF). Works at Key Street Phase 1 have commenced while Phase 2 is in design and expected to be agreed shortly. Grovehurst is in design, with it likely to be agreed in the next few months. All HIF funded improvements are required to be in place by 2024 ie prior to the forecast completion/ start of full operation of the WKN/K3 sites.

KCC's Position

- 4.18.67. KCC as Local Highway Authority maintained its objection to the Proposed Development including the expansion of capacity at the Consented K3 Facility, on grounds including that it would have an unnecessary, significant and severe impact upon the highway network with inadequate consideration of mitigation impacts, contrary to policy and the objective of sustainable development.
- 4.18.68. KCC's position at the end of the Examination [REP8-016] was that the practical effects of the Proposed Development would be to increase the levels of waste delivery by road by 497,000 tonnes of waste per year, additional to the 550,000 tonnes already consented. With a highway network already operating over capacity without the full impact of the consented 348 daily HGV movements, it is inconceivable that a near doubling of that level of required daily HGVs would not have a significant and severe impact upon the network. It disputed the conclusions drawn in paragraphs 6.47, 6.69 and 6.94 of the TA that suggest the operation of K3 Proposed Development and the construction and operation of WKN Proposed Development would not have a severe impact on the highway network. Traffic modelling to assess the junction capacity for nodes along the local highway network shows that some junctions are predicted to operate in exceedance of their capacity in future years 2024 and 2031 baseline scenarios with committed development.
- 4.18.69. KCC therefore considered that mitigation was required at the Swale Way/Barge Way roundabout and A249/Grovehurst interchange. It considered that in the case of the A249/Grovehurst Road interchange, sensitivity testing of the Future Year Junction Assessments for the committed upgrade to the A249/Grovehurst Road interchange is required so as not to jeopardise the delivery of housing allocated in the Swale

Local Plan. The upgrade is possible due to the successful Housing Infrastructure Fund bid, which is targeted at enabling the delivery of this housing.

- 4.18.70. The TA shows that the existing junction is exceeding its capacity on five of the seven arms of the junction in the AM peak and three in the PM peak. Queues in the PM peak are of such severity that they extend for over 362 vehicles. In the AM peak, the South A249 slip has queues of 23 vehicles introducing significant safety concern (for example Table 13.4 TA Part 1 [APP-020]). KCC therefore state that any development adding traffic to the junction should not proceed prior to guaranteed delivery of the improvements. KCC was unaware at the date of its closing submissions of any mitigation or restrictions on HGV movements proposed by the Applicant. As such its position was largely overtaken by the “offline” dialogue taking place between HE and the Applicant.

USI

- 4.18.71. I carried out a tour of the strategic and local road networks during the AM and PM peaks to get a first-hand experience of the scale and type of congestion prevalent. My inspection [EV-005] was undertaken by car and on foot. Visits to the highways network at locations the subject of representations from interested parties, were made during the peak hours period in the evening of 30 June and in the morning of 1 July. My observations can only be a general impression of conditions at the relevant locations visited, which was that there was a great deal of congestion at M2/J5, A249 Key Street and A249 Grovehurst junctions. Nothing in what I observed caused me to question the findings from the data that the junctions are all at or nearing their respective safety led capacities.

Matters outstanding at close of Examination

- 4.18.72. The Applicant and HE failed to agree a SoCG. The matters outstanding between them at the end of the Examination were however highlighted in their own clean and (where submitted) tracked versions of draft travel and construction management plans submitted at D8 as follows:

- WKN Draft Construction Traffic Management Plan - Applicant [REP8-003, REP8-004]
- WKN Draft Construction Traffic Management Plan - HE [REP8-005, REP8-006]
- Draft Travel Plan - K3 - Applicant [REP8-007]
- Draft Travel Plan - K3 - HE [REP8-008]
- WKN Draft Travel Plan - Applicant [REP8-009, REP8-010]
- WKN Draft Travel Plan - HE [REP8-011, REP8-012].

- 4.18.73. HE’s position as set out in its D7 submissions was that without mitigation the operation of Project K3 and the construction and operation of Project WKN would adversely affect the safety, reliability and/or operation of the M2 Junction 5 and the A249 Grovehurst Roundabout. The Applicant, as accepted by HE considers it possible to monitor and manage the access and egress of HGV traffic for both projects within the Proposed

Development so that the operation of those junctions would not be detrimentally affected.

- 4.18.74. The mitigation proposed by the Applicant would be to prohibit entry or egress of HGVs at peak hours on the additional K3 movements, and the WKN movements with a half hour 'shoulder' either side of the peak hours. This would result in a restriction of such movements between 07:30 to 09:30 and 16:30 to 18:30. It can be seen from the Applicant's and HE's respective versions of the dCTMP and dTP listed above, that it is disputed whether such restrictions should operate daily, as HE request, or on weekdays only as the Applicant maintains.
- 4.18.75. The methods of monitoring and managing vehicle movements in the management and travel plans would permit weekday and weekend movements to be differentiated and the Applicant considers the capacity issues identified on the M2J5 and A249 Grovehurst junctions occur during weekdays so it would be inappropriate to apply peak hour restrictions at weekends.
- 4.18.76. HE in its D7 submissions predict that both junctions would be upgraded prior to 2025, when Project WKN would become operational. The Applicant therefore states that on completion of the upgrades, peak hour restrictions should be removed, whereas HE state the restrictions should remain in place following the upgrading of those junctions, until any residual capacity and the impact of the operation of the Proposed Development on those junctions can be reviewed.
- 4.18.77. HE then state that Project K3's increased tonnage of +107ktpa which would generate 68 HGV movements per day should be the subject of peak hour and 'shoulder' restrictions such time as the M2J5 and Grovehurst improvements are complete. In response the Applicant revised Requirement 10 in its Preferred DCO [REP7-003] so that approval of the operational routing and travel plans is required before the additional 68 K3 movements can commence. However the need for restrictions on HGV movements generated by the Practical Effects of the K3 Proposed Development is disputed.
- 4.18.78. Finally HE appeared to maintain a request for specific wording in the DCO to secure the peak hour restrictions on HGV movements whereas the Applicant considered this was unnecessary in light of the content of the revised dCTMP and dTPs.

Conclusion

- 4.18.79. The primary outputs of the junction modelling suite used in the TA the Ratio of Flow to Capacity (RFC) and queue. The former measures demand traffic flow against predicted capacity, whereby a value of 1.0 means that traffic demand is equal to capacity. The results clearly show significant increases over RFC of 1.0, for example with the cumulative 2031 traffic added to the K3 Proposed Development, WKN Proposed Development and K3 Proposed Development plus WKN Proposed Development operational flows the Swale Way West arm reports

respective RFCs of 1.20, 1.20, 1.21, 1.22 and 1.22 in the AM peak hour and in the PM peak hour maximum RFC's were reported on the Swale Way South arm of 0.90, 0.90, 0.91, 0.91 and 0.91.

- 4.18.80. The Applicant's defence of the impact is that the junction modelling is unreliable due to the junction being over capacity. That may be so, however the junction is clearly unable to facilitate additional traffic without severe impacts to congestion and safety.
- 4.18.81. The prohibition approach advocated by HE and partially agreed by the Applicant would protect the safety, reliability and operational efficiency of the M2/J5 and A249 Grovehurst junctions in perpetuity regardless of the contracts entered into or the origin or destination of any imports or exports from the WKN/K3 sites. The 'shoulders' proposed would ensure there would be no associated vehicle movements leaving / arriving on site outside of the peak hours, but travelling through the M2J5 or Grovehurst during the peak hour. The junction improvements are aimed solely at providing capacity to aid housing delivery, so they cannot be relied upon by the Applicant and as HE point out, a new Swale Local Plan is due to be adopted in 2022 with the possibility that there would be a further uplift in housing delivery (p22 of HE's reply to ExQ4 [REP7-032]).
- 4.18.82. With the prohibition applying until the Roads Investment Strategy M2/J5 improvement and Housing Infrastructure Fund A249 Grovehurst improvement are open to traffic, I am satisfied that the Proposed Development would not give rise to severe or unacceptable effects on the SRN.
- 4.18.83. With regard to the days on which HGV movements should be restricted at and around peak hours as discussed, it is generally accepted that background traffic levels are lower at weekends than on a typical weekday. Therefore the greatest percentage impact on the junctions under scrutiny has been assessed as on a Sunday, which increase is primarily related to the cumulative development taken into account. Whilst the capacity issues highlighted can be confidently predicted during weekdays, the overall effects outside these days is less clear. The Future Year Junction Assessments for Swale Way/Barge Way is that this junction is operating beyond capacity in all future scenarios tested, with no mitigation being proposed. This is unacceptable and due to the high volume of HGVs is a safety and capacity concern. In light of all the evidence I consider it is reasonable and proportionate to impose a daily restriction on HGV movements as requested by HE at least until the position can be effectively reviewed in accordance with the TP and CTMPs for the Proposed Development.
- 4.18.84. Secondly, for mitigation to apply effectively I agree that the prohibitions should continue to apply unless or until the Applicant demonstrates an absence of unacceptable impact on the SRN. This can only be tested and demonstrated once the SRN improvements have been open to traffic and the Proposed Development is operational for a sufficient period for any evidence to be robust. I agree that a minimum 12 months period would allow for seasonal or other variations and traffic flows to become

apparent. Residential development relies on the Trip Rate Information Computer System (TRICs) data and so forth to provide robust supporting evidence regarding trip rates and impacts, but the waste industry has no equivalent, making it sensible and appropriate in my view to have 12 months of actual evidence before making any decision regarding whether the prohibition should apply in perpetuity.

- 4.18.85. Thirdly, as to the Practical Effects of the K3 Proposed Development HE appeared to be in agreement that HGV movements associated with the implemented and operational 550,000 tonnes annual throughput of K3 would not be subject to any peak hour restrictions (HE's D7 submission). Moreover the IBA facility was permitted to have a total of 84 HGV movements per day without further restrictions. The permitted increase in HGV movements relating to the Consented K3 Facility, from 258 to 348 per day, was not objected to by HE, and it has now been commissioned and is operational from 16 July 2020. In the circumstances it would not be reasonable to impose a further restriction in these HGV movements.
- 4.18.86. However as for the K3 increased tonnage of +107k tpa which would generate 68 HGV movements per day, HE seeks daily peak hour and 'shoulder' restrictions until the M2J5 and Grovehurst improvements are complete, which appears to me a reasonable approach. Therefore the HE version of the K3 dTP [REP8-008] is to be preferred.
- 4.18.87. Fourthly, Requirements 10, 24, 25 and 26 of the Applicant's Preferred dDCO [REP7-003] taken together with the detailed content of the revised dTPs and dCTMP, would in my view effectively support the prohibition approach, and with the monitor and manage regime set out in the latter documents, the final form of which must be approved by the RPA, would constitute an effective and enforceable package of controls.
- 4.18.88. Otherwise the provision for the submission and approval of an Operational Traffic Routing and Management Plan and Travel Plan for Project K3 and a CTMP and Travel Plan for Project WKN is appropriate in relation to matters such as the movement of staff, visitors and waste vehicle movements during the operational phases, including minimising single occupancy vehicle movements by staff, seeking to avoid HGV movements during the peak hours and seeking to utilise existing HGV routes.
- 4.18.89. The CTMP appropriately deals with the main concerns of construction traffic, dust and dirt migrating onto the highway, wheel cleaning facilities, a regular programme of road cleaning and inspection of the site entrance and highway in the vicinity of the site.
- 4.18.90. With these measures and DCO Requirements in place, I am satisfied that the Proposed Development would accord with the requirements of NPSs, the development plan and other policies, and traffic management issues.

4.19. WATER ENVIRONMENT

Introduction

- 4.19.1. This section addresses the water environment effects of the Proposed Development in terms of flood risk and water quality and resources.

Policy Considerations

- 4.19.2. Section 5.7 of NPS EN-1 states that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. All applications for energy projects of 1 ha or greater in Flood Zone 1 (FZ1) and all proposals for energy projects located in FZs 2 and 3 in England should be accompanied by a flood risk assessment (FRA).
- 4.19.3. Paragraphs 5.7.13 to 5.7.16 of NPS EN-1 set out the need for development to pass a Sequential Test, then an Exception Test if development is to be considered permissible in a high-risk Flood Zone area.
- 4.19.4. Section 5.15 of NPS EN-1 addresses water quality and resources recognising that infrastructure development can have adverse effects on groundwater, inland surface water, transitional waters and coastal waters. The possibility of adverse impacts on health or on protected species and habitats could arise and result in a failure to meet environmental objectives established under the Water Framework Directive (WaterFD). Activities that discharge to the water environment are subject to pollution control whilst the abstraction licensing regime regulates activities that take water from the water environment.
- 4.19.5. Where the project is likely to have effects on the water environment applicants should undertake an assessment addressing water quality, water resources and physical characteristics of the water environment according to paragraph 5.15.2 of NPS EN-1.
- 4.19.6. NPS EN-2 specifically refers to the need for the assessment referenced in paragraph 5.15.2 of NPS EN-1 to demonstrate that appropriate measures will be put in place to avoid or minimise adverse impacts of abstraction and discharge of cooling water.
- 4.19.7. Paragraphs 148 to 165 of the NPPF outline the development requirements in terms of climate change and flood risk confirming the requirement for a site-specific FRA. Paragraph 155 confirms that inappropriate development should be avoided in areas at the highest risk of flooding and where development is necessary in those areas it should be made safe without increasing flood risk elsewhere. These principles are also set out in Policy DM1 of the Swale Local Plan.

The Applicant's Case

- 4.19.8. Chapter 10 of the ES addressed the water environment and included an assessment of flood risk [APP-062]. A separate FRA was provided as Appendix 10.1 of the ES [APP-041] in respect of the WKN Proposed

Development. The FRA in respect of the Consented K3 Facility was also provided to the Examination [APP-153].

- 4.19.9. The ES noted that the majority of the WKN Proposed Development lies within FZ2, assessed as having between a 1 in 100 and 1 in 1,000 annual probability of river flooding (1% – 0.1%), or between a 1 in 200 and 1 in 1,000 annual probability of sea flooding (0.5% – 0.1%) in any year. A small area in the eastern extent of the WKN Site is within FZ3 ('High Probability'). The area around the western extent of the WKN Site is in FZ1, having a 'low probability' (less than 1 in 1,000 years) annually of flooding.
- 4.19.10. However, subsequent to the publication of the EA flood maps a ground profiling exercise of the Site was undertaken, raising the ground level to 6.30m Above Ordnance Datum (AOD), c.0.30m above the worst-case flood event. This results in the land being equivalent to FZ1 and therefore sequentially appropriate.
- 4.19.11. The construction access road and laydown area are located within FZ3 and have a 'high' probability of tidal flooding. The southern extent of the access road is located within FZ1 with less than 1 in 1,000 annual probability of flooding from river or sea in any year. The WKN Site access roads and laydown area are assessed to remain flood free for a present day 0.5% (1 in 200 year event) and 0.5% event occurring in 2070. The area is assessed to be at risk of residual flooding from the overtopping of flood defences, which are assumed to remain at current crest levels, in 2115. The laydown area and construction access is only required up to 2024 from which point the land will be restored.
- 4.19.12. The ES assessed the likely effects on water resources taking account of the impacts of the Proposed Development on the prevailing hydrological, surface water drainage, flooding and water quality environments.
- 4.19.13. Climate change: Since the K3 Planning Permission was granted the EIA Regulations were updated in 2017 emphasising the need for EIAs to consider potential future impacts of climate change. The EA have assessed the K3 Site as being situated in FZs 1, 2 and 3, however due to land elevation the K3 Site now identifies as FZ1, and therefore considered to be at low risk of flooding from all sources. This would remain the case for the EA modelled period 2115.
- 4.19.14. The construction access road is shown to be situated within Flood Zone 1, 2 and 3 and therefore at 'low to high' risk of flooding from The Swale. The existing Kemsley access road has its own surface water drainage system with two retention ponds which treats the surface water before discharging to local watercourses.
- 4.19.15. In the absence of the WKN Proposed Development, the current K3 Proposed Development construction laydown area would be restored to grassland and/or scrubland similar to that prior to use as a laydown area.
- 4.19.16. The WKN Site was assessed as being in FZ2, however due to land elevation it now identifies as FZ1, and therefore considered to be at low

risk of flooding from all sources. This would remain the case for the EA modelled period 2115 (see Drainage Design Philosophy, ES Appendix 10.2 [APP-042]).

- 4.19.17. The potential environmental impacts arising from the construction of the Proposed Development were identified in the ES [APP-062] at paragraph 10.6.3. These were temporary in nature as follows:
- impacts which may affect temporary (construction) flood risk;
 - impacts of construction on surface water resources; and
 - impacts of construction on on-site drainage network.
- 4.19.18. In each case the significance of impacts upon hydrology and flood risk receptors was assessed.
- 4.19.19. Standard construction mitigation measures to be adopted during the construction of the WKN Proposed Development would include drainage works to be constructed to relevant statutory guidance and approved via the Lead Local Flood Authority (LLFA) prior to the commencement of construction; and consultation with the EA to be ongoing throughout the construction period to promote best practice and implement proposed mitigation measures.
- 4.19.20. The overall significance of the effect of construction on flood risk, surface water resources and on-site drainage network based on the situation which includes the integration of construction measures adopted in Table 10.14 and Table 10.15 [APP-062] is assessed as minor adverse, which is not significant.
- 4.19.21. The effects of the operation and maintenance of the WKN Proposed Development in relation to hydrology and flood risk were identified in the ES. The longer-term impacts assessed were the impact of operation on flood risk; impact of operation on surface watercourses; and impact on water resources.
- 4.19.22. Standard mitigation measures to be adopted as part of the WKN Proposed Development for operation and maintenance would incorporate measures to prevent pollution and increased flood risk:
- Emergency spill response procedures;
 - Clean up and remediation of contaminated water run-off;
 - Operational drainage gullies to prevent run-off from site;
 - Drainage strategy including surface water management plan, maintenance and/or monitoring procedures of drains and gullies; and
 - Operational management plan (including site storage procedures)
- 4.19.23. Applying the standard mitigation measures the significance of effects of the WKN Proposed Development on flood risk and surface water quality is assessed as minor adverse and not significant.
- 4.19.24. Decommissioning impacts which would occur due to the decommissioning of the WKN Proposed Development and associated infrastructure were assessed in relation to flood risk and surface watercourses. The

decommissioning impacts have been determined to be similar and no worse than construction impacts in relation to hydrology and flood risk, and therefore are at worst minor adverse and unlikely to be significant subject to implementation of standard construction practice and the DEMP as set out in Table 10.14 [APP-062].

Examination

- 4.19.25. No concerns were raised during the Examination about the approach to or findings of the FRA.
- 4.19.26. In their RR [RR-001] the EA stated it had no objection to the FRA, flood mitigation in the form of land raising had been maintained as per the previous application, considered appropriate here for the type of development, and the flood levels used in the FRA remain the same in the updated modelling. It noted the permit application for Project K3 submitted to increase waste input from 550 000 Tpa to 657 000 Tpa as a substantial variation and that the modelling assessments would be done during the permitting process. The WKN Proposed Development would require an environmental permit.
- 4.19.27. The EA added [RR-001] that groundwater and contaminated land baseline conditions were addressed for this site previously under earlier permissions from KCC and under the IED permit. Additional assessment of ground conditions would be undertaken before, during and after operational activities under any new permit issued. The site's geological setting is on strata that is not of significant sensitivity for groundwater protection and provided surface management and materials handling are undertaken in accordance with permit requirements, ground quality and associated controlled waters should not be at significant risk.
- 4.19.28. In the SoCG between the EA and the Applicant [REP7-012] it is noted the tidally dominated Swale to the east of the Application Site presents the greatest flood risk and it is agreed there is no discernible flood risk associated with the Site from other sources. It is also agreed that the ES and FRA have used an appropriate methodology, are based on an appropriate baseline and make an appropriate judgement regarding the likely significant residual impacts in terms of the flood risk relating to the proposed schemes. The Consented K3 Facility as constructed and the WKN Proposed Development would be set above the predicted flood levels for the area taking into account climate change and raised above the 1 in 200-year (2115) flood level. Flood risk associated with the construction accesses and laydown areas is considered acceptable and it is agreed that the Proposed Developments would be compatible with the flood risk of the locality.
- 4.19.29. The SoCG [REP7-012] also agrees that the Proposed Development does not pose a risk to surface water quality and the River Swale subject to the controls set out in the mitigation measures, the dCEMP and secured through R18 of the DCO.

- 4.19.30. With respect to land contamination and groundwater it is agreed within the SoCG [REP7-012] that the K3 Proposed Development would not pose a risk to groundwater. Regarding the WKN Proposed Development it is agreed that R28 (piling risk assessment) and R19 (contaminated land and groundwater) of the dDCO would ensure the appropriate ongoing management of any contamination that might be present and that the risk of consequential environmental impact is adequately mitigated and any risk would be as low as reasonably practical.

Questions

- 4.19.31. Written questions relating to the water environment were addressed to the Applicant and KCC, namely ExQ1.12.1 to ExQ1.12.4; and ExQ3.12.1 to ExQ3.12.3.
- 4.19.32. ExQ1.12.1 asked how the specifications in the Surface Water Management and Foul Drainage Design Philosophy Statement [APP-152] would be captured in the DCO and it was noted this is included as a certified document and as such addressed by R9 dDCO which states that the K3 authorised development must be carried out in accordance with the approved plans and documents in Schedule 3.
- 4.19.33. In response to ExQ1.12.3 concerning R18(4) dDCO [AS-002] the Applicant considered that the Requirement appropriately ensured that commissioning would not take place until the surface and foul water drainage systems had been constructed in accordance with details which had to be approved by the RPA under R18(1).
- 4.19.34. ExQ1.12.4 sought to clarify Options A and B for the surface water outfalls, in ES Appendix 11.7: Marine Licence Surface Water Outfall to Swale [APP-049]. The Applicant responded that Option A reflected the original option to discharge clean surface water from K3 and Option B was the amended approach now allowing for discharge of clean surface water from both Project K3 and Project WKN, a benefit over the previous position that would have allowed discharge from K3 and the previously consented IBA facility. If consent were granted for Project WKN Option B would be implemented. The ES did not consider the outfall, given consent has been granted for that by the MMO.
- 4.19.35. In reply to ExQ3.12.1 the Applicant confirmed the WKN EP application was submitted on 13 June 2020. However it declined the ExA's request to supply a copy to the Examination, on the basis that amended information might be requested by the EA which would then amend or replace the original information made public through this Examination.
- 4.19.36. In reply to ExQ1.2.8 it was clarified that the Surface Water and Foul Drainage Philosophy [APP-152] included in Appendix B drawings: 16315/A1/P/0100 Rev U (Proposed Site Layout), 16315/A0/0250 Rev J (Site Sections) and 16315/A0/0301 Rev J (Proposed Drainage Layout), match the references for those plans at Schedule 3 dDCO.
- 4.19.37. The intertidal area of the Swale where the second surface water outfall would be located was surveyed in 2017. This is referred to in ES

Appendix 11.7 [APP-049] where full details of the intertidal habitats can be found. However this referred to the 2017 Marine Licence, which was varied on 10 May 2019 to allow for construction and operation of a second outfall. Asked (ExQ1.5.2) to clarify the correct location of the information, the Applicant then supplied the full marine licence application documents [REP2-036] which contains a full assessment of effects on marine interest features.

- 4.19.38. ExQ1.8.12 sought clarity over whether the marine licences authorised both construction and operation. MMO responded [REP2-041] that under the MCAA2009 a marine licence is required for specific activities in the UK marine area such as construction activity, but MMO does not licence the operation of activities such as outfalls. Consent required for the discharge of water from infrastructure constructed via a marine licence, ie a discharge permit, would be obtained from the relevant authority (e.g. EA). Marine licence L/2017/00482/2 consents the construction of two outfalls, one to serve the Kemsley Generating Station and one to serve the WKN Proposed Development. The licence does not consent the operation, maintenance or decommissioning of such structures.
- 4.19.39. 'Work No 1E' and 'Work No 7' in Schedule 1 (authorised development) dDCO refer to those activities consented under this existing marine licence. MMO queried whether matters arising from the works in the marine area should be dealt with by requirements in the dDCO or conditions on the marine licence. It considered that matters in the scope of the 2009 Act could be regulated by such conditions or through a Deemed Marine Licence (DML) within a DCO.
- 4.19.40. ExQ2.5.3 explored the reference to outfall pipes and operation in MMO's D2 submission [REP3-017] concerning ES Chapter 11, paragraph 11.9.73 [REP2-024], and any maintenance works needed for the outfall pipes, to either incorporate this into a DML or request a variation to the existing ML.
- 4.19.41. ExQ2.5.4. asked the MMO and EA whether a DCO Requirement or environmental permit is needed in respect of operation as only clean surface water will be discharged from the outfalls.
- 4.19.42. ExQ2.5.5 sought information about the rate and volume of the discharge from the outfalls.
- 4.19.43. The Applicant's response [REP4-006] to ExQ2.14 gave information on the scope and conclusions of the assessment in respect of the SEIMP relating to the surface water outfall elements of the Proposed Development. The outfalls for Project K3 and Project WKN would not generate significant impacts on seascapes or the landscape and would only discharge clean surface water so that no deterioration of water quality would result. The process would be controlled by any permit or amended permit issued for the Proposed Development which was not considered to have the potential to impact on any element of the marine protected areas, specifically the Swale Ramsar site and Swale Estuary Marine Conservation Zone. There would be no noise effects arising from the

operation of the outfalls but their construction using a vibro hammer would have the potential to create noise. Therefore a controlling condition requiring a soft start approach would be imposed within the Marine Licence. No cumulative adverse effects were identified with other proposals. It was concluded that the Proposed Development was not considered to conflict with any element of the emerging SEIMP.

Conclusion

- 4.19.44. Although having both options of conditions on a current marine licence and a DML risks inconsistency, and duplication of conditions, I agree with MMO's view that it is open to an applicant to apply for a variation to their existing licence to incorporate all licensable activities in the UK marine area in which case the DCO contains no licensable activities. Alternatively an applicant might incorporate a DML in their DCO including all licensable activities within the UK marine area. I see nothing wrong in the approach adopted by the Applicant in pursuing the marine licence option.
- 4.19.45. I conclude that in terms of flood risk, the Proposed Development would be acceptable, compatible with the flood risk of the area and would comply with NPS EN-1, the NPPF, and development plan policies. The Applicant has demonstrated compliance with the WaterFD and that there would be no impact upon The Swale Estuary MCZ or other designated sites.
- 4.19.46. In respect of the WKN Proposed Development and hydrology and flood risk, potential impacts to the water environment would be avoided where practicable through implementation of a number of industry standard mitigation measures, and careful consideration of the drainage design, construction techniques and operational best practice of the WKN Proposed Development. The construction mitigation measures are included in the dCEMP [REP4-013].
- 4.19.47. Subject to the controls provided through R12 Preferred dDCO [REP7-003] in respect of the K3 Proposed Development, or R18 in respect of the WKN Proposed Development, surface water run-off would be securely managed during construction, operation and decommissioning, as the case may be, of the Proposed Development, and there would not be any detrimental impact on water quality. As a result, I find that in respect of water quality and resources the Proposed Development would be in accordance with NPS EN-1, NPS EN-2, the NPPF and the development plan and emerging SEIMP policies.

5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

5.1. INTRODUCTION

- 5.1.1. This chapter of the Report sets out my analysis and conclusions relevant to Habitats Regulations Assessment (HRA). This will assist the SoSBEIS,

as the competent authority, in performing their duties under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) ('the Habitats Directive') and Council Directive 79/409/EEC on the conservation of wild birds (2009/147/EC), as transposed in the UK through The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

- 5.1.2. Regulation 63 of the Habitats Regulations states that if a plan or project is likely to have a significant effect on a European site designated under the Habitats Regulations (either alone or in-combination with other plans or projects), then the competent authority must undertake an appropriate assessment (AA) of the implications for that site in view of its conservation objectives. As a matter of policy, the Government applies the same procedures to a number of other internationally designated sites, including Ramsar sites; these are all referred to in this report hereafter as European sites. Consent can only be granted if the AA concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).
- 5.1.3. Evidence has been sought during the Examination from the Applicant and the relevant Interested Persons (IPs) through written questions and Issue Specific Hearings (ISHs), with the aim of ensuring that the SoS has such information as may reasonably be required to carry out their duties as the competent authority.
- 5.1.4. In accordance with the process set out in Planning Inspectorate Advice Note 10 (AN10), submitted evidence in respect of HRA matters was drawn together during the Examination into a Report on the Implications for European Sites (RIES) [PD-018]. The purpose of the RIES was to compile, document and signpost information provided in the application and submitted by the Applicant and IPs during the Examination (up to and including D6) in relation to potential effects on European sites. The RIES was published on the Planning Inspectorate's website on 15 July 2020. IPs, including Natural England (NE), were notified and consultation was undertaken between 15 July and 5 August 2020.
- 5.1.5. The RIES was issued to ensure that IPs, including NE as the statutory nature conservation body, had been consulted formally on Habitats Regulations matters. This process may be relied upon by the SoS for the purposes of Regulation 63(3) of the Habitats Regulations. The consultation raised no new relevant or important issues or concerns. The Applicant confirmed at D7 [REP7-001] that they had no comments on the RIES. NE stated at D7 that it reflected an accurate representation of their advice throughout the Examination [REP7-035] and the MMO stated at D8 that they agreed with NE's conclusion on the content of the RIES [REP8-018].
- 5.1.6. The Applicant submitted a final version of their HRA Report (HRAR) at D7 [REP7-010], after the RIES had been published. Having reviewed it I find that the change does not affect the content of the RIES.

5.2. PROJECT LOCATION

K3 PROPOSED DEVELOPMENT

- 5.2.1. As described in Chapter 2 above, the Proposed Development comprises, firstly, the construction and operation of Wheelabrator Kemsley Generating Station (K3), a waste to energy facility with a generating capacity of up to 75 megawatts (MW) (49.9MW previously consented plus a 25.1MW upgrade) and a total waste throughput of up to 657,000 tonnes per annum (550,000 tonnes previously consented plus a 107,000 tonnage increase). K3 would combust post-recycled solid recovered fuel waste, commercial and industrial waste and pre-treated municipal solid waste to produce electricity which is exported to the national grid and steam which is supplied to the adjacent paper mill. The grid connection would be via the existing substation located within the DS Smith paper mill site located to the immediate west of the Application Site.
- 5.2.2. The K3 waste facility consented under the Town and Country Planning Act 1990 (TCPA1990) has been constructed and was commissioned with effect from 16 July 2020.

WKN PROPOSED DEVELOPMENT

- 5.2.3. The Proposed Development also comprises the construction and operation of Wheelabrator Kemsley North (WKN), a new waste-to-energy facility with a generating capacity of 42MW and capable of processing 390,000 tonnes of waste per annum. The electricity produced would be exported to the national grid. The grid connection would be via the existing substation located within the DS Smith paper mill site located to the immediate west of the Application Site.

K3 and WKN

- 5.2.4. As both K3 and WKN would be located within the Application Site the same European sites were identified and considered by the Applicant in respect of each of the Proposed Developments, consequently the commentary below equally applies to both K3 and WKN unless indicated otherwise.
- 5.2.5. The Order Limits of K3 and WKN do not overlap with any European site. The nearest European sites, The Swale Special Protection Area (SPA) and Swale Ramsar site, are located approximately 160m away from the Application Site at their closest point.
- 5.2.6. The Applicant identified European sites within 10km of the Application Site boundary, and accordingly considered the following eight European sites (and features), for which the UK is responsible, for inclusion within the HRA:

- Swale SPA;
- Swale Ramsar site;
- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar site;
- Thames Estuary and Marshes SPA;

- Thames Estuary and Marshes Ramsar site;
- Queendown Warren Special Area of Conservation (SAC); and
- Outer Thames Estuary SPA.

5.2.7. No other European sites or features were identified by NE or any other IP.

5.2.8. The Applicant did not identify any potential significant effects on European sites in any other European Economic Area State.

5.2.9. I am satisfied that the Applicant has correctly identified all the relevant European sites and qualifying features/interests for consideration within the HRA.

5.3. HRA IMPLICATIONS OF THE PROJECT

5.3.1. The Proposed Developments are not connected with or necessary to the management for nature conservation of any of the European sites considered within the Applicant's assessment.

5.3.2. The Applicant concluded that there was potential for likely significant effects from the Proposed Developments on eight European sites. Therefore a HRAR was provided with the application entitled 'Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO: Habitats Regulations Assessment Report' [APP-044], together with screening and integrity matrices ('the 2019 HRAR'). This provides an assessment of the operational and decommissioning effects arising from the K3 Proposed Development and the construction, operational and decommissioning effects arising from WKN.

5.3.3. The construction effects of the K3 Proposed Development are assessed in the 2010 HRAR for K3 as consented under the TCPA1990. This assessment is included in the Development Consent Order (DCO) application documents, contained within the 2010 Environmental Statement (ES) Appendix 9.6: Information for an Appropriate Assessment [APP-073] ('the 2010 HRAR').

5.3.4. In response to ExA questions and representations made by IPs during the Examination, the Applicant provided an updated 2019 HRAR incorporating updated screening and integrity matrices at D2 [REP2-034] and D4 [REP4-010]. In response to comments made by the Marine Management Organisation (MMO) at D5 the Applicant provided an updated 2019 HRAR at D6 [REP6-008]. In response to ExQ4.8.1 [PD-015] the Applicant provided an updated 2019 HRAR at D7 [REP7-010] to incorporate text that had been omitted from Evidence Note c to the Integrity Matrices in Appendix 2. All subsequent references to the 2019 HRAR in this report are to the D7 version unless otherwise stated.

5.3.5. The study area for the assessment of effects on European sites is not identified in the 2019 HRAR. It was clarified in the Applicant's response [REP2-009] to ExQ1.5.3 [PD-008] as being 10km from the Application Site boundary. Paragraph 2.12 of the 2019 HRAR states that the eight

European sites considered in the HRAR were selected on the basis of the nature of the Proposed Developments and the findings of the technical chapters of the ES.

- 5.3.6. In their response to ExQ1.8.22 [PD-010] NE did not identify any other UK European site or European site features that could be affected by the Proposed Developments and confirmed that they agreed that the correct sites and features had been considered in the 2019 HRAR [REP2-042].
- 5.3.7. I sought clarification from the Applicant in ExQ1A [PD-008] and ExQ2 [PD-012] on a number of apparent discrepancies and omissions in the 2019 HRAR (Q1.8.1 – Q1.8.22 and Q2.8.1 – Q2.8.6, respectively). The questions included in ExQ1 related to the features of the European sites, the Applicant's approach to the in-combination assessment, the securing of the proposed mitigation and discrepancies in the matrices. I also asked NE to confirm whether they agreed that the correct sites and features were considered in the HRA and whether they agreed with its conclusions (ExQ1.8.22). The HRA-related questions included in ExQ2 related to the in-combination assessment, the mitigation contained within the Draft Construction Environmental Management Plan (dCEMP), changes made to the preamble to the matrices in the updated 2019 HRAR and the MMO's comment in their D3 submission [REP3-017] that saltmarsh habitats and locations were not identified in the 2019 HRAR. A number of these questions were also directed at NE, the Environment Agency (EA) and Swale District Council (SDC).
- 5.3.8. The Applicant responded to ExQ1 and ExQ2 at D2 and D4 [REP2-009 and REP4-006] and submitted updated versions of the 2019 HRAR at D2 and D4 [REP2-034 and REP4-010]. The Applicant's approach to the in-combination assessment was clarified in the D4 version of the 2019 HRAR. The revised text in Section 7 confirmed that it had been concluded that the K3 and WKN Proposed Developments would not give rise to likely significant effects on any European sites in combination with other plans and projects. The matrices in Appendices 1 and 2 were revised to reflect this by the inclusion of in-combination effects in the screening matrices and their removal from the integrity matrices. This was subsequently reversed in the screening and integrity matrices contained in the D7 version of the HRAR [REP7-016]. Evidence Note h to the integrity matrices states that the in-combination assessment concluded that there would be no adverse effects on the integrity (AEoI) of designated sites either because there were no ecological pathways or because the in-combination modelling results did not exceed the (relevant) maximum thresholds.
- 5.3.9. NE requested in their Relevant Representation (RR) [RR-006] that the Swale Local Plan was included in the in-combination effects assessment of other plans or projects. The updated 2019 HRAR [REP2-034] submitted for D2 included an assessment of the potential in-combination effects of the Swale LP together with K3 and WKN and concluded no likely significant effects. NE subsequently confirmed [REP3-018] that the updated text addressed their comments and that they had no further comments on the updated HRAR. The final Statement of Common

Ground (SoCG) between the Applicant and NE [REP5-008], submitted at D5, confirmed that all matters, including those related to HRA, were agreed.

- 5.3.10. Following a request by the ExA in ExQ3 (Q3.5.1) [PD-014] the Applicant submitted a 'Draft WKN Ecological Mitigation and Management Plan' (dEMMP) [REP5-005] that contained details of the measures proposed to address potential ecological impacts on species. This includes species that are also features of European sites considered in the HRA such as the Swale SPA, Swale Ramsar site, Medway Estuary and Marshes SPA and Medway Estuary and Marshes Ramsar site.
- 5.3.11. The MMO, in their D3 submission [REP3-017], commented that saltmarsh habitats and locations had not been identified in the 2019 HRAR despite being considered in the marine licence application [REP2-036]. ExQ2.8.6 [PD-012] contained a request to the Applicant and NE to provide their comments on this point for D4. The Applicant responded [REP4-006] that saltmarsh is a supporting habitat of the various SPA/Ramsar site interest features and is identified in the HRAR in Table 4.7. NE responded [REP4-031] that "*..whilst saltmarsh habitats and locations are not explicitly identified in the HRAR [REP2-034], saltmarsh is considered as a supporting habitat of the SPAs in the vicinity. The Swale Ramsar site is also included and the saltmarsh plants that form part of the designated interest are noted.*". NE also commented that the HRA for the marine licence application for the outfall considered implications for intertidal habitats, including any required mitigation measures, and those conclusions are referred to in the 2019 HRAR.
- 5.3.12. In their D4 response [REP4-028] the MMO referred to ExQ1A.11.6 [PD-010]. They encouraged a review of the potential environmental impacts of the Proposed Developments using water transport and commented that it must include an assessment of the potential impacts on adjacent designated sites and that this should be considered within the HRA.
- 5.3.13. In their D5 response [REP5-011] the Applicant confirmed that a direct response had been provided to the MMO setting out their position. They were of the view that it would not be appropriate or possible at this stage to provide a review of the potential impacts of using water transport without knowing the quantum of waste being transported using water, the source of that waste, the method of transportation and any associated infrastructure required. They stated that this information would only become available when a waste contract which allowed for transportation by water was being sought and acknowledged the MMO's point in its D4 submission that an assessment would need to be undertaken of the environmental impacts of using water transportation. The MMO's D5 submission [REP5-030] welcomed the Applicant's engagement and reiterated that they encouraged a robust assessment of the potential impacts of transporting material by barge, including emissions and noise from the additional marine traffic passing through protected areas.

- 5.3.14. The MMO also raised concerns in their D5 submission about potential impacts of the discharge of water from the outfall on mussel beds and/or saltmarsh. They considered that it could lead to changes in salinity and turbidity which, depending on the location of the mussel beds in relation to the location of the outfall, could have significant effects, and requested further elaboration from the Applicant as to why there would be no significant effects resulting from the discharge.
- 5.3.15. The Applicant submitted an updated version of the 2019 HRAR [REP6-008] at D6, which contained minor revisions to address points raised by the MMO in their D5 submission. They responded to the MMO's points about salinity changes and water transportation in their D6 response to the D5 submissions [REP6-010], as set out below.
- 5.3.16. In respect of salinity, the Applicant commented that the original application for a marine licence was accompanied by a full ES. The ES dealt with the potential impacts of both construction and operation of up to two outfalls and the issue of localised changes to salinity due to discharge of 'pure' water from the outfalls. They explained that the assessment scope was determined in consultation with the MMO, it was concluded that there would be no likely significant effects on any interest feature/supporting habitat of any of the designated sites within the Swale, and that was accepted by the MMO in their granting of the marine licence. They stated that the scope of the Environmental Appraisal that accompanied the request to vary the original marine licence to allow for the construction of a second outfall to serve WKN was also determined in discussion with the MMO (set out in Section 1.2 of the Environmental Appraisal [REP2-036]). They explained that the MMO agreed that the assessment should focus on impacts related to the construction of the second outfall only, with no further assessment necessary of other activities on the basis that they had all been assessed in the original licence application, including the issue of changes to salinity. They considered that this was subsequently confirmed by the granting by the MMO of the licence variation in May 2019.
- 5.3.17. In their D7 response [REP7-016] to ExQ4.8.2 [PD-015] the Applicant stated that they had asked the MMO on 31 July 2020 if they had any questions about the impacts of the Proposed Developments on the mussel beds and that the MMO had not raised any issues with them to date. The MMO, in their D7 response [REP7-033], acknowledged the inclusion of water quality impacts in relation to appropriate assessment in the 2019 HRAR and that all existing discharges were regulated by the EA and the consents subject to their own HRA.
- 5.3.18. NE, in their D7 submission [REP7-035], stated that in relation to the MMO's comments about potential effects on the Swale SPA and Ramsar site arising from water quality impacts they considered that the mitigation measures described in Chapter 10 of the ES (Water Environment) [APP-062] were sufficient to avoid adverse effects on the sites' integrity. They were of the view that the sustainable drainage systems as illustrated on the Drainage Layout plan [APP-127] would allow any silt in the surface water run-off to settle out and would treat

any other pollutants before discharge to The Swale. They considered that discharging freshwater to the site at no greater than greenfield run-off rates was not likely to significantly affect the features of the site as a gradient in salinity was appropriate in an estuarine system. NE concluded that, as set out in the agreed SoCG [REP7-014] submitted at D7, the evidence before the SoS was sufficient to support a conclusion of no AEoI of the Swale SPA and Ramsar site.

- 5.3.19. In respect of the MMO's comments about water transportation, the Applicant stated in their D6 submission [REP6-010] that they would review the D6 responses from IPs and provide responses to those and any questions in ExQ4 which addressed this issue at D7. In their D6 response [REP6-012] the MMO acknowledged the Applicant's D5 response [REP5-011] to ExQ3.8.1 about water transportation and referred back to their D5 submission [REP5-030] but did not comment further in relation to HRA specifically.
- 5.3.20. In their D7 response the Applicant stated that their position on water transportation remained the same as set out in their response [REP5-011] to the questions contained in ExQ3 [PD-014] in respect of that matter.
- 5.3.21. In the MMO's D7 submission [REP7-033] they acknowledged the Applicant's statement in their ExQ3 response [REP5-011] that transport by water was not feasible. They highlighted that points 1.1, 1.3 & 1.5 of their D6 response [REP6-012] contained information about the requirement to consider any activities which may be licensable under s66 of the Marine and Coastal Access Act 2009 and the requirement to consider operational impacts if transport by water is required. No further comments were made on this matter by any party at D8.
- 5.3.22. In their D7 response to ExQ4.5.1 [PD-015] the MMO set out their view that if impact piling was required during construction soft start measures should be implemented and suggested wording that could be inserted in Requirement 28 (R28) of the dDCO. They reiterated this point in their D8 submission [REP8-018].
- 5.3.23. In their D8 submission [REP8-015] the Applicant stated that dDCO R28 provided timing restrictions across a calendar year on impact piling, which they considered sufficient to avoid impacts on bird species; the SoCG with NE confirmed that NE were satisfied that those measures were sufficient; and NE confirmed at D7 in their comments on the RIES [REP7-035] that the evidence was sufficient to support a conclusion of no AEoI for the Swale SPA and Ramsar site. They confirmed that any impact piling undertaken to construct the WKN outfall would be done under the control of the marine licence [APP-049], Section 5.2.7 of which requires a soft start to be made for any impact piling. They expressed their view that it was not necessary for that provision to be replicated within the Ecological and Mitigation Management Plan (EMMP) [REP5-005] or DCO.

5.3.24. In their D7 response [REP7-033] the MMO stated that they had no further comments to make on the 2019 HRAR and deferred to NE for all further comments.

5.3.25. No other IPs raised any concerns about the Applicant's approach to undertaking the HRA or its conclusions.

5.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

CONSENTED K3 FACILITY

5.4.1. The Applicant's screening assessment of K3 as consented, contained in the 2010 HRAR [APP-073], concluded that it would have no likely significant effects during construction, operation and decommissioning, either alone or in-combination with other plans or projects, on the qualifying features of the Outer Thames Estuary SPA. It was concluded that K3 as consented was likely to give rise to significant effects during construction, operation and decommissioning, either alone or in-combination with other plans or projects, from urbanisation, operational air quality, hydrological changes and noise and lighting disturbance on qualifying features of the seven European sites listed below:

- Swale Special SPA;
- Swale Ramsar site;
- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar site;
- Thames Estuary and Marshes SPA;
- Thames Estuary and Marshes Ramsar site; and
- Queendown Warren Special Area of Conservation.

K3 PROPOSED DEVELOPMENT AND WKN PROPOSED DEVELOPMENT

5.4.2. The Applicant's assessment of likely significant effects of K3 and WKN on the eight European sites considered in the HRA is contained in Section 5 of the 2019 HRAR and reflected in the screening matrices in Appendix 1. The evidence notes to the matrices cross-reference to the relevant information contained in the HRAR.

5.4.3. The Applicant has addressed potential in-combination effects of K3 and WKN within Section 7 of the 2019 HRAR. Paragraph 7.3 identifies 10 projects considered in the in-combination assessment carried out by the Applicant. A discrete assessment of the in-combination effects of emissions to air is provided in the 2019 HRAR paragraphs 7.7 – 7.15. All other potential in-combination effects are considered in HRAR paragraphs 7.16 – 7.38. NE, in their RR [RR-006], suggested that traffic movements generated by proposals in the Swale Local Plan should additionally be included in the in-combination effects (ICE) assessment. The Applicant provided this assessment in the updated 2019 HRAR submitted for D2. It concluded that only one road would carry traffic associated with both the Proposed Developments and proposals within the Swale LP (the A249) and that the habitats in that location were not sensitive to changes in air

quality. NE confirmed in their D3 submission [REP3-018] that the updated assessment addressed their comments and that they had no further comments on the HRAR. The scope of the ICE assessment was not disputed by any other IP.

K3 PROPOSED DEVELOPMENT

- 5.4.4. The Applicant's screening assessment contained in the updated 2019 HRAR (Section 5) considered that the environmental pathways through which there was the potential for K3 to have LSEs on the European sites were air quality and disturbance due to increased traffic noise. All other pathways were excluded on the basis that there were no construction activities required for the Proposed Development and no changes proposed to its physical form. Potential air quality and disturbance effects are assessed in the HRAR. In relation to air quality, regard was had to the information available on the Air Pollution Information System (APIS) website. Cross-reference is made to the air quality modelling results contained in ES Appendix 5.4 [REP2-032], from which it was concluded that the relevant maximum pollutant thresholds were not exceeded and therefore not significant. In respect of disturbance it was concluded that the potential for disturbance due to traffic noise was highly limited as a result of the distance between the traffic and the designated sites (about 100m from the grazing marsh habitats of the nearest European sites) and because the absolute increase in average annual daily traffic would be extremely small (<2%) with a correspondingly small increase in absolute noise.
- 5.4.5. It was concluded that the operation and decommissioning of the K3 Proposed Development would have no likely significant effect, either alone or in-combination with other plans or projects, on the qualifying features of any of the eight European sites.
- 5.4.6. The IPs did not dispute the Applicant's conclusion of no likely significant effects on these European sites and their qualifying features during the Examination. I am satisfied that the screening conclusions are appropriate.

WKN PROPOSED DEVELOPMENT

- 5.4.7. The Applicant's screening assessment in respect of WKN is set out in Section 5 of the HRAR. Paragraph 5.20 identifies the environmental pathways through which it was considered WKN could have a significant effect on the European sites. These are as follows:
- direct loss or damage of habitats within a designated site or nearby areas used by interest species;
 - change in management regimes of habitats within a designated site or nearby areas used by interest species;
 - loss of future space to allow for managed realignment to avoid coastal squeeze;
 - urbanisation that results in over shadowing, reduction of sight lines or which hinders flight paths;
 - air quality;

- water quality;
- hydrological changes, including in the balance of saline and non-saline conditions;
- disturbance (activity, recreation, noise and lighting); and
- introduction or spread of non-native invasive species.

5.4.8. An assessment of the potential effects of each of these pathways is provided in paragraphs 5.21 – 5.73 of the HRAR. It was concluded that WKN would have no likely significant effects during construction, operation and decommissioning, either alone or in-combination with other plans or projects, on the qualifying features of the six European sites listed below:

- Medway Estuary and Marshes SPA;
- Medway Estuary and Marshes Ramsar site;
- Thames Estuary and Marshes SPA;
- Thames Estuary and Marshes Ramsar site;
- Queendown Warren Special Area of Conservation; and
- Outer Thames Estuary SPA.

5.4.9. The IPs did not dispute the Applicant's conclusion of no likely significant effects on these European sites and their qualifying features during the Examination.

5.4.10. It was concluded that WKN was likely to give rise to significant effects on the qualifying features of the Swale SPA and Swale Ramsar site as a result of impacts on air and water quality and through recreational, lighting, noise and visual disturbance. The MMO raised a number of questions during the Examination about the Applicant's assessment of effects on these sites and their qualifying features (see Section 6.3 above).

5.4.11. I am satisfied that the screening conclusions are appropriate.

5.5. CONSERVATION OBJECTIVES

5.5.1. The conservation objectives for all of the European sites taken forward for an assessment of effects on integrity and discussed in this section of the report were provided by the Applicant in Section 4 of the 2019 HRAR.

5.6. FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

CONSENTED K3 FACILITY

5.6.1. Paragraphs 9.311 – 9.323 of the 2010 HRAR [APP-073] contain information on proposed measures to mitigate the potential effects of K3 as consented, including industry standard and good practice measures. These include:

- provision of areas within the Application Site to support qualifying plant species that may be present on land beyond the site boundary that will be lost;
- minimisation of construction dust;

- treatment and pollution prevention measures;
- surface water drainage incorporating sustainable urban drainage system features to provide attenuation and storage;
- a 'soft start' to the piling operation and limited night-time construction or operational activity that could produce 'startling' noise; and
- directional lighting.

5.6.2. The Applicant concluded in the 2010 HRAR that K3 as consented would not adversely affect the integrity of the seven European sites, and their features, that were taken forward for assessment.

WKN PROPOSED DEVELOPMENT

5.6.3. Section 6 of the 2019 HRAR contains the Applicant's assessment of the potential effects of WKN on the integrity and features of the eight European sites considered in the HRA, which is reflected in the integrity matrices contained in Appendix 2. The potential effects arising from visual disturbance during construction, operation and demolition and noise disturbance during construction and demolition are considered for each bird species that are a feature of the Swale SPA and Swale Ramsar site.

5.6.4. Information on proposed measures to mitigate the potential effects of WKN, including industry standard and good practice measures, is contained in Section 6 of the 2019 HRAR and the Evidence Notes to the Integrity Matrices in Appendix 2. Cross-reference is made from Section 6 to proposed measures contained in other DCO application documents, such as the 2019 ES Chapter 10: Water [APP-062], the WKN Construction Environmental Management Plan (CEMP) [REP4-013], the varied Marine Licence [REP2-036], and the WKN external lighting strategy set out in the 2019 ES Appendix 11.8 [APP-050]. The Evidence Notes to the matrices describe the proposed mitigation and cross-reference to the relevant information in the main text of the HRAR. The dEMMP [REP5-005] submitted by the Applicant at D5 also describes measures to protect species which could be affected by WKN, some of which are also features of European sites considered in the HRA.

5.6.5. Proposed measures in respect of WKN include:

- those contained within the CEMP in relation to construction dust, including damping down, vehicle wheel and body washing, and sheeting of vehicles carrying material;
- a site-wide surface water pollution prevention system to prevent the discharge of any contaminated surface water from the site;
- a palisade fence, a minimum of 2m high, around much of the WKN site boundary to avoid disturbance effects. This is in addition to a 2.4m fence that was erected along part of the K3 site boundary for the K3 construction works that has been retained and is located on the northern boundary of the WKN site;
- restrictions on impact piling to avoid disturbance effects; and
- lighting to be designed according to best practice standards to ensure that no additional light spill would occur.

- 5.6.6. The dDCO includes Requirements that secure the implementation of the proposed measures, such as R17 (fencing), R18 (drainage), R21 (dEMMP), R22 (CEMP), R23 (lighting) and R28 (piling).
- 5.6.7. The Applicant concluded in the 2019 HRAR that following the implementation of the proposed mitigation measures WKN would not adversely affect the integrity of the Swale SPA and Swale Ramsar site. I am satisfied that this conclusion is appropriate.
- 5.6.8. The Applicant's conclusions in relation to the effects on the integrity of the European sites that were taken forward for assessment were not disputed by NE [REP3-018] [REP4-031] [REP5-008] or any other IPs.

5.7. HRA CONCLUSIONS

- 5.7.1. My understanding of HRA matters in relation to the Proposed Development is drawn from the information provided in the application, with reference to the 2010 and 2019 HRARs and the ES, and taking full account of the responses to relevant questions that I raised.
- 5.7.2. On the basis of the information before me I consider that the Proposed Development would have no adverse effect, subject to the controls set out in the dDCO, either alone or in-combination with other plans or projects, on the integrity of any European site and its features.
- 5.7.3. I am also satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an appropriate assessment and discharge his obligations under the Habitats Regulations.

6. CONCLUSIONS ON THE CASE FOR DEVELOPMENT CONSENT

6.1. INTRODUCTION

- 6.1.1. The ExA has considered the issues that were raised by all Interested Parties (IPs) in their various representations. They were examined during the Hearing and through the ExA's written questions. The Principal Issues are set out at Section 4.1 of this Report and I have made findings in relation to these matters. The policy context and the ExA's findings on individual matters are set out in the preceding Chapters 4 and 5. The overall planning balance is summarised in Section 6.3 below.

6.2. CONSIDERATIONS IN THE OVERALL PLANING BALANCE

Application of NPSs and development plan to the Proposed Development

- 6.2.1. The designated National Policy Statements (NPSs) NPS EN-1 and NPS EN-3 provide the primary basis for the Secretary of State (SoS) to make decisions on development consent applications for energy based Nationally Significant Infrastructure Projects (NSIPs) in England, which includes the K3 Proposed Development.
- 6.2.2. In terms of Project WKN the NPSs may be considered "alongside" other national and local policies, however as the adopted local plan for waste matters, I consider the development plan and in particular the Kent Minerals and Waste Local Plan (KMWLP) to be the primary policy against which this element of the Proposed Development should be determined. The presumption in favour of determining the application in accordance with the NPS is absent here although the relevant NPSs are important and relevant matters to be considered.
- 6.2.3. I disagree with the Applicant's response [REP5-011] to ExQ3.6.2 [PD-014] that EN-1 and EN-3 are so germane to the assessment of the WKN Proposed Development that it would be irrational not to give them primacy for the reasons they give. As to the reasons given for this proposition, the NPPF is not dispositive of the issue, and the s35 direction does not override s105(2)(c) PA2008. S105 PA2008 does not stipulate that the NPSs take precedence viz a viz local plan policies (although as *The Queen (oao David Gate on behalf of Transport Solutions Fop Lancaster and Morecambe) v The Secretary of State for Transport v Lancashire County Council* [2013] EWHC 2937 (Admin) would suggest they are capable of being important and relevant matters).
- 6.2.4. The Applicant suggested further in its reply [REP5-011] to ExQ3.6.2 [PD-014], that local plan policies would otherwise take precedence by default. Indeed, whatever the reason behind the lack of definitive statutory or judicial clarity over the issue, it would be sensible in my view to apply the statutorily adopted development plan as the primary consideration to

a project that, but for the s35 Direction, would have fallen to be considered on that basis.

- 6.2.5. That said, conclusions on the case for development consent set out in the application are reached in the context of the policies contained in the NPSs, according to how important and relevant are the matters contained therein.

Issues arising in the Local Impact Reports (LIRs)

- 6.2.6. KCC's LIR [REP1-011] deferred to Swale Borough Council (SBC) on matters concerning economic development, landscape and visual impact, noise, air quality, ground contamination and cultural heritage. It deferred to Natural England (NE) on matters concerning biodiversity and to Historic England (HistE) on the impacts the Proposed Development may have on the Scheduled Monument - Castle Rough. As Lead Local Flood Authority KCC found acceptable the Flood Risk Assessment and Surface Water Management Design and Foul Drainage Design Philosophy Statement submitted by the Applicant, noting details of surface water drainage would require approval by the relevant planning authority (RPA) before commencement of development.
- 6.2.7. KCC considered the Proposed Development may have a significant impact on path users along Public Footpath ZU1 due to air quality and noise effects arising from the development. Given the potential for its increased use, KCC requested the Applicant to contribute to the improvement of the Public Right of Way (PRoW) surrounding the Application Site.
- 6.2.8. Otherwise, KCC's LIR made two fundamental objections to the Proposed Development respectively as Waste Planning Authority (WPA) and as Local Highway Authority. These are detailed in the relevant sections of Chapter 4.
- 6.2.9. SBC's LIR [REP1-012], whilst deferring to the views of other IPs or statutory authorities on certain specific issues, raised no fundamental objection to the Proposed Development. It emphasised that its LIR was not intended to repeat or contradict KCC's views on matters relating to ecology, flood risk / sustainable urban drainage, highway safety, cultural heritage, archaeology, public rights of way, public health, or minerals and waste planning. Taking into account mitigation factors, SBC's LIR concluded there would be no significant adverse impacts from the Proposed Development on landscape character and visual impacts, residential amenity, noise and vibration, air quality, and land contamination.
- 6.2.10. On economic impacts, SBC welcomed the anticipated job creation of "up to 482 staff" during the construction period and "35 to 49 staff" once the WKN plant would be operational. It deferred to HistE in respect of cultural heritage impacts.

Need for and benefits of the Proposed Development

Project K3

- 6.2.11. In relation to NPS EN-1 and NPS EN-3 which apply to the K3 Proposed Development I find that the need for infrastructure covered by these national policies is assumed and must be accorded significant weight. The recovery of energy from the combustion of waste forms an important element of waste management strategies in England. Furthermore, the ability to generate an increased amount of electricity without change to the design of the Consented K3 Facility is an additional benefit, as is the potential to generate that amount without necessarily increasing the throughput of waste feedstock. The adverse impacts as a result of increase in throughput are considered separately.
- 6.2.12. Although there are marked uncertainties as to what if any net carbon benefit would be achieved by comparison to other forms of waste management, it is reasonable to assume that it would perform better in Greenhouse Gas (GHG) emission terms than had it not been linked to an integrated CHP facility to serve the adjoining DS Smith Paper Mill. This is a further positive benefit that would align with the aspirations of NPS EN-1 and EN-3.

Project WKN

- 6.2.13. Although the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, the generation of up to 42MW of electricity would be in accordance with those national policies and would be a benefit as such. As a fossil fuel generated supply it could be brought on line quickly when demand is high and shut down when demand is low, but the supply generated is not significantly high and the benefits would therefore be limited.
- 6.2.14. The economic impacts of the Proposed Development would be an additional acknowledged benefit, principally in the form of the anticipated job creation of up to 482 staff during the construction period and between 35 to 49 staff once the WKN Proposed Development is operational and would be a positive factor in support of the WKN Proposed Development.
- 6.2.15. Achievement of R1 recovery status is not guaranteed and would only be a positive factor insofar as the SoS considers it likely that R1 status would be achieved. The energy produced from the biomass fraction of waste is regarded as renewable under EN-3 although there is uncertainty as to the proportion of waste fuel that would be derived from this component.
- 6.2.16. However, recognising that EfW facilities have an important role to play in waste management, the key important and relevant matter contained in the relevant NPSs as far as concerns the WKN Proposed Development, is under EN-3: whether, with reference to the relevant waste strategies and plans, the proposed waste combustion generating station would be in accordance with the waste hierarchy and of an appropriate type and

scale so as not to prejudice the achievement of local or national waste management targets in England.

- 6.2.17. I find on this issue that, as described in Chapter 4 and summarised further below, it has not been demonstrated that there is a need for the Proposed Development having regard to the WPA's Need Assessments and other evidence that has underpinned the formulation of KCC's revised development plan. The statutorily adopted development plan and relevant policies discussed, form part of the overall planning system adverted to in NPS EN-3, the role of which is to identify the types of infrastructure needed in the places where it is acceptable in planning terms.

Conformity with the Development Plan

- 6.2.18. As a preliminary matter it should be noted that it is likely that a final decision on adoption of the changes proposed by the EPR will have been taken by KCC at some point after the close of the Examination (see p2 KCC Closing Statement [REP8-016] which referred to its proposed meeting on 10 September 2020). Therefore the SoS may wish to consider whether to confirm with KCC whether the changes discussed in this Report have been incorporated into the development plan and have now attained the same status as other development plan policies.
- 6.2.19. Both the K3 and the WKN Proposed Development would be in conflict with fundamental policies of the development plan, namely KMWLP Policy CSW6 which requires it to be: *"demonstrated that waste will be dealt with further up the hierarchy... and where such uses are compatible with the development plan"* and Policy CSW7 which would be permissive of new capacity to manage waste *"provided that: 1. it moves up the Waste Hierarchy"*.
- 6.2.20. In addition, KMWLP Policy CSW4 as revised through the EPR, incorporates revised targets for management of waste in Kent, however waste recovery capacity is sufficiently met by the Consented K3 Facility and the EfW facility at Allington, and there is no proven need for the plant to be located in Kent. This presents a serious risk of prejudice to the principles of proximity and net self-sufficiency which underpin Policy CSW4, and the wider regional strategy in SEWPAG's Memorandum of Understanding (MoU)/"Statement of Common Ground" would clearly be undermined through any significant increase in the capacity gap located in Kent.
- 6.2.21. The weight attached to the harm thereby caused is however assessed in light of the specific circumstances pertaining to each of the two projects. The increased capacity provided by the K3 Proposed Development would be markedly less than that of Project WKN.

Environmental Impact Assessment

- 6.2.22. No submissions were made which raised concerns about the overall adequacy of the Environmental Impact Assessment (EIA) or the Environmental Statement (ES). The ES and associated information

submitted by the Applicant during the Examination provided an adequate assessment of the environmental effects of the Proposed Development which meets the requirements of The Infrastructure Planning (EIA) Regulations 2017 (the EIA Regulations). It is sufficient to describe the Rochdale Envelope for it and to secure its delivery within that envelope through the DCO.

Habitat Regulations Assessment (HRA) considerations

- 6.2.23. Information on HRA matters in relation to the Proposed Development is drawn from the application, with reference to the 2010 and 2019 Habitat Regulations Assessment Reports (HRARs) and the ES, taking full account of the responses to relevant questions that I raised. On the basis of the information before me I consider that the Proposed Development would have no adverse effect, subject to the controls set out in the dDCO, either alone or in-combination with other plans or projects, on the integrity of any European site and its features.
- 6.2.24. I am also satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an appropriate assessment and discharge his obligations under the Habitats Regulations.

Waste Hierarchy

- 6.2.25. The evidence underpinning KCC's revised development plan policies which was independently compiled, points to a capacity gap which at both the upper and lower ranges of estimates, produces a negative level of need to manage waste fuel available in Kent, even taking into account the capacities of the Proposed Development. This would be contrary to the Waste Needs Assessment produced by KCC to support the EPR which has now been found sound by the examining Inspector. This evidence base found no need exists in Kent for additional capacity for the Plan period.
- 6.2.26. Therefore the Proposed Development would be in conflict with KMWLP Policy CSW6 which requires it to be: "demonstrated that waste will be dealt with further up the hierarchy... and where such uses are compatible with the development plan" and Policy CSW7 "provided that: 1. it moves up the Waste Hierarchy".
- 6.2.27. However, although the Applicant's position is that both Project K3 and Project WKN are important, relevant and appropriate infrastructure projects that would meet net zero emissions goals and ensure waste is managed efficiently, there are differences between the two. Project K3 is a CHP facility, connected to the Kemsley Paper Mill with the benefits of increased heat export. That the WKN Proposed Development would provide a sustainable source of steam/heat to local customers for industry and housing within the area is uncertain as there is no clear agreement with any customer for this purpose, except perhaps arguably with DS Smith for the very limited occasions when K3 is undergoing maintenance.

- 6.2.28. Therefore whilst the benefits of co-location of both facilities to provide steam to the paper mill, remain unclear, increased weight should be given to the K3 Proposed Development in this respect.
- 6.2.29. The need for infrastructure covered by NPS EN-3 is assumed and must be accorded significant weight. Further, the increased capacity provided by the K3 Proposed Development would be a more modest increase than that of Project WKN, therefore the risk of prejudice to the principles of proximity and net self-sufficiency in local and regional strategies and plans is reduced. The ability to generate additional electricity without change to its design or increase in throughput would be an additional benefit.
- 6.2.30. As to the WKN Proposed Development, the generation of 42MW electricity would be a benefit having regard to the need for all types of infrastructure set out in NPS EN-1, although the energy generated would be partially renewable at best.
- 6.2.31. However the Applicant has not provided a robust argument that justifies a concentration of a new waste management facility that would increase the capacity gap at this time. Although put forward as a regional facility, given that the waste recovery capacity is well catered for by the Consented K3 Facility and the EfW facility located at Allington, there is no proven need for the plant to be located in Kent. An alternative location outside Kent where the heat produced can be more effectively utilised, would appear to better serve the strategic purposes of member authorities of SEWPAG in order to comply with the aims set out in their respective WLPs, and in particular the KMWLP.
- 6.2.32. Therefore I find that the WKN Proposed Development would be inconsistent with the KMWLP and EPR. Such a finding would be in accordance with upholding the role of the planning system as found in NPS EN-1 to provide a framework which permits construction of what Government as well as the market identify as the type of infrastructure needed "in the places where it is acceptable in planning terms (paragraph 2.2.4)."
- 6.2.33. Further, the introduction of additional Other Recovery capacity of the scale proposed at this time with respect to the WKN Proposed Development would justifiably put at risk achievement of the revised recycling and composting targets in the revised KMWLP which would also be in conflict with National Planning Policy for Waste.

Air Quality

- 6.2.34. There would be no significant effects on air quality caused by the construction or decommissioning of the Proposed Development and a Construction Environment Management Plan (CEMP), secured through R22 of the Preferred DCO would provide appropriate mitigation for the WKN Proposed Development to manage the dust impacts during construction.

- 6.2.35. Emissions from the Proposed Development would be controlled by the Environmental Permitting (EP) regime, and would not be expected to exceed objectives or standards even when based on the worst-case assumptions within the assessment model. I am satisfied with the Applicant's determination of and reasoning for the height of the stack as set out in ES Appendix 5.2, Stack Height Determination [APP-026].
- 6.2.36. ES Chapter 5 [APP-057] robustly assessed air quality impacts as a result of the K3 and WKN Proposed Developments and appropriately concluded there would be no significant impacts arising. The IAQM guidance would be followed with regard to dust management and the dispersion modelling for the stack emissions of both K3 and WKN Proposed Developments demonstrate that the predicted contributions and environmental contributions of all pollutants would be negligible.
- 6.2.37. The ES assessment of impacts of the K3 and WKN Proposed Developments cumulatively with other developments both together and alone, concluded there would be no significant effects on air quality. Therefore, both the K3 and WKN Proposed Developments accord with both national and local policies with regard to air quality.

Archaeology and cultural heritage

- 6.2.38. Matters raised in HistE's Relevant Representation (RR) and in KCC's RR and WR have been examined. I have concluded that there would be no significant archaeological or cultural heritage related effects from the construction, operation or decommissioning of the Proposed Development either physically or on the setting of any Scheduled Monument (SM), listed building or other designated heritage asset in the surrounding area. Consequently, there would be no harm to the significance of heritage assets. Similarly, there would be no significant cumulative archaeological or cultural heritage effects as a result of the Proposed Development.
- 6.2.39. The locality in which the Site lies has recognised potential to contain archaeological remains and it is appropriate to make provision for a programme of archaeological works to ensure that potentially significant adverse effects would be comprehensively mitigated. This would be effectively secured through R20 of the Applicant's Preferred dDCO [REP7-003].
- 6.2.40. On the basis of the evidence and the proposed mitigation secured as above, all impacts have been addressed in a manner that would comply with the Historic Environment elements of NPS EN-1 and the development plan.

Ecology

- 6.2.41. The ES has not identified any significant effects on designated sites, protected species and habitats or other species of principal importance for the conservation of biodiversity. Various construction phase mitigation measures are proposed by the Applicant to be secured by Requirements set out within the Recommended DCO. In respect of

Project K3 these are carried forward from the K3 Planning Permission and approved variations thereto.

- 6.2.42. The effect of the proposed mitigation measures would be that no residual likely significant effects are anticipated on any of the ecological receptors identified. Accordingly, both the K3 Proposed Development and the WKN Proposed Development would not result in significant harm to biodiversity conservation interests and would meet the aims of NPS EN-1, the NPPF and relevant development plan policies.

Greenhouse Gases and Climate Change

- 6.2.43. Project K3 and Project WKN are both facilities proposed for the incineration of waste with energy recovery, which if they achieved R1 status, would represent Other Recovery facilities for the purposes of the waste hierarchy which sit above 'disposal'. However this is a matter for the EA. I cannot with a high level of confidence assume that either project within the Proposed Development would achieve R1 status.
- 6.2.44. In relation to the WKN Proposed Development neither NPS EN-1 nor EN-3 apply as such, they remain important and relevant considerations, but primacy is given to the development plan.
- 6.2.45. The levels of carbon benefit impact relating to the Proposed Development is subject to many fundamental uncertainties and limitations, for example the estimate of GHG emissions from landfill, the carbon intensity of marginal electricity generation and the proportions of waste types to be managed. The available evidence casts considerable doubt on whether a net benefit can be ascertained, given it is highly sensitive to the assumptions applied.
- 6.2.46. Further, if the Proposed Development is not necessary to meet waste requirements for Kent, the carbon burden resulting from the proposed facilities would needlessly increase to no particular purpose but at the same time contribute to an increased risk of failure to meet international commitments. This would be particularly concerning for the WKN Proposed Development, which would result in some 163 ktCO₂e each year of operation from waste combustion and transport. This would be a considerably significant regular discharge of greenhouse gas in its own right over the lifetime of the development, expected to have an operating life of up to 50 years.
- 6.2.47. In that scenario, the Proposed Development would risk being insufficiently resilient against the impacts of climate change and not be able to satisfy the energy needs in such a way that the NPSs contemplate. This concern is accentuated in light of the June 2020 CCC Progress Report identifying for the first time the need to address emissions from waste incineration, and the warning against the continued 'dash for incineration'.
- 6.2.48. The comparative scenario related to landfill has limitations as an alternative baseline scenario. From the available evidence I see no good reason why without the Proposed Development, the landfill option would

not compete with management through other routes such as through other EfW plants with CHP or export as RDF.

6.2.49. The claimed “net carbon benefit” of the Proposed Development is not proven given the lack of robustness of the Applicant’s baseline alternative scenarios. Assessing the degree of GHG emissions that would actually be produced as a factor in its own right, the degree of harm clearly varies such that under Project K3 the practical effect would result in a lesser degree of GHG emissions. The harm thereby caused falls to be assessed against the benefits of and the assumed need for the increase in capacity of the Consented K3 Facility.

6.2.50. Indeed, despite the uncertainties inherent in calculating the net carbon benefit of the K3 Proposed Development’s practical effect, I recognise that as a whole it could be said with higher confidence to perform better in GHG emission terms, due to its greater efficiency as a CHP facility. This would be a positive benefit.

Ground Conditions

6.2.51. I have concluded that the Proposed Development accords with all relevant legislation and policy requirements and that ground condition matters are adequately provided for and secured in the Recommended DCO and Alternative Recommended DCO.

Landscape and Visual Impact

6.2.52. The assessment of the effect of the WKN Proposed Development on landscape character and visual receptors uses an appropriate methodology and accurately represents the potential effects of the proposal in this regard. The proposed buildings and structures would only be visible in front of or against the backdrop of existing large-scale industrial buildings at Kemsley Paper Mill and therefore the significance of any effect would be seen in that context.

6.2.53. I have concluded that the landscape and visual assessment presented in ES Chapter 12 [APP-064] presents an accurate reflection of the likely significant effects of the WKN Proposed development both alone and in combination with the Consented K3 Facility and with other developments taken into account. Subject to the implementation of R23 dDCO the WKN Proposed Development would not have a detrimental visual effect pursuant to external lighting. Detailed design approval of the WKN Proposed Development would be effectively secured through R14 dDCO.

6.2.54. I conclude there would be no significant landscape effects that would arise as a result of the Proposed Development during the construction, operational or decommissioning phases. Moderate adverse construction effects would be experienced by walkers using a relatively short section of the Saxon Shore Way located to the north of the WKN Site.

Noise and Vibration

6.2.55. I find that the assessment methodology for noise is acceptable [APP-059] and the residential noise sensitive receptors assessed are representative

of the wider area. No specific mitigation was identified in the ES as required to reduce the effects of construction noise or vibration. However the adoption of best practicable means and adherence to the CEMP would be secured through R22 Preferred dDCO [REP7-003]. I am satisfied that noise and vibration emissions would be minimised as far as reasonably practicable. R24 Preferred dDCO [REP7-003] provides for a Construction Traffic Management Plan (CTMP) to manage the impact of construction traffic on the surrounding area.

- 6.2.56. R14(2) dDCO requires detailed design to be approved and to be in accordance with the noise mitigation measures in ES Chapter 7 [APP-059] and R22(2)(e) requires the CEMP to address complaints relating to emissions of noise, odour or dust construction of Project WKN, including remedial action relating to emissions of noise. In addition R27 specifies the hours for the construction of the WKN Proposed Development with exceptions for work associated with concrete laying and internal process works relating to mechanical and/or electrical equipment installation.
- 6.2.57. Noise and vibration arising from on-site construction activities, construction vehicle movements or decommissioning works are not expected to give rise to any significant effects for sensitive receptors. No significant effects are predicted from vibration at any time or from noise during normal operating conditions. A requirement for post construction noise monitoring is not necessary and has not been requested by any IP. The proposed controls regarding construction, secured through Requirements in the DCO would comply with NPS EN-1, NPS EN-2 and the NPPF in respect of noise and vibration.

Traffic and Transport

- 6.2.58. Junction modelling results clearly show significant increases of RFC over 1.0, for example with the cumulative 2031 traffic added to the K3 Proposed Development, WKN Proposed Development and K3 Proposed Development plus WKN Proposed Development operational flows the Swale Way West arm reports respective RFC's of 1.20, 1.20, 1.21, 1.22 and 1.22 in the AM peak hour and in the PM peak hour maximum RFCs were reported on the Swale Way South arm of 0.90, 0.90, 0.91, 0.91 and 0.91. The junction is clearly unable to facilitate additional traffic without severe impacts to congestion and safety.
- 6.2.59. The prohibition approach advocated by Highways England (HE) and partially agreed by the Applicant would protect the safety, reliability and operational efficiency of the M2/J5 and A249 Grovehurst junctions in perpetuity regardless of the contracts entered into or the origin or destination of any imports or exports from the WKN/K3 sites. The 'shoulders' proposed would ensure there would be no associated vehicle movements leaving / arriving on site outside of the peak hours, but travelling through the M2J5 or Grovehurst during the peak hour. The junction improvements are aimed solely at providing capacity to aid housing delivery, so they cannot be relied upon by the Applicant and as HE point out, a new Swale Local Plan is due to be adopted in 2022 with the possibility that there would be a further uplift in housing delivery (p22 of its reply to ExQ4 [REP7-032]).

- 6.2.60. With the prohibition applying until the Roads Investment Strategy M2/J5 improvement and Housing Infrastructure Fund A249 Grovehurst improvement are open to traffic, I am satisfied that the Proposed Development would not give rise to severe or unacceptable effects on the strategic road network (SRN).
- 6.2.61. The capacity issues highlighted can be confidently predicted during weekdays, but whilst effects outside these days is less clear, in light of all the evidence I consider it is reasonable and proportionate to recommend a daily restriction be placed on HGV movements as requested by HE, until the position can be effectively reviewed in accordance with the Travel Plan (TP) and Construction Travel Management Plans (CTMPs) for the Proposed Development. I also recommend that the prohibitions should continue to apply unless or until the Applicant demonstrates an absence of unacceptable impact on the SRN. This can only be tested and demonstrated once the SRN improvements have been open to traffic and the Proposed Development is operational for a minimum 12 months period.
- 6.2.62. As to the Practical Effects of the K3 Proposed Development the permitted increase in HGV movements relating to the Consented K3 Facility, from 258 to 348 per day, was not objected to by HE, and it has now been commissioned and is operational from 16 July 2020. In the circumstances it would not be reasonable to impose a further restriction in these HGV movements.
- 6.2.63. Requirements 10, 24, 25 and 26 of the Applicant's Preferred dDCO [REP7-003] taken together with the detailed content of the revised draft TPs (dTPs) and draft CTMP (dCTMP), would in my view effectively support the prohibition approach, with the monitor and manage regime set out in the latter documents, without the need for additional drafting to be adopted in the DCO.
- 6.2.64. Overall adequate mitigating provision would be made via the Operational Traffic Routing and Management Plan and Travel Plan for Project K3 and a CTMP and Travel Plan for Project WKN such as the movement of staff, visitors and waste vehicle movements, minimising single occupancy movements by staff, restricting HGV movements during and around peak hours and seeking to utilise existing HGV routes. Similarly, the CTMP would appropriately deal with the main concerns of construction traffic, dust and dirt migrating onto the highway, wheel cleaning facilities, a regular programme of road cleaning and inspection of the site entrance and highway in the vicinity of the site.
- 6.2.65. With these measures and DCO Requirements in place, I am satisfied that the Proposed Development would accord with the requirements of NPSs, the development plan and other policies, and traffic management issues.

Water Environment

- 6.2.66. In terms of flood risk, the Proposed Development would be acceptable, compatible with the flood risk of the area and would comply with NPS EN-1, the NPPF and development plan policies. The Applicant has

demonstrated compliance with the WaterFD and that there would be no adverse impact on The Swale Estuary MCZ or other designated sites.

- 6.2.67. In respect of the WKN Proposed Development and hydrology and flood risk, potential impacts to the water environment would be avoided where practicable through implementation of a number of industry standard mitigation measures, and careful consideration of the drainage design, construction techniques and operational best practice. Adequate construction mitigation measures are included in the draft Construction and Environmental Management Plan (dCEMP) [REP4-013].
- 6.2.68. Subject to the controls provided through R12 Preferred dDCO [REP7-003] in respect of the K3 Proposed Development, or R18 in respect of Project WKN, surface water run-off would be securely managed during construction, operation and decommissioning, as the case may be, of the Proposed Development, and there would not be any detrimental impact on water quality. As a result, I find that in respect of water quality and resources the Proposed Development would be in accordance with NPS EN-1, NPS EN-2, the NPPF and the development plan.

Other considerations

- 6.2.69. Taking all other relevant documents and policies drawn to my attention into account, no other matters have arisen which affect the identification in Sections 4.1 – 4.19 above, of the planning matters that are required to be balanced by the SoS or taken into account in the DCO decision.

6.3. OVERALL CONCLUSIONS ON THE PLANNING BALANCE

- 6.3.1. In reaching conclusions on the case for the Proposed Development, I have had regard to NPS EN-1 and NPS EN-3 as the relevant NPSs, the Development Plan, the NPPF, the LIRs and all other matters which I consider are both important and relevant to the SoS's decision.
- 6.3.2. My conclusions on the case for Project K3 and for Project WKN are considered separately.
- 6.3.3. I have further considered whether the determination of this application in accordance with the relevant NPSs would lead the UK to be in breach of any of its international obligations where relevant. I conclude that this would be unlikely in the case of the K3 Proposed Development or the WKN Proposed Development.

Project K3

- 6.3.4. The public benefits of the Proposed Development can be identified in the context of NPS EN-1's recognition of the need for energy generating infrastructure and the presumption in favour of granting consent for energy NSIPs whilst recognising that Energy from Waste (EfW) facilities play a vital role in providing reliable energy supplies.

- 6.3.5. The potentially adverse impacts of Project K3 and the concerns raised in submissions on the application have been considered. The ES identifies that the practical effect of the K3 Proposed Development would have no significant effects from construction, operation and decommissioning activities on the environment, or that the potentially significant effects identified can be mitigated as far as practicable by the package of controls that are appropriately secured in the Recommended DCO.
- 6.3.6. I have found that, as with the WKN Proposed Development the Applicant has not provided a sufficiently robust assessment of fuel availability in relation to assessed capacity in facilities for its treatment. Nevertheless, taking account of the positive benefits of Project K3 as described above, and mindful of the limited harms identified, I find that it would generally accord with the waste hierarchy and would be of an appropriate type and scale so as not to significantly prejudice the achievement of local or national waste management targets. Therefore, all harmful effects would be within the scope envisaged in the relevant NPSs as policy compliant.
- 6.3.7. In conclusion, I find that the identified harms in relation to the K3 Proposed Development would be outweighed by the benefits from the provision of energy to meet the need identified in NPS EN-1 and by the other benefits of the application as summarised above.
- 6.3.8. No HRA effects have been identified and there is no reason for HRA matters to prevent the making of the Order.
- 6.3.9. For the reasons set out in the preceding chapters and summarised above, I conclude that the K3 Proposed Development is acceptable, and that development consent should be granted therefor. This conclusion is taken forward in light of identified minor changes required to the DCO, described in Chapter 7 below.

Project WKN

- 6.3.10. Although the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, the generation of up to 42MW of electricity would be in accordance with those national policies and would be of some benefit. In addition there would be some positive economic advantages through job creation during the construction and operational phases of the facility.
- 6.3.11. However the prospect of Project WKN becoming a viable CHP facility is uncertain. The lack of a clear and immediate sustainable source of steam/heat to local customers contrasts unfavourably with Project K3. With no guaranteed heat offtake the proposed incineration would not qualify as Good Quality CHP. In my view this is an important and relevant factor to weigh in the balance, not least having regard to the need to transition to a low-carbon electricity market, as underlined by the UNFCCC Paris Agreement and the June 2020 Progress Report which indicates that plants without CHP should not be regarded as supplying renewable energy.

- 6.3.12. Moreover, the Applicant's assessment of fuel availability in relation to assessed capacity for its treatment, compares unfavourably with the Waste Planning Authority's own assessments of need and capacity that underpin its strategy in revising targets within the KMWLP which aim to ensure that new facilities demonstrate that waste will be dealt in a manner that clearly moves its management further up the waste hierarchy. Therefore the WKN Proposed Development would be in conflict with key policies of KMWLP including Policy CSW4, Policy CSW6 and Policy CSW7.
- 6.3.13. I have had regard to the other benefits of the WKN Proposed Development set out by the Applicant that may comply with other provisions of the development plan including both the Swale Local Plan and KMWLP. However my conclusion is that the provision of too much waste capacity in conflict with the waste hierarchy, represented by the WKN Proposed Development, is a serious conflict that would result in conflict with the development plan as a whole, the adverse impacts arising from which in my view would clearly outweigh the benefits of the facility.
- 6.3.14. It would also be in conflict with National Planning Policy for Waste (NPPW) which expects applicants to demonstrate that waste disposal facilities not in line with the Local Plan, would not undermine its objectives through prejudicing movement up the waste hierarchy. The WKN Proposed Development is a non-NSIP proposal and where the NPSs do not apply as such, the more recent NPPW that sets out detailed waste planning policies should in my view carry considerable weight.
- 6.3.15. I have had regard to NPS EN-1 at paragraph 5.2, that CO2 emissions are not reasons to place more restrictions on projects in the planning policy framework than are set out in the energy NPSs. However as I have found that there is no need for the WKN Proposed Development, the GHG emissions would be an additional harm that would result, whether or not a conclusion could have been reached as to any net carbon benefit that would result.
- 6.3.16. To conclude, I find that the identified harms in relation to the WKN Proposed Development would outweigh its benefits from the provision of energy and by the other benefits of the application as summarised above.
- 6.3.17. For the reasons set out in the preceding chapters and summarised above, I therefore conclude that the WKN Proposed Development should not proceed at this time, and that development consent should not be granted therefore.
- 6.3.18. However, should the SoS consider that the advantages of Project WKN outweigh the harm caused by the adverse effects as I have described, and is minded to grant consent, then consideration should be given to the Alternative Recommended DCO set out at Appendix E, which is the subject of minor changes required to the Applicant's Preferred DCO, and as described in Chapter 7 below.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. A draft Development Consent Order (dDCO) [APP-005] and Explanatory Memorandum (ExMemo) [APP-006] were submitted by the Applicant as part of the application for development consent. The ExMemo describes the purpose of the dDCO as originally submitted, with each of its articles and schedules.
- 7.1.2. The submission version dDCO [APP-005] was broadly based on the Model Provisions (MPs) (the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009) (Model Provisions Order) adapted to draw on drafting used in made DCOs for energy development under the PA2008. MPs provide a starting point for the consideration of the DCO, whilst the use of successive precedents is also generally apposite. The submission version dDCO [APP-005] and subsequent iterations are in the form of a statutory instrument as required by section s117(4) PA2008.
- 7.1.3. This Chapter provides an overview of the changes made to the dDCO during the Examination process, between the submission version dDCO and the Applicant's Preferred dDCO submitted at D7 [REP7-003] (Preferred DCO). It then considers changes made to the Preferred dDCO in order to arrive at my Recommended DCO in Appendix D to this Report (Recommended DCO).
- 7.1.4. The Recommended DCO is based on my recommendation that only the K3 Proposed Development should be granted consent. Should the Secretary of State nevertheless consider that the Proposed Development should be granted consent as applied for, that is to say for both the K3 Proposed Development and the WKN Proposed Development, Appendix E sets out the recommended form of DCO.
- 7.1.5. The following sections of this Chapter:
- report on the structure and functions of the dDCO;
 - report on the processes used to examine the dDCO and its progress through the Examination;
 - summarise changes made to the dDCO during the Examination;
 - set out final changes proposed, consequent on the Examining Authority's (ExA's) consideration of the evidence and to address matters of drafting convention;
 - address the relationship between the DCO and other consents; and
 - address the provision of a defence against nuisance in the DCO.

7.2. THE DCO AS APPLIED FOR

- 7.2.1. This section records the structure of the dDCO which is based on the Applicant's preferred dDCO [REP7-003] at D7 and is as follows:

- Part 1: Article 1 sets out how the Order may be cited and when it comes into force; Article 2 sets out the meaning of various terms used in the Order;
- Part 2: Articles 3 to 6 provide for the grant of development consent for the Proposed Development, and allow it to be carried out, maintained and operated; Article 7 sets out who has the benefit of the powers of the Order and how those powers can be transferred.
- Part 3: Articles 8 to 12 provide for supplementary powers, consisting of access to works, discharge of water, authority to survey and investigate the land, Removal of Human Remains, and felling or lopping of trees;
- Part 4: Articles 13 to 18 make miscellaneous provisions, for a defence to proceedings in respect of statutory nuisance; application of landlord and tenant law, treatment of operational land for the purposes of TCPA1990, certification of plans, arbitration and the procedure for approvals under the DCO and discharge and variation of Requirements.

7.2.2. There are 3 Schedules to the Order providing for: the description of the Authorised Development (Schedule 1); the Requirements applying to Project K3 and Project WKN, the K3 Generating Station approved plans and documents (Schedule 2); and the procedure for discharge of Requirements (Schedule 3).

7.2.3. I find that the structure of the DCO is fit for purpose and no changes to the structure as outlined above are recommended.

THE EXAMINATION OF THE DCO

7.2.4. My review of the application versions of the dDCO [APP-005] and the ExMemo [APP-006] commenced before the Preliminary Meeting (PM). There were a number of technical and drafting matters which were desirable to address early in the Examination. These were matters which did not particularly relate to the interests of Interested Parties (IPs) and therefore it was appropriate to address them before the relationship between IP issues, planning merits and the dDCO was examined in any detail.

7.2.5. In addition, and subsequent to the application being accepted for Examination on 8 October 2019, the Applicant amended various documents to address the advice under s51 PA2008 [PD-002] and submitted them to the Planning Inspectorate on 18 October 2019, ahead of the period during which Relevant Representations (RR) could be made.

7.2.6. The s51 advice [PD-002] in relation to the DCO was for the Applicant to:

- undertake a full check of the draft DCO and other application documents, in particular the Land Plan and those plans the Applicant considers to be Works Plans submitted under Reg 5(2)(j) of the APFP Regulations, to ensure consistency; and
- also review Article 16 (Certification of Plans) of their draft DCO and ensure consistency when referencing application documents

associated to the Proposed Development, to avoid any uncertainty during the Examination.

- 7.2.7. These matters were addressed in the "S51 DCO" [AS-002].
- 7.2.8. Matters arising from the application versions of the dDCO and ExMemo were documented during the pre-examination period, as part of preparation for the PM. Consequently, the first (and only) hearing (described in Chapter 1 above) related to the dDCO. The Rule 6 Letter of 21 January 2019 [PD-006] was accompanied by notice of Issue Specific Hearing (ISH) 1 on the DCO (Annex F). An Agenda and a Schedule of the ExA's Issues and Questions relating to the dDCO was issued on 10 February [EV-003]. This provided adequate notice to the Applicant and IPs before the start of the Examination that it was intended to hold an early ISH into the DCO giving them notice of the matters that would be raised.
- 7.2.9. As a consequence of the initial Procedural Decisions, ISH1 into the dDCO was held on 19 February 2020 on the same day as the PM. An audio recording of the hearing was subsequently put on the project website [EV-004].
- 7.2.10. In Table 1 annexed to the Agenda issued for ISH1 [EV-003] a number of questions were posed principally in respect to the wording and provisions within the s51 dDCO [AS-002]. The Applicant responded to these questions with a Written Submission of Oral Case made by the Applicant at ISH1 dDCO at D1 [REP1-007]. It then produced a further dDCO [REP2-006] (clean copy) and [REP2-007] (tracked changes) which included changes which the Applicant agreed were necessary, as well as resulting from discussions with IPs, and the correction of typographical errors it had found.
- 7.2.11. In the Agenda I set out that the Applicant would be invited to explain the effect of changes to the dDCO in response to advice received under s51 PA2008 [PD-002]. The Applicant had summarised the changes in its covering letter [AS-009] accompanying submission of amended documents to address the points raised in the S51 advice. I also invited the Applicant to state any further changes proposed to the dDCO. I invited submissions from IPs who wished to speak in relation to these matters and the Applicant had a right of reply.
- 7.2.12. In my initial Written Questions (ExQ1) [PD-008] issued on 26 January 2020 I requested responses to matters addressed in Table 1 annexed to the Agenda issued for ISH1 [EV-003] by D1 (2 March 2020) and comments on any matters raised in those submissions by D2 (18 March 2020).
- 7.2.13. In ExQ1 I set out that IPs who participated in ISH1 and consider that their issues have already been drawn to the ExA's attention did not need to reiterate their issues in responses to the questions. IPs were requested to review the D1 written submissions arising from ISH1 before responding to the questions. I advised that matters set out in the D1 written submissions arising from ISH1 were best responded to in D2

comments rather than in responses to the questions, which aimed to capture matters not raised at ISH1.

- 7.2.14. Matters for examination arising from the DCO and progress on them were tracked throughout the Examination with further written questions. Owing to the onset of Covid 19 no further hearings were held (see the notice of variation to the Timetable, 22 May 2020 [PD-013]) and the written process was used to complete the Examination.
- 7.2.15. Accordingly, further written questions were made relating to the dDCOs, and the Applicant updated the dDCO several times during the Examination, responding to issues raised in questions, to WRs and additional submissions. At each revision, the Applicant submitted a clean copy and a copy showing tracked changes from the previous clean copy version. The versions of the dDCO submitted by the Applicant were as follows:
- Submission version [APP-005] and DCO Validation Report [APP-007];
 - Section 51 version [AS-002] and DCO Validation Report [AS-003];
 - D2 version: (Clean) [REP2-006] (Tracked) [REP2-007]
 - D4 version: (Clean) [REP4-003] (Tracked) [REP4-004]
 - D6 version: (Clean) [REP6-003] (Tracked) [REP6-004]
 - D7 version: (Clean)[REP7-003] (Tracked) [REP7-004]
- 7.2.16. The ExA's preferred changes to the DCO in the event consent were given for both K3 and WKN Projects within the Proposed Development, was published on 15 July 2020 (Schedule of Examining Authority's preferred changes to the Applicant's Development Consent Order) [PD-017] (The Preferred Changes). The Preferred Changes were to the most recent version submitted at D6 [REP6-003].

ExA's Draft K3 DCO

- 7.2.17. As set out in ExQ4.13.1 the ExA considered there were benefits to the K3 and WKN Proposed Developments being assessed comprehensively, however given the two proposals are in effect separate projects, the possible outcomes of the Application had to be clear to all, which were: consent or refusal in respect of both projects, consent for the K3 Proposed Development only, or consent for the WKN Proposed Development only.
- 7.2.18. It was thus important that the dDCO separated out the two projects so that any eventual recommendation or decision to consent one only of the Proposed Developments was clearly set out in terms of a recommended DCO or DCOs. It followed that alternative sets of plans and drawings that show items and boundaries applicable only to K3 and its associated development, and an amended Book of Reference (BoR) should also be available to the Secretary of State. This request, made to the Applicant for the amended documents for the K3 Project only, was for them to be submitted in the alternative without prejudice to further consideration of both Projects within the Examination.

- 7.2.19. Accordingly, I issued an alternative proposed version of the dDCO (the "K3 DCO") [PD-016] on 15 July 2020 based on an eventual consent for the K3 Proposed Development only. I also issued a Schedule of Preferred Changes to the Applicant's DCO [PD-017] which highlighted in a separate table the changes to reflect the dDCO (K3) [PD-016]. I emphasised that no conclusions had been reached on the desirability of one alternative outcome over another at that stage of the Examination and requested IPs to consider and comment as appropriate on both alternatives.
- 7.2.20. I also made clear my view in ExQ4.13.1 that it would be unlikely on the evidence then available, that any recommendation to grant consent for the WKN Proposed Development would not also justify consent for the K3 Proposed Development, but if any IP considered consent should be granted for the WKN Proposed Development only they were requested to clarify their position and explain their reasoning.
- 7.2.21. In relation to the K3 dDCO [PD-017] I requested the Applicant to consider:
- which if any of the requirements 14 to 30 (proposed to be deleted in the K3 DCO [PD-017]) should nevertheless apply to the K3 Proposed Development, and if so why;
 - which if any of the detailed items of associated development for Works Nos. 1, 2, 3, 4, 5, 6, and 7 described in Schedule 1 should be included in the K3 authorised development and if so why; and
 - how some of the documents listed in Article 16 K3 dDCO [PD-017], would need to change to new ones not yet submitted into the examination, namely alternative versions of the BoR, the Land Plan and the Works Plan.

Response to the ExA's K3 dDCO

- 7.2.22. Responses to the ExA's K3 dDCO [PD-016] were sought by D7, 5 August 2020. In response the Applicant produced at D7:
- ExA's K3 Alternative DCO K3 Works Plan [REP7-024];
 - ExA's K3 Alternative DCO Land Plan [REP7-025]; and
 - K3 Book of Reference [REP7-009].
- 7.2.23. In reply to ExQ4.13.2 the Applicant confirmed that the Consented K3 Facility became fully operational on 16 July 2020. However since a K3 DCO would make provision for the construction and operation of the K3 Proposed Development in its entirety, the Applicant considers it appropriate that the following elements of Associated Development be retained within a K3 DCO:
- Work No1C; Alteration of existing private access road to construct, use and maintain Work No 1;
 - Work No1D; Creation of a temporary construction compound and laydown area for the construction of Work No 1;
 - Work No1E; Construction and operation of a surface water outfall for Work No 1; and
 - Further Associated Development items (a) to (n).

- 7.2.24. The Applicant considers that none of Requirements 14 to 30 should apply to a K3 Proposed Development.

Response to ExA's Preferred Changes

- 7.2.25. Responses to the ExA's Preferred Changes [PD-017] as they related to an eventual DCO granted for both Project K3 and Project WKN were also sought by D7, 5 August 2020. At D7 [REP7-008] the Applicant provided its Comments on the ExA's "preferred DCO" (ie on the ExA's preferred changes to the Applicant's DCO) [REP7-023]. An updated Table of Amendments to the DCO was also produced at D7 [REP7-008].

7.3. CHANGES DURING EXAMINATION

- 7.3.1. In this section I do not comment on every change made to the dDCO in the updated versions, as many were as a result of typographical errors, or slight revisions of the wording following dialogue between the Applicant and relevant IPs or from their WRs, or as a result of written questions (ExQ1) [PD-008], ExQ1A [PD-010], (ExQ2) [PD-012], ExQ3 [PD-014] and ExQ4 [PD-015]. I do however comment on those changes made during the Examination which I consider to be significant because of their effect or because they were subject to further consideration after ISH1. Numbers for Articles and Requirements are based on the submission version unless otherwise referenced.

Matters outstanding at Close of Examination

- 7.3.2. The Applicant acknowledged in its D7 Response to Examining Authority's Further Written Questions (ExQ4) [REP7-016] the possible outcomes of the Application as set out within Q4.13.1. It agreed there was unlikely to be a situation where there is justification to grant consent for the WKN Proposed Development but not the K3 Proposed Development "*given the existing K3 is now an established operational facility under its own planning permission*".
- 7.3.3. The Applicant stated that both elements would deliver priorities for energy recovery, diverting waste from landfill and contribute to meeting the urgent need for all types of electricity generation in the UK, in an appropriate location where significant environmental impacts would be avoided or mitigated. It added that even if the ExA considered that the Proposed Development would provide too much waste capacity in conflict with the waste hierarchy in local plan policy, there was no conflict with the development plan as a whole. Any adverse impacts from such a conflict would not outweigh the clear benefits of the facilities under NPS EN-1 and EN-3. No matters justified consent to be granted for one of the facilities in the absence of the other.
- 7.3.4. However for the reasons set out in my conclusions on the case for development consent in Chapter 6 of this Report I have found that the WKN Proposed Development should not be granted.
- 7.3.5. KCC made further suggested changes to the Applicant's Preferred DCO in its submissions at D7 [REP7-038] as follows.

Part 1 – Preliminary - 3. Interpretation - Relevant planning authority (RPA)

- 7.3.6. Due to different planning functions of KCC and SBC it was suggested that definitions should be provided for each and the "RPA" is specifically referenced in the relevant sections of the DCO.
- 7.3.7. However, it is not usual for DCOs to identify which authority is meant by the RPA which is the terminology used in the Model Provisions Order. Areas of jurisdiction may change over time, the more appropriate recourse in the event of a dispute would be to invoke the procedure for discharge of Requirements set out in Schedule 3. Accordingly, it is unnecessary to amend Article 4 or other provisions in this connection, as requested by KCC.

Schedule 1 - Article 3 - Authorised Development Work No 3 – Installation of grid connection for Work No 2

- 7.3.8. KCC questioned whether this article should be referenced as Work No 2a, given its association with Work No 2. However, the description of Work No. 3 is self-explanatory and used throughout the application, documents and plans within the Application, therefore no change is recommended.

Schedule 2 - Article 3 - Requirements – Project WKN Requirement 14 (b) electric vehicle charging points

- 7.3.9. KCC questioned why the provision for electric car charging would only be provided at WKN and not K3. The Applicant confirmed in the draft SoCG with SBC [REP5-006] that Project K3 has 2 electric charging points fitted and 4 passive electric charging spaces where charging points could be fitted. The ExA is satisfied that is a sufficient level of provision given the Consented K3 Facility is now operational.

Explanatory Note

- 7.3.10. Given the restrictions currently in place KCC stated to the Planning Inspectorate that it could not currently commit to holding the various documents referred to in the Order at its offices for public inspection. KCC suggested a pragmatic approach be taken in respect of this requirement should public inspection not be possible.
- 7.3.11. The current restrictions due to the state of emergency that exists arising from the outbreak of Covid-19 may change, including at short notice, from time to time. The ExA understands the need for a pragmatic approach to the public inspection of documents but defers to the SoS as to what changes if any might be required to address the situation as it obtains at the time of the SoS's decision.

Peak hour and 'shoulder' restrictions requested by Highways England (HE)

- 7.3.12. Despite the Applicant's Response to Submissions at D7 [REP8-015] to the effect that peak hour and 'shoulder' restrictions requested by HE had been agreed, no consequential amendment had been made to the

Applicant's Preferred DCO. In Section 4.20 of this Report, I concluded that it was necessary for such restrictions to be placed on HGV movements to achieve the objective of protecting the M2 Junction 5 and the A249 Grovehurst junctions during the peak hours before their improvement schemes are completed.

7.3.13. In its reply to ExQ4 questions HE set out at its D7 submission [REP7-032] justification and a precise form of wording to be inserted into the DCO as follows:

- *"No part of the authorised development shall commence (including site clearance or preparation) until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Construction Management Plans for the WKN and K3 (additional development) sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The prohibition will apply throughout the construction period, and any subsequent period until the authorised development is occupied"; and*
- *"No part of the authorised development shall be occupied until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Travel Plans for the WKN and K3 sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The Travel Plans shall also include such details as are necessary to set out the agreed means by which, should they choose to do so, the applicant/operator of an authorised development may seek to end the prohibition. Any application to end the prohibition may only be submitted once the SRN improvements have been open to traffic and the WKN/K3 authorised developments have been operational for a sufficient period for any evidence to be robust. The "sufficient period" shall be a minimum 12 months."*

7.3.14. These matters were considered in some detail in Section 4.18 of this Report. The wording is imprecise to achieve the purpose for which it was drafted. However, Requirements 10, 24, 25 and 26 of the Applicant's Preferred dDCO [REP7-003] taken together with the detailed content of the revised draft Travel Plans (dTPs) and draft Construction Traffic Management Plan (dCTMP), would in my view effectively support the prohibition approach, with the monitor and manage regime set out in the latter documents. Although the wording suggested by HE could be redrafted so as to make the proposed new requirements precise and enforceable, I consider that to be unnecessary, as taken together the

existing package of controls would have a sufficient degree of precision to render them enforceable and would achieve the desired objective.

KCC Comments on the Applicant's K3 Conditions Tracker

- 7.3.15. Several matters were raised by KCC in relation to the updated Conditions Tracker [REP7-039]. These revolved around the extent to which, if at all, specific conditions should be carried forward into Requirements within the DCO in addition to the Approved Plans and Documents listed in Part 4 of Schedule 2 in accordance with which the Project K3 authorised development must be carried out.
- 7.3.16. The "Access Road - Proposed Internal Access Layout Plan" is included in the Approved Plans and Documents. No condition relating to SW/12/1001 or SW/13/1257 needs to be transposed as they relate to construction or land outside the K3/WKN DCO boundary.

Condition 3 – maximum number of HGVs

- 7.3.17. R10(5) stipulates a maximum number of HGV movements to and from the K3 Generating Station not to exceed 416 movements per day. KCC considers this would undermine the previous condition and be unacceptable in highway terms. No increase should be permitted other than those to and from the Ridham Dock to encourage the Applicant to pursue more sustainable options in accordance with national and local policy.
- 7.3.18. The Applicant set out its position on this matter in its SoCG with KCC and generally during the Examination. KCC's response to ExQ4.13.8 discuss an increase to the number of HGV movements associated with Project K3 and the Applicant responded at D8 [REP8-015] (Paragraphs 3.3.41 et seq).
- 7.3.19. In response to Q4.13.8, KCC's D5 Submission - Highways Response to dDCO R10 – HGVs [REP5-037], disputes the figure of 416 movements per day. KCC proposes:
- 7.3.20. *"K3 movements should be conditioned to be split equally between the day and night, with further restrictions on the peak hour and shoulders. A suggestion could be to restrict to 400 per day with a minimum of 200 movements to be at night between 19:00 and 07:00 and no arrivals between 07:00 and 09:00 and 16:00 and 18:00."*
- 7.3.21. There is merit in the Applicant's response [REP8-015] that evidentially it is difficult to justify this approach, the figure of 400 movements per day may result in operational issues with waste delivery associated with the tonnage throughput and affect the overall performance of the facility.
- 7.3.22. The ExA notes however that the comments from KCC and HE on junction performance relate to protecting the peak hours and the agreed peak hour and 'shoulder' restrictions with HE would achieve the objective of protecting the M2 Junction 5 and the A249 Grovehurst junctions during the peak hours before their respective improvement schemes are

completed. The ExA prefers this approach, therefore the condition/requirement proposed by KCC is not accepted.

R6 - K3 Rail and Water Transportation Strategy (K3 RWTS)

- 7.3.23. The rail strategy approved by the WPA under planning reference SW/10/444/RVAR on 27 June 2017 has to be implemented as approved unless otherwise approved beforehand in writing by the WPA. However, R6 would now require the K3 facility to be operated in accordance with the K3 RWTS. KCC objects that the current strategy is not effective since the Applicant has repeatedly requested increases in HGV movements from the original K3 Planning Permission. KCC proposes that the original condition be replicated with a requirement for a new strategy to be written and approved by the Highway Authority that includes penalties unless increasing levels of waste delivery through sustainable means is evidenced.
- 7.3.24. The Applicant responded on the subject of the RWTS for Project K3 and Project WKN. In particular, its responses to ExQ3.6.9 and ExQ3.11.4 [REP5-011] were that to require the provision of infrastructure as part of the RWTS would not result in waste being transported by rail or water unless contracts were secured which allowed those methods of transport to be used and without knowing the quantum and form of delivery it was impossible to assess what infrastructure would be required. Commercial sensitivities on the value of waste contracts would prevent information on the viability of providing infrastructure for rail and water transportation.
- 7.3.25. I accept there are commercial sensitivities involved, as demonstrated by the rail strategy in respect of the Consented K3 Facility, predicated on a separate permission (SW/12/167) to upgrade rail infrastructure in the vicinity and at the Ridham Dock, prior to the North London Fuel Use Contract being withdrawn and the strategy being revised. The RWTS for Project K3 and Project WKN as contained in the Applicant's Preferred DCO replicate the wording which was acceptable to KCC in mid-2017. Therefore, I see no compelling justification for a requirement to rewrite the strategy as now suggested by KCC.

The Surface Water Management and Foul Drainage Philosophy (SWMFDP)

- 7.3.26. The SWMFDP December 2016 referred to in the Condition is certified within the DCO. KCC request clarity on where this is certified within the DCO.
- 7.3.27. Article 16 lists The Surface Water Management and Foul Drainage Design Philosophy Statement [APP-152] dated on its face 13 December 2016, pertains to Project K3. It has clearly been updated since then and contains the drawings Site Sections Drawing No 16315 A0 0250 including Rev J dated 31.8.18, and Proposed Drainage Layout Drawing No 16315 A0 0301 including Rev J dated 7.9.18. The revisions including preceding revisions refer back to the matters included in Condition 16 described in the Conditions Tracker. These provide among other things for detailed

mitigation measures to be constructed and operational prior to the acceptance of waste by the development. In addition, the Proposed Drainage Layout 16315/A0/0301 Rev J and Site Sections 16315/A0/0250 Rev J are individually listed among the Approved Plans and Documents in Schedule 2, Part 4.

Condition 22 of permission SW/19/501345– minimum 20% of annual waste throughput to be pre-treated

7.3.28. Condition 22 reads:

"Other than waste arising from within Kent all waste used as a fuel in the Sustainable Energy Plant hereby permitted shall be pre-treated. Unless otherwise agreed in writing by the Waste Planning Authority no less than 20% of the annual waste throughput shall be pre-treated waste sourced from within the area defined as Hinterland shown on the plan attached to the letter from RPS dated 17 March 2011 entitled KENT & HINTERLAND and which includes Kent, Tandridge, Thurrock and Medway."

7.3.29. KCC maintain this condition is still required for the Proposed Development to be sustainable and the waste proximity principle to be met. Its rationale was to ensure that sourcing of waste processed at the plant is consistent with the waste proximity principle and to secure waste management capacity sufficient to achieve net regional and sub-regional self-sufficiency.

7.3.30. The Applicant points out this is a contrary position to KCC's previous submissions, noting its submission [REP4-015] (page 11):

"Given that it is acknowledged that waste will travel beyond administrative boundaries, it is not the sourcing of waste in itself that is problematic to KCC and its Kent Minerals and Waste Local Plan. It is simply that the quantum of capacity proposed is far above that which could ever be required to meet Kent's needs or to 'compensate' for flows of Kent waste beyond its borders."

7.3.31. In its Comments on the Applicant's Response to ExQ1A [REP5-038] (page 13) KCC references the removal of a catchment area condition that had been applied to the Tilbury Green Power Facility, stating:

"This supports KCC's position (as set out in its response to EXAQ1A.1.23) that attempts to condition limits to sourcing, as suggested by the ExA, would be of limited value as they could then be removed on subsequent application, and hence cannot be relied upon to limit the harm identified. The County Council has previous experience of the unsuccessful application of such a condition."

7.3.32. I note this matter is not taken up by KCC in its Closing Statement [REP8-016] or directly in its SoCG with the Applicant [REP8-013] although the quotations provided by the Applicant do not of themselves undermine a position that a minimum amount of annual waste throughput should be pre-treated. That said, it is not explained how such a requirement would be precisely quantified, for example in the definition of "pre-treated" or that any environmental effects of a smaller percentage that the WPA may

approve, which (on this wording) could be as low as a zero percentage, have been assessed within the scope of the ES. Consequently, I find that such a requirement would not be justified.

Key changes made by the Applicant during the Examination

- 7.3.33. Table 1 sets out the key changes made by the Applicant during the Examination, contained in its preferred dDCO [REP9-007], and which the ExA recommends should remain if the SoS decides to grant consent for both Project K3 and Project WKN. The changes followed discussion at ISHs and in response to written questions and submissions from interested persons. I am satisfied that these changes are justified by the evidence I have examined and recommend they are included in the DCO if the development consent is granted.
- 7.3.34. In my Preferred Changes [PD-017] I invited the Applicant to consider whether in R25(1) "commissioned" should be replaced with "commenced" to reflect a need to have the Operational Traffic Routing and Management Plan (OTRMP) approved in a timely fashion. The Applicant responded that as the OTRMP applies to the WKN Proposed Development it is appropriate to require the plan to be submitted and approved prior to commissioning of the WKN facility, rather than prior to commencement. I agree that in doing so both R24 and R25 would ensure that WKN construction traffic is appropriately managed and controlled.

Table 1: Changes made by the Applicant during the Examination

Provision	Examination Issue	ExA comment
Article 2 Interpretation:	Date of submission version of Environmental Statement to be inserted.	Amended in response to the ExA's question ISH1:1 [EV-003]
Article 2 Interpretation:	The definition of 'works plan' changed to 'works plans' for consistency with article 16.	Amended in response to the ExA's question ISH1:2 [EV-003]
Article 2 Interpretation:	The words 'Requirement 14 (Detailed Design Approval) have been inserted before 'of Schedule 2'.	Amended in response to the ExA's question ISH1:3 [EV-003]

Provision	Examination Issue	ExA comment
Article 2 Interpretation:	The words 'Schedule 1 of' have been inserted after 'authorised by'.	Amended in response to the ExA's question ISH1:4 [EV-003]
Article 2 Interpretation:	Remaining references to 'plan' to be changed to 'plans' for consistency with the defined term 'works plans' and article 16	Amended in response to the ExA's question 2.13.1 [PD-012]
Article 2 Interpretation:	In the definition of "environmental statement", addition of the words "including all appendices thereto" following words "submitted with the application on 11 September 2019"	Amended in response to the ExA's question 3.13.16. [PD-014]
Article 2 Interpretation:	The definition of "K3 Generating Station" has been amended to read "a generating station authorised by the Order as having a capacity of up to 75MW, which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 4 of Schedule 2"	For clarity, and also to complete the date of commissioning of the K3 Sustainable Energy Plant.
Article 4(1) Effect on K3 planning permission	The word 'commence' has been replaced by 'start'.	Amended in response to the ExA's question ISH1:8 [EV-003] to avoid any confusion between the defined term 'commence' in

Provision	Examination Issue	ExA comment
		relation to works, and 'commence' in relation to operational use.
Article 4(2) Effect on K3 planning permission	The words 'the conditions of' have been deleted before 'K3 Sustainable Energy Plant Planning Permission'.	Amended in response to the ExA's question ISH1:5 [EV-003] to clarify that the whole planning permission will cease to have effect, not just the conditions.
Article 10(6) Authority to survey and investigate the land	The word 'vehicles' has been inserted before 'apparatus'.	Amended in response to the ExA's question ISH1:8 [EV-003]
Article 13(2) and (3) Defence to proceedings in respect of statutory nuisance	The references to section 65 Control of Pollution Act 1974 have been deleted.	Amended in response to the ExA's question ISH1:10 [EV-003]
Article 16(g) Certification of plans etc	The reference of the WKN parameter plan has been moved from 16(c) to 16(g).	For consistency with the definition in requirement 1 and in response to the ExA's first written questions 1.2.2 [PD-008]. Further information is provided in the Applicant's Further Submissions [REP2-014] on ISH1 DCO Questions – Deadline 2
Article 16 Certification of plans etc	The WKN draft construction environmental management plan dated May 2020 and the Design and Access Statement [APP-083] have been added	In response to the ExA's question 3.13.4 [PD-014]

Provision	Examination Issue	ExA comment
Article 16 Certification of plans etc	The addition of "(m) draft ecological management and enhancement plan".	In response to the ExA's question 4.13.7 [PD-015].
Article 16 Certification of plans etc	The addition of "(o) draft K3 travel plan"	As a result of the addition of requirements in requirement 10 as referred to below.
Article 18(1) Procedure for approvals	"The Order" changed to "this Order"	Amended in response to the ExA's question ISH1:13 [EV-003].
Schedule 2, Parts 2 & 3 Requirements	Various references to the relevant project or works number have been added.	To clarify to which work each requirement relates
Schedule 2 Interpretation	The definition of "commissioning" has been moved to Article 2(1) Interpretation	Amended in response to the ExA's question ISH1:20 [EV-003].
Schedule 2 Interpretation	The definition of "permitted preliminary works" is amended to clarify that archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, and the diversion and laying of services are all subject to compliance with Requirement 20(1).	Amended in response to the ExA's question 3.13.3 [PD-014]

Provision	Examination Issue	ExA comment
Schedule 2 Requirement 2 Commencement of authorised development	The words 'Work No 1 and Work No 2' have been replaced by 'Project K3 and Project WKN'	Amended in response to the ExA's question ISH1:20 [EV-003].
Schedule 2 Requirement 4(1) – Decommissioning	The word "decides" has been replaced by "notifies the relevant planning authority that it intends to".	Amended in response to the ExA's question ISH1:23 [EV-003]. A requirement to decommission has not been included as cessation of use may be temporary or subject to approval of refurbishment plans. Any physical decommissioning works will in any event be subject to their own assessment under the planning and EIA regimes.
Schedule 2 Requirement 6(2) Rail and water transportation strategy	Rail and water transportation strategy definition moved to Requirement 1.	Amended in response to the ExA's question ISH1:24 [EV-003]
Schedule 2 Requirement 7 Amendments to approved plans	The definition of 'Approved plans' has been moved to Requirements 1 and used in requirements 7 and 9 and elsewhere as appropriate.	Amended in response to the ExA's question ISH1:25. [EV-003]
Schedule 2 Requirement 10 Heavy goods vehicles	The name of the requirement has been changed, and additional requirements added with respect to the approval of	As a result of discussions with HE in relation to the regulation of the additional movements associated with the K3

Provision	Examination Issue	ExA comment
	operational traffic routing and management plan and travel plan for K3	authorised development
Schedule 2 Requirement 11 Trees	Definition of 'approved Landscape Masterplan' moved to Requirement 1 and reference to it in 11(1) has been corrected for clarity.	Amended in response to the ExA's question ISH1:28 [EV-003].
Schedule 2 Requirement 13 Combined heat and power	A definition of Kemsley Paper Mill has been added to Requirement 1.	Amended in response to the ExA's question ISH1:29 [EV-003]. The definition of the CHP strategy in this requirement has not been moved because the purpose of the requirement is to define the CHP strategy. Therefore a separate definition in requirement would simply refer back to this requirement, making it a circular definition
Schedule 2 Requirement 14 Detailed Design Approval – Table 1	The maximum height of Work No 2(j) Administration Office has been corrected to 30m to be consistent with Table 2.3 of the ES.	Amended in response to the ExA's first written questions 1.2.4 [PD-008].
Schedule 2 Requirement 14(4) Detailed Design Approval	Duplication of "(4)" deleted. Definition of "WKN parameter plan" moved to requirement 1.	Amended in response to the ExA's question ISH1:31 [EV-003]

Provision	Examination Issue	ExA comment
Schedule 2 Requirement 14 Detailed design approval	The addition of paragraph 14(1)(a) requiring the approval of details for the provision of electric vehicle charging point for WKN	Amended as agreed with Swale Borough Council, as referred to in the Applicant's response [REP5- 011] to the ExA's question 3.6.4 [PD-014].
Schedule 2 Requirement 15 Provision of landscaping	The word 'commissioned' is replaced by 'commenced'.	Amended in response to the ExA's question 4.13.5 [PD-015].
Schedule 2 Requirements 16, 24, 25, 26 & 30	The word 'relevant' has been added before 'planning authority'.	Amended in response to the ExA's question ISH1:34 [EV-003].
Schedule 2 Requirements 19 Land contamination and groundwater	Title 'Contaminated Land and groundwater' changed to 'Land contamination and groundwater'	Amended in response to the ExA's first written questions 1.13.4 [PD-008].
Schedule 2 Requirement 20 Archaeology	The words 'and reporting' inserted after the word 'analysis' in paragraph 20(2).	Inserted as requested by KCC's D3 submission dated 24 April 2020 [REP3-020]
Schedule 2 Requirement 20 Archaeology	Amended to provide for field work and post-field work analysis and recording	Amended as requested by KCC's submission dated 2 March 2020 [REP1-009]
Schedule 2 Requirement 21 Ecological management and enhancement plan	The word 'commissioned' is replaced by 'commenced'.	Amended in response to the ExA's question 3.13.15 [PD-014].

Provision	Examination Issue	ExA comment
Schedule 2 Requirement 21 Ecological management and enhancement plan	Paragraph 21(2)(a) has been amended to read "be in accordance with the ecological management and enhancement plan certified by the Secretary of State under article 16"	Amended in response to the ExA's question 4.13.6 [PD-014].
Schedule 2 Requirement 22 Construction environmental management plan	The correct reference has been added to the environmental statement in 22(2)(d)	Amended in response to the ExA's question ISH1:35 [EV-003].
Schedule 2 Requirement 22 Construction environmental management plan	Sub-paragraph 22(2)(a) has been amended to reflect the certification of the draft construction environmental management plan in Article 16.	Amended for consistency with the change to Article 16.
Schedule 2 Requirement 29(1) Piling and penetrative foundation design	Corrected to reflect the restrictions in para 11.9.21 of the ES on impact piling between January and February inclusive and April to August inclusive.	Amended in response to the ExA's first written questions 1.5.13 [PD-008].
Schedule 2 Requirement 29 Piling and penetrative foundation design	Paragraph 29(3) has been deleted in its entirety.	Amended in response to the ExA's question 3.13.1 [PD-014].
Schedule 2 Requirement 30 Employment, skills and training program	The words "in consultation with the Economic Development Officer at Swale Borough Council" have been	At the request of SBC at paragraph 6.8.2 of its LIR [REP1-012] dated 2 March 2020.

Provision	Examination Issue	ExA comment
	inserted after "by the relevant planning authority".	
Schedule 3	The whole of Schedule 3 has been moved to Part 4 of Schedule 2. All references in the DCO to Schedule 3 have as a consequence been amended to Part 4 of Schedule 2, and subsequent Schedule numbers and references changed.	Amended in response to the ExA's question ISH1:36 [EV-003]
Schedule 3	'Revision' numbers have been moved to the 'Reference' column where those documents were never revised and retain their original date.	Amended in response to the ExA's question ISH1:37 [EV-003].

7.3.35. In its D7 submission [REP7-032], HE proposed wording for a Requirement in the DCO to provide for the completion of road improvements discussed in Chapter 4 of this Report, as follows.

"No part of the authorised development shall commence (including site clearance or preparation) until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Construction Management Plans for the WKN and K3 (additional development) sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The prohibition will apply throughout the construction period, and any subsequent period until the authorised development is occupied"; and

"No part of the authorised development shall be occupied until the submission to and agreement in writing by the local planning authority (who shall consult Highways England) of respective Travel Plans for the

WKN and K3 sites. The Plans are to provide such details as are necessary to demonstrate how the prohibition of all HGV authorised development related traffic from that part of the Strategic Road Network comprising M2 Junction 5 and A249 Grovehurst Junction will be achieved, monitored and managed. The hours of prohibition shall be 7.30 to 9.30 daily and 16.30 to 18.30 daily. The Travel Plans shall also include such details as are necessary to set out the agreed means by which, should they choose to do so, the applicant/operator of an authorised development may seek to end the prohibition. Any application to end the prohibition may only be submitted once the SRN improvements have been open to traffic and the WKN/K3 authorised developments have been operational for a sufficient period for any evidence to be robust. The "sufficient period" shall be a minimum 12 months."

- 7.3.36. I have considered carefully whether, subject to amendments to clarify the drafting of such provisions the proposed Requirement is necessary, however in light of the detailed content of the dCTMP and dTPs for the Proposed Development, together with the existence of Requirements 10 and 24, the restrictions desired by HE will be effectively tied into the Proposed Development. Therefore it is unnecessary to consider the proposed new Requirement further.

Summary of ExA Recommended Changes

- 7.3.37. In the event that the SoS is minded to grant consent for Project K3 and Project WKN within the Proposed Development, I recommend that the Applicant's Preferred DCO at D7 be amended to:
- Amend Article 16 to refer to Highways England's versions of the WKN dCTMP, WKN dTP and K3 dTP;
 - Amend Article 16 (m) (certification of plans) to insert "draft" before "ecological management and enhancement plan dated June 2020";
 - Amend R21(2)(a) to insert "draft" before "ecological management and enhancement plan"; and
 - Other minor drafting and typographical amendments.
- 7.3.38. These recommended changes are set out below in Table 2.

Table 2: Recommended changes to Applicant's Preferred DCO should SoS grant consent for Project K3 and Project WKN

Provision	Examination Issue	ExA Comment
Article 16(h)	Delete and replace with "the draft WKN construction traffic management plan – Highways England version (dated 7 August 2020);"	7.3.39. To reflect restrictions on HGV movements

Provision	Examination Issue	ExA Comment
Article 16(i)	Delete and replace with "the draft WKN travel plan - Highways England version (dated 7 August 2020);"	7.3.40. To reflect restrictions on HGV movements
Article 16 (o)	Delete and replace with "the draft K3 travel plan – Highways England version (dated 7 August 2020)"	7.3.41. To reflect restrictions on HGV movements
Article 16 (m)	Insert "draft" immediately before "Ecological" and after "plan" insert "dated June 2020"	7.3.42. Responds to submitted draft EMMP
Schedule 1, Part 2 General Requirements Requirement 7(2)	Insert immediately before "paragraph (1)" "sub-"	7.3.43. Improve drafting
Schedule 1, Part 2 General Requirements Requirement 21(2)(a)	Insert "draft" immediately before "ecological"	7.3.44. Responds to submitted draft EMMP
Explanatory Note 2nd paragraph	Delete "for" before "associated development"	7.3.45. Improve drafting

ExA's recommended final DCO

7.3.46. The key changes which I am proposing in the Recommended DCO which differ from the Applicant's Preferred D7 version [REP7-003], consist of

those changes necessary to omit the WKN Project from the Proposed Development.

- 7.3.47. No party commented on the wording of the ExA K3 dDCO [PD-016] save as described above.
- 7.3.48. It should however be noted that since the ExA K3 dDCO [PD-016] was published the Applicant updated its dDCO at D7 (Applicant's Preferred DCO) in the manner set out in its Table of Amendments to the DCO [REP7-008]. Some of these are relevant to a K3 DCO, namely to:
- Amend the definition of "K3 Generating Station"; and
 - Add requirements to R10 (HGVs);
- 7.3.49. The additional requirements in Schedule 2 R10 (Heavy goods vehicles) with respect to the approval of operational traffic routing and management plan, were added as a result of discussions with HE in relation to the regulation of the additional movements associated with the K3 authorised development.
- 7.3.50. I have considered these updated changes at D7 made by the Applicant in respect of its Preferred DCO and consider that they should also be incorporated into a K3 only DCO with the exception of the change to R21 (ecological management and enhancement plan). At ExQ2.5.7 I noted the various titles of this plan in ES Chapter 11 and requested that the Applicant commit to produce an EMEP referred to in dDCO R21. This was submitted under the title draft Ecological Mitigation and Management Plan (EMMP) [REP5-005]. It is this plan that should be tied to the DCO in the sense that it should be certified under Article 16 and the final plan be in accordance therewith. Therefore R21(2)(a) of the Applicant's Preferred DCO [REP7-003] should be amended to replace "ecological management and enhancement plan" with "draft Ecological Mitigation and Management Plan dated June 2020".
- 7.3.51. These amendments are incorporated into the Recommended DCO at Appendix D.
- 7.3.52. Further amendments recommended are in respect of:
- The new Work Plan and Land Plan drawing numbers and dates, and Book of Reference in Article 16;
 - Reinstating the items of Associated Development so far as they should apply to Work No. 1; and
 - Minor drafting and typographical amendments.
- 7.3.53. These recommended amendments, together with those necessary to omit Project WKN from the DCO as tabled in [PD-017], are included in Table 3 below.

Table 3: DCO Provisions Recommended to be Changed from the Applicant's Preferred DCO (ExA's final recommended form of DCO)

Provision	Examination Issue	Recommendations
Title and Contents		
Title	Change title of Order to "The Wheelabrator Kemsley K3 Generating Station Order 20[]"	7.3.54. Remove references to Project WKN and consequential amendments
Contents, Schedules, Schedule 2, Part 1	Delete "GENERAL"	7.3.55. Remove references to Project WKN and consequential amendments
Contents, Schedules, Schedule 2, Part 2	Delete "PROJECT K3 REQUIREMENTS" and insert "K3 GENERATING STATION APPROVED PLANS AND DOCUMENTS"	7.3.56. Remove references to Project WKN and consequential amendments
Contents, Schedules, Schedule 2	Delete PART 3 and PART 4	7.3.57. Remove references to Project WKN and consequential amendments
Articles		
Article 1	Delete "and (WKN Waste-to-Energy Facility)"	7.3.58. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Article 2(1) "commissioning"	Delete "each of" and "and Work No 2"	7.3.59. Remove references to Project WKN and consequential amendments
Article 2(1) "K3 Generating Station"	Delete definition and replace with: "means a generating station authorised by the Order as having a capacity of up to 75MW, which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 2 of Schedule 2;"	7.3.60. Insert date of commissioning of K3 and consequential amendments to removal of references to Project WKN
Article 2(1) "K3 Generating Station"	Delete "Part 4" and insert "Part 2"	7.3.61. Remove references to Project WKN and consequential amendments
Article 2 (1) "operational use"	Where "development" first occurs, replace with "developments", and delete "they are" and replace with "it is"	7.3.62. Remove references to Project WKN and consequential amendments
Article 2(1)	Delete this definition	7.3.63.

Provision	Examination Issue	Recommendations
"Project K3"		Remove references to Project WKN and consequential amendments
Article 2(1) "Project WKN"	Delete this definition	7.3.64. Remove references to Project WKN and consequential amendments
Article 2(1) "WKN Waste-to-Energy Facility"	Delete this definition	7.3.65. Remove references to Project WKN and consequential amendments
Article 2(3)	Delete ", save in respect of the parameters referred to in Requirement 14 (Detailed Design Approval) of Schedule 2"	7.3.66. Remove references to Project WKN and consequential amendments
Article 7(4)(a)	Delete "in the case of Project K3" and after "(Company number 09240062);" insert "or"	7.3.67. Remove references to Project WKN and consequential amendments
Article 7(4)(b)	Delete "in the case of Project WKN the transfer or grant is made to Kemsley North Limited (Company number 11699563); or"	7.3.68. Remove references to Project WKN and consequential amendments
Article 7(4)(c)	Delete.	7.3.69.

Provision	Examination Issue	Recommendations
		Remove references to Project WKN and consequential amendments
Article 16(a)	Delete "October 2019" and insert "August 2020"	7.3.70. Remove references to Project WKN and consequential amendments
Article 16(b)	Delete "9812-0057-006 " and replace with "9812-0071-02"; and delete "October 2019" and replace with "July 2020"	7.3.71. Remove references to Project WKN and consequential amendments
Article 16(c)	Replace "works plans" with "work plan"; and replace "drawing numbers 9812-0059-005 and 9812-0060-007 dated March 2020" with "drawing number 9812-0072-02 dated July 2020"	7.3.72. Remove references to Project WKN and consequential amendments
Articles 16 (g) to (k)	Delete sub-paragraphs (g) to (k) inclusive and (m) and add: "(g) the Design and Access Statement dated September 2019"	7.3.73. Remove references to Project WKN and consequential amendments
Article 16 (i)	Delete (i) (K3 travel plan) and replace with "the draft K3 travel plan – Highways England	7.3.74. To reflect consistency with

Provision	Examination Issue	Recommendations
	version (dated 7 August 2020)"	Alternative Recommended DCO
Schedules/Requirements		
Schedule 1	After "in the County of Kent-" delete "Project K3"	7.3.75. Remove references to Project WKN and consequential amendments
Schedule 1	After "water outfall for Work No 1." Delete everything up to and including "surface water outfall for Work No. 2"	7.3.76. Remove references to Project WKN and consequential amendments
Schedule 1	Delete "In connection with and in addition to Works Nos. 1, 2, 3, 4, 5, 6, and 7" and replace with "In connection with and in addition to Work No. 1"	7.3.77. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "approved Landscape Masterplan"	Delete "4" and insert" 2"	7.3.78. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "approved plans"	Delete "4" and insert" 2"	7.3.79. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Schedule 2, Paragraph 1 "permitted preliminary works"	Delete "works within Work Nos 4, 5 and 6," and delete ", subject to compliance with Requirement 20(1) of this Order,"	7.3.80. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "rail and water transportation strategy"	Delete "relevant"	7.3.81. Remove references to Project WKN and consequential amendments
Schedule 2, Paragraph 1 "WKN parameter plan"	Delete definition	7.3.82. Remove references to Project WKN and consequential amendments
Schedule 2, PART 1, title	Delete "GENERAL"	7.3.83. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 2 (R2)	Delete "Each of Project K3 and Project WKN"	7.3.84. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 3 (R3)	In both sub-paragraphs (1) and (2) delete "each of" and "and Work No 2"	7.3.85. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Schedule 2, paragraph 4 (R4)	In sub-paragraph (1) delete "either" and delete "or the WKN Waste-to-Energy Facility"	7.3.86. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 6 (R6)	Delete "and the WKN Waste-to-Energy Facility" and delete "for that project"	7.3.87. Remove references to Project WKN and consequential amendments
Schedule 2, PART 2, title	Delete "PART 2 PROJECT K3 REQUIREMENTS"	7.3.88. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 7 (R7(2))	Insert immediately before "paragraph (1)" "sub-"	7.3.89. Improve drafting
Schedule 2, paragraph 9 (R9)	Delete "Project K3", and delete "4" and insert "2"	7.3.90. Remove references to Project WKN and consequential amendments
Schedule 2, paragraph 12 (R12)	Delete "Project K3"	
Schedule 2, PART 3, title and Part 3	Delete "PART 1 PROJECT WKN REQUIREMENTS" and everything that follows to the end of Part 3	7.3.91. Remove references to Project WKN and consequential amendments

Provision	Examination Issue	Recommendations
Schedule 2, Part 4, title	Delete "4" and insert "2"	7.3.92. Remove references to Project WKN and consequential amendments
Explanatory Note		
1st paragraph	Delete ", and to construct, operate and maintain the WKN Waste-to-Energy Facility with a gross installed capacity of up to 42MW"	7.3.93. Remove references to Project WKN and consequential amendments
2nd paragraph	Delete "for" before "associated development"	7.3.94. Improve drafting

7.4. LEGAL AGREEMENTS AND OTHER CONSENTS

- 7.4.1. Other than the s106 agreement (Appendix B, Planning Statement [APP-082] discussed in Section 1.7 of this Report, there are no development consent obligations pursuant to the TCPA1990 or equivalent undertakings or agreements of which the SoS needs to be aware or to take into account in the decision.

7.5. NUISANCE

- 7.5.1. Regulation 5(2)(f) of the APFP Regulations requires that an application must be accompanied by...*"a statement whether the proposal engages one or more of the matters set out in section 79(1)...of the Environmental Protection Act 1990 and, if so, how the applicant proposes to mitigate or limit them"* This obligation has been discharged in the Statement of Statutory Nuisance (SSN) submitted with the application [APP-084].
- 7.5.2. The SSN reviews the scope of statutory nuisance potentially arising from the Proposed Development. It identifies the potentially engaged areas of statutory nuisance as follows:
- any premises in such a state as to be prejudicial to health or a nuisance (s79(1)(a) Environmental Protection Act 1990 (EPA1990);
 - fumes or gases emitted from premises (s79(1)(c) EPA1990);

- any dust, steam, smell or other effluvia arising on industrial, trade or business premises (s79(1)(d) EPA1990);
- any insects emanating from premises (s79(1)(fa) EPA1990);
- artificial light from premises (s79(1)(fb) EPA1990);
- noise emitted from premises or a vehicle, machinery or equipment in a street (s79(1)(g) and (ga) EPA1990); or
- any other matter declared by any enactment to be a statutory nuisance (s79(1)(h) EPA1990).

7.5.3. The DCO seeks defence against proceedings in respect of statutory nuisance through a combination of the effect of section 158 PA2008 and Article 13. Based on the conclusions of the ES and the Requirements proposed within the DCO, I am satisfied that approach is justified and appropriate, as with appropriate mitigation the development proposal would not have the potential to cause a statutory nuisance, during either its construction or operation, of the types identified under Section 79(1) of the Environmental Protection Act 1990.

7.6. CONCLUSIONS

7.6.1. I have considered all versions of the dDCO provided by the Applicant, from the submission version [APP-005] to the Applicant's Preferred DCO [REP7-003]. Excepting the issue of whether consent should be granted for Project WKN within the Proposed Development, the Applicant's Preferred DCO addressed outstanding matters save for the minor recommended changes contained in Table 2 of this Chapter. These are included in the Alternative Recommended DCO in Appendix E of this Report.

7.6.2. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this Report fully into account, if the SoS is minded to make the DCO, it is recommended to be made in the form set out in Appendix D.

7.6.3. However in the event that the SoS is not minded to follow the recommendation of the ExA but to grant consent for both the Project K3 and Project WKN the recommended form of DCO is set out in Appendix E.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

- 8.1.1. Before summarising my findings it would be useful to highlight a matter which the Secretary of State (SoS) may wish to pursue further, namely to seek confirmation from KCC that the formal adoption of changes to the Kent Minerals and Waste Local Plan (KMWLP) through the EPR has by now taken place, thus making the EPR changes formally part of the development plan.

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

K3 Proposed Development

- 8.2.1. Section 104(1) of the Planning Act 2008 has effect for the K3 Proposed Development contained within the Application
- 8.2.2. Having regard to s104 PA2008 (PA2008), I conclude that making the Recommended Development Consent Order (DCO) would be in accordance with National Policy Statements (NPSs) NPS EN-1 and NPS EN-3. It would also accord with the development plan and other relevant policy, all of which have been taken into account in this report. I have also had regard to the Local Impact Reports produced by Kent County Council and Swale Borough Council in reaching my conclusion.
- 8.2.3. Whilst the SoS is the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) (as amended), and will make the definitive assessment, I conclude that the K3 Proposed Development would not be likely to have significant effects on European sites, and I have taken this finding into account in reaching my recommendation.
- 8.2.4. I have had regard to the Public Sector Equality Duty (PSED) throughout the Examination and in producing this report. The K3 Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the PSED.
- 8.2.5. With regard to all other matters and representations received, I have found no important and relevant matters that would individually or collectively lead to a different recommendation to that below. Therefore there is nothing to indicate that the Application insofar as it concerns the K3 Proposed Development, should be decided other than in accordance with the relevant NPSs.
- 8.2.6. With the mitigation proposed through the Recommended DCO, there are no adverse impacts arising from the K3 Proposed Development that would outweigh its benefits.

- 8.2.7. For all of the above reasons, and in the light of my findings and conclusions on important and relevant matters set out in the report, I recommend that the SoS for Business, Energy and Industrial Strategy makes The Wheelabrator Kemsley K3 Generating Station Order in the form recommended at Appendix D to this Report.

WKN Proposed Development

- 8.2.8. I have found that the need for the WKN Proposed Development is not established through either NPS EN-1 or EN-3, albeit that generation of up to 42MW of electricity would be in accordance with those national policies and of some benefit. There would be some positive economic advantages through job creation during the construction and operational phases of the facility.
- 8.2.9. However with no guaranteed heat offtake the proposed incineration would not qualify as Good Quality CHP and the prospect of its becoming a viable CHP facility is uncertain given there is no immediate sustainable source of steam/heat to local customers, unlike Project K3. This is an important and relevant factor to weigh in the balance, also considering the need to transition to a low-carbon electricity market, underlined by the UNFCCC Paris Agreement and the June 2020 Progress Report which indicates that plants without CHP should not be regarded as supplying renewable energy.
- 8.2.10. In addition, the Applicant's assessment of fuel availability and capacity for its treatment, compares unfavourably with the WPA's own assessments of need and capacity that underpin its strategy in revising targets within the KMWLP so to ensure that new facilities demonstrate the management of the waste clearly moves further up the waste hierarchy. Therefore the WKN Proposed Development would be in conflict with key policies of KMWLP including Policy CSW2, Policy CSW4, Policy CSW6 and Policy CSW7.
- 8.2.11. Having regard to other benefits of the WKN Proposed Development set out by the Applicant that may comply with other provisions of the development plan including both the Swale Local Plan and KMWLP, my conclusion is that the provision of too much waste capacity in conflict with the waste hierarchy, represented by the WKN Proposed Development, would result in conflict with the development plan as a whole, the adverse impacts arising from which I consider to be serious and which would clearly outweigh the benefits of the facility.
- 8.2.12. It would also be in conflict with National Planning Policy for Waste (NPPW) which expects applicants to demonstrate that waste disposal facilities not in line with the development plan, would not undermine its objectives through prejudicing movement up the waste hierarchy. The WKN Proposed Development is a non-NSIP proposal and where the NPSs do not apply as such, and the more recent NPPW that sets out detailed waste planning policies should in my view carry considerable weight.
- 8.2.13. I have had regard to NPS EN-1 at paragraph 5.2, that CO2 emissions are not reasons to place more restrictions on projects in the planning policy

framework than are set out in the energy NPSs. However as I have found that there is no need for the WKN Proposed Development, the GHG emissions would be an additional harm that would result, whether or not a conclusion could have been reached as to any net carbon benefit that would result.

- 8.2.14. The identified harms in relation to the WKN Proposed Development would outweigh its benefits from the provision of energy and by the other benefits of the application as summarised above. Therefore for the reasons set out in the preceding chapters of this Report and summarised above, I conclude that the WKN Proposed Development should not proceed at this time, and that development consent should not be granted therefor.
- 8.2.15. However, if the SoS concludes that development consent should be granted for both Project K3 and Project WKN the ExA has examined the form of the Applicant's Preferred DCO [REP7-003] and recommended minor changes thereto in the form of Appendix E to this Report.

Other matters

- 8.2.16. As noted in Section 7 of this Report, in ExQ4.13.1 [PD-015] I made clear to all Interested Parties (IPs) my view that it would be unlikely on the evidence then available, that any recommendation to grant consent for the WKN Proposed Development would not also justify consent for the K3 Proposed Development, but if any IP considered consent should be granted for the WKN Proposed Development only, they were requested to clarify their position and explain their reasoning.
- 8.2.17. I received no representations that advocated consent for the WKN Proposed Development only and have not considered consent for WKN only as an option.
- 8.2.18. Reference is made in Section 1.4.31 of this Report to submissions that were made by the Applicant received by the Planning Inspectorate at 1655hrs on the last day of the Examination, and my letter sent to the Applicant dated 21 August 2020 [PD-019] declining to accept these late submissions, for the reasons given therein. I consider that no new evidence was disclosed as a result of those submissions, however the matter is raised for the SoS to consider if necessary.

8.3. RECOMMENDATION

- 8.3.1. For all of the above reasons, and in the light of its findings and conclusions on important and relevant matters set out in this Report, the ExA, under the Planning Act 2008 (as amended), recommends that the Secretary of State for Business, Energy and Industrial Strategy makes The Wheelabrator Kemsley K3 Generating Station Order in the form recommended at Appendix D to this Report.
- 8.3.2. However, if the SoS concludes that development consent should be granted for both Project K3 and Project WKN the ExA has examined the

form of the Applicant's Preferred DCO [REP7-003] and recommended minor changes thereto in the form of Appendix E to this Report.

APPENDICES

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APPENDIX A: THE EXAMINATION

Examination Timetable as held

Item	Matters	Due Dates
1	Preliminary Meeting	Wednesday 19 February 2020 (morning)
2	Issue Specific Hearing 1 (ISH1) ISH1 on the draft Development Consent Order (dDCO)	Wednesday 19 February 2020 (afternoon)
3	Issue by ExA of: • Examination timetable • ExA's Written Questions (ExQ1)	As soon as practicable following the PM
4	Deadline 1 (D1) Deadline for receipt of: • comments on any updates to application documents submitted by the Applicant before or at the PM; • comments on any additional submissions received before or at the PM; • comments on Relevant Representations (RR); • summaries of all RRs exceeding 1500 words; • Written Representations (WRs) by all Interested Parties (IP); • summaries of all WRs exceeding 1500 words; • Statements of Common Ground (SoCGs) requested by ExA; • Local Impact Reports (LIRs) from any Local Authorities; • response to any further information requested by the ExA for this deadline; • post-hearing submissions including written submissions of oral cases; • notification by Statutory Parties of their wish to be considered as an IP by the ExA; • notification of wish to speak at any subsequent Issue Specific Hearings (ISH); • notification of wish to speak at an Open Floor Hearing (OFH);	Monday 2 March 2020 (midday)

	• provision of suggested locations and justifications for site inspections for consideration by the ExA; • notification of wish to attend an Accompanied Site Inspection (ASI); and • notification of wish to have future correspondence received electronically.	
5	Deadline 2 (D2) Deadline for receipt of: • comments on WRs; • comments on any SoCG; • comments on any LIRs • responses to ExQ1; • Applicant's revised dDCO; • comments on any additional information/submissions received by D1; and • responses to any further information requested by the ExA for this deadline.	Wednesday 18 March 2020
	Added – publication of ExQ1a	Thursday 9 April 2020
6	Accompanied Site Inspection 1 (ASI1) Date reserved to hold an ASI1 (if required)	Wednesday 15 April 2020
7	Open Floor Hearing 1 (OFH1) Date reserved to hold an OFH (if required)	Wednesday 15 April 2020 (evening)
10	Deadline 3 (D3) Deadline for receipt by the ExA of: • post-hearing submissions including written submissions of oral cases; • comments on responses to ExQ1; • comments on Applicant's revised dDCO; • comments on any additional information/submissions received by D2; and • responses to any further information requested by the ExA for this deadline.	Wednesday 22 April 2020
11	Issue by ExA of: • Further Written Questions (ExQ2) (if required);	Wednesday 6 May 2020
12	Deadline 4 (D4) Deadline for receipt by the ExA of:	Wednesday 20 May 2020

	• responses to ExQ2 (if required); • Applicant's revised dDCO; • Any revised/updated SoCGs; • comments on any additional information/submissions received by D3; and • responses to any further information requested by the ExA for this deadline.	
	ExQ3 added	Wednesday 3 June
16	Deadline 5 (D5) Deadline for receipt by the ExA of: • Responses to ExQ3 if required • comments on responses to ExQ2 (if required); • comments on Applicant's revised/updated dDCO; • comments on any revised/updated SoCGs; • comments on any additional information/submissions received by D4; and • responses to any further information requested by the ExA for this deadline.	Wednesday 19 June 2020
	Deadline 6 Comments on ExQ3 etc.	29 June
17	Publication by ExA of: • ExQ4 if needed • Consultation on the ExA's preferred DCO (if required); and • Report on the Implications for European Sites (RIES) (if required).	Wednesday 15 July 2020
18	Deadline 7 (D7) Deadline for receipt by the ExA of: • Responses to ExQ4, if required • comments on the ExA's preferred DCO (if required); • comments on the ExA's RIES (if required); • Applicant's Final preferred DCO in Statutory Instrument (SI) template validation report; • Any revised/updated SoCGs; • comments on any additional information/submissions received by D5; and	Wednesday 5 August 2020

	• responses to any further information requested by the ExA for this deadline.	
19	Deadline 8 (D8) Deadline for receipt by the ExA of: • comments on any revised/ updated SoCG; • comments on the Applicant's Final preferred DCO in the Statutory Instrument (SI) template validation report; • comments on any additional information/ submissions received by D6; and • responses to any further information requested by the ExA for this deadline.	Wednesday 12 August 2020
20	The ExA is under a duty to complete the Examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.	Wednesday 19 August 2020

Alterations to the Exam Timetable

When	Status	What	Date of original event
26 March 2020	Added	A date was added for the publication of ExQ1a of 9 April 2020	
	Postponed	Issue specific Hearing 2 (ISH2) ISH2 into Environmental issues, including traffic and transport	16 April 2020
	Postponed	Issue specific Hearing 3 (ISH3) ISH3 on the dDCO	17 April 2020
22 May 2020	Cancelled	Accompanied Site inspection 2 (ASI2)	16 June 2020
	Cancelled	Issue Specific Hearing 4 (ISH4)	17 June 2020
	Cancelled	Issue Specific Hearing 5 (ISH5)	18 June 2020
	Added	A date for the publication of ExQ3 on 3 June 2020	
	Altered	Deadline 5: was moved to 19 th June 2020	24 June 2020
	Added	Deadline 5: added 'Responses to ExQ3 if required'	19 June 2020

	Added	A date for Deadline 6 Comments on ExQ3 etc was added on 29 June 2020	
	Added	Text was added to allow publication by ExA of ExQ4 on 15 th July 2020	
	Added	Text was added to Deadline 7: to allow responses to ExQ4 on 5 August 2020	

APPENDIX B: EXAMINATION LIBRARY

Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility

Examination Library

Updated – 18 August 2020

This Examination Library relates to the Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

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

**EN010083 – Wheelabrator Kemsley Generating Station (K3) and
Wheelabrator Kemsley North (WKN) Waste to Energy Facility**

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Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination including responses to Rule 6 and Rule 8 letters	AS-xxx
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Deadline 3:	REP3-xxx

Deadline 4:	REP4-xxx
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Deadline 6:	REP6-xxx
Deadline 7:	REP7-xxx
Deadline 8:	REP8-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

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AS-013	Marine Management Organisation Additional Submission accepted at the discretion of the Examining Authority – 14 February 2020
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	• Notification of wish to speak at any subsequent Issue Specific Hearings (ISH) • Notification of wish to speak at an Open Floor Hearing (OFH) • Provision of suggested locations and justifications for site inspections for consideration by the ExA • Notification of wish to attend an Accompanied Site Inspection (ASI) • Notification of wish to have future correspondence received electronically
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REP1-002	WTI/EFW Holdings Ltd Deadline 1 Submission - Application Guide
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REP1-011	Kent County Council Deadline 1 Submission - Local Impact Report
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REP1-014	Marine Management Organisation Deadline 1 Submission - Written Representation and Comments on Relevant Representation
REP1-015	Natural England Deadline 1 Submission - Written Representation

REP1-016	South East Waste Planning Advisory Group Deadline 1 Submission - Written Representation - Submission received by a Non-Interested Party and accepted at the discretion of the Examining Authority
REP1-017	John C Twiseldon Deadline 1 Submission - Written Representation - Submission received by a Non-Interested Party and accepted at the discretion of the Examining Authority
REP1-018	Minster-on-Sea Parish Council Deadline 1 Submission - Late Submission accepted at the discretion of the Examining Authority
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REP2-003	WTI/EFW Holdings Ltd Deadline 2 Submission - Application Guide - Deadline 2 Version
REP2-004	WTI/EFW Holdings Ltd Deadline 2 Submission - Explanatory Memorandum (Clean)
REP2-005	WTI/EFW Holdings Ltd Deadline 2 Submission - Explanatory Memorandum (Tracked)
REP2-006	WTI/EFW Holdings Ltd Deadline 2 Submission - Draft Development Consent Order (DCO) - Clean
REP2-007	WTI/EFW Holdings Ltd Deadline 2 Submission - Draft Development Consent Order (DCO) - Tracked
REP2-008	WTI/EFW Holdings Ltd Deadline 2 Submission - Table of Amendments to the Development Consent Order (DCO)
REP2-009	WTI/EFW Holdings Ltd Deadline 2 Submission - Applicant's Response to Examining Authority's Written Questions (EXQ1)

REP2-010	WTI/EFW Holdings Ltd Deadline 2 Submission - Applicant's Response to Local Impact Reports
REP2-011	WTI/EFW Holdings Ltd Deadline 2 Submission - Applicants Comments on Written Representations
REP2-012	WTI/EFW Holdings Ltd Deadline 2 Submission - Summary of Applicant's Structure and Standing (Clean)
REP2-013	WTI/EFW Holdings Ltd Deadline 2 Submission - Summary of Applicant's Structure and Standing (Tracked)
REP2-014	WTI/EFW Holdings Ltd Deadline 2 Submission - Further Submissions on ISH1 DCO Questions
REP2-015	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 2
REP2-016	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 3 Methodology-Clean
REP2-017	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 3 Methodology-Tracked
REP2-018	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 4 Transport-Clean
REP2-019	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 4 Transport-Tracked
REP2-020	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 5 Air Quality-Clean
REP2-021	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 5 Air Quality-Tracked
REP2-022	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 8 Human Health-Clean
REP2-023	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 8 Human Health-Tracked
REP2-024	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 11 Ecology-Clean
REP2-025	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 11 Ecology-Tracked
REP2-026	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 12 LVIA-Clean
REP2-027	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 12 LVIA-Tracked
REP2-028	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 14 Summary Tables- Clean
REP2-029	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Chapter 14 Summary Tables-Tracked
REP2-030	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.2-Clean

REP2-031	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.2-Tracked
REP2-032	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.4 Ecology-clean
REP2-033	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 5.4 Ecology-Tracked
REP2-034	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 11.2 Habitats Regulations Assessment Report -Clean
REP2-035	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 11.2 Habitats Regulations Assessment Report -Tracked
REP2-036	WTI/EFW Holdings Ltd Deadline 2 Submission - ES Appendix 11.7 MMO Licence
REP2-037	WTI/EFW Holdings Ltd Deadline 2 Submission - K3 Works Plan
REP2-038	WTI/EFW Holdings Ltd Deadline 2 Submission - WKN Works Plan
REP2-039	WTI/EFW Holdings Ltd Deadline 2 Submission - WKN Parameter Plan
REP2-040	Environment Agency Deadline 2 Submission - Responses to Examining Authority's First Written Questions
REP2-041	Marine Management Organisation Deadline 2 Submission - Response to Deadline 2
REP2-042	Natural England Deadline 2 Submission - Responses to Examining Authority's First Written Questions
REP2-043	South East Waste Planning Advisory Group Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Response to Examining Authority's First Written Questions
REP2-044	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Response to Examining Authority's First Written Questions
REP2-045	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 1 Kent Minerals and Waste Local Plan - relevant policy extracts
REP2-046	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 2 Early Partial Review of the KMWLP - Pre Submission Draft 2018 relevant policy extracts

REP2-047	Kent County Council Deadline 2 Submission - Late submission accepted at the discretion of the Examining Authority - Appendix 3 Bearing Fruits 2031 The Swale Borough Local Plan - relevant policy extracts
REP2-048	Kent County Council Deadline 2 Submission - Late Submission accepted at the discretion of the Examining Authority - Submission regarding IBA Facility
Deadline 3 – 22 April 2020 Deadline for receipt by the ExA of: • Post-hearing submissions including written submissions of oral cases • Comments on responses to ExQ1 • Comments on Applicant's revised draft Development Consent Order • Comments on any additional information/submission received by D2 • Response to any further information requested by the ExA for this deadline • Any updated documents/submissions	
REP3-001	WTI/EFW Holdings Ltd Deadline 3 Submission - Cover Letter
REP3-002	WTI/EFW Holdings Ltd Deadline 3 Submission - Application Guide - Deadline 3 Version
REP3-003	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Responses to Deadline 2 Submissions
REP3-004	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to Examining Authority's Written Questions (ExQ1A)
REP3-005	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.2 & 1.8 – Local Plan Policies
REP3-006	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.5 - Surrey 2 Hour Drive Time Map
REP3-007	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.6 – Surrey Waste Plan 2008
REP3-008	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.13a – UK Statistics on Waste – 19th March 2020

REP3-009	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.13b – Tilbury Green Section 36 Consent – 26th March 2020
REP3-010	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.15a – Our Waste, Our Resources: A Strategy For England 2018
REP3-011	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.15b - Our Waste, Our Resources - A Strategy For England 2018 – Evidence Annex
REP3-012	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.32 – Tolvik Review 2017 – UK Residual Waste – 2030 Market Review
REP3-013	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.34 – Riverside Energy Park – Supplementary Report to the Project and its Benefits Report
REP3-014	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.46a – WTI C&I Review and RDF Review - Hendeca
REP3-015	WTI/EFW Holdings Ltd Deadline 3 Submission - Applicant's Response to the Examining Authority's Further Written Questions (ExQ1A) Appendix 1.46b – WTI LACW Review - Hendeca
REP3-016	Environment Agency Deadline 3 Submission - Comments on ExQ1 responses, additional information, the Applicants revised dDCO and responses to ExQ2
REP3-017	Marine Management Organisation Deadline 3 Submission - Comments on responses to ExQ1 and Comments on Applicant's revised draft Development Consent Order
REP3-018	Natural England Deadline 3 Submission - Written Representation
REP3-019	South East Waste Planning Advisory Group Deadline 3 Submission - Response to the Examining Authority's Further Written Questions and requests for information (ExQ1A)
REP3-020	Kent County Council Deadline 3 Submission - Late Submission accepted at the discretion of the Examining Authority

Deadline 4 – 20 May 2020

Deadline for receipt by the ExA of:

- Responses to ExQ2 (if required)
- Applicant's revised dDCO
- Any revised/updated SoCGs
- Comments on any additional information/submissions received by D3
- Responses to any further information requested by the ExA for this deadline

REP4-001	WTI/EFW Holdings Ltd Deadline 4 Submission - Cover Letter
REP4-002	WTI/EFW Holdings Ltd Deadline 4 Submission - Application Guide - Deadline 4 Version
REP4-003	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's revised Draft Development Consent Order - Clean
REP4-004	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's revised Draft Development Consent Order - Tracked
REP4-005	WTI/EFW Holdings Ltd Deadline 4 Submission - Table of Amendments to the Development Consent Order (DCO)
REP4-006	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to Examining Authority's Second Written Questions (ExQ2)
REP4-007	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to the Examining Authority's Second Written Questions (ExQ2) - Appendix 1 – Environmental Permit for K3
REP4-008	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to Submissions received at Deadline 3
REP4-009	WTI/EFW Holdings Ltd Deadline 4 Submission - Applicant's Response to Submissions at Deadline 3 - Appendix 1 - Digest of Waste and Resources Statistics 2018, DEFRA
REP4-010	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 – ES Volume 2 Appendix 11.2- Habitats Regulation Assessment Report -Clean
REP4-011	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 11.2- Habitats Regulation Assessment Report - Tracked
REP4-012	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 11.2- Habitats Regulation Assessment Report Matrices - also included in REP4-010 and REP4-011

REP4-013	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 2.1- Draft Construction Environmental Management Plan (CEMP) for WKN - Clean
REP4-014	WTI/EFW Holdings Ltd Deadline 4 Submission - Document 3.1 - ES Volume 2 Appendix 2.1- Draft Construction Environmental Management Plan (CEMP) for WKN - Tracked
REP4-015	Kent County Council Deadline 4 Submission - Response to the Further Written Questions published on 9 April 2020
REP4-016	Kent County Council Deadline 4 Submission - Appendix 1 Kent EPR and MSP Inspector Report
REP4-017	Kent County Council Deadline 4 Submission - Appendix 2 Status of WPAs counted within Study Area with regards to net self sufficiency
REP4-018	Kent County Council Deadline 4 Submission - Appendix 3 WPAs counted within Study Area for DCOs
REP4-019	Kent County Council Deadline 4 Submission - Appendix 4 KMWLP EPR Sensitivity on Recovery Requirement 08 10 2019 v5
REP4-020	Kent County Council Deadline 4 Submission - Appendix 5 BPP Consulting Kent WNA 2018 Residual NHW Management Needs Sept 2018 Update v1.4 05.09.2018
REP4-021	Kent County Council Deadline 4 Submission - Appendix 6 Transport Statement
REP4-022	Kent County Council Deadline 4 Submission - Appendix 7 JNY10115-04a Transport Technical Note April 2020
REP4-023	Medway Council Deadline 4 Submission - Response to Deadline 4
REP4-024	Minster-on-Sea Parish Council Deadline 4 Submission - Responses to ExQ2
REP4-025	Swale Borough Council Deadline 4 Submission - Response to Deadline 4
REP4-026	Swale Borough Council Deadline 4 Submission - Appendix 1 - Climate & Ecological Emergency Action Plan
REP4-027	Environment Agency Deadline 4 Submission - Responses to ExQ2
REP4-028	Marine Management Organisation Deadline 4 Submission - Responses to ExQ2 and comments on Written Representations
REP4-029	Highways England Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ2

REP4-030	Highways England Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Summary of on-going discussions involving applicant, Highways England and Kent County Highways
REP4-031	Natural England Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ2
REP4-032	South East Waste Planning Advisory Group Deadline 4 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ2
Deadline 5 – 19 June 2020 Deadline for receipt by the ExA of: • Responses to ExQ3 • Comments on responses to ExQ2 • Comments on Applicant's revised/updated dDCO • Comments on any revised/updated SoCGs • Comments on any additional information/submissions received by D4 • Responses to any further information requested by the ExA for this deadline	
REP5-001	WTI/EFW Holdings Ltd Deadline 5 Submission - Cover Letter
REP5-002	WTI/EFW Holdings Ltd Deadline 5 Submission - Application Guide - Deadline 5 Version
REP5-003	WTI/EFW Holdings Ltd Deadline 5 Submission - 3.1 – ES Volume 2 Appendix 4.2 - Draft Construction Traffic Management Plan (CTMP) for WKN - Clean
REP5-004	WTI/EFW Holdings Ltd Deadline 5 Submission - 3.1 – ES Volume 2 Appendix 4.2 - Draft Construction Traffic Management Plan (CTMP) for WKN - Tracked
REP5-005	WTI/EFW Holdings Ltd Deadline 5 Submission - 4.10 - Draft WKN Ecological Mitigation and Management Plan
REP5-006	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.1 Draft Statement of Common Ground between the Applicant and Swale Borough Council
REP5-007	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.2 Statement of Common Ground between the Applicant and the Environment Agency
REP5-008	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Clean
REP5-009	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Tracked

REP5-010	WTI/EFW Holdings Ltd Deadline 5 Submission - 8.6 Statement of Commonality
REP5-011	WTI/EFW Holdings Ltd Deadline 5 Submission – 13.2 Applicant's Response to Examining Authority's Further Written Questions (ExQ3)
REP5-012	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix A – Energy NPS Judicial Review Statement of Facts and Grounds
REP5-013	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix B – Riverside Energy Park Secretary of Statement Decision
REP5-014	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix C – Drax Judgement
REP5-015	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix D – Carbon Burden from Waste Transportation
REP5-016	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix E – Ferrybridge Multifuel 2 (FM2) Recommendation Report to Secretary of State
REP5-017	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix F – Ferrybridge Multifuel 2 (FM2) Secretary of State Decision
REP5-018	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix G – North London Heat and Power Project (NLHPP) Recommendation Report to Secretary of State
REP5-019	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix H - North London Heat and Power Project (NLHPP) Secretary of State Decision
REP5-020	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ3) Appendix I - SW/18/503317 Committee Report

REP5-021	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.3 Site Photographs and Drone footage
REP5-022	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.3 Applicant's Response to Submissions at Deadline 4
REP5-023	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.3 Applicant's Response to Submissions at Deadline 4 Appendix A - Tolvik UK Energy from Waste Statistics 2019
REP5-024	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.5 Drone video 1
REP5-025	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.6 Drone video 2
REP5-026	WTI/EFW Holdings Ltd Deadline 5 Submission - 13.7 Drone video 3
REP5-027	Swale Borough Council Deadline 5 Submission - Response to ExQ3
REP5-028	Environment Agency Deadline 5 Submission - Response to Deadline 5
REP5-029	Highways England Deadline 5 Submission - Response to ExQ3
REP5-030	Marine Management Organisation Deadline 5 Submission - Response to ExQ3, Comments on Written Representations and Response to Applicant
REP5-031	Natural England Deadline 5 Submission - Response to ExQ3
REP5-032	Royal Mail Group Limited Deadline 5 Submission - Response to Deadline 5
REP5-033	Royal Mail Group Limited Deadline 5 Submission - Draft Construction Traffic Management Plan - Clean
REP5-034	Royal Mail Group Limited Deadline 5 Submission - Draft Construction Traffic Management Plan - Tracked
REP5-035	South East Waste Planning Advisory Group Deadline 5 Submission - Responses to any further information requested by the ExA for this deadline
REP5-036	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Response to ExQ3
REP5-037	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Highways Response to Draft Development Consent Order

REP5-038	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Comments on the Applicants Response to the Examining Authority's Written Questions (ExQ1A)
REP5-039	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 1 Brookhurst Wood EfW Appeal Decision
REP5-040	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 2 WTI Representation
REP5-041	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 3 Junction Modelling
REP5-042	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Appendix 1 - RAG Analysis of 1,000tonne plus wastes types that fall under HIC Waste Going to Landfill within Applicant Chosen Study Area (WDI 2018)
REP5-043	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - Waste Planning article: Covid-19: Recycling rates and quality surge for Horsham
REP5-044	Kent County Council Deadline 5 Submission - Late Submission accepted at the discretion of the Examining Authority - BEIS Renewable Energy Statistics, Data Sources and Methodologies (July 2018)
Deadline 6 – 29 June 2020 Deadline for receipt by the ExA of: • Comments on responses to ExQ3 • Comments on Applicant's revised/updated dDCO • Comments on any revised/updated SoCGs • Comments on any additional information/submissions received by D5 • Responses to any further information requested by the ExA for this deadline	
REP6-001	WTI/EFW Holdings Ltd Deadline 6 Submission - Cover Letter
REP6-002	WTI/EFW Holdings Ltd Deadline 6 Submission - Application Guide - Deadline 6 Version

REP6-003	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.1 Draft Development Consent Order (DCO) - Clean
REP6-004	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.1 Draft Development Consent Order (DCO) - Tracked
REP6-005	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.2 Explanatory Memorandum - Clean
REP6-006	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.2 Explanatory Memorandum - Tracked
REP6-007	WTI/EFW Holdings Ltd Deadline 6 Submission - 2.7 Table of Amendments to the Development Consent Order (DCO)
REP6-008	WTI/EFW Holdings Ltd Deadline 6 Submission - 3.1 - ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Clean
REP6-009	WTI/EFW Holdings Ltd Deadline 6 Submission - 3.1 – ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Tracked
REP6-010	WTI/EFW Holdings Ltd Deadline 6 Submission - 14.2 Applicant's Response to Submissions at Deadline 5
REP6-011	Environment Agency Deadline 6 Submission - Response to Deadline 6
REP6-012	Marine Management Organisation Deadline 6 Submission - Comments on responses to ExQ3 and Comments on any revised/updated Statements of Communal Ground
Deadline 7 – 5 August 2020 Deadline for receipt by the ExA of: • Responses to ExQ4 (if required) • Comments on the ExA's preferred DCO (if required) • Comments on the ExA's RIES (if required) • Applicant's Final preferred DCO in Statutory Instrument (SI) template validation report • Any revised/updated SoCGs • Comments on any additional information/submissions received by D6 • Responses to any further information requested by the ExA for this deadline	
REP7-001	WTI/EFW Holdings Ltd Deadline 7 Submission - Cover Letter

REP7-002	WTI/EFW Holdings Ltd Deadline 7 Submission - Application Guide - Deadline 7 Version
REP7-003	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.1 Draft Development Consent Order (DCO) - Clean
REP7-004	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.1 Draft Development Consent Order (DCO) - Tracked
REP7-005	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.1 Draft Development Consent Order (DCO) - Validation Report
REP7-006	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.2 Explanatory Memorandum - Clean
REP7-007	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.2 Explanatory Memorandum - Tracked
REP7-008	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.7 Table of Amendments to the Development Consent Order (DCO)
REP7-009	WTI/EFW Holdings Ltd Deadline 7 Submission - 2.8 K3 Book of Reference
REP7-010	WTI/EFW Holdings Ltd Deadline 7 Submission - Document 3.1 - ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Clean
REP7-011	WTI/EFW Holdings Ltd Deadline 7 Submission - Document 3.1 - ES Volume 2 Appendix 11.2: Habitats Regulation Assessment Report - Tracked
REP7-012	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.2 Statement of Common Ground between the Applicant and the Environment Agency - Clean
REP7-013	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.2 Statement of Common Ground between the Applicant and the Environment Agency - Tracked
REP7-014	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Clean
REP7-015	WTI/EFW Holdings Ltd Deadline 7 Submission - 8.3 Statement of Common Ground between the Applicant and Natural England - Tracked
REP7-016	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to Examining Authority's Further Written Questions (ExQ4)
REP7-017	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix A - Kemsley K3 CHP R1 Supporting Information April 2019

REP7-018	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix B - FM1 R1 Accreditation 2018 and FM1 R1 Revalidation 2019
REP7-019	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix C - WKN Construction HGV Profile
REP7-020	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix D - FM1 Site Location Plan
REP7-021	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.2 Applicant's Response to the Examining Authority's Further Written Questions (ExQ4) Appendix E - Norfolk County Council Cabinet Report - 6th July 2020
REP7-022	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.3 Applicant's Response to Submissions at Deadline 6
REP7-023	WTI/EFW Holdings Ltd Deadline 7 Submission - 15.4 Applicant's Comments on the ExA's preferred DCO
REP7-024	WTI/EFW Holdings Ltd Deadline 7 Submission - ExA's K3 Alternative DCO K3 Works Plan
REP7-025	WTI/EFW Holdings Ltd Deadline 7 Submission - ExA's K3 Alternative DCO Land Plan
REP7-026	Kent County Council Deadline 7 Submission - Responses to ExQ4
REP7-027	Kent County Council Deadline 7 Submission - Response to Applicant's Response to ExAQ3
REP7-028	Kent County Council Deadline 7 Submission - Additional Submission at Deadline 7
REP7-029	Kent County Council Deadline 7 Submission - Appendix 1 CCC Progress Report to Parliament June 2020
REP7-030	Kent County Council Deadline 7 Submission - Appendix 2 Waterbeach EfW Appeal SoS Refusal June 2020
REP7-031	Environment Agency Deadline 7 Submission - Response to Deadline 7
REP7-032	Highways England Deadline 7 Submission - Responses to ExQ4
REP7-033	Marine Management Organisation Deadline 7 Submission - Response to Deadline 7

REP7-034	Natural England Deadline 7 Submission - Responses to ExQ4
REP7-035	Natural England Deadline 7 Submission - Comments on the ExA's RIES
REP7-036	South East Waste Planning Advisory Group Deadline 7 Submission - Responses to ExQ4
REP7-037	Swale Borough Council Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority - Responses to ExQ4
REP7-038	Kent County Council Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority - Comments on the draft DCO (REP6-003)
REP7-039	Kent County Council Deadline 7 Submission - Late Submission accepted at the discretion of the Examining Authority - Comments on K3 Planning Permission - Planning Conditions Tracker
Deadline 8 – 12 August 2020 Deadline for receipt by the ExA of: • Comments on responses to ExQ4 (if required) • Comments on any revised/updated SoCG • Comments on the Applicant's Final preferred DCO in the Statutory Instrument (SI) template validation report • Comments on any additional information/submissions received by D7 • Responses to any further information requested by the ExA for this deadline	
REP8-001	WTI/EFW Holdings Ltd Deadline 8 Submission - Cover Letter
REP8-002	WTI/EFW Holdings Ltd Deadline 8 Submission - Application Guide - Deadline 8 Version
REP8-003	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.11 Draft Construction Traffic Management Plan - WKN - Applicant - Clean
REP8-004	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.11 Draft Construction Traffic Management Plan - WKN - Applicant - Tracked
REP8-005	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.12 Draft Construction Traffic Management Plan - WKN - Highways England - Clean
REP8-006	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.12 Draft Construction Traffic Management Plan - WKN - Highways England - Tracked
REP8-007	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.13 Draft Travel Plan - K3 - Applicant
REP8-008	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.14 Draft Travel Plan - K3 - Highways England

REP8-009	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.15 Draft Travel Plan - WKN - Applicant - Clean
REP8-010	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.15 Draft Travel Plan - WKN - Applicant - Tracked
REP8-011	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.16 Draft Travel Plan - WKN - Highways England - Clean
REP8-012	WTI/EFW Holdings Ltd Deadline 8 Submission - 4.16 Draft Travel Plan - WKN - Highways England - Tracked
REP8-013	WTI/EFW Holdings Ltd Deadline 8 Submission - 8.4 Statement of Common Ground between the Applicant and Kent County Council
REP8-014	WTI/EFW Holdings Ltd Deadline 8 Submission - 8.6 Statement of Commonality
REP8-015	WTI/EFW Holdings Ltd Deadline 8 Submission - 16.2 Applicant's Response to Submissions at Deadline 7
REP8-016	Kent County Council Deadline 8 Submission - Closing Statement
REP8-017	Environment Agency Deadline 8 Submission - Response to Deadline 8
REP8-018	Marine Management Organisation Deadline 8 Submission - Comments on Deadline 7 Submissions
Other Documents	
OD-001	WTI/EFW Holdings Ltd Section 56 Notice
OD-002	WTI/EFW Holdings Ltd Certificates of compliance

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
µg.m-3	Microgram(s) per cubic metre of air
2009 Act	Marine and Coastal Access Act 2009
2011 Regulations	Waste (England and Wales) Regulations 2011
2018 Revised WFD	revised legislative framework on waste as set out in Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste
2019 HRAR	Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility DCO: Habitats Regulations Assessment Report, together with screening and integrity matrices
25 YEP	25 Year Environment Plan
AA	Appropriate Assessment
AD	Anaerobic Digestion
AEoI	Adverse effects on (the) integrity
AHLV	Area of High Landscape Value
Alternative Recommended DCO	DCO as recommended to be made by the SoS should consent be granted for the K3 Proposed Development and WKN Proposed Development
AMR(s)	Annual Monitoring Report(s)
AN10	Planning Inspectorate Advice Note 10
AOD	Above Ordnance Datum
APFP Regulations	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
APIS	UK Air Pollution Information System
Applicant	WTI/EFW Holdings Ltd
Application	Application made by the Applicant under section 37 of the PA2008 which was received in full by the Planning Inspectorate on 11 September 2019
Application Site	K3 site and WKN site within the DCO boundary on the Site Location Plan (unless context otherwise requires)
AQD	Air Quality Directive
AQMA(s)	Air Quality Management Area(s)
AQP2017	revised draft 'Air Quality Plan for NO ₂ ' published by DEFRA on 26 July 2017
AQS	Air Quality Strategy
ASI	Accompanied Site Inspection

BAT	Best Available Technique
Beddington ERF	Beddington Energy Recovery Facility
BEIS	(Department for) Business, Energy and Industrial Strategy
Birds Directive	Council Directive [2009/147/EC] on the Conservation of Wild Birds
BMW	Biodegradable municipal waste
BoR	Book of Reference
BREEAM	Building Research Establishment Environmental Assessment Method
BREF	BAT reference document(s)
C&I	Commercial and Industrial
C2/13	DfT Circular 02/2013
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
Carbon Plan	2011 Carbon Plan
CCA2008	Climate Change Act 2008
CCGT	Combined Cycle Gas Turbine
CCR	Carbon Capture Readiness
CCS	Carbon Capture and Storage
CCUS	Carbon Capture, Utilisation and Storage
CEMP	Construction Environmental Management Plan
CEMS	Continuous Emissions Monitoring System
CEP	Circular Economy Package
CGS	Clean Growth Strategy for the UK, 2017
CHP	Combined Heat and Power
CHPQA	CHP Quality Assurance
CIL	Community Infrastructure Levy
CL	Critical level
CO ₂	Carbon dioxide
Consented K3 Facility	Completed K3 facility commissioned on 16 July 2020 pursuant to planning permission Ref SW/19/501345 granted on 14 June 2019 by KCC pursuant to section 73 TCPA1990 permitting the construction and operation of a generating station having a capacity of up to 49.9MW
CoPA	Control of Pollution Act 1974
CRRNH	Capacity Requirement for the Management of Residual Non-Hazardous Waste
CTMP(s)	Construction Traffic Management Plan(s)

CV	Calorific value
D (number)	(Examination) Deadline (see Appendix A for a list)
dCEMP	draft Construction Environmental Management Plan
DCO	Development Consent Order
dCTMP(s)	draft Construction Traffic Management Plan(s)
dDCO	draft Development Consent Order
DECC	(Former) Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
dEMMP	draft WKN Ecological Mitigation and Management Plan
DEMP	Decommissioning Environmental Management Plan
DfT	Department for Transport
DML	Deemed Marine Licence
dSoCG	draft Statement of Common Ground
DS Smith	DS Smith Paper Limited
dSTS	draft Swale Transportation Strategy 2014 – 2031
dTP(s)	draft Travel Plan(s)
EA	Environment Agency
EA1995	Environment Act 1995
EAL	Environmental Assessment Level
EEA	European Economic Area
EEAAP	(SBC) Climate and Ecological Emergency Action Plan
EfW	Energy from waste
EfW Debate Guide	Energy from Waste, A Guide to the Debate, 2014
EIA(s)	Environmental Impact Assessment(s)
EIA Directive	Council Directive 2011/92/EU, amended by 2014/52/EU, on the assessment of the effects of certain public and private projects on the environment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations, 2017
ELV(s)	Emission limit value(s)
EMEP	Ecological Management and Enhancement Plan
EMMP	Ecological Mitigation and Management Plan
EP	Environmental Permit
EPA1990	Environmental Protection Act 1990
EPC	Engineering, procurement and construction
EPR	Early Partial Review
EP Regulations	Environmental Permitting (England and Wales) Regulations 2016 (as amended)

EP Rules	Infrastructure Planning (Examination Procedure) Rules 2010
ES(s)	Environmental Statement(s)
EU	European Union
EU CEP	EU's 2020 Circular Economy Package
EU ETS	EU Emissions Trading System
EWCA Civ	Court of Appeal (Civil Division)
ExA	Examining Authority
ExMemo	Explanatory Memorandum
ExQ1	ExA's first Written Questions
ExQ1A	ExA's Further Written Questions
ExQ2	ExA's Further Written Questions
ExQ3	ExA's Further Written Questions
ExQ4	ExA's Further Written Questions
FGT	Flue Gas Treatment Plant
FM2	Ferrybridge Multifuel 2
fn	Footnote
FRA	Flood Risk Assessment
FZ	Flood Zone
FZ1	Flood Zone 1
FZ2	Flood Zone 2
FZ3	Flood Zone 3
GHG	Greenhouse Gas
GLVIA	Guidelines for Landscape and Visual Impact Assessment
GLVIA3	Guidelines for Landscape and Visual Impact Assessment 2013
GW	Gigawatt(s)
ha	Hectare
Habitats Directive	Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora
Habitats Regulations	Conservation of Habitats and Species Regulations 2017
HE	Highways England
HGV(s)	Heavy goods vehicle(s)
HIC	Household/Industrial/Commercial
HIF	Housing Infrastructure Fund
HistE	Historic England
HRA	Habitats Regulations Assessment
HRAR	HRA Report

IAPI	Initial Assessment of the Principal Issues
IAQM	Institute of Air Quality Management
IBA	Incinerator Bottom Ash
IBAA	Incinerator bottom ash aggregate
ICE	In-combination effects
IEA	(Former) Institute of Environmental Assessment
IED	Industrial Emissions Directive
IEMA	Institute of Environmental Management and Assessment
Inspectorate	Planning Inspectorate
IP(s)	Interested Party(ies)
IPC	Infrastructure Planning Commission
IPPC Directive	EU Directive 2008/1/EC concerning Integrated Pollution Prevention and Control
ISH(s)	Issue Specific Hearing(s)
J5	Junction 5
June 2020 CCC Progress Report	Reducing UK emissions: Progress Report to Parliament (June 2020)
K1	Existing CHP plant
K3	Wheelabrator Kemsley (Generating Station)
K3 Planning Permission	Original planning permission for the Consented K3 Facility granted in 2012 Ref SW/10/444
K3 Proposed Development	Proposal to increase the generating capacity of the K3 generating station up to 75MW with a tonnage throughput of up to 657,000 tonnes per annum
K3 RWTS	K3 rail and water transportation strategy
K3 Site	Site of K3 being land immediately to the east of the Kemsley Paper Mill, 0.8km east of Kemsley
K4	Proposed CHP facility to replace K1
KCC	Kent County Council
KJMWMS	Kent Joint Municipal Waste Management Strategy
km	Kilometre
KMWLP	Kent Minerals and Waste Local Plan 2013-30 (July 2016)
kt	Kilotonne(s)
ktCO ₂ e	Thousand tonnes of fossil carbon dioxide equivalent
ktpa	Kilo-tonnes per annum
LACW	local authority collected waste
LCE	Low Carbon Economy

LCP	Large Combustion Plant
LCPD	Large Combustion Plant Directive
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LNR(s)	Local Nature Reserve(s)
LOAEL	Lowest Observable Adverse Effect Level
LP	Local Plan
LSE	Likely Significant Effects
LTP4	KCC's fourth Local Transport Plan (2016-2031)
LV(s)	Limit value(s)
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
m	Metre(s)
M2J5	M2 Junction 5
MCAA2009	Marine and Coastal Access Act 2009
MCZ(s)	Marine Conservation Zone(s)
MHCLG	Ministry of Housing, Communities and Local Government
MK	Milton Keynes
MMO	Marine Management Organisation
Model Provisions Order	Infrastructure Planning (Model Provisions) (England and Wales) Order 2009
MoU	Memorandum of Understanding
MP(s)	Model Provision(s)
MPS	Marine Policy Statement
MSPC	Minster-on-Sea Parish Council
MSW	Municipal Solid Waste
Mt	Megatonne(s)
MtCO ₂ e	Million tonnes of fossil carbon dioxide equivalent
MW	Megawatt(s)
MWLP	Minerals and Waste Local Plan
NE	Natural England
NERC Act	Natural Environment and Rural Communities Act 2006 (as amended)
NIA	National Infrastructure Assessment, 2018
NLHPP	North London Heat and Power Project
NNR	National Nature Reserve
NO ₂	Nitrogen dioxide

NO _x	Oxides of nitrogen
NOEL	No Observed Effect Level
NPPF	National Planning Policy Framework
NPPW	National Planning Policy for Waste
NPS(s)	National Policy Statement(s)
NPSE	Noise Policy Statement for England
NPS EN-1	Overarching NPS for Energy (EN-1)
NPS EN-3	NPS for Renewable Energy Infrastructure (EN-3)
NR	Network Rail
NSIP(s)	Nationally Significant Infrastructure Project(s)
NTS	Non-Technical Summary
OFH	Open Floor Hearing
OTRMP	Operational Traffic Routing and Management Plan
p(pp)	Page(s)
PA2008	Planning Act 2008
para(s)	Paragraph(s)
PC	Process contribution
PEC	Predicted environmental concentration
PINS	Planning Inspectorate
PM	Preliminary Meeting
PM _{2.5}	Particulate matter up to a diameter of 2.5 microns
PM ₁₀	Particulate matter up to a diameter of 10 microns
PPG	Planning Practice Guidance
Practical Effect(s)	Effect(s) in reality (of the K3 Proposed Development)
Preferred Changes	ExA's preferred changes to the DCO in the event consent
Preferred DCO	Applicant's preferred dDCO submitted at D7
Project K3	Proposal to increase the generating capacity of the K3 generating station up to 75MW with a tonnage throughput of up to 657,000 tonnes per annum
Project WKN	Proposed waste-to-energy generating station with a generating capacity of up to 42MW and an annual through put of up to 390,000 tonnes of waste
Proposed Development(s)	Project K3 and Project WKN
PRoW(s)	Public Right(s) of Way
PSED	Public Sector Equality Duty
R (number 2 onwards)	Requirement of a DCO
R1 (status)	Recovery operation status

Ramsar	Ramsar Convention on Wetlands
RDF	Refuse derived fuel
Recommended DCO	DCO as recommended by the ExA to be made by the SoS
Rev	Revision
RFC(s)	Ratio(s) of Flow to Capacity
RIES	Report on the Implications for European Sites
ROC(s)	Renewable Obligation Certificate(s)
RPA	Relevant Planning Authority
RR(s)	Relevant Representation(s)
RSPB	Royal Society for the Protection of Birds
Rule 6 Letter	Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8 Letter	Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010
rWFD	revised Waste Framework Directive
RWTS	Rail and water transportation strategy
s (number)	Section of a statute
s106 (agreement)	Planning obligations under Section 106 of the TCPA1990
s51 Advice	Advice provided by the Planning Inspectorate under s51 PA2008
SAC(s)	Special Area(s) of Conservation
SBC	Swale Borough Council
SCC	Surrey County Council
Scoping Opinion	Opinion provided by the Planning Inspectorate about the scope of the information in the ES
SDC	Swale District Council
SEIMP	South East Inshore Marine Plan
SEP	Sustainable Energy Plant
SEWPAG	South East Waste Planning Advisory Group
SHD	Stack Height Determination
Site	K3 site and WKN site within the DCO boundary on the Site Location Plan (unless context otherwise requires)
SM	Scheduled Monument
SNCB(s)	Statutory nature conservation body(ies)
SO ₂	Sulphur dioxide
SOAEL	Significant Observed Adverse Effect Level
SoCG(s)	Statement(s) of Common Ground

SoS	Secretary of State
SoSBEIS	Secretary of State for Business, Energy and Industrial Strategy
SPA(s)	Special Protection Area(s)
SRN	Strategic road network
SSN	Statement of Statutory Nuisance
SSSI(s)	Site(s) of Special Scientific Interest
Swale Local Plan	Bearing Fruits 2031: The Swale Borough Local Plan (July 2017)
Swale LP	Swale Local Plan
SWLP	Surrey Waste Local Plan
SWMFDP	Surface Water Management and Foul Drainage Philosophy
TA	Transport Assessment
TCPA1990	Town and Country Planning Act 1990
TEEP	Technically, environmentally & economically practicable
TEMPRO	Trip End Model Presentation Program
Tolvik Review	UK Residual Waste: 2030 Market Review Final November 2017
TP	Travel Plan
tpa	Tonnes per annum
UK	United Kingdom
UK CCC	UK Committee on Climate Change
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
USI	Unaccompanied Site Inspection
WACA1981	Wildlife and Countryside Act 1981
WaterFD	Water Framework Directive
WDA	Waste disposal authority
WDI	Waste Data Interrogator
WFD	Waste Framework Directive
WfH	Waste from households
WHFAA	Waste Hierarchy and Fuel Availability Assessment
WID	Waste Incineration Directive
WKN	Wheelabrator Kemsley North

WKN Proposed Development	Waste-to-energy generating station with a generating capacity of up to 42MW and an annual through put of up to 390,000 tonnes of waste
WKN Site	Site of WKN being land immediately north of the Consented K3 Facility
WLP	Waste Local Plan
WMPE	Waste Management Plan for England, December 2013
WNA	Waste Needs Assessment
WPA(s)	Waste Planning Authority(ies)
WR(s)	Written Representation(s)
WRATE	Waste and Resources Assessment Tool for the Environment
WRS	Our Waste, Our Resources: A strategy For England 2018 / Waste and Resources Strategy 2018
WSI	Written Statement of Investigation
WtE	Waste to energy
WTI	Applicant (WTI/EFW Holdings Ltd)

APPENDIX D: THE RECOMMENDED DCO

202[] No.

INFRASTRUCTURE PLANNING

The Wheelabrator Kemsley K3 Generating Station Order 20[]

Made - - - -

Coming into force - -

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PART 1 — REQUIREMENTS

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SCHEDULE 3 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 (“the 2008 Act”)^(b);

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

The single appointed person, having considered the application with the documents that accompanied it and the representations made and not withdrawn, has submitted a report with a recommendation to the Secretary of State;

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

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

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Wheelabrator Kemsley (K3 Generating Station) Order and shall come into force on [] 201[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961^(d);

(a) S.I. 2009/2264 as amended by S.I. 2013/522.

(b) 2008 c.29.

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

(d) 1961 c.33.

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

“the 1989 Act” means the Electricity Act 1989(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 New Roads and Street Works Act 1991(e);

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(f);

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

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“commissioning” means the process of testing all systems and components of Work No 1 (including systems and components which are not yet installed but the installation of which is near to completion), in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker; and “commission” and other cognate expressions are to be construed accordingly;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application on 11 September 2019 including all appendices thereto;

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

“K3 Generating Station” means a generating station having a capacity of up to 75MW, which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 2 of Schedule 2;

“K3 Sustainable Energy Plant Planning Permission” means planning permission SW/19/501345 granted on 14 June 2019 by Kent County Council pursuant to section 73 of the 1990 Act permitting the construction and operation of a generating station having a capacity of up to 49.9MW;

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“maintain” includes (i) inspect, repair, adjust, alter, refurbish, improve, the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and “maintenance” is construed accordingly;

“MW” means megawatts of electrical output;

“operational use” of the development comprising the authorised development means operational use for the purposes for which it is authorised under this Order but not including commissioning;

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

-
- (a) 1980 c.66.
 - (b) 1989 c.29.
 - (c) 1990 c.8.
 - (d) 1991 c.22.
 - (e) 2008 c.29.
 - (f) S.I. 2016/1154.

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

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

“relevant highway authority” means the highway authority for the area in which the relevant highway to which the relevant provision of this Order applies is situated;

“relevant planning authority” means the local authority for the area in which the land to which the relevant provision of this Order applies is situated;

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

“statement undertaker” means any person falling within the meaning set out in section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways (subject to confirmation from the relevant highway authority), 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;

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

“undertaker” means, subject to article 7 (Benefit of the Order) WTI/EFW Holdings Ltd. (company number 07593865);

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

“works plans” means the plans certified as the works plans by the Secretary of State for the purposes of the Order.

(2) A reference in this Order to a “grid reference” is a reference to the map co-ordinates on the National Grid used by the Ordnance Survey.

(3) All distances, directions and lengths referred to in this Order are approximate.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by Schedule 1 of this Order.

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3. Subject to the provisions of this Order and to the requirements in Schedule 2 the undertaker is granted development consent for the authorised development.

Effect of the Order on the K3 Sustainable Energy Plant Planning Permission

4.—(1) The undertaker may not start operational use of the K3 Generating Station under this Order until notice has been served on the relevant planning authority that the undertaker is ceasing to operate the K3 Sustainable Energy Plant under the K3 Generating Station Planning Permission.

(2) Upon service of the notice under paragraph (1) the K3 Sustainable Energy Plant Planning Permission will cease to have effect.

(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.

Authorisation of the operation of the authorised development

5.—(1) The undertaker is authorised to operate the generating stations forming part of the authorised development.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

Power to maintain authorised development

6. The undertaker may, at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Benefit of the Order

7.—(1) Except where paragraph (4) applies, the undertaker may with the written consent of the Secretary of State—

- (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 person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed between the undertaker and the lessee.

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

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

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where—

- (a) the transfer or grant is made to K3 CHP Limited (Company number 09240062); or
- (b) the transfer or grant is made to a licence holder within the meaning of section 6(1) of the Electricity Act 1989.

PART 3

SUPPLEMENTARY POWERS

Access to works

8. The undertaker may with the approval of the relevant highway authority, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Discharge of water

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) 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 must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval 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 must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior written consent of the Environment Agency.

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

(7) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

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

Authority to survey and investigate the land

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

(a) 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 sub-paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

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

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

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

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

(b) S.I. 2016/1154.

(c) 1991 c.57.

(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.

(5) A consent for the purpose of sub-paragraph (4)(a) or (b) may be given subject to such terms and conditions as the authority giving it may reasonably impose, but may not be unreasonably withheld.

(6) As soon as practicable following the exercise of any powers under paragraph (1), any vehicles, apparatus or equipment must be removed and the land shall be restored to the reasonable satisfaction of the owners of the land.

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

Removal of Human Remains

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

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

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

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of a deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of his or her intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4) and the remains in question can be identified, that person may cause the remains to be—

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

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that a person giving notice under sub-paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

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

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land, or

- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days, or
- (c) within 56 days after an order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains, or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article the undertaker must send—

- (a) a certificate of re-interment or cremation to the Registrar General, giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) to the relevant planning authority.

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

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

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

Felling or lopping of trees

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

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

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

(a) 1857 c.81.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

13.—(1) Paragraph (2) applies 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 a nuisance).

(2) No order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to that construction or maintenance—
 - (i) in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974^(b);
 - (ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction site); or
- (b) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

(3) 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^(c) does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised development.

Application of landlord and tenant law

14.—(1) This article applies to—

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

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

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants 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

(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.

(c) 1974 c.40.

- (c) restrict enforcement (whether by action for damages or otherwise) by any part to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

15. 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).

Certification of plans etc

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

- (a) the book of reference (dated August 2020);
- (b) the land plan (drawing number 9812-0071-02 dated July 2020);
- (c) the work plan (drawing number 9812-0072-02 dated July 2020);
- (d) the environmental statement (dated September 2019);
- (e) the K3 Generating Station approved plans as follows:
 - (i) 16315-A1-P-0100 4.3D Proposed Site Layout Rev U dated November 2009;
 - (ii) 16315-A1-P-0110 4.4D South East Elevation Rev U dated November 2009;
 - (iii) 16315-A1-P-0111 4.5D North East Elevation Rev T dated November 2009;
 - (iv) 16315-A1-P-0112 4.6D South West Elevation Rev U dated November 2009;
 - (v) 16315-A1-P-0113 4.7D North West Elevation Rev T dated November 2009;
 - (vi) 16315-A1-4.21 Landscape Masterplan Rev M dated June 2013;
- (f) the K3 rail and water transportation strategy (dated September 2019);
- (g) the Design and Access Statement dated September 2019;
- (h) the draft K3 operational traffic routing and management plan; and
- (i) the draft K3 travel plan – Highways England version (dated 7 August 2020)

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.

Arbitration

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

Procedure in relation to certain approvals

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

(2) Schedule 3 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to Schedule 2 (requirements).

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

Signed
Title

Date

Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Kent—

Work No 1- An electricity generating station (the K3 Generating Station) with a gross installed generating capacity of up to 75MW comprising the following works—

- (a) tipping hall;
- (b) waste fuel bunker;
- (c) boiler hall;
- (d) flue gas treatment building;
- (e) turbine hall housing steam turbine and generator;
- (f) air cooled condenser;
- (g) stack and associated emissions monitoring system;
- (h) electricity substation;
- (i) stores and utilities;
- (j) administration office;
- (k) fire water tanks;
- (l) stores;
- (m) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

Work No. 1A – Installation of grid connection for Work No 1.

Work No. 1B – Installation of steam connection for Work No 1.

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No 1C - Alteration of existing private access road to construct, use and maintain Work No 1.

Work No 1D - Creation of a temporary construction compound and laydown area for the construction of Work No 1.

Work No 1E - Construction and operation of a surface water outfall for Work No 1.

In connection with and in addition to Work No. 1 to the extent that it does not otherwise form part of that work, further associated development including—

- (n) pipe racks and pipe runs;
- (o) external lighting;
- (p) fencing, boundary treatment and other means of enclosure;
- (q) signage;
- (r) CCTV and other security measures;
- (s) surface and foul water drainage facilities;
- (t) potable water supply;

- (u) new telecommunications and utilities apparatus and connections;
- (v) hard and soft landscaping;
- (w) biodiversity enhancement measures;
- (x) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;
- (y) works for the protection of buildings and land affected by the authorised development;
- (z) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections;
- (aa) establishment of temporary construction compounds, vehicle parking areas, materials storage and laydown areas, construction related buildings, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities;

and, to the extent that it does not form part of such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

REQUIREMENTS

Article 3

Interpretation

19.—(1) In this Schedule—

“approved Landscape Masterplan” means the K3 Generating Station approved Landscape Masterplan listed in Part 2 of Schedule 2;

“approved plans” means any approved plans or other plans, details, schemes or other documents which require approval by the relevant planning authority pursuant to any requirement or which are already approved and listed in Part 2 of Schedule 2;

“bank holiday” is a day that is a bank holiday in England and Wales by virtue of section 1 of the 1971 Act;

“commencement” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), other than permitted preliminary works, comprised in or carried out for the purposes of the authorised development; and “commence and other cognate expressions are to be construed accordingly;

“construction site” means the Order land during the construction of the authorised development;

“Kemsley Paper Mill” means the paper mill on the land immediately adjacent to the Order land at Sittingbourne, Kent operated by DS Smith Limited;

“means of enclosure” means fencing, walls or other means of boundary treatment and enclosure;

“permitted preliminary works” means site clearance work, survey work, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements and the provision of site security, and archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, and the diversion and laying of services, provided that no permitted preliminary works will give rise to any materially new or materially different effects from those assessed in the environmental statement;

“rail and water transportation strategy” means the rail and water transportation strategy certified by the Secretary of State under article 16.

(2) A reference in this Schedule to an agreement, approval, consent, notice, report, scheme, submission or any other form of communication is a reference to that form of communication in writing.

(3) A reference in this Schedule to details, a method statement, a plan, a programme, a scheme or any other document approved by the planning authority is a reference to that document including any amendments subsequently approved by the relevant planning authority.

PART 1

REQUIREMENTS

Commencement of the authorised development

20. The authorised development must commence within five years of the date on which this Order comes into force.

Notice of commissioning

21.—(1) Notice of commencement of commissioning of Work No 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

(2) Notice of completion of commissioning of Work No 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

Decommissioning

22.—(1) Within six months after it notifies the relevant planning authority that it intends to decommission the K3 Generating Station, the undertaker must submit to the relevant planning authority for its approval a written decommissioning environmental management plan for that generating station.

(2) Decommissioning works must not be carried out until the relevant planning authority has approved the scheme.

(3) The decommissioning environmental management plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) all measures necessary for the protection from the potential environmental effects pursuant to decommissioning;
- (e) any restoration works to restore the Order land to a condition agreed with the relevant planning authority;
- (f) the phasing of any restoration works;
- (g) a timetable for the implementation of the scheme.

(4) The undertaker must implement the scheme as approved and is responsible for the costs of the decommissioning works.

Fuel storage

23.—(1) All fuels, oils and other liquids with the potential to contaminate the Order land shall be stored in a secure bonded area in order to prevent any accidental or unauthorised discharge to the ground.

(2) The area for storage shall not drain to any surface water system.

(3) Where it is proposed to store more than 200 litres of any type of oil must be stored in accordance with the provisions of the Control of Pollution (Oil Storage) (England) Regulations 2001(a).

(4) Where a drum or barrel has a capacity less than 200 litres a drip tray capable of retaining 25% of the maximum capacity of the drum or barrel may be used in lieu of storing the drum or barrel in the secure bonded area.

Rail and water transportation strategy

24. The K3 Generating Station must be operated in accordance with the approved rail and water transportation strategy.

(a) S.I. 2001/2954.

Amendments to approved plans, etc.

25.—(1) With respect to any approved plans, the undertaker may submit to the relevant planning authority for approval any amendments to the approved plans and following any such approval by the relevant planning authority the approved plans are to be taken to include the amendments approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 14 below must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

Works in the vicinity of gas apparatus

26.—(1) No work involving excavations shall take place within 3 metres of gas apparatus belonging to Southern Gas Networks PLC unless the undertaker has first obtained written consent from Southern Gas Networks PLC for those works to proceed.

(2) The undertaker shall provide such information as Southern Gas Networks PLC may reasonably require in order for it to respond to a request for consent under sub-paragraph (1).

Approved details

27. The authorised development must be carried out in accordance with the K3 Generating Station approved plans and documents as listed in Part 2 of this Schedule.

Operational traffic and travel plans

28.—(1) The number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed 348 movements per day until the following have been submitted to and, after consultation with the relevant highway authority, approved by the relevant planning authority:

- (a) a written operational traffic routing and management plan; and,
- (b) a written travel plan for operational staff.

(2) The plan submitted and approved under sub-paragraph (1)(a) must be in accordance with the draft K3 operational traffic routing and management plan certified by the Secretary of State under article 16.

(3) The plan submitted and approved under sub-paragraph (1)(b) must be in accordance with the draft K3 travel plan certified by the Secretary of State under article 16.

(4) The plans referred to in sub-paragraphs (1)(a) and (1)(b) must be implemented as approved.

(5) The total maximum number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed a combined total of 416 movements per day subject to any prior written variation as approved by the relevant planning authority

(6) Sub-paragraphs (1) to (5) do not apply to waste deliveries originating from and returning to the railway depot at Ridham Docks accessing and egressing the K3 Generating Station by the use of Ridham Dock Road.

Trees

29.—(1) All trees and shrubs planted under the approved Landscape Masterplan shall be maintained for a period of 5 years.

(2) Any trees or shrubs that either die, are lost, damaged or become diseased during this 5 year period shall be replaced with a tree or shrub of the same species within the next available planting season.

Surface water drainage

30. All surface water drainage from the authorised development discharging to a local water course shall be attenuated for a 1:100 year return storm with a limited discharge of 7 litres per second per hectare or the equivalent run off from a greenfield site for a 1:2 storm.

Combined heat and power

31.—(1) Within 12 months of ceasing to supply heat and/or power to the Kemsley Paper Mill, the undertaker must submit to the relevant planning authority for its approval a strategy (“the CHP strategy”).

(2) The CHP strategy submitted and approved must—

- (a) consider the opportunities that reasonably exist at the time of submission for the export of heat and/or power from the K3 Generating Station to other users; and
- (b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the K3 Generating Station to other users.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP strategy.

Part 2

K3 GENERATING STATION APPROVED PLANS AND DOCUMENTS

<i>(1)</i> <i>Title</i>	<i>(2)</i> <i>Reference</i>	<i>(3)</i> <i>Revision</i>
Environmental Statement	March 2010	
ES Addendum (Air Quality)	June 2013	
ES Chapter 10 – Hydrology and Flood Risk – Supplementary Report	May 2017	
ES Addendum	May 2018	
Design and Access Statement	March 2010	
Surface Water Management and Foul Drainage Design Philosophy	December 2016	
Ecological Mitigation and Management Plan	JPP1804-MP-001d	July 2013
Flood Risk Assessment	May 2019	
Proposed (Permitted) Site Location Plan	16315/A0/P/0060	Rev N
Proposed Site Layout	16315/A1/P/0100	Rev U
Proposed Building Layout	16315/A0/P/0105	Rev L
Boundary Treatment	16315/A0/P/0106	Rev R
South East Elevation	16315/A1/P/0110	Rev U
North East Elevation	16315/A1/P/0111	Rev T
South West Elevation	16315/A1/P/0112	Rev U
North West Elevation	16315/A1/P/0113	Rev T
Proposed Structure for Air Cooled Condenser (URC) Elevations	16315/A1/P/0121	Rev N
Main Building – Proposed South East Elevation	16315/A0/P/0125	Rev K

Main Building – Proposed North East Elevation	16315/A1/P/0126	Rev K
Main Building – Proposed South West Elevation	16315/A1/P/0127	Rev L
Main Building – Proposed North West Elevation	16315/A0/P/0128	Rev K
Site Layout and Access	16315/A1/P/0160	Rev K
Typical Office and Staff Amenities Building (UYA) Floor Plans	16315/A1/P/0171	Rev H
Proposed Gatehouse Floor Plan	16315/A2/P/0172	Rev L
Site Sections	16315/A0/0250	Rev J
Proposed Drainage Layout	16315/A0/0301	Rev J
Proposed Levels Site Plan	16315/A1/0600	Rev H
Illustrative Visual 1 of 7	16315/P/0150	Rev R
Illustrative Visual 2 of 7	16315/P/0151	Rev P
Illustrative Visual 3 of 7	16315/P/0152	Rev O
Illustrative Visual 4 of 7	16315/P/0153	Rev Q
Illustrative Visual 5 of 7	16315/P/0154	Rev O
Illustrative Visual 6 of 7	16315/P/0155	Rev O
Illustrative Visual 7 of 7	16315/P/0156	Rev R
Landscape Masterplan	16315/A1/4.21	Rev M
Fuel Bunker Level +2.0000m	16315/A1/P/0220	Rev D
Fuel Bunker Level +20.000m and Level +36.000m	16315/A1/P/0221	Rev E
Fuel Bunker Section A-A	16315/A1/P/0222	Rev C
Fuel Bunker Section B-B	16315/A0/P/0223	Rev C
Tipping Hall Layout Level +2.000m	16315/A1/P/0201	Rev E
Tipping Hall Section A-A	16315/A1/P/0202	Rev D
Overall Roof Layout Comparison Drawing	16315/A1/P/0200	Rev H
Lighting Discharges Report	20020117LXI0019	Rev C
External Lighting Technical Submission	20020117LXJ0922	Rev I
External Lighting Drawing	20020117LXG0907	Rev H
K3 External Lighting Strategy	ECO00047 Fig1	-
Access Road - Proposed	9163-0135-01-JNY9060	Rev 01
Proposed Internal Access Layout		
K3 Employment Strategy	March 2012	

SCHEDULE 3

Article 18

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Application of this Schedule

32. This Schedule applies to an application made by the undertaker to the planning authority (referred to in this Schedule as “the authority”) for an approval, consent or agreement required by any of the requirements.

Decision Period

33.—(1) The authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In sub-paragraph (1), “the decision period” means—

- (a) where the authority does not give written notice under paragraph 34(1) or (2) requiring further information, the period of eight weeks from the later of—
 - (i) the day immediately following the day on which the authority receives the application, and
 - (ii) the day on which the authority receives the fee payable under paragraph 4; or
- (b) where the authority gives written notice under paragraph 34(1) or (2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or
- (c) such longer period as may be agreed in writing by the undertaker and the authority.

Further information

34.—(1) If the authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant requirement requires that authority to consult a person (referred to in this Schedule as a “consultee”) in relation to the application—

- (a) the authority must consult the consultee within five business days from the day on which it receives the application;
- (b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the authority, specifying what further information is required, within 18 business days from the day on which the authority received the application; and
- (c) within five business days from the day on which it receives any such notification from the consultee, the authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the authority under sub-paragraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the authority does not give written notice in accordance with sub-paragraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

Fees

35.—(1) The undertaker must pay the authority a fee of £116, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under sub-paragraph (1) to the undertaker, within the relevant period, if it—

- (a) rejects the application as being invalidly made;
- (b) fails to give the written notice required by paragraph 33(1).

(3) Sub-paragraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In sub-paragraphs (2) and (3) “the relevant period” means the period of eight weeks from, as the case may be—

- (a) the day on which the authority rejects the application as being invalidly made;
- (b) the day after the day on which the decision period expires.

Appeal to the Secretary of State (procedure)

36.—(1) The undertaker may appeal to the Secretary of State against—

- (a) the authority’s refusal of an application;
- (b) the authority’s grant subject to conditions of an application;
- (c) the authority’s failure to give the written notice required by paragraph 33(1);
- (d) a written notice given by the authority under paragraph 34(1), (2) or (3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

- (a) its grounds of appeal;
- (b) a copy of the application submitted to the authority;
- (c) any supporting documentation which it wishes to provide.

(3) In sub-paragraph (2), “the relevant day” means—

- (a) in the case of an appeal under sub-paragraph (1)(a) or (b), the day on which the undertaker is notified by the authority of its decision;
- (b) in the case of an appeal under sub-paragraph (c), the day after the day on which the decision period expires;
- (c) in the case of an appeal under sub-paragraph (1)(d), the day on which the undertaker receives the authority’s notice.

(4) At the same time as it sends the documents mentioned in sub-paragraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) As soon as reasonably practicable following receipt of the documents mentioned in sub-paragraph (2), the Secretary of State must—

- (a) appoint a person (referred to in this Schedule as “the appointed person”) to determine the appeal on his behalf;
- (b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person’s address for correspondence in relation to the appeal.

(6) Within 20 business days from the day on which the Secretary of State gives notice under sub-paragraph (5)(b), the authority and any consultee—

- (a) may submit written representations in respect of the appeal to the appointed person; and
- (b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.

(7) Within 10 business days from the last day on which representations are submitted to the appointed person under sub-paragraph (6), any party—

- (a) may make further representations to the appointed person in response to the representations of another party; and
- (b) must, at the same time, send a copy of any such further representations to each other party.

Appeal to the Secretary of State (powers of the appointed person)

37.—(1) The appointed person may—

- (a) allow or dismiss the appeal;
- (b) reverse or vary any part of the authority's decision, irrespective of whether the appeal relates to that part;
- (c) make a decision on the application as if it had been made to the appointed person in the first instance.

(2) The appointed person—

- (a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;
- (b) if he gives such a notice, must—
 - (i) at the same time send a copy of it to each other party, and
 - (ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.

(3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

Appeal to the Secretary of State (supplementary)

38.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.

(2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.

(3) Subject to sub-paragraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.

(4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

(5) In considering an application under sub-paragraph (4) the appointed person must have regard to the National Planning Practice Guidance: Advice on planning appeals and the award costs or any circular or guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for WTI/EFW Holdings Ltd (company number 07593865) to construct, operate and maintain the K3 Generating Station with a gross installed capacity of up to 75MW.

The Order also authorises associated development and imposes requirements in connection with the development.

A copy of the various documents referred to in this Order and certified in accordance with article 16 (certification of plans, etc) of this Order may be inspected free of charge during working hours at the offices of Kent County Council, Sessions House, County Hall, Maidstone, Kent ME14 1XQ.

APPENDIX E: THE ALTERNATIVE RECOMMENDED DCO

2018 No.

INFRASTRUCTURE PLANNING

**The Wheelabrator Kemsley K3 Generating Station and
Wheelabrator Kemsley North Waste-to-Energy Facility Order
20[]**

Made - - - - ***

Coming into force - - ***

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SCHEDULE 3 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 (“the 2008 Act”)^(b);

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

The single appointed person, having considered the application with the documents that accompanied it and the representations made and not withdrawn, has submitted a report with a recommendation to the Secretary of State;

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

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

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Wheelabrator Kemsley (K3 Generating Station) and (WKN Waste-to-Energy Facility) Order and shall come into force on [] 201[].

^(a) S.I. 2009/2264 as amended by S.I. 2013/522.

^(b) 2008 c.29.

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

Interpretation

2.—(1) In this Order—

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

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

“the 1989 Act” means the Electricity Act 1989(c);

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

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

“the 2008 Act” means the New Roads and Street Works Act 1991(f);

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(g);

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

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

“commissioning” means the process of testing all systems and components of each of Work No 1 and Work No 2 (including systems and components which are not yet installed but the installation of which is near to completion), in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker; and “commission” and other cognate expressions are to be construed accordingly;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application on 11 September 2019 including all appendices thereto;

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

“K3 Generating Station” means a generating station having a capacity of up to 75MW which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 4 of Schedule 2;

“K3 Sustainable Energy Plant Planning Permission” means planning permission SW/19/501345 granted on 14 June 2019 by Kent County Council pursuant to section 73 of the 1990 Act permitting the construction and operation of a generating station having a capacity of up to 49.9MW;

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“maintain” includes (i) inspect, repair, adjust, alter, refurbish, improve, the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and “maintenance” is construed accordingly;

“MW” means megawatts of electrical output;

(a) 1961 c.33.
(b) 1980 c.66.
(c) 1989 c.29.
(d) 1990 c.8.
(e) 1991 c.22.
(f) 2008 c.29.
(g) S.I. 2016/1154.

“operational use” of the developments comprising the authorised development means operational use for the purposes for which they are authorised under this Order but not including commissioning;

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

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

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

“Project K3” means Work No 1 and any other authorised development associated with that work;

“Project WKN” means Work No 2 and any other authorised development associated with those works;

“relevant highway authority” means the highway authority for the area in which the relevant highway to which the relevant provision of this Order applies is situated;

“relevant planning authority” means the local authority for the area in which the land to which the relevant provision of this Order applies is situated;

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

“statement undertaker” means any person falling within the meaning set out in section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways (subject to confirmation from the relevant highway authority), 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;

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

“undertaker” means, subject to article 7 (Benefit of the Order) WTI/EFW Holdings Ltd. (company number 07593865);

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

“works plans” means the plans certified as the works plans by the Secretary of State for the purposes of the Order;

“WKN Waste-to-Energy Facility” means the Wheelabrator Kemsley North Waste-to-Energy Facility, a generating station having a generating capacity of up to 42MW which is treated as development for which development consent is required pursuant to a direction by the Secretary of State for Business, Energy and Industrial Strategy under section 35 of the 2008 Act dated 27 June 2018;

(2) A reference in this Order to a “grid reference” is a reference to the map co-ordinates on the National Grid used by the Ordnance Survey.

(3) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to in Requirement 14 (Detailed Design Approval) of Schedule 2.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by Schedule 1 of this Order.

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

(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.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2 the undertaker is granted development consent for the authorised development.

Effect of the Order on the K3 Sustainable Energy Plant Planning Permission

4.—(1) The undertaker may not start operational use of the K3 Generating Station under this Order until notice has been served on the relevant planning authority that the undertaker is ceasing to operate the K3 Sustainable Energy Plant under the K3 Generating Station Planning Permission.

(2) Upon service of the notice under paragraph (1) the K3 Sustainable Energy Plant Planning Permission will cease to have effect.

Authorisation of the operation of the authorised development

5.—(1) The undertaker is authorised to operate the generating stations forming part of the authorised development.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

Power to maintain authorised development

6. The undertaker may, at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Benefit of the Order

7.—(1) Except where paragraph (4) applies, the undertaker may with the written consent of the Secretary of State—

- (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 person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed between the undertaker and the lessee.

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

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

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where—

- (a) in the case of Project K3 the transfer or grant is made to K3 CHP Limited (Company number 09240062);
- (b) in the case of Project WKN the transfer or grant is made to Kemsley North Limited (Company number 11699563); or
- (c) the transfer or grant is made to a licence holder within the meaning of section 6(1) of the Electricity Act 1989.

PART 3

SUPPLEMENTARY POWERS

Access to works

8.—(1) The undertaker may with the approval of the relevant highway authority, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Discharge of water

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) 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 must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval 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 must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior written consent of the Environment Agency.

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

(7) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016^(b).

(8) In this article—

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

Authority to survey and investigate the land

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

- (a) survey or investigate the land;

^(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

^(b) S.I. 2016/1154.

^(c) 1991 c.57.

- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
 - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must if so required on entering the land, produce written evidence of their authority to do so; and
 - (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes 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.
- (5) A consent for the purpose of sub-paragraph (4)(a) or (b) may be given subject to such terms and conditions as the authority giving it may reasonably impose, but may not be unreasonably withheld.
- (6) As soon as practicable following the exercise of any powers under paragraph (1), any vehicles, apparatus or equipment must be removed and the land shall be restored to the reasonable satisfaction of the owners of the land.
- (7) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of Human Remains

- 11.—**(1) Before the undertaker carries out any development or works which it has reason to think will or may disturb any human remains in the Order land it must remove those remains, or cause them to be removed, from the Order land in accordance with the following provisions of this article.
- (2) Before any such remains are removed the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—
- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
 - (b) displaying a notice in a conspicuous place on or near to the Order land.
- (3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.
- (4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of a deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of his or her intention to undertake the removal of the remains.
- (5) Where a person has given notice under paragraph (4) and the remains in question can be identified, that person may cause the remains to be—

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

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

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

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land, or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days, or
- (c) within 56 days after an order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains, or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article the undertaker must send—

- (a) a certificate of re-interment or cremation to the Registrar General, giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) to the relevant planning authority.

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

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

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

(a) 1857 c.81.

Felling or lopping of trees

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

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

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

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

13.—(1) Paragraph (2) applies 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 a nuisance).

(2) No order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to that construction or maintenance—
 - (i) in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(**b**);
 - (ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction site); or
- (b) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

(3) 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(**c**) does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised development.

Application of landlord and tenant law

14.—(1) This article applies to—

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

(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.

(c) 1974 c.40.

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 enforcement (whether by action for damages or otherwise) by any part to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

15. 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).

Certification of plans etc

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

- (a) the book of reference (dated October 2019);
- (b) the land plan (drawing number 9812-0057-006 dated October 2019);
- (c) the works plans (drawing numbers 9812-0059-005 and 9812-0060-007 dated March 2020);
- (d) the environmental statement (dated September 2019);
- (e) the K3 Generating Station approved plans as follows:
 - (i) 16315-A1-P-0100 4.3D Proposed Site Layout Rev U dated November 2009;
 - (ii) 16315-A1-P-0110 4.4D South East Elevation Rev U dated November 2009;
 - (iii) 16315-A1-P-0111 4.5D North East Elevation Rev T dated November 2009;
 - (iv) 16315-A1-P-0112 4.6D South West Elevation Rev U dated November 2009;
 - (v) 16315-A1-P-0113 4.7D North West Elevation Rev T dated November 2009;
 - (vi) 16315-A1-4.21 Landscape Masterplan Rev M dated June 2013;
- (f) the K3 rail and water transportation strategy (dated September 2019);
- (g) the WKN parameter plan (drawing number 9812-0031-10 dated March 2020);
- (h) the draft WKN construction traffic management plan – Highways England version (dated 7 August 2020);
- (i) the draft WKN travel plan - Highways England version (dated 7 August 2020);
- (j) the WKN rail and water transportation strategy dated September 2019;
- (k) the WKN draft construction environmental management plan dated May 2020;
- (l) the Design and Access Statement dated September 2019;
- (m) the draft ecological management and enhancement plan;
- (n) the draft K3 operational traffic routing and management plan; and
- (o) the draft K3 travel plan – Highways England version (dated 7 August 2020)

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.

Arbitration

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

Procedure in relation to certain approvals

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

(2) Schedule 3 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to Schedule 2 (requirements).

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

*Signed
Title*

Date

Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Kent—

Project K3

Work No 1- An electricity generating station (the K3 Generating Station) with a gross installed generating capacity of up to 75MW comprising the following works—

- (a) tipping hall;
- (b) waste fuel bunker;
- (c) boiler hall;
- (d) flue gas treatment building;
- (e) turbine hall housing steam turbine and generator;
- (f) air cooled condenser;
- (g) stack and associated emissions monitoring system;
- (h) electricity substation;
- (i) stores and utilities;
- (j) administration office;
- (k) fire water tanks;
- (l) stores;
- (m) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

Work No. 1A – Installation of grid connection for Work No 1.

Work No. 1B – Installation of steam connection for Work No 1.

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No 1C - Alteration of existing private access road to construct, use and maintain Work No 1.

Work No 1D - Creation of a temporary construction compound and laydown area for the construction of Work No 1.

Work No 1E - Construction and operation of a surface water outfall for Work No 1.

Project WKN

Work No 2– An electricity generating station (the WKN Waste-to-Energy Facility) with a gross installed generating capacity of up to 42MW comprising the following works—

- (n) raised tipping hall (with demineralised water treatment plant beneath);
- (o) waste fuel bunker;
- (p) boiler hall;

- (q) flue gas treatment building;
- (r) turbine hall housing steam turbine and generator;
- (s) air cooled condenser;
- (t) stack and associated emissions monitoring system;
- (u) electricity substation;
- (v) stores and utilities;
- (w) administration office;
- (x) fire water tanks;
- (y) stores;
- (z) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

Work No 3 – Installation of grid connection for Work No 2.

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No 4 - Alteration of existing private access road to construct, use and maintain Work No 2.

Work No 5 – Temporary construction or alteration of existing private haul road for the construction of Work No 2.

Work No 6 - Creation of a temporary construction compound and laydown area for the construction of Work No 2.

Work No 7 - Construction and operation of a new surface water outfall for Work No 2.

In connection with and in addition to Works Nos. 1, 2, 3, 4, 5, 6, and 7, to the extent that it does not otherwise form part of those works, further associated development including—

- (aa) pipe racks and pipe runs;
- (bb) external lighting;
- (cc) fencing, boundary treatment and other means of enclosure;
- (dd) signage;
- (ee) CCTV and other security measures;
- (ff) surface and foul water drainage facilities;
- (gg) potable water supply;
- (hh) new telecommunications and utilities apparatus and connections;
- (ii) hard and soft landscaping;
- (jj) biodiversity enhancement measures;
- (kk) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;
- (ll) works for the protection of buildings and land affected by the authorised development;
- (mm) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections;
- (nn) establishment of temporary construction compounds, vehicle parking areas, materials storage and laydown areas, construction related buildings, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities;

and, to the extent that it does not form part of such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

REQUIREMENTS

Article 3

Interpretation

19.—(1) In this Schedule—

“approved Landscape Masterplan” means the K3 Generating Station approved Landscape Masterplan listed in Part 4 of Schedule 2;

“approved plans” means any approved plans or other plans, details, schemes or other documents which require approval by the relevant planning authority pursuant to any requirement or which are already approved and listed in Part 4 of Schedule 2;

“bank holiday” is a day that is a bank holiday in England and Wales by virtue of section 1 of the 1971 Act;

“commencement” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), other than permitted preliminary works, comprised in or carried out for the purposes of the authorised development; and “commence and other cognate expressions are to be construed accordingly;

“construction site” means the Order land during the construction of the authorised development;

“Kemsley Paper Mill” means the paper mill on the land immediately adjacent to the Order land at Sittingbourne, Kent operated by DS Smith Limited;

“means of enclosure” means fencing, walls or other means of boundary treatment and enclosure;

“permitted preliminary works” means works within Work Nos 4, 5 and 6, site clearance work, survey work, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements and the provision of site security, and, subject to compliance with Requirement 20(1) of this Order, archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, and the diversion and laying of services, provided that no permitted preliminary works will give rise to any materially new or materially different effects from those assessed in the environmental statement;

“rail and water transportation strategy” means the relevant rail and water transportation strategy certified by the Secretary of State under article 16;

“WKN parameter plan” means the plan certified by the Secretary of State as the WKN parameter plan under article 16;

(2) A reference in this Schedule to an agreement, approval, consent, notice, report, scheme, submission or any other form of communication is a reference to that form of communication in writing.

(3) A reference in this Schedule to details, a method statement, a plan, a programme, a scheme or any other document approved by the planning authority is a reference to that document including any amendments subsequently approved by the relevant planning authority.

PART 1

GENERAL REQUIREMENTS

Commencement of the authorised development

20. Each of Project K3 and Project WKN must commence within five years of the date on which this Order comes into force.

Notice of commissioning

21.—(1) Notice of commencement of commissioning of each of Work No 1 and Work No 2 must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

(2) Notice of completion of commissioning of each of Work No 1 and Work No 2 must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

Decommissioning

22.—(1) Within six months after it notifies the relevant planning authority that it intends to decommission either the K3 Generating Station or the WKN Waste-to-Energy Facility, the undertaker must submit to the relevant planning authority for its approval a written decommissioning environmental management plan for that generating station.

(2) Decommissioning works must not be carried out until the relevant planning authority has approved the scheme.

(3) The decommissioning environmental management plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) all measures necessary for the protection from the potential environmental effects pursuant to decommissioning;
- (e) any restoration works to restore the Order land to a condition agreed with the relevant planning authority;
- (f) the phasing of any restoration works;
- (g) a timetable for the implementation of the scheme.

(4) The undertaker must implement the scheme as approved and is responsible for the costs of the decommissioning works.

Fuel storage

23.—(1) All fuels, oils and other liquids with the potential to contaminate the Order land shall be stored in a secure bonded area in order to prevent any accidental or unauthorised discharge to the ground.

(2) The area for storage shall not drain to any surface water system.

(3) Where it is proposed to store more than 200 litres of any type of oil must be stored in accordance with the provisions of the Control of Pollution (Oil Storage) (England) Regulations 2001(a).

(a) S.I. 2001/2954.

(4) Where a drum or barrel has a capacity less than 200 litres a drip tray capable of retaining 25% of the maximum capacity of the drum or barrel may be used in lieu of storing the drum or barrel in the secure bonded area.

Rail and water transportation strategy

24. The K3 Generating Station and the WKN Waste-to-Energy Facility must be operated in accordance with the approved rail and water transportation strategy for that project.

Amendments to approved plans, etc.

25.—(1) With respect to any approved plans, the undertaker may submit to the relevant planning authority for approval any amendments to the approved plans and following any such approval by the relevant planning authority the approved plans are to be taken to include the amendments approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for amendments to the parameters identified in requirement 14 below must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

Works in the vicinity of gas apparatus

26.—(1) No work involving excavations shall take place within 3 metres of gas apparatus belonging to Southern Gas Networks PLC unless the undertaker has first obtained written consent from Southern Gas Networks PLC for those works to proceed.

(2) The undertaker shall provide such information as Southern Gas Networks PLC may reasonably require in order for it to respond to a request for consent under sub-paragraph (1).

PART 2

PROJECT K3 REQUIREMENTS

Approved details

27. The Project K3 authorised development must be carried out in accordance with the K3 Generation Station approved plans and documents as listed in Part 4 of this Schedule.

Operational traffic and travel plans

28.—(1) The number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed 348 movements per day until the following have been submitted to and, after consultation with the relevant highway authority, approved by the relevant planning authority:

29. (a) a written operational traffic routing and management plan; and,

30. (b) a written travel plan for operational staff.

31. (2) The plan submitted and approved under sub-paragraph (1)(a) must be in accordance with the draft K3 operational traffic routing and management plan certified by the Secretary of State under article 16.

32. (3) The plan submitted and approved under sub-paragraph (1)(b) must be in accordance with the draft K3 travel plan certified by the Secretary of State under article 16.

33. (4) The plans referred to in sub-paragraphs (1)(a) and (1)(b) must be implemented as approved.

34. (5) The total maximum number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed a combined total of 416 movements per day subject to any prior written variation as approved by the relevant planning authority.

35. (6) Sub-paragraphs (1) and (5) do not apply to waste deliveries originating from and returning to the railway depot at Ridham Docks accessing and egressing the K3 Generating Station by the use of Ridham Dock Road.

Trees

36.—(1) All trees and shrubs planted under the approved Landscape Masterplan shall be maintained for a period of 5 years.

(2) Any trees or shrubs that either die, are lost, damaged or become diseased during this 5 year period shall be replaced with a tree or shrub of the same species within the next available planting season.

Surface water drainage

37. All surface water drainage from the Project K3 authorised development discharging to a local water course shall be attenuated for a 1:100 year return storm with a limited discharge of 7 litres per second per hectare or the equivalent run off from a greenfield site for a 1:2 storm.

Combined heat and power

38.—(1) Within 12 months of ceasing to supply heat and/or power to the Kemsley Paper Mill, the undertaker must submit to the relevant planning authority for its approval a strategy (“the CHP strategy”).

(2) The CHP strategy submitted and approved must—

- (a) consider the opportunities that reasonably exist at the time of submission for the export of heat and/or power from the K3 Generating Station to other users; and
- (b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the K3 Generating Station to other users.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP strategy.

PART 3

PROJECT WKN REQUIREMENTS

Detailed design approval

39.—(1) No part of Work No 2 may commence until written details of:

- (a) the siting, layout, scale and external appearance (including colours, materials, and surface finishes) of all permanent buildings and structures; and
- (b) the provision of electric vehicle charging points throughout the Project WKN authorised development;

have been submitted to and approved by the relevant planning authority.

(2) The details to be submitted for approval under sub-paragraph (1) must be in accordance with:

- (a) the noise mitigation measures referred to in chapter 7 (Noise and Vibration) of the environmental statement;
- (b) the lateral limits of deviation for each of the works comprising Work No 2 as shown on the WKN parameter plan;
- (c) the height parameters specified in table 1 below.

Table 1

<i>Building structure</i>	<i>or</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Minimum height (metres)</i>	<i>Maximum height (metres)</i>
Tipping hall (Work No 2(a))		45	36	-	30
Waste fuel bunker (Work No 2(b))		35	36	-	44
Boiler hall (Work No 2(c))		50	36	-	58
Flue gas treatment plant (Work No 2(d))		45	35	-	44
Turbine hall (Work No 2(e))		40	25	-	30
Air-cooled condensers (Work No 2(f))		45	30	-	40
Stack (Work No 2(g))	-	4	90		99
Electricity substation (Work No 2(h))	45	30	-		15
Stores & Utilities (Work No 2(i))	20	10	-		15
Administration office (Work No 2(j))	30	15	-		30
Fire water tanks (Work No 2(k))	-	7.2	-		15
Stores (Work No 2(l))	40	35	-		15
Supporting infrastructure (Work No 2(m))	-	-	-		10

(3) The Project WKN authorised development must be carried out in accordance with the approved details.

Provision of landscaping

40.—(1) No part of Work No 2 may be commenced until a written detailed landscaping scheme has been submitted to and approved by the relevant planning authority.

(2) Each scheme submitted and approved must include details of all proposed hard and soft landscaping works, including—

- (a) the treatment of hard surfaced areas;
- (b) earthworks, including the proposed levels and contours of landscaped areas;
- (c) the seed mix for areas of grassland;

- (d) shrub planting, including the height, size and species and the density of distribution;
- (e) the management of existing and new areas of grassland and tree and shrub planting;
- (f) an implementation timetable for the phasing and completion of the landscaping works.

(3) Each scheme submitted and approved must be in accordance with the ecological management and enhancement plan approved under requirement 46.

Implementation and maintenance of landscaping

41.—(1) All landscaping works must be carried out in accordance with the relevant landscaping scheme (including the implementation timetable) approved under requirement 40.

(2) 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 relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

(3) Any area of grassland planted as part of an approved landscaping scheme that, within a period of five years after planting, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be reseeded in the first available planting season with the same seed mix as that originally planted.

(4) The undertaker must implement and maintain the approved landscaping scheme during the construction, operation and decommissioning of the WKN Waste-to-Energy Facility.

Fencing and other means of enclosure

42.—(1) No part of Work No 2 may be commenced until written details of all proposed means of enclosure have been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the Project WKN authorised development must remain securely fenced at all times during construction of the Project WKN authorised development.

(3) Any approved temporary means of enclosure must be removed within 12 months after the Project WKN authorised development is brought into commercial use.

(4) The Project WKN authorised development must not be brought into commercial use until any approved permanent means of enclosure has been completed.

(5) The Project WKN authorised development must be carried out in accordance with the approved details.

Surface water drainage

43.—(1) No part of the surface and foul water drainage systems may commence until written details have been submitted to and approved by the relevant planning authority.

(2) The details submitted and approved must be in accordance with the principles and strategy set out in chapter 10 of the environmental statement and its relevant appendices including:

- (a) surface water drainage strategy;
- (b) drainage maintenance plan;
- (c) flood management plan;
- (d) emergency spillage management plan;
- (e) water quality monitoring plan;
- (f) flood evacuation plan.

(3) The surface and foul water drainage systems must be constructed in accordance with the relevant approved details.

(4) The Project WKN authorised development must not be commissioned until the surface and foul water drainage systems have been constructed.

Land contamination and groundwater

44.—(1) No Project WKN authorised development may be commenced, and no archaeological investigations, investigations for the purpose of assessing ground conditions or remedial work in respect of contamination or other adverse ground conditions may take place, until details of capping layer and ground gas protection measures for that part, or for those activities to the extent they may be required, have been submitted to and approved by the relevant planning authority.

(2) Construction works for the Project WKN authorised development must be carried out in accordance with the approved measures.

(3) If contamination not previously identified is found during the construction of the Project WKN authorised development, no further works for the authorised development may be carried out in the affected area until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

- (a) how the contamination is to be identified and assessed;
- (b) where remediation is required by the scheme, the remediation measures;
- (c) timescales for carrying out the remediation measures; and
- (d) any ongoing monitoring or mitigation requirements.

(4) Any remediation measures identified in the investigation and remediation scheme mentioned in sub-paragraph (3) must be carried out in accordance with the approved scheme.

Archaeology

45.—(1) No Project WKN authorised development shall commence until a written scheme for the investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority.

(2) The scheme shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found. The scheme should also detail measures for post-field work processing, assessment, analysis and reporting of the results of archaeological work and the deposition of the archive.

(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme unless otherwise agreed in writing with the relevant planning authority.

Ecological management and enhancement plan

46.—(1) The Project WKN authorised development must not be commenced until a written ecological management and enhancement plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must—

- (a) be in accordance with the draft ecological management and enhancement plan certified by the Secretary of State under article 16; and
- (b) include an implementation timetable and details relating to maintenance and management.

(3) The plan must be implemented as approved.

Construction environmental management plan

47.—(1) The Project WKN authorised development must not commence until a written construction environmental management plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must—

- (a) be in accordance with the draft construction environmental management plan certified by the Secretary of State under article 16;
- (b) include measures for the protection of any protected species found to be present on the Order land during construction;
- (c) include the mitigation measures included in chapter 14 of the environmental statement;
- (d) identify the consideration given to greenhouse gas emissions reduction measures during construction referred to in chapter 6 of the environmental statement and the measures that have been included;
- (e) incorporate a scheme for handling complaints received from local residents, business and organisations relating to emissions of noise, odour or dust from the authorised development during its construction, which must include appropriate corrective action in relation to substantiated complaints relating to emissions of noise.

(3) In sub-paragraph (2)(b), a “protected species” means a species protected under the Wildlife and Countryside Act 1981(a) or the Conservation of Habitats and Species Regulations 2017(b).

(4) All construction works associated with the Project WKN authorised development must be carried out in accordance with the approved construction environmental management plan.

External lighting

48.—(1) No part of the external lighting may be commenced until a scheme for all permanent external lighting to be installed during the operation of the Project WKN authorised development has been submitted to and approved by the relevant planning authority.

(2) The details submitted and approved must be in accordance with the principles and strategy set out in chapter 11 of the environmental statement and be designed to avoid any consequential adverse impacts on biodiversity.

(3) The external lighting must be constructed in accordance with the relevant approved details.

(4) The Project WKN authorised development must not be brought into operational use until the external lighting has been constructed in accordance with an approved external lighting scheme.

Construction traffic management plan

49.—(1) The Project WKN authorised development must not commence until a written construction traffic routing and management plan has been submitted to and, after consultation with the relevant highway authorities, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 4 of the environmental statement and the draft construction traffic management plan contained in Appendix 4.2 to the environmental statement.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;
- (c) the construction programme;
- (d) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers’ plant and equipment and any temporary removal of street furniture;

(a) 1981 c. 69.

(b) S.I. 2017/1012.

- (e) measures to promote the use of sustainable transport modes by construction personnel in order to minimise the overall traffic impact and promote sustainable transport modes;
 - (f) details of parking for construction personnel within the construction site; and
 - (g) details of a co-ordinator to be appointed to manage and monitor the implementation of the plan, including date of appointment, responsibilities and hours of work.
- (4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.
- (5) The plan must be implemented as approved.

Operational traffic routing and management plan

50.—(1) Work No 2 must not be commissioned until a written operational traffic routing and management plan has been submitted to and, after consultation with the relevant highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 4 of the environmental statement and the operational travel plan framework contained in Appendix 4.3 to the environmental statement.

(3) The plan submitted and approved must include details of the routes to be used for the transport of fuel, consumables and combustion by-products to and from the authorised development.

(4) The plan must be implemented as approved.

Travel plan – operational staff

51.—(1) Work No 2 must not be brought into commercial use until a written travel plan for operational staff has been submitted to and, after consultation with the relevant highway authorities, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 4 of the environmental statement and the operational travel plan framework contained in Appendix 4.3 to the environmental statement.

(3) The plan submitted and approved must include—

- (a) details of the travel plan budget;
- (b) measures to promote the use of sustainable transport modes to and from the WKN Waste-to-Energy Facility by operational staff;
- (c) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (d) a monitoring and review regime.

(4) The approved plan must be implemented within six months after Work No 2 is brought into commercial use and must be maintained throughout the operation of Work No 2.

Construction hours

52.—(1) With the exception of construction using the concrete slip-forming method, construction using constant pour methods for concrete laying and internal process works relating to mechanical and/or electrical equipment installation, construction activities shall only take place between 07:00 and 19:00 hours Monday to Friday inclusive and 07:00 and 16:00 hours on Saturday and Sunday with no construction activities to take place on Bank or Public Holidays.

Piling and penetrative foundation design

53.—(1) No part of Work No 2 may commence until a piling risk assessment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) Construction works for the Project WKN authorised development must be carried out in accordance with the approved piling method and agreed risk management for that method as set out in the approved piling risk assessment.

(3) All piling and penetrative foundation works must be carried out in accordance with the relevant approved method statement.

54.—(1) No impact piling associated with Work No 2 shall take place in the months of January, February, or between April and August inclusive.

(2) No more than ten days of impact piling associated with the Project WKN authorised development, whether consecutive or otherwise, shall take place in the months of November and December.

Employment, skills and training program

55.—(1) Work No 2 may not commence until a written plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to and approved by the relevant planning authority in consultation with the Economic Development Officer at Swale Borough Council.

(2) The approved plan must be implemented and maintained during the construction and operation of Work No.2.

Part 4

K3 GENERATING STATION APPROVED PLANS AND DOCUMENTS

<i>(1)</i> <i>Title</i>	<i>(2)</i> <i>Reference</i>	<i>(3)</i> <i>Revision</i>
Environmental Statement	March 2010	
ES Addendum (Air Quality)	June 2013	
ES Chapter 10 – Hydrology and Flood Risk – Supplementary Report	May 2017	
ES Addendum	May 2018	
Design and Access Statement	March 2010	
Surface Water Management and Foul Drainage Design Philosophy	December 2016	
Ecological Mitigation and Management Plan	JPP1804-MP-001d	July 2013
Flood Risk Assessment	May 2019	
Proposed (Permitted) Site Location Plan	16315/A0/P/0060	Rev N
Proposed Site Layout	16315/A1/P/0100	Rev U
Proposed Building Layout	16315/A0/P/0105	Rev L
Boundary Treatment	16315/A0/P/0106	Rev R
South East Elevation	16315/A1/P/0110	Rev U
North East Elevation	16315/A1/P/0111	Rev T
South West Elevation	16315/A1/P/0112	Rev U
North West Elevation	16315/A1/P/0113	Rev T

Proposed Structure for Air Cooled Condenser (URC) Elevations	16315/A1/P/0121	Rev N
Main Building – Proposed South East Elevation	16315/A0/P/0125	Rev K
Main Building – Proposed North East Elevation	16315/A1/P/0126	Rev K
Main Building – Proposed South West Elevation	16315/A1/P/0127	Rev L
Main Building – Proposed North West Elevation	16315/A0/P/0128	Rev K
Site Layout and Access	16315/A1/P/0160	Rev K
Typical Office and Staff Amenities Building (UYA) Floor Plans	16315/A1/P/0171	Rev H
Proposed Gatehouse Floor Plan	16315/A2/P/0172	Rev L
Site Sections	16315/A0/0250	Rev J
Proposed Drainage Layout	16315/A0/0301	Rev J
Proposed Levels Site Plan	16315/A1/0600	Rev H
Illustrative Visual 1 of 7	16315/P/0150	Rev R
Illustrative Visual 2 of 7	16315/P/0151	Rev P
Illustrative Visual 3 of 7	16315/P/0152	Rev O
Illustrative Visual 4 of 7	16315/P/0153	Rev Q
Illustrative Visual 5 of 7	16315/P/0154	Rev O
Illustrative Visual 6 of 7	16315/P/0155	Rev O
Illustrative Visual 7 of 7	16315/P/0156	Rev R
Landscape Masterplan	16315/A1/4.21	Rev M
Fuel Bunker Level +2.0000m	16315/A1/P/0220	Rev D
Fuel Bunker Level +20.000m and Level +36.000m	16315/A1/P/0221	Rev E
Fuel Bunker Section A-A	16315/A1/P/0222	Rev C
Fuel Bunker Section B-B	16315/A0/P/0223	Rev C
Tipping Hall Layout Level +2.000m	16315/A1/P/0201	Rev E
Tipping Hall Section A-A	16315/A1/P/0202	Rev D
Overall Roof Layout	16315/A1/P/0200	Rev H
Comparison Drawing		
Lighting Discharges Report	20020117LXI0019	Rev C
External Lighting Technical Submission	20020117LXJ0922	Rev I
External Lighting Drawing	20020117LXG0907	Rev H
K3 External Lighting Strategy	ECO00047 Fig1	-
Access Road - Proposed	9163-0135-01-JNY9060	Rev 01
Proposed Internal Access Layout		
K3 Employment Strategy	March 2012	

SCHEDULE 3

Article 18

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Application of this Schedule

56. This Schedule applies to an application made by the undertaker to the planning authority (referred to in this Schedule as “the authority”) for an approval, consent or agreement required by any of the requirements.

Decision Period

57.—(1) The authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In sub-paragraph (1), “the decision period” means—

- (a) where the authority does not give written notice under paragraph 58(1) or (2) requiring further information, the period of eight weeks from the later of—
 - (i) the day immediately following the day on which the authority receives the application, and
 - (ii) the day on which the authority receives the fee payable under paragraph 4; or
- (b) where the authority gives written notice under paragraph 58(1) or (2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or
- (c) such longer period as may be agreed in writing by the undertaker and the authority.

Further information

58.—(1) If the authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant requirement requires that authority to consult a person (referred to in this Schedule as a “consultee”) in relation to the application—

- (a) the authority must consult the consultee within five business days from the day on which it receives the application;
- (b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the authority, specifying what further information is required, within 18 business days from the day on which the authority received the application; and
- (c) within five business days from the day on which it receives any such notification from the consultee, the authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the authority under sub-paragraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the authority does not give written notice in accordance with sub-paragraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

Fees

59.—(1) The undertaker must pay the authority a fee of £116, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under sub-paragraph (1) to the undertaker, within the relevant period, if it—

- (a) rejects the application as being invalidly made;
- (b) fails to give the written notice required by paragraph 57(1).

(3) Sub-paragraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In sub-paragraphs (2) and (3) “the relevant period” means the period of eight weeks from, as the case may be—

- (a) the day on which the authority rejects the application as being invalidly made;
- (b) the day after the day on which the decision period expires.

Appeal to the Secretary of State (procedure)

60.—(1) The undertaker may appeal to the Secretary of State against—

- (a) the authority’s refusal of an application;
- (b) the authority’s grant subject to conditions of an application;
- (c) the authority’s failure to give the written notice required by paragraph 57(1);
- (d) a written notice given by the authority under paragraph 58(1), (2) or (3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

- (a) its grounds of appeal;
- (b) a copy of the application submitted to the authority;
- (c) any supporting documentation which it wishes to provide.

(3) In sub-paragraph (2), “the relevant day” means—

- (a) in the case of an appeal under sub-paragraph (1)(a) or (b), the day on which the undertaker is notified by the authority of its decision;
- (b) in the case of an appeal under sub-paragraph (1)(c), the day after the day on which the decision period expires;
- (c) in the case of an appeal under sub-paragraph (1)(d), the day on which the undertaker receives the authority’s notice.

(4) At the same time as it sends the documents mentioned in sub-paragraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) As soon as reasonably practicable following receipt of the documents mentioned in sub-paragraph (2), the Secretary of State must—

- (a) appoint a person (referred to in this Schedule as “the appointed person”) to determine the appeal on his behalf;
- (b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person’s address for correspondence in relation to the appeal.

(6) Within 20 business days from the day on which the Secretary of State gives notice under sub-paragraph (5)(b), the authority and any consultee—

- (a) may submit written representations in respect of the appeal to the appointed person; and
- (b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.

(7) Within 10 business days from the last day on which representations are submitted to the appointed person under sub-paragraph (6), any party—

- (a) may make further representations to the appointed person in response to the representations of another party; and
- (b) must, at the same time, send a copy of any such further representations to each other party.

Appeal to the Secretary of State (powers of the appointed person)

61.—(1) The appointed person may—

- (a) allow or dismiss the appeal;
- (b) reverse or vary any part of the authority's decision, irrespective of whether the appeal relates to that part;
- (c) make a decision on the application as if it had been made to the appointed person in the first instance.

(2) The appointed person—

- (a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;
- (b) if he gives such a notice, must—
 - (i) at the same time send a copy of it to each other party, and
 - (ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.

(3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

Appeal to the Secretary of State (supplementary)

62.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.

(2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.

(3) Subject to sub-paragraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.

(4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

(5) In considering an application under sub-paragraph (4) the appointed person must have regard to the National Planning Practice Guidance: Advice on planning appeals and the award costs or any circular or guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for WTI/EFW Holdings Ltd (company number 07593865) to construct, operate and maintain the K3 Generating Station with a gross installed capacity of up to 75MW, and to construct, operate and maintain the WKN Waste-to-Energy Facility with a gross installed capacity of up to 42MW.

The Order also authorises for associated development and imposes requirements in connection with the development.

A copy of the various documents referred to in this Order and certified in accordance with article 16 (certification of plans, etc) of this Order may be inspected free of charge during working hours at the offices of Kent County Council, Sessions House, County Hall, Maidstone, Kent ME14 1XQ.



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Eclipse House
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Our Ref: EN010083

19 February 2021

Dear Mr [REDACTED]

PLANNING ACT 2008

APPLICATION FOR THE WHEELABRATOR KEMSLEY K3 GENERATING STATION AND WHEELABRATOR KEMSLEY NORTH WASTE-TO-ENERGY FACILITY ORDER

1. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to advise you that consideration has been given to the report dated 19 November 2020 of the Examining Authority ("the ExA"), comprising a single examining Inspector, Grahame Kean, who conducted an examination into the application ("the Application") submitted on 11 September 2019 by WTI/EFW Holdings Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Wheelabrator Kemsley K3 and Wheelabrator Kemsley North waste-fuelled electricity generating stations.

1.2 The Application was accepted for examination on 8 October 2019. The examination began on 19 February 2020 and was completed on 19 August 2020. The Secretary of State received the report containing the ExA's conclusions and recommendation on 19 November 2020.

1.3 The Order as applied for would grant development consent for an increase in generating capacity from 49.9MW to 75MW and an increase in the throughput of waste that is permitted to be utilised at the operational Wheelabrator Kemsley K3 generating station ("WK3") and permit the construction, operation and decommissioning of a new energy from waste generating station, Wheelabrator Kemsley North ("WKN"). The projects would be located on adjoining sites next to the DS Smith Paper Mill near

Sittingbourne in Kent. The WK3 and WKN sites would be within the boundary of Swale Borough Council in the County of Kent.

1.4 As applied for, WK3 and WKN would comprise (in general terms):

- **Work No 1 [WK3]** – Construction and operation of an onshore generating station with a generating capacity of up to 75MW and permissible waste throughput of 657,000 tonnes per annum;
- Work 1A – Installation of grid connection for Work No 1;
- Work 1B – Installation of steam connection for Work No 1;
- Work 1C – Alteration of existing private access road to construct, use and maintain Work No 1;
- Work 1D – Creation of a temporary construction compound and laydown area for the construction of Work No 1;
- Work 1E – Construction and operation of a surface water outfall for Work No 1;

- **Work No 2 [WKN]** – Construction and operation of a waste-to-energy facility capable of processing 390,000 tonnes of waste per annum, with a generating capacity of up to 42MW;
- Work No 3 – Installation of a grid connection for Work No 2;
- Work No 4 – Alteration of existing private access road to construct, use and maintain Work No 2;
- Work No 5 – Temporary construction or alteration of existing private haul road for the construction of Work No 2;
- Work No 6 – Creation of a temporary construction compound and laydown area for the construction of Work No 2; and
- Work No 7 – Construction and operation of a new surface water outfall for Work No 2.

1.5 No compulsory acquisition powers are sought by the Applicant.

1.6 Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s Report of Findings, Conclusions and Recommendation to the Secretary of State (“the ExA Report”). The main features of the development proposals, as applied for, and site are set out in section 2 of the ExA’s Report. The ExA’s findings are set out in sections 4 - 6 of the ExA Report, and the ExA’s conclusions on the terms of the Order and the case for development consent and are set out at sections 7 and 8 respectively.

2. Summary of the ExA Report and Recommendation

2.1 The ExA’s recommendation in the ‘Overview’ section of the ExA Report is as follows:

“The Examining Authority recommends that the Secretary of State should grant consent for the K3 Generating Station only and should make the Order in the form attached at Appendix D”.

3. The Secretary of State's Consideration of the ExA Report

3.1 The Secretary of State notes that a total of 9 Relevant Representations (as defined in the Planning Act 2008) were received from statutory and non-statutory authorities, local councils and local residents. In addition, the Secretary of State notes that during the examination of the Application, the ExA accepted two individuals and two organisations (Royal Mail and the South East Waste Planning Advisory Group) as Interested Parties to enable their views to be heard during the examination.

3.2 The principal matters considered by the ExA, as set out in the ExA Report are:

- the principle and need for the proposed developments;
- conformity with the National Policy Statements for Energy
- conformity with Development Plan policies;
- waste hierarchy and fuel availability;
- air quality;
- archaeology and cultural heritage;
- ecology;
- greenhouse gases and climate change;
- ground conditions;
- landscape and visual impact;
- noise and vibration;
- traffic and transport;
- water environment; and
- Habitats Regulations Assessment.

3.3 The Secretary of State has considered the ExA Report and all other material considerations, including further representations received after the close of the ExA's examination ("the post-examination representations"). The Secretary of State's consideration of the ExA's Report and the post-examination representations is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*.*"].

3.4 The Secretary of State notes that the ExA concluded [ER 8.2.7] that for WK3, with the mitigation proposed through the DCO recommended by the ExA, there would be no adverse effects that would outweigh the benefits of the project. He further notes the ExA's conclusion for WKN [ER 8.2.14] was that the identified harms did outweigh the benefits. As noted above, the ExA's overall conclusion [ER 8.3.1] was that development consent should be granted for WK3 only. The Secretary of State agrees with the ExA's conclusion.

The Principle and Need for the Development

4.1 The Planning Act 2008 sets out a process for decision-makers to follow in considering applications for nationally significant infrastructure projects. In the first instance, the decision-maker needs to consider whether the proposed nationally significant infrastructure projects are in accordance with the relevant National Policy Statement(s). WK3 is a 'Nationally Significant Infrastructure Project' as defined in

sections 14 and 15 of the Planning Act 2008 by virtue of having a generating capacity of more than 50MW.

4.2 WKN is not a nationally significant infrastructure project as defined in the Planning Act 2008 as its proposed generating capacity is 42MW. However, WKN was 'directed in' to the Planning Act regime by the Secretary of State under section 35 of the Planning Act 2008 on 27 June 2018 following a request by the Applicant. The Secretary of State considered that the project would be of national significance given that it would be located on the same site as two other projects of national significance, which together comprised a significant facility of sustainable energy supply and taking into account the fact that the WKN project would be applied for at the same time as the WK3 project. There would also be benefits from the two projects being considered together in a consistent manner.

4.3 Section 104 of the Planning Act 2008 sets out that decisions on nationally significant infrastructure projects where a National Policy Statement has effect must have regard to the relevant statement and any other matters that are both important and relevant to the decision. Any decision must be taken in accordance with the relevant National Policy Statement except where doing so would: lead to a breach of the UK's international obligations; lead to the Secretary of State being in breach of any duty imposed on him by or under any enactment; be unlawful by virtue of any enactment; or where the adverse effects of a development outweigh its benefits (the last at section 104(7) of the Act).

4.4 Section 105 of the Planning Act 2008 sets out that decisions on nationally significant infrastructure projects where a National Policy Statement does not have effect must have regard to any local impact reports, any matters prescribed in relation to development of the description to which the application refers and any other matters which the Secretary of State considers are relevant and important.

4.5 National Policy Statements EN-1 (the Overarching National Policy Statement for Energy - "NPS EN-1") and EN-3 (the National Policy Statement for Renewable energy Infrastructure "NPS EN-3") set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. NPS EN-1 sets out that the assessment of development consent applications for electricity generating infrastructure should start with a presumption in favour of granting consent. The ExA noted the strong need case for electricity generating projects that is set out in NPS EN-1 and NPS EN-3 but considered that the presumption in favour of granting consent did not apply to the WKN project because it had been directed into the Planning Act process and, therefore, did not fall to be considered under section 104 of the Planning Act 2008, but rather under section 105 of that Act. Instead, the ExA concluded that, while the National Policy Statements were important and relevant matters in the consideration of the development consent application for WKN, the primary consideration in determining the development should be the local development plan.

4.6 The Secretary of State takes the view that the Application should be treated as a whole and determined under section 104 of the Planning Act 2008. This section, and section 105 would seem to be mutually exclusive and it would not be correct to determine different parts of the Application under different provisions. It is also noted

that WKN is a type of generating station which would generally fall to be considered under EN-3 had it met the 50MW threshold by itself and was directed into the Planning Act regime on the basis of its combined significance with the WK3 project. In any event, the Secretary of State does not consider that determining the whole application under section 104 has a material impact on the overall outcome in this case. Section 104(2)(d) of the 2008 Act enables the Secretary of State to give consideration to any important and relevant matters appropriate to this aspect of the application as fully considered by the ExA.

4.7 The Energy White Paper, “Powering our Net Zero Future”, was published on 14 December 2020. The White Paper announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State’s consideration of the Application.

Consideration of Alternatives

4.8 The Applicant considered the question of alternatives in section 2.14 of Chapter 2 of its Environmental Statement that was submitted to the Planning Inspectorate as part of its application for development consent. The Applicant’s position was that, in relation to WK3, the fact that it had been constructed meant that it was not necessary to consider alternatives, while for WKN, the need to locate it next to the sister WK3 generating station and the proximity to viable feedstock also meant that it was not necessary to consider alternatives.

4.9 The ExA did not explicitly consider alternatives to the proposed developments that are the subject of the Applicant’s request for a development consent order. However, in considering the need for WKN, the ExA states at ER 6.2.20 of its Report that “there is no proven need for the plant to be located in Kent” and at ER 6.2.31 that “... an alternative location outside Kent..... would appear to better serve the strategic purposes of member authorities of SEWPAG [the South East Waste Planning Advisory Group]....in particular the KMWLP [Kent Minerals and Waste Local Plan]”.

4.10 The Secretary of State notes the ExA’s comments in this matter and has considered these in the overall ‘planning balance’ section of this decision letter.

Conformity with Development Plan Policies

4.11 The ExA considered in general terms the conformity of WK3 and WKN with policies in the relevant local development plans [ER 4.6.1 et seq]. The ExA took the view that there were supportive statements in the plans that referenced sustainability and none that were in conflict with the policy directions of the National Policy Statements. However, in its analysis of this point, the ExA again indicates that the National Policy Statements are the primary source of policy direction for WK3 but that the local development plans have primacy for WKN.

Waste Hierarchy and Fuel Availability

4.12. The ways that the waste hierarchy (a set of priorities for making efficient use of resources) and fuel availability apply to WK3 and WKN were key issues in the ExA's assessment of the development consent application for the two projects.

4.13 The National Policy Statements set out that energy from waste is a type of infrastructure that is needed. However, the National Policy Statement for Renewable Energy Infrastructure, NPS EN-3 states that an applicant for development consent must assess "the conformity with the waste hierarchy and the effect on relevant waste plans.....". NPS EN-3, notes that the decision-maker should be satisfied, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets.

4.14 The ExA notes that there are a number of national and local policies and plans that come into play in considering such applications [ER 4.10.8 et seq]. The ExA notes [ER 4.10.24 et seq] that the Kent Minerals and Waste Local Plan refers to the potential for waste management proposals to contribute towards local energy supply. The ExA also notes [ER 4.10.28 et seq] that policies within the Kent Minerals and Waste Local Plan state that, in order to deliver sustainable waste management solutions for Kent, proposals for waste management must demonstrate how waste is being driven to ascend the waste hierarchy.

4.15 The ExA considered the case made by the Applicant in support of WK3 and WKN and notes that the Applicant's starting position [ER 4.10.31] is that the projects would be wholly in accordance with the waste hierarchy and not prejudicial to the achievement of national or local waste management targets. The ExA sets out in detail the Applicant's consideration of waste capacities and sourcing of its fuel supplies which would come from a number of local authority areas in the South East of England in addition to Kent. The Applicant concluded that bringing fuel sources in from outside Kent should not be the subject of an objection. In its overall conclusion, the Applicant stated [ER 4.10.44] that WK3 and WKN would meet objectives of national and local policy through: delivering the waste hierarchy; contributing to self-sufficiency at national level; and being part of a network of facilities from which value would be recovered from appropriate residual wastes.

4.16 The ExA sets out the key issues that were considered during the examination in respect of the application. It notes [ER 4.10. 46 et seq] that both Kent County Council and the South East Waste Planning Advisory Group (an organisation which seeks to coordinate the planning of waste management within the South East of England) objected to the grant of consent for WK3 and WKN. Kent County Council stated that the projects would be counter to the waste hierarchy in diverting waste from more sustainable solutions such as preparation for re-use and recycling [ER 4.10.54]. The Council also stated that existing waste disposal capacity was sufficient to deal with capacity demand – additional waste capacity was not required or expected during the existing contract period [ER 4.10.56].

4.17 The ExA notes [ER 4.10.74 et seq] that there were several matters still outstanding in relation to Waste Hierarchy and Fuel Availability at the end of the examination: Local Policy Principles; Waste Hierarchy; Energy Production; the Relevance of the National Policy Statements to WK3; and the Kent Minerals and Waste Local Plan Policy. In its conclusion on the Waste Hierarchy and Fuel Availability, the ExA weighs up the relevant considerations that have been presented by the Applicant, Kent County Council, the South East Waste Planning Advisory Group and other Interested Parties. The ExA sums up its overall position in relation to WK3 and WKN as follows:

Wheelabrator Kemsley K3 [ER.4.10.139 et seq]

4.18 While Kent County Council submits that there is no need in Kent for additional waste capacity for the period of the Kent Minerals and Waste Local Plan (up to 2030) and that neither WK3 nor WKN should benefit from the National Policy Statements' presumption in favour of energy development infrastructure, the Applicant submits that both projects are important and relevant to meeting a number of critical national needs including on net zero and waste management. The ExA notes that WK3 would, in addition to generating electricity, also provide steam and heat to local customers which is a factor in its favour. The ExA's overall conclusion is that the need for WK3 should carry significant weight in the decision-making process and the small increase in the proposed generating capacity with related increase in waste throughput would not prejudice the principles of sourcing waste locally and aiming for self-sufficiency.

Wheelabrator Kemsley North [ER 4.10.142 et seq]

4.19 The project would contribute 42MW of electricity to the electricity grid. Whilst noting this, the ExA states that the Applicant has not provided robust arguments to support the new plant and that there is no proven need for it to be located in Kent. WKN would be inconsistent with the Kent Mineral and Waste Local Plan and the revisions to it that were the result of the 'Early Partial Review' carried out on the Plan. (The Early Partial Review is an independent report carried out by the Planning Inspectorate which checks whether local plans are 'sound'.) The ExA considered that WKN did not accord with paragraph 2.5.70 of NPS EN-3 as it was not in compliance with the Kent Minerals and Waste Local Plan and there was no evidence provided as to why an exception should be made. Following on from that, WKN would not satisfy the statement in paragraph 2.2.4 of NPS EN-1 that the planning system should provide a framework which permits the construction of the infrastructure needed in the place where it is acceptable in planning terms. Finally, the ExA noted that WKN would be in conflict with the National Planning Policy for Waste because it would put at risk the achievement of revised recycling and composting targets in the Kent Minerals and Waste Local Plan.

4.20 The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Air Quality

4.21 The ExA points out [ER 4.11.1 et seq] that the National Policy Statements and the National Planning Policy Framework include the policy considerations that should

be taken into account in determining the acceptability of proposed developments in relation to impacts on air quality. The National Policy Statements acknowledge that the construction, operation and decommissioning of energy infrastructure can lead to emissions to air which have the potential to adversely impact human health as well as protected habitats and species and the wider environment. The ExA also notes that the Swale Local Plan includes a policy which sets out to address climate change through, among other things, the management of emissions.

4.22 The ExA notes [ER 4.11.8 et seq] the Applicant provided a detailed assessment of potential air quality impacts arising from the construction and operation of WK3 and WKN as part of its application for development consent.

4.23 The Applicant assessed that during the construction of WKN, the impacts of dust emissions and emissions from construction traffic would be low as a result of mitigation and utilisation of best practices. The Applicant's assessment of potential impacts from the operation of WKN was that the design of the facility, including the use of a 90-metre-tall emissions chimney would ensure that any pollutant concentrations would be adequately dispersed before they reached ground level. A 'Continuous Emissions Monitoring System' would ensure emissions would be controlled and regulated under an Environment Agency permit. The impacts of operational traffic were assessed as being negligible.

4.24 During the examination of the Application, the ExA asked questions of the Applicant and other Interested Parties about a range of air quality and emissions topics [ER 4.11.18 et seq]. The ExA notes that the Statement of Common Ground between the Applicant and Natural England set out agreement between the two parties on the absence of significant adverse effects arising from emissions linked to the construction and operation of WK3 and WKN. However, Kent County Council and Swale Borough Council both expressed concerns about potential impacts arising from WK3 and WKN but the ExA notes that no evidence was provided about the projects exceeding local Air Quality Objectives.

4.25 In its conclusion [ER 4.11.26 et seq], the ExA states that appropriate mitigation measures would be put in place to avoid any significant adverse impacts on air quality arising from WK3 and WKN either on their own or in-combination with other developments. WK3 and WKN would, therefore, accord with national and local policies as regards to air quality. The Secretary of State sees no reasons to disagree with the ExA's conclusions in this matter.

Archaeology and Cultural Heritage

4.26 The National Policy Statements and the National Planning Policy Framework set out the policy considerations that should be taken into account in determining the acceptability of proposed developments in relation to archaeological and cultural heritage. The ExA [ExA 4.12.6] also notes the policies in the Swale Local Plan which seek to conserve and enhance the historic environment and prevent adverse effects on Scheduled Monuments and their setting.

4.27 The ExA considered the potential impacts of WK3 and WKN on archaeology and cultural heritage during the examination of the Application. The ExA notes that

there would be no external changes to WK3 and that the Applicant states there are no designated heritage assets within the site of the two projects although there are a number of listed buildings at a minimum of 1 km distance from the development site. The Applicant's Environmental Statement [ER 4.12.7 et seq] sets out that no listed buildings within 3km of the development site would experience more than a minor adverse impact [ER 4.12.16]. In addition, the Environmental Assessment set out that the in-built mitigations of WK3 and WKN projects would limit any effects on designated heritage assets. Finally, the Environmental Statement also considered the cumulative impacts of WK3 and WKN with other relevant projects and concluded there would be no significant effects.

4.28 The ExA notes that no significant concerns about impacts on cultural heritage assets were raised during the examination of the Application. However, Historic England (the statutory adviser on all matters relating to the historic environment and its heritage assets) raised the likelihood that WK3 and WKN would be visible across a wide area and could affect the significance of some heritage assets located some distance away from them. Historic England did, however, agree with the Applicant that any harm would be low level and might, therefore, be found to be outweighed by the benefits of the projects [ER 4.12.22 et seq]. Kent County Council also made representations to the examination suggesting that a Written Scheme of Investigation should be produced by the Applicant which should be agreed with the Council before any works commenced. This was included as a Requirement in the development consent order recommended to the Secretary of State by the ExA.

4.29 In assessing potential impacts on archaeological and cultural heritage, the ExA concludes [ER 4.12.29 et seq and 6.2.38 et seq] that there would be no significant effects on archaeological or heritage assets from the construction, operation or decommissioning of WK3 and WKN (including on the setting of any Scheduled Monument, listed building or other designated heritage asset). All impacts were addressed in a way which complies with the relevant sections of the National Policy Statements and the local development plan.

4.30 The Secretary of State notes the Infrastructure Planning (Decisions) Regulations 2010 set out the desirability of preserving listed buildings or scheduled monuments or their setting and require him to give substantial importance and weight to these matters. Noting the benefits of WK3 and WKN, he must be satisfied that these outweigh any harm. The Secretary of State must also agree that there is a clear and convincing justification for any harm that would result, both individually and collectively, upon designated heritage assets and that overall, historic environment matters would accord with NPSS EN-1 and EN-3 and do not weigh significantly against the Order being made. The Secretary of State believes that the position set out above meets the requirements of the regulations and that impacts on archaeology and cultural heritage have been minimised to an acceptable level. He sees no reason, therefore, to disagree with the ExA's conclusions.

Ecology

4.31 The National Policy Statements set out that energy infrastructure development should avoid significant harm to ecological interests through mitigation measures and the use of alternatives where possible. The National Policy Statements and the

National Planning Policy Framework set out a range of other considerations that are of relevance in assessing the potential impacts of energy infrastructure projects on those interests. The Kent Minerals and Waste Local Plan and the Swale Local Plan also set out the need for developments to avoid adverse impacts on ecological features.

4.32 The Applicant set out in the Environmental Statement that was submitted with the Application information about a range of international and nationally designated nature conservation sites. While there were no such sites within the boundaries of WK3 and WKN, there were a number of such sites within a reasonable distance (10km), including Swale Special Protection Area (“SPA” – originally designated under the EU Birds Directive) and Ramsar site (designated under the Convention on Wetlands of International Importance), the Medway Estuary and Marshes SPA and Ramsar site, the Thames Estuary and Marshes SPA and Ramsar site, the Outer Thames Estuary SPA and the Queendown Warren Special Area of Conservation (“SAC” – originally designated under the EU Habitats Directive). A number of the nationally designated sites (Sites of Special Scientific Interest) are within one kilometre of WK3 and WKN’s site boundaries.

4.33 The Applicant also set out its consideration of potential impacts arising from the construction and operation of WK3 and WKN projects and the mitigations that were proposed to be put in place to avoid or reduce impacts. It noted that during the construction of WKN, there were potential impacts on a number of receptors including on Schedule 1 breeding birds (including, Marsh Harrier, Bearded Tit and Cetti’s Warbler) and on reptiles [ER 4.13.17 et seq]. The Applicant also assessed possible impacts from the operation of WKN [ER 4.13.38 et seq] including from drainage run off into sensitive sites, light spill, disturbance from people and plant, recreation and noise and vibration. The Applicant’s assessment of operational impacts also covered [ER 4.13.43 et seq] potential impacts on breeding birds in the vicinity of the projects and on reptiles. Finally, the Applicant looked at the provision of habitat enhancement measures to mitigate impacts on relevant species and set out mitigation measures in its proposed development consent order [ER 4.13.48] including the approval of an ‘Environmental Mitigation and Management Plan’ and the timing of piling. The Applicant’s overall conclusion was there would be no significant effects on sites or species important for the conservation of biodiversity as a result of WK3 and WKN.

4.34 The ExA notes that during the examination, both Natural England (the Government’s statutory advisers on nature conservation matters) and Kent County Council agreed with the Applicant that WK3 and WKN would not result in adverse impact on ecological factors. The ExA concluded [ER 4.13.57] that with the mitigation measures proposed by the Applicant in place the construction and development of WK3 and WKN would result in no significant harm to biodiversity conservation interests and the aims of the National Policy Statements, the National Planning Policy Framework and relevant local development policies would be met.

4.35 The Secretary of State sees no reason to disagree with the ExA’s conclusions in this matter.

Greenhouse Gases and Climate Change

4.36 The ExA notes the many policy and legislative provisions that address the need to reduce emissions of greenhouse gases.

4.37 The ExA's Report set out that the Applicant assessed the likely significant effects resulting from WK3 and WKN resulting from greenhouse gas emissions and the resultant impact on climate change [ER 4.14.24].

4.38 The Applicant considered the direct greenhouse gas emissions from the operation of WK3 and WKN but also set these against notional emissions figures for emissions from landfill disposal of waste and from conventional electricity generation which would be avoided [ER 4.14.24 et seq]. The Applicant estimated that the annual greenhouse gas emissions from the already consented WK3 project would be 255,000 tonnes of carbon dioxide equivalent per year of operation. However, when greenhouse gas emissions from landfill were taken into account, there would be a net reduction 232,000 tonnes of carbon dioxide equivalent per year of operation. The Applicant predicted that the requested increase in generating capacity and throughput of waste capacity at WK3 would produce a reduction of 60,000 tonnes of carbon dioxide equivalent per year of operation when set against emissions from landfill and from conventional electricity generation which would be avoided. The comparable figures for WKN are 163,000 tonnes of carbon dioxide equivalent per year of operation emitted but an overall reduction in emissions of 64,000 tonnes of carbon dioxide equivalent per year of operation. It is noted [ER 4.14.36] that these reductions in emissions are based on some uncertainties but the overall assessment is that they are of significant benefit.

4.39 During the examination, Kent County Council and Swale Borough Council queried the figures provided by the Applicant because there were too many unknowns in the assessments. The ExA's Report notes [ER 4.14.47] that both councils objected to WK3 and WKN because they were not necessary to meet waste requirements for Kent and conflicted with policies for self-sufficiency and promotion of recycling. Swale Borough Council is recorded as being concerned that the projects would result in significant carbon impacts and lead to an increase in heavy goods vehicle movements within the borough and impact negatively on climate change.

4.40 The ExA's Report [ER 4.4.19 and 4.15.54] refers to the Climate Change Committee's 2020 Progress Report which expresses concerns about the proliferation of energy from waste plants because of its competition with recycling and seeks mechanisms to reduce carbon emissions from those plants.

4.41 In its conclusions [ER 4.14.58 et seq], the ExA sets out that, given the uncertainties in the Applicant's assessment of carbon benefits, the matter should carry little weight in the assessment of WK3 and WKN. However, the ExA notes that, while they are conjoined in the Application, there are differences between the two projects so that the 'environmental burden' of WKN should not apply to WK3. As far as the possibility of waste being diverted from landfill to fuel the two projects is concerned, the ExA considers that the projects would divert a significant proportion of waste from recycling rather than landfill. Finally, with respect to the level of guaranteed heat utilisation for the WK3 and WKN, the ExA considers that, taken together, neither

project is particularly energy efficient. However, the ExA goes on to say that WK3 project provides the greater benefit as a result of its better Combined Heat and Power performance. The Secretary of State sees no reason to take different view to the ExA in this matter.

Ground Conditions

4.42 As indicated above, WK3 project is already operational as an electricity generating station. The ExA, therefore concluded [ER 4.15.5] that it was anticipated that there would be no potential for ground condition-related effects for this part of the Application.

4.43 The ExA set out the Applicant's case that no significant issues had been raised by consultees during the scoping exercise for WKN. There were no concerns raised by Interested Parties during the examination of the Application. A Statement of Common Ground between the Applicant and the Environment Agency agreed that the Applicant's assessment of ground conditions and potential contamination impacts was appropriate. The Statement of Common Ground also agreed that conditions in the proposed development consent order would ensure appropriate management regimes would be put in place in the event that consent was granted.

4.44 The ExA concluded [ER 4.15.13] that WK3 and WKN were in accord with all relevant legislation and policy and that ground condition matters would be provided for and secured in the proposed development consent order. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Landscape and Visual Impact

4.45 The ExA notes [ER 4.16.5 et seq] the National Policy Statements set out that virtually all nationally significant energy infrastructure projects will have effects on the landscape but that the aim should be to minimise any harm. Any harm should be assessed against the benefits of the projects in question. The National Policy Statements also set out how assessments of landscape and visual impacts should be undertaken. The ExA also notes that the Kent Minerals and Waste Local Plan sets out that proposals for developments should aim to 'protect and enhance the character of the Site's setting'. The Swale Local Plan sets out similar ambitions for development within its area.

4.46 The ExA sets out the Applicant's assessment of the landscape and visual effects of WK3 and WKN. In respect of the WK3 project, the Applicant stated that the additional generating capacity and waste throughput for which development consent was being sought would not result in any changes to the physical structure of the already consented and constructed development and no additional visual impacts were likely. However, WK3 would be taken into account in considering any 'in-combination' impacts.

4.47 In respect of WKN, the Applicant noted that the site of the proposed development was currently an area of hard-standing which was being used for the storage of construction material for WK3. The site was not currently visible from most of the nearby town of Sittingbourne because of existing developments around the

town. The Applicant assessed that for landscape and townscape character impacts, the constructed WK3 and WKN would become an element of the existing industrial setting provided by the DS Smith Paper Mill and the constructed WK3. However, it also notes that walkers on the Saxon Shore Way (a designated long-distance footpath) would notice the introduction of another industrial element to the landscape although the Applicant's assessment is that this would only lead to a moderate adverse effect for those people. The Applicant set out mitigation measures in its environmental statement but notes that certain features are dictated by function of the development and cannot be mitigated.

4.48 As far as the cumulative visual and landscape impacts of WK3 and WKN projects are concerned, the Applicant's view is that, while there would be increased visibility with some substantial adverse impacts for walkers using the Saxon Shore Way, the contribution of the projects would vary between a moderate adverse effect to negligible.

4.49 During the examination, the ExA noted that no significant matters of concern about visual and landscape impacts were raised by Interested Parties [ER 4.16.32]. Nonetheless, the ExA did pursue a large number of matters with the Applicant and other parties [ER 4.16.33 et seq]. The ExA also considered the Local Impact Report submitted by Swale Borough Council [ER 4.16.36 et seq] which noted the possible visibility of WK3 and WKN albeit as part of a wider industrial scene. The ExA also noted the unsigned and undated draft Statement of Common Ground between Swale Borough Council and the Applicant and a submission by the Council during the examination which stated that WK3 and WKN would be unlikely to result in significant adverse visual or landscape character effects [ER 4.16.41]. Finally, the ExA considered the potential impact of the lighting at WK3 and WKN [ER 4.16.42 et seq] and noted that this would lead to an intensification of baseline conditions in the vicinity of the projects when combined with the lighting at the existing developments in the area.

4.50 The ExA's conclusions [ER 4.16 46 et seq] were that while WK3 and WKN would give rise to adverse impacts on visual and landscape receptors, the overall impact would at its worst be moderately adverse (for walkers on the Saxon Shore Way). The ExA also concluded that there would be no significant landscape effects as a result of WKN during its construction, operation or decommissioning. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Noise and Vibration

4.51 The ExA notes [ER 4.17.1 et seq] that the National Policy Statements and the National Planning Policy Framework set out relevant matters for the assessment and consideration of noise and vibration impacts from nationally significant energy infrastructure noting that excessive noise can have adverse impacts on human health as well as on wildlife and biodiversity.

4.52 The ExA also notes that the Applicant predicted that there would be no significant changes to noise emissions as a result of WK3 and WKN (including from increases in levels of traffic associated with them).

4.53 During the examination, the ExA sought to clarify the potential sources of noise, what the impacts might be and how they could be mitigated. The ExA draws attention to the draft Statement of Common Ground between Swale Borough Council and the Applicant which sets out mitigation measures that would be included in any development consent order that the Secretary of State might issue and records the Council's position of no objection to WK3 and WKN in respect of their potential noise impacts [ER 4.17.12 et seq].

4.54 In its conclusion [ER 4.17.22 et seq], the ExA sets out that it found there would be no significant impacts arising from the construction and operation of WK3 and WKN projects and that the projects would comply with the National Policy Statements and the National Planning Policy Framework in respect of noise and vibration. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Traffic and Transport

4.55 The National Policy Statements acknowledge that traffic movements into and out of nationally significant infrastructure projects during its development life cycle can have a wide variety of impacts on the surrounding transport infrastructure. However, the National Policy Statements also note that it is possible to mitigate those impacts. The National Planning Policy Framework sets out that development should only be refused on traffic and transport grounds if there would be unacceptable impacts on road safety or on the road network more generally. Both Kent County Council's fourth Local Transport Plan and Swale Borough Council's Local Plan and Swale Borough Council's draft Transportation Strategy 2014 – 2031 include matters that are potentially impacted by the increase in traffic density arising from WK3 and WKN.

4.56 The ExA notes [ER 4.18.10 et seq] that the Applicant submitted an assessment of potential traffic impacts arising from WK3 and WKN as part of the environmental statement that accompanied its application for development consent. The assessment covers a range of transport links including roads, footpaths and local rail and bus routes. The Applicant notes that WK3 and WKN, particularly if operated together would lead to an increase in traffic flow movements in the vicinity of the plants. However, the Applicant's overall conclusion was that [ER 4.18.37] WK3 and WKN would not result in an unacceptable or severe impact on the transport network.

4.57 The question of potential impacts of WK3 and WKN on traffic and transport matters with Highways England and Kent County Council (the Local Highways Authority) both raising concerns in relation to the 'Strategic Road Network' [motorways and major 'A' roads] and local routes respectively. The concerns related to the increase in the number of Heavy Goods Vehicle movements along the already congested local and strategic road network that would result from the increase in waste throughput at WK3 and the operation of the new WKN project. There would also be impacts from the transport arrangements necessary to remove Incinerator Bottom Ash from WK3 and WKN for disposal.

4.58 The ExA considered the traffic and transport issue in great detail during the examination with a number of questions being asked of the Applicant, Highways

England and Kent County Council to seek clarification on relevant issues related to potential impacts and mitigations. If both WK3 and WKN were consented and developed to their requested generating and waste throughput capacities, there would be a total increase of 318 additional Heavy Goods Vehicle movements per day in the vicinity of the projects and on the wider road network. The individual daily increases would be 68 additional movements for WK3 and 250 additional movements for WKN [ER 4.18.55]. This total would be in addition to the 348 daily movements arising from the existing consented WK3 project. It was also noted that other infrastructure developments in the vicinity of WK3 and WKN – particularly proposals for a new housing development – that would also impact on the local and strategic road networks with the potential to adversely affect road congestion (the carrying capacity at certain important road junctions would be exceeded) and road safety.

4.59 Kent County Council and Highways England considered that mitigation measures to limit the numbers of Heavy Goods Vehicles on the road network at particular points during the day was necessary to minimise impacts on congestion and road safety. These matters were outstanding at the end of the examination.

4.60 The ExA concluded [ER 4.18.79 et seq] that with a number of mitigation measures in place then WK3 and WKN would not give rise to adverse impacts on the Strategic Road Network. The mitigation measures that would apply are:

- a prohibition on the timing of Heavy Goods Vehicle movements at the M2 Junction 5 and A249 Grovehurst Road traffic junctions until such time as suitable upgrades to those junctions had been out in place;
- the prohibitions should continue to apply until the Applicant can demonstrate an absence of an unacceptable impact on the Strategic Road Network which can only happen once the road improvements are in place and WK3 and WKN have been operational for a minimum of twelve months;
- there would be no need to restrict further the existing limitation of Heavy Goods Vehicle movement numbers for WK3. However, there should be limits on the number of Heavy Goods Vehicle movements in relation to the increased generation and waste throughout for WK3 project; and
- approval for the relevant local planning authority would be needed for construction and operational travel management plans.

4.61 The ExA's overall conclusion [ER 4.18.90] is that mitigation for impacts would ensure that WK3 and WKN would accord with the requirements of the National Policy Statements, local development plan and other policies.

4.62 The ExA notes that there was no completed Statement of Common Ground between the Applicant and Highways England at the close of the examination and that this omission adversely affected the conduct of the examination by making it difficult to know which key issues were still in dispute and how those issues might be resolved. The Applicant did submit a 'working draft' of a Statement of Common Ground with Highways England to the ExA on the last afternoon of the examination along with a 'Position Statement on Highways Matters' but the documents were not accepted into

the Examination as the ExA decided that there would be no opportunity for Interested Parties to review them and provide comments.

4.63 The Applicant subsequently wrote to the Secretary of State drawing his attention to the existence of the two documents and asking that they should be taken into account in the Secretary of State's decision-making. The Applicant also asked whether it would be asked to continue to discussions with Highways England to try to seek agreement on some of the key issues. The Applicant copied its correspondence to Highways England which responded that it was unable to enter into any further discussions with the Applicant and that the draft Statement of Common Ground did not reflect Highways England's position.

4.64 The Secretary of State does not consider that the correspondence from the Applicant and the response from Highways England add any new information to that which is available to the Secretary of State from the ExA Report.

Water Environment

4.65 The National Policy Statements and the National Planning Policy Framework set out policy considerations that should be taken into account by developers and decision-makers in relation to flood risks to and arising from nationally significant energy infrastructure projects and in relation to potential impacts on water courses and other resources. In relation to flood risk, the general presumption is to avoid locating energy infrastructure in areas at highest risk of flooding: all energy projects with an area greater than 1 hectare in Flood Zone 1 and all proposals for energy projects in Flood Zones 2 and 3 should be accompanied by a Flood Risk Assessment. [The Flood Zone Level reflects the probability of a flooding event occurring over a defined geographical area, with Flood Zone 1 being the lowest risk category] [ER 4.19.2 et seq].

4.66 The ExA [ER 4.19.8 et seq] notes that the Applicant assessed that the overall location of the WK3 and WKN would fall into each of the Flood Zone categories, however much of the land on which the developments would be located had been elevated as part of previous construction work and so most of it now was categorised as Flood Zone 1. Where parts of the development site are still in Flood Zone 2 or 3, then mitigation is in place to limit the impacts of flooding on and from the proposed developments. As indicated above, the WK3 facility has already been constructed so has already been assessed for its flood risk potential. However, for WKN, the Applicant's assessment is that with mitigation measures employed, there would be a minor adverse – not significant – impact on flood risk.

4.67 The ExA notes [ER 4.19.25] that there were no concerns raised during the examination about the Applicant's Flood Risk Assessment. It also notes [ER 4.19.26 et seq] that the Environment Agency considered the potential flood risk to be acceptable and that WK3 and WKN would not pose a risk to surface water quality and the nearby River Swale provided that appropriate mitigation measures were included in any development consent order which might be granted by the Secretary of State. Similarly, the Environment Agency agreed that WK3 would not pose a risk to groundwater, while the WKN would manage any potential contamination through mitigation measures in the development consent order [ER 4.19.30].

4.68 The ExA asked a number of questions of the Applicant and other parties to the examination about the ‘water environment’ and about the mitigation measures that were being proposed by the Applicant [ER 4.19.31]. In particular, there was an exchange of information with the Marine Management Organisation and the Environment Agency about the permitting regime necessary for two water outfall pipes that would take clean water from WK3 and WKN into the River Swale. There was agreement that the existing Marine Licences that covered the two outfall pipes would remain in place (so there would be no deemed Marine Licence within any development consent order that might be issued by the Secretary of State) and discharges from the pipes would be covered by an Environmental Permit issued by the Environment Agency.

4.69 The ExA concluded [ER 4.19.44 et seq] that for flood risk, WK3 and WKN would be acceptable and would comply with relevant policies in the National Policy Statements, the National Planning Policy Framework and local development plan policies. In addition, the Applicant had demonstrated compliance with the provisions of the Water Framework Directive and that there would be no impacts on designated sites. Further, the potential impacts of WKN on the water environment would be avoided by the use of mitigation measures including the design of the project. The ExA’s overall conclusion was that WK3 and WKN would comply with all relevant national and local policy requirements. The Secretary of State sees no reason to disagree with the ExA’s conclusions in this matter.

Submissions to the Secretary of State after Receipt of the ExA’s Report

4.70 In addition to the Applicant submitting representations about traffic and transport issues to the Secretary of State after receipt of the ExA Report (see paragraphs 4.66 – 4.67 above), it also asked the Secretary of State to consider additional matters related to waste management. These matters were submitted to the ExA at the very close of the examination but as with the representations about traffic and transport, the ExA declined to accept them into the examination because Interested Parties would not have had a chance to review them or offer comments.

4.71 The Applicant also wrote to the Secretary of State on 27 January 2021 to inform him that the Environment Agency was minded to grant an Environmental Permit for WKN subject to any final comments from Natural England. (The Applicant notes that Natural England did not raise any objections to the project during the examination.)

4.72 While noting the late representations above (and the one set out at paragraphs 4.63 – 4.64 above about Traffic and Transport), the Secretary of State does not consider that these late representations materially add to the information that was already available through the ExA. The Secretary of State has not, therefore, taken them into account in the decision-making process.

5. Findings and Conclusions in Relation to Habitats Regulations Assessment

5.1 The Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) require the Secretary of State to consider whether the proposed

Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any site forming part of the national site network as defined in the Habitats Regulations (a “protected site”). If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 63(1) of the Habitats Regulations to address potential adverse effects on site integrity. The Secretary of State may only agree to the project if he has ascertained that it will not adversely affect the integrity of a protected site. This process is collectively known as a Habitats Regulations Assessment.

5.2 The preparation of the Habitats Regulations Assessment (“HRA”) that is published alongside this decision letter was prepared by environmental specialists in BEIS. The HRA concludes that a likely significant effect cannot be ruled out in respect of two protected sites, the Swale SPA and Ramsar site, when considered alone. No potential in-combination likely significant effects were identified. The potential impact pathways identified were changes to air quality during construction and decommissioning, and noise and visual disturbance and changes to water quality during construction and operation. It is, then, necessary to consider whether the proposed WK3 and WKN projects alone would have an adverse effect on the integrity of those sites. An appropriate assessment was, therefore, undertaken to determine whether an adverse effect on the sites could be ruled out in light of the sites’ conservation objectives. The overall conclusion of the assessment was that the proposed Development would have no adverse effects on the integrity (“AEoI”) of any protected sites subject to the implementation of suitable mitigation. The Secretary of State does not, therefore, consider that there would be any breach of his duty under the Habitats Regulations in the event he was to grant development consent for WK3 [and WKN].

5.3 The Secretary of State also notes that the ExA also concluded that the proposed Development, subject to the inclusion of suitable mitigation in any development consent order that might be granted, would not have any AEoI on the integrity of any protected sites. The Secretary of State further notes that neither Natural England nor any other Interested Parties disagreed with the ExA in this matter [ER 5.7.1 et seq]

6. The Secretary of State’s Consideration of the Planning Balance

6.1 All nationally significant energy infrastructure developments will have some potential adverse impacts. In the case of WK3 and WKN, most of the potential impacts have been assessed by the ExA as being acceptable subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely. As set out above, the ExA determined that consent should be granted for WK3 only. The adverse impacts for the WK3 project did not outweigh the significant weight attaching to the need case established by the National Policy Statements.

6.2 However, the ExA’s consideration of all the issues, particularly in respect of arguments about where the incineration of waste stood in the waste hierarchy and how this related to adopted policies in relevant local plans, led to the conclusion that WKN, while offering some benefits (particularly from the 42MW of electricity that would be generated), did not accord with the relevant provisions in the National Policy

Statements, the National Planning Policy Framework and in relevant local plans. The ExA recommended, therefore, that WKN should not benefit from the grant of consent.

6.3 As set out in above, sections 104 and 105 of the Planning Act 2008 set out the procedures to be followed by the Secretary of State in determining applications for development consent where National Policy Statements have and do not have effect. In both cases, the Secretary of State has to have regard to a range of policy considerations including the relevant National Policy Statements and development plans and local impact reports prepared by local planning authorities in coming to a decision. However, for applications determined under section 104, the primary consideration is the policy set out in the National Policy Statements, while for applications that fall to be determined under section 105, it is local policies which are specifically referenced although the National Policy Statements can be taken into account as ‘important and relevant considerations’.

6.4 The Secretary of State adopts a different approach to the ExA’s in this matter and is of the view that the whole application (including the benefits and impacts of WKN) fall to be considered under section 104 of the Planning Act 2008. This means that in the consideration by the Secretary of State, more weight has been given to the National Policy Statements. However, the Secretary of State does not consider that this different approach to the planning process results in a different conclusion to that reached by the ExA, namely that development consent should not be granted for WKN and that the benefits of WKN are outweighed by the non-compliance with policies elsewhere, in particular, the policies regarding compliance with the NPS EN-1 and the policies referencing both the waste hierarchy and local waste management plans in NPS EN-3.

6.5 The determination of applications for development consent for nationally significant infrastructure projects is a balancing exercise and the weight afforded to different elements of the matrix of impacts and benefits may affect the overall conclusion. The ExA identifies that there are undoubtedly concerns that WKN would have adverse impacts on local and regional targets for moving waste up the waste hierarchy. As noted, the ExA has had regard to these matters in framing its recommendation. However, the Secretary of State is not bound to follow that recommendation if he feels that the evidence presented to him can support a different conclusion.

6.6 The Secretary of State has considered the arguments in the ExA Report together with the strong endorsement of developments of the type that is the proposed Development. He notes the ExA’s comments that WK3’s anticipated provision of steam to nearby industrial facilities is a further benefit in its favour. He considers that the overall planning balance supports the grant of consent for the increase in generating capacity and an increase in waste-fuel throughput at WK3. As noted, whilst taking a different approach to the application of sections 104 and 105 of the Planning Act 2008 and consequently to the application of the planning balance in considering WKN, the Secretary of State nevertheless agrees with the ExA’s conclusion that even though there are benefits from WKN, these do not outweigh the adverse impacts. The Secretary of State does not, therefore, consider that development consent should be granted for WKN.

7. Other Matters

Human Rights

7.1 The Applicant has not requested powers of compulsory acquisition as part of the Application. The Secretary of State has considered the potential infringement of human rights in relation to the proposed Development and notes there were no human rights concerns raised during the Examination. He has no reason to believe, therefore, that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

Equality Act 2010

7.2 The Equality Act 2010 includes a public sector equality duty ("PSED"). This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Planning Act 2008; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships¹; pregnancy and maternity; religion and belief; and race.) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7.3 In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

7.4 The ExA states [ER 8.2.4] that it had due regard to the relevant provisions of the Equality Act 2010 during the examination and in writing its Report. It concluded that the WK3 project "would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic" and on that basis "there would be no breach of the PSED".

7.5 The Secretary of State is confident that, in taking the recommended decision, he has paid due regard to the above aims when considering the potential impacts of granting or refusing the Application and can conclude that the WK3 project will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that neither the grant nor refusal of the Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

¹ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

Natural Environment and Rural Communities Act 2006

7.6 The Secretary of State has considered the Secretary of State's duty in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006, where he is required to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

7.7 The Secretary of State is of the view that the ExA Report, together with the environmental impact analysis, considers biodiversity sufficiently to inform his decision to grant consent to the proposed Development.

Climate Change Act and the Net Zero Target

7.8 On 2 May 2019, the Climate Change Committee recommended the UK reduce greenhouse gas emissions by net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline.

7.9 The Secretary of State notes the Energy White Paper states that National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State does not consider that the amendment to the Climate Change Act 2008 has lessened the need for development of the sort represented by WK3 which is, therefore, still in accordance with the National Policy Statements.

8. Modifications to the draft Order

8.1 The ExA records that there were a number of changes to the development consent order submitted by the Applicant as part of its Application as it progressed through the examination process. Many of the changes were minor in nature but others were more substantive. All potential changes the development consent order were subject to discussion and consultation during the examination. The ExA recommended draft DCO contained at Annex D of the report is on the basis that only the K3 plant should be granted development consent. This is the version that the Secretary of State has adopted as the basis for the consented development consent order.

8.2 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to confirm with the current practice for statutory instruments and changes in the interests of clarity and consistency. In particular:

- an amendment to Article 3 to confirm that the undertaker is granted development consent for the authorised development within the Order limits;

- a provision (article 7) has been included confirming that the provisions for the benefit of the order have effect for the undertaker unless the benefit is transferred in accordance with article 8;
- under article 8, the undertaker must notify the Secretary of State and the relevant planning authority at least 14 days before any transfer if no consent is otherwise required;
- the provision in relation to human remains has been removed on the basis that it does not appear to be relevant or necessary in relation to WK3;
- a provision in relation to the service of notices has been added (article 19);
- a reference to the waste capacity of WK3 has been included in the description of the generating station in Schedule 1.

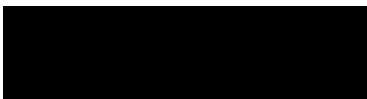
9. Challenge to decision

9.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

10. Publicity for decision

10.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Yours sincerely



Head of Energy Infrastructure Planning

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/wheelabrator-kemsley-generating-station-k3-and-wheelabrator-kemsley-north-wkn-waste-to-energy-facility/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Net Zero Teesside Project

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Business, Energy and Industrial Strategy

Examining Authority

A MCD MRTPI Panel Lead

BA (Hons) MA MRTPI

c (Hons) MSc FGS CGeol

10 February 2023

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OVERVIEW

File Ref: EN010103

The application, dated 19 July 2021, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 19 July 2021.

The Applicants are Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited.

The application was accepted for Examination on 16 August 2021.

The examination of the application began on 10 May 2022 and was completed on 10 November 2022.

The development proposed is a full chain Carbon Capture, Usage and Storage project comprising a number of elements including a new gas-fired electricity generating station (with an electrical output of up to 860 megawatts) with post-combustion carbon capture plant; gas, electricity and water connections (for the electricity generating station); a carbon dioxide (CO₂) pipeline network (a 'gathering network') for gathering CO₂ from a cluster of local industries on Teesside; a high pressure CO₂ compressor station and an offshore CO₂ export pipeline.

Summary of Recommendation:

The Examining Authority recommends that, subject to consent being obtained from The Crown Estate in relation to Crown land, and the Environment Agency confirming that it is content with the Applicants' approach to the modelling of nutrient nitrogen, the Secretary of State should make the Order in the form attached.

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ERRATA SHEET – Net Zero Teesside Project - File Ref: EN010103

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy Security & Net Zero dated 10 February 2023

Corrections agreed by the Examining Authority prior to a decision being made

ePage No.	Paragraph	Error	Correction
95	5.3.46	'Given there would be approximately 70MtCO ₂ e emitted even with 90% capture [REP6-123]'	'Given there would be approximately 16MtCO₂e emitted even with 90% capture [REP6-123]'
102	5.3.41-42	'worst case reduction in wind generation capacity would be 0.67GW, assuming co-existence of the NZT and HP4 projects is possible'.	'worst-case reduction in wind generation capacity would be 0.67 GW, assuming co-existence of the NZT and HP4 projects is not possible'
209	5.14.74	'and draft policy set out in draft EN-1 section'	Delete word – 'section'
185	ER 5.11.31	'Mitigation measures and monitoring for both noise and monitoring have been embedded in the Framework CEMP [REP9-007]'	'Mitigation measures and monitoring for both noise and vibration have been embedded in the Framework CEMP [REP9-007]'

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

- 1.1.1. The application for the Net Zero Teesside Project (the Proposed Development) under file reference EN010103 was submitted by Net Zero Teesside Power Limited (NZT Power) and Net Zero North Sea Storage Limited (NZNS Storage) (the Applicants) to the Planning Inspectorate on 19 July 2021 under section (s)37 of the Planning Act 2008 (PA2008) [APP-003].¹ The application was accepted for Examination under s55 of the PA2008 on 16 August 2021 [PD-001].
- 1.1.2. The Proposed Development is described in the Application Form [APP-003] as *"a full chain Carbon Capture, Usage and Storage (CCUS) project comprising a number of elements including a new gas-fired electricity generating station (with an electrical output of up to 860 megawatts) with post-combustion CCP [carbon capture plant]; gas, electricity and water connections (for the electricity generating station); a CO₂ [carbon dioxide] pipeline network (a 'gathering network') for gathering CO₂ from a cluster of local industries on Teesside; a high pressure CO₂ compressor station and an offshore CO₂ export pipeline"*.
- 1.1.3. The location of the Proposed Development (the Site) is shown in the Site Location Plan [REP12-034]. The Site lies within the administrative boundaries of both Redcar and Cleveland Borough Council (RCBC) and Stockton-on-Tees Borough Council (STBC). It includes areas that are below Mean Low Water Springs (MLWS) that are outside the jurisdiction of either local authority being part of the United Kingdom (UK) marine area.
- 1.1.4. The legislative tests for whether the Proposed Development is an NSIP were considered by officials of the Planning Inspectorate on behalf of the Secretary of State (SoS) for the Ministry of Housing Communities and Local Government (MHCLG) (now the Department for Levelling Up, Housing and Communities (DLUHC)) in its decision to accept the application for Examination in accordance with s55 of the PA2008 [PD-001] [PD-003].
- 1.1.5. Under delegation from the SoS, the Planning Inspectorate agreed with the Applicants' view stated in the Application Form [APP-003] that the Proposed Development is a Nationally Significant Infrastructure Project (NSIP). This is because the Proposed Development set out in Schedule 1 of the draft Development Consent Order (DCO) [APP-005] includes construction of a generating station, which is development falling within the scope of s14(1)(a) of the PA2008. It also satisfies s15(2) including subsections a, b and c of the PA2008 by being within England, being onshore and having a capacity of more than 50 megawatts.

¹ References to documents in the Examination Library for this Report are enclosed in square brackets []. A full index to the Examination Library can be found in Appendix A.

- 1.1.6. Parts of the Proposed Development do not fall within the categories set out in s14(1)(a) and s15 of the PA2008. These are subject to a s35 Direction by the SoS. A copy of the Direction is provided at Appendix 1 of the Explanatory Memorandum (EM) [APP-006]. This confirms the SoS's decision that the Proposed Development, and any associated matters, should be treated as development for which development consent is required under the PA2008. We are satisfied that the draft DCO (dDCO) includes development for which development consent is required.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 26 October 2021, the Planning Inspectorate on behalf of the SoS appointed Kevin Gleeson as Lead Member of the Examining Authority (ExA), and Susan Hunt and Beth Davies as members of the ExA for the examination of the application under s61 and s65 of the PA2008 [PD-004].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

- 1.3.1. The persons involved in the Examination were:
- Persons who were entitled to be Interested Parties (IPs) because they had made a Relevant Representation (RR) or were a statutory party who requested to become an IP.
 - Affected Persons (APs) who were affected by a compulsory acquisition (CA) and / or temporary possession (TP) proposal made as part of the application and objected to it at any stage in the Examination.
- 1.3.2. On 7 June 2022 we wrote to invite NatureScot to attend and take part in the Examination as an "other person" owing to the potential impacts of the Proposed Development on European protected areas for which NatureScot has responsibilities [PD-013]. At Deadline (D)3 NatureScot confirmed that the Proposed Development is unlikely to affect Scottish protected areas and therefore it did not need to be involved in the Examination [REP3-029].
- ## **1.4. THE EXAMINATION AND PROCEDURAL DECISIONS**
- 1.4.1. The Examination began on 10 May 2022 and concluded on 10 November 2022.
- 1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found on the Examination timetable page for the project on the Planning Inspectorate National Infrastructure website (the Inspectorate's website).
- 1.4.3. When the application was accepted for Examination, advice was provided to the Applicants under s51 of the PA2008 [PD-002]. The Applicants' interim response to this advice was contained in a letter dated 24 September 2021 [AS-001]. Subsequently, the period for persons to submit a RR took place between 28 October and 17 December 2021. The Applicants' letter [AS-001] also advised of the intention to make changes

to the DCO application following further technical studies expected to be concluded early in 2022. Another letter from the Applicants [AS-034] outlined further work on the optionality around certain elements of the NZT Project and proposed a draft timetable for the proposed change request, with a request for the Preliminary Meeting (PM) to be arranged for mid-May 2022.

- 1.4.4. On 31 January 2022 we wrote to the Applicants expressing concerns about the proposed delay to the commencement of the Examination, which we had envisaged could occur in mid-March 2022, and sought justification for the delay [PD-005]. On receipt of the Applicants' letter [AS-035], all IPs and APs were invited to comment on the potential delay [PD-006]. Comments were received from seven IPs [AS-036 to AS-042] with no objections to, and some support for, delaying the start of the Examination. Having taken account of those comments, on 16 February 2022 [PD-007] we wrote to all IPs and APs to advise that a PM in May 2022 was being considered.

The Preliminary Meeting

- 1.4.5. On 11 April 2022, we wrote to all IPs and Statutory Parties under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (the Rule 6 Letter) [PD-009] inviting them to the PM, an Issue Specific Hearing (ISH) into the Scope of the Proposed Development, an ISH into the dDCO and a Compulsory Acquisition Hearing (CAH). The letter outlined:

- the arrangements and agenda for the PM;
- notification of, and an agenda for, ISH1;
- notification of, and an agenda for, ISH2;
- notification of, and an agenda for, CAH1;
- an Initial Assessment of the Principal Issues (IAPI);
- the draft Examination Timetable;
- the availability of RRs and application documents; and
- the ExA's preliminary procedural decisions.

- 1.4.6. Other Procedural Decisions set out in the Rule 6 Letter [PD-009] (at Annex I) related to matters largely confined to Examination procedures. They were set out at this early stage so that, subject to discussion at the PM, it was possible to commence certain Examination procedures earlier within the Examination than would be the case if such decisions were not communicated until after the PM. No attendee at the PM raised any objection to these decisions and, on that basis, they were implemented and complied with. A Procedural Decision was also made to hold an early Accompanied Site Inspection (ASI) to enable us to access and observe the Order land at close quarters given that the majority of the Order land is not publicly accessible.

- 1.4.7. The PM took place on 10 May 2022 as a blended event comprising both face-to-face discussions and virtual contributions via Microsoft Teams. The physical event took place at the Redcar and Cleveland College, Corporation Road, Redcar which is within two kilometres (km) of the Order limits. A recording [EV2-001], transcript [EV2-002] and a note of

the meeting [EV2-003] were published on the project page of the Inspectorate's website.

Key Procedural Decisions

- 1.4.8. On 19 May 2022 we wrote to all IPs and Statutory Parties invited to the PM under Rule 8 of the EPR (the Rule 8 Letter) [PD-011]. The letter finalised the Examination Timetable and set out further Procedural Decisions made in respect of the Examination Timetable, an invitation to submit Written Representations (WR), our initial Written Questions (ExQ1) [PD-012], information about Statements of Common Ground (SoCG), Local Impact Reports (LIR), Hearings, ASIs and Examination procedures. The Rule 8 Letter largely confirmed the preliminary Procedural Decisions.
- 1.4.9. Following the acceptance of the application, the Applicants made three requests for changes to the application. The first was submitted prior to the Examination commencing [AS-047 to AS-195] while the second and third requests were made at D6 [REP6-105 to REP6-110] and D12 [REP12-116 to REP12-121] respectively. All three changes were accepted by the ExA [PD-010, PD-017 and PD-023]. Descriptions of the proposed changes together with the reasons for their acceptance are provided in Chapter 2.

Site Inspections

- 1.4.10. Site Inspections are held in Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.
- 1.4.11. Where matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and / or there are requests made to accompany an inspection, an ASI is held.
- 1.4.12. We held the following USIs:
- USI1 was undertaken on 1 March 2022 to view the application site in its wider context [EV1-001] and was attended by all members of the ExA; and
 - USI2 took place on 13 September 2022 and was undertaken by Susan Hunt in order to view heritage assets in the vicinity of the Site [EV1-003].

A site note providing a record of each USI can be found in the Examination Library (EL) under the above references.

- 1.4.13. We held the following ASIs:
- ASI1 took place on 12 May 2022 [EV1-002]; and

- ASI2 took place on 20 October 2022 [REP10-001].
- 1.4.14. The itinerary for each ASI can be found in the EL under the above references.
- 1.4.15. We have had regard to the information and impressions obtained during the site inspections in all relevant sections of this Report.

Hearing Processes

- 1.4.16. Hearings are held in PA2008 Examinations in two main circumstances:
 - To respond to specific requests from persons who have a right to be heard - in summary terms:
 - where APs affected by CA and / or TP proposals request to be heard at a CAH (s92 of the PA2008); and / or
 - where IPs request to be heard at an Open Floor Hearing (OFH) (s93 of the PA2008).
 - To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear, generally at ISHs (s91 of the PA2008).
- 1.4.17. Hearings were held under s91 and s92 of the PA2008 to ensure the thorough examination of the issues raised by the application.
- 1.4.18. ISHs were held on the subject matter of the dDCO as follows:
 - ISH2, 11 May 2022 [EV4-001 to EV4-005];
 - ISH3, 12 July 2022 [EV6-001 to EV6-010]; and
 - ISH5, 18 October 2022 [EV9-001 to EV9-007].
- 1.4.19. The following other ISHs were held:
 - ISH1, Scope of the Proposed Development, 10 May 2022 [EV3-001 to EV3-005];
 - ISH4, Environmental Matters, 14 July 2022, [EV8-001 to EV8-006]; and
 - ISH6, Environmental Matters, 19 October 2022 [EV11-001 to EV11-005].
- 1.4.20. The following CAHs were held:
 - CAH1, 11 May 2022 [EV5-001 to EV5-003];
 - CAH2, 13 July 2022 [EV7-001 to EV7-006]; and
 - CAH3, 19 October 2022 [EV10-001 to EV10-005].
- 1.4.21. All persons affected by CA and / or TP proposals (APs) were provided with an opportunity to be heard. We also used these hearings to examine the Applicants' case for CA and / or TP in the round.

- 1.4.22. The PM, ISH1, ISH2 and CAH1 were held at Redcar and Cleveland College. All subsequent hearings were held at Jurys Inn Hotel, Fry Street, Middlesbrough.
- 1.4.23. No requests were made to hold an OFH and therefore we did not hold one. Additionally, hearings which were timetabled in the Rule 8 Letter to be held during the week beginning 5 September 2022 were not held as they were not required.
- 1.4.24. Notifications of Hearings were provided at least 21 days prior to the Hearings taking place [PD-014 and PD-019].
- 1.4.25. The Examination was closed at 11.59pm on 10 November 2022. This was communicated to IPs in the ExA's letter of 11 November 2022 [PD-025].

Written Processes

- 1.4.26. Examination under the PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. All material is recorded in the EL (Appendix A) and published online. For this reason, this Report does not contain extensive summaries of documents and representations, although full regard has been had to them in all reasoning and conclusions. All important and relevant matters arising from them have been considered. Key written sources are set out further below.

Relevant Representations

- 1.4.27. The registration of IPs began on 28 October 2021 and ended on 17 December 2021. A total of 42 RRs were received by the Planning Inspectorate [RR-001 to RR-39 including RR21a and RR21b and AS-046]. All were sent the Rule 6 Letter [PD-009] and were provided with an opportunity to become involved in the Examination as IPs and invited to attend the PM. We have fully considered all RRs. The issues that they raise are considered in Chapters 4, 5, 6, 8 and 9 of this Report.

Written Representations and Other Examination Documents

- 1.4.28. The Applicants and IPs were provided with opportunities to:
- make Written Representations (WRs) (D2);
 - comment on WRs made by IPs (D3);
 - summarise their oral submissions in writing (D1, D5, and D11);
 - make other written submissions requested or accepted by the ExA (D2-D13); and
 - comment on our Report on the Implications for European Sites (RIES) [PD-018] issued for consultation on 16 September 2022 (D9).
- 1.4.29. We have fully considered all WRs and other Examination documents, and the issues that they raise are considered throughout this Report.

Local Impact Reports

- 1.4.30. A LIR is prepared by a relevant planning authority (RPA) giving details of the likely impact of the proposals on the authority's area (or any part of that area). These were submitted to the ExA under s60 of the PA2008.
- 1.4.31. We received LIRs from RCBC [REP1-046] and STBC [REP1-047] as the host local authorities, as set out in section 3.11 of this Report. The LIRs have been taken fully into account in all relevant Chapters of this Report.

Statements of Common Ground

- 1.4.32. Annex I of the Rule 6 Letter [PD-009] identified the SoCGs which we requested should be prepared between the Applicants and various named parties.
- 1.4.33. Given the number of IPs involved, the Applicants produced a Statement of Commonality of Statements of Common Ground [REP13-014] which lists the organisations with whom the Applicants tried to complete a SoCG. Table 3.1 of that document summarises the matters that have been agreed, that are subject to on-going discussion or that have not been agreed with each IP.
- 1.4.34. By the end of the Examination, the following bodies had agreed SoCGs with the Applicants. Where at the conclusion of the Examination these remained unsigned it is indicated at the relevant entry:
- RCBC [REP9-009];
 - STBC [REP8-036];
 - Marine Management Organisation (MMO) [REP13-016];
 - Environment Agency (EA) [REP13-017];
 - Natural England (NE) [REP13-018];
 - National Highways (NH) [REP4-021];
 - Historic England (HE)[REP8-045];
 - Northumbrian Water Limited (NWL) [REP13-012]; (unsigned);
 - CATS North Sea Limited (CNSL) [REP13-013]; and
 - North Sea Midstream Partners (NSMP) [REP13-015] (unsigned).
- 1.4.35. The following SoCGs had been prepared by the Applicants in draft form but remained incomplete at the end of the Examination:
- South Tees Development Corporation (STDC), Tees Valley Combined Authority and Teesworks Limited [REP8-037];
 - National Grid Electricity Transmission PLC (NGET) [REP1-011];
 - National Grid Gas PLC (NGG) [REP1-012];
 - Northern Gas Networks Limited [REP1-013];
 - Northern Powergrid (Northeast) PLC and Northern Powergrid Limited (NPG) [REP4-011];
 - PD Teesports Ltd (PDT) [REP9-010];
 - Telefonica [REP1-017];
 - Vodafone & Cornerstone [REP1-018];
 - Network Rail Infrastructure Ltd (NR) [REP1-019];
 - Air Products PLC [REP1-020];
 - CF Fertilisers UK Limited (CFL) [REP12-125];

- Exolum Seal Sands Ltd and Exolum Riverside Ltd (Exolum) [REP5-021];
- Ineos Nitriles (UK) Limited [REP1-023];
- Marlow Foods [REP1-024];
- NPL Waste Management Ltd (NPL)[REP4-019];
- Redcar Bulk Terminal Limited (RBT) [REP1-026];
- SABIC UK Petrochemicals Limited (SABIC) [REP1-027];
- Sembcorp Utilities (UK) Ltd (Sembcorp) [REP1-028];
- Suez Recycling and Recovery UK Ltd [REP1-029];
- Anglo American [REP1-030];
- Ineos UK SNS Limited [REP1-031];
- North Tees Limited, North Tees Land Limited and North Tees Rail Limited (NTG) [REP12-127];
- Orsted Hornsea Project Four (Orsted) [REP5-022]; and
- Huntsman Polyurethanes (UK) Limited (HPU) [REP1-033].

- 1.4.36. The draft SoCG with Anglo American was superseded and replaced by a Joint Position Statement [REP12-130 and REP12-135].
- 1.4.37. In the written summary of Oral Submissions for ISH2 [REP1-036] the Applicants confirmed that they would seek agreement with Orsted in a SoCG in respect of the relationship between its application for the Hornsea Project 4 Offshore Windfarm (HP4) and the NZT application. However, at D2 the Applicants stated that, having considered the matter further, they did not believe that this would be useful to the ExA. [REP2-060] However, a position statement was agreed at D5 [REP5-022].
- 1.4.38. The Applicants stated at the PM that they intended to conclude additional SoCGs with the North Sea Transition Authority (NSTA) and the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED). However, at D3 it was confirmed that both the NSTA and OPRED had advised that they did not consider it would be appropriate to discuss a SoCG during the Examination in view of ongoing discussions between the parties regarding any potential storage permit application [REP3-008]. Consequently, no draft SoCGs with NSTA and OPRED were produced.
- 1.4.39. We have taken account of SoCGs and their status of agreement (including whether a final signed version was reached) in all relevant Chapters of this Report.

Written Questions

- 1.4.40. We undertook three rounds of Written Questions:
- ExQ1 [PD-012] was published on 19 May 2022;
 - ExQ2 [PD-016] was published on 9 August 2022; and
 - ExQ3 [PD-021] was published on 13 October 2022.
- 1.4.41. Four requests for further information under Rule 17 of the EPR were made. The first, dated 23 June 2022 was a request to RCBC, STBC and Hartlepool Borough Council (HBC) to provide answers or further clarification to some of ExQ1 [PD-015]. The second, dated 6 September advised IPs of the Procedural Decision made by the ExA following the

change request made by the Applicants dated 23 August 2022 [REP6-105]. Representations were sought on the proposed changes by D8 (20 September 2022) and any comments on these representations by D9 (6 October 2022) [PD-017]. The third request was made to the Applicants, the EA and ClientEarth. This formed Annex C of the letter dated 16 September 2022, which addressed various Procedural Decisions [PD-019]. The final request was made to the Applicants, the EA and NE [PD-022] regarding the water environment and specifically the issue of nutrient neutrality.

- 1.4.42. One amendment was made to the Examination Timetable under Rule 8(3) of the EPR. This was addressed in Annex A of our letter dated 16 September 2022 [PD-019]. It introduced a new D10, which provided the deadline for receipt by the ExA of notification to attend an ASI on 20 October. Subsequent deadlines were amended but otherwise the Examination proceeded as provided for in the Rule 8 Letter [PD-011].
- 1.4.43. We have fully considered all responses to written questions and taken them into account in all relevant Chapters of this Report.

Requests to Join and Leave the Examination

- 1.4.44. There were no requests to join the Examination by persons who were not already IPs at or after the PM. One person, Mr Mike Blood [RR-006], wrote to us to advise that he wished to withdraw his representation before the Examination commenced [AS-045]. By letter dated 10 November 2022 it was confirmed that NWL had entered into an agreement with the Applicants and in pursuance of that agreement NWL was withdrawing any objections to the DCO application.

Report on the Implications for European Sites

- 1.4.45. We published a RIES on 16 September 2022 [PD-018] with comments on it requested by D9 (6 October) and responses to comments by D11 (originally D10) (26 October 2022). Only the Applicants provided comments on the RIES [REP9-021] and no responses to these comments were provided at D11.

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

- 1.5.1. The Applicants provided a notification under Regulation 8(1)(b) of the Infrastructure (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) of their of their intention to provide an environmental statement (ES). Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, we determined that the Proposed Development was EIA development.
- 1.5.2. In February 2019, the Applicants submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations [APP-238 to APP-240]. This requested an opinion about the scope of the ES that was to be prepared (a Scoping Opinion). The Planning Inspectorate provided a Scoping Opinion in April 2019 [APP-241 to APP-243]. As originally submitted, the ES comprised a Non-Technical Summary [APP-081], Main Report (Part 1)

[APP-082 to APP-107], Figures (Part 2) [APP-108 to APP-236] and Appendices [APP-237 to APP-347].

- 1.5.3. In October 2021 the Applicants provided the Planning Inspectorate with certificates confirming that s56 and s59 of the PA2008 had been complied with [OD-002]. On 21 December 2021 the Applicants confirmed compliance with Regulation 16 of the EIA Regulations [OD-003].
- 1.5.4. The potential environmental effects have been assessed and are set out in the ES. The ES includes details of measures proposed to mitigate likely significant effects identified by the Applicants. Consideration is given to the adequacy of the ES and matters arising from it in Chapters 4 and 5 of this Report.
- 1.5.5. We are satisfied that the submitted ES meets the requirements of Schedule 4 of the EIA Regulations and, together with the environmental information provided during the Examination, forms an adequate basis for decision making.

1.6. HABITATS REGULATIONS ASSESSMENT

- 1.6.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Report has been provided [APP-080], with the final version submitted at D12 [REP12-120].
- 1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 6 of this Report.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

- 1.7.1. By the end of the Examination, no other separate undertakings, obligations or agreements between the Applicants and IPs had been submitted to the Examination. The Applicants are continuing to negotiate voluntary and side agreements with RCBC, STBC, Statutory Undertakers, and other APs on matters of CA and TP of land and rights and the wording of protective provisions. We have reported on the progress of negotiations into such agreements in Chapters 8 and 9 of this Report.

1.8. OTHER CONSENTS

- 1.8.1. In addition to the consents required under the PA2008 (which is the subject of this Report), the Applicants identified in the Other Consents and Licences document [APP-077] (with the final version submitted at D11 [REP11-004]) other approvals that are, or may be, required under other legislation for the construction and operation of the Proposed Development, outside of the DCO.
- 1.8.2. Table 2.1 of Other Consents and Licences identifies the approvals required, the relevant consenting body and the timescale for submission/approval. In summary the following are identified:

- Electricity Generation Licence - s6 of The Electricity Act 1989 (licences authorising supply, etc.);
- Hazardous Substances Consent - s4 and s6 of The Planning (Hazardous Substances) Act 1990 & Schedule 1 of The Planning (Hazardous Substances) Regulations 2015;
- The Control of Major Accident Hazards (COMAH) Regulations 2015;
- Greenhouse Gas Permit - Greenhouse Gas Emissions Trading Scheme Order 2020;
- Construction Noise Consent - s61 of The Control of Pollution Act 1974;
- Notification of Construction Works - The Construction (Design and Management) CDM Regulations 2015;
- Permit for Transport of Abnormal Loads - The Road Vehicles (Authorisation of Special Types) (General) Order 2003 or The Road Traffic Act 1988;
- Temporary Traffic Regulation Order;
- Agreement under s278 Highways Act for the carrying out of works to the public highway;
- Building Regulations Approval - The Building Regulations 2010;
- Environmental Permit - The Environmental Permitting (England and Wales) Regulations 2016 ;
- Environmental Permit (Flood Risk Activities) - The Environmental Permitting (England and Wales) Regulations 2016;
- Environmental Permit (for discharge to surface water) – The Environmental Permitting (England and Wales) Regulations 2016;
- Gas Safety Case - The Gas Safety (Management) Regulations 1996 (Regulation 3);
- Pipeline Safety Notification - The Pipeline Safety Regulations 1996 (Regulation 20);
- Planning & Advanced Reservation of Capacity Agreement;
- Application to Offer for physical connection to gas National Transmission System network;
- Connection Agreement for connection to the electricity distribution network;
- Fire Notice - The Regulatory Reform (Fire Safety) Order 2005;
- Deemed Marine Licence - Marine and Coastal Access Act 2009;
- European Protected Species Licence - The Conservation of Habitats and Species Regulations 2010;
- Class Licence under Wildlife and Countryside Act 1981 s10(3)(c); and
- Assent for works within a Site of Special Scientific Interest.

1.8.3. Table 2.2 of Other Consents and Licences identifies five approvals required for the offshore works.

1.8.4. All outstanding consents recorded above have been considered. The Applicants have submitted that these relate to matters that cannot be consented until the finalisation of detailed design and/or the discharge of relevant requirements in the DCO. Without prejudice to the exercise of discretion by future decision-makers, we conclude that there are no

apparent impediments in respect of other consent and licences to the implementation of the Proposed Development, should the SoS grant the application.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this Report is as follows:

- **Chapter 1** introduces the reader to the application, the processes used to carry out the Examination and produce this Report;
- **Chapter 2** describes the Site and its surrounds, the Proposed Development, its planning history and that of related projects;
- **Chapter 3** provides an outline of the legal and policy context applicable to consideration of the application by the SoS;
- **Chapter 4** identifies the main planning issues that arose from the application and during the Examination;
- **Chapter 5** provides our findings and conclusions in relation to the main planning issues, taking into account the information provided in the ES and raised during the Examination;
- **Chapter 6** provides findings and conclusions in relation to the effects on European Sites and the HRA;
- **Chapter 7** sets out the balance of planning considerations arising from Chapters 4, 5 and 6, in the light of the factual, legal and policy information in Chapters 1 to 3;
- **Chapter 8** sets out the examination of CA and TP proposals;
- **Chapter 9** considers the implications of the matters arising from the preceding chapters for the DCO; and
- **Chapter 10** summarises all relevant considerations and sets out our recommendation to the SoS.

1.9.2. This Report is supported by the following Appendices:

- **Appendix A** – Examination Library.
- **Appendix B** – List of Abbreviations.
- **Appendix C** – the Recommended DCO.

2. THE PROPOSAL AND THE SITE

2.1. INTRODUCTION

The application is for a DCO to construct, operate and decommission a Combined Cycle Gas Turbine (CCGT) electricity generating station and carbon capture plant (CCP). The captured CO₂ would be compressed prior to transportation via pipeline for storage in the Endurance saline aquifer beneath the North Sea, approximately 145km to the south-east of the Proposed Development. A CO₂ gathering network would also be constructed to allow industrial emitters on Teesside to connect to the High Pressure (HP) Compressor Station and Endurance storage facility in the future [APP-001, APP-070]. In this Report the term 'Proposed Development' refers to the DCO application while the wider 'NZT Project' refers to both the onshore and offshore elements, including those beyond the Order Limits. Figure 1 [Figure 1.1, APP-002] shows the CCUS process in simple terms.

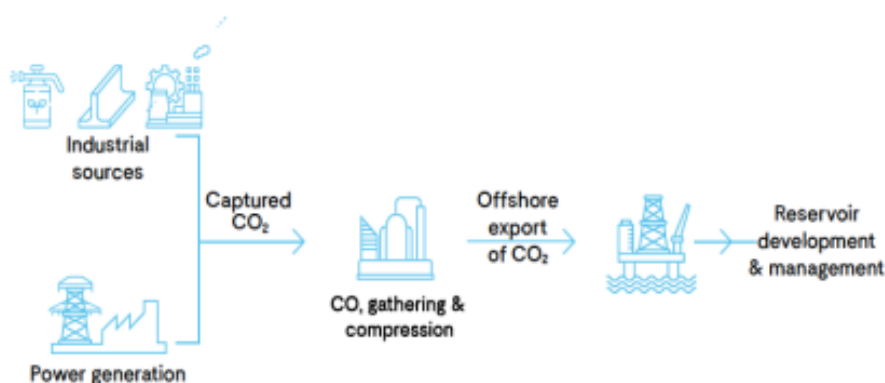


Figure 1: Diagrammatic representation of the CCUS process

- 2.1.1. The application was submitted jointly by NZT Power and NZNS Storage. NZT Power was originally a partnership between BP, Eni, Equinor and Total, with BP acting as the operator on behalf of the partnership. By D1, NZT Power comprised BP and Equinor only [REP1-002]. NZT Power would be responsible for the construction, operation and decommissioning of the electricity generating station, post combustion carbon capture and the gas, electricity and water connections. NZNS Storage is a partnership between BP, Equinor, National Grid, Shell and Total, with BP as operator. It also originally included Eni. It would be responsible for the construction, operation and decommissioning of the CO₂ gathering network, compression equipment and the onshore section of the export pipeline. NZNS Storage would also be responsible for the offshore section of the export pipeline, which is subject to a separate consenting process [APP-001, APP-070].
- 2.1.2. The Applicants describe the Proposed Development as a 'First of a Kind' for this type of infrastructure project. For this reason, they have

incorporated a degree of flexibility in the process and configurations of structures to allow for the future selection of a preferred technology and contractors [APP-070].

2.2. THE SITE OF THE PROPOSED DEVELOPMENT AND ITS SETTING

The Site of the Proposed Development is situated in the administrative areas of Redcar and Cleveland, and Stockton-on-Tees, in proximity to the town of Middlesbrough in north-east England. It spans both sides of the River Tees, which enters the North Sea at Teesmouth, bounded by reclaimed land at South Gare. Figure 2 [ES Figure 1-1, APP-109] below indicates the Order Limits of the application as submitted in its wider context.

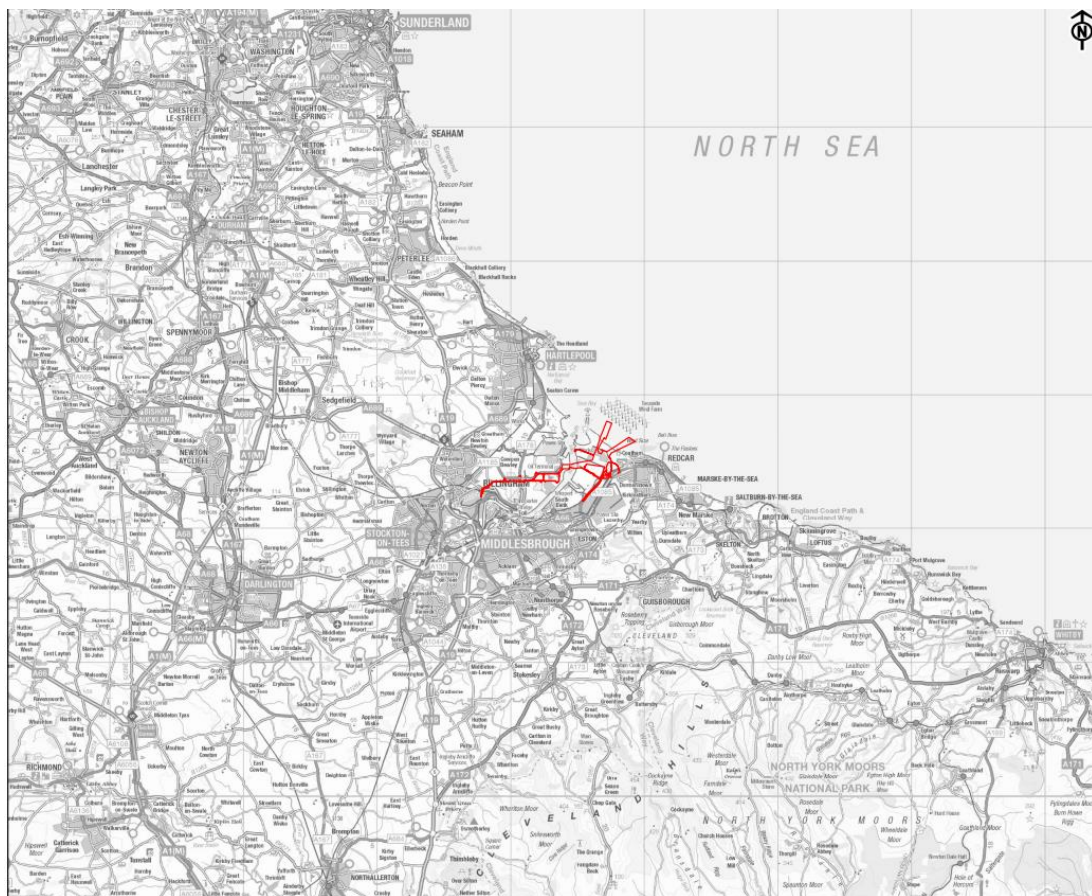


Figure 2: Site location plan

- 2.2.1. The Site extends to approximately 462 hectares (ha) in area, much of which is previously developed land, some of which was reclaimed from the Tees Estuary from the late 19th and during the 20th century. The area is flat and low-lying, sitting between sea level and approximately 9 metres (m) above ordnance datum (AOD).
- 2.2.2. The area surrounding the Site is largely characterised by industrial and commercial uses, although there are open areas of land at South Gare

and Coatham Sands, which are used for recreational purposes and are of nature conservation importance (see Chapter 5 section 5.7).

- 2.2.3. The site proposed for the electricity generating station is land that was formerly part of the Redcar Steelworks on the south bank of the River Tees, to the south east of the Redcar Bulk Terminal. This area contains redundant large-scale plant and open land areas that were previously used for storage and processing of raw materials. Many of the structures have since been demolished as part of the ongoing remediation of the former steelworks site. The location of the main area of the Site within the former steelworks is shown in Figure 3 [ES Figure 3-1, APP-110] below.

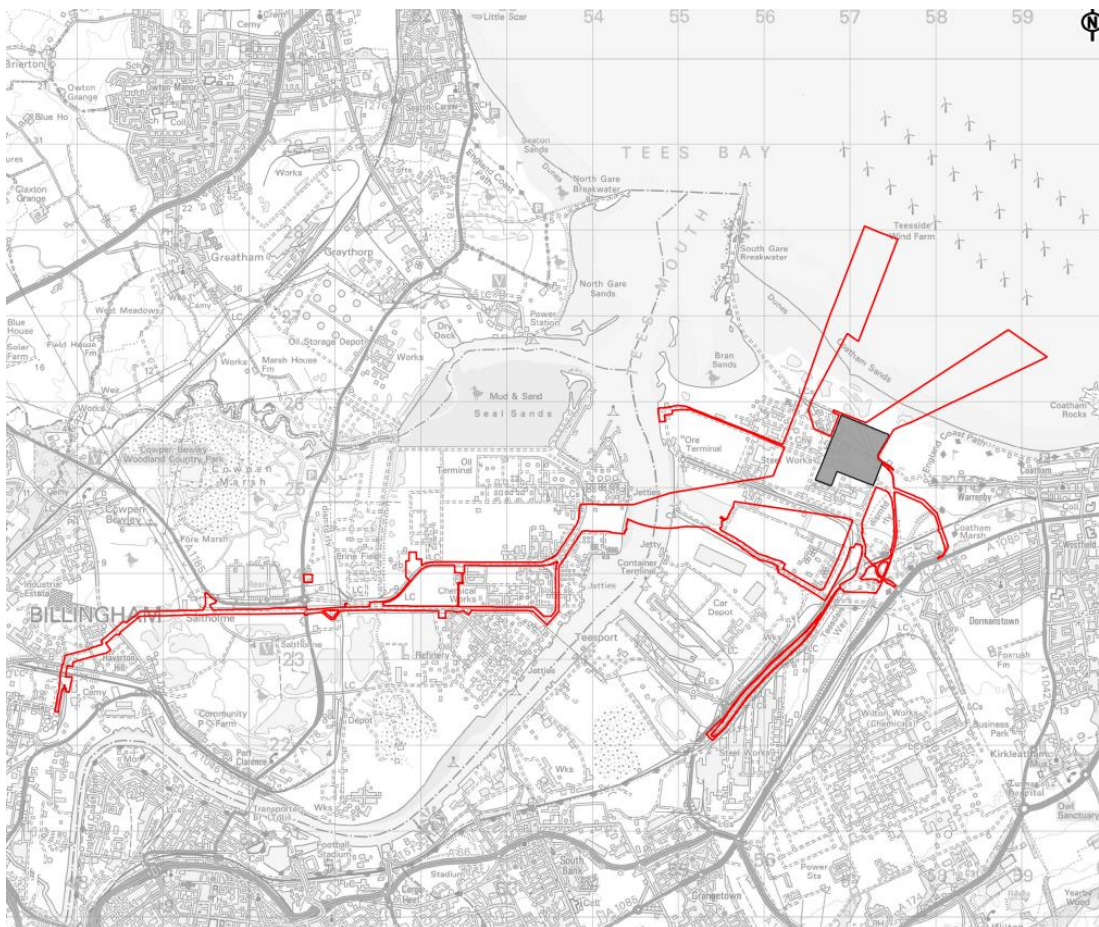


Figure 3: Site boundary plan at the start of the Examination

- 2.2.4. The Order land is remote from residential areas, but areas of public and private amenity lie close to the northern and eastern boundaries at Coatham Sands. There are a number of public rights of way in the area including the national trail 'England Coast Path' which runs alongside the former steelworks and South Gare Road. The nearest main settlement is the town of Redcar approximately 1.8km east and the suburb of Dormanstown about 1.4km to the south-east. Warrenby is approximately 0.7km to the south-east, consisting of a single residential property (Marsh House Farm), industrial and commercial premises, caravan parks and a golf course. A detailed description of the Order land and its surroundings is provided in Chapter 3 of the ES [APP-085].

- 2.2.5. The pipeline corridors beyond the former steelworks site are predominately located on industrial land, extending across the Tees to Seal Sands and Billingham. These corridors pass through vacant land and existing utilities corridors on both sides of the River Tees. The main transport routes are the A1085 Trunk Road and the A1053 Tees Dock Road, approximately 4km south of the former steelworks.
- 2.2.6. There are a wide range of industrial and commercial uses in the area, where a number of APs involved in the Examination have operations and land interests both within the Order land and its surroundings. They are broadly concentrated at the following locations.
- **Teesworks:** Located to the south side of the Tees and the North Sea. The wider Teesworks site is owned and operated by STDC and covers a significant area comprising the former Redcar Steelworks and surrounding land. Remediation/redevelopment of the Teesworks site is ongoing, which includes the largest area of Order land and its utility/pipeline connection corridors.
 - **Redcar Bulk Terminal:** RBT operate a deep-water marine terminal situated on the south bank of the River Tees, with cranes for loading and unloading of bulk cargo together with a storage and processing area. The Order land directly interacts with the terminal, its access and utilities.
 - **Bran Sands:** NWL's waste treatment works and Anglo American Woodsmith Limited's (Anglo American) operational land interests are located in this area which bounds Teesworks and the pipeline corridor.
 - **Teesport:** Teesport is a major port, located to the south of the River Tees towards the town of Middlesbrough. It is operated by PDT, the statutory Harbour Authority for the area.
 - **Seal Sands and North Tees:** The industrial area to the north of the River Tees includes gas processing plants, a wide range of chemicals industries and other manufacturing and processing operations. The APs based in this area included NTG, CNSL, Ineos Nitriles (UK) Limited, Teesside Gas Processing Plant (TGPP) and Exolum.
 - **Billingham:** This area, also referred to as 'Haverton Hill', lies to the western extent of the Order land, to the east of the A19. APs in this area include CFL, Marlow Foods, Suez Recycling and Recovery and NPL Waste.
 - **Wilton International:** This large industrial complex lies to the south side of the Tees at Lazenby south of the A1085 and north of the A174. It was initially developed by the former Imperial Chemical Industries from the 1950s. Sembcorp is the freeholder and integrated infrastructure provider to the Wilton complex [REP2-098]. Their occupiers include industries involved in petrochemical production, plastics (low density polyethylene), bioethanol, and there are a range of energy industries and power stations. APs located at Wilton include SABIC and HPU. Furthermore, Wilton lies at the centre of the UK ethylene pipeline distribution system. Some of the products which are transported

have significant importance not just for the local area but nationally. Many are also potentially hazardous.

- **Pipeline Corridor:** The pipeline corridor is referred to by the Applicants and AP's as both the 'Sembcorp Pipeline Corridor' and the 'Link Line corridor'. It collectively includes a number of pipelines which span to each side of the River Tees via 'No.2 Tunnel'. It connects line a range of operations at Wilton International to and from industries at Seal Sands and Billingham. Both Sembcorp and the NTG have land interests and management responsibilities for different parts of the pipeline corridor.

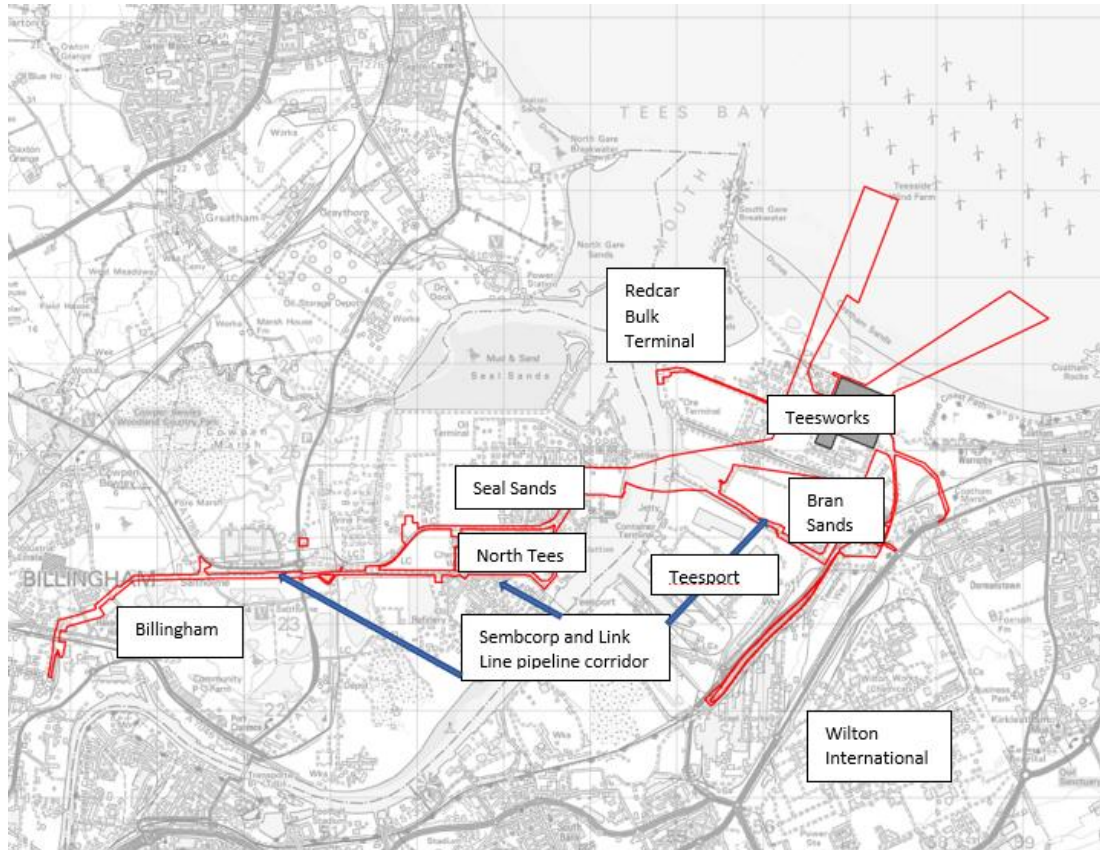


Figure 4: Indicative location of industrial areas

2.3. THE APPLICATION AS MADE

- 2.3.1. The Proposed Development and its components are shown on the Works Plans [APP-020 to APP-022]. A detailed description and corresponding Works Nos. are contained in Schedule 1 'Authorised Development' of the dDCO [APP-005] and ES Chapter 4 'The Proposed Development' [APP-086] from which the following description of the components of the Proposed Development is based.

Work No. 1: Low Carbon Electricity Generating Station

- 2.3.2. Work No. 1 is an electricity generating station fuelled by natural gas and with an electrical output up to 860 megawatts electric (MWe). Referred

to as the 'Low Carbon Electricity Generating Station' it comprises a CCGT (Work No. 1A), CCGT and CCP cooling and utilities infrastructure (Work No. 1B), CCP (Work No. 1C), administration, control room and stores (Work No. 1D) and ancillary works [APP-005, APP-086]. The Low Carbon Electricity Generating Station together with the associated carbon capture and compression facilities are referred to as Power Capture and Compression (PCC) and occupy the PCC Site which is the proposed location of Work No. 1. An indicative layout of the PCC Site is provided in Figure 4-1 [APP-114].

- 2.3.3. There is a significant range in the potential electrical output of the CCGT because of the 'First of a Kind' nature of the CCP. In unabated mode (without carbon capture) power output could range from around 650 MWe to over 850MWe. It is possible that output would increase with cooler ambient temperatures, but at this location the upper limit on output is restricted by the grid connection, which is rated at 860MWe. In abated mode the auxiliary loads are significant and power output is likely to be in the range of 580MWe to 760MWe.

Combined Cycle Gas Turbine Plant

- 2.3.4. Following combustion in the gas turbine, heat from the exhaust gases would be passed to the Heat Recovery Steam Generator (HRSG) to generate additional power and to heat process streams within the carbon capture unit. Condensation of steam exiting the turbine would be achieved using a separate circuit of cooling water recirculated through mechanical draught cooling towers at approximately 38mAOD. These could give rise to a visible plume of water vapour.
- 2.3.5. The flue gas from the HRSG would be ducted directly into the CCP for the removal of CO₂ from the gas stream. However, there would also be a stack of a maximum 85m height between the HRSG and the CCP for use at times when the CCP is not operational (see section 5.2 of this Report).
- 2.3.6. An auxiliary boiler may be required to provide heat and steam during commissioning, start-up, shutdown and to maintain carbon capture equipment in a stand-by state when the CCGT is offline. Exhaust emissions from an auxiliary boiler would be via a dedicated stack.
- 2.3.7. Emergency diesel generators may need to be installed to provide a short-term source of electricity for emergency and safety critical equipment in the event of a loss of power generation and external power supply.
- 2.3.8. The CCGT would be supported by a continuous emissions monitoring system, an onsite substation, transformers for the import and export of electricity and ancillary equipment, including chemical storage facilities, a water treatment plant and pipework.

Carbon capture plant

- 2.3.9. The CCGT would be served by a dedicated CCP, which also forms part of Work No. 1. This would be designed to capture approximately 95% by weight of the CO₂ emitted from the CCGT. The Applicants have calculated

that this equates to approximately 1.7 to 2 million tonnes of CO₂ per year.

- 2.3.10. Cooled flue gases are introduced to an absorber column containing a solvent to remove CO₂ from the gas stream. The solvent of choice is subject to on-going technical studies, but it is likely to be an aqueous solution of amines. The treated flue gas would exit from the top of the absorber column via a dedicated stack at a maximum height of 115m for dispersion to the atmosphere.
- 2.3.11. The CO₂ gas exiting the top of the stripper column would then be passed through a condenser to remove water and solvent vapours, and then passed to the CO₂ conditioning and compressor unit.

CO₂ Conditioning and Low-Pressure Compressor Unit

- 2.3.12. The CO₂ gas would be saturated with water with traces of oxygen that would need to be reduced. The exact process is still the subject of on-going technical studies, but the CO₂ stream is likely to be cooled and partly compressed before removal of oxygen and water. The resulting low pressure CO₂ stream would then enter the CO₂ gathering network on the PCC Site.
- 2.3.13. It is envisaged that the CCGT and CCP would have a design life of around 25 years. If these elements are no longer viable at the end of this period, then they will be decommissioned. The CO₂ gathering network and export pipeline have been designed to operate independently of the PCC Site and have a design life of approximately 40 years.

Work No. 2: Gas Connection Corridor

- 2.3.14. Work No. 2 is a gas connection being for the transport of natural gas to Work No. 1A. Natural gas to be combusted in the CCGT would be conditioned offsite to the required temperature and pressure. The two route corridors being considered when the application was made are shown in ES Figure 3-2b [APP-111]. All indicative pipeline routeings are shown in Figure 5-2 [APP-117]. The underground high pressure gas pipeline of up to 600mm diameter, cathodic protection posts, marker posts and electrical supply cables comprise **Work No. 2A**.
- 2.3.15. Subject to agreement with National Gas Grid, the gas would be supplied via a tie-in via a new Above Ground Installation (AGI) to the gas transmission network in the area on the north bank of the Tees at Seal Sands (**Work No. 2B**). This would then cross feed to a second AGI, with subsequent transport through a new 24-inch buried gas line, potentially routed via disused pipelines under the river. A new tunnel shared with the CO₂ gathering network would then transport gas to be received at a third AGI on the PCC Site.
- 2.3.16. Work No. 2B also comprises compounds for the undertaker's apparatus and the access, vehicle parking, drainage and security associated with these.

Work No. 3: Electrical Connection

- 2.3.17. Work No. 3 comprises works for the export of electricity from Work No. 1 to the National Grid Electricity Transmission system. The electricity grid connection would comprise a 275 kV single circuit cable route and control cables connecting the substation on the PCC Site into a new NZT owned electrical substation adjacent to the existing Tod Point substation, which would need to be extended.
- 2.3.18. Two possible routings, including crossing of the Tees Valley railway line were identified due to uncertainty in the timing and location of third-party projects. All electrical and control system cables would be installed below ground or at ground level. The proposed corridor and substation are shown on Figure 5-3, the Indicative Electrical Connection Routeings [APP-118]. The route corridors being considered are shown in ES Figure 3-2c [APP-111].

Work No. 4: Water Supply Connection Corridor

- 2.3.19. Work No. 4 would supply water for works to provide cooling and make-up for the CCGT and CCP, as well as for domestic and sanitary use. Raw water would be provided from an existing supply from the River Tees by NWL. All indicative pipeline routeings are shown in Figure 5-2 [APP-117].

Work No. 5: Wastewater Discharge Connection Corridor

- 2.3.20. Work No. 5 covers wastewater disposal works in connection with Work No. 1. Water from the process would be treated and discharged to Tees Bay via either existing water discharge infrastructure, which would be repaired and upgraded (Work No. 5A) or through a new outfall (Work No. 5B). Discharge of domestic and sanitary effluent would be to the local sewerage system for treatment with Work No. 5C providing for up to two new wastewater pipelines between Bran Sands Wastewater Treatment Plant (WwTP) and Work No. 1.
- 2.3.21. The location of water supply and discharge connections is shown on ES Figure 3-2d [APP-111]. All indicative pipeline routeings are shown in Figure 5-2 [APP-117].
- 2.3.22. Water is needed to treat the water feed to the plant, provide make-up water, cooling water, fire water and for the dilution of make-up solvent in the capture plant.
- 2.3.23. Wastewater treatment would be required for process effluent from the flue gas quencher and generating station. Two options were initially considered. The first is that effluent would be treated on site using a WwTP before being discharged to Tees Bay via the outfall. The alternative is that the effluent would be directed to NWL's Bran Sands WwTP via a new pipeline prior to discharge. This effluent could be returned via a new pipeline for discharge to Tees Bay via the outfall or discharged via an existing consented outfall to Dabholm Gut.

- 2.3.24. Other effluent streams would be subject to re-use where possible or treated on-site prior to discharge to the outfall.

Work No. 6: CO₂ Gathering Network Corridor

- 2.3.25. Work No. 6 is a CO₂ gathering network (including connections under the River Tees) to collect and transport CO₂ to Work No. 7. It is intended that the Proposed Development facilitates future third-party industrial carbon capture connections to the offshore storage site. This would be achieved through installation of the CO₂ gathering network. Development of third-party carbon capture and compression facilities would be the subject of separate consent applications by these operators. The potential routing of the CO₂ gathering network is shown in ES Figure 3-2e [APP-111]. All indicative pipeline routeings are shown in Figure 5-2 [APP-117].
- 2.3.26. The CO₂ gathering network would predominantly use an existing above ground pipe racking network, including culverts and bridges. It would start in Billingham, pass through the Seal Sands industrial area and cross under the River Tees before entering the PCC Site. The routing under the River Tees would be either via micro-bored tunnel (MBT) from Seal Sands to the PCC Site, or installed using horizontal directional drilling (HDD) from Sea Sands towards Dabholm Gut and on to the PCC Site.

Work No. 7: High Pressure Compressor Station

- 2.3.27. The HP Compressor Station (Work No. 7) would be a collection point for CO₂ from the medium pressure CO₂ gathering network, including CO₂ from the CCGT. CO₂ would be compressed, prior to introduction into the CO₂ export pipeline. Its proposed location is adjacent to Coatham Dunes to minimise the onshore length of high-pressure pipeline. The location of the HP Compressor Station is shown on ES Figures 3-2A and Figure 4-1 [APP-111 and APP-114].
- 2.3.28. The CCGT would provide the power required for the HP Compressor Station (approximately 30MWe). However, the design life of the HP Compressor Station is longer than the CCGT. Following decommissioning of the CCGT, the power required would be supplied by the Tod Point substation.

Work No. 8: CO₂ Export Pipeline

- 2.3.29. A high pressure, dense-phase CO₂ export pipeline (Work No. 8) with an indicative diameter of up to 800 millimetres (mm) would be installed below ground using trenchless techniques. This pipeline would eventually link to the Endurance storage facility (the Endurance store). Only the onshore elements of export infrastructure are included in this DCO application.
- 2.3.30. The onshore section of pipeline would pass under the private road to South Gare, under Coatham Dunes as far as the MLWS. The proposed route is shown in ES Figure 3-2 in [APP-111]. All indicative pipeline routeings are shown in Figure 5-2 [APP-117].

- 2.3.31. Although the current project would allow storage of up to 4 million tonnes per annum (MTPA) of CO₂, the export pipeline would be sized to allow up to 10MTPA to be stored to allow for future connections from industrial emitters.
- 2.3.32. A separated trenchless crossing would be required to run power and fibre-optic control cables from the PCC Site to the off-shore installation and a remote isolation valve. These would be installed at the same time as the export pipeline.

Work No. 9: Laydown Areas

- 2.3.33. Work No. 9 provides for six temporary construction and laydown areas across the Site. Each would include hardstanding, laydown and open storage areas. In addition, contractor compounds and construction staff welfare facilities would be provided. Laydown areas are shown in ES Figure 5-1 [APP-116].

Work No. 10: Access and Highway Works

- 2.3.34. Access and highway improvement works (Work No. 10) areas are shown in Figure 5-1 of ES [APP-116].
- 2.3.35. There would be a single entrance for Heavy Goods Vehicle (HGV) traffic to the PCC Site from Tees Dock Road via the A1053/A66/Tees Dock Road junction to the south of the Site. There would be seven potential points of access for operational and construction traffic across the Site. No specific highway improvements are proposed.

2.4. THE APPLICATION AT THE CLOSE OF THE EXAMINATION

- 2.4.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the Examination. The changes sought to address points raised by IPs and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the Examination. A list of the updated, revised and additional information submitted into the Examination is contained within the Guide to the Application [REP13-002].
- 2.4.2. The Applicants submitted three change requests comprising 18 changes. These are illustrated in Figure 5 [Figure 6-2, REP12-114] below according to the change numbers listed below. Figure 6 [ES Figure 3-1, REP12-035] shows the Order Limits at the close of Examination [REP12-035].
- 2.4.3. The Applicants' first change request involved 13 individual changes [AS-047 to AS-195]. The changes aimed to reduce optionality, land take and complexity, and reflected updated construction assessments and landowner discussions. The proposed changes are detailed in Chapter 2 of the ES Addendum [AS-050]. In summary, these were:

- 1) Removal of the long tunnel between North Tees and the PCC Site and reduction in land take for the Gas Connections (Options 1A and 1B) (Work No. 2A).
- 2) Removal of AGI for Option 1B (Work No. 2B).
- 3) Removal of the STDC substation at Tod Point and reduction in land take (Work No. 3A).
- 4) Reduction in the Order Limits for repair and upgrade of the existing water discharge infrastructure to Tees Bay (Work No. 5A).
- 5) Reduction in land take for the new wastewater pipelines between Bran Sands WwTP and the generating station (Work No. 5C).
- 6) Removal of Option 1 (bored long tunnel direct to the PCC Site for the CO₂ gathering network) and reduction in land area (Work No. 6).
- 7) Inclusion of Option 3 (Sembcorp No. 2 tunnel) for the CO₂ gathering network crossing the Tees (Work No. 6).
- 8) Change in the direction of HDD drilling from Dabholm Gut to North Tees, rather than vice versa (Work No. 6).
- 9) Reduction in land take (Work No. 9A, 9B and 9F).
- 10) Addition of a land parcel at Saltholme Laydown to allow access to Seaton Carew Road (Work No. 9D).
- 11) Change in the Work No. for pipe stringing for a land parcel on the Teesworks Site from Work No. 5A to Work No. 9A (Work No. 9A).
- 12) Addition of part of Seal Sands Road from Work No. 2A to Work No. 10 to allow access to Navigator Terminals from the public road network (Work No. 10).
- 13) Removal of small parcels of land in the Seal Sands area and from STDC land (Work Nos. 4 and 10).

2.4.4. We agreed that none of these proposed changes was so material that individually or cumulatively they would lead to a materially different project [PD-010]. However, change no.10 included a minor increase in the Order Limits at land to the east of the A178 Seaton Carew Road related to the proposed laydown area (Work No. 9D). The land is required for TP only, but nevertheless consultation was carried out by the Applicants and the landowner (SABIC) did not raise any objections.

2.4.5. A second change request was made on 23 August 2022 to further reduce optionality and the extent of the Order Limits [REP6-104 to REP6-110, REP6-046 to REP6-108, REP8-011 to REP8-035]. This comprised four further changes and is described in more detail in Chapter 2 of the Second ES Addendum [REP6-107]. The changes were:

- 14) Removal of the option to use HDD for crossing of the River Tees (Option 2) and downgrading of rights sought from CA to TP (Work No. 6).
- 15) Removal of Option 1B for the Electrical Connection (Work No. 3A).

- 16) Removal of parcels of land subject to TP powers from North Tees Land Limited and a reduction in rights sought (Work No. 6).
- 17) Removal of parcels of land subject to TP powers from STDC land (Work No. 9A).

2.4.6. We agreed that none of these proposed changes was so material that individually or cumulatively they would lead to a materially different project [PD-017].

2.4.7. The third change request [REP12-116, REP12-034 to REP12-119] was made towards the end of the Examination. This is described in more detail in Chapter 2 of the Third ES Addendum [REP12-118]. The proposed change was:

- 18) Removal of option to use the existing STDC water discharge infrastructure to Tees Bay (Work Nos. 5A and 10).

2.4.8. We agreed that the change was non-material and could be accepted into the Examination [PD-017].

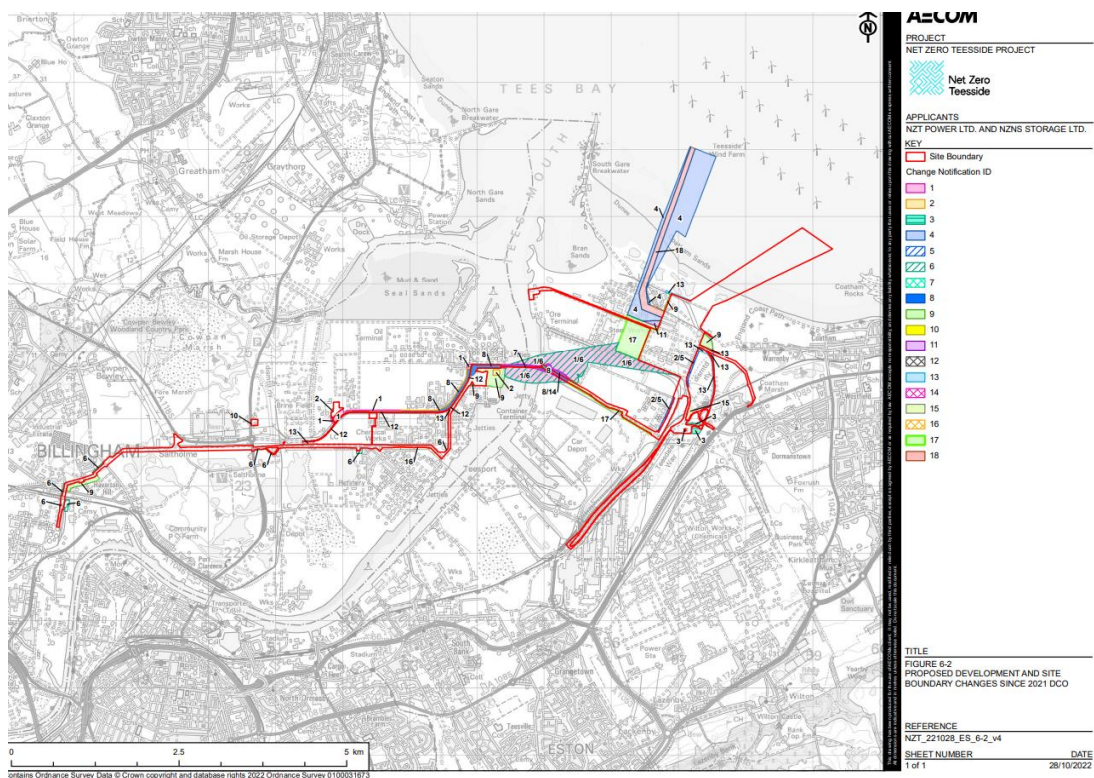


Figure 5: Order Limit changes since submission

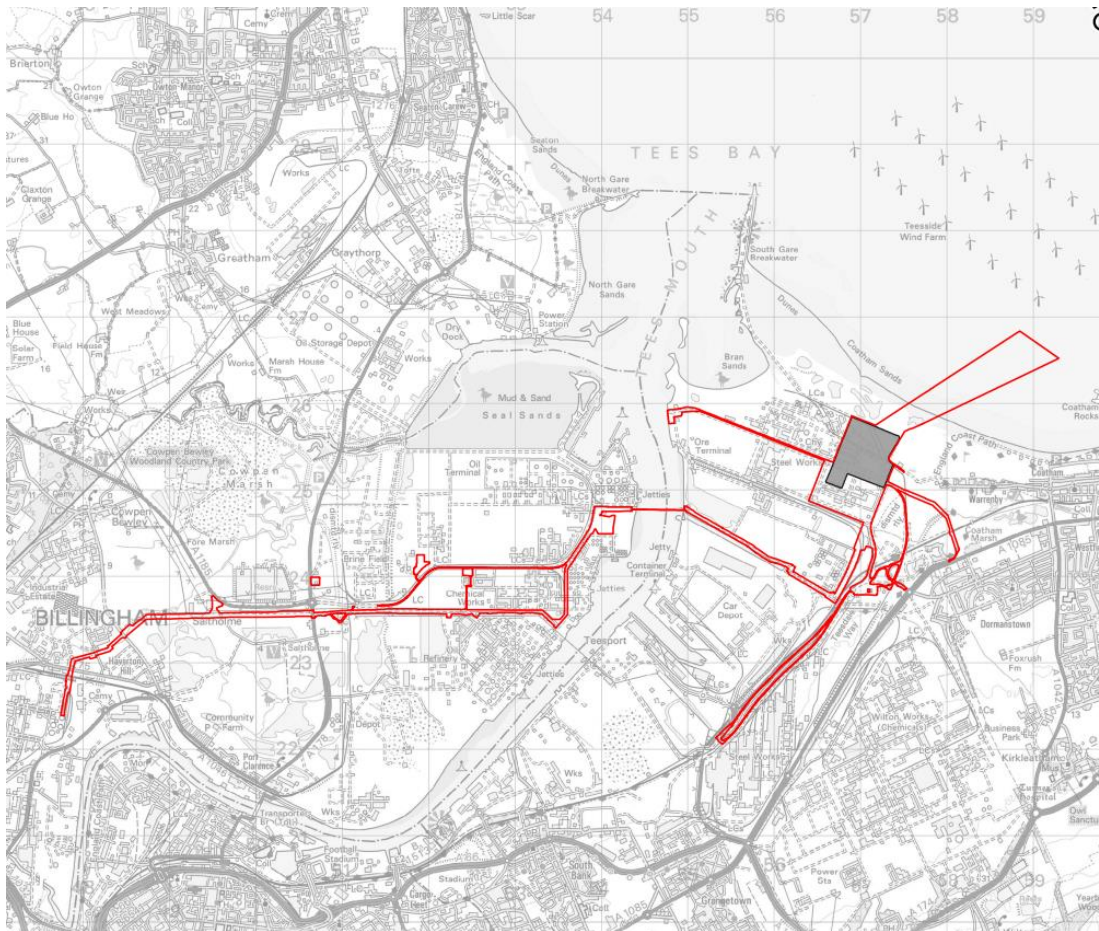


Figure 6: Plan of Order Limits at close of the Examination

- 2.4.9. In total the change requests have reduced the extent of the Order land from approximately 462ha to 246ha. The Proposed Development still comprises the same ten main elements that were in the original application, but optionality within these has been significantly reduced over the course of the Examination. The Applicants are also considering the removal of the Tees Dock Road Access (part of Work No. 10) from the application, subject to agreement with STDC outside the Examination.

2.5. RELEVANT PLANNING HISTORY

- 2.5.1. There is an extensive planning history relating to the immediate area around the PCC Site (wholly within RCBC area), and the wider Order Limits which lie within the administrative areas of both RCBC and STBC. Most of these applications do not have direct relevance to our consideration of the Proposed Development. Those that are within the Order Limits or adjacent to them are listed in Table 3.1 of the Planning Statement [REP1-003], the most recent update of which was provided at Table 2.1 in response to ExQ2 GEN.2.2(i) [REP11-012].
- 2.5.2. Steel working on Teesside dates back to the 1870s, with the area around the PCC Site being used for production of steel from the early 1900s. The Redcar Steel Works, which the PCC Site forms part of, was constructed in the 1970s with the opening of the blast furnace in 1979.

- 2.5.3. Steel production at Redcar Steel Works ceased in 2015. In 2017 STDC was established as a Mayoral Development Corporation under Section 198 of the Localism Act 2011, responsible for around 1,820 hectares of land to the south of the River Tees. The South Tees Development Corporation (Land at the former Redcar Steel Works, Redcar) Compulsory Purchase Order 2019 resulted in the acquisition of some 700 hectares of land by STDC, including much of the land within the Applicants' Order Limits. The land was rebranded by STDC as 'Teesworks'. In March 2021 the Teesside area was granted Freeport status, which became operational in November 2021 (ExQ1 GEN.1.41 [REP2-016, REP2-023 to 025, REP2-097b]).
- 2.5.4. Paragraph 28 of the Teesworks Constitution (v.8, July 2021) [REP2-025] sets out STDC's powers including those in relation to land, infrastructure, acquisition of land, and financial assistance. It should be noted that planning functions in relation to determination of planning applications and preparation of development plan documents are not STDC powers; such functions remain with RCBC.
- 2.5.5. Numerous planning applications for major development have been submitted since 2020 on Teesworks by STDC. These are described in more detail in paragraph 2.6.9 below. The applications followed the adoption of the South Tees Area Supplementary Planning Document (SPD) [REP2-054] by RCBC in 2018 together with publication of a Masterplan [REP2-053] and a Design Guide [REP2-055]. These documents are discussed further in Chapters 3 and 5 of this Report.
- 2.5.6. The RPAs' responses to ExQ1 GEN.1.37 and GEN 3.2 [REP4-041, REP4-044, REP5-039 and REP11-022] list a number of additional relevant planning applications submitted since the Planning Statement was originally produced in March 2021. RCBC's initial response [REP4-041] specifically provided an update to the planning applications listed in Table 3.1 of the Planning Statement [REP1-003], some of which have since been approved. The final update to the table was provided by the Applicants at D11 (Table 2.1, ExQ2 GEN.2.2i [REP11-012]).
- 2.5.7. The most directly relevant planning application relates to the demolition of former steelworks structures and associated engineering operations within and around the PCC Site, approved in September 2019 (RCBC ref. R/2019/0427/FFM). Demolition works commenced in August 2021 and are ongoing. They are expected to continue into 2023.
- 2.5.8. A long list, narrowed down to a short list, of developments is considered in the assessment of cumulative effects set out in ES Chapter 24 [APP-106]. We requested an update to the list at regular intervals in the Examination, given the fast-moving nature of the redevelopment of the Teesworks site together with the proliferation of other major developments in the wider Teesside area. Updated lists were provided at D4 [REP4-029], D6 [REP6-102 and REP6-103], and D11 [REP11-012], with a visual representation of their locations provided at D12 [REP12-112 and REP12-113]. The agreement of the relevant planning history

was confirmed in the SoCG between RCBC and the Applicants [REP9-009].

- 2.5.9. Figure 7 below [Figure 24-3, REP12-113] indicates the location of the short-listed other developments in relation to the Order land. The reference numbers are referred to in the next section of this Report (section 2.6), which summarises the most relevant other major projects and proposals included on the aforementioned short list.

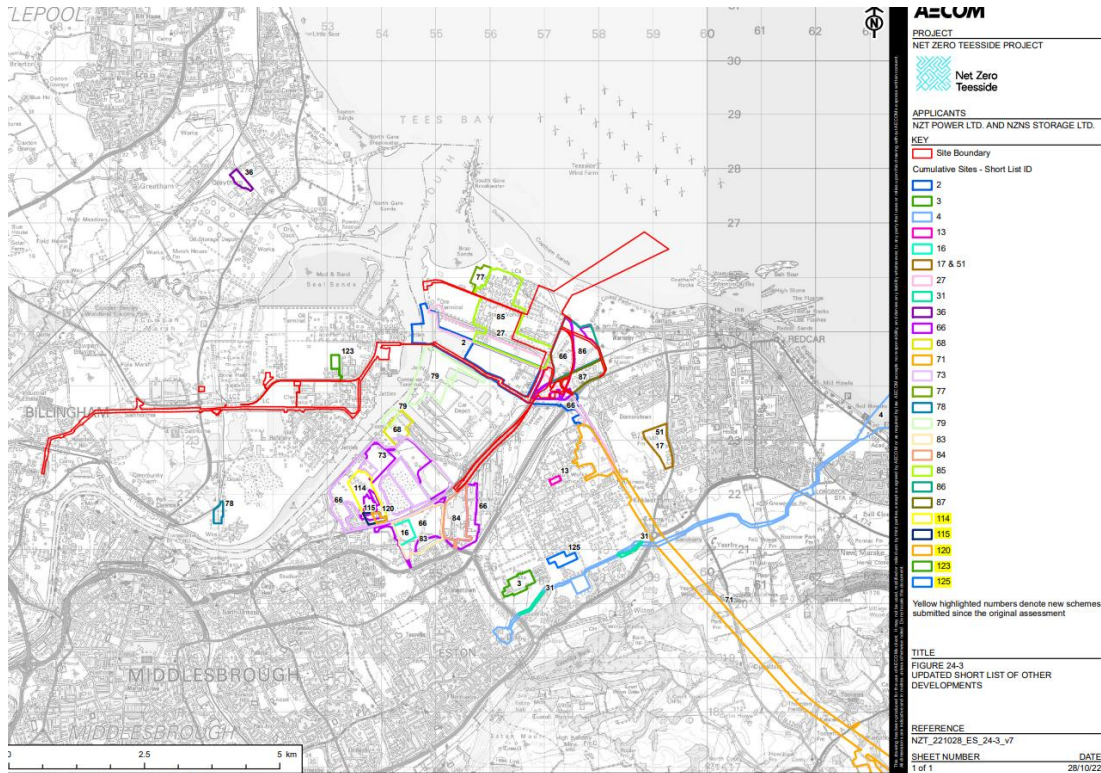


Figure 7: Short list of other developments

2.6. OTHER MAJOR PROJECTS AND PROPOSALS

- 2.6.1. An extensive range of other major developments are consented or proposed in the area, some of which are also nationally significant and many of which have some level of interaction with the Proposed Development, in terms of their environmental effects as set out in Chapter 24 of the ES [APP-106] and/or in terms of land rights. Other NSIPs in the area are described below.

Nationally Significant Infrastructure Projects

York Potash Harbour Facilities Order 2016

- 2.6.2. The harbour facility forms part of the wider York Potash Project (now titled and referred to as the 'Woodsmith Project'), which comprises the development of an underground mine for winning and working of polyhalite (fertiliser) together with its handling and transportation (short list ID's **27** and **71**). The site of the harbour facilities is located adjacent to NWL's Bran Sands WwTP (short list ID **2**). The minehead site near Whitby would connect to a materials handling facility at Wilton

International via a 36.5km underground conveyor tunnel for the mineral transport system. These other parts of the project were the subject of separate planning applications to RCBC and the North York Moors National Park Authority. The construction of the mine is well advanced, and as at May 2022 the tunnel had travelled more than half way from the portal at Wilton towards the minehead site.

- 2.6.3. The Order includes works to enable bulk loading of vessels from a new quay within a dredged section of the River Tees, together with a range of associated development and a conveyor system to enable the transfer of finished products from the minerals handling facility at Wilton.
- 2.6.4. The operators, Anglo American, in their D2 submission [REP2-073], confirmed that the DCO is to be delivered in two phases, ultimately facilitating the movement of 13 million tonnes of polyhalite per annum. The submission sets out that the harbour works are complex, and the construction is likely to be a lengthy process. Anglo American confirmed at D9 that a non-material change to the DCO Order was granted on 25 August 2022 [REP9-024]. The change reduces the extent of details to be approved before development can commence, to enable Anglo American to begin construction of the quay whilst it finalises details of the conveyor. The harbour development is programmed to start prior to July 2023 [paragraph 5.2, REP2-073].
- 2.6.5. The Order Limits of the York Potash Order 2016 lie partly within the Order Limits as the Proposed Development. A number of 'shared areas' are identified at Part 18 of Schedule 12 of the dDCO [REP8-008], with both parties agreeing that appropriate provisions should be included within the DCO in order to ensure that the two NSIPs can be delivered and neither one prejudices the other. Protective provisions in this respect are outlined at Chapter 9, section 9.4 of this Report.

Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (Dogger Bank Teesside A/Sofia Offshore Wind Farm)

- 2.6.6. This DCO (the Dogger Bank Teesside DCO) relates to up to two offshore wind generating stations with up to 400 turbines located in the North Sea (short list ID **4**). The onshore elements include up to two converter stations at Wilton International, with underground cables from a coastal landing point between Redcar and Marske-by-the-Sea and connection to the grid at Lackenby near Eston (short list ID **31**). Construction of the converter station and cable route has commenced. There is no direct interaction with the Order Limits of the Proposed Development, which are some 2.5km apart at their closest point. However, submissions have been made by APs regarding protective provisions associated with the NZT dDCO.

Tees Combined Cycle Power Plant Order 2019

- 2.6.7. This DCO relates to two CCGT units and associated infrastructure at Wilton International (short list ID **3**). There is no indication that the development has commenced. There is no direct interaction between

Order Limits which are some 1.8km apart at their closest point. However, the DCO has been referred to in submissions by APs.

Other Projects

- 2.6.8. Other projects and proposals within the area subject to future development are set out in Table 24-5 of ES Chapter 24 [APP-106] and the Updated List of Developments [REP11-012] in a short list of projects assessed at Stage 4 of the cumulative effects assessment. The majority are situated within the broad areas set out below.

Teesworks

- 2.6.9. STDC's Teesworks site covers a significant area as shown in the South Tees Regeneration Master Plan [REP2-053]. Within the Master Plan area, there are a range of current projects and future proposals. As at D12, planning permission had been granted for the following developments which are fully referenced on the short list [REP11-012 and Figure 24-3, REP12-113]:
- Short list ID **66** - Demolition of structures and engineering operations associated with ground preparation and temporary storage of soils and its final use in the remediation and preparation of land for regeneration and development;
 - **73** - Development of up to 418,000 m² of general industry (use class B2) and storage or distribution facilities (B8) with office accommodation (B1), HGV and car parking and associated infrastructure works;
 - **120** - Erection of 3,396 m² of B2/B8 floorspace including waste storage area, installation of sprinkler tank and associated plant, creation of hardstanding and landscaping works (linked with no. 73 above);
 - **83** - Development of up to 139,353 m² of general industry (B2) and storage or distribution facilities (B8) with office accommodation (E), HGV and car parking, works to watercourse including realignment and associated infrastructure works;
 - **84** - Development of up to 92,903 m² of general industry (B2) and storage or distribution facilities (B8) with office accommodation (E), HGV and car parking and associated infrastructure works;
 - **85** - Development of up to 464,515qm of general industry (B2) and storage or distribution facilities (B8) with office accommodation (E), HGV and car parking and associated infrastructure works;
 - **86** - Development of up to 185,806 m² of general industry (B2) and storage or distribution facilities (B8) with office accommodation (E), HGV and car parking, works to watercourses including realignment and associated infrastructure works.
- 2.6.10. Of the above applications at Teesworks, ID's **83, 84, 85, 86, 87** and **120** were approved since submission of the application for the Proposed Development. Commencement of built development on the wider

Teesworks site began in July 2022 with the construction of the SeaH Wind monopile factory (ID **73** and **120** above).

- 2.6.11. A further application at Teesworks (ID **87**) was validated in January 2021 and at D12 was pending consideration - Outline planning application for office accommodation, car parking and associated infrastructure works.
- 2.6.12. Both STDC and RCBC have indicated that pre-application discussions are underway with a number of major investors expressing an interest in locating operations within Teesworks. However, they are not specifically named for reasons of commercial confidentiality (ExQ2 CA.2.6 [REP6-144 and REP12-166]).

Redcar Bulk Terminal

- 2.6.13. The Order land directly interacts with RBT's terminal, its access and utilities. A planning application (short list ID **77**) for construction of the Redcar Energy Centre consisting of a material recovery facility incorporating a bulk storage facility, an energy recovery facility and an incinerator bottom ash recycling facility was approved in January 2021 [REP11-012]. The 10.1ha site lies between the former steelworks and the terminal. Construction has not yet commenced.

Teesport

- 2.6.14. PDT is the statutory Harbour Authority for the area. The proposed Northern Gateway Terminal (short list IDs **69** and **79**) would involve dredging and construction of a container terminal facility amongst other proposals. A detailed planning application has yet to be submitted but it is understood that a Marine Licence was granted by the MMO in March 2022 [REP2-093, REP11-012]. As originally submitted the application included land at Teesport (plots 224 and 225, sheet 5 [APP-018]) in the ownership of PDT which were identified for Work No. 6 (CO₂ gathering network corridor). These plots were removed from the Order land following the acceptance of the first change request [PD-010] and consequently there is now no physical overlap with the Proposed Development.

Wilton International

- 2.6.15. Whilst there is no direct interaction between the Order Limits and the complex itself, a number of pipelines link a range of operations at Wilton International to industries at Seal Sands and Billingham. The importance of the industries located at Wilton International and the associated pipelines is relevant to the consideration of CA/TP matters and protective provisions which are considered in Chapters 8 and 9 of this Report.
- 2.6.16. The aforementioned Dogger Bank Teesside DCO (short list ID **31**) and Tees Combined Cycle Power Plant (ID **3**) are located at Wilton International, and during the Examination an additional development was added to the short list (ID **125**); a lithium hydroxide monohydrate manufacturing plant [REP11-012].

Seal Sands, North Tees and Billingham

- 2.6.17. There are no approved developments in the area north of the Tees in the short list of cumulative sites, however during the Examination an application was submitted for an energy recovery facility at Seal Sands and subsequently added to the short list after D8 (ID **123**). The proposal, located to the north of the gas pipeline at Seal Sands Road, remains undetermined by STBC.
- 2.6.18. We are also aware of a number of potential future proposals as noted in representations which relate to matters of CA/TP and protective provisions, as set out in Chapters 8 and 9 of this Report. However, there is limited information on such developments and no planning applications cited for them.

Residential Developments

- 2.6.19. A number of major residential developments in the area are set out in Table 24-5 of Chapter 24 of the ES [APP-106] and the Updated List of Developments [REP11-012], the nearest being some 1.3km from the Order Limits at Kirkleatham Lane, Redcar (RCBC ref. R/2016/0663/OOM). No further information has been provided regarding progress of these developments.

Offshore Development

- 2.6.20. Operational offshore developments include the nearby Teesside Wind Farm, in operation since 2014. Its offshore and onshore cables bisect the Order land at Coatham Sands which is proposed for Works Nos. 5 and 8 (sheets 10 and 17 [REP12-017]).
- 2.6.21. Approved developments include the offshore elements of the Dogger Bank Teesside DCO would be located approximately 4.1km from the PCC Site.
- 2.6.22. Future developments include, as noted in section 2.1, the offshore elements of the NZT Project including the CO₂ export pipeline (below Mean High Water Springs (MHWS) and the area identified for the storage of CO₂ from the Proposed Development (the Endurance store).
- 2.6.23. Hornsea Project Four (HP4) is an NSIP currently pending consideration by the SoS for Business, Energy and Industrial Strategy (BEIS). The HP4 Project was subject to Examination between 22 February and 22 August 2022 with the Recommendation Report issued to the SoS for BEIS on 22 November 2022. Consequently, a decision on the HP4 application is due by 22 February 2023. The Order Limits of HP4 intersect with the proposed Endurance store and this is considered at section 5.2 of this Report.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

- 3.1.1. This Chapter sets out the relevant legal and policy context for the application. We have taken this into account in the Examination of the Proposed Development and in presenting findings and making recommendations to the SoS for BEIS.
- 3.1.2. The legal and policy context, as understood by the Applicants, is described in Sections 4 and 5 of the Planning Statement [REP1-003] and ES Chapter 7 Legislative Context and Planning Policy [APP-089]. Section 4 of the Planning Statement provides an overview of the PA2008 and National Policy Statements (NPSs) while Section 5 describes UK Energy and Climate Change Policy. Section 6 of the Planning Statement sets out a high-level assessment of the Proposed Development's conformity against policy with Appendix 3 providing an assessment against draft revised NPSs. Individual chapters of the ES provide specific legal and policy background relating to particular topics.
- 3.1.3. These submissions were further supported by the Applicants' and local authorities' responses to the ExA's written questions PPL.1.1 to PPL.1.10 [REP2-016], [REP2-094] PPL.2.1 [REP6-121] and PPL.3.1 [REP11-018], [REP11-022] and to the Rule 17 Letter [PD-015] of 23 June 2022 [REP4-044].
- 3.1.4. The LIRs prepared and submitted by RCBC [REP1-046] and STBC [REP1-047] set out each local authority's position on the relevant development plan policies.

3.2. THE PLANNING ACT 2008

- 3.2.1. As set out in the Planning Statement (paragraph 4.2.3 [REP1-003]) elements of the Proposed Development fall within the definition and thresholds of an NSIP under s14(1)(a) and ss15(1) and (2) of the PA2008, notably the electricity generating station (Work No. 1), which will have a generating capacity of greater than 50 MW output (up to 860 MW). We agree with the Applicants that in accordance with s31 of the PA2008 a DCO is required to authorise this element of the Proposed Development.
- 3.2.2. Other elements of the Proposed Development are the subject of a direction made by the SoS. A request for a direction under ss35(1) and 35ZA was submitted to the SoS for BEIS on 25 November 2019. This sought to confirm that the following elements (the Specified Elements) of the Proposed Development should be treated as development for which development consent is required under the PA2008 in addition to the electricity generating station (and its associated development) (paragraph 4.2.4 [REP1-003]). The Specified Elements were defined as follows:

- a CO₂ gathering network, including the CO₂ pipeline connections from the electricity generating station and industrial facilities on Teesside to transport the captured CO₂ (including connections under the tidal River Tees);
- a CO₂ gathering/booster station (also known as the high-pressure compressor station) to receive captured CO₂ from the gathering network; and
- a CO₂ transport pipeline for the onward transport of the captured CO₂ to a suitable offshore geological storage site.

3.2.3. The SoS issued a Direction made under s35(1) and s35ZA on 17 January 2020 which confirmed that the Specified Elements, together with any matters/development associated with them, are to be treated as development for which development consent is required (in so far as they form a part of the NZT Project which includes a generating station which is an NSIP). Furthermore, the SoS determined that the Overarching Policy Statement for Energy (EN-1) has effect in relation to an application for development consent under the Direction. A copy of the Direction is provided at Appendix 1 of the Planning Statement [REP1-003]. The three Specified Elements correspond to Work Nos. 6-8 respectively.

3.2.4. S115(1)(b) of the PA2008 provides that a DCO can include consent for 'associated development', which is development that is not part of, but is associated with the NSIP. The Applicants identified that the Gas Connection (Work No. 2), Electrical Connection (Work No. 3); Water Supply Connection Corridor (Work No. 4); Water Discharge Connection Corridor (Work No. 5); Laydown Areas (Work No. 9); and Access and Highway Works (Work No. 10); would support the construction and operation of the NSIP and also the Specified Elements and would therefore be considered as associated development for the purpose of s115(1)(b) of the PA2008 (paragraph 4.2.6 [REP1-003]).

3.2.5. S104 (2) of the PA2008 sets out the matters to which the SoS must have regard in deciding an application. In summary these comprise: any relevant NPSs and appropriate marine policy documents (if any); any LIRs; any matters prescribed in relation to development of the description to which the application relates; and to any other matters which the SoS considers are both important and relevant to the decision.

3.2.6. S104(3) of the PA2008 requires that the SoS must decide an application for development consent in accordance with any relevant NPSs, except to the extent that the SoS is satisfied that, in summary, doing so:

- would lead to the UK being in breach of its international obligations;
- would lead to the SoS being in breach of any duty imposed on the SoS under any enactment;
- would be unlawful by virtue of any enactment;
- the adverse impact of the proposed development would outweigh its benefits; or
- would fail to comply with any prescribed condition for deciding the application otherwise than in accordance with the NPS.

- 3.2.7. S105 of the PA2008 applies in relation to an application if s104 does not apply because there is no NPS in place relating to the specific type of development, the subject of the application. In such cases, s105 states that in deciding the application the SoS must have regard to: any LIR; any matters prescribed in relation to development of the description to which the application relates; and any other matters which the SoS considers are both important and relevant to their decision.
- 3.2.8. The Applicants identified that NPSs have been designated in relation to a range of energy infrastructure (NPS EN-1 to NPS EN-6) and while addressing some elements of carbon capture, they do not specifically contain policies on all of the Specified Elements of the Proposed Development, notably the CO₂ gathering network corridor (Work No. 6) [paragraph 4.2.10, REP1-003]. It was the Applicants' view that those elements do not fall within the scope of the NPSs as designated. However, the SoS's s35 Direction provides that in relation to the Specified Elements that "*the Overarching Policy Statement for Energy (EN-1) has effect in relation to an application for development consent under this Direction in a manner appropriately equivalent so far as the considerations and impacts described in EN-1 are relevant to the proposed development*".
- 3.2.9. The SoS made that Direction before the High Court handed down judgment in EFW Group Limited v Secretary of State for Business, Energy and Industrial Strategy [2021] EWHC 2697 (Admin). Here, the Court determined that development subject to a s35 Direction (albeit one that did not specifically direct that the relevant NPS had effect in relation to the proposed development) should be determined pursuant to the decision-making framework in s105 of the PA2008, rather than s104.
- 3.2.10. A commentary on this matter was subsequently provided by the Applicants in their updated Planning Statement (paragraphs 1.1.10 to 11 and 4.2.10 to 4.2.15) with a copy of the judgement appended to Appendix 2 [REP1-003]. Based on the High Court judgment the Applicants considered that it would be prudent for the ExA to consider both s104 and s105 of the PA2008.
- 3.2.11. We agree with the Applicants that EN-1 and EN-2 have effect in relation to the Low Carbon Electricity Generating Station, which falls within the definition and thresholds under s14 and s15 of the PA2008, together with its associated development and is within the scope of the NPSs. Consequently, the application for development consent for those elements should be assessed and determined pursuant to s104.
- 3.2.12. The Applicants position is that the CO₂ gathering network corridor and its associated development, which constitute the Specified Elements in the s35 Direction, needs to be considered in light of the EFW Group Limited case. They argued that EN-1 could only 'have effect' in relation to those elements of the application for the purposes of s104 insofar as the legal effect of the s35 Direction is to bring them within the scope of the NPSs as associated development. In the EFW Group Limited case, the High Court decided that the s35 Direction in question could not have the effect

of bringing the development within the scope of EN-1 which has been drafted specifically to apply only to those projects that are within the definition of an NSIP. The relevant Direction in that case did not include an equivalent provision in relation to the NPS to that which has been made in respect of the Proposed Development, and therefore the implications of such a provision are not considered in the Judgment (paragraph 4.2.13 [REP1-003]).

- 3.2.13. The Applicants went on to conclude that if, following the EFW Group Limited case, the SoS decides that the Direction does not have that intended legal effect, those parts of the application will need to be determined pursuant to s105. Accordingly, the Applicants considered that it would be prudent for the ExA to consider what its recommendation would be on both bases, so as to enable the SoS to determine the application with the benefit of that advice whichever statutory route they ultimately determine to be appropriate (paragraph 4.2.14 [REP1-003]).
- 3.2.14. The judgment in the EFW case found that, whilst it is possible to include more than one project within the same application for a DCO, it was contrary to the statutory scheme to suggest that by incorporating a project to which the NPS had no effect within a project to which the NPS did apply it was not possible to enlarge the scope of the NPS as to include a project to which it did not apply. The judgment found in the EFW case that the s35 Direction did not have the effect of bringing the proposed development within the s104 framework and did not alter the scope of the NPS.
- 3.2.15. The Proposed Development can be distinguished from the EFW case because the s35 Direction in the EFW case did not specify which NPS applies, whereas in the NZT case the s35 Direction specifies that EN-1 has effect. Based on the s35 Direction in respect of the NZT proposals and taking account of the EFW case we regard it as appropriate to consider the Proposed Development under s104 of the PA2008. However, should the SoS decide that the Direction does not have that intended legal effect and that the Specified Elements should be determined pursuant to s105 we also present our findings and recommendation on that basis.

3.3. NATIONAL POLICY STATEMENTS

- 3.3.1. The NPSs which are relevant to the Proposed Development are:
- Overarching NPS for Energy (EN-1);
 - NPS for Fossil Fuel Electricity Generating Infrastructure (EN-2);
 - NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4); and
 - NPS for Electricity Networks Infrastructure (EN-5).
- 3.3.2. EN-1 sets out the Government's overarching policy for the delivery of major energy infrastructure. It is part of a suite of NPSs for the energy sector which are to be read in conjunction with EN-1.

- 3.3.3. EN-2 is one of the suite of technology specific NPSs that sit under EN-1. It provides the primary basis for decisions on applications for nationally significant fossil fuel infrastructure, including gas-fired generating stations and therefore has relevance to Work No. 1 (the Low Carbon Electricity Generating Station).
- 3.3.4. EN-4 provides the primary basis for decisions on applications for gas supply infrastructure and gas and oil pipelines and is relevant to Work No. 2 (the Gas Connection Corridor). It is relevant to the Proposed Development as natural gas will be used as the fuel for the operation of the electricity generating station and the Proposed Development includes a gas supply pipeline.
- 3.3.5. EN-5 provides the primary basis for decisions on applications for electricity networks infrastructure. It is therefore relevant to Work No. 3 (the Electrical Connection) as it includes a new electrical connection between the Low Carbon Electricity Generating Station and the National Electricity Transmission System for the export of electricity.

Draft Revised National Policy Statements for Energy Infrastructure

- 3.3.6. In December 2020 the Government's Energy White Paper (EWP), confirmed that the SoS had decided that it was appropriate to review the suite of NPSs for energy infrastructure to ensure that they reflected the policies set out in the EWP. Draft NPSs for energy infrastructure were published for consultation in September 2021 although no date has been set for their designation (paragraph 4.3.4 [REP1-003]).
- 3.3.7. While the review of energy NPSs is undertaken, the current suite of NPSs remains relevant Government policy and have effect for the purposes of the PA2008 (as confirmed in paragraph 1.6.1 of EN-1, EN-2 and paragraph 1.5.1 of EN-5).
- 3.3.8. The Applicants considered that the draft NPSs are an important and relevant matter to the SoS's decision-making on the application (paragraph 4.4.2 [REP1-003]). The following draft NPSs are considered to be of relevance to the Proposed Development:
- Draft Overarching National Policy Statement for Energy (draft EN-1);
 - Draft National Policy Statement for Natural Gas Electricity Generating Infrastructure (draft EN-2);
 - Draft National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (draft EN-4); and
 - Draft National Policy Statement for Electricity Networks Infrastructure (draft EN-5).
- 3.3.9. These matters are addressed with references to individual paragraphs in the NPSs in Chapters 4 and 5 of this Report below.
- 3.3.10. The NPSs also state that applicable policies from the relevant Development Plan can be important and relevant matters. These are

identified in section 3.9 of this Report and addressed further in Chapters 4 and 5.

3.4. MARINE AND COASTAL ACCESS ACT 2009

- 3.4.1. The Marine and Coastal Access Act 2009 (MCAA) provides the legal mechanism to provide a system for improved management and protection of the marine and coastal environment. It established a strategic marine planning system which includes the production of a Marine Policy Statement (MPS), introduced the production of marine plans as well as establishing the MMO and streamlining the marine licensing system.
- 3.4.2. Under s104(2)(aa) of the PA2008 the SoS must have regard to "*the appropriate marine policy documents (if any), determined in accordance with s59 of the Marine and Coastal Access Act 2009*". In this case the appropriate marine policy documents are the MPS and the adopted North East Inshore and North East Offshore Marine Plan, as the Proposed Development includes works within part of the UK marine area, namely the Tidal River Tees and the North Sea, as confirmed by the MMO [RR-037].
- 3.4.3. The Applicants' dDCO includes Deemed Marine Licences (DMLs) detailed within Article 37 and Schedules 10 and 11 [REP12-003].
- 3.4.4. Accordingly, the decision of the SoS must comply with the general duty under s125 to exercise his functions in the manner which they consider best furthers the conservation objectives for the MCZ, or where this is not possible, to exercise their functions in the manner which they consider least hinders the achievement of those objectives. In addition, s126 sets out the specific duties of public authorities. These matters are discussed in Chapter 6.

UK Marine Policy Statement

- 3.4.5. The MPS provides the high-level policy context within which marine plans will be developed, implemented and monitored. It has been prepared and adopted for the purposes of s44 of the MCAA and is intended to sit alongside terrestrial consenting regimes, including the PA2008 regime. It was updated in September 2020 in respect of references to how EU law should be interpreted following the UK's withdrawal from the EU. It is intended to provide consistency in marine planning across the UK marine area, including the territorial seas and offshore area adjacent to the UK. It provides the overarching policy context for the ExA's consideration of the offshore works.
- 3.4.6. NSIP applications must be determined in accordance with relevant NPSs, subject to certain exceptions, and have regard to the MPS and relevant marine plans. The MPS has provided the overarching policy context for the ExA's consideration of the application's offshore works and DMLs.

North East Inshore and North East Offshore Marine Plan

- 3.4.7. Marine plans are intended to set out detailed policy and spatial guidance for a particular area. The MMO is the authority responsible for preparing marine plans which set out detailed policy and spatial guidance for a particular area. The Proposed Development lies within the North East Inshore Marine Area, which stretches from Flamborough Head in Yorkshire to the Scottish Border. The Plan Area has three main tidal rivers, including the River Tees.
- 3.4.8. The North East Marine Plan which was adopted by the SoS on the 23 June 2021 is intended to provide a strategic approach to decision making, considering future use and providing a clear approach to managing resources, activities and interactions within the area. In referring to Teesside, Tyneside and Wearside (paragraph 14), the Plan identifies that there are future opportunities for CCUS using existing oil and gas infrastructure.
- 3.4.9. The relevant objectives and policies of the North East Marine Plan are addressed in subsequent Chapters of this Report.

3.5. EUROPEAN LAW AND RELATED UK REGULATIONS

- 3.5.1. The UK, through The European Union (Withdrawal) Act 2018 (EUWA2018) has converted EU law into UK law and preserved laws made in the UK which implements EU obligations. The SoS will be aware that retained EU law as defined in the EUWA2018 continues to apply.

The EIA Directive and the EIA Regulations

- 3.5.2. Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive) defines the procedure by which information about the environmental effects of a project is collated and taken into account by the relevant decision-making body before consent is granted for a development. It applies to a wide range of defined public and private projects. The most recent EIA Directive is 2014/52/EU, which came into force on 15 May 2014.
- 3.5.3. The EIA Directive is transposed into law for NSIPs in England and Wales by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). Regulation 14 and Schedule 4 of the EIA Regulations set out the information required in an ES. This is reinforced by Regulation 4(2), which sets out the core duty of the decision maker in deciding on EIA development. It states that the decision maker *"must not ... make an order granting development consent or ... grant subsequent consent unless an EIA has been carried out in respect of that application"*.
- 3.5.4. The EIA Regulations state that an EIA (where relevant): *"must include a description of the likely significant effects of the development on the environment resulting from ... the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and vulnerability of the project to climate change"*.

- 3.5.5. The ES for the Proposed Development is addressed in section 1.5 and Chapters 4 and 5 of this Report.

The Habitats Directive, the Birds Directive and the Habitats Regulations

- 3.5.6. The Habitats Directive (92/43/EEC) on the conservation of natural habitats and wild fauna and flora and the Birds Directive (2009/147/EC) on the conservation of wild birds form a cornerstone of European nature conservation policy. The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) are the principal means by which they are transposed into English law. The Habitat Regulations were amended by the Conservation of Habitats and Species (Amendment)(EU Exit) Regulations 2019 to transfer functions from the EU to the appropriate authorities in England and Wales and to establish the National Site Network in place of the Natura 2000 network.
- 3.5.7. The Habitats Directive requires the identification and designation of Special Areas of Conservation (SACs) for habitats that are listed in Annex I of the Habitats Directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species.
- 3.5.8. The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the EU. It places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species.
- 3.5.9. Assessment processes taking place pursuant to the Habitats Regulations are referred to as Habitats Regulations Assessment (HRA). When determining this application, the SoS must consider whether the Proposed Development would have a significant effect on a European site of nature conservation importance alone or in combination with other plans or projects.
- 3.5.10. The types of European site relevant to the application are as follows: SACs designated pursuant to the Habitats Directive; SPAs designated pursuant to the Birds Directive; and Ramsar sites designated under the Ramsar Convention on Wetlands of International Importance.
- 3.5.11. The applicant is required to provide information to allow a HRA to be undertaken by the competent authority in support of its DCO which in the case of the DCO is the SoS.
- 3.5.12. The Habitats Directive, Birds Directive and Habitats Regulations are relevant to this application by virtue of potential effects on European sites as described in Chapter 6 of this report and the matters arising from this legislation are considered throughout this Report.

The Water Framework Directive and Water Framework Directive Regulations

- 3.5.13. Directive 2000/60/EC establishes a framework for community action in the field of water policy (the Water Framework Directive (WFD)) and includes objectives to prevent and reduce pollution, improve aquatic ecosystems and mitigate the effects of floods. It seeks to prevent the deterioration of and improve aquatic ecosystems by progressively reducing pollution and mitigating the effects of floods.
- 3.5.14. The WFD is transposed into law in England and Wales by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (the WFD Regulations). The WFD Regulations require the 'appropriate agency' to prepare River Basin Management Plans for each River Basin District.
- 3.5.15. Regulation 3 places a general duty on the SoS and the EA to exercise their "*relevant functions*" to secure compliance with the WFD. Whilst the PA2008 is not a "*relevant function*" for this purpose, the SoS and EA, together with public bodies, have a specific duty to have regard to the relevant River Basin Management Plans and any supplementary plans made under it in exercising their functions, which would include functions under the PA2008. The Applicants have prepared a WFD Assessment Report which is provided as Appendix 9C of the ES [APP-254].
- 3.5.16. Three WFD surface waterbodies were considered in the ES. These are 'Tees Coastal Water', 'Tees Transitional' encompassing the estuary and 'Tees Estuary (South Bank)', coinciding with The Fleet and its tributaries. The Order land is underlain by the 'Tees Sherwood Sandstone' and 'Tees Mercia Mudstone and Redcar Mudstone' groundwater bodies. The waterbodies fall in the Tees Management Catchment and under the Northumbrian River Basin Management Plan [REP11-009]. The WFD Assessment is addressed in Chapter 5, section 5.7.

The Air Quality Directive and the Air Quality Standards Regulations

- 3.5.17. Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the Air Quality Directive (AQD)) requires Member States to assess ambient air quality. The Directive aims to protect human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollutants. It sets legally binding concentration-based limit values (LVs) as well as target values to be achieved for the main air pollutants and establishes control actions where these are exceeded. The AQD is transposed into UK law through the Air Quality Standards Regulations 2010. Air quality is discussed in section 5.4 of Chapter 5.

Environmental Permitting Regulations

- 3.5.18. The Environmental Permitting (England and Wales) Regulations 2016 (the EP Regulations) implement the EU Directive 2008/1/EC concerning Integrated Pollution Prevention and Control. They define activities that

require the operator to obtain an EP from the EA and transpose the requirements of the EU Industrial Emissions Directive (IED) into UK legislation. As the Proposed Development falls under the EP Regulations, an EP would be required before the Proposed Development commences operation.

- 3.5.19. The EP Regulations provide a regulatory system to ensure a high level of protection of environmental and health impacts, secured by demonstrating that the proposed approach adopts Best Available Techniques (BAT) to prevent or minimise the effects of the activity on the environment, taking account of relevant local factors.

3.6. ENERGY AND CLIMATE CHANGE LEGISLATION AND POLICY

- 3.6.1. This section provides an overview of relevant international and UK energy and climate change legislation and policy. This establishes objectives for decarbonising the power and industrial sectors and achieving the Government's legally binding commitment to achieve net zero in terms of greenhouse gas (GHG) emissions by 2050. The matters, within the context of s104 and s105 of the PA2008, are relevant and important to the SoS's decision making on the Proposed Development.

Kyoto Protocol

- 3.6.2. The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change (UNFCCC), which commits its Parties by setting internationally binding emission reduction targets. Article 4 requires the setting of individual binding GHG emission reduction targets for each signatory. Currently, the UK is committed to a 37% reduction in GHG emissions for the period 2021 to 2030 (Regulation (EU) 2018/842, 2018).

Paris Agreement

- 3.6.3. The Paris Agreement is an agreement under the UNFCCC dealing with GHG emissions mitigation, adaptation and finance starting in the year 2020. It requires all signatories to strengthen their climate change mitigation efforts to keep the increase in global average temperature to well below 2°C this century above pre-industrial levels and to pursue efforts to limit the increase to 1.5°C.

Climate Change Act 2008 and Climate Change Act 2008 (2050 Target Amendment) Order 2019

- 3.6.4. The Climate Change Act 2008 set a legally binding target for the UK to reduce its GHG emissions from 1990 levels by at least 80% by 2050. This target is supported by a system of legally binding five-year carbon budgets and an independent body to monitor progress, the Climate Change Committee (CCC). The UK carbon budgets restrict the amount of GHG emissions the UK can legally emit in a defined five-year period.

- 3.6.5. The Act was amended following advice from the CCC, to revise the 80% reduction target and legislate for net zero emissions by 2050 through the Climate Change Act 2008 (2050 Target Amendment) Order 2019.
- 3.6.6. In 2020, the 6th Carbon Budget was published by the CCC for consideration by Government and is the first budget to reflect the amended trajectory to net zero by 2050.
- 3.6.7. The existing UK carbon budgets are used to determine significance of GHG emissions from the Proposed Development and this matter is addressed in section 5.3.

National Infrastructure Plan

- 3.6.8. The National Infrastructure Plan 2014 (the NIP) sets out a vision for the UK's infrastructure, reinforcing the government commitment to investing in infrastructure and improving its quality and performance. Paragraph 1.1 emphasises the strong case for infrastructure investment and that this has a significant positive effect on output, productivity, and growth rates, being a key driver for jobs throughout the economy. Paragraph 8.3 states that large-scale investment in gas and low-carbon electricity generation is vital in order to replace ageing energy infrastructure, maintain secure energy supplies and meet legally binding environmental targets [REP1-003].

National Infrastructure Delivery Plan

- 3.6.9. The National Infrastructure Delivery Plan (2016-2021) (the NIDP) published by the Infrastructure and Projects Authority reporting to HM Treasury and Cabinet Office builds upon the NIP. The NIDP brings together the Government's plans for economic infrastructure with those to support the delivery of housing and social infrastructure Chapter 13 deals with regional infrastructure and sets out the Government's Northern Powerhouse plan to boost the economy across the North of England. With regard to Teesside, Table 13.C confirms that the Government is committed to "*... working with Tees Valley to explore how it can continue to develop its industrial carbon capture and storage proposals towards deployment of this infrastructure for its industrial sites in the 2020s...*" [REP1-003].

National Infrastructure Assessment

- 3.6.10. In the National Infrastructure Assessment, published in July 2018, the National Infrastructure Commission (NIC) looked across different infrastructure sectors with the Assessment setting out a clear, long-term strategy for the UK's economic infrastructure from 2020 to 2050, providing long term clarity for industry and the supply chain [REP1-003].

The Clean Growth Strategy

- 3.6.11. The 'Clean Growth Strategy - Leading the way to a low carbon future', published by the Department for BEIS in 2017 sets out the aims of the Government to deliver increased economic growth while reducing carbon

emissions. It estimates that the low carbon economy could grow 11% per year between 2015 and 2030, four times faster than the projected growth of the economy as a whole.

- 3.6.12. The Strategy details the increased investment and collaboration in CCUS in the UK to drive industrial innovation and its importance in long-term emissions reduction. It confirms that for the UK to achieve its Fourth and Fifth Carbon Budgets, it is necessary for the pace of decarbonisation to accelerate [AS-015, APP-103].

Clean Growth - The UK Carbon Capture Usage and Storage Deployment Pathway - An Action Plan

- 3.6.13. 'Clean Growth - The UK Carbon Capture Usage and Storage deployment pathway - An Action Plan' (the Clean Growth Action Plan) was published by the Government in 2018. It confirms the Government's vision for the UK to become a global leader in CCUS. The Action Plan is aimed at enabling the development of the first CCUS facility in the UK, with commissioning in the mid-2020s, which would support the ambition of being able to deploy CCUS at scale during the 2030s, subject to the costs coming down sufficiently. It states (page 6): *"Through our Clean Growth Strategy we re-affirmed our commitment to the domestic deployment of CCUS subject to cost reductions. This Plan sets out our next steps to progress this commitment."*
- 3.6.14. Within the Clean Growth Action Plan, Teesside was identified as a key location for CCUS due to its heavy industry and chemical manufacturing [AS-015, APP-103].

Net Zero - The UK's Contribution to Stopping Global Warming

- 3.6.15. The commitment to achieve net zero by 2050 was based on the recommendations of the CCC set out in its 2019 report 'Net Zero - The UK's Contribution to Stopping Global Warming'. The CCC Report is clear that if this target is to be achieved, GHG emissions will need to be offset by schemes that are capable of sequestering large amounts of emissions. It also identifies CCUS as having a key role in mitigating GHG emissions.
- 3.6.16. The Executive Summary to the report states that the net zero target cannot be met by simply adding mass removal of CO₂ onto existing plans associated with the previous target of an 80% reduction by 2050 compared to 1990 levels. It highlights that CCUS is crucial to the delivery of zero GHG emissions and that it is of strategic importance to the economy. However, it raises concern that CCUS has barely started in the UK, and that of the 43 large-scale CCUS projects operating in the World, none are in the UK [AS-015].

Reducing UK emissions: 2020 Progress Report to Parliament

- 3.6.17. The CCC issued a progress report 'Reducing UK emissions: 2020 Progress Report to Parliament', in June 2020. The report provides an annual review of UK progress in reducing GHG emissions. This followed a May 2020 update, which raised concerns over the UK's ability to meet its Fourth and Fifth Carbon Budgets (despite these being set against the previous target of an 80% reduction in emissions by 2050) and stressed the need, given the more challenging net zero target, for progress on emissions reductions to be accelerated.
- 3.6.18. Much of the report focuses on providing advice to government on delivering a recovery from COVID-19 that both accelerates the transition to net zero and strengthens the UK's resilience to the impacts of climate change, whilst driving new economic activity. It raises concern that over the previous 12 months Government had not made the policy progress that the CCC called for in 2019. It highlights the importance of the Energy White Paper – Powering our Net Zero Future' (EWP), including measures to expand supplies of low-carbon power, encourage a resilient and flexible energy system, and provide enduring market mechanisms to drive investment in low-carbon industrial technologies and industrial sectors. [AS-015].
- 3.6.19. As the Applicants confirmed in response to ExQ1 CC.1.1 [REP2-016] the CCC presented a further progress report to Parliament in June 2021. The report and the Government's response to it demonstrated a continuing commitment to achieving net zero by 2050. The CCC report also welcomed the adoption of the Sixth Carbon Budget which is the first to align with the 2050 net zero target. The Government's response also made various recommendations and commitments in support of CCUS.

Net Zero - Opportunities for the power sector

- 3.6.20. In March 2020, the NIC published 'Net Zero - Opportunities for the power sector'), responding to the Government's decision in June 2019 to legislate for a net zero GHG emissions target for the whole economy by 2050, and taking account of the recommendations set out in the National Infrastructure Assessment. It highlights the potential future role of CCS in decarbonising the power sector by capturing CO₂ from new gas-fired generation while also decarbonising industry supporting the generation of hydrogen and decarbonising industry generally.
- 3.6.21. Core to the NIC recommendations is the conclusion that "*a highly renewable power system, combined with flexible technologies including hydrogen powered generation, could be substantially cheaper than alternatives that rely heavily on a fleet of nuclear power plants.*" It also highlights the important role of CCS in decarbonising the power sector by capturing CO₂ from new gas-fired generation [REP1-003].

The Ten Point Plan for a Green Industrial Revolution

- 3.6.22. 'The Ten Point Plan for a Green Industrial Revolution – Building back better, supporting green jobs, and accelerating our path to net zero', was published in November 2020 and is aimed at delivering a 'Green Industrial Revolution' in the UK. It states that it will aim to mobilise £12 billion of government investment, and potentially three times as much from the private sector, to create and support up to 250,000 green jobs.
- 3.6.23. The introduction states that *"to the extent that we still emit carbon, we will pioneer a new British industry dedicated to its capture and return to under the North Sea..."*. Point 8 of the document refers specifically to investing in CCUS, stating that *"CCUS will be an exciting new industry to capture the carbon we continue to emit and revitalise the birthplaces of the first Industrial Revolution. Our ambition is to capture 10Mt [million tonnes] of carbon dioxide a year by 2030, the equivalent of four million cars' worth of annual emissions. We will invest up to £1 billion to support the establishment of CCUS in four industrial clusters, creating 'SuperPlaces' in areas such as the North East, the Humber, North West, Scotland and Wales"*.
- 3.6.24. The plan as a whole, highlights the function and necessity of CCUS in achieving a green economy and the Government's commitment to establish CCUS in two industrial clusters by the mid-2020s [AS-015].

National Infrastructure Strategy: Fairer, Faster, Greener

- 3.6.25. The National Infrastructure Strategy (the NIS) was published shortly after the Ten Point Plan. It sets out the Government's plans to deliver an infrastructure revolution in the UK, while *"levelling the country up"* and achieving its net zero target by 2050. It also provides the Government's formal response to the recommendations of the NIC on infrastructure provision in their National Infrastructure Assessment (July 2018). The NIS highlights how the Government wants to prioritise those areas that have received the least support in the past and to create regional power-houses. One of the measures identified to achieve this is backing new green growth clusters in traditional industrial areas such as Teesside, with investment in CCS, offshore wind, port infrastructure and low-carbon hydrogen production. A key theme of the NIS is decarbonising the economy and adapting to climate change with an emphasis on the role of CCS in contributing to the net zero target [AS-015].

The Energy White Paper

- 3.6.26. The EWP (December 2020) builds on the Ten Point Plan. At its core is the commitment to achieve net zero and tackle climate change. The EWP seeks to put in place a strategy for the wider energy system that transforms energy, supports a green recovery, and creates a fair deal for consumers. The EWP confirms the Government's support for CCUS

(drawing upon the resource provided by the North Sea) and new hydrogen technologies [AS-015].

- 3.6.27. The EWP (page 54) states: *"... the need for the energy infrastructure set out in the energy NPS remains, except in the case of coal-fired generation.... Nothing in this white paper should be construed as setting a limit on the number of development consent orders which may be granted for any type of generating infrastructure set out in the energy NPS".*

Industrial Decarbonisation Strategy

- 3.6.28. The Industrial Decarbonisation Strategy sets out how industry can be decarbonised in line with net zero, while remaining competitive and without pushing emissions abroad. It builds on the Ten Point Plan and sets out the Government's vision for a prosperous, low carbon UK industrial sector by 2050 and aims to provide industry with the long-term certainty it needs to invest in decarbonisation. It emphasises that the 2020s will be crucial to industrial decarbonisation, with the UK needing to deploy key technologies such as CCUS while starting to switch from fossil fuel combustion to low carbon alternatives such as hydrogen [AS-015].

North Sea Transition Deal

- 3.6.29. The North Sea Transition Deal (March 2021) recognises that the offshore oil and gas sector has a key role in helping the UK meets its net zero commitments. It acknowledges the need to build on the proven capabilities and skills within the existing sector to support the transition to net zero. It notes that: *"The UK already has the capability and skills within the existing sector to lead in new and emerging energy technologies such as CCUS and the hydrogen economy as well as to support the growth of new sectors such as offshore wind. ... Delivering large-scale decarbonisation solutions will strengthen the position of the existing UK energy sector supply chain in a net zero world, securing new high-value jobs in the UK, supporting the development of regional economies and competing in clean energy export markets."*
- 3.6.30. The North Sea Transition Deal aims to deliver on the commitments in the EWP and is closely aligned with the Ten Point Plan. It does this through the implementation of several commitments and measures, including supporting up to 40,000 direct and indirect supply chain jobs in decarbonising UKCS production and the CCUS and hydrogen sectors [AS-015].

Net Zero Strategy: Build Back Greener

- 3.6.31. The Net Zero Strategy: Build Back Greener (October 2021) expands on key commitments in the Ten Point Plan and the EWP and sets out the next steps the Government proposes to cut emissions, seize green economic opportunities and leverage further private investment into net zero. It sets an indicative delivery pathway for emissions reductions to 2037 by sector. It is intended to put the UK on the path for the UK's Sixth Carbon Budget and ultimately on course for net zero by 2050.

- 3.6.32. In respect of power, the strategy states that the UK will fully decarbonise its power system by 2035 subject to security of supply. It states that the power system will consist of abundant, cheap renewables, cutting edge new nuclear power stations, underpinned by flexibility including storage, gas with CCS and hydrogen [REP1-003].
- 3.6.33. The Strategy states that it will deliver four CCUS clusters, capturing 20-30Mt CO₂ across the economy, including 6Mt CO₂ of industrial emissions, per year by 2030. This will be done by supporting industry to switch to cleaner fuels, such as low carbon hydrogen alongside renewable energy and CCUS. These clusters, including the East Coast Cluster, which includes Teesside, could have the opportunity to access support under the Government's CCUS programme. The Government has also set up the Industrial Decarbonisation and Hydrogen Revenue Support Scheme, to fund new hydrogen and industrial carbon capture business models [REP1-003].
- 3.6.34. At paragraph 5.2.33 reference is made to the case of R. (on the application of Friends of the Earth Ltd) v Secretary of State for the Business, Energy and Industrial Strategy [2022] EWHC 1841 (Admin) (Appendix C [REP6-121] which addressed the SoS's obligations under the CCA2008 s13 and s14 in relation to the Net Zero Strategy.

British Energy Security Strategy

- 3.6.35. The British Energy Security Strategy (the Energy Strategy) was published in April 2022. Among the topics it addresses is improved energy efficiency, reducing the need for energy and the underlying vulnerability to international oil and gas prices by reducing the UK's dependence on imported oil and gas.
- 3.6.36. The Energy Strategy states that the transition away from oil and gas depends on how quickly the UK can roll out new renewables and other low carbon technologies. It highlights that the Ten Point Plan and Net Zero Strategy are driving unprecedented private sector investment in new British industries and supporting around 480,000 clean jobs by the end of the decade.

The Energy Strategy sets out the delivery so far on the Ten Point Plan which includes investing in CCUS, with £1 billion in public investment committed to decarbonise industrial clusters and the announcement of the first clusters in Teesside, the Humber and Merseyside. In addition, the Government has launched Phase 2 of the Industrial Energy Transformation Fund. The Energy Strategy also identifies the importance of hydrogen, with an increased commitment to achieve up to 10 Gigawatt (GW) of hydrogen production by 2030, including "blue hydrogen" from natural gas, which requires CCUS [REP1-003].

Conclusion

- 3.6.37. The overview of relevant energy and climate change legislation and policy demonstrates how progress is rapidly being made in moving towards addressing new challenges in these fields. These policies build

upon the existing suite of energy NPSs and reflect emerging technologies, legislation, and wider Government policies in relation to energy and climate change. The announcement of shortlisted bidders on Phase 2 of the CCUS Cluster Sequencing Process signifies the Government's commitment to addressing net zero. Draft NPSs also reflect the context provided by the EWP and demonstrate a direction of travel for energy and climate change policies. While s104 of the PA2008 requires an application for development consent to be decided in accordance with any relevant NPSs it also sets out that the SoS must have regard to any other matters considered important and relevant to the decision. The same requirement applies in respect of applications determined under s105 of the PA2008. The energy and climate change legislation and policy and draft NPSs outlined above are clearly important and relevant matters and should be accorded significant weight in deciding this application.

3.7. OTHER RELEVANT LEGAL PROVISIONS

- 3.7.1. The following legislative provisions have been taken into account in the Examination of the Proposed Development.

United Nations Environment Programme Convention on Biological Diversity 1992

- 3.7.2. Responsibility for the UK contribution to the Convention on Biological Diversity lies with the Department for Environment, Food and Rural Affairs (Defra) who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.7.3. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010 (IPD Regulations), the Convention on Biological Diversity has to be taken into account in consideration of the likely impacts of the Proposed Development and of appropriate objectives and mechanisms for mitigation and compensation. The Convention is of relevance to the biodiversity and ecological considerations which are discussed in Chapter 5 of the Report.

The Wildlife and Countryside Act 1981

- 3.7.4. The Wildlife and Countryside Act 1981 (WCA) protects animals, certain habitats and species in the UK. It provides for nature conservation and countryside protection and contains measures for the notification, confirmation, protection and management of SSSIs.
- 3.7.5. The WCA has relevance to consideration of impacts on SSSIs and on protected species and habitats including European sites. The effects of the Proposed Development on the Teesmouth and Cleveland Coast SSSI, the Lovell Hill Pools SSSI and the Teesmouth National Nature Reserve (NNR) are considered in section 5.7 of Chapter 5 of this Report.
- 3.7.6. Chapter 12 of the ES [APP-094] scoped in two SSSIs that could be affected by the Proposed Development, namely the Lovell Hill Pools SSSI,

located 6.3km south-east of the PCC Site and the Teesmouth and Cleveland Coast SSSI which overlaps with the CO₂ export pipeline and water discharge connection. The issues arising from these SSSI's are considered in sections 5.4, 5.6 and 5.7 of Chapter 5 of this Report.

Natural Environment and Rural Communities Act 2006

- 3.7.7. The Natural Environment and Rural Communities Act 2006 (NERCA) includes a duty that every public body (including the ExA and the SoS) must, in exercising its functions have regard, so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with the biodiversity duty, regard must be had to the United Nations Environment Programme Convention on Biological Diversity.
- 3.7.8. We have had regard to the NERCA and the biodiversity duty in all relevant sections of Chapters 4 and 5 of this Report.

The Countryside and Rights of Way Act 2000

- 3.7.9. The Countryside and Rights of Way Act 2000 includes provisions in respect of Public Rights of Way (PRoW) and access to land. The Act also brought in improved provisions for the protection and management of SSSIs and other designations under the Wildlife and Countryside Act 1981.

The Planning (Listed Buildings and Conservation Areas) Act

- 3.7.10. The Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the desirability of preserving any listed buildings or their settings or any features of special architectural or historic interest which it possesses, and the SoS must also have regard to this in making their decision. The historic environment is discussed in section 5.14 of Chapter 5 of this Report.

Ancient Monuments and Archaeological Areas Act 1979

- 3.7.11. The Ancient Monuments and Archaeological Areas Act provides for Scheduled Monuments to be protected and for the maintenance of a list of Scheduled Monuments. It also imposes a requirement for Scheduled Monument Consent for any works of demolition, repair, and alteration that might affect a designated Scheduled Monument. The Act is relevant due to the presence of scheduled monuments in the study area as identified in the ES [APP-100, APP-338 and APP-339], which are principally located within the Eston Hills.

Environmental Protection Act 1990

- 3.7.12. Section 79(1) of the Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. Article 40 of the dDCO [REP12-003] contains provisions relating to proceedings in respect of statutory nuisance.

Control of Pollution Act 1974

- 3.7.13. S60 and s61 of the Control of Pollution Act 1974 provide the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, a s60 notice may be issued by the local planning authority with instructions to cease work until specific conditions to reduce noise have been adopted. S61 provides a means for applying for prior consent to carry out noise generating activities during construction. The legislation requires that Best Practicable Means be adopted for construction noise on any given site.

Water Resources Act 1991, Flood and Water Management Act 2010, Water Act 2003 and 2014, Land Drainage Act 1991

- 3.7.14. The above Acts set out the relevant regulatory controls that provide protection to waterbodies and water resources from abstraction pressures, discharge and pollution, and for drainage management related to non-main rivers. The application would have implications for land drainage, flood risk and water quality and further consents may be needed under the above Acts. The application is considered against such matters in Chapters 4 and 5 of this Report.

The Control of Substances Hazardous to Human Health Regulations 2002

- 3.7.15. The main aim of the Control of Substances Hazardous to Human Health (COSHH) Regulations is to protect people from the hazards of substances used or likely to be present in the workplace and to impose specific duties regarding the import and use of certain specified substances within the EU.
- 3.7.16. The Regulations apply to a wide range of substances and preparations (mixtures of two or more substances) which have the potential to cause harm to health if they are ingested, inhaled, absorbed by, or come into contact with, the skin, or other body membranes. Hazardous substances can occur in many forms, including solids, liquids, vapours, gases and fumes.

The Equality Act 2010

- 3.7.17. S149 of the Equality Act 2010 established the Public Sector Equality Duty (PSED) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA

in the conduct of this Examination and reporting and to the SoS in decision-making. It has been addressed in section 8.49 and paragraph 8.52.12 of Chapter 8 of this Report.

Other Environmental Legislation

- 3.7.18. Section 1.8 of this Report identifies additional consents, beyond the PA2008, that would or may be required to implement the Proposed Development. In most cases the relevant statutory provisions have already been covered above. Other relevant environmental legislation has been fully taken into account in all relevant sections of this Report.

3.8. THE NATIONAL PLANNING POLICY FRAMEWORK

- 3.8.1. The National Planning Policy Framework (NPPF) (2021) and the accompanying Planning Practice Guidance set out the Government's planning policies for England and how these should be applied. This is for the purpose of making Development Plans and deciding applications for determinations under the Town and Country Planning Act 1990 (TCPA).
- 3.8.2. The NPPF does not contain specific policies for NSIPs but, in addition to the accompanying Planning Practice Guidance, can be an important and relevant consideration in decisions.
- 3.8.3. Consultation on draft updates to the NPPF commenced on 22 December 2022. We are satisfied there are no implications arising for the Examination from the draft document.

3.9. THE DEVELOPMENT PLANS

- 3.9.1. The legal requirement under s38(6) of the Planning and Compulsory Purchase Act 2004 to determine applications for planning permission in accordance with development plan documents does not apply to applications under the PA2008.
- 3.9.2. However, EN-1 confirms that policies in development plans and other Local Development Framework documents may be considered important and relevant in decision making. In the event of a conflict, the NPSs prevail for the purpose of decision making by the SoS.
- 3.9.3. The development plans for the area are:
- The Redcar & Cleveland Local Plan and Policies Map (adopted May 2018).
 - The Stockton-on-Tees Borough Council Local Plan and Policies Map (adopted January 2019).
 - The Tees Valley Joint Minerals and Waste DPDs (adopted September 2011). This comprises a Minerals and Waste Core Strategy DPD and a Minerals and Waste Policies and Site DPD. It is development jointly between RCBC and STBC with Darlington, Hartlepool and Middlesbrough Councils.

- 3.9.4. RCBC has produced SPD for the South Tees Area (adopted May 2018) [REP2-054] which forms part of their development plan. Alongside this, but not adopted as SPD, are the 'South Tees Regeneration Master Plan' 2019 [REP2-053], which sets out the framework for regeneration of the Teesworks and South Tees Area and the 'Teesworks Design Guide for Development' 2020 [REP2-055]. The documents are of relevance to the consideration of design issues as set out in section 5.5 of this Report.

3.10. TRANSBOUNDARY EFFECTS

- 3.10.1. A transboundary screening under Regulation 32 of the 2017 EIA Regulations was undertaken on behalf of the SoS on 11 June 2019 [APP-245] following the Applicant's request for a Scoping Opinion. This concluded that the Proposed Development was not likely to have a significant effect on the environment in a European Economic Area (EEA) state.
- 3.10.2. Changes were subsequently made to the Proposed Development and a second screening was published on 30 November 2021 following submission of the application documents [OD-001]. Again, no EEA states were identified as being likely to have significant effects on their environment in terms of extent, magnitude, probability, duration, frequency or reversibility.
- 3.10.3. The Regulation 32 duty is an ongoing duty on the SoS when determining whether or not to grant development consent. We have considered whether any facts have emerged to change these screening conclusions up to the point of closure of the Examination. No mechanisms whereby any conceivable transboundary effects could occur emerged.

3.11. THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

- 3.11.1. Throughout the Examination the ExA has remained aware of the need to consider whether revisions to the application documents have changed the proposal to a point where it became a different application and, therefore, whether the SoS would have the power under s114 of the PA2008 to make a DCO having regard to the development consent applied for.
- 3.11.2. The 'Planning Act 2008: Guidance for the examination of applications for development consent' (March 2015) refers at paragraphs 109 to 115 to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act was that s114(1) places the responsibility for making a DCO on the decision maker and does not limit the terms on which it can be made.
- 3.11.3. Having regard to this context, we consider that the changes to the application [PD-010, PD-017 and PD-024] have not resulted in any significant changes to the proposals for which the application was originally made. The changes considered in reaching this conclusion

include the three rounds of change requests documented in section 2.4 of this Report.

- 3.11.4. It follows that we consider that the SoS for BEIS has the power to make the DCO as recommended in Chapter 9 and provided in Appendix C to this Report.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. A total of 42 RRs were received raising a range of issues and concerns, but generally grouped around the following principal matters:

- the water environment;
- contaminated land;
- air quality;
- carbon emissions and climate change;
- alternatives;
- lack of detail;
- vehicular access;
- the Relationship of the NZT Project to the HP4 Project;
- acquisition of land and rights and TP;
- drafting of the dDCO;
- protective provisions in the dDCO; and
- the operation of the CCGT and the CCP.

4.1.2. Nine RRs stated their support for the application albeit that a number of these representations raised other concerns.

4.1.3. As required by s88 of PA2008 and Rule 5 of the EPR, the ExA undertook an initial assessment of the application and of the RRs received. Annex C of the ExA's Rule 6 letter [PD-009] outlined the IAPI. At the PM [EV2-001 to 003] no IPs raised any concerns with the IAPI as topic headings.

4.1.4. The following matters identified in the IAPI which were not intended to imply an order of importance, were as follows:

- air quality and emissions;
- biodiversity and ecology;
- climate change;
- CA and TP;
- design, landscape and visual effects;
- the dDCO;
- geology, hydrogeology and land contamination;
- historic environment;
- major accidents and natural disasters;
- noise and vibration;
- the proposed development, site selection, infrastructure and cumulative and combined effects;
- socio-economics and tourism;
- traffic, transport and public rights of way; and
- the water environment.

4.1.5. With the exception of CA/TP and other related land issues and the content and wording of the DCO, including protective provisions which are dealt with in Chapters 8 and 9 respectively, all of the matters identified in the IAPI are addressed in detail in Chapters 5 and 6.

- 4.1.6. In deciding to accept the Applicants' proposed changes to the application submitted prior to the Examination and at D6 and D12 (as set out in section 2.4 of this Report) the ExA undertook a review of the IAPI in the context of the proposed changes. It was decided that no changes needed to be made to the original list.

4.2. ISSUES ARISING IN WRITTEN AND ORAL SUBMISSIONS

- 4.2.1. Beyond the initial RRs, participants in the Examination were provided with the opportunity to make WRs. WRs amplified the position of IPs and presented updated positions where possible. Further written submissions were received as the Examination progressed in response to our written questions, and the Applicants' comments as well as further information such as that submitted for the change requests. IPs were also given the opportunity to make oral submissions at Hearings, with a subsequent summary and action points. SoCGs were revised at numerous points during the Examination as set out in Section 1.4 of the Report.
- 4.2.2. The matters raised in RRs, WRs, responses to written questions and SoCGs have been addressed in relation to the particular issues as set out primarily in Chapters 5 and 6 of this Report to the extent that they are important and relevant.
- 4.2.3. Most of the issues raised in written and oral submissions expanded on matters set out in the IAPI. Whilst some were dealt with at an early stage in the Examination, others gained momentum as the Examination progressed. A novel issue not previously included in the IAPI was the interface of the offshore elements of the NZT Project with HP4. This was initially raised at ISH1 and in ExQ1 [GEN.1.2, PD-012] and is dealt with at Chapter 5 (section 5.2) of this Report.
- 4.2.4. Additionally, nutrient neutrality was raised as a significant issue later on in the Examination, being initially touched upon by NE in their RR [RR-026]. Chapter 6 (section 6.4) specifically deals with this matter.

4.3. ISSUES ARISING IN LOCAL IMPACT REPORTS

- 4.3.1. S104 and s105 of the PA2008 state that in deciding the application the SoS must have regard to any LIR within the meaning of s60(3). LIRs were submitted by both host authorities RCBC [REP1-046] and STBC [REP1-047]. Both LIRs expressed support for the Proposed Development in principle.
- 4.3.2. Potential issues raised in RCBC's LIR included the following:
- landscape and visual impact;
 - highways, including junction capacity in the vicinity of the site and Kirkleatham Lane signals;
 - the effects of vibration and noise on the closest receptors, including the adequacy of noise impact assessment;
 - contamination and the scope of the investigative works; and

- ensuring that mitigation from flooding is secured.

4.3.3. STBC did not raise any concerns in its LIR, but provided an assessment of the relevant development plan policies, concluding that the Proposed Development would be compatible and summarising as follows:

- the principle of lower carbon emissions is supported;
- the social, environmental and economic benefits of the proposed scheme would make a significant contribution to meeting national targets; and
- it would support local businesses and create jobs for local people which would have a positive impact on the Borough.

4.3.4. The final SoCGs with both RCBC [REP9-009] and STBC [REP8-036] confirmed their support for the need for and principle of the Proposed Development. Both SoCGs stated that its location is acceptable given that it involves significant areas of previously developed land and sits within a location that is identified in the local development plan for industrial development, including development related to energy and carbon capture and storage.

4.3.5. We have had regard to all matters raised in the LIRs, as required by s104(2) of the PA2008. The overall support for the proposal and the potential benefits from employment and help to local industries to reduce carbon costs is noted. The other concerns expressed are discussed later in this Chapter and in the relevant sections of Chapter 5.

4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS

4.4.1. As identified in Chapter 3, where the Proposed Development falls to be considered against NPSs these are the Overarching NPS for Energy (EN-1); NPS for Fossil Fuel Electricity Generating Infrastructure (EN-2); NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4); and NPS for Electricity Networks Infrastructure (EN-5).

4.4.2. The Applicants considered the conformity of the Proposed Development against the assessment principles, generic impacts and assessment and technology specific considerations of the relevant energy NPSs in section 6 of their Planning Statement (paragraph 1.1.16 [REP1-003]). An assessment of the Proposed Development against the draft NPSs is provided in Appendix 3 of the Planning Statement. This section provides an overview of Government policy on energy and energy infrastructure, as presented in EN-1, before considering the relevant assessment principles set out in the relevant NPS apart from where matters are principal matters for consideration in the Examination (paragraph 6.1.2 [REP1-003]). In that case, along with generic impacts identified in EN-1 and technology specific considerations identified in EN-2, EN-4 and EN-5 they are addressed in the topic-based assessments in Chapter 5.

NPS Policy on Energy and Energy Infrastructure Development

- 4.4.3. Part 2 of EN-1 outlines the policy context for the development of nationally significant energy infrastructure (paragraph 2.1.1), confirming the Government's commitment (in 2011), to meet its legally binding target to cut GHG emissions by at least 80% by 2050 compared to 1990 levels and the need to affect a transition to a low carbon economy to reduce GHG emissions. Paragraph 2.2.11 sets out how the energy sector can help deliver the Government's climate change objectives by clearly setting out the need for new low carbon energy infrastructure to contribute to climate change mitigation.
- 4.4.4. Paragraphs 2.2.20-2.2.26 of EN-1 deal with the security of energy supplies, recognising that it is critical that the UK continues to have secure and reliable supplies of electricity. Paragraph 2.2.23 notes that the UK must therefore reduce over time its dependence on fossil fuels, particularly unabated combustion. This should be achieved by improving energy efficiency and pursuing a range of objectives including for CCS. However, EN-1 recognises that some fossil fuels will still be needed during the transition to a low carbon economy. Box 2.1 highlights the continuing role of natural gas in safeguarding the security of the UK's electricity supplies.
- 4.4.5. EN-1 also notes (paragraph 2.2.27) the Government's wider objectives for energy infrastructure which include contributing to sustainable development and ensuring that energy infrastructure is safe. The alignment of the Proposed Development with the policy objectives of Part 2 of EN-1 is considered in section 5.2.

Assessment Principles

- 4.4.6. Part 4 of the NPS sets out general policies in accordance with which applications relating to energy infrastructure are to be decided. These are in addition to the need for new energy infrastructure or particular physical impacts of its construction or operation.
- 4.4.7. Paragraph 4.1.2 of EN-1 confirms that the SoS should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.
- 4.4.8. As set out in paragraph 4.1.3 of EN-1, when weighing benefits against adverse impacts, account should be taken of the potential benefits including the contribution to meeting the need for energy infrastructure, job creation and any longer term or wider benefits. Potential adverse impacts include any long term and cumulative ones, as well as measures to avoid, reduce or compensate for them.
- 4.4.9. Additionally, in this context, decisions should take into account environmental, social and economic benefits and adverse impacts, at

national, regional and local levels (paragraph 4.1.4). These may be identified in EN-1, the relevant technology-specific NPS, in the application or elsewhere (including in LIRs).

- 4.4.10. Other matters that may be considered both important and relevant to decision-making on energy NSIPs may include Development Plan Documents. In the event of a conflict between these or any other documents and an NPS, the NPS prevails given the national significance of the infrastructure (paragraph 4.1.5). The Applicants have identified UK Government energy and climate change policy among the matters which are important and relevant to the determination of the DCO application, and this is addressed in section 5.2 of this Report. Draft NPSs, the NPPF and local Development Plan policies are also considered to be important and relevant to the application and are considered in the relevant sections of Chapter 5.
- 4.4.11. The MCAA provides for the preparation of a MPS and a number of marine plans. The SoS must have regard to the MPS and applicable marine plans in taking any decision which relates to the exercise of any function capable of affecting the whole or any part of the UK marine area. In the event of a conflict between any of these marine planning documents and an NPS, the NPS prevails given the national significance of the infrastructure. An assessment of this issue is provided in section 4.5 of this Report.
- 4.4.12. EN-1 paragraph 4.1.7 confirms that the SoS should only impose requirements in relation to a development consent where these satisfy relevant guidance and are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. Requirements are listed at Schedule 2 of the dDCO [REP12-003] and their intended purpose is set out within the EM [REP12-006]. Requirements are considered in depth in Chapter 9 of this Report.
- 4.4.13. Paragraph 4.1.8 indicates that the SoS may take into account any development consent obligations (under s106 of the TCPA by s174 of the PA2008) as agreed with local authorities. The Applicants' assessment of the Proposed Development has identified some effects that require mitigation. These have either been embedded within the design of the Proposed Development or will be secured through the proposed DCO requirements. No mitigation has been identified by the Applicants, the host local authorities or other parties that would require such an obligation in order to make the Proposed Development acceptable in planning terms (paragraph 6.2.14 [REP1-003]).
- 4.4.14. EN-1 paragraph 4.1.9 confirms that in bringing forward energy infrastructure, the applicant will have made a judgement as to its financial and technical feasibility. It goes on to state that where that financial and technical feasibility have been properly assessed, it is unlikely to be relevant to the decision-making. The Funding Statement [AS-201] provides the Applicants' case as to its ability to fund any CA that is required to deliver the Proposed Development. This is assessed in Chapter 8 (sections 8.11 and 8.47).

4.5. CONFORMITY WITH THE MARINE POLICY STATEMENT AND MARINE PLANS

- 4.5.1. As set out in section 3.4 of this Report the MPS and the 2021 North East Marine Plan are relevant to the Proposed Development. The decision maker must have regard to the MPS and applicable marine plans in taking any decision which relates to the exercise of any function capable of affecting the whole or any part of the UK marine area. The application covers the works down to MLWS and seeks DMLs as part of the DCO for the works below MHWS within the foreshore area and the tidal River Tees.
- 4.5.2. Section 3.3 of the MPS deals specifically with energy production and infrastructure development. It refers to CCUS including its positive wider benefits, and the UK's programme to support the development and deployment of CCUS and in particular the need for suitable locations that provide for the permanent storage of CO₂.
- 4.5.3. Paragraph 3.3.31 states that the need for all new fossil fuel power stations to be constructed as carbon capture ready will generate considerable volumes of CO₂ and that the UK offshore area is thought to be one of the most promising hub locations in Europe for the permanent storage of CO₂. The significant climate change and economic benefits of CCUS to the UK are set out at paragraph 3.3.34.
- 4.5.4. Policy NE-CCUS-2 of the North East Marine Plan supports CCUS proposals incorporating the re-use of existing oil and gas infrastructure. Policy NE-CCUS-3 supports proposals associated with the deployment of low carbon infrastructure for industrial clusters. It states that the Government has identified potential regional clusters which can be utilised for low carbon development where low carbon infrastructure, including CCUS technologies, could be deployed. Supporting development associated with industrial clusters also aims to enhance connectivity between marine operations and land infrastructure, which will ensure that opportunities for CCUS are realised.
- 4.5.5. The application as submitted provided an assessment of marine policy at section 4.4 of the planning statement [APP-070] and within the ES (including APP-096 and APP-101] but referred to draft policy and did not acknowledge that the North East Marine Plan had been adopted in June 2021. An updated assessment of the Proposed Development against the North East Marine Plan was therefore provided in the Applicants answer to our written question [ExQ1 PPL.1.10, REP2-106] and at D3 [REP3-014].
- 4.5.6. We consider conformity with the MPS and relevant North East Marine Plan policies are dealt with, if relevant, in the relevant sections of this Report in Chapter 5.

4.6. CONFORMITY WITH THE DEVELOPMENT PLAN

- 4.6.1. The development plans for the RCBC and STBC areas are set out in section 3.9 of this Report.
- 4.6.2. Neither RCBC nor STBC identified conflict with their respective development plan policies in their LIRs [REP1-046 and REP1-047] nor their SoCGs [REP9-009 and REP5-015].
- 4.6.3. A detailed review of the Proposed Development against the statutory Development Plan policies is set out in the Applicants' Planning Statement [REP1-003] as well as the individual chapters of the ES, and no conflict was identified.

4.7. APPLICATION OF OTHER POLICIES

- 4.7.1. The legislative and policy framework applicable to the assessment of this application and which give rise to important and relevant considerations for the SoS are summarised in Chapter 3 above. Individual references to relevant legislation and policy detail are drawn out in the relevant sections of Chapter 5 of this Report. The main focus is energy and climate change legislation and policy. It is appropriate to record at this point that no IPs raised any concerns or objections regarding the Proposed Development's conformity against such legislation and policy.

4.8. ENVIRONMENTAL IMPACT ASSESSMENT

- 4.8.1. As set out previously the application is EIA development in terms of the EIA Regulations. An ES accompanied the submission of the application [APP-081 to APP-347] and was updated and supplemented during the Examination [AS-019 to AS-033, AS-049 to AS-132, REP6-046 to REP6-104, REP12-034 to REP12-119].
- 4.8.2. The changes to the ES occurred as a result of approved change requests involving amendments to the Proposed Development including reductions in Order Limits, as discussed in Section 2.4 of this Report. Three change requests were accepted by the ExA [Annex B5 of PD-011, PD-017 and PD-024] following a conclusion that the amendments would not generate new or different likely significant effects. We were content that such changes and updates to the ES were non-material.
- 4.8.3. The first addendum to the ES was submitted in April 2022 prior to the start of the Examination [AS-049 to AS-132] and gave further consideration to Chapters 11 (Noise and Vibration), 15 (Ornithology) and 22 (Major Accidents and Disasters). The second addendum was submitted in August 2022 at D6 [REP6-046 to REP6-108], and the third addendum was submitted at D12 in November 2022 [REP12-034 to REP12-119].
- 4.8.4. Chapter 2 of the ES [APP-084] sets out that the ES was prepared to satisfy the requirements of the EIA Regulations and in its preparation, reference was made to the Planning Inspectorate's Advice Notes and the Scoping Opinion issued by the SoS on 2 April 2019 [APP-241 to APP-

243]. The ES presents a description of the Proposed Development and its likely significant environmental effects on the environment during construction and operation (including maintenance where relevant) and decommissioning. It also details measures to avoid or reduce such effects and the alternatives considered.

- 4.8.5. The existing baseline conditions are generally dated from 2018 to 2020, extending to 2021 for some of the supplementary ground condition reporting. Future baseline conditions are also predicted at a high level for each scenario where it was considered relevant to that assessment.
- 4.8.6. The evolution of design is described in ES Chapter 6 (Alternatives and Design Evolution) [APP-088] and consideration to mitigation is set out in the Mitigation and Enhancement Measures sections of ES Chapters 8 to 23 [APP-090 to APP-105], followed by a presentation of residual effects after the implementation of mitigation. Significant residual effects are summarised in ES Chapter 25 (Summary of Significant Effects) [APP-107] and the DCO sets out how measures may be secured. Cumulative and combined effects arising as a result of the Proposed Development are considered in Chapter 24 of the ES [APP-106].
- 4.8.7. Standard EIA terms are used to classify effects throughout the ES (ie major, moderate, minor and negligible) and effects are also described as being adverse, neutral or beneficial. Moderate and major effects are generally considered to be “significant” for the purposes of the EIA Regulations.

Adequacy of the ES

- 4.8.8. EN-1, Section 4.2 sets out the considerations for determining the adequacy of the ES accompanying an application for development consent. On submission, all the application documents were reviewed within the statutory period available for Acceptance. The information within the ES was considered to be of an adequate standard for examination.
- 4.8.9. Aside from submissions from Orsted relating to the interaction of the offshore elements of the NZT Project with HP4 (which are dealt with in section 5.2 of this Report), there were no substantive submissions from IPs during the Examination in relation to the EIA process or the format of the ES. There were issues raised regarding the findings arising from detailed assessment. The ExA’s assessment of the Proposed Development undertaken in Chapter 5 of this Report summarises the environmental effects.
- 4.8.10. Methodology and approach to the EIA was not raised as a significant issue, but we asked a number of questions which related to the detail of numerous chapters and the significance of effects, largely within ExQ1 [PD-012]. Any matters arising are dealt with in the individual sections of Chapters 5 and 6 of this Report.
- 4.8.11. The status of each topic area with each party in SoCGs is set out in the Applicants’ Statement of Commonality of Statements of Common Ground

[REP12-129]. These are all reported under the relevant topic sections of Chapter 5 of this Report and in Chapter 6 for HRA matters.

- 4.8.12. Overall, in the light of the submitted documentation and the submissions received, the ExA considers that the ES, as supplemented with the additional information secured during the Examination, provides an adequate basis for the EIA. In turn the ExA also considers that the various elements of the EIA, supplemented by the information received during the Examination, now form an adequate basis for this Recommendation Report and for decision making by the SoS for BEIS.
- 4.8.13. Schedule 14 of the dDCO [REP12-003] includes the ES documents proposed to be certified post-examination. We believe the list to be correct and reflect the documents which comprise the ES. The ES is considered to be sufficient to enable the SoS for BEIS to take a decision in compliance with the EIA Regulations.

4.9. HABITATS REGULATIONS ASSESSMENT

- 4.9.1. EN-1 (paragraph 4.3.1) confirms that prior to granting development consent, the SoS must, under the Habitats Regulations, consider whether the Proposed Development may have a significant effect on a European site, or any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans and Proposed Developments. EN-1 continues that the applicant should seek the advice of NE and provide the SoS with such information as may be reasonably required to determine whether an appropriate assessment (AA) is required. In the event that an AA is required, the applicant must provide such information as may reasonably be required to enable it to conduct the AA. This should include information on any mitigation measures that are proposed to minimise or avoid likely effects.
- 4.9.2. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects on European sites and is therefore subject to an HRA. Consequently, the application was accompanied by an HRA Report with the final version submitted at D12 [REP12-120]. The Proposed Development site lies directly adjacent to (and involves land within) the Teesmouth and Cleveland Coast SPA and Ramsar site. As likely significant effects on the SPA and Ramsar site could not be ruled out at the screening stage, the HRA Report includes an AA and considers in combination effects. The HRA concludes that following amendments made to the design of the operational development and with the identified mitigation measures in place there will be no adverse effect on the integrity of any European site either alone or in combination with other plans and projects.
- 4.9.3. The ExA asked a number of questions about the Applicants' approach to the preparation and findings of the HRA during Hearings (ISH4 and ISH6) and in writing (ExQ1 [PD-012], ExQ2 [PD-016] and ExQ3 [PD-021]). A separate record of considerations relevant to HRA has been set out in Chapter 6 of this Report below.

- 4.9.4. We have considered all documentation relevant to the HRA as required by paragraphs 4.3.1 of EN-1 and have taken it into account in the conclusions reached here and in the case for development consent (Chapter 9 below). Further, project design and mitigation proposals included in the ES and secured in the Recommended DCO have been fully considered for HRA purposes.
- 4.9.5. As discussed in Chapter 6 of this Report, we are satisfied about the adequacy of the data provided such that it allows the SoS to act as the competent authority to undertake their own appropriate assessment.

4.10. OUTSTANDING MATTERS AT THE CLOSE OF THE EXAMINATION

- 4.10.1. At the close of the Examination, there were some matters which were either not resolved or where we consider additional or updated information is required. These are discussed further in the relevant sections in Chapter 5 of this Report. Where we consider the SoS may wish to consider seeking updated or additional evidence from IPs, these matters are reported in the relevant sections of Chapter 5. They have also been set out in our overall conclusion in Chapter 10 of this Report for the SoS's ease of reference.

5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

5.1. INTRODUCTION

5.1.1. This Chapter builds on Chapter 4 to set out the findings and conclusions in relation to the planning issues. The planning issues have been reordered from the alphabetic order in the IAPI into an order reflecting the degree to which they were addressed through the Examination and their relationship with other topics. It follows that the planning issues are dealt with in this Chapter in the following order:

- The Need for and Scope of the Proposed Development and Consideration of Alternatives;
- Climate Change;
- Air Quality and Emissions;
- Design and Landscape and Visual Effects;
- Water Environment;
- Biodiversity and Ecology;
- Geology, Hydrogeology and Land Contamination;
- Material Resources and Waste Management;
- Major Accidents and Natural Disasters;
- Noise and Vibration;
- Traffic and Transport and Public Rights of Way;
- Socio Economics and Tourism;
- Historic Environment;
- Cumulative and Combined Effects; and
- Other Considerations.

5.1.2. In each section we identify the policy position for each issue, followed by a summary of the Applicants' case. We report on the main issues that were discussed during the Examination and then set out our findings and conclusions for each topic, including whether it represents a positive, neutral or negative planning effect.

5.2. THE NEED FOR AND SCOPE OF THE PROPOSED DEVELOPMENT AND CONSIDERATION OF ALTERNATIVES

Policy Considerations

Need and scope

5.2.1. Paragraph 3.2.3 of EN-1 explains that that, without significant amounts of new large-scale energy infrastructure, the objectives of the Government's energy and climate change policy cannot be fulfilled. It also references the urgency of the need for new electricity generation capacity. Consequently, substantial weight should be given to considerations of need, with the weight attributed being proportionate to the project's contribution to satisfying the need for a particular type of infrastructure. The key reasons for this urgent need for new electricity

NSIPs are described in section 3.3 of EN-1. This is also reflected in draft EN-1 (paragraphs 3.1.1 and 3.1.2).

- 5.2.2. Section 3.6 of EN-1 and paragraph 1.1.1 of EN-2 acknowledge that fossil fuel generation plays a vital role in providing reliable energy supplies, flexibility and diversity in the energy mix. Section 3.8 highlights that the transition away from fossil fuels will take some time, and gas will continue to play an important part in the country's fuel mix for many years to come. This is supported by EN-4 paragraph 1.1.1 and draft EN-2.
- 5.2.3. Paragraphs 3.6.4-3.6.7 of EN-1 relate specifically to CCS. CCS has the potential to significantly reduce carbon emissions, although the process of capturing, transporting and storing CO₂ also means that more fuel is used in producing a given amount of electricity than would be the case without CCS. Paragraph 3.6.6 of EN-1 and paragraph 2.3.4 of EN-2 state that the Government will require all new fossil fuel generating stations at or above 300MWe to be carbon capture ready (CCR) Therefore, there is an urgent need for CCR fossil fuel generating stations (paragraph 3.6.8). To demonstrate that a project is CCR, paragraph 4.7.10 of EN-1 sets out various criteria, with which proposals will need to demonstrate compliance. Paragraphs 3.5.1 and 3.5.3 of draft EN-1 also make clear that new CCS infrastructure will be needed to capture and store CO₂ emissions from industrial processes.

Alternatives

- 5.2.4. Paragraph 4.4.1 of EN-1 confirms that the relevance or otherwise to the decision-making process of the existence of alternatives to a proposed development is in the first instance a matter of law. EN-1 does not contain any general requirement to consider alternatives or to establish whether a proposed project represents the best option.
- 5.2.5. Nevertheless, applicants are obliged to include information about the main alternatives they have studied (paragraph 4.4.2 of EN-1). This should include the main reasons for the applicant's choice. There are also some specific legislative requirements to consider alternatives that should be identified in the ES, notably under the Habitats Directive.
- 5.2.6. Paragraph 5.7.13 of EN-1 states that the consideration of alternative sites is relevant to the application of the Sequential Test in relation to flood risk. Consideration of alternatives can also be relevant where development involves land that is subject to nationally designated landscapes (paragraph 5.9.10).
- 5.2.7. EN-2 paragraph 2.2.1 identifies the factors influencing site selection by applicants for fossil fuel NSIPs. It confirms that the specific criteria considered by applicants, and the weight they give to them, will vary from project to project.
- 5.2.8. EN-4 paragraph 2.21.3 reiterates that the ES should include an assessment of the biodiversity and landscape and visual effects of the proposed route and of the main alternative routes considered.

- 5.2.9. EN-5 section 2.2 addresses factors influencing site/route selection for electricity networks NSIPs. It notes that the general location of electricity network projects is often determined by the location of a particular generating station and the existing network infrastructure.
- 5.2.10. In addition to the policy context provided by the relevant NPSs, the Government's wider policy statements on energy referenced in section 3.6 of this Report are important and relevant considerations.

The Applicants' Case

- 5.2.11. The application was accompanied by a Planning Statement [APP-070] and a Need Statement [AS-015], which together explained the need for the Proposed Development by reference to Government policy. Chapter 21 of the ES [APP-103] also provides further justification for the Proposed Development.

Need and scope

- 5.2.12. To make the expected contribution toward net zero emissions reduction goals, a significant expansion of low carbon new electricity generation capacity is required. The Applicants also noted that while significant progress is being made in reducing demand for electricity through efficiency measures, this will not be enough to eradicate the need for new capacity or to address the retirement of the majority of the UK's nuclear power plants by the early 2030s [AS-015].
- 5.2.13. Paragraph 4.1.7 of the Need Statement [AS-015] noted that the demand for electricity must be simultaneously, exactly, and continuously, balanced by supply. This balance will be more acute with the increasing proportion of renewable energy because most renewable generation is intermittent.
- 5.2.14. To address the inflexibility of baseload capacity and intermittent renewable generation, flexible generating capacity, referred to as mid-merit, is required which enables the active management of output to instantaneously match supply with demand. Mid-merit generating plant can ramp up and down rapidly, turn down to a small proportion of rated capacity to provide 'spinning reserve' such that the generation output drops off relatively slowly, and may be frequently turned off completely. It provides "dispatchable" generating capacity and can be rapidly asked by National Grid as the System Operator to adjust output to stabilise the electricity grid (paragraph 4.1.7 [AS-015]).
- 5.2.15. Currently, mid-merit operation is largely provided by CCGT power stations which make a crucial contribution toward system operability and the security of national energy supply. Adding carbon capture to CCGT generation would allow for over 90% of the CO₂ in the flue gas to be captured and sequestered (significantly reducing the CO₂ emissions). Consequently, additional low-carbon mid-merit plant equipped with CCS generation is seen as critical to meet the net zero target [AS-015].

- 5.2.16. NZT proposes to deliver a 'First of a Kind' integrated flexible CCGT with CCS to provide between 650MWe and 860MWe of low carbon dispatchable power if unabated, or around 580MWe to 760MWe in carbon-abated mode [AS-019]. The Applicants see the Proposed Development as representing the first major step of deploying commercial-scale CCS in the UK.
- 5.2.17. Section 6 of the Need Statement [AS-015] also notes that CCS/CCUS is a technology that can support decarbonisation across multiple sectors. For industry it provides infrastructure to capture emissions at source, allowing industrial emitters to pursue decarbonisation to enable energy-intensive industries to continue to operate in a net zero economy. CCS infrastructure also enables the production of blue hydrogen which can be used to decarbonise heating, while by supporting the further decarbonisation of the grid that powers electric vehicles and electrified rail, CCS supports the decarbonisation of both light and heavy transport.
- 5.2.18. In November 2020, the 'Ten Point Plan' (see paragraphs 3.6.22-3.6.24 above) confirmed the CCUS target as 10Mt of CO₂ by 2030, with four industrial clusters as well as increasing the CCS Infrastructure Fund to support the development of CCS sites with funding of £1 billion. The Government also indicated that the first CCUS site would be established by the mid-2020s, with at least one CCS gas power station by 2030.
- 5.2.19. The Applicants confirmed that as a carbon capture enabled electricity generating station, CCS is an essential element of the Proposed Development (paragraph 6.2.86 [APP-070]). Nevertheless, the application includes a CCR Assessment [APP-074] in accordance with the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013. The CCR Assessment has been produced in accordance with Government guidance 'CCR – A Guidance Note for Section 36 Electricity Act 1989 consent applications' (November 2009).
- 5.2.20. The CCR Assessment confirms that the PCC Site provides sufficient space for CCP taking account of a technical assessment of available technology, the capacity to accept CO₂ over its design life and economic viability (paragraph 6.2.87 [APP-070]). The Applicants' position is that the Proposed Development will be constructed with carbon capture readiness from the outset and forms part of a full chain CCUS project. It is therefore CCR in accordance with the CCR regulations and guidance and consequently, there is no need for periodic reviews of its CCR and the feasibility of CCS/CCUS.

Alternatives

- 5.2.21. The main alternatives that the Applicants have considered are set out at ES Chapter 6 Alternatives and Design Evolution [APP-088]. An overview is also provided in the Applicants' Planning Statement (section 6.2 [APP-070]).
- 5.2.22. The ES (paragraph 6.3.8 [APP-088]) noted that as a final decision had not yet been made on a range of technology matters it had been

necessary to incorporate flexibility within the application. Consequently, the Applicants adopted the principles of the Rochdale Envelope.

- 5.2.23. The key criteria for the selection process included an east coast location (due to the proximity of potential storage sites in the North Sea); proximity to the coast to minimise the onshore section of the high pressure CO₂ export pipeline; avoidance of residential areas; proximity to industrial emitters that could connect into the CO₂ gathering network; proximity to necessary connections, including the gas network, electricity transmission network and water supply; sufficient space, including for future expansion; the use of brownfield land where possible; access to an industrial deep water jetty to facilitate the delivery of abnormal loads; and minimisation of environmental effects and risks.
- 5.2.24. As Teesside performed well against these criteria it was selected as the preferred location and within Teesside various sites were assessed before the former Redcar Steelworks Site (now Teesworks) was selected.
- 5.2.25. Sections 6.5 to 6.7 of ES Chapter 6 [APP-088] set out the reasons for the selection of the PCC Site within the Teesworks area and how the various connection corridors for the Proposed Development were evaluated and selected. It includes an explanation of the design process, including the alternative design options considered and design changes, which are summarised at ES Table 6-1. This was updated in Table 6-2 of the ES – Addendum [AS-050].
- 5.2.26. The Order land lies directly adjacent to (and involves land within) the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site. The HRA Report [APP-080] concluded that there would be no adverse effects on the integrity (AEoI) on any European site either alone or in combination with other plans and projects. As such there is no requirement to consider alternatives to the Proposed Development under the Habitats Regulations.
- 5.2.27. Chapter 9 of the ES Surface Water, Flood Risk and Water Resources [APP-091] considers the effects of the Proposed Development in terms of flooding and the risk of flooding. A site-wide Flood Risk Assessment (FRA) is provided at Appendix 9A of the ES [APP-250 to APP-252]. Together, these demonstrate that the Proposed Development satisfies the Sequential Test.
- 5.2.28. ES Chapter 17 Landscape and Visual Amenity [APP-099] confirms that the Order land is not subject to any nationally designated landscapes, neither are there any within the immediate vicinity. As such, there is no requirement to consider alternatives from a landscape perspective.

Examination Matters

- 5.2.29. This section of the Report therefore covers: the issue of need; the scope of the Proposed Development in the context of the wider NZT project; alternatives; the operation of the CCGT and the CCP; and the relationship of the offshore elements of the project to HP4.

The Need for the Proposed Development

- 5.2.30. The Applicants indicated at ISH1 [EV3-001 to EV3-005] and in their post-hearing summary [REP1-035] that as the urgent need for electricity generating stations is set out in EN-1 and within recent UK energy and climate change policy the matter of need should not be an issue for the Examination or the determination of the application, and that need should be afforded substantial weight in decision-making. The Applicants noted that s87(3)(b) of the PA2008 allows the ExA to disregard representations that relate to the merits of a policy set out in an NPS. Nevertheless, because of its 'First of a Kind' nature we sought clarification about the need for the Proposed Development.
- 5.2.31. At ISH1 the Applicants backed up their case for the Proposed Development by stating that since the submission of the application, other energy policy documents had been published by Government that reinforced the need for CCUS and the establishment of low-carbon industrial clusters. These included publication of draft NPSs, the Net Zero Strategy: Build Back Greener (October 2021) and the Energy Strategy (April 2022) (see section 3.6 above).
- 5.2.32. The Applicants responded [EV3-001 to EV3-005, REP1-035], to comments by Dr Andrew Boswell of Climate Emergency, Planning and Policy (CEPP) about a legal challenge having been initiated in respect of the Net Zero Strategy. They submitted that administrative decisions are to be regarded as valid unless and until quashed, and that principle applied to the publication of the Net Zero Strategy; and in any event, the Applicants' need case [AS-015] did not depend on the Net Zero Strategy (which postdates that document). The need case would remain whether the challenge succeeds or not.
- 5.2.33. At D6, the Applicants' response to ExQ2 CC.2.12 [REP6-121] commented on the case of R. (on the application of Friends of the Earth Ltd) v Secretary of State for the Business, Energy and Industrial Strategy [2022] EWHC 1841 (Admin) (Appendix C [REP6-121] which addressed the SoS's obligations under the CCA2008 s13 and s14 in relation to the Government's Net Zero Strategy. The Applicants' view was that the judgment did not affect the case or the need for the Proposed Development and did not consider the merits of the Net Zero Strategy which remains in place. It was also noted that the SoS had been ordered to lay a fresh report to Parliament addressing the matters in the High Court's judgment.
- 5.2.34. CEPP [RR-023 and REP2-061] questioned the need for the NZT Project based on the implementation of CCS technology not being the best way to decarbonise the UK energy system. It considered that full life-cycle emissions assessment still showed considerable CO₂ generation with CCS, however efficient the capture process itself may be. These emanated from emissions both upstream and downstream of the combustion and capture processes, while energy is required to power the CCS process, reducing the efficiency of gas-powered electricity generation.

- 5.2.35. The Applicants noted [REP1-045 and REP3-012] that the Proposed Development is in line with the recommendations of the CCC and the Net Zero Strategy. These both recommended that CCS is used to supplement other technologies to decarbonise electricity production and help decarbonise industrial emissions with policy support for CCS set out in the Planning Statement [REP1-003]. The Applicants acknowledged that the CCGT would be a new-build power plant and would be designed from the outset to minimise the energy demand of the carbon capture process as far as is reasonably practicable.
- 5.2.36. Responding to ExQ1.CC1.4 [PD-012] about the extent to which the Proposed Development would contribute to decarbonisation of the industrial sector and meeting the UK's Carbon Budgets, the Applicants explained [REP2-016] that decarbonising industry is critical if the UK is to transition to a low carbon economy referencing the Net Zero Strategy and the BEIS report 'Carbon Capture, Usage and Storage', (May 2021). The Net Zero Strategy has set out commitments to capture between 20-30Mt CO₂ by 2030 from four CCUS clusters of which Teesside is one. Overall, CCUS could provide 37% of the total abatement potential in energy-intensive industries by 2050. The Proposed Development would enable decarbonisation of carbon intensive industries on Teesside and enable their continued operation with significantly reduced carbon footprints.
- 5.2.37. The signed SoCG between the Applicants and the EA [REP13-017] confirmed that the Carbon Capture Readiness Assessment [APP-074] adequately explained the carbon capture related infrastructure proposed and demonstrated that the Applicants had set aside enough land to accommodate the CCP within Work No. 1C.

The Scope of the Proposed Development

- 5.2.38. At ISH1 [EV3-001 to EV3-005] and in their post-hearing summary [REP1-035] the Applicants clarified the scope of the Proposed Development in relation to the wider NZT project. While the NZT Project and Zero Carbon Humber together are part of the Northern Endurance Partnership (NEP) they are different projects and capable of being progressed separately. The East Coast Cluster (ECC) plan was submitted on behalf of NEP and was selected by BEIS as one of the successful Track 1 industrial clusters under the Cluster Sequencing process in October 2021. The ECC Plan aims to deliver 20MTPA of CCUS capacity by 2030 across multiple emitters in both Teesside and the Humber, with further expansion to 27MTPA by 2035.
- 5.2.39. Further information on the Cluster Sequencing process is set out in Cluster Sequencing for Carbon Capture Usage and Storage Deployment: Phase 1 (May 2021) (Appendix 3 [REP1-035]). Further information about the successful ECC proposal is provided in the CCUS Investor Roadmap (April 2022) (Appendix 4 [REP1-035]).
- 5.2.40. The Teesside region is one of the six main industrial clusters in the UK according to the Industrial Decarbonisation Strategy (paragraph 8.1.3 [AS-015]). Teesside industries account for 5.6% of industrial emissions

in the UK and the area is home to five of the top 25 CO₂ emitters. Together with Zero Carbon Humber, the NZT Project would be able to maximise economies of scale will allow decarbonisation of nearly 50% of the UK's total industrial cluster emissions, enabling clean hydrogen production and creating a pathway for growth (paragraph 7.1.9 [AS-015]).

- 5.2.41. Responding to our questions at ISH1 about the scope of the CO₂ gathering network, the Applicants confirmed that the network would initially transport up to 4MTPA of CO₂ with provision for future expansion. There would be a staged approach to achieving the capture of 4MTPA which would be subject to Government decisions on selecting emitters. The proposal made to BEIS was for the development of a backbone pipeline system reaching the majority of local emitters, with capacity to accommodate more emitters through extension of the CO₂ gathering network. Any anticipated extensions would be on a case-by-case basis, as and when emitters' proposals move forward. Individual emitters submitted bids to BEIS in January 2022, totalling 25 projects for the ECC, 14 of which are in the Teesside area.
- 5.2.42. Responding to ExQ1.GEN.2.4 the Applicants confirmed [REP6-121] that on 12 August 2022, BEIS announced an updated shortlist of eligible emitters for the ECC. Of the 14 potential Teesside emitters nine had been successful. Each shortlisted emitter project would enter the negotiation/due diligence stage with Government prior to a Final Investment Decision. This process is expected to take place concurrently with the finalisation of the CO₂ gathering network. Emitters would obtain their own permissions to tie-in to the NZT backbone pipeline system.
- 5.2.43. Responding to the ExA's questions at ISH1 and at ExQ1.GEN.1.3 about why the offshore elements of the wider project were not included within the DCO application and responsibilities for obtaining different consents, the Applicants outlined the four main consents that are required to construct and operate the offshore elements:
- a CO₂ appraisal and storage licence under s18 of the Energy Act 2008 (EA2008);
 - a storage permit under regulations 6-8 of the Storage of Carbon Dioxide (Licensing) Regulations 2010 (the 2010 Regulations);
 - an authorisation relating to the construction and use of pipelines under s14 of the Petroleum Act 1998 (PA1998);
 - consent under the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 (the 2020 Regulations).
- 5.2.44. The storage licence has already been granted pursuant to the EA2008. All three of the remaining consents involve the same decision-maker, namely the NSTA, with consent to be provided pursuant to the 2020 Regulations being dependent on the OPRED on behalf the SoS. More detail on the consenting arrangements is set out in response to ExQ2 GEN2.5 [REP6-121] and Appendix 5 of the post-hearing summary [REP1-035]. Updated timescales for the submissions of the remaining

applications are provided in Table 2.2 of Other Consents and Licences [REP11-004] (see paragraph 1.8.3 above).

- 5.2.45. The Applicants explained that two of the three remaining consents are not capable of being brought within the scope of the PA2008, because they are not included in the list of prescribed consent regimes under Schedule 2 to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. Those regulations prescribe the consent regimes where, pursuant to s150(1) of the PA2008, the need to obtain a consent may be removed via a DCO if the consenting authority has agreed to this being done. The two which cannot be included are the storage permit under the 2010 Regulations and consent under the 2020 Regulations. That means that the authorisation for the construction and use of the offshore pipelines under the PA1998 could as a matter of law have been included, but only if the NSTA consented to this being done.
- 5.2.46. However, as the acceptability of the storage permit and assessment of environmental impacts of the offshore elements is to be judged and determined by the NSTA, the Applicants argued that there would be obvious benefit in one decision-maker dealing with all the offshore elements together. Splitting the assessment and decision-making in respect of the offshore elements would offer no clear public interest benefits.
- 5.2.47. At ISH1 [EV3-001 to EV3-005], in their post-hearing summary [REP1-035] and in response to ExQ1.GEN.1.33 [REP2-016] the Applicants confirmed that the CCR Assessment [APP-074] needed to consider the worst-case scenario in terms of quantity of CO₂. The CCR assessment sets out that there is capacity in the network for 10MTPA of CO₂. Two million tonnes would be generated by the CCGT, giving an 8 million tonne headroom for other emitters.
- 5.2.48. The Endurance store, to which the Proposed Development will connect offshore, has capacity for approximately 450 million tonnes of CO₂. The project as a whole is projected to send 10MTPA of CO₂ for storage at the Endurance store for 40 years. The NSTA announced in May 2022 that it had issued further CO₂ storage licences to BP and Equinor for storage sites, in the Southern North Sea and in the same area as the Endurance store. The NSTA's announcement identified that, together with Endurance, these storage sites could allow for the storage of up to 23MTPA of CO₂.
- 5.2.49. Responding to ExQ1.GEN.1.34, the Applicants confirmed [REP2-016] that as the CO₂ export pipeline is sized to accommodate up to 10MTPA, which was assessed in the ES, no changes are required to the CO₂ gathering network or export pipeline to accommodate the increase in capacity from 4MTPA. Only the operating pressure of the pipeline would increase.
- 5.2.50. The Applicants were also of the view that the amount of CO₂ being exported would not need to be controlled through the DCO since none of the environmental effects or assessments are reliant on that capacity

being specified. The maximum diameter of the CO₂ gathering network pipeline of 550mm is specified in Work No. 6. A larger diameter pipeline could have greater environmental effects than those assessed in the ES and, for that reason, the Applicants considered it appropriate that the DCO specifies the pipeline diameter. The determining aspect of the amount of CO₂ that can be exported, and so injected into the store, should be the capacity of the store to safely inject and contain the CO₂ permanently, which would be defined by the store permit. The NSTA would determine the storage (and therefore export) capacity and as the export rate of CO₂ would be regulated by the NSTA, in the Applicants' view it would not need to be regulated in the NZT DCO.

- 5.2.51. At D6 the Applicants responded to ExQ2 GEN.2.10 [REP6-121] explaining that the purpose of the two-yearly review of CCR assessments is for generating stations that do not fit carbon capture technology to ensure that such a decision remains appropriate as the technical and commercial landscape changes. The proposed CCGT would install carbon capture technology from the outset. This would exceed the minimum requirements of the CCR assessment and fulfil the purpose of any such CCR assessment. Therefore, there would be no need to re-evaluate the opportunity to install carbon capture technology every two years.

Alternatives

- 5.2.52. At ISH1 [EV3-001 to EV3-005] the Applicants provided an overview of the alternative technologies considered with reference to section 6.3 of the ES [APP-088]. They explained and subsequently confirmed in their post hearing summary [REP1-035] that the original premise of the NZT project was to deliver CCS, to decarbonise industry and provide dispatchable power generation. It also enables investment in the proposed carbon transport and storage infrastructure to facilitate the capture of CO₂ from industrial sources. Various technologies were reviewed with the post-combustion approach being most readily available and adopted for the NZT generating station. This technology was therefore selected to minimise the technology risks associated with the Proposed Development. Further reasoning in relation to the specific requirements to consider alternatives was also provided.
- 5.2.53. CEPP [RR-023 and REP2-061] suggested that preferable technologies to CCS were to maximise the balance of solar, wind and energy storage technologies. It was suggested by CEPP that that solar, wind and energy storage have a much lower carbon footprint than the proposed NZT Project which was not necessary for decarbonisation given the technological advances and cost reductions in renewables and energy storage, offering the potential for carbon free dispatchable energy on the same timescales as the NZT Project.
- 5.2.54. The Applicants advised that the Proposed Development does not intend to displace solar, wind or energy storage technologies which will also be required as part of the overall energy mix, alongside widescale energy efficiency improvements. Dispatchable decarbonised electricity supply is currently provided by existing unabated gas-fired power stations and

energy storage is not available at the scale required to be able to replace this function [REP1-045 and REP3-012].

- 5.2.55. The NZT Project also enables the development of hydrogen at scale and the decarbonisation of UK industry as part of the ECC transmission and storage network. The Applicants' addressed CEPP's request for BEIS to undertake studies comparing CCS based energy production against wind, solar and energy storage before projects like NZT are granted consent, noting that this was outside of the Applicants' control and outside the scope of the DCO Examination. However, they noted that BEIS and other bodies have considered a range of decarbonisation approaches and technologies and concluded that CCS is a key part of the UK's decarbonisation strategy, as confirmed in the Planning Statement [REP1-003].
- 5.2.56. At ISH1 [EV3-001 to EV3-005] the Applicants noted that the guiding principles when considering alternatives are summarised in R (Save Stonehenge World Heritage Site Ltd.) v SoS Transport [2021] EWHC 2161. This identified that land may be developed in any way that is acceptable for planning purposes. The fact that other land exists on which the development proposed would be yet more acceptable would not justify the refusal of planning permission. Save for any specific legal or policy obligation to consider alternatives, the question for any proposed development is whether it is acceptable on its own merits, applying relevant policy. If it is, the fact that it is possible to identify another form of development (or location for the same development) that would be even better does not provide a reason for refusal.
- 5.2.57. Responding to our question about whether the approach taken by the SoS in the recent AQUIND NSIP decision was of relevance, the Applicants submitted that it was highly fact-specific and should not be regarded as setting a precedent for a different approach to the consideration of alternatives. The Applicants noted that the AQUIND decision was subject to legal challenge including on the basis that the approach taken to alternatives by the SoS was unlawful. AQUIND is a decision in which the SoS acknowledged in terms that "*alternatives are material in exceptional circumstances only*" (paragraphs 3.6 and 4.20 of the decision letter (Appendix 9 of REP1-035)).
- 5.2.58. In January 2023 judgment was handed down in the case of R (AQUIND Limited) v SoS for Business, Energy and Industrial Strategy [2023] EWHC 98 (Admin) which confirmed the correct approach to both the s104 duty and compliance with EN-1.
- 5.2.59. Responding to ExQ1.GEN.1.32, which sought clarification about the criteria for the consideration of alternative locations, the Applicants explained that the site was selected to allow for potential expansion in the future, but expansion does not form part of the DCO application and has not therefore been assessed in the ES [REP2-016].

The Operation of the CCGT and the CCP

- 5.2.60. During the Examination we asked a number of questions both orally (ISH1) and in writing (ExQ1, ExQ2, ExQ3 and PD-019) about the operation of the CCGT and the CCP. These questions also reflected issues raised in representations by ClientEarth, CEPP and the EA. They essentially dealt with the following questions: how a carbon capture rate of 90% or greater would be achieved; how a carbon capture rate of 90% or greater would be secured; and when the CCGT would operate in unabated mode and how this would be minimised.
- 5.2.61. CEPP stated that the Applicants had provided no evidence that the project would deliver greater than 90% capture rate and there should be caution about the possible delivery of a greater rate [REP2-061].
- 5.2.62. Responding to WRs and to ExQ1.GEN.1.23 and ExQ2 GEN.2.8 the Applicants confirmed [REP3-012, REP2-016 and REP6-122] that the CO₂ capture rate of 90% or greater would be specified in the EP for the plant's operation in accordance with the use of BAT. The 90% minimum capture efficiency relates to regular operating conditions, although rates may vary outside of these conditions, such as during start up or in response to external events. The design basis being progressed for the CCP is to achieve a capture rate of at least 95% in accordance with the current BAT position in EA guidance. The Applicants expressed confidence that the 95% capture rate was achievable given the technology proposed by their contractors. The EA [REP5-032, REP9-027 and REP13-017] confirmed that it is likely that the EP would require that the capture plant achieves the current BAT position of a capture rate of CO₂ of at least 95%.
- 5.2.63. The Applicants also expected that the permitted capture efficiency would be based on the Dispatchable Power Agreement (DPA) contract, which would incentivise higher capture rates and impose significant financial penalties if it were to operate with no capture plant.
- 5.2.64. Responding to ExQ1.GEN.1.25 the Applicants confirmed (ES Chapter 4 paragraph 4.3.3 [APP-086]) [REP2-016] that the CCGT could be run in unabated mode which would be important, particularly to support testing and maintenance. Unabated emissions would be substantially higher than for the plant running as designed in abated mode but would be for considerably shorter periods of operation.
- 5.2.65. Through ExQ1.GEN.3.3 we noted that the EA's D9 submission [REP9-027], explained the circumstances under which the EP would allow the CCGT to run in unabated mode. The Applicants confirmed [REP11-018] that the circumstances allowing operation in unabated mode would be closely defined in the EP.
- 5.2.66. In a Request for Further Information [PD-019] we noted that ClientEarth [RR-004, REP2-079, REP4-033, REP5-030, REP6-129] had raised a concern about the commercial operation of the CCGT arguing that the permitting regime would only control the capture plant and not the CCGT. ClientEarth sought to ensure that at least 90% of carbon

emissions from CCGT were captured during the commercial operation and that these must be stored permanently in the proposed offshore geological storage site.

- 5.2.67. The Applicants commented that environmental permitting would apply to both the generating station and CCP as a whole [REP7-009] They noted that the capture plant itself does not emit carbon and could not be subject to a capture rate on its own. The EA [REP9-027] also confirmed that the BAT carbon capture rate would apply to the CCGT (when the CCGT is not exempt from operating in carbon capture mode) and the CCP as a whole. The EA also commented that when the CCGT is exempt from operation in carbon capture mode, it will be regulated under the EP. At D11 ClientEarth welcomed the EA's clarification [REP9-027] that the BAT capture rate would regulate the operation of the generating station, not only the capture plant when it is in operation.
- 5.2.68. We also noted that the Applicants had stated that carbon capture would be measured by weight of CO₂ emitted from the CCGT [APP-086]. The EA [REP9-027] explained that the time period over which this is calculated is likely to be annual and that the methodologies and reporting requirements under the UK Emissions Trading Scheme (ETS) Monitoring, Reporting & Verification will be used to demonstrate performance. The Applicants [REP9-019] confirmed that the rate of CO₂ capture would be measured continuously and reported annually under the UK ETS. Emissions reporting would cover both unabated and abated emissions. Monitoring requirements would be specified in the EP and annual reporting would be required under the UK ETS Monitoring, Reporting and Verification to verify performance [REP5-032 and REP9-027].
- 5.2.69. ClientEarth proposed a requirement to provide that at least 90% of the total carbon emissions generated by the power plant must be captured at all times during the power plant's commercial operation [RR-004]. It confirmed [REP9-025] that this was intended to allow for reasonable operating exceptions, such as during testing or maintenance. ClientEarth's illustrative drafting (Annex A [REP2-079]) does so by reference to any operating exceptions included in the EP in respect of the operation of the capture plant. Alternatively, ClientEarth would be content with the approach in the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 (the Keadby 3 Order) preferred dDCO (as was) being replicated in the NZT DCO, which would provide for the applicable minimum capture requirements on the operation of the generating station applying when it is operating "*at full load*" [REP5-030]. ClientEarth pursued this issue throughout the Examination [REP2-079, REP4-033, REP5-030, REP6-129, REP9-025 and REP11-027] with the Applicants responding at Hearings and at subsequent deadlines [REP1-036, REP1-045, REP3-012, REP5-025, REP6-121, REP9-019, REP11-015 and REP12-133]. The signed SoCG between the Applicants and the EA [REP13-017] confirmed that the Applicants provided further explanation for the wording in relation to R31 with no outstanding matters to be agreed between the parties. Further discussion about the evolution of R31 (Carbon dioxide capture transfer and storage) is provided in Chapter 9.

- 5.2.70. The EA [REP5-032] also questioned whether there should be a Requirement that construction of Work No. 6, the CO₂ gathering network, would be tied to the construction of the CCGT, to ensure that the benefits of the wider CO₂ gathering network could be secured. In response to ExQ2 DCO.2.9 the Applicants advised [REP6-121] that there was no statutory or policy basis for the DCO to include a provision requiring the CO₂ gathering network to come forward in tandem with the generating station. The Applicants also noted that the EA had confirmed that they were content with the Applicants' approach. At D11 the EA confirmed that they were content with the wording of R31 [REP11-031].
- 5.2.71. The Applicants argued that there was no need for the dDCO to include Requirements regarding capture efficiency because they would overlap with the obligations set through the operational controls under the EP and the DPA [REP2-016 and REP7-009]. However, R31 was updated at D5 [REP5-002] to require that an EP is in place for the CCGT and its associated capture facility (part of Work No. 1) prior to works (except preliminary works) on the Proposed Development commencing. The amendment also reflected the permitting approach agreed with the EA that two EPs would be required: one for Work No. 1 and one for Work No. 7. This is covered further in Chapter 9.
- 5.2.72. The Applicants [REP11-015] provided further justification for the use of EPs rather than controlling carbon capture rates through the DCO by noting that an EP is an established protocol to regulate industry in accordance with BAT which is typically reviewed on a 6 to 8-year cycle and represents a progressive tightening on the control of emissions. Draft wording for the EP is not yet available, however the Applicants noted that the normal approach in permits (for discharges other than CO₂) is well understood.
- 5.2.73. At ISH5 [EV9-001 to EV9-007] and in its post hearing note [REP11-027], ClientEarth confirmed that, in its view, including a minimum capture rate in the DCO would be appropriate given the continuing uncertainty [REP9-027] regarding the terms of the EP. There would be no regulatory duplication in view of the separate purpose of the BAT regime and provisions in the DCO to secure core aspects of this Proposed Development in the context of the planning merits.

The Relationship of the NZT Project to the Hornsea Project Four Offshore Windfarm Project

Introduction

- 5.2.74. The area identified for the offshore storage of CO₂ from the Proposed Development (the Endurance store) overlaps with the area proposed for the HP4 Project. This Overlap Zone is an area of seabed which the HP4 Project requires for the siting of wind turbines. The Endurance store would also provide storage for the Net Zero Humber Project as part of the ECC Plan.

The relationship between the DCO application and offshore proposals

- 5.2.75. Throughout the NZT Examination the Applicants emphasised that no infrastructure or powers were proposed to be authorised under the NZT DCO that could physically interact with or present a physical impediment to the HP4 Project [REP1-014, REP2-060 and REP11-015]. Consequently, the offshore elements and particularly issues surrounding the Overlap Zone did not extend to, and were distinct from, the works covered by the NZT DCO application. [REP1-045, REP6-121, REP7-009 and REP8-049]. Moreover, the NZT offshore elements are subject to separate consenting processes for the reasons provided in paragraphs 5.2.42 to 5.2.45.
- 5.2.76. Nevertheless, Orsted noted the clear link between the onshore and offshore elements of the NZT Project, as evidenced by Article 31(1) of the dDCO. The Proposed Development needs to use the Endurance store for storing CO₂ emissions and therefore the Endurance store is an important part of the justification for the NZT DCO.
- 5.2.77. Through the NZT Examination Orsted sought to protect its interests in the Overlap Zone and to ensure the successful co-existence of the NZT Project, the Endurance store and the HP4 Project [RR-039 and REP1-052]. Orsted considered that co-existence and the impact upon the NEP Project may be able to be dealt with by appropriate protective provisions within the NZT DCO that contain reciprocal obligations to those in the HP4 DCO [REP1-052 and REP2-089]. The Applicants saw no justification or need for any co-existence or provisions in the context of the Proposed Development [REP2-016, REP2-021 and REP11-014].

The examination of the offshore proposals

- 5.2.78. Various scenarios for the determination of the HP4 Project of relevance to the NZT Project and how such decisions may impact on the acceptability and deliverability of the Proposed Development were identified by the Applicants (Appendix 7 of [REP1-035]) and Orsted [REP1-052].
- 5.2.79. Orsted argued [REP2-089] that there was a need for the NZT ExA to understand the activities proposed in the area of the Endurance store as a result of the Proposed Development and the NEP Project. Impacts of the NZT Project on the HP4 Project, and the need to mitigate those impacts must be considered when making a recommendation on the NZT DCO because of the technical nature of the issues in dispute and because the NZT Examination would be concluded prior to the decision by the SoS on the HP4 DCO [REP1-052, REP3-022 and REP5-038].
- 5.2.80. The Applicants stated [REP1-035], and in responding to ExQ2 DCO.2.15 [REP6-121] that re-litigating issues relating to the offshore proposals during the NZT Examination would not be necessary, as the recommendation of the ExA in the HP4 Examination would be provided to the same decision maker (the SoS for BEIS) prior to receiving a recommendation in respect of the NZT DCO application [REP5-025, REP7-009, REP11-014 and REP11-015].

- 5.2.81. Responding to submissions in respect of the cost and time it would take to examine the issues arising from the HP4 Examination in the NZT Examination, Orsted stated [REP5-038] that the evidence submitted to the HP4 Examination could be reproduced for the NZT Examination without difficulty and therefore there should be no consequential impact. Orsted also considered it would be wrong to import a provision from the HP4 DCO without a thorough consideration of the applicability of the reasoning for that provision in the NZT DCO [REP11-037].
- 5.2.82. Copies of relevant documents which had been submitted to the HP4 Examination, were submitted to the NZT Examination by the Applicants [REP5-025 and REP6-121] and Orsted [REP6-139].
- 5.2.83. The Applicants considered [REP7-009] that it does not follow that because the applications for the offshore consents had not been made, that protections must be secured in the NZT DCO. Orsted could make submissions as to any protections or conditions it considered appropriate and necessary to include in the offshore consents when the offshore applications had been submitted. That process would be well placed to make such judgments because it would have a clearer and more detailed understanding of what is proposed offshore [REP11-015].

The Interface Agreement

- 5.2.84. The commercial relationship between Orsted and BP (as the appointed operator of the NEP) within the Overlap Zone is governed by an Interface Agreement entered into by BP, Orsted and The Crown Estate, which has sought to regulate and co-ordinate their activities with a view to managing and resolving conflicts.
- 5.2.85. Through the HP4 Examination BP sought within to disapply the Interface Agreement and remove the ability of Orsted to make a claim for an antecedent breach under the Interface Agreement through its protective provisions.
- 5.2.86. The Applicants argued that the justification for including a provision addressing the Interface Agreement in the NZT DCO was to safeguard the NZT Project, particularly where the HP4 DCO was refused and therefore BP's proposed protective provisions would not be effective, with the result that the Interface Agreement would remain extant. This would compromise the potential deliverability or introduce significant potential liability for the carbon storage element of the NEP [REP5-025 and REP11-014].
- 5.2.87. The Applicants proposed a new article disapplying the Interface Agreement in the NZT dDCO (Article 49) [REP2-002], with justification provided in the updated EM [REP5-005]. At D4 the Applicants advised [REP4-030] that it was no longer proposed to disapply the Interface Agreement but to remove BP's liability to Orsted pursuant to it and instead of such liability, provide for BP (on behalf of the NEP) to make a compensation payment to Orsted. Article 49 was amended to address two alternative scenarios [REP5-002]. Article 49 would provide for where the compensation amount is agreed at the date of granting the NZT DCO,

while under Article 50 the compensation amount is not agreed, in which case it must be determined by the SoS within two months of the NZT DCO coming into force [REP5-025]. This replicated drafting from protective provisions proposed by BP to the HP4 Examination.

- 5.2.88. Orsted [REP2-089, REP2-092 and REP3-022] rebutted the Applicants' reasoning for the inclusion of Article 49, setting out why disapplication would neither be lawful or appropriate. Commenting on the proposed changes, in response to ExQ2 DCO.2.14 and in subsequent submissions Orsted stated [REP5-038, REP6-139 and REP7-016] that interference with the Interface Agreement was not appropriate because it would deprive Orsted of its contractual rights, and that alternative means would be available to the parties to revisit the amount of compensation [REP12-138]. The compensation provisions in Articles 49 and 50 were seen as unnecessary and unworkable while the Interface Agreement already provided an appropriate framework for compensation [REP12-138].
- 5.2.89. The scope of the SoS's powers under s120 of the PA2008 to interfere with the Interface Agreement was disputed by Orsted [REP9-033] and The Crown Estate [REP6-145] while the Applicants took the opposite position [REP6-121, REP11-014 and REP11-015].
- 5.2.90. Orsted also argued [REP8-056] that the Interface Agreement itself envisaged some further detailed agreements between the parties and would not preclude other measures to achieve appropriate co-existence and interface from being found. The Applicants' position was that the issue of compensation was a matter for the SoS to address and determine as part of their decision-making on the HP4 application [REP13-019].
- 5.2.91. Orsted [REP2-022, REP3-022 REP5-022, REP5,037, REP5-038, REP6-139, REP7-016, REP8-056, REP9-032, REP9-033, REP11-037 and REP12-138] and the Applicants [REP2-021, REP5-022, REP6-121, REP11-014 and REP13-019] presented a variety of different arguments about the case for interference with the Interface Agreement. These included the public interest in preserving the viability of the ECC Plan, interference with rights under Article 1 Protocol 1 the European Convention on Human Rights, whether the public interest would justify the proposed interference with Orsted's contractual rights under the Interface Agreements and the potential for a restriction to prevent storage in the Overlap Zone if it were not required for the NZT Project.

Protective Provisions

- 5.2.92. At ISH2 [EV4-001 to EV4-005] and in their post-hearing summary [REP1-052] Orsted set out their case for protective provisions in the NZT DCO for the benefit and protection of Orsted. Further justification was provided throughout the Examination [REP2-089, REP5-022, REP5-038, REP6-139 and REP8-056].
- 5.2.93. Orsted noted that there was no obligation on BP to engage with Orsted to establish the degree to which the NZT and HP4 projects could co-exist. This could be achieved through appropriately worded protective

provisions within the NZT DCO to provide the required reciprocal obligation to engage. Appropriate protective provisions would also ensure the acceptability of the scheme overall at the point of NZT DCO decision. The DCO process offers the best opportunity to fully consider the relevant issues and to apply appropriate mitigations and protections.

- 5.2.94. Orsted outlined three potential scenarios for the HP4 application that were relevant to the Proposed Development. Firstly, if the HP4 DCO were refused there would be no potential interface between the projects. The second scenario would see the HP4 DCO approved with BP's proposed protective provisions applied which would exclude any HP4 infrastructure from the Overlap Zone. The third scenario would see the HP4 DCO approved with Orsted's protective provisions applied. In this scenario Orsted is required to refrain from any wind development within the Overlap Zone unless and until a suitable co-existence solution is agreed between the parties [REP1-052].
- 5.2.95. At ISH2 Orsted indicated that it would submit to the Examination its own proposed protective provisions for inclusion in the NZT DCO which it did at D2 (Appendix 1 [REP2-089]).
- 5.2.96. The Applicants and Orsted made submissions at ISH3 in respect of the need (or otherwise) for protective provisions to be included in the NZT DCO for the benefit of Orsted. At D5 a Position Statement [REP5-022] was submitted confirming the parties' positions in circumstances where the HP4 DCO has been made with Orsted's preferred protective provisions included.
- 5.2.97. Orsted argued that the retention of the Interface Agreement on its own would not provide the complete solution to interactions between the projects. The protective provisions proposed by Orsted in the HP4 DCO for the benefit of BP and in the NZT DCO for the benefit of Orsted seek to supplement but are consistent with the Interface Agreement. They are necessary to ensure that the SoS can intervene if the CCUS project is proposed to come forward in a way which unduly and unnecessarily constrains the deployment of renewable energy from the HP4 Project [REP8-056].
- 5.2.98. The Applicants' commented on the issue of protective provisions for the benefit of Orsted at various points in the Examination [REP1-035, REP2-060, REP3-012, REP5-022, REP5-025, REP6-121 and REP8-049]. In Orsted's third scenario where the HP4 DCO is made without the protection that Orsted considers necessary to ensure the successful delivery of HP4, the Interface Agreement would remain extant, and it would similarly be assumed that Article 49 or Article 50 would also not be included in the NZT DCO if granted. There would be nothing authorised by the NZT DCO which would impede the delivery of HP4 and so no need to duplicate the same drafting in the NZT DCO. It is unclear what risk the HP4 Project would be exposed to without reciprocal protection through the NZT DCO.

- 5.2.99. If BP's protective provisions are preferred within the HP4 DCO (scenario two), there would be no basis for reaching an inconsistent decision in the NZT DCO by imposing Orsted's 'reciprocal' protective provisions.
- 5.2.100. Through ExQ2.DCO.2.18 we asked the Applicants and Orsted whether measures to safeguard the delivery of the HP4 Project should be managed through the approvals process for the offshore elements of the NZT project rather than the NZT DCO. Orsted's response [REP6-139] concluded that the protective measures proposed for the HP4 DCO would not be sufficient on their own as it is possible that steps would be taken for the Endurance store in advance of those controls.
- 5.2.101. The Applicants stated that it does not follow that because the applications for the offshore consents which would authorise the works in the Overlap Zone have not been made, that protections must be secured in the NZT DCO. Moreover, there was no reason why the determination of HP4 Project would be delayed until after the NZT DCO, meaning the SoS would have the benefit of that decision when making the determination on the NZT DCO. However, the Applicants had addressed the alternative scenario where there is a material delay to the HP4 DCO such that the NZT DCO fell to be determined first [REP2-060].
- 5.2.102. In summary, the Applicants' position was that the decision on HP4's DCO would deal with the issue of whether and if so, what protection is required for Orsted. The Applicants did not consider there to be any connection between the Proposed Development and the HP4 Project, and so there was no justification for any provision in the NZT DCO which conditions the Proposed Development to the HP4 DCO outcomes. The Applicants did not comment on the detail of Orsted's proposed protective provisions [REP6-121].

Examining Authority's Response

The Need for the Proposed Development

- 5.2.103. The Proposed Development would contribute toward the urgent need for new dispatchable low carbon generating capacity and CCS infrastructure and complementing other low carbon electricity sources such as intermittent renewables or baseload nuclear. As CCGT with CCS it would reduce the carbon intensity of the overall future energy mix of the UK and would help deliver the Government's net zero commitment by 2050.
- 5.2.104. Policy support for the Proposed Development is provided firstly by Part 3 of EN-1 which offers support for all types of energy infrastructure to help achieve energy security, and overall grid stability while contributing toward the decarbonisation of power and industry on Teesside and reducing GHG emissions. EN-1 and EN-4 clearly establish the need for electricity generating stations and recognise that fossil fuels play an important role. These objectives are also echoed in draft EN-1 and draft EN-2 which are important and relevant to decision-making in respect of the Proposed Development. Policy support for the use of natural gas for electricity generation is also provided through Part 3 of EN-1 and EN-4.

- 5.2.105. Moreover, in providing CCS the Proposed Development is in accordance with section 3.6 of EN-1 and in line with the Government's wider policy statements on energy and climate change and the Proposed Development would see the provision of additional low carbon mid merit plant equipped with CCS generation being deployed on a commercial scale. The extensive range of legislation and policy outlined in section 3.6 of this Report can be considered as important and relevant matters and which collectively add considerable additional support for the need of the Proposed Development. Draft EN-1 also confirms the pressing need for gas-fired electricity generation with CCS and CCS infrastructure.
- 5.2.106. Furthermore, the Proposed Development is consistent with policy contained within the UK Marine Policy Statement and the North East Marine Plan, both of which are supportive of the deployment of CCS/CCUS in the UK Marine Area.
- 5.2.107. Additional policy support for the Proposed Development is provided by compliance with the Tees Valley Climate Change Strategy, the sustainable development objectives of the RCBC Local Plan, RCBC's declared climate emergency and its intent to be carbon neutral by 2030. Support also comes through RCBC's backing for a CCUS network for industry in the Borough. The Proposed Development is also in line with the objectives of STBC's Climate Change Strategy and Action Plan which promotes a low carbon vision and STBC's Local Plan which describes the significant local opportunities to move towards a low carbon economy with CCS.
- 5.2.108. Whether or not CEPP is right that CCS technology is the best way to decarbonise the UK energy system, there is considerable NPS policy and wider energy support for the Proposed Development. While aspects of the Net Zero Strategy have been challenged in the High Court, the judgment does not affect the merits of the Strategy or how it should be considered in terms of this application.

The Scope of the Proposed Development

- 5.2.109. The Applicants have demonstrated to our satisfaction that they have met the criteria set out in paragraph 4.7.10 of EN-1 to assess whether a project is CCR. Where the criteria rely on such matters being addressed through other consenting regimes the Applicants have adequately demonstrated that sufficient progress is being made in meeting the criteria.
- 5.2.110. The Proposed Development is part of a larger programme forming part of the ECC Plan which has been chosen as one of the successful Track 1 industrial clusters under BEIS' Cluster Sequencing process. Given the extent of Teesside's industrial emissions, the CO₂ gathering network offers significant opportunities to reduce carbon emissions, and while the connections to the backbone pipeline system are not part of the application, the potential which this network provides also adds support to the Proposed Development.

- 5.2.111. We also recognise that a suitable area of deep geological storage offshore exists and that it has sufficient capacity to address the CO₂ captured by the Proposed Development. The Applicants' approach to the offshore consenting process appears entirely reasonable in the context of the PA2008 regime. Similarly, we are content that a process is in place to add industrial emitters to the backbone system provided by the CO₂ gathering network.

Alternatives

- 5.2.112. In line with the requirements of the energy NPSs, the draft energy NPSs and Regulation 14(2)(d)) of the EIA Regulations, the Applicants have demonstrated that a range of alternatives was considered. These related to alternative technologies, locations/sites and the choice of network infrastructure corridors.
- 5.2.113. We are content that the Applicants have considered alternative technologies and that proper reasons have been provided for the choice of the Proposed Development in line with paragraph 4.4.2 of EN-1. Specific legislative requirements to address alternatives through the Habitats Directive, and the policy requirements in respect of flood risk, landscape and site selection have also been appropriately addressed in line with EN-1, EN-2, EN-4, EN-5 and draft NPSs.
- 5.2.114. Additionally, in respect of the Specified Elements identified within the s35 Direction we find that there is nothing to indicate that alternatives have not been appropriately addressed or any are more appropriate than the Proposed Development. This position holds whether the s35 Direction means that the energy NPSs have effect in relation to the Specified Elements or whether the NPSs, along with draft NPSs are important and relevant considerations.
- 5.2.115. We are also satisfied that the Applicants have addressed the matter of alternatives appropriately with reference to recent case law.
- 5.2.116. Regarding CEPP's position that there were preferable technologies to CCS, we find that this does not acknowledge that NPSs and wider Government energy policies recognise that CCS along with other technologies, including energy storage ones, are intended to be part of an overall energy mix.

The Operation of the CCGT and the CCP

- 5.2.117. In terms of the operation of the CCP and how a carbon capture rate of over 90% could be secured, we sought clarification during the Examination about the mechanism to ensure that the commercial operation of the CCGT could not avoid the capture of carbon and its storage within the Endurance store. It was suggested that the DCO should include controls to secure the capture rate of 90% or above but based on the evidence we received we find that the EPs would provide the appropriate controls and monitoring in line with the advice in EN-1 section 4.10 that recognises that there should be no duplication of regulatory regimes.

- 5.2.118. We are satisfied, based on the clarification provided by the Applicants and the EA, that the combination of R31 and the EPs, which would require the operation of the CCGT and the capture plant to achieve a specified capture rate, would provide appropriate controls to ensure that the normal commercial operation of the CCGT would involve the capture of CO₂ to the standard of BAT and transportation for offshore storage. The precise form of R31 is addressed in Chapter 9.
- 5.2.119. Through the combined operation of these controls the carbon capture rate would be secured, and a mechanism would be in place through Work Nos. 6-8 to create a backbone pipeline system for the collection of CO₂ from local emitters. These potentially substantial benefits of capturing CO₂ from local businesses are not accounted for in the planning balance because they do not form part of the Proposed Development. However, we do give some weight to the benefit of creation of the CO₂ gathering network.

The Relationship of NZT to the Hornsea Project Four Offshore Windfarm Project

- 5.2.120. We find that there is a clear physical separation between the onshore and offshore elements of the NZT Project. Offshore elements are distinct from the Order Limits and the DCO application. Additionally, the offshore elements of the NZT Project are appropriately subject to a separate consenting regime.
- 5.2.121. There is a physical relationship between the wider ECC Plan, of which the NZT Project is part, and the HP4 Project through matters in relation to the Endurance aquifer, but neither of these is dependent upon the Proposed Development. While Orsted's position is that R31 demonstrates a clear link between onshore and offshore elements, its purpose is to provide a mechanism to secure storage of carbon rather than connecting the onshore and offshore elements of the NZT Project. The Endurance store itself does not provide an important justification for the Proposed Development; the appropriate test is whether there is adequate scope for offshore storage as required by paragraph 4.7.10 of EN-1. We consider this has been demonstrated.
- 5.2.122. While the Examination has considered offshore matters, this has allowed us to understand the context of the wider NZT Project and to address the related submissions of Orsted and the Applicants. We have considered the issues of co-existence of the NZT and HP4 Projects within the Overlap Zone, the viability of the ECC Plan and the consenting regime for the offshore elements. Notwithstanding the requirement through the EIA Regulations to consider effects beyond the Order Limits, the distance and absence of any physical connection between the Proposed Development and the offshore elements of the NZT Project leads to our conclusion that these matters should not be addressed through the DCO.
- 5.2.123. Part of the Applicants' early reasoning for the inclusion of proposals to initially disapply, and subsequently modify, the Interface Agreement through Articles 49 and 50 was to deal with the unlikely circumstances where the NZT application falls to be determined before the HP4

application. As the Interface Agreement provides for the management of interests in the Overlap Zone, for the reasons above it would not be appropriate for the NZT DCO to disapply or modify that Agreement. Accordingly, we recommend that Articles 49 and 50 are removed from the Applicants' final dDCO.

- 5.2.124. Having concluded that the offshore elements of the NZT Project should be considered outside of the NZT application, we find that Orsted's wish to protect its interests in the Overlap Zone would best be achieved through the HP4 DCO (if approved), the Interface Agreement or the applications for the offshore elements of the NZT Project. Similarly, we find no reason for reciprocal arrangements to those proposed in the HP4 DCO such that protective provisions need to be secured within the NZT DCO for the protection of Orsted.

Conclusions

- 5.2.125. The Proposed Development would address the urgent need for new electricity capacity as set out in EN-1, the use of natural gas for energy generation (EN-1 and EN-4) and the urgent need for gas-fired electricity generation with CCSs and CCS infrastructure as highlighted in draft EN-1. As CCGT with CCS it would add to the energy mix of the UK and would help deliver the Government's net zero commitment by 2050. In providing CCS the Proposed Development would be in line with the Government's wider policy statements on energy and climate change which constitute important and relevant matters. The UK Marine Policy Statement and the North East Marine Plan are supportive of the deployment of CCS/CCUS in the UK Marine Area, while local policies of RCBC and STDC back the move to a low carbon economy and a CCUS network in the area.
- 5.2.126. As part of the wider NZT Project and the ECC Plan we are content that the Applicants have demonstrated that a suitable area of deep geological storage offshore exists and that it has sufficient capacity to store the CO₂ captured by the Proposed Development in line with EN-1. Moreover, the Applicants' approach to the offshore consenting process appears entirely reasonable in the context of the PA2008 regime. Similarly, we are content that a process is in place to add industrial emitters to the backbone pipeline system provided by the CO₂ gathering network.
- 5.2.127. The issue of alternatives has been appropriately addressed by the Applicants in line with NPS policies and EIA Regulations, demonstrating that a range of alternative technologies, locations/sites and the choice of network infrastructure corridors were considered. Specific legislative requirements to address alternatives have been addressed while having regard to recent case law.
- 5.2.128. The combination of R31 and the EPs would require the operation of the CCGT and the capture plant to achieve a specified capture rate and would provide appropriate controls to ensure that the normal commercial operation of the CCGT would involve the capture of CO₂ to the standard of BAT and transportation for offshore storage. Through Work Nos. 6-8 a

backbone pipeline system for the collection of CO₂ from local emitters would be created. While the potentially substantial benefits of capturing CO₂ from local businesses are not accounted for in the planning balance because they are not part of the Proposed Development, we do give some weight to the benefit of providing the CO₂ gathering network.

- 5.2.129. Finally, we have concluded that the DCO does not need to and should not interfere with the offshore elements of the NZT Project or with the interface with the HP4 Project.
- 5.2.130. We therefore conclude that the need for the Proposed Development is clearly justified through EN-1, EN-2, EN-4 and draft EN-1 and as well as a range of other more recent Government energy policies. On this basis we give substantial weight to the need for the Proposed Development.

5.3. CLIMATE CHANGE

Introduction

- 5.3.1. ES Chapter 21 [APP-103] assesses the resilience of the Proposed Development in the context of future climate change and the potential impacts in terms of climate change. Both issues are covered in this section.
- 5.3.2. Climate change was identified within the IAPI (Annex C [PD-009]). In addition to those issues dealt with in section 5.2 of this Report it included the effects from the construction and operation of the Proposed Development on climate change; the overall change in GHG emissions that may arise from the construction and operation of the Proposed Development; emissions of GHGs arising from the development, including during its operational phase; and the effectiveness of measures to mitigate the effects of, or adapt to, climate change.

Policy Considerations

Climate Change Adaptation

- 5.3.3. Section 4.8 of EN-1 explains that the climate change that is already happening should be taken into account when developing and consenting infrastructure. Paragraph 4.8.6 states that the decision maker should be satisfied that proposals have considered the potential impacts of climate change using the latest projections.
- 5.3.4. The decision maker should be satisfied that there are no features of the design critical to the operation of the infrastructure which may be seriously affected by more radical changes to the climate and that necessary action can be taken to ensure operation over its estimated lifetime (paragraph 4.8.8).
- 5.3.5. EN-2 (paragraph 2.3.13) notes that fossil fuel generating stations are likely to be located at coastal sites and therefore at risk from rising sea levels. Applicants should set out how the proposal would be resilient to coastal changes and increased risk from tidal and storm surge, the

effects of higher temperatures, and increased risk of drought (EN-2, paragraph 2.3.14).

- 5.3.6. EN-4 (paragraph 2.2.2) indicates that applicants for gas supply infrastructure and pipelines should set out how the proposals would be resilient to climate change.
- 5.3.7. EN-5 (paragraph 2.4.1) states that as climate change is likely to increase risks to the resilience of some electricity networks, infrastructure applicants should set out to what extent the proposed development is expected to be vulnerable, and how it would be resilient to the effects of climate change.
- 5.3.8. The revised NPPF includes policies of relevance to climate change in relation to the challenge of moving to a low carbon economy, climate change, flooding and coastal change. National Planning Practice Guidance on Climate Change describes how to identify suitable climate adaptation measures to incorporate into the planning process.
- 5.3.9. RCBC has adopted the Tees Valley Climate Change Strategy, while its Strategic Flood Risk Assessment is used as guidance for new developments to help avoid increased flooding risks. RCBC's Local Plan aims for new developments to be sustainable in design and construction, incorporating best practice in resource management, energy efficiency and climate change adaptation. STBC has also adopted the Tees Valley Climate Change Strategy as well as its own Climate Change Strategy and Action Plan.

Assessment of Greenhouse Gas Emissions

- 5.3.10. Paragraph 2.2.12 of EN-1 states that the EU Emissions Trading System (ETS) forms the cornerstone of UK action to reduce emissions. The caps on emissions translate to a finite number of allowances to emit GHG that companies can trade with each other. The draft EN-1 updates this to include the 'key' mechanism of Contracts for Difference, and business models to incentivise CCUS, Carbon Price Support and the Emissions Performance Standard (section 2.4).
- 5.3.11. The draft EN-1, which is an important and relevant consideration, states that the SoS must be satisfied that the applicant has, as far as possible, assessed the GHG emissions of all stages of the development (paragraph 5.3.5).
- 5.3.12. Paragraph 5.3.6 of draft EN-1 states that the SoS should be content that the applicant has taken all reasonable steps to reduce GHG emissions during the construction and decommissioning stages of development. The SoS should also give positive weight to projects that embed nature-based or technological processes to mitigate or offset the emissions of construction and decommissioning within the proposed development. However, in light of the vital role energy infrastructure plays in the process of economy wide decarbonisation, it is accepted that there are likely to be some residual emissions from construction and decommissioning of energy infrastructure.

- 5.3.13. Draft EN-1 (paragraph 5.3.7) also accepts that operational GHG emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). Operational emissions will be addressed in a managed, economy-wide manner to ensure consistency with carbon budgets, net zero and our international climate commitments. The SoS does not therefore need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments.
- 5.3.14. Paragraph 5.3.8 of draft EN-1 states that a carbon assessment should be used to drive down GHG emissions at every stage of the proposed development and to ensure that emissions are minimised as far as possible, taking into account the overall objectives of ensuring our supply of energy always remains secure, reliable and affordable, as we transition to net zero. A GHG Reduction Strategy setting out steps to minimise and offset emissions should be secured under the development consent order (paragraph 5.3.10, draft EN-1).

The Applicants' Case

Climate Change Resilience Review

- 5.3.15. The Climate Change Resilience Review (CCRR) [section 21.5 of ES Chapter 21, APP-103] identified the likelihood of climate change impacts on the Proposed Development and the potential consequence, taking account of adaptation measures.
- 5.3.16. The CCRR assessed the resilience of all phases of the Proposed Development against both gradual climate change and the risks associated with an increased frequency of severe weather events. While a range of climate change hazards and their potential impact upon the Proposed Development were identified [Table 21-36, APP-103], the embedded design measures were deemed sufficient to reduce the likelihood or consequence of an impact occurring to the extent that no significant resilience risks were identified. The management of impacts and application of the adaption measures during construction would be enforced through the Final CEMP secured through R16 of the dDCO [REP12-003].
- 5.3.17. The assessment of flood risk impacts and effects from the Proposed Development is considered in section 5.6 of this Report, which confirms that the risks from rising sea levels and flood events during all phases would be low with appropriate mitigation.

Lifecycle Greenhouse Gas Assessment

- 5.3.18. ES Chapter 21 [APP-103] includes a GHG Assessment of the potential effects on the climate from emissions arising from the Proposed Development. This identifies the global climate as the receptor emissions and the UK's Carbon Budgets were used as a proxy to assess the impacts on the receptor. The GHG impact assessment considered the emissions during construction, operation and decommissioning. These were

calculated in line with ISO14064 BSI, (2019) and the principles of the GHG Protocol (WRI and WBCSD, 2015) by multiplying activity data by a GHG emissions factor for seven gases. The worst-case uncaptured CO₂ emissions from these scenarios were used to inform the total GHG calculations. The assessment was updated at D6 [REP6-123] to include well-to-tank emissions from upstream supply of natural gas.

- 5.3.19. It was estimated that a total of approximately 76,000tCO₂e (tonnes CO₂ equivalent) would be produced during the construction period. Using a conservative 90% capture rate, it is estimated that over 16MtCO₂e (million tonnes CO₂ equivalent) would be emitted from operations over 25 years, including well-to-tank emissions [REP6-123].
- 5.3.20. The Applicants concluded that the operation of the Proposed Development would not significantly affect the ability of the UK to meet its Carbon Budgets [paragraph 21.3.66, APP-103] and that the significance of effects is 'minor adverse' [paragraph 12.3.67, APP-103].
- 5.3.21. Unabated, the carbon intensity of the CCGT would be slightly lower than the average gas-fired power plant [Table 21-13, APP-103]. However, allowing for a 95% capture rate it would have a carbon intensity of 20.7tCO₂ per Gigawatt hour (GWh), which is much less than the grid average intensity from all fuels in 2020 of 198tCO₂ per GWh [paragraph 21.3.58, APP-103]. At D6, the Applicants argued that if the project baseline represents a similar CCGT operating without carbon capture and storage, the effects of the Proposed Development would be beneficial and significant [REP6-123].
- 5.3.22. Once CO₂ is captured from neighbouring industries the NZT Project could result in a net reduction in CO₂ emissions. The Applicants have calculated that the carbon captured from third-party emitters could be up to 45Mt CO₂ [REP6-123]. However, the benefits from capture and storage of third-party industrial emissions were not included in the assessment because industrial emitters would be responsible for their own carbon capture and connections to the CO₂ gathering network.
- 5.3.23. The cumulative effects of sectoral GHG emissions on the global climate were acknowledged as being potentially significant, but the Applicants stated that it is not possible to quantify these effects due to data not being available [APP-106].

In-combination Climate Change Impacts Assessment

- 5.3.24. The Applicants provided an In-combination Climate Change Impacts (ICCI) assessment of the way in which the Proposed Development combined with climate change could impact receptors in the surrounding area [section 21.4, APP-103].
- 5.3.25. Table 21-29 of ES Chapter 21 [APP-103] summarises the potential ICCIs that could occur during construction, operation and decommissioning, and their significance, taking account of embedded mitigation. Two potentially significant ICCIs were identified relating to increased winter rainfall combined with the existing flood risk on the Order land. The

Applicants' assessment concluded that the development of a Flood Emergency Response Plan, supported by the results and recommendations of the FRA would be sufficient to address the ICCIs and no significant adverse effects were therefore predicted [paragraph 21.4.46, APP-103].

Examination Matters

Lifecycle Greenhouse Gas Assessment

- 5.3.26. CEPP stated that the Applicants had failed to quantify and assess the GHG emissions associated with the full lifecycle of the natural gas combusted in the power station [REP2-061]. Upstream and downstream methane emissions had not been included, which led to an incorrect carbon intensity being calculated and assessed. CEPP argued that scientific research demonstrated that in a full lifecycle analysis, methane leakage during gas production, transport, and consumption adds significant GHG emissions to the generation of energy in gas power stations. Assuming methane leakage is reduced to 0.2% by 2025, it would still be 60% greater than that reported by the Applicants.
- 5.3.27. The Applicants stated that upstream emissions associated with the supply of gas were not originally included in the ES in line with the then current 'Assessing Greenhouse Gas Emissions and Evaluating their Significance, 2017' (the IEMA Guidance) [REP3-012]. However, they accepted that it would now be considered good practice to include these emissions and a revised assessment including well-to-tank emissions and a cumulative assessment of GHG for construction, operation and decommissioning of the offshore pipeline that would be part of the wider NZT project was submitted at D6 [REP6-123]. This increases the GHG emissions but would not change the conclusion on the significance of effects [REP3-012].
- 5.3.28. The GHG assessment used published emissions factors from BEIS/Defra for both direct emissions from the combustion of fuels and indirect emissions associated with extraction, refining and transportation of the raw fuel sources prior to combustion, including leakage of methane in the supply chain [APP-103 and REP6-123]. At D4 CEPP warned that using the BEIS/Defra conversion factors would not provide certainty that the GHG emissions reported would accurately describe how the gas power plant would operate [REP4-034]. This is because these factors reflect the national average carbon intensity for the fuel in commercial uses and not the carbon intensity for the actual fuel used. Furthermore, the conversion factors are for a recent year and do not predict how the relevant factor will change over time because of, for example, geopolitical factors.
- 5.3.29. Related to this, CEPP drew our attention to the fact that over the lifetime of the project, there may be radical changes to the UK gas supply and that gas could be sourced from regions with more lax regulation of methane leakage, and with higher liquefaction, transport and regasification energy costs [REP2-061, REP4-034]. Without taking these potential changes into account, CEPP stated that the conclusions regarding GHG emissions in the EIA would be erroneous.

- 5.3.30. Addressing this point, the Applicants explained [REP5-028] that the GHG assessment [APP-103] was based on the most reliable data available in 2021. The emissions factor relating to the carbon intensity of natural gas consumed as a fuel was replaced in 2022 but this would not change the outcome of the assessment or the significance of effects. The Applicants stated that, while minor regional variations in the direct emissions from the combustion of natural gas would occur, this would be very unlikely to make a material difference to the GHG assessment.
- 5.3.31. The Applicants also acknowledged that there could be a change in the source of natural gas over the lifetime of the Proposed Development [REP5-028] and replacement of gas with blue/green hydrogen and biomethane. However, there remains considerable uncertainty over this, and the current carbon intensity has therefore been applied. In addition, the Applicants drew attention to the fact that 120 countries have endorsed the Global Methane Pledge to reduce their emissions, which may reduce the risks of higher emissions from changing the origin of supply. They also pointed out that emissions from the Proposed Development would need to be monitored, reported and controlled to ensure that they were within appropriate limits.
- 5.3.32. CEPP also stated that the ES needed to include annual projections or targets for the carbon intensities based on full life-cycle analysis to meet the requirements of the EIA Regulations [REP2-061, REP4-034]. This should include the rapid reduction in methane leakage in line with the pathway implied by the International Energy Authority analysis (ie 66% reduction by 2030 from 2020 to meet the obligations under the Global Methane Pledge). The Applicants re-iterated that the calculated carbon intensities were based on the best available information and that, considering the commitments made to reduce methane from the oil and gas industry, applying the 2021 emissions factor over the lifetime over the site is conservative and appropriate REP5-028.
- 5.3.33. CEPP state that the only way to provide certainty of the carbon intensity of the fuel source it to include a DCO that the CCGT is only operated when the carbon intensity would be less than or equal to the International Energy Agency compliant annual projections [REP2-061, REP4-034]. The Applicants' view was that there is no requirement for the Proposed Development to use gas of a particular carbon intensity [REP3-012]. They also noted that the updated IEMA Guidance does not require such a commitment.
- 5.3.34. At D13 CEPP submitted final comments [REP13-022] which stated that the Applicants had not provided an updated assessment of the GHG emissions that they had committed to earlier in the Examination. In CEPP's view the ES therefore remained contrary to the EIA Regulations because the Applicants had only addressed the direct impacts of GHGs.
- 5.3.35. The Applicants' responses to ExQ2.CC.2.1 to ExQ2.CC.2.12 [REP6-121] clarified a number of detailed matters, including that the reduction in the Order land through changes to the application would not have any bearing on the Applicants' GHG assessment, the details of the use of CO₂

equivalent in the assessment, an update in respect of the Sixth Carbon Budget and that the evolution of construction and design proposals since the preparation of the ES would not have a material impact on the overall GHG assessment. The Applicants also confirmed that applying the revised UK Climate Change Risk Assessment 2022 to the CCRR would not change the overall findings.

Cumulative assessment

- 5.3.36. Responding to the observation by CEPP [RR-023 and REP2-061] that a cumulative, short, medium and long-term, impact assessment of carbon emissions had not been undertaken as required under the EIA Regulations, the Applicants referenced the IEMA Guidance [REP1-045]. This states that all GHG emissions are significant and contribute to climate change, that the receptor is the global climate and to provide context the emissions for a given project can be compared to appropriate carbon budgets, which are inherently cumulative.
- 5.3.37. At D4 CEPP commented [REP4-034] that the Applicants had selectively quoted the updated IEMA Guidance, which states that assessment of a project's carbon emissions against the UK's Carbon Budget is only a starting point of limited value in the EIA process. In particular, CEPP drew our attention to the section which states that contextualisation of GHG emissions should incorporate the cumulative contributions of other sources that make up that context. Where the contextualisation is geographically or sector-bounded then the consideration of cumulative contributions to that context should be within that boundary. CEPP proposed three levels of assessment, including the GHG across the ECC.
- 5.3.38. Responding, the Applicants stated that the updated IEMA Guidance advises that, while it is good practice to draw on multiple sources of evidence when evaluating the context of GHG emissions, there is no requirement to present the GHG impact of the proposal against regional and local budgets [REP3-012]. The Applicants had also previously stated that the cumulative effects could not be assessed on a sectoral basis because sufficient data were not available [paragraph 24.5.142, APP-106].
- 5.3.39. The Applicants maintained that there is no rationale for a cumulative assessment of a group of otherwise unconnected projects, simply because they happen to be in proximity with each other, since the impact is at a global level. The contextual information for the cumulative assessment was derived from a comparison of likely emissions with UK Carbon Budget totals as a trajectory towards net zero, in line with the updated IEMA guidance. They added that it was not appropriate to use estimated carbon budgets prepared at the local authority level for context because the electricity produced would be transferred far beyond the boundaries of the area [REP5-028].
- 5.3.40. The Applicants also noted [REP1-045 and REP3-012] that the UK's Carbon Budgets are the only national legally binding targets implemented under the CCA2008, which does not give a legal duty to set carbon budgets at a smaller scale than those set out nationally. As a result, the

Applicants' assessment of GHG emissions [APP-103] only compared emissions from the Proposed Development in the context of the UK Carbon Budgets.

Effect of carbon store licences on trajectories for offshore wind development

- 5.3.41. At D2 CEPP [REP2-061] sought clarification from the Applicants on what it considered to be the impact, if the wider NZT Project proceeds, to the national target for offshore wind and trajectories for offshore wind development, including the HP4 project.
- 5.3.42. In response, the Applicants stated [REP5-028] that the worst-case reduction in wind generation capacity would be 0.67GW, assuming co-existence of the NZT and HP4 Projects is possible. This represents 0.015% of the 45GW target for offshore wind (50GW target with 5GW removed as specifically stated for floating wind) by 2030. The Government and CCC trajectories for offshore wind development post 2030 to 2050 identify a pathway for up to 125GW from offshore wind. The potential reduction of 0.67GW represents 0.005% of this target. These percentages are therefore not expected to significantly affect the UK's ability to deliver their targets for wind.

Examining Authority's Response

- 5.3.43. Details explaining how the Proposed Development would be resilient to climate change over the lifetime of the Proposed Development have been provided as required by EN-1, EN-2, EN-4 and EN-5. These have included assessment of the increased risk from flooding, rainfall and rising sea levels. The Applicants have referenced the IEMA Guidance in concluding that there would be no likely significant effects in this regard. We see no reason to come to a different conclusion.
- 5.3.44. In the absence of any widely accepted guidance on assessing the significance of the impact from GHG emissions, the IEMA Guidance, including the updates to this since the assessment in APP-103, was referenced by the Applicants. It is not disputed by IPs that this is a suitable approach, and we are content that the guidance is appropriate for addressing the requirements of the ES. As part of the update, the Applicants accepted that the assessment should include the upstream and downstream emissions associated with the supply of gas. Their assessment [REP6-123] demonstrated that there would be a significant increase in GHG emissions once upstream and downstream emissions were included and they provided an estimate of this on both an annual and lifecycle basis. We are satisfied that this assessment is appropriate.
- 5.3.45. We have noted the Applicants' revised assessment at D6 of the effects of GHG emissions from the Proposed Development as being both significant and beneficial. This is on the basis that the project baseline could be a similar CCGT operating without CCS and that the Proposed Development represents a significant improvement on this. EN-1 (paragraph 4.7.10) requires that all commercial scale combustion power stations must be

constructed Carbon Capture Ready. On this basis, we do not consider it viable to use unmitigated emissions as a baseline any longer.

- 5.3.46. It is of note that the draft EN-1 (paragraph 5.3.7) describes the inevitable emissions that cannot be avoided from some energy infrastructure as a significant adverse impact. EN-1 does not provide policy on this matter. We also note that the IEMA is quoted as saying that "*all GHG emissions are classed as having the potential to be significant as all emissions contribute to climate change*" [APP-106 and REP1-045]. Given there would be approximately 70MtCO₂e emitted even with 90% capture [REP6-123], we conclude that this would be a significant adverse effect. In coming to this conclusion, we have had regard to the Applicants' use of the UK's Carbon Budget in section 21.3 of ES Chapter 21 [APP-103] to put these emissions in context and accept that they would be a very small part of this.
- 5.3.47. We regard use of the BEIS/Defra emissions factor, which represents the national average carbon intensity for the fuel in commercial use, is a reasonable approach and we are satisfied that this represents the best data and understanding available at the current time. We acknowledge the considerable uncertainty over the future source of natural gas and that the well-to-tank emissions could be higher for imported fuel. However, we also recognise a concerted international effort to reduce methane emissions, including leakage, which could lead to reduction in carbon intensities. Based on this, we do not consider it necessary or reasonable to require annual projections for the lifetime of the Proposed Development to meet the requirements of the EIA Regulations.
- 5.3.48. We do not consider it necessary to insert a requirement into the dDCO that requires the CCGT to operate only when the carbon intensity is below the International Energy Agency projections, as recommended by CEPP. EN-1 is clear that the ETS forms the cornerstone of UK action to reduce emissions. The draft EN-1 updates this to include the 'key' mechanism of Contracts for Difference, and business models to incentivise CCUS, Carbon Price Support and the Emissions Performance Standard. These regulatory and financial controls outlined work together to control and encourage reduction of GHG emissions and it would not be appropriate for us to seek further control of this via the dDCO.
- 5.3.49. We are satisfied from the information provided in Chapter 21 [APP-103] that the Applicants have taken all reasonable steps to reduce the GHG emissions during construction, operation and decommissioning, as required in draft EN-1.
- 5.3.50. Turning to the assessment of cumulative effects from GHG emissions, CEPP stated that this should be assessed over different timescales in a local, regional and sector context to meet the requirements of the EIA Regulations. Given that this would be a nationally significant power station that would input to the wider national grid, we concur with the Applicants that contextualisation of emissions on a local or even regional scale would not be appropriate. We are also content that the updated

assessment provided an estimate of GHG emissions over time through provision of a lifecycle analysis.

- 5.3.51. However, we consider that there is potential merit in an assessment of the cumulative effects on a sectoral basis. We accept the Applicants' statement that insufficient data are available to quantify this. We also note that the Applicants suggested that cumulative effects of sectoral GHG emissions on the global climate could be potentially significant. We consider it inevitable that there would be GHG emissions from across the wider sector, which, as discussed above, the draft EN-1 views as a significant adverse effect. We must therefore conclude that cumulatively there would also be a significant adverse effect. The data to undertake a cumulative assessment of the sector in the context of the UK Carbon Budgets are not available.
- 5.3.52. We have found that the Applicants' assessment did follow the IEMA guidance in this regard, in that the guidance recommends a review of the contextualisation options prior to identifying the one that can best represent a project's potential carbon footprint, as described above.
- 5.3.53. We also note that the draft EN-1 suggests because operational emissions would be managed in an economy-wide manner to ensure consistency with carbon budgets, net zero and international climate commitments, individual applications would not need to be assessed against these measures.
- 5.3.54. We have reviewed CEPP's concerns about the lack of assessment of the effects on the trajectory of offshore wind development in the area. The Applicants accepted that there would be a worst-case reduction in energy capacity at HP4, should it be consented, of 0.67GW if the Endurance store is used, but highlighted that this would be 0.005% of the Government's trajectory for wind by 2050, which is therefore not significant. We see no reason to disagree with this analysis.

Conclusions

- 5.3.55. It has been demonstrated to our satisfaction that the Proposed Development would be resilient to climate change over its lifetime and would not increase risks to the surrounding environment either on its own or in-combination with other development, as required by section 4.8 of EN-1, and EN-2, EN-4 and EN-5.
- 5.3.56. GHG emissions have been assessed from all stages of the Proposed Development, including upstream and downstream emissions. We are satisfied that the assessment of likely significant effects over the lifetime of the Proposed Development meets the requirements of the EIA Regulations. The need for such an assessment is not identified in current NPSs, but we have had regard to the draft NPSs and other government policy in coming to this conclusion.
- 5.3.57. Conservatively allowing for 90% capture during operation, the total onshore GHG emissions would be over 16MtCO₂e over the lifetime of the Proposed Development. Based on the policy in the draft EN-1, we

conclude that these emissions would have a significant, adverse effect on carbon emissions, even with deployment of CCS technology. Although quantitative data are not available, we have also concluded that there would be a significant adverse effect from cumulative emissions across the sector. However, this conclusion is of moderate weight in the planning balance because it is based on draft policy. We accept that in isolation the emissions would not measurably harm the Government's ability to meet its national targets or have a significant effect on the UK Carbon Budgets. Nevertheless, considering the draft EN-1, which is an important and relevant matter, and the clear direction of Government policy towards significantly reducing GHG emissions (section 3.6), we have given more weight to the draft policy than a comparison with the UK Carbon Budgets for the assessment of significance.

- 5.3.58. The Applicants have estimated that the captured emissions from third parties would be over 42MtCO₂e. When viewed in its broader context, the NZT Project could therefore facilitate a significant positive contribution to the reduction of CO₂ emissions. However, because the Proposed Development does not secure capture of third party GHG emissions, this likely overall reduction in the emissions is not a matter that we can include in the planning balance.
- 5.3.59. Notwithstanding the benefits which the wider NZT Project would bring in terms of reducing CO₂ emissions, we judge that the emissions of GHG over the lifetime of the Proposed Development would have a significant adverse effect, which is of moderate weight in the planning balance.

5.4. AIR QUALITY AND EMISSIONS

Introduction

- 5.4.1. Air quality and emissions were identified in the IAPI [Annex C, PD-009]. During construction, the main sources would be emissions from additional traffic and dust. During operation there would be emissions from several stacks, including the CO₂ absorber stack, which would emit, among other things, include oxides of nitrogen (NO_x), carbon monoxide (CO) and ammonia (NH₃) and amines and their degradation products. The emissions have the potential to have effects on human health and ecological receptors.

Policy Considerations

- 5.4.2. Paragraph 5.2.7 of EN-1 states that the ES should describe any significant air emissions, their mitigation and any residual effects, the absolute emission levels, existing air quality levels and the relative change, and any potential eutrophication impacts.
- 5.4.3. At paragraph 5.2.8 of EN-1 it is reiterated that many activities involving air emissions are subject to pollution control regimes. It should be assumed that these will be properly enforced and not seek to duplicate them.

- 5.4.4. Paragraph 5.2.9 of EN-1 says that air quality considerations are generally of substantial weight where a project would lead to deterioration in air quality. Statutory air quality limits must be considered, and mitigation measures may be needed to allow the proposal to proceed. Where a project would lead to non-compliance with a statutory limit then consent should be refused (paragraph 5.2.10).
- 5.4.5. Details of the air quality legislation, policy and guidance, including application of the EP regime are provided in section 8.2 of Chapter 8 [APP-090].

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- 5.4.6. The Applicants' assessment of air quality is set out in Chapter 8 of the ES [APP-090]. This was accompanied by two appendices assessing in detail the potential impacts from the construction and operational phases [APP-247 to APP-248]. A third appendix describes the approach to assessment of amine degradation products [APP-249]. The accompanying figures illustrating the study areas were re-submitted following the change requests; the latest versions were received at D12 [REP12-046 to REP12-049].

Background monitoring

- 5.4.7. Baseline air quality data were derived from RCBC ambient monitoring data, Air Quality Management Area data and Defra's background mapping. Background air quality surveys were carried out between December 2019 and March 2020 when the programme was ceased due to the national lockdown for COVID-19. Background data relating to the Pollution Information System (UK Centre for Ecology and Hydrology, 2017). Further information regarding baseline air quality is in section 8.4 of APP-090.
- 5.4.8. It was agreed with the EA that no background monitoring of amines would be undertaken at this stage due to the absence of accredited methods [paragraph 8.4.8, APP-090]. Background concentrations were therefore assumed to be zero as a worst case.

Construction phase

- 5.4.9. Emissions of dust would be controlled through adoption of Best Practicable Means in line with the Institute of Air Quality Management 'Guidance on the assessment of dust from demolition and construction' (2014). This states that application of appropriate mitigation should ensure that residual effects would not normally be significant. Such mitigation measures are secured in the Framework CEMP [REP9-007].
- 5.4.10. An assessment of the emissions of NO₂ and PM₁₀ from non-road mobile machinery (NRMM) was undertaken in line with relevant guidance. Good practice would be employed for siting and operation of NRMM, which is also included in the Framework CEMP [REP9-007]. The Applicants concluded that the effects from NRMM emissions on human receptors would be insignificant because there are no sensitive receptors within

200m of the Order Limits. It was also concluded that any effects on protected sites would be insignificant because NRMM would be located over 100m distance from these, usage would be limited and emissions would be controlled by the Final CEMP [paragraphs 8.6.8 and 8.6.9, APP-090].

- 5.4.11. An assessment of NO₂, PM₁₀ and PM_{2.5} from the additional exhaust emissions caused by an increase in traffic during construction was undertaken applying the widely used dispersion model software 'ADMS-Roads' [section 8.3, APP-090]. The calculated effect of additional construction traffic on human receptors was negligible (section 8.6 of APP-090). The results for ecological sites are provided in Table 8-21 [APP-247] and a conclusion that the effects would be insignificant on biodiversity drawn in Chapter 12 [APP-094].

Operational phase - introduction

- 5.4.12. Emissions from the CCGT flue gas abated by the CCP include NO_x, CO, NH₃. There would also be some direct emission of amines and associated degradation products from the stack through 'amine slip'. Amines can degrade in the atmosphere to form other species, including N-amines, many of which are potentially carcinogenic. Details of the amine chemistry mechanisms likely to occur and specific parameters for the modelling were provided in Appendix 8C [APP-249].
- 5.4.13. Emissions from the CCGT HRSG stack were not assessed because it was judged that they would lead to lower impacts than emissions from the carbon capture absorber. The Applicants also stated that the CCGT stack would be sized appropriately to ensure that the unabated emissions would be no worse than those from the absorber stack [paragraph 8.5.8, APP-090].
- 5.4.14. The Proposed Development would be permitted under the EP Regulations. Permit conditions would ensure that environmental quality standards are not breached through application of emission limit values and Best Available Techniques associated emission levels (BAT-AELs). The EA published the '*Post-combustion carbon dioxide capture: best available techniques (BAT)*' guidance in July 2021, during the Examination. This specifically covers power plants that use amine-based technologies to capture CO₂ and has been referred to by the Applicants.

Operational phase – air dispersion modelling

- 5.4.15. Dispersion modelling was undertaken using the well-established atmospheric dispersion model 'ADMS'. A specific amine chemistry module was applied [APP-249] based on the EA's recommended approach [paragraph 8.2.42, APP-090].
- 5.4.16. The Applicants recognised that there was a high degree of uncertainty associated with the modelling of operational emissions [section 8.8, APP-090]. Most plant design parameters, such as the release temperature, are yet to be finalised. These parameters were therefore modelled at the lower and upper end of the potential ranges and reported emissions

broadly based on the permitted maximums. In addition, the technology licensors will not confirm the specific amines species present in their solvents due to commercial confidentiality issues. The assessment of amines has therefore been carried out using worst-case assumptions to ensure a conservative assessment [paragraph 8.2.36, APP-090]. An Air Quality Assessment Level is available for N-nitroso-dimethylamine (also known as NDMA), one of the potential degradation products. This is the most widely studied nitrosamine due to its toxicity. This level was applied to all N-amines to produce a conservative assessment [paragraph 8.2.15, APP-090].

- 5.4.17. The final stack heights can only be determined following the Front End Engineering Design (FEED) process, so a likely range of between 80m and 120m was modelled. The main reported emissions are for a stack height of 115m above ground level with an internal stack diameter of 6.6m. If the final building heights are reduced, then the stack heights may also be reduced. The Applicants stated that any changes in this parameter would be subject to further modelling to ensure that predicted impacts remain within those presented in the ES [section 8.2, APP-090]. There was also uncertainty about the absorber stack location, which was consequently modelled at all four corners of a defined area of the PCC Site and the worst-case results reported [paragraph 8.2.40, APP-090].
- 5.4.18. There is also uncertainty around levels of emissions during start-up and shut-down of the CCGT in abated mode given the novel nature of the carbon capture technology. The Applicants anticipate that details would become available during the FEED process. However, start-up and shut-down would be over short periods during which the gas flow rate would be lower than when fully operational. Emissions were therefore considered by the Applicants to be comparable to the steady state operation [paragraph 8.3.36, APP-090].
- 5.4.19. An assessment of operational traffic emissions was scoped out on the basis that there would be few additional movements [APP-241].
- 5.4.20. There could be several auxiliary boilers to provide steam for the plant at start up. These would be of small capacity, used for short periods and designed using best practice. They are not expected to give rise to significant impacts at receptor locations and were therefore not included in the detailed assessment [paragraph 8.3.37, APP-090].

Operational phase – assessment of the effects on receptors

- 5.4.21. It was predicted that the effects on human health from operational emissions of NO₂, CO, NH₃, amines and their associated degradation products would be insignificant and would remain within the appropriate environmental standards [paragraph 8.6.17, APP-090].
- 5.4.22. The worst-case, long and short-term effects on ecological receptors from NO_x and NH₃ were above the screening thresholds for significance at ecological receptors [table 8-11, APP-090]. The Applicants therefore undertook a second stage of screening that considers the process

contributions in the context of existing background pollutant concentrations. The outcome of this was that all predicted concentrations would remain below the appropriate critical level thresholds and are therefore not significant [section 8.6, APP-090].

- 5.4.23. Table 12-5 of ES Chapter 12 [APP-094] justifies scoping out all ecological sites in respect of air emissions with the exception of Teesmouth and Cleveland SSSI, Teesmouth NNR (part of the SSSI) and Lovell Hill Pools SSSI. NE was consulted by the Applicants and confirmed that the impacts were unlikely to produce a significant impact on habitats and dependent species at Teesmouth and Cleveland Coast SSSI [paragraph 12.6.52, APP-094]. This is discussed further in section 5.7 of this Report. It was also concluded that any air quality impact was unlikely to affect the habitat quality for dragonflies and damselflies at Lovell Hill Pools SSSI, and that there would be no potential for a significant effect on the integrity of the SSSI or conservation status of the assemblage [paragraph 12.6.65, APP-094].
- 5.4.24. The potential effects on the habitats supporting birds were considered in Chapter 15 [APP-097]. No significant impacts were predicted, in part because the affected area in Coatham Dunes is very small, the foreshore would be subject to tidal washing and the deposition rates would be imperceptibly low elsewhere [section 15.6, APP-097].
- 5.4.25. Modelling of the cumulative impacts of emissions from the Proposed Development and nearby schemes that have either received or about to receive planning permission has been undertaken [Annex C of APP-248]. This concluded that the cumulative impacts on local air quality would not result in significant effects.

Decommissioning phase

- 5.4.26. Detailed assessment of the effects on air quality during the decommissioning phase was not undertaken. This was on the basis that the effects would be comparable to or lower than construction impacts and vehicle fleet emissions would be expected to improve. In addition, best practice mitigation measures would be applied during any decommissioning works through the Decommissioning Environmental Management Plan (DEMP) required by R32 of the dDCO [paragraph 8.5.14, APP-090].

Examination Matters

Operational matters

- 5.4.27. Temperature is key to reducing N-amine emissions. We explored how the likely range of temperatures and implications for the dispersion of amines had been considered and how it could be ensured that the maximum operating temperature would be kept as low as possible. A process of limiting the temperature with a low-pressure steam supply from the CCGT was described by the Applicants to ensure that degradation from high temperatures (above 150°C) would be avoided. It was reiterated that the controls, including multiple water wash sections, potentially an

acid wash section and de-mister beds would be in place to achieve the emission limits relied upon in the assessment [ExQ1 AQ.1.15, REP2-016].

- 5.4.28. At ISH4 we requested an explanation of how the stated level of effects on air quality can be safeguarded without specifying a minimum stack height [EV8-006, Action 15]. The emissions are highly sensitive to this parameter and modelling results suggest that NO₂ concentrations at ground level increase rapidly once the stack is less than 90m in height [Diagram 8B-2, APP-248]. The Applicants responded to our follow up question on this [ExQ2 AQ.2.2, PD-016] to say that R3 of the dDCO requires that the height of the stack must be approved by the RPA as part of detailed design, and that it *"must be at a level at which the environmental effects will be no worse than those identified in chapter 8 of the environmental statement"* [REP6-121].
- 5.4.29. The EA asked for clarification on the application of its M1 monitoring guidance in respect of large stack diameters of 6.5m or 6.6m [REP3-027]. The Applicants stated [REP5-027] that the proposed diameters are within the normal range for a Large Combustion Plant and that the M1 guidance would be taken into account. At D6 the EA welcomed this commitment, stating that any resultant changes to the plant design must be reflected in the DCO and permit applications [REP6-132].
- 5.4.30. At D4 [REP4-041] RCBC requested that an odour assessment be submitted once the design is finalised. The Applicants responded to say that this would be a consideration for the EP [REP5-028]. Although no further response was received from RCBC on this matter, we note that there are no outstanding issues raised in their final SoCG [REP9-009].
- 5.4.31. We asked for more details of the number and location of auxiliary boilers, including emergency diesel generators. The Applicants clarified that there would be a single auxiliary boiler, likely to be electrically powered, which would provide heating in the event that the CCP starts before the CCGT. After CCGT shut down the boiler may also be used to provide heating to continue regenerating the amines. It is estimated the boiler could be in operation for up to 100 hours of operation per year. There would also be up to three generators for emergencies, with a maximum of 36 hours of testing per year. The locations of these are still not confirmed. However, such information must be provided to the EA as part of the EP application [ExQ1 AQ.1.8, REP2-016].

Methodology and modelling

- 5.4.32. We asked the Applicants to explain how data collected over a short, winter period is representative of a baseline level. They responded that it was only used for validation of the traffic modelling and was annualised in line with guidelines [ExQ1 AQ.1.6, REP2-016]. Questions were also asked regarding the likely margin of error associated with the model and the sensitivity testing in relation to meteorological inputs. The Applicants responded satisfactorily to all of these queries [ExQ1 AQ.1.10, REP2-016].

- 5.4.33. In response to ExQ1 AQ.1.7, the Applicants confirmed that higher emissions during start-up and shut-down applied to all pollutant species [REP2-016]. They stated that the associated uncertainty would continue until the FEED process was completed but reiterated that any increase in emissions during these periods would be for a short period, during which the gas flow rate would necessarily be lower and that no additional significant effects were therefore predicted.
- 5.4.34. NE confirmed that it was content the critical load data for ecological sites were appropriate [ExQ1 AQ.1.1, REP2-065]. At the same time, NE also confirmed that a screening distance of 200m for ecological sites is in accordance with its guidance. The RPAs were also asked to confirm whether 200m was an appropriate distance for protection of human health receptors [ExQ1 AQ.1.5]. STBC responded that it considered it an appropriate distance [REP4-044]. A response on this matter was not received from RCBC, but we note that there were no outstanding matters in its final SoCG [REP9-009].
- 5.4.35. The EA were unable to respond to several of our questions on the modelling because these were matters that it would consider when determining the permit (for example, REP2-062 in response to ExQ1 AQ.1.13 and AQ.1.16). We did, however, ask the EA [ExQ1 AQ.1.4] if it was content that emissions from the plant could be satisfactorily controlled via the EP regime. The EA responded that it would only issue the permit if satisfied that the operations would meet legal standards [ExQ1 AQ.1.16, REP2-062]. No points of concern regarding the methodology and modelling of air quality emissions were raised by any other IP.

The effects of NO_x at designated ecological sites

- 5.4.36. We asked questions about the margin of error in the modelling of annual average NO_x levels at the Teesmouth and Cleveland Coast SPA, SSSI and Ramsar site, given that these were predicted to be close to the critical level threshold of 70%. The Applicants responded that the area where this level of impact occurs is a very small proportion of the SPA. In addition, for the 70% threshold to be exceeded as result of the proposal, the contribution from the development would need to increase more than two-fold. They also drew our attention to the conservative assumptions in the assessment, in particular the assumption that NO_x emissions occur continuously and at the highest rate allowed, which is unlikely to be the case [ExQ1 AQ.1.10, REP2-016].
- 5.4.37. Predicted daily levels of NO_x were also questioned. At 21%, these are above the 10% screening criteria for significance and in combination with background levels, would result in 60% of the daily critical level at the Teesmouth and Cleveland Coast SPA, SSSI and Ramsar site being reached. The Applicants explained that even if the worst-case outputs from the sensitivity analysis are used, contribution from the development would be only marginally higher and the levels at the protected site would remain at approximately 61% of the critical level [ExQ1 AQ.1.10, REP2-016].

- 5.4.38. We also requested further details on the cumulative assessment of NO_x during operation at Teesmouth and Cleveland Coast SPA, SSSI and Ramsar site because the predicted annual average environmental concentration is 72% of the critical level, compared to a significance threshold of 70%. The Applicants explained that this does not necessarily mean that such effects are significant but indicates that further consideration of the potential impact is required. The critical level is designed to protect vegetation, rather than the breeding tern and avocet species that the SPA is designated for and is therefore conservative. It was also reiterated that the modelling is based on worst-case conditions [ExQ1 AQ.1.13, REP2-016].
- 5.4.39. NE responded to ExQ1 AQ.1.13 to state that the higher emissions of NO_x would be at Coatham Dunes, which are not identified as a key supporting habitat for the SPA, and that the Applicants' conclusion that the emissions would be insignificant in this respect is therefore correct [REP2-065].
- 5.4.40. However, NE stated that the sand dunes at Coatham Dunes are a special interest feature of the SSSI and that the rationale for concluding that a predicted concentration of 72% of the Critical Load is not significant was not clearly set out. NE recommended that a more detailed assessment be undertaken, which could take the form of a contour map for cumulative NO_x; if only a small proportion was affected then this would not be considered significant [REP2-065]. This matter was subsequently agreed between NE and the Applicants [REP13-018].
- 5.4.41. In response to our question regarding the cumulative effects of NO_x at Coatham Marsh SSSI from construction traffic the Applicants confirmed that the increase would be negligible and concentrations at the site would remain well below the critical levels [ExQ1 AQ.1.11, REP-016].
- 5.4.42. RCBC reiterated that due to modelling uncertainty and lack of final design, it recommends that a final air quality assessment should be submitted based on a precautionary approach [ExQ1 AQ.1.13, REP4-041]. The Applicants confirmed that final air quality modelling would be required as part of the EP [REP5-028].
- 5.4.43. The Applicants' statement that *'the impact of stack emissions can be regarded as insignificant at sites of local importance if the long- and short-term Process Contribution is less than 100% of the critical level'* was queried with IPs [ExQ1 AQ.1.14]. RCBC confirmed that this should be queried because this was not its interpretation of the guidance [REP4-041]. However, NE responded to say that it is in line with the EA's air emissions guidance for environmental permitting [REP2-065] and the Applicants have provided evidence of this [REP5-028].

Examining Authority's Response

- 5.4.44. The Applicants have satisfactorily answered all our queries regarding the methodology and modelling of the effects on air quality. Based on the

information before us we are satisfied that air emissions have been appropriately described as required by EN-1.

- 5.4.45. No significant adverse effects are predicted from construction works. Best practice and mitigation for dust emissions and NRMM would be secured via the Final CEMP (R16). The effects of emissions from construction traffic have been demonstrated to be negligible. We are also satisfied that it is likely the decommissioning phase would give rise to a similar level of effects once mitigated and that this is secured via the DEMP (R32).
- 5.4.46. The results of dispersion modelling of emissions to air during operation are necessarily indicative because a detailed design has not yet been completed and the technology is still emerging in respect of amines. However, we are satisfied that the assessment is conservative and accept that there are unlikely to be significant effects from emissions on human health or the environment during the operation of the Proposed Development. In coming to this conclusion, we have considered in detail the potential effects of NO_x on protected sites, the potential variation in emissions during the year, and the uncertainty around stack heights and modelling of novel amine technology. No queries from IPs remain outstanding.
- 5.4.47. R3 of the dDCO [REP12-003] requires that the height of the stack (singular) must be at a level at which the environmental effects will be no worse than those identified in ES Chapter 8. The Recommended DCO amends R3 to ensure that the emissions from all stacks are controlled.
- 5.4.48. The EA emphasised that air quality dispersion modelling, mitigation and monitoring would all be reviewed as part of the EP process for the plant and that this would ensure that statutory air quality limits and BAT-AELs are met. We are satisfied that operation of the PCC Site would be adequately controlled via the pollution control regimes.

Conclusions

- 5.4.49. The Applicants have satisfactorily described the significant air emissions and mitigation of these, as required by section 5.2 of EN-1 and the draft EN-1.
- 5.4.50. Best practice, mitigation and monitoring of emissions, including those from dust and NRMM during construction and decommissioning would be secured via the Final CEMP (R16). Based on this, we are satisfied that there would not be significant adverse effects during construction.
- 5.4.51. Although air dispersion modelling is highly indicative, we are satisfied that the Proposed Development can in principle achieve statutory limits during operation. These would be controlled through an EP to ensure that all appropriate limits are met, with additional approval from the RPAs via R3 of the dDCO to control the height of stacks.
- 5.4.52. Matters relating to air quality and emissions therefore have no effect on the planning balance.

5.5. DESIGN AND LANDSCAPE AND VISUAL EFFECTS

Introduction

- 5.5.1. Two issues are considered in this section, namely design and landscape and visual effects. They were jointly listed in the IAPI [Annex C, PD-009], including the methodology, effects on landscape character, visual effects on the landscape and sensitive receptors, together with landscaping and lighting. A range of issues were raised both in writing and orally at hearings during the Examination.

Policy Considerations

National Policy Statements

- 5.5.2. EN-1 refers to design in section 4.5, and landscape and visual effects in section 5.9. EN-2 cross-references to EN-1, and specifically considers fossil fuel generating stations. Applicants are required to demonstrate the evolution of the proposed design and set out reasons for selected options (paragraph 4.5.4). Applicants are encouraged to take independent professional advice on design aspects (EN-1 paragraph 4.5.5).
- 5.5.3. In reaching a decision on design matters the SoS should be satisfied that both function and aesthetics have been taken into account, that developments are sustainable and, having regard to other constraints, are as attractive, durable and adaptable as possible. Good design should be demonstrated in terms of siting relative to existing landscape character, landform and vegetation, and the design and sensitive use of materials should assist in ensuring that such development contributes to the quality of the area (EN-1 paragraphs 4.5.1-4.5.3).
- 5.5.4. Applicants are expected to demonstrate how siting and the use of appropriate technologies have been used to mitigate adverse effects and thereby contribute to good design (EN-1 paragraphs 4.5.2 and 4.5.5).
- 5.5.5. Paragraph 5.9.1 of EN-1 clarifies that references to 'landscape' should be taken as covering seascape and townscape where appropriate. Such effects do not only relate to buildings; paragraphs 5.9.2 to 5.9.4 highlight that visible steam plumes can also have impacts on landscape and visual amenity. Paragraphs 5.9.5 to 5.9.7 require applicants to carry out a landscape and visual assessment (LVIA) for both construction and operation stages of the Proposed Development.
- 5.5.6. EN-2 at paragraphs 2.6.2 to 2.6.4, in reference to fossil fuel generating stations, recognises the impact that the scale of the main structures including the plant and stack(s) will have on the surrounding landscape and visual amenity. Paragraph 2.6.5 states that *"It is not possible to eliminate the visual impacts associated with a fossil fuel generating station. Mitigation is therefore to reduce the visual intrusion of the buildings in the landscape and minimise impact on visual amenity as far as reasonably practicable"*.

- 5.5.7. In relation to fossil fuel generating stations, EN-2 paragraph 2.6.10 specifies that, having regard to the considerations in respect of other impacts set out in both EN-1 and EN-2, if the SoS is satisfied that the location is appropriate for the project and that it has been designed sensitively to minimise harm to landscape and visual amenity, the visibility of a fossil fuel generating station should be given limited weight.
- 5.5.8. The NPPF at section 12 sets out that achieving good design is a key aspect of sustainable development. The need to take account of the National Design Guide and National Model Design Code is noted in paragraphs 128 and 134 (footnote 52). Paragraph 130 sets out that decisions should ensure that development should meet a number of criteria relating to design and goes on to say that development that is not well designed should be refused. Section 14 refers to landscape and visual impacts of renewable or low carbon energy developments and section 15 seeks to protect and enhance valued landscapes and maintain the character of the undeveloped coast while improving public access to it where appropriate.
- 5.5.9. Policy NE-SCP-1 of the North East Marine Plan is also of relevance in requiring that proposals ensure the location, scale and design of proposals takes account of the character, quality and distinctiveness of the seascape and landscape.
- 5.5.10. Relevant development plan policies regarding design and landscape are summarised at paragraphs 17.2.16 to 17.2.32 of ES Chapter 17 [APP-099]. More locally and site-specific, the South Tees Area SPD [REP2-054] sets out development principles for the North Industrial Zone at STDC11 (within part of which the PCC Site is proposed). Whilst there are no specific policies relating to design or visual impact within the SPD, the Teesworks Design Guide for Development [REP2-055] (the Design Guide) and the South Tees Regeneration Masterplan 2019 [REP2-053] (the Masterplan) have been separately produced by STDC to guide development on the wider Teesworks site. It should be noted that only the SPD forms part of RCBC's development plan.

The Applicants' Case

- 5.5.11. ES Chapter 17 [APP-099], its Appendices 17A to C [APP-335 to APP-337], and Figures 17-1 to 17-18 (including viewpoint visuals at 12 locations and as updated) set out the Applicants' LVIA case within the ES. Other relevant documents for this topic include the Design and Access Statement (DAS) [REP12-030], PCC Site layout and elevation plans [REP12-021, REP12-022, AS-153 and AS-154], the landscaping and biodiversity plan [REP12-027], the PCC layout overlaid with structure for demolition [REP2-022], the Indicative lighting strategy [AS-017] and the PCC Site topographic survey [REP2-056].
- 5.5.12. The assessment methodology is set out in Section 17.3 of ES Chapter 17 [APP-099] and Appendix 17B [APP-336]. The assessment of landscape value, magnitude of landscape impacts, and overall assessment of the significance of landscape effects is based on a number of criteria in

accordance with the Guidelines for Landscape and Visual Impact Assessment (GLVIA3) (section 17.2, APP-336]. Visual assessment methodology is set out in paragraphs 17.3.14 to 17.3.19 [APP-099] and section 17.3 of Appendix 17B [APP-336], with the overall significance of visual effects being a combination of the sensitivity of the visual receptor and the magnitude of the visual impacts. Levels of effect are summarised in Table 17B-17 [APP-336].

- 5.5.13. In terms of the Rochdale Envelope, the assessment is based on the largest possible dimensions for the Proposed Development as representing the worst-case scenario; the widest building footprint and tallest potential height (paragraph 17.3.21 of APP-099]. The maximum dimensions are detailed in Table 4-1 of Chapter 4 [AS-019]. These include a range of the most visible structures which are proposed primarily as part of the PCC Site (Work Nos. 1 and 7) including an absorber stack at 128mAOD (115m above ground level), and heat recovery steam generator at 110mAOD.
- 5.5.14. The study area, defined by a combination of Zone of Theoretical Visibility (ZTV) analysis and professional judgement, is assessed at 10km for the PCC Site based on the tallest element of the works. The other above ground structures including AGIs and substation works have a smaller study area of 2km based on the scale of the works.
- 5.5.15. ES Chapter 8 [APP-090] is also of relevance in relation to visible plumes. The worst-case scenario assessment relates to the 35° release which would vary from a 21m visible plume for up to 40% of the time, reducing to 4% of the time for a plume over 115m in length.
- 5.5.16. In terms of cumulative assessment, the methodology at Section 17.4 of Appendix 17B [APP-336] follows GLVIA3 which requires that the baseline includes additional changes to the baseline landscape or visual resources as a result of other existing developments.

The Baseline

- 5.5.17. The existing landscape baseline is informed by a range of landscape character assessments. Nationally, there are three of NE's National Character Area (NCA) profiles within the 10km study area; Durham Magnesian Limestone Plateau (NCA profile 15), Tees Lowlands (NCA profile 23), and North York Moors and Cleveland Hills (NCA profile 25). The relevant characteristics of each NCA are detailed at Table 17A-1 [APP-335].
- 5.5.18. In terms of the marine environment, the assessment refers to the MMO's Marine Character Area profiles. The Tyne, Tees and Wear Estuaries and Coastal Waters profile (Marine Character Area 22) lies within the 10km study area, and its relevant characteristics are detailed within Table 17A-2 [APP-335].
- 5.5.19. On a more local level, the study area is covered by three landscape character assessments (LCAs) published by RCBC (2006), STBC (2011) and HBC (2000). These are detailed in Tables 17A-3 to 17A-5 of

Appendix 17A [APP-335]. Figure 17-3 [REP12-102] illustrates that the Proposed Development crosses a number of LCAs, with the PCC being situated wholly within NCA 23 (Tees Lowlands) and on the edge of RCBC landscape character tract 'Redcar Flats'.

- 5.5.20. Paragraphs 17.4.24 to 17.4.33 [APP-099] describe the baseline characteristics of the study area including the sparse vegetation cover, reflecting its coastal location. Topography is relatively flat until it rises up to Eston Moor to the south-west. The River Tees flows through the centre of the study area into the Tees Mouth estuary and the North Sea. Settlements within the study area include the city of Middlesbrough, the towns of Redcar and Hartlepool and seaside resorts of Seaton Carew, Marske-by-the-Sea and Saltburn-by-the-Sea. A number of main roads and PRoWs run through the area including long distance routes. The England Coast Path and the Teesdale Way are coastal routes proximate to the PCC Site.
- 5.5.21. There are no designated landscapes in the study area. Local landscape areas and features are set out at Table 17-2 of ES Chapter 17 [APP-099], The assessment concludes the overall landscape value of the study area to be 'medium', the site to be 'low' and the PCC Site to be 'very low'.
- 5.5.22. Thirty-two viewpoints within the ZTV study area were identified for potential further consideration in the LVIA which are listed at Table 17C-1 [APP-337] and shown visually at Figure 17-4 [REP12-103]. From these, and following consultation with the local authorities, a total of 12 representative viewpoints were selected for inclusion in the final LVIA, the following locations as shown at Figure 8 [Figure 17-8, REP12-105] below. The locations highlighted in bold are those that were selected for additional photowires and photomontages at Figures 17-19 to 17-30. The description and value of each of the 12 viewpoints as assessed by the Applicants is summarised in Table 17-3 of ES Chapter 17 [APP-099].
- 1) Albion Terrace, Hartlepool
 - 2) The Cliff, Seaton Carew**
 - 3) Teesmouth National Nature Reserve
 - 4) North Gare Sands**
 - 5) South Gare Breakwater
 - 6) Cowpen Bewley Country Park
 - 7) England Coast Path, Warrenby**
 - 8) Redcar seafront**
 - 9) Coatham Marsh Nature Reserve
 - 10) Eston Nab
 - 11) Longbeck Lane
 - 12) Carpark off A1085 Coast Road, Marske-by-the-Sea

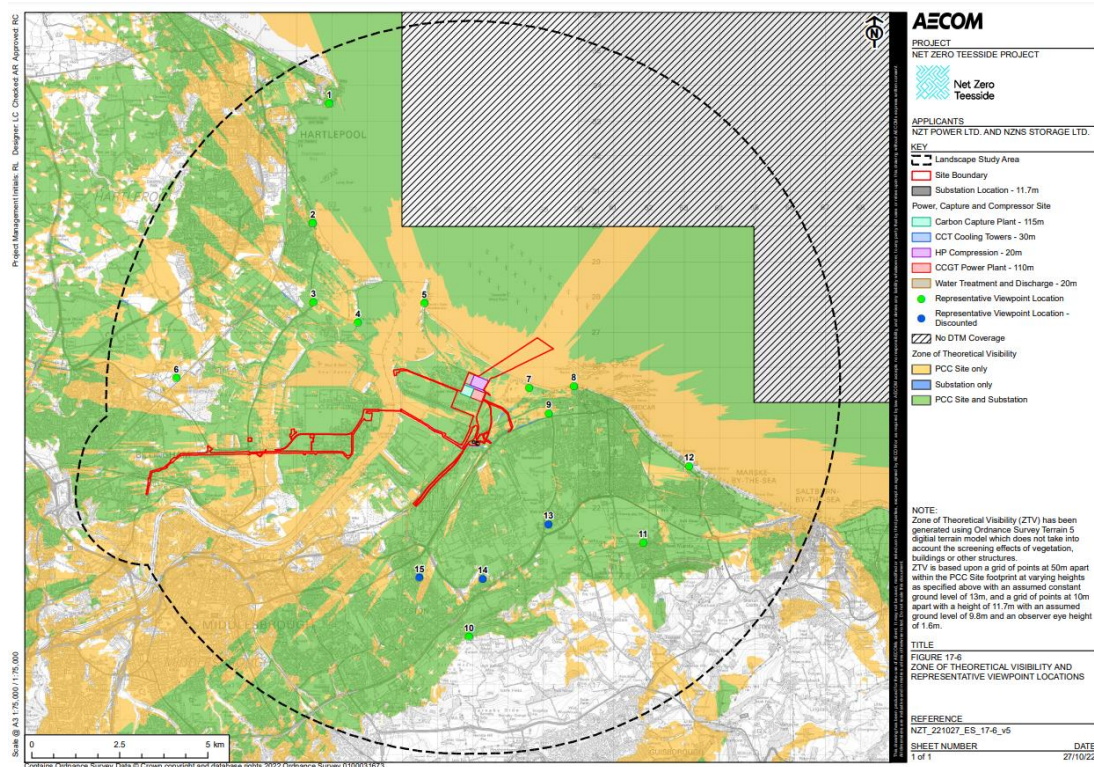


Figure 8: ZTV and Representative Viewpoint Locations

Impacts and Effects

- 5.5.23. Likely impacts and effects are considered in Section 17.6 of ES Chapter 17 [APP-099]. Table 17-4 summarises the landscape sensitivity assessment of each of the landscape character areas, with the Eston Hills (RCBC LCA) and the Coastal Fringe (HBC LCA) being assessed as having the highest sensitivity. Tables 17-5 to 17-6 assess effects on landscapes during construction, on opening (year 1), and during operation (year 15).
- 5.5.24. The visuals indicate a representation of the scale of the key elements of the PCC site as set out in Table 4-1 of ES Chapter 4 [AS-019] and the indicative layout as illustrated on Figure 4-1 [REP12-039]. The proposed substations at the PCC Site and at Tod Point are not included on the visuals, as they were considered to be inconsequential in the context of the larger proposed structures and surrounding industrial installations.
- 5.5.25. Visual effects on each of the representative viewpoints are set out in Table 17-8 of ES Chapter 17 [APP-099]. The table details the visual susceptibility to change, receptor types and their sensitivity, the value of the views and the magnitude of impact and significance of effect at construction, opening and during operation. Decommissioning effects are considered to be similar to those identified at the construction stage. Table 17-9 summarises the effects, indicating that significant effects are predicted on visual amenity at viewpoints 5 (South Gare Breakwater) and 8 (Redcar seafront) during construction only, and at viewpoint 7 (England Coast Path, Warrenby) at all phases. This is as a result of the sites' close proximity to the PCC Site and limited intervening vegetation.

- 5.5.26. Cumulative developments considered in the assessment are illustrated on Figure 24-1 [Sheet 2 of 3, REP12-111]. A total of 13 other developments are scoped into the cumulative visual assessment and are assessed in Table 17-15 [APP-099]. In summary, the cumulative viewpoint assessment identifies the cumulative effect as being the same overall classification of effects on each viewpoint as for the Proposed Development alone.
- 5.5.27. Section 17.5 of ES Chapter 17 [APP-099] considers mitigation, with the sole mitigation measure noted to be addressed through the design of the Proposed Development, including siting, materials and colours. The classification of effect would remain the same after such mitigation. The visual impact of lighting as proposed in the Indicative Lighting Strategy [AS-017] is also considered on the viewpoints that may be affected.

Design

- 5.5.28. The application includes a DAS [REP12-030]. It sets out to demonstrate how regard has been had to the surrounding context and to good design principles as required by national and local policy. It explains the design parameters used for the purposes of the EIA, and how the design information can be ultimately controlled and secured.
- 5.5.29. Its main focus is on the PCC Site, which the DAS explains sits within an industrialised context dominated by industrial and port related uses and relatively remote from residential areas [sections 3.3 to 2.5, REP12-030]. It refers to STDC's Design Guide, its development zones and its design principles for Teesworks at section 4.6. A summary of how the Proposed Development would comply with a number of development principles within the SPD was provided in the updated Planning Statement [Table 6.4, REP1-003].
- 5.5.30. Section 5.0 explains the reasons for the need to incorporate flexibility into the design and layout. The design approach is set out in section 6.0, and further explained in terms of appearance at section 7.6. It notes that the appearance of the buildings and structures is representative of their function and purpose, a characteristic of the Design Guide typology 'Large scale industrial operations'. It states that the buildings and structures at the PCC Site would be simple and functional in form and detailing, predominantly comprising steel framed enclosures clad in appropriate materials.
- 5.5.31. Design development and evolution is set out at section 6.3, explaining how the design has been refined, largely in terms of its scale. Potential design options were put to the local community and other stakeholders at Stage 2 consultation, with a selection of images presented at Figure 6.2 and Appendix 1 of the DAS [REP12-030].
- 5.5.32. It is envisaged that external finishes would predominately comprise metal cladding and concrete. External finishes may include flat and profiled cladding in lighter colours to soften the appearance of the structures against the sky and the sea. It confirms that a decision on

external finishes would be made at detailed design stage post consent, secured by R3 of the dDCO. A 3D visualisation of the PCC Site provided at Figure 7.3 and AS-153 is reproduced below at Figure 9 [AS-153].



Figure 9: 3D visualisation of PCC Site

- 5.5.33. Landscaping is described at section 7.7 of the DAS. Function and safety requirements mean that the only opportunities for planting would be around the perimeter of the PCC Site, including wildflower grassland and native scrub creation. The areas between and around the main structures are likely to comprise hardstanding and crushed stone. Security fencing would bound the perimeter of the PCC Site [section 7.7, REP12-030].
- 5.5.34. The DAS summarises that the Proposed Development would represent '*good design*' for the purposes of national and local planning policy [section 10, REP12-030].

Examination Matters

- 5.5.35. LVIA and design matters were not raised within any RRs nor within STBC's LIR. NE confirmed that the project would not affect any protected landscapes [RR-026].
- 5.5.36. RCBC commented on the LVIA at sections 9.6 to 9.9 of their LIR. It noted that the methodology was appropriate and included representative viewpoints. It acknowledged the potential for significant adverse effects from viewpoints 5, 7 and 8 and recognised that mitigation for such developments is challenging. RCBC accepted that an appropriate mechanism for minimising adverse impacts is through the appropriate siting of infrastructure and the use of suitable materials (including colour), secured through R3 of the dDCO [REP1-046].
- 5.5.37. We visited the majority of the viewpoints as part of USI1 and USI2 [EV1-001 and EV-003], where publicly accessible. We also took longer range views of the PCC site not included in the LVIA, including from Saltburn-

by-the-Sea. South Gare in the region of viewpoint 5 was viewed as part of ASI 1 [EV1-002].

LVIA: Methodology and Baseline

- 5.5.38. The Applicants provided clarification of and a range of further information in relation to the baseline for the LVIA. We questioned the altered baseline, regarding new developments and demolition carried out since the viewpoint photography was produced. The Applicants stated that the removal of some former steelwork structures represented relatively minor changes in the view and confirmed that no significant new buildings or infrastructure had been constructed [ExQ1 DLV.1.7, REP2-016].
- 5.5.39. At the time of D2, the larger structures were still in place, as they were at all of our site inspections [EV-001 to EV-003]. However as previously explained, we are aware that there has since been more widespread demolition of structures associated with the former steelwork structures, including the blast furnace.
- 5.5.40. Nonetheless the LVIA considers a 'modified' baseline where the structures on land adjacent to the PCC Site are no longer present, and photomontages are provided to this effect [APP-219 to APP-228]. Therefore, the Applicants did not consider revised or additional visuals of the viewpoints to be necessary [DLV.1.7 (iii and v), REP2-016]. A more detailed review of the baseline was provided by the Applicants in response to ExQ1 DLV.1.7(ii) at D6 [REP6-125]. This did not identify any changes to the original assessment in terms of the landscape baseline as reported in ES Chapter 17 [APP-099].
- 5.5.41. The RPAs confirmed that they were satisfied with how the baseline conditions had been established and did not consider that any amendments were required to reflect changes, including demolition and new structures, and that night-time photography was not required [REP2-094 and REP4-044].

LVIA: Viewpoints

- 5.5.42. We questioned the selection and quality of representative viewpoints [ExQ1 DLV.1.8, DLV.1.16 and DLV.1.17, PD-012]. Further consideration of viewpoints from Seaton Carew and Saltburn-by-the Sea was invited from both the Applicants and the RPAs. The Applicants considered that viewpoints 1, 2 and 4 were representative of recreational receptors and visitors to these coastal locations, and alternative or additional locations would be unnecessary as the (non-significant) effects would be similar to those viewpoints already provided [ExQ1 DLV.1.16 and DLV.1.17, REP2-016].
- 5.5.43. RCBC said they were satisfied with the viewpoint locations and quality of the visualisations and did not request any additional viewpoints (including Saltburn) in both their response to DLV.1.8 [REP2-094] and at ISH4 [EV8-001 to 006]. STBC were also satisfied with the information provided and had nothing further to add [REP4-044].

- 5.5.44. Following USI1 [EV1-001], we had concerns that photography was not taken from a location which would be sufficiently representative for receptors. The photograph had been taken on a junction on the landward side of Cliff Road rather than the promenade side, with the foreground cluttered by street furniture.
- 5.5.45. Consequently, at ISH4 [EV8-006] we requested updated visualisations for viewpoint 2 at Seaton Carew. The Applicants subsequently provided updated viewpoint photography [REP6-093 and 094, and REP11-006]. They did not consider the baseline and subsequent LVIA within ES Chapter 17 [APP-099] to change as a result, with a minor adverse effect during construction and negligible adverse effect at opening and during operation which was considered to be not significant [REP6-125].
- 5.5.46. No responses were received from HBC to any of the written questions (ExQ1 DLV.1.8, ExQ2 DLV.2.5 and ExQ2 DLV.3.2) regarding whether they were satisfied with the amended visuals from Seaton Carew, nor landscape and visual impact on the Hartlepool area generally.
- 5.5.47. Only the structures within the PCC Site are included in the ZTV mapping to inform the LVIA. We asked whether the proposed substation at Tod Point should also be included. The Applicants answered that when the scale of the substation elements was considered in the context of the larger structures and surrounding industrial installations they would not result in any significant landscape and visual effects. An updated ZTV was appended [Appendix DLV.1.10, REP2-020] to demonstrate this.
- 5.5.48. The Applicants clarified that the maximum heights set in ES Chapter 4 [AS-019] would represent the worst-case scenario, but that Schedule 15 (Design Parameters) of the dDCO did not seek to restrict or define actual ground levels given the cut and fill balance of earthworks [ExQ1 DLV.1.9, REP2-016]. A level of 7.3mAOD has been adopted in STDC's reclamation strategy; meaning no material would need to be imported or exported from the site to form the development platform. This was further clarified in the Applicants answer to ExQ2 DLV.2.3 [REP6-121].
- 5.5.49. The Applicants were also asked if a lower height but increased width of structures would have an effect on the LVIA. The Applicant replied that while the increased widths of structures could increase their presence in the view it is considered that this would be counteracted by the reduction in overall height and as such visual impacts would be similar or less than those related to the maximum height delivery scenario. The existing baseline of the Site and surrounding area includes a combination of both broad and narrow large scale industrial buildings and structures of differing heights to which both of the delivery scenarios could relate [ExQ1 DLV.1.11, REP2-016].
- 5.5.50. The landscape baseline and mitigation were considered in ExQ1 DLV.1.12, 13 15. The Applicants explained how the vegetation cover baseline was established and confirmed that whilst there were no trees or landscaping features of importance within the connection corridors, the configuration of the Proposed Development avoids the need for

removal of mature trees [ExQ1 DLV.1.12, REP2-016]. They also clarified that restoration of any vegetation removed is set out in Table 25-1 of the Commitments Register [REP9-005] in relation to ES Chapters 12 [APP-094] and 15 [APP-097] and would be secured by R4 of the dDCO [REP12-003]. It was also clarified that possible additional planting was discounted as mitigation, as it would be largely out of character with the local landscape, difficult to establish and inappropriate due to the exposed coastal location which is subject to ecological designations [DLV.1.15, REP2-016]. RCBC confirmed their acceptance of this at ISH4 [EV8-001 to 006].

- 5.5.51. The MMO confirmed in their SoCG [REP13-016] that the assessment of landscape and seascape effects was appropriate (and as such no viewpoints from the seascape would be necessary).

Design

- 5.5.52. We highlighted in ExQ1 that a number of national policy and guidance documents relating to design did not appear to have been considered within the DAS. The Applicants responded that the documents had not been included in their considerations as they were introduced in 2021, late in the pre-application stage. They considered the National Design Guide and the National Model Design Code to be of very limited relevance to the proposed development [ExQ1 DLV.1.1i, REP2-016], given their lack of guidance on energy infrastructure or NSIPs.
- 5.5.53. The guidance within NIC's Design Principles for National Infrastructure (2020) is directly applicable to NSIPs. The Applicants provided a more detailed response in respect of its' four principles (climate, people, places and value). However, no details were given regarding other guidance within the document in terms of design review, which reiterates the recommendations in the National Infrastructure Assessment. The documents identify the need for championing of good design at board level on projects and recommend design review panels should be set up for every NSIP.
- 5.5.54. We followed up this matter at ISH4 [EV8-001 to 006]. We highlighted that the NIC documents state that good design should be prioritised from an early stage, and all major infrastructure projects deserve to have design review panels which need to be involved early enough for their advice to shape project design. Such panels would advocate for improvements to design that would improve the outcomes of the project, taking advantage of opportunities to achieve better value.
- 5.5.55. The Applicants replied that there had been no design champion on the project to date but would give it further consideration. They pushed against the use of a design panel and cited other projects where it had not worked successfully or had led to excessive additional costs. RCBC said at ISH4 that they had no objection to the use of a design panel being included in the provisions of R3, and such a panel would involve working with STDC as landowners [EV8-001 to 006].

- 5.5.56. We continued to pursue matters of design and potential use of a design panel or champion further at ExQ2. In response, the Applicants confirmed that they do not consider this approach is proportionate or necessary to secure good design, citing the need for flexibility and the lack of feedback to design options presented at pre-application stage. RCBC, in consultation with STDC, would be able to control the final design including its external appearance and use of materials. STDC would have the opportunity to comment on the compatibility of the design with their Design Guide. Therefore, the Applicants considered that R3 would provide a sufficient degree of control and a design panel or champion is not required [ExQ2 DLV.2.1(i & ii), REP6-121].
- 5.5.57. Through ExQ1 DLV.1.2 and DLV.1.5 we sought clarification of potential compliance with more localised design guidance as set out in the Teesworks Design Guide for Development (the Design Guide), together with the Masterplan and SPD. The Applicants explained that the Masterplan and Design Guide have no formal planning status, and this was confirmed by RCBC at ISH4. The Applicants confirmed the Order land lies within the Northern Industrial Zone (NIZ) which has been broadly divided into three development zones; The Foundry, NZT and RBT. The PCC Site broadly corresponds with the extent of the NZT zone as shown on Figure 4 in the Design Guide [REP2-055] and replicated below.



Figure 10: Teesworks Development Zones

- 5.5.58. The Applicants considered that the Proposed Development in terms of its use, location and extent is consistent with the aims of the Design Guide for the NIZ. They highlighted in their response that the PCC Site is less sensitive from a design perspective as compared to a 'gateway plot' or

the infrastructure corridor, and that it would have a functional form, reflective of the industrial character of the area [REP2-016].

- 5.5.59. ExQ1 DLV.1.4 questioned monitoring of materials and finishes. The Applicants repeated some of the content of the DAS in their response and reiterated that R3(1) would appropriately secure matters of detailed design including materials, which the RPA would have the power to refuse if it was not satisfied with the final design.
- 5.5.60. RCBC in their response to DLV.1.4 stated that monitoring of the materials could be included as part of R3, through submission of a compliance statement to ensure implementation. We followed this up at ISH3 [EV6-001 to 010] and ISH4 [EV8-001 to 006], where RCBC admitted that due to resource constraints monitoring was unlikely to be carried out. They would expect development to be carried out in accordance with the approved design details and materials. The Applicants noted that any divergence from approved details would constitute an offence, and that there are limits to the scope of the discretion of the RPA.
- 5.5.61. At ISH4 [EV8-001 to 006], we also explored the potential for the PCC Site as being a 'strong visual beacon' as set out in typology C5 of the Design Guide [REP2-055] (and quoted at paragraph 4.6.10 of the DAS). We highlighted the status of the blast furnace and associated former steel works infrastructure as a local landmark, and the prominent coastal location of the PCC Site proximate to recreational destinations and PRowS. Design typology C5 'Large scale industrial operations' [p.39 to 42, REP2-055] provides some useful design guidance, including shape and cladding of such large structures. It was explored whether there was any scope for an individual and high-quality design, perhaps an iconic structure, reflecting its coastal location and 'First of a Kind' status. The Applicants were asked if they could refer to good practice used at any other NSIPs or other power stations. Finally, they were asked if any further indicative plans or elevations were likely to be available before the end of the Examination as the FEED process progresses.
- 5.5.62. In response, the Applicants highlighted that no responses had been received at pre-application stage relating to design, re-iterated that the site did not occupy a 'gateway' plot, and the LVIA had identified the visual effects as moderate significant. It was explained that functionality and safety were key to the design of the PCC Site, and a balance has to be struck between cost effectiveness and design. They quoted other developments that had been made unviable in having an iconic design. In terms of further refinement of plans, the Applicants considered that following FEED the structure were likely to be smaller and more compact than as assessed. They would be simple structures made to blend in rather than stand out [REP5-027]. However, no refinement of design details was provided by the Applicants before the end of the Examination.
- 5.5.63. RCBC accepted that the blast furnace represented an iconic structure on the Teesside skyline, and that there had been controversy over its demolition, however retention of iconic industrial structures comes at a

cost. They recognised the 'First of a Kind' status of the Proposed Development and provided assurances that they would go as far as possible in promoting good design, inferring their support for a 'landmark' structure [EV8-001 to 006].

- 5.5.64. Following ISH4, further consideration was given by the Applicants to whether amendments to R3 were appropriate. In their post-hearing note [REP5-027] the Applicants confirmed an update to the dDCO in order to specify that the detailed design of Works Nos. 1 and 7 must be in accordance with sections 7 (design components) and 8 (access arrangements) of the DAS, which have been informed by the SPD and Design Guide. Schedule 14 of the dDCO [REP5-002] was also updated to include the DAS as a certified document.
- 5.5.65. Following up from our suggestion of a 'landmark' type structure at ISH4 and ExQ2 DLV.2.1, the Applicants did not consider this necessary or appropriate to deliver good design at the PCC Site. The blast furnace was not designed or constructed to be iconic but formed a functional part of the steel works; it became a landmark and iconic due to its prominence with the local landscape for a number of decades and its historic association with steel making in the Redcar area. They stated that the character of the local landscape is undergoing significant change with the removal of the large steel works structures and there will be further significant change in the future as the Teesworks site is redeveloped, which will affect the way that the Proposed Development is perceived within the area. Other developments will provide the opportunity to create new local landmarks if appropriate. They stated that an attempt to introduce 'landmark' elements would increase the prominence of the Proposed Development at a time when large, man-made, dominating influences are being removed from the local landscape [ExQ2 DLV.2.1(i & ii), REP6-121].
- 5.5.66. RCBC in their response to ExQ2 DLV.2.1 and ExQ3 DLV.3.1 [REP11-022] confirmed they would encourage development of a 'landmark' type structure with design merit on the PCC Site, given it will be one of the first of its kind in the UK and its prominence at the entrance of the River Tees. They confirmed it would be appropriate to consult and work together with STDC on the final design to ensure that design and quality objectives of both RCBC and STDC are met in accordance with the SPD supported by the Design Guide and Masterplan.
- 5.5.67. RCBC accepted that R3 as amended, with reference to the DAS, would provide a sufficient basis to secure a high-quality design of the development of the PCC Site. Finally, it provided assurances that it has the necessary expertise and resources to take on the post-consent design approval, but if an external design review is considered appropriate then any additional resources to support this process should be the responsibility of the Applicants [ExQ3 DLV.3.1 REP11-022]
- 5.5.68. The SoCG with RCBC also provides agreement on the following, [REP9-009] although it should be noted that the above response to ExQ3 was submitted after the final SoCG:

- the design of the Proposed Development is considered acceptable in terms of its site, location and policy context;
- the viewpoints considered provide a representative assessment of the Proposed Development;
- an appropriate mechanism for minimising adverse impacts is through the appropriate siting of infrastructure, including the use of suitable materials (colour); and
- it is agreed that this will be secured through R3 of the dDCO.

Mitigation

- 5.5.69. We sought to establish whether there was scope for any further mitigation other than through design as stated in section 17.7 of ES Chapter 17 [APP-099]. The Applicants responded to ExQ1 DLV.1.16 in terms of the significant long term adverse effects for visual receptors at viewpoint 7 (England Coast Path, Warrenby). Whilst the potential for offsite planting adjacent to this location was considered, it was discounted because woodland planting would be out of character with the local landscape and be difficult to establish due to the exposed coastal location. The area is also covered by ecological designations related to coastal habitats therefore planting is not considered appropriate in this context [REP2-016].
- 5.5.70. The matter was clarified at ISH4 [EV8-001 to 006], where the Applicants stated that there was no landscaping that could mitigate the adverse visual effects, and instead the emphasis in the Landscape and Biodiversity Strategy was on biodiversity aspects. At the hearing RCBC agreed that it was impossible to screen the Proposed Development but matters of detail including breaking up space or adding interest between buildings could be agreed under R4 of the dDCO.
- 5.5.71. The Applicants also confirmed that restoration of any vegetation removed during construction would be dealt with by the Landscape and Biodiversity Strategy as set out in Table 25-1 of the Commitments Register [REP9-005] and secured by R4 of the dDCO [ExQ1 DLV.1.13, REP2-016].

Examining Authority's Response

- 5.5.72. Whilst acknowledging the lack of representations from IPs, there were a number of outstanding concerns relating to LVIA and design matters at the end of the Examination.

Landscape and Visual

- 5.5.73. Overall, we are satisfied that the methodology and establishment of the baseline is reasonable and adequate in relation to EIA requirements and in accordance with national policy objectives. GLVIA3 guidelines have been followed and the range of visualisations used in the LVIA are generally fit for purpose.
- 5.5.74. Broadly the selection of locations for viewpoint assessment are appropriate. Whilst an additional coastal viewpoint (such as from Saltburn-by-the-Sea) would have been desirable, we accept that the

effects would be no worse than from other coastal locations to the south of the Tees (such as Redcar seafront and Marske-by-the-Sea) where effects were assessed to be not significant.

- 5.5.75. We requested an amendment to viewpoint 2, from Seaton Carew, to better reflect where sensitive receptors would be situated (on the seafront promenade side of The Cliff) and uncluttered by the pedestrian crossing and street furniture. On USI1, from the vicinity of this viewpoint, we noted there are a number of benches lining the promenade and alongside the gardens overlooking the large expanse of beach. The viewpoint is situated on the long-distance PRow the England Coast Path. From here, recreational users and visitors are likely to pause and enjoy the coastal views. Furthermore, the viewpoint lies within Seaton Carew Conservation Area (the effect on its setting is considered in section 5.14 of this Report).
- 5.5.76. We agree with the Applicants' assessment of sensitivity and the overall value of the view as medium, with a high susceptibility to change [as set out in Table 17-8, APP-099], but would extend the receptor types to residential, recreational and PRow users. As well as being locally valued, the view is likely to have a wider appeal for visitors to the coastal resort evidenced by the seafront hotels and tourism/recreational services facilities in the vicinity of this viewpoint. The Applicants' assessment of the significance of effect as 'negligible adverse' is predicated that in the context that there are existing large-scale structures within the wider view, and that the availability of alternative views with the long distance and presence of other detracting features in the landscape reduces the impact on visual amenity.
- 5.5.77. We consider that the Applicants' assessment has underplayed the significance of the view from this location on the north side of the Tees. Whilst more distant from the PCC Site than other viewpoints, we noted from USI 1[EV1-001] that views from this location are distinct in that the PCC Site and former steelworks structures have the appearance of standing largely alone alongside the coastal scenery and the Cleveland Hills behind. The majority of other structures associated with the industrial areas and ports around the Tees do not appear in the backdrop in this view; rather they are detached and (despite their significant scale) lie partially obscured behind the dunes at North Gare. Whilst the offshore turbines at Teesside Wind farm draw the eye to the sea, there is a clear gap between them and the PCC Site in which the sweeping coastline and hills beyond can be appreciated on a clear day.
- 5.5.78. Therefore, whilst it is true that there are alternative views, it is the view to the south which has the most interest both in terms of natural and industrial features. We consider that the amended viewpoints which show the 3D representation and massing of the illustrative plans [REP11-006 and REP6-094] are certainly not indicative of a completed development which the Applicants describe as barely noticeable, and not altering the context of the view [APP-099].

- 5.5.79. The PCC Site structures would be noticeably prominent in the view. Therefore, we would elevate the effect on this viewpoint, during all phases of development, to 'moderate adverse', which is significant.
- 5.5.80. Other viewpoints taken from the north side of the Tees have also been underplayed in the LVIA, including at viewpoints 1 (Albion Terrace, Hartlepool) and 4 (North Gare Sands). From viewpoint 1, we would agree that the distance vastly reduces the effects and the industrial structures around the Tees are noticeably present in the same view. From here the effect at all phases would be minor adverse (not significant) due to the high sensitivity of receptors in this location which include residential properties directly facing the PCC Site.
- 5.5.81. From viewpoint 4 the Proposed Development would be prominent when viewed across the Tees Mouth from North Gare beach and dunes. However, given its more southerly location the surrounding industrial and harbour structures around the Tees would be viewed in the same context, thus reducing its overall effect from here (compared to viewpoint 2 at Seaton Carew). Given the high sensitivity of recreational receptors in this location (but lack of other types of receptors including residential), we would agree with the overall effect at all phases being minor adverse (not significant).
- 5.5.82. We agree with the Applicants' assessment that the landscape impact would be neutral overall, but that visual impacts from certain viewpoints would be significant adverse. The predicted significant adverse visual effects would arise from the structures at the PCC Site on viewpoints 2 (Seaton Carew), in addition to viewpoints 5 (South Gare Breakwater), 7 (England Coast Path, Warrenby) and 8 (Redcar seafront) during all phases.
- 5.5.83. We also agree with the Applicants' assessment of cumulative impacts, in that the effects would be no worse than assessed for the Proposed Development alone.

Design

- 5.5.84. We accept that there was very little engagement from the public or statutory authorities in relation to design matters, both during pre-application consultation and the Examination. However, the national guidance is clear, and it is disappointing that further consideration has not been given to use of a design champion and/or design panel by the Applicants, nor were they willing to change R3 to include reference to such a review at post-decision stage. We note that RCBC are supportive of the use of a design panel but would require additional resources to do so.
- 5.5.85. The exposed coastal location of the PCC Site, with its backdrop of large industrial and harbour related structures, means that the use of a 'landmark' or 'iconic' design could be readily accommodated here. The legacy of the steel works structures, including the recently demolished blast furnace, have left a void in the landscape. It is noteworthy that

RCBC supported the notion of a landmark structure, given its 'First of a Kind' status and its prominent coastal location.

- 5.5.86. We also acknowledge the Applicants' points regarding the functional nature of the design, along with safety and security considerations, and that the FEED process is ongoing. It is understood that the structures when finally designed are likely to be smaller than the scenario envisaged in the ES, so would be less dominant both on the landscape and visually. The limited information before us regarding design means that assumptions have to be made regarding the final visual impact of the Proposed Development within the confines of the Rochdale Envelope. Whilst an innovative and eye-catching design would be supported by us, there is no indication that the proposed structures would come forward in such a manner. The scale parameters give an element of certainty that effects in terms of height and bulk in particular would be no worse than that assessed.
- 5.5.87. We accept that reference to the DAS has been added to R3. Whilst there is little within the DAS to direct the development to being of 'good design' which could be accommodated in this specific coastal location, we acknowledge the document does refer to the Teesworks Design Guide. The Design Guide includes a number of references to 'design typologies' and encourages good design, recognising both the industrial context and the coastal location. STDC would be a consultee to R3 (which would be dealt with by RCBC), and they would have some input into the approval of the final design details of the PCC Site. We would stress, however, that this is not a substitute for use of a design panel.
- 5.5.88. We are conscious that in this particular case a Development Corporation is involved, and that there is adopted SPD together with a detailed Design Guide and Masterplan. Given that STDC would have a consultee role, this provides sufficient comfort to us that there will be an 'overseeing' element to the discharge of R3. We have not therefore included reference to a post-consent design panel in R3 or elsewhere in the Recommended DCO.
- 5.5.89. Overall, we are satisfied that the detailed design, particularly in terms of the shape of structures, use of materials and colour would be adequately dealt with by RCBC in consultation with STDC in discharging R3.

Mitigation

- 5.5.90. We agree with the Applicants that it would not be possible to mitigate the significant adverse visual effects of the Proposed Development by screen planting, whether that be on or off site.
- 5.5.91. The design of the Proposed Development will be key in reducing its adverse effects. Conversely, we do not consider it necessary to make the Proposed Development at the PCC Site 'blend in' as suggested by the Applicants. It would be highly visible from a number of viewpoints but the experience of the view (in particular from coastal viewpoint receptors) formerly characterised by steelworks infrastructure, could be

given an element of interest by use of an innovative design (including materials and colours).

- 5.5.92. If consented, it would be for RCBC and STDC, having regard to the SPD and Design Guide, to satisfy themselves that good design principles would be adopted in the final design when considering any submission for R3 of the Recommended DCO.

Conclusions

- 5.5.93. We consider that the Proposed Development, specifically Work Nos. 1 and 7 at the PCC Site, would fail to meet the requirements of EN-1 and EN-2 in terms of its significant adverse effects on the visual amenity of a number of viewpoints predominately along the coast. Such effects would be long-term in the case of viewpoints 2 and 7, and predominately during construction for viewpoints 5 and 8.
- 5.5.94. Draft EN-1 and EN-2 also recognise that power CCS facilities will have an impact on the surrounding landscape and visual amenity, but that 'good design' should be applied from an early stage, with consideration of use of design review. We are not satisfied that this has been adequately carried out.
- 5.5.95. The PCC Site proposals would also partly conflict with Policy NE-SCP-1 of the North East Marine Plan in that the design of proposals has not adequately taken account of the character, quality and distinctiveness of the seascape and landscape.
- 5.5.96. The detailed design of the PCC Site has the potential to partially mitigate the effect. However, the indicative designs fail to achieve good design as required by section 4.5 of NPS-1 and NIC guidance, as well as failing to reflect the Teesworks Design Guide. The detailed design process for the PCC Site would need to balance functionality with aesthetics, with the involvement of RCBC and STDC to ensure a collaborative engagement to achieve high quality design.
- 5.5.97. We consider the approach to assessment of other components of the Proposed Development including the electricity substations and the AGI's is proportionate given the lack of visibility and their industrial context.
- 5.5.98. We find that the effects of the Proposed Development on the surrounding landscape would be neutral. However, the visual impact would be negative due to the prominent coastal location of the PCC Site, and adverse effects on the views of sensitive receptors including residents, recreational and PRow users. We would expect RCBC, in consultation with STDC and assisted by the Design Guide, to agree a high-quality detailed design post-consent secured through R3 of the dDCO. This is because the adverse visual effect has the potential to further increase if the detailed design does not achieve sufficient quality.
- 5.5.99. Overall, in respect of design, landscape and visual impacts we ascribe negative effects of moderate weight in the planning balance.

5.6. WATER ENVIRONMENT

Introduction

- 5.6.1. The 'water environment' was identified in our IAPI [PD-009], specifically in relation to pollution, the WFD, flooding and the outfall to Tees Bay. These issues are largely covered in Chapter 9 of the ES [APP-091], supported by information from several other chapters. Separate appendices present the FRA [APP-250 to APP-252] and the WFD Assessment [APP-254, updated with REP11-009].
- 5.6.2. The third change request removed the option to use the existing outfall for the discharge of water to Tees Bay (Work No. 5A) [REP12-116, REP12-034 to REP12-119]. The ExA made a Procedural Decision [PD-023] on 4 November 2022 to accept this, therefore references to the outfall in this section refer to the new wastewater outfall only (Work No. 5B).

Policy Considerations

Water quality and resources

- 5.6.3. Infrastructure development can have adverse effects on the water environment, including groundwater, inland surface water, transitional waters and coastal waters. Paragraph 5.15.3 of EN-1 details the requirements for an ES chapter on this issue.
- 5.6.4. Paragraph 4.10.1 of EN-1 states that issues relating to emissions from a proposed project that affect water quality may be subject to separate regulation. It should be assumed that the relevant regulatory regime would be properly applied and enforced by the regulator and such controls should not be duplicated (paragraph 4.10.3). Paragraph 5.15.5 states that impacts on the water environment should be given more weight where a project would have an adverse effect on the achievement of the environmental objectives established under the WFD.
- 5.6.5. EN-2 states that some fossil fuel generating stations have very high water demands and that water supply is something that should be investigated at an early stage (paragraphs 2.27 and 2.29). The design of water-cooling systems could have additional impacts, including discharging of water at a higher temperature (paragraph 2.10.1). It should be demonstrated that measures to minimise adverse impacts on water quality and resources have been taken (paragraph 2.10.3).
- 5.6.6. EN-4 identifies additional risks associated with construction of pipelines, including through changes to drainage and mobilisation of existing contamination (paragraph 2.22.2) and from river crossings (2.22.6).
- 5.6.7. Policy NE-WQ-1 of the North East Marine Plan states that proposals that protect, enhance and restore water quality will be supported. Proposals that would cause a deterioration in water quality must demonstrate that they will, in order of preference, avoid, minimise and mitigate.

- 5.6.8. Further details of development plan policies relating to the water environment are provided in section 9.2 of ES Chapter 9 [APP-091].

Flooding

- 5.6.9. Applications for energy projects of 1ha or greater in Flood Zone 1 and all proposals in Flood Zones 2 and 3 should be accompanied by an FRA (paragraph 5.7.4 of EN-1). Paragraph 5.7.5 lists the minimum requirements for an FRA.
- 5.6.10. Paragraph 5.7.9 of EN-1 also requires that the Sequential Test should be applied as part of site selection, a sequential approach applied at site level, any flood risk management strategies are referenced, priority is given to the use of sustainable drainage systems (SuDS) and in flood risk areas that the project is flood resilient and resistant.
- 5.6.11. Paragraph 5.7.12 of EN-1 states that development should not be consented in Flood Zone 2 unless it has been demonstrated that the Sequential Test requirements have been met. Development in Flood Zone 3 should not be consented unless the Sequential and Exception Test requirements have been met.

The Applicants' Case

Water supply

- 5.6.12. Raw water would be supplied from the River Tees upstream of the Order Limits, potentially via the existing feed to the former steelworks. The operational water demand is estimated to be up to 32 Megalitres per day [REP4-025] and, although not specified, the demand during construction is anticipated to be less than this. The volumes required during decommissioning are not known, but they are not expected to be significant. NWL confirmed that it can support the water supply needs of the Proposed Development [REP5-019] and this is an agreed matter between the parties [REP13-012].

Water quality

- 5.6.13. There are risks to water quality in the area from all phases of development. To identify and characterise all potential receptors, the Applicants undertook a desk study of watercourses, drains and ditches within approximately 1km of the Order Limits. This was supplemented by site walkovers in 2020 and some water quality monitoring at 'Pond 14' in Coatham Dunes, which demonstrated that it was predominantly rainwater fed [section 9.4, APP-091].

Construction

- 5.6.14. Water quality would be protected during construction through the final CEMP, which must follow the Framework CEMP [REP9-007]. This must contain a dedicated Water Management Plan outlining the measures necessary to avoid, prevent and reduce adverse effects on the water environment, and details of the associated monitoring. The details of

drainage systems must be approved by the RPA in consultation with the EA, amongst others, through R11 of the dDCO in association with the Final CEMP (R16).

- 5.6.15. It was assumed that the potential impacts during decommissioning would be similar to those during construction [paragraph 9.5.52, APP-091]. A DEMP must be approved by the RPA in consultation with the EA, among others, within 12 months of any part of the development permanently ceasing operation under R32.
- 5.6.16. A diffuser head would need to be constructed at the end of the outfall with a footprint and associated scour protection estimated to be less than 100m². When the drill emerges water-based drilling fluid would be released to the marine environment, which could result in a localised increase in suspended solids and turbidity. However, it is not anticipated that this would lead to any significant morphological change and any release of drilling fluid would be short term and insignificant [paragraph 9.6.9, APP-091].
- 5.6.17. There would potentially be a short-term temporary impact on the 'Redcar Coatham' Bathing Water from works around the outfall discharge point. To manage this, with EA agreement, bathing in the affected area would not be advised during works until the turbidity has dispersed [paragraph 9.6.13, APP-091].

Operation

- 5.6.18. A new surface water drainage network and management system would be provided at the PCC Site to intercept, convey and treat surface water runoff from buildings and hard standing. Details of the permanent surface and foul water drainage systems must be approved by the RPA in consultation with the EA, among others, through R11.
- 5.6.19. The proposed surface water drainage system includes the use of SuDS to provide treatment of runoff from urban areas where there is a low risk of contamination to ensure potential adverse effects on water quality and habitat of receiving water bodies are avoided [paragraph 9.5.35, APP-091].
- 5.6.20. Two proposed ponds (a balancing pond and outfall retention pond) would provide storage for pollution events and oil interception prior to discharge to the North Sea via the outfall to Tees Bay, managed through the EP. These two ponds also act as SuDS features for the Proposed Development [paragraph 9.6.35, APP-091].
- 5.6.21. The appropriateness of surface water drainage measures in terms of providing adequate treatment of diffuse urban pollutants has been assessed with reference to the methods in the SuDS Manual (CIRIA, 2015) [APP-091].
- 5.6.22. The use and storage of chemical products at the Proposed Development site would also need to follow the product specific environmental

guidelines, as well as the legislative requirements set out in the COSHH Regulations and COMAH Regulations [section 9.5, APP-091].

5.6.23. An assessment of atmospheric deposition from operational activities on water bodies is described in Chapter 8 [APP-090], including the pond at Coatham Dunes and in relation to Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site. The results indicate that there would not be significant effects to water quality at any receptors from atmospheric deposition (see section 5.4 above). There is further discussion of this matter in relation to the WFD below (paragraph 5.6.31 onwards).

5.6.24. The connection corridors would not require additional drainage during operation as they would utilise existing pipe racks, pipe bridges or culverts, or would otherwise be installed underground [9.5.33, APP-091].

Discharge of wastewater

5.6.25. Separate systems would be provided for welfare facilities and the process wastewater generated by PCC Site operations. A conceptual diagram and description of the proposed drainage systems has been provided in Diagram 9-2 [APP-091].

5.6.26. It has been assumed that the small volume of foul water from welfare facilities would either be directed to nearby Marske-by-the-Sea WwTP or sent to an on-site package treatment plant. NWL has confirmed that Bran Sands or Marske-by-the-Sea WwTP are likely to have the capacity to treat the discharges [REP5-019].

5.6.27. Amine contaminated water and hazardous wastes would be taken off-site by tanker for specialist treatment.

5.6.28. Process wastewater would be treated, either on site or at Bran Sands WwTP, prior to being discharged via the outfall to Tees Bay, which could cause water quality impacts. It would need to be demonstrated that the discharged effluent from the Proposed Development meets the required standards for a range of water quality indicators in order to obtain a permit. There is further discussion on this matter in relation to the WFD below and Chapter 6 of this Report in relation to the HRA. The potential effects on marine ecology from changes in water quality are discussed in section 5.7 of this Report.

5.6.29. Cooling water blowdown from the PCC Site would also discharge to Tees Bay via the outfall. If water is not sufficiently cooled it could create a thermal barrier to fish passage. Thermal modelling of the discharge has been undertaken [Appendix 14E, APP-321], which concludes that impacts would be localised and insignificant.

5.6.30. An assessment of the cumulative effects with other development schemes in the area has been undertaken, the construction and operation of which could overlap. The Applicants concluded that providing good practice is implemented through respective CEMPs, EPs and licences, the potential effects would be effectively managed and there

would not be an increased cumulative effect to water quality [section 9.9, APP-091].

Water Framework Directive

- 5.6.31. There are three WFD surface waterbodies in the study area. These are 'Tees Coastal Water', 'Tees Transitional' encompassing the estuary and 'Tees Estuary (South Bank)', coinciding with The Fleet and its tributaries. The Order land is underlain by the 'Tees Sherwood Sandstone' and 'Tees Mercia Mudstone and Redcar Mudstone' groundwater bodies. The waterbodies within the study area fall in the Tees Management Catchment and under the Northumbrian River Basin Management Plan [REP11-009].
- 5.6.32. Under the WFD, projects should not cause deterioration of a waterbody or prevent attainment of future good status or potential. Compliance with the WFD also requires protection of Protected Sites. The Applicants have undertaken an assessment of the potential effects on hydromorphological, biological and physio-chemical parameters against the WFD objectives. This concluded that the proposal is compliant with the WFD provided the mitigation measures, including the CEMP and Water Management Plan, are implemented, and all appropriate licences and consents obtained [REP11-009].
- 5.6.33. The Applicants undertook additional work during the Examination to assess whether atmospheric deposition of nutrients could have an impact on the concentration of nitrogen in coastal waters. This took the form of a simple mass balance for the Tees Coastal WFD waterbody, which concluded that there would not be a significant impact [section 9.7, REP11-009]. This was reportedly accepted by the EA at a meeting between the EA and the Applicants in April 2022 [REP2-016] and this outcome is reflected in their SoCG [REP13-017].
- 5.6.34. An updated WFD Assessment was submitted at D11 incorporating the 'intermediate water quality modelling' [Annex G, REP11-009]. This indicated that there would be a small increase in Dissolved Inorganic Nitrogen (DIN) in Tees Bay and that a small area within the plume would exceed the Environmental Quality Standard (EQS). However, there is no routine monitoring of DIN in Tees Bay and thus no status class against which a deterioration could easily be measured [section 9.7, REP11-009].
- 5.6.35. The Applicants stated that any impact to Tees Coastal Water waterbody would be minor and localised, and not significant at the waterbody scale. No detectable effects to marine species or habitats are predicted, nor to biodiversity or the conservation objectives for any marine species or designated sites. In addition, a Water Discharge Permit would be required at which point final effluent quality parameters would be known so that final water quality modelling can be undertaken [paragraph 9.7.164, REP11-009]. In addition, the requirement in R37 of the dDCO [REP12-003] for a nutrient nitrogen safeguarding scheme would protect the WFD waterbody.

- 5.6.36. Under certain conditions DIN could also increase at the mouth of the Tees Estuary, but there would be no overall exceedance of DIN thresholds and therefore no deterioration. The Applicants also stated that abstraction of water contaminated with nitrates for use in the Proposed Development would lead to a net benefit in the estuary [paragraph 9.8.4, REP11-009].

Flood risk

- 5.6.37. The entirety of the PCC Site is located within Flood Zone 1. The areas of land within the Order Limits in Flood Zones 2 or 3a are:
- the coast at Coatham Sands; the Water Discharge Connection Corridor (Work No. 4) and CO₂ Export Pipeline (Work No. 8),
 - along Dabholm Gut; the CO₂ Gathering Network (Work No. 6),
 - the Tidal River Tees, to be crossed by the Gas Connection corridor (Work No. 2) and CO₂ Gathering Network corridor (Work No. 6),
 - land at Salthome; CO₂ Gathering Network (Work No. 6) and two laydown areas (Work Nos. 9D and 9E).
- 5.6.38. The EA has undertaken modelling of tidal peak water levels and tidal defences are maintained in the area. The 2125 sea level allowances for climate change were applied to the 2109 scenario. The results suggest that levels along the estuary could rise by 1.32m to approximately 5.65mAOD at the mouth of the estuary for a 0.1% (Annual Exceedance Probability) (AEP) [paragraph 9.4.113, APP-091]. It is proposed that the platform for the PCC Site would be at least 7mAOD. Based on this, it was determined that the PCC Site and the majority of the connection corridors are at low risk of flooding from tidal sources over the lifetime of the Proposed Development [section 9.7, APP-250].
- 5.6.39. The western extent of connection corridor is at high risk of flooding from tidal sources during events that exceed a 0.5% AEP event or should breach of flood defences occur. However, works in this area are either underground pipework or installation of pipelines on existing pipe racking. Mitigation measures are therefore proposed to manage this risk during construction, secured through the Framework CEMP [section 9.10, APP-250].
- 5.6.40. EA mapping indicates that the PCC Site and the associated connection corridors are generally at very low risk of flooding from fluvial flooding, even including an allowance for climate change. The exception is the AGI at the eastern end of Dabholm Gut (Work No. 6). The Applicant recommends that mitigation measures are implemented to mitigate this risk, secured in the Framework CEMP [section 9.10, APP-091].
- 5.6.41. There are small, isolated areas where water is known to pond during more significant rainfall events. The main locations are the A1085/Broadway East roundabout junction approximately 275m south-east of the PCC Site and land located to the west between the A1185 and Cowpen Bewley Road, approximately 8 km to the west of the PCC Site

[section 9.4.133, APP-091]. The Applicants conclude that the risk of surface water runoff onto the Order Limits from these areas is low.

- 5.6.42. The EA's 'Susceptible to Groundwater Flooding map' shows that the Site lies in an area where 75% or more of the area is considered to be potentially at risk of groundwater emergence [paragraph 9.4.128, APP-091]. Excavation of cuttings has the potential to liberate groundwater in some areas, and open excavations in some locations may also be more prone to becoming inundated by groundwater. With the implementation of mitigation measures, including those outlined in British Standard BS:8102, the Applicants conclude that this risk is insignificant [paragraph 9.10.13, APP-250].
- 5.6.43. R12 of the dDCO [REP12-003] secures the proposed flood risk mitigation measures. R12(1) and (3) respectively require that schemes for the mitigation of flood risk during construction and operation are approved by the RPA. R12(6) requires that the development is not commissioned until a flood emergency response and contingency plan has also been approved. This would include details on actions to be taken in the event of a flood and would require that safe egress and exits would be maintained at all times when working in excavations.
- 5.6.44. Should a fluvial flood event occur during construction there could be a high risk to construction workers in the immediate vicinity. The baseline risk could be exacerbated during construction works by the temporary increase in the rate and volume of surface water runoff from an increase in impermeable areas. However, with the implementation of standard construction methods and mitigation described in the FRA, secured in R12 of the dDCO and the management of water through the Final CEMP and Water Management Plan, the Applicants are satisfied that this risk can be effectively managed [section 9.6, APP-091].
- 5.6.45. An assessment of the potential cumulative effects with other schemes at all phases in the area has been undertaken by the Applicants. The Applicants conclude that the risk of flooding would be managed to a good standard with reference to the relevant policies and guidance at all the sites, which means that the risks would be negligible [Section 9.9, APP-091].
- 5.6.46. A Sequential Test is required for development in Flood Zones 2 and 3. The PCC Site is entirely within Flood Zone 1 [paragraph 9.6.18, APP-250]. The small areas of development in Flood Zones 2 and 3a are of necessity partly located here [section 9.6, APP-250]. The Applicants state that the Sequential Test is satisfied because the location of the Proposed Development has a similar risk of flooding to the other potential alternative sites considered in Teesside [paragraph 9.6.20, APP-250].
- 5.6.47. An Exception Test was therefore undertaken. The Applicants concluded that there are clear wider sustainability benefits, the land is previously developed, and the site-wide FRA demonstrates that the Site would be safe from the risk of flooding and not increase the risk of flooding off-

site. All parts of the Exception Test are therefore satisfied [section 9.6, APP-250].

Examination Matters

Water quality

- 5.6.48. The Applicants acknowledged that it would not be possible to eliminate mobilisation of fine sediment during construction of the new discharge outfall in response to our question about potential additional measures. They reiterated that any mobilised sediment would quickly dissipate in a tidal setting and that all construction works would be undertaken in accordance with best practice mitigation measures, as set out in the ES and secured in the Framework CEMP [ExQ1 WE.1.28, REP2-016].
- 5.6.49. In response to our request for more details of the approach to monitoring and mitigation of the temporary effects on Redcar Coatham Bathing Water from turbidity, the Applicants said that monitoring requirements would be secured via the Final CEMP and that they were working with the EA to ensure that these were appropriate [ExQ1 WE.1.33, REP2-016]. At D6, the EA stated that it was satisfied with the proposed actions in the Framework CEMP in this respect [REP6-132].
- 5.6.50. Article 17 of the dDCO [RE12-003] sets out supplemental powers for the use of any watercourse, public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the Proposed Development. We asked for clarification on how the potential for this to effect surface water quality had been assessed. The Applicants drew attention to the conditions of Article 17 and R11, which together require that the consent of the owners or authority has been obtained and that discharges meet a satisfactory standard [ExQ1 WE.1.23, REP2-016].
- 5.6.51. In response to ExQ1 WE.1.28 regarding the EA's request for a hazardous substance assessment [RR-024], the Applicants explained that this would be addressed in a Hazardous Substances Management Plan [REP2-016]. We questioned how this would be secured [ExQ2 WE.2.3, PD-016] and the Applicants modified the wording of R16 to ensure that it was secured in the dDCO [REP6-121]. This was undertaken at D8 [REP8-003] through the insertion of R16(2)(k), which requires that a hazardous materials management plan is provided that must be approved by the RPA, following consultation with the EA [REP8-042].
- 5.6.52. We further explored uncertainties around the effects on water quality, including thermal effects, from the outfall in ExQ1 WE.1.29 [PD-012]. The Applicants reiterated that the discharge would need to meet the standards required by a permit, but that further modelling of nutrients would be undertaken [REP2-016]. This is discussed further in sections on the WFD below and Chapter 6 of this Report.
- 5.6.53. We asked how the design parameters for the new outfall on which the assessments are based would be secured. In response to this, the Applicants inserted a Condition 30 in the DMLs [Schedule 10 and Schedule 11, REP12-003] specifying that Work No. 5B must be consistent

with the maximum parameters in paragraph 9.3.28 of ES Chapter 9 [APP-091] [ExQ1 WE.1.32, REP2-016].

- 5.6.54. We also asked several questions about the baseline dataset, including meteorological data, the conceptual model for Pond 14 and the search area for pollution incidents [ExQ1 WE.1.3, WE.1.7, WE.1.8, PD-012]. At ExQ1 WE.1.25, we asked for clarification regarding the indirect effects to distant receptors from increased demand on potable water supplies and foul water treatment referred to by the Applicants in paragraph 9.4.4 of Appendix 9C [APP-254]. We also sought clarification on the criteria used in the assessment for hydromorphology [ExQ1 WE.1.24]. These were all satisfactorily addressed by the Applicants [REP2-016].

Water Framework Directive

- 5.6.55. The EA identified that the Application did not include measures to enhance or restore any waterbodies [RR-024] and we asked a follow up question to this at ExQ1 [WE.1.6(i)]. In particular, the EA drew attention to the failure of the Tees Estuary transitional waterbody for DIN, in part caused by discharge to Dabholm Gut from Bran Sands WwTP. The Applicants responded to say that no significant residual effects from the Proposed Development had been identified in their WFD Assessment but that they were engaging with the EA to potentially 'future proof' enhancement initiatives and options [REP2-016].
- 5.6.56. Although we requested [PD-022] that the EA provide comments on the significant updates to the WFD in relation to DIN [REP11-009], a response was not received by the close of the Examination. However, a signed SoCG between the Applicants and the EA [REP13-017] records that both parties are confident that a design solution could be developed to achieve WFD compliance in the Tees Coastal, Tees Transitional and Tees Estuary waterbodies both for current and future status, and that the detail of the solution is adequately secured through R37 of the dDCO [REP12-003].
- 5.6.57. The EA confirmed that the approach taken to modelling impacts from atmospheric deposition of nutrients on waterbodies was acceptable, subject to clarification on a few queries, which were subsequently addressed [ExQ2 WE.2.2, REP6-132].
- 5.6.58. We also sought clarity regarding the 'other discharges' raised by the EA [REP8-042]. The Applicants explained that this referred to the Total Organic Nitrogen and Particulate Nitrogen that could be picked up from other sources at Bran Sands WwTP. The total nitrogen load returned from Bran Sands would remain consistent however [ExQ3 WE.3.2, REP11-018]. The EA said that the other principal component is ammonia and that it was content these other pollutants had been adequately considered [REP11-031].

Flood risk

- 5.6.59. We asked for a clear diagram of the Strategic Flood Risk Assessment mapping, access routes, topography and flood defences [ExQ1 WE.1.11,

WE.1.12, WE.1.13, WE.1.15] and clarification regarding use of extreme wave heights and wind events, the planned and likely lifetime of the Proposed Development and the assessment of groundwater emergence [ExQ1 WE.1.17, WE.1.19, WE.1.20]. The Applicants provided the additional information and confirmed that the entire PCC Site would be on a 7.3mAOD platform ('no lower than 7.5mAOD' in APP-250) [REP2-016]. The Applicants also confirmed that there would be no land raise within Flood Zones 2 or 3 and therefore no displacement of floodplain storage [REP6-121].

- 5.6.60. Responding to our questions about whether the most up to date climate change allowances had been used, the Applicants re-assessed the FRA based on the most up to date figures [ExQ1 WE.1.16 and WE.1.18, REP2-016]. They concluded that there were no implications for the assessment of risk and significance of effects.
- 5.6.61. We sought clarification regarding application of the Sequential Test, noting that paragraph 9.4.21 of the ES [APP-091] stated that all of the alternative sites listed are entirely in Flood Zone 1, unlike this site. The Applicants responded to say that while all alternative sites were in Flood Zone 1, the scale of the development meant that some crossing of Flood Zones 2 and 3 was inevitable, whichever site was chosen. They were therefore all equally viable [ExQ1 WE.1.14(ii), REP2-016].
- 5.6.62. Work No. 2B, the AGI connecting Work No. 2A to the National Transmission System via the Sembcorp South Pipeline which would comprise instrumentation, communications equipment and parking, is partly in Flood Zone 3. Given this, we questioned at ISH4 how a sequential approach had been applied at a site scale [REP5-027]. We asked if consideration had been given to splitting the works and potentially putting some elements in less vulnerable areas given that the Flood Zone is narrow in the area. The Applicants responded that they are constrained by the existing access road and that operability restricted them from splitting the works [ExQ2 WE.2.5, REP2-016].
- 5.6.63. We also requested further evidence that a sequential approach had been applied on a site scale to Work Nos. 9D and 9E (laydown areas near Saltholme) given that these are in Flood Zone 3a and 2 respectively [ExQ2 WE.2.6, PD-016]. The Applicants responded that these were areas of existing access from the highway network with space for parking, storage and welfare facilities [REP6-121]. They directed us to 9.6.32 to 9.6.40 of the FRA [APP-250] for evidence that the Sequential Test had been applied. These paragraphs refer to the Exception Test; clear evidence that a sequential approach to the location of these laydown areas within the Site has been undertaken was therefore not been provided.
- 5.6.64. Paragraph 9.9.31 of the FRA [APP-250] stated that the access to and from the PCC Site would be flooded during higher return period events. It is proposed that members of staff either remain within the PCC Site area or are evacuated via the northern gate onto South Gare Road. The Applicants also confirmed that access would be secured and that the

escape route would remain above the worst-case cumulative flood levels [ExQ1 WE.1.21, REP2-016].

Examining Authority's Response

- 5.6.65. The large water supply required during operation of the Proposed Development would be provided by NWL from the River Tees upstream of the site and there are no significant adverse effects associated with this. Based on the final position with NWL in the SoCG [REP13-012], discussions were on-going regarding discharge of foul water to Marske-on-Sea WwTP, but as volumes would be low relative to previous use on the Order land this has not been identified as an issue. In addition, R11 of the dDCO requires approval of the details of foul drainage both during construction and operation prior to commencement. For these reasons, we are content that water supply and the discharge of foul water would not give risk to significant effects.
- 5.6.66. Details of the surface water and foul water drainage systems must be approved prior to commencement by the RPA (R11). Water quality during construction would also be protected by the Final CEMP (R16 of the dDCO), which must include a Hazardous Substances Management Plan. A DEMP would be protective of the water environment during the decommissioning phase (R32).
- 5.6.67. The construction of the new outfall has the potential to mobilise sediment. However, we are satisfied that this would be localised, temporary and would not lead to significant effects. These would be minimised through best practice secured in the Final CEMP (R16 of the dDCO) and the DMLs (Schedules 10 and 11 of the dDCO). R30 of the dDCO requires that, in the event that the design of the outfall differs from that modelled, the effects cannot be worse than those in the ES.
- 5.6.68. There could be a temporary, localised effect on turbidity in the Bay during construction, which could reduce the quality of Redcar Coatham Bathing Water. However, the EA has indicated that it is content with the mitigation and monitoring measures in place to protect against this and we are also satisfied that there would be no significant adverse effects.
- 5.6.69. It was also agreed by the Applicants and IPs that there would be no significant adverse effects from thermal discharges to Tees Bay and we see no reason to come to a different conclusion.
- 5.6.70. Potential adverse effects on water quality in the Bay and estuary could be caused by discharge of DIN from the outfall and the WFD Assessment was updated to incorporate additional water quality modelling of this pollutant during the Examination. The modelling identified that a small plume could exceed the AEP, but that this would not be significant at a waterbody scale. However, release of DIN has the potential to increase levels at the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site, which is material in the assessment of compliance with the WFD. To address this uncertainty, the Applicants produced a 'nutrient nitrogen safeguarding scheme' in discussions with the EA and NE, which is

secured through R37 of the dDCO. We are satisfied that this provides appropriate mitigation and monitoring of the waterbodies and the protected site to ensure that there would not be adverse effects. The Applicants have also stated that technical solutions to reduce the concentrations of DIN would be available if necessary, and for this reason we are satisfied that in principle a solution can be found.

- 5.6.71. The EA are content with the approach to modelling impacts from atmospheric deposition of nutrients on WFD waterbodies and we see no reason to come to a different conclusion. There would therefore be no adverse effects in this regard.
- 5.6.72. The WFD Assessment has been satisfactorily completed and it is concluded that there would be no deterioration to any waterbody, nor would the Proposed Development prevent future attainment of good status or potential, providing the mitigation measures secured by the dDCO and all relevant permits and licences are secured.
- 5.6.73. Most of the Order land, including the PCC Site, are in Flood Zone 1 and therefore at very low risk of flooding, even allowing for worst-case climate change scenarios. Given the extensive area of the flood zones and length of the connection corridors, we are persuaded that some pipework in Flood Zones 2 or 3 cannot be avoided. Pipelines would be underground or in existing pipe racks and for this reason would not increase the risk of flooding elsewhere. The risks to personnel during construction and operation can be satisfactorily managed through a scheme for the mitigation of flood risk, and a flood emergency response and contingency plan (R12). The CEMP should also ensure that best practice is adhered to, and risks minimised during construction (R16).
- 5.6.74. Sequential and Exception Tests have been undertaken at a site scale and we are satisfied with the outcomes of these. We concur that there is a clear wider sustainability benefit, that the land is previously developed, and that the FRA has demonstrated that the Proposed Development would be safe from flooding and would not increase the flooding off-site.
- 5.6.75. However, we have questioned the application of the sequential approach at a site scale. The Applicants explained that the AGI and associated development (Work No. 2B) must be located in Flood Zone 3 because they are constrained by the existing access road and operability restricts them from splitting the works. We are content that this is reasonable and that the mitigation measures outlined above are appropriate to negate this risk.
- 5.6.76. However, the Applicants have not clearly explained how a sequential approach was applied to placement of two laydown areas at Saltholme (Works No. 9D and 9E). For this reason, we are not satisfied that other locations at lower risk of flooding could not have been found. However, we are satisfied that the schemes referred to above, required by R12, should ensure that the residual risks at these locations are managed to the extent that the potential risks are not significant. No other IP has raised concerns in this regard.

Conclusions

- 5.6.77. The Applicants have undertaken an assessment of the potential impacts from the Proposed Development on water quality, water resources and the physical characteristics of the water environment, as required in section 5.15 of EN-1 and the draft EN-1.
- 5.6.78. There is potential for adverse effects on water quality from construction activities, including the new outfall in Tees Bay and construction of pipelines, and during operation, particularly from discharge of effluent. There could also be effects during decommissioning. However, these potential effects would be minimised, mitigated and monitored through Requirements 11, 16, 32 and 37 of the dDCO and the DMLs (Schedules 10 and 11 of the dDCO).
- 5.6.79. Potential impacts to Tees Bay and the estuary from the discharge of DIN via the outfall have been considered in detail during the Examination, including through additional modelling of the likely plume. Although the predicted impacts would be small at a waterbody scale, the modelling has demonstrated that the discharge has the potential to effect water quality at the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site, which has implications for the WFD Assessment. However, we are satisfied that appropriate discharge concentrations are achievable in principle and that the nutrient nitrogen safeguarding scheme would be protective of water quality. We are mindful that the details of the discharge are also subject to the environmental permitting regime. Taken together, we are content that no adverse effects would arise.
- 5.6.80. It has been demonstrated to our satisfaction that the Proposed Development would not have an adverse effect on the achievement of the environmental objectives established under the WFD, as required by section 5.15 of EN-1.
- 5.6.81. Policy NE-WQ-1 provides support for proposals that protect and enhance water quality. Based on the conclusions above, we are therefore satisfied that the requirements of this policy are also met by the proposals.
- 5.6.82. The application was accompanied by an FRA and SuDS have been incorporated in the Proposed Development, as required by section 5.7 of EN-1. A Sequential Test for the whole site was undertaken and, as some areas would fall in Flood Zones 2 and 3, an Exception Test provided. All strands of the test were passed, including that the Proposed Development would be safe from flooding and would not increase the flooding elsewhere.
- 5.6.83. However, a sequential approach should be applied at a site level according to paragraph 5.7.9 of EN-1. This has not been clearly demonstrated for the two laydown areas at Saltholme (Works No. 9D and 9E) and it is possible that other locations at lower risk of flooding could have been found. However, we are satisfied that the risks would be satisfactorily managed through a scheme for the mitigation of flood risk, and a flood emergency response and contingency plan (R12 of the

dDCO). The Final CEMP, secured through R16 of the dDCO, would also ensure that best practice is adhered to and risks minimised during construction. We conclude that the risks from flooding are not significant.

- 5.6.84. We therefore conclude that matters relating to the water environment would have no effect on the planning balance.

5.7. BIODIVERSITY AND ECOLOGY

Introduction

- 5.7.1. Biodiversity and ecology were identified in the IAPI [Annex C, PD-009]. Issues included the potential effects on protected species and habitats in the terrestrial, aquatic and marine environments, and the adequacy and security of proposed mitigation, monitoring and management to ensure protection of these.
- 5.7.2. Matters relating to the Teesmouth and Cleveland Coast SPA and Ramsar site are assessed in the HRA provided in Chapter 6.

Policy Considerations

- 5.7.3. Paragraph 5.3.3 of EN-1 states that the ES should clearly set out any effects on designated sites of ecological importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. Paragraph 5.3.4 states that the applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity conservation interests. Opportunities to maximise for building-in beneficial biodiversity features as part of good design should be maximised in and around developments (paragraph 5.3.15, EN-1).
- 5.7.4. Development should aim to avoid significant harm to biodiversity conservation interests, including through mitigation and consideration of reasonable alternatives (paragraph 5.3.7 of EN-1). Where a SSSI or its features are not internationally designated they should be given a high degree of protection (paragraph 5.3.10 of EN-1). Where there would be an adverse effect on a SSSI after mitigation the consent should not normally be granted (paragraph 5.3.11).
- 5.7.5. Sites of regional and local biodiversity interest have a fundamental role to play in meeting national biodiversity targets. For this reason, due consideration should be given to such designations (paragraph 5.3.13, EN-1). Species and habitats of principal importance for the conservation of biodiversity, but not statutorily protected, should be protected from adverse effects (paragraph 5.3.17, EN-1).
- 5.7.6. Appropriate mitigation measures should be an integral part of the proposed development. Where the applicant cannot demonstrate that appropriate mitigation will be put in place then appropriate requirements should be attached to any consent (paragraph 5.3.18, NPS EN-1). In particular, the applicant should demonstrate that activities are confined to the minimum areas required during construction, best practice is

followed, habitats are restored after construction where practicable and opportunities taken to enhance and create new habitats of value.

- 5.7.7. Protection of water quality, including inland surface water, transitional waters and coastal waters, should not duplicate other regulatory regimes (paragraph 5.15.4 of EN-1). However, appropriate requirements may be required to mitigate adverse effects on the water environment.
- 5.7.8. Biodiversity is referred to in the context of the effects of cooling water on water quality in EN-2. Paragraph 2.10.1 states that discharge of cooling water could affect biodiversity and chemical anti-fouling treatment may have adverse effects on the aquatic environment. The design of the cooling system should include intake and outfall locations to avoid and minimise adverse impacts. There should also be specific measures to minimise fish impingement and entrainment and to prevent excessive heat from discharges to receiving waters (paragraph 2.10.4).
- 5.7.9. Additional considerations apply during the construction of a pipeline. Paragraph 2.21.3 of EN-4 requires an assessment of the biodiversity effects of proposed gas supply pipeline routes and proposals for reinstatement of the route as close to its original state as possible. Where it is unlikely to be possible to restore the landscape to its original state, the applicant should set out measures to avoid, mitigate or compensate for adverse effects.
- 5.7.10. The North East Marine Plan was adopted in June 2021. Policy NE-MPA-4 states that proposals that could have significant impacts on the distribution of priority habitats and species must demonstrate that they would avoid, minimise and mitigate adverse impacts so that they are no longer significant. The North East Marine Plan also contains relevant policies on Invasive Non-native Species (INNS), disturbance, underwater noise and cumulative effects.

The Applicants' Case

- 5.7.11. The Applicants set out their case in four chapters of the ES: Chapter 12, Terrestrial Ecology and Nature Conservation [APP-094]; Chapter 13, Aquatic Ecology and Nature Conservation [APP-095]; Chapter 14, Marine Ecology and Nature Conservation [APP-096]; and Chapter 15, Ornithology [APP-097].
- 5.7.12. These are supported by figures and appendices containing surveys, baseline data and detailed appraisals. The following appendices are relied upon by more than one biodiversity chapter: Appendix 12A [APP-298] sets out the legislation and planning policy relevant to ecology; Appendix 12B [APP-299], the Ecological Impact Assessment Methodology; and Appendix 12C [APP-300], the Preliminary Ecological Appraisal.

Terrestrial ecology

- 5.7.13. The assessment of the potential impacts on terrestrial ecology was undertaken in accordance with best practice guidance published by the Chartered Institute of Ecology and Environmental Management (CIEEM,

2019). It was supported by a bat survey report (Appendix 12D) [APP-305 and APP-306], a reptile survey report (Appendix 12E) [APP-307], an invertebrate survey report (Appendix 12F) [APP-308], a water vole and otter survey report (Appendix 12G) [APP-309] and a great crested newt screening report (Appendix 12J) [APP-313]. Supplementary habitat information and a terrestrial invertebrate survey report were also provided for Coatham Sands (Appendices 12H and 12I) [APP-310 and APP-312].

5.7.14. Of the nearby sites with national statutory conservation designations, all the following were scoped in for assessment of potential impacts from changes in air quality:

- Teesmouth and Cleveland Coast SSSI, to the immediate north of the PCC Site. Relevant designated interest features are nationally important saltmarsh and sand dune habitats, and a diverse assemblage of invertebrates associated with the sand dune habitats. Open mosaic habitats (OMH), although not a designated interest feature, are also important to support the SSSI species.
- Teesmouth NNR within the Teesmouth and Cleveland Coast SSSI, approximately 700m north of the Natural Gas Connection Corridor and CO₂ gathering network. Designated for invertebrate assemblages, lyme grass moth, salt marsh and sand dune plant assemblages.
- Lovell Hill Pools SSSI, approximately 6.3km south-east of the PCC Site. Designated for its outstanding assemblage of dragonflies and damselflies.

5.7.15. In addition, of the protected species identified, bats, common lizard, terrestrial invertebrates and controlled weed species were scoped in for assessment from habitat loss and disturbance. A list of all of those scoped out and the reasons for this is in Table 12-5 [APP-094].

Construction

5.7.16. Construction activities would result in permanent losses of semi-improved grassland habitat of borough nature conservation value on the PCC Site. However, the loss of up to 17.3ha of grassland on the PCC Site would be compensated for within the PCC Site with the aim of achieving an overall net gain for biodiversity, as described in the Indicative Landscape and Biodiversity Strategy [REP5-011 and REP12-040]. The Applicants do not have control over the Teesworks construction and laydown areas, so a possible permanent loss of up to 1.7ha of dense scrub of local value would be replaced with new scrub within the PCC Site.

5.7.17. R4 of the dDCO requires the submission of a Landscape and Biodiversity Protection Plan. It must contain details of measures to protect shrub and trees that are to be retained, details of those to be removed, and details of mitigation and impact avoidance. The Final CEMP must also be in accordance with the Indicative Landscape and Biodiversity Strategy (R16(2)).

- 5.7.18. For Work Nos. 1 to 7 R4(4) also requires submission of a Landscape and Biodiversity and Enhancement Plan, which must include measures to enhance biodiversity and habitats, an implementation timetable, details of management, maintenance, and production of an annual monitoring report. The monitoring measures must be in accordance with those in the Indicative Landscape and Biodiversity Strategy (R4(f)).
- 5.7.19. Up to 12.2ha of secondary grassland and 1.7ha of dense local scrub of local value could also be temporarily lost for the Teesworks construction and laydown area on the PCC Site. This would be reinstated in accordance with the requirements of the relevant landowner. Grassland of comparable quality to the existing baseline can be expected to re-establish within five years, with a net gain on the PCC Site within 10 years of the habitat creation [paragraphs 12.6.8, 12.6.12, 12.6.20 APP-094].
- 5.7.20. There would be temporary losses of areas of semi-improved grassland and minor loss of scrub, some of which is mapped as grazing marsh by NE, of local to borough value, for construction of laydown areas and construction corridors [paragraphs 12.6.14 and 12.6.23, APP-094]. The consequences for birds are addressed in Chapter 15 [APP-097] and later in section 5.7 of this Report. Disturbance would be local, temporary and to a degree may be ecologically beneficial because ecological succession can be re-set back to a more optimal state [paragraph 12.6.16, APP-094]. The grassland areas would be reinstated where appropriate and would be expected to re-establish within two growing seasons [paragraph 12.6.17, APP-094]. It is expected that shrub will re-establish itself within 10 years, but replacement is catered for in the Indicative Landscape and Biodiversity Strategy [paragraph 12.6.23, APP-094].
- 5.7.21. OMH, a habitat of principal importance encompassing a number of Phase 1 habitat types of borough nature conservation value, would be lost during construction of the Natural Gas Connection within the Seal Sands Industrial Complex [section 12.6, APP-298]. Construction works in this area would be limited in scale. Temporary disturbance is not necessarily considered adverse for OMH, as long as the habitat is allowed to re-establish naturally, which is expected to occur within two to three growing seasons [paragraphs 12.6.28 and 12.6.29, APP-094].
- 5.7.22. In 2018 surveys recorded a terrestrial invertebrate assemblage of county value within and adjacent to the PCC Site associated with open habitats. There would be permanent and temporary losses of part of this habitat during construction. However, the Applicants conclude that appropriate land remains within the Order Limits and in the extensive fixed dune system of Coatham Sands to the immediate north of the PCC Site, which can support such assemblages. In this context, the permanent loss of semi-improved grassland and scrub habitats during construction is not likely to impact the conservation status of the terrestrial invertebrates. There may even be a biodiversity net gain in this respect through creation of flower-rich grassland and scrub within the Order Limits that would be suitable for re-colonisation [paragraph 12.6.37, APP-094].

- 5.7.23. A bat population of local nature conservation value has been identified in association with the PCC Site. However, no bat roosts are present within the land required for construction. In terms of foraging habitat, losses are predominantly from exposed areas of open grassland and ephemeral or short perennial habitat. Extensive areas of comparable foraging habitat are present on adjacent land and would remain available for use by the small numbers of bats recorded during surveys. There are no construction requirements that would substantially remove bat foraging habitats or that would sever or obstruct access to such habitats [paragraphs 12.6.42 and 12.6.43, APP-094].
- 5.7.24. Given the baseline conditions and the limited potential for lighting to coincide with periods of bat activity, it is very unlikely that construction lighting would impact bat habitat usage, including foraging behaviour [paragraph 12.6.39, APP-094]. In addition, the Indicative Lighting Strategy [AS-017] commits the Applicants to minimising potential adverse lighting effects. This is secured via R6 of the dDCO [REP12-003].
- 5.7.25. Surveys did not detect common lizards on the PCC Site but did find a small population on adjacent land where habitat conditions are comparable. Given this, good practice precautionary working methods are proposed during vegetation clearance. In addition, there is sufficient suitable habitat nearby to accommodate any common lizards displaced by or rescued during construction activities [paragraph 12.6.46, APP-094].
- 5.7.26. There would also be the potential for transference of INNS to new sites. However, it is an offence under the WCA to cause controlled weed species to spread in the wild, so appropriate working practices will be put in place to deliver legal compliance. This is detailed in the Framework CEMP, which states that the final CEMP would include a supporting Invasive Species Management Plan [REP9-007]. This is secured via R16 of the dDCO [REP12-003].
- 5.7.27. Monitoring requirements to track compliance with the commitments in these chapters during the construction phase would be set out in the final CEMP. The Framework CEMP [REP9-007] also commits the Applicants to ensuring that an Environmental or Ecological Clerk of Works would be present during construction to supervise and instruct the implementation of the proposed impact avoidance commitments.

Operation

- 5.7.28. The background nitrogen deposition already exceeds the critical load set for Teesmouth and Cleveland Coast SSSI and this exceedance would be even greater once the large contribution from the recently consented Redcar Energy Centre is added [paragraph 12.6.57, APP-094]. In a worst-case scenario, the additional dose of nitrogen caused by the Proposed Development of up to 6.4ha of the SSSI dune system would be above the EA's threshold for insignificance, compared to a total SSSI area of 184ha [paragraph 12.6.55, APP-094].

- 5.7.29. However, the Applicants argued that the most recent condition monitoring by NE from 2010 confirmed that the SSSI was in favourable condition and that data collected for this project strongly indicate that the condition remains favourable. This is against a backdrop of likely higher nitrogen deposition associated with the former Teesside Steelworks, including the former Redcar blast furnace. Given this, while the current baseline nitrogen deposition is relatively high, it is still lower than the long-term historic baseline and there can be reasonable certainty that the emissions from the Proposed Development would not undermine conservation objectives. The Applicants stated that this approach has been approved by NE for other sites in the area [paragraph 12.6.60, APP-094]. On this basis, they concluded that the effects on designated sites from air emissions during operation would be insignificant.
- 5.7.30. NE has not undertaken a condition assessment of the Lovell Hill Pools SSSI since 2009, when it was assessed that it was in favourable condition. The Applicants considered it unlikely that the vegetation identified is sensitive to nutrient nitrogen and acid deposition [paragraph 12.6.63, APP-094]. This has not been challenged by IPs.
- 5.7.31. Maintenance activities across the Proposed Development would only occur occasionally and would be of low impact [paragraph 12.6.66, APP-094]. The only relevant species in this regard are bats and the only potential impact pathway on these is through operational external lighting. However, measured bat activity was low and the species recorded comprise those more tolerant to artificial lighting. Given this baseline, external lighting of the PCC is not likely to affect the conservation status of any bat species [paragraph 12.6.70, APP-094]. Notwithstanding, lighting would be controlled via the Indicative Lighting Strategy [AS-017], secured through R6 of the dDCO [REP12-003].
- 5.7.32. Habitat monitoring may be needed for a defined period during operation to measure and confirm successful establishment and management of the committed measures. This would be detailed in the final Landscape and Biodiversity Protection Plan, which would be approved by the RPA through R4 in the dDCO [REP12-003].

Decommissioning

- 5.7.33. The Applicants state that decommissioning would probably remove all above ground infrastructure within the built footprint of the Order land and that underground infrastructure would be left in situ. In most cases decommissioning activities would be able to avoid vegetated areas or only affect localised areas of vegetation immediately adjacent to works. It is not anticipated that any species associated with these habitats would be affected [paragraphs 12.6.72 and 12.6.73, APP-094].
- 5.7.34. No adverse air quality or hydrological impacts on terrestrial ecology are considered likely by the Applicants, given that decommissioning activities are comparable with construction activities, for which no adverse effects were predicted [paragraph 12.6.74, APP-094].

- 5.7.35. A DEMP would be produced through R32 of the dDCO [REP12-003]. This would consider in detail all potential environmental risks from decommissioning and would contain guidance on how risks can be removed, mitigated or managed. Ecological surveys would be commissioned as appropriate to inform the scope of the DEMP [paragraph 12.6.75, APP-094]. This would ensure that there would be no significant adverse effects during decommissioning.

Aquatic ecology and nature conservation

- 5.7.36. Chapter 13 considers the potential effects of the Proposed Development on fish, macroinvertebrates, macrophytes and their habitats. It is accompanied by an aquatic ecology supplementary desk study and field survey report [Appendix 13A, APP-314].
- 5.7.37. Allowing for appropriate design and the integration of impact avoidance measures there would be no direct impacts to aquatic habitats or fish, such as from disturbance to watercourse banks, channels or beds, because no open-trench crossings are required for construction of the various connections or on the PCC Site. Where new pond or watercourse crossings are needed, these connections would use existing pipe racks, sleeper tracks, culverts and existing pipe bridges, or trenchless technologies, such as HDD [paragraphs 13.6.1 and 13.6.15, APP-095].
- 5.7.38. There is a potential risk for indirect impacts from surface runoff containing fine sediment from construction areas and potential pollution incidents [paragraph 13.6.2, APP-095]. However, adherence to regulatory requirements and to the pollution control measures defined in the Framework CEMP (R16) [REP9-007] would appropriately manage this risk [paragraph 13.6.3, APP-095].
- 5.7.39. Desk-based assessment and site surveys have demonstrated that macroinvertebrate and macrophyte species within nearby ponds and watercourses are widespread in the area. There would be no direct impacts on macroinvertebrates or macrophytes during construction, and no significant effects from indirect impacts on the supporting habitats and water quality were identified [paragraphs 13.6.17 to 13.6.22, APP-095].
- 5.7.40. There would also be no direct impacts on fish, macroinvertebrates, macrophytes or their habitats during operation of the Proposed Development. The Applicants' assessment included consideration of the potential effects of atmospheric nitrogen on ponds located in proximity to the PCC Site. The assessment drew on the conclusions of Chapters 8, 9 and baseline data to confirm that the effect on ponds from air emissions during operation would be negligible [paragraphs 13.6.29 and 13.6.30, APP-095].
- 5.7.41. There would also be no direct impacts to aquatic habitats during decommissioning given that there would be no requirement to remove or disturb buried infrastructure [paragraph 13.6.34, APP-095]. Potential temporary and indirect impacts on water quality via accidental pollution

or uncontrolled site runoff would be prevented through accordance with guidance, legislation and the DEMP (R32 of the dDCO [REP12-003]).

Marine ecology and nature conservation

5.7.42. Chapter 14 is supported by appendices reporting on the intertidal benthic ecology survey, a fisheries and fish ecology baseline, a marine mammal ecology baseline, a subtidal benthic ecology survey and a coastal modelling report (Appendices 14A to 14E) [APP-315 to APP-321]. The marine ecological receptors considered are plankton (phytoplankton and zooplankton), benthic ecology, fish and shellfish, commercial fisheries and marine mammals.

5.7.43. For the purposes of this assessment the marine environment is defined as any area seaward of the MHWS mark of any tidally influenced water body, which includes intertidal zones.

Construction phase

Permanent and temporary loss of habitats

5.7.44. Construction of the new Wastewater Discharge Connection Corridor, including emplacement of a discharge head and rock armour protection (Work No. 5B) and construction of the onshore CO₂ Export Pipeline (Work No. 8) have the potential to have direct effects on marine habitats. The Applicants confirmed that a replacement water discharge outfall would be built, rather than using the existing outfall. The potential effects from the latter are therefore not considered in this chapter.

5.7.45. Construction activities would cause permanent loss of subtidal sandflats which qualify as habitats of principal importance and are representative of an Annex I habitat [paragraph 14.6.16, APP-096]. This is estimated at worst-case to represent an additional volume of rock of approximately 250m³ over an area of 100m² [paragraph 14.6.19, APP-096]

5.7.46. However, soft sediment habitats and are highly resilient to physical disturbance and the Applicants conclude that effects would be local and insignificant [paragraphs 14.6.15 and 14.6.21, APP-096]. In addition, the rock armouring is likely to be colonised by benthic communities which would offset any loss to an extent. For this reason, the Applicants considered that additional mitigation or compensatory measures were not required in relation to the loss or marine biodiversity from construction of the outfall [paragraphs 14.6.20 and 14.6.23, APP-096].

5.7.47. Temporary loss and physical disturbance of subtidal habitats would also occur during the construction phase because of anchoring, grounding or positioning of marine vessels. However, the spatial extent would be highly localised. The Applicants anticipated that any habitat lost would recover over reasonable timescales (less than 5 years) [paragraph 14.6.17, APP-096].

5.7.48. Fish and shellfish may be affected by the direct loss and physical disturbance of habitats used for spawning or as nursery grounds under

the footprint of the marine construction works [paragraph 14.6.25, APP-096]. However, the footprint of the works is not considered to provide a particularly important functional habitat for these species [paragraph 14.6.27, APP-096] and the Applicants concludes that the effects would therefore not be significant.

- 5.7.49. The migratory fish species identified are concentrated in the River Tees where they migrate upstream to spawn in freshwater habitats, and so are unlikely to be close to the proposed marine construction activities in Tees Bay. Neither is the area under the outfall footprint considered to provide an important functional habitat for most non-migratory fish and shellfish. The potential effects from the direct loss and physical disturbance of habitats were therefore not considered for these receptors group [paragraphs 14.6.26 and 14.6.27, APP-096].
- 5.7.50. The exception is sandeel (*Ammodytes* spp.) as there is evidence to suggest that this species utilises inshore areas as a nursery ground. However, owing to the widespread prevalence of similar habitats within the area, the Applicants anticipated that sandeel would recolonise suitable sediments nearby during and following completion of the construction works and the risks are therefore considered to be low [paragraph 14.6.28, APP-096].
- 5.7.51. The addition of hard artificial substrate around the replacement outfall head may also provide a beneficial alternative refuge for fish and shellfish, in addition to food resources once benthic communities have become established on these structures [paragraph 14.6.29, APP-096]. Any indirect effect from a loss of food resources from construction works to marine mammals, including the harbour seals that are a feature of the Teesmouth and Cleveland Coast SSSI, was therefore also predicted to be insignificant [paragraph 14.6.17, APP-096].

Changes in turbidity, deposition and water quality

- 5.7.52. Various construction activities have the potential to increase suspended sediment concentrations, including potentially contaminated sediments. Such activities include surface water run-off, preparatory dredging and break-out during drilling [paragraph 14.6.32, APP-096]. Change in suspended sediments has the potential to disturb benthic habitats and species.
- 5.7.53. Water quality would be protected during construction through the final CEMP, which must follow the Framework CEMP [REP9-007]. This must contain a dedicated Water Management Plan outlining the measures necessary to avoid, prevent and reduce adverse effects on the water environment, and details of the associated monitoring. The details of drainage systems must be approved by the RPA in consultation with the EA, among others, through R11 of the dDCO in association with the Final CEMP (R16). This should prevent run-off contaminated with fine particulates from entering surface water drains without treatment [section 14.5, APP-096].

- 5.7.54. The Applicants stated that any dredged material would be placed near the new outfall head or disposed of locally at a licensed marine disposal site. Given the low predicted volume of dredged material for disposal and the highly dispersive nature of hydrodynamic conditions in the North Sea, the Applicants concluded that any impact to benthic habitats and species through this activity would be unlikely [paragraph 14.6.36, APP-096].
- 5.7.55. At the break-out point from drilling there would be a release of water-based drilling mud that would remain in suspension for longer than the coarser substrates typically found in Tees Bay. However, as the mud is not under any pressure during drilling operations the release is expected to be small, short-term and localised. It is not expected to significantly alter the geomorphology or structure of substrates such that there would be indirect effects to marine ecology [paragraphs 14.6.37 to 14.6.40, APP-096].

Changes in underwater soundscape

- 5.7.56. Noise generated during construction has the potential to affect fish and marine mammals. This includes activities associated with construction of the outfall head, marine vessel movements, geophysical surveys and unexploded ordnance (UXO) detonation. With the exception of explosions, the only impulsive sound source generated would be during geophysical surveying.
- 5.7.57. Details of the modelling approach to underwater sound are described from paragraph 14.6.69 of APP-096. The MMO reportedly agreed that the methodology would provide a precautionary assessment in pre-application discussions [paragraph 14.6.77, APP-096].
- 5.7.58. Several fish species with medium to high hearing sensitivity (eg Atlantic salmon, cod, herring, European eel and sea trout) known to be present in the River Tees are UK BAP priority species or species of principal importance [paragraph 14.6.82, APP-096]. The impulsive sound from geophysical surveying would be beyond the hearing of fish [paragraph 14.6.84, APP-096]. However, UXO detonations using a TNT equivalent charge weight of 100kg could cause mortality of fish up to 473m from the detonation and sub-lethal effects could occur at greater distances [paragraph 14.6.89, APP-096]. However, standard Joint Nature Conservation Committee (JNCC) mitigation measures would be applied and, although displacement of fish would still occur, the Applicants conclude that effects would be localised and temporary [paragraph 14.6.91, APP-096].
- 5.7.59. The results of the modelling suggest that for high hearing sensitivity fish species, recoverable injury would only occur if individuals remained within 10m of a continuous sound source for 48 hours. A temporary threshold shift (TTS), which is a measure of a reduction in hearing sensitivity, could occur up to 100m away if fish remain in the zone for a period of 12 hours [paragraph 14.6.94, APP-096]. Given a distance of approximately 3km between drilling and dredging operations from the mouth of the River Tees, it is not anticipated that these activities would

result in a temporary acoustic barrier to the Tees [paragraph 14.6.95, APP-096]. Overall, disturbance to fish from continuous sound sources would be localised and short-term, against a baseline of habituation from the existing high level of marine traffic and is therefore not found to be significant [paragraph 14.6.98, APP-096].

- 5.7.60. Baseline data in Appendix 14C [APP-319] indicate that harbour porpoise may occur in Tees Bay, and dolphin and minke whale may be present further offshore in low numbers. Given the presence of a seal colony at Seal Sands, seals would be expected to occur frequently in the impact zone of any geophysical survey associated with Proposed Development. In the absence of mitigation, some permanent or temporary injury to the hearing of both pinnipeds and cetaceans could occur and, assuming that the TTS is indicative of a behavioural response, significant behavioural disturbance could occur [paragraph 14.6.111, APP-096]. The Applicants states that the JNCC guidelines for good practice would be adopted to mitigate the effects of surveying and detonation of UXO, which should reduce the risk of impacts to an insignificant level [paragraphs 14.6.112, 113 and 118, APP-096]. In addition, geophysical works would be short-term. Taken together, the resulting effects are predicted to be insignificant.
- 5.7.61. A permanent threshold shift (PTS), which is a permanent elevation in hearing threshold, is predicted to occur within 69m of the drilling of pin piles for all marine mammals. Larger PTS impact zones are predicted for dredging and general marine vessel movements of up to 688m for high frequency cetaceans [paragraph 14.6.127, APP-096]. The estimated impact for TTS is within 319m for low and medium frequency species and beyond 10km for high frequency cetaceans [paragraph 14.6.128, APP-096]. However, marine mammals are highly mobile and would be expected to move away from underwater noise sources, so the potential for PTS is considered by the Applicants to be low. Nevertheless, there remains significant potential for individuals to be subject to TTS [paragraph 14.6.129, APP-096].
- 5.7.62. Effects from changes to the underwater soundscape would be temporary and short-term, a degree of habituation would be expected given that there is a high level of marine traffic in the area and non-impact piling methods have been chosen. Together the Applicants conclude that these reduce the potential impacts from continuous sound sources on marine mammals to the extent that they would not be significant [paragraph 14.6.132, APP-096].

Changes in the airborne soundscape

- 5.7.63. Construction activities would create airborne sound, which has the potential to disturb seals at Seal Sands approximately 0.6km from the Order Limits. Ambient sound measurements were made at the Seal Sands industrial area to establish baseline levels from industry and the road through the industrial estate [APP-093]. Indicative predictions of construction sound levels were calculated; the highest sound impacts

would be caused by the CO₂ pipeline construction, which is expected to last for about a year [paragraph 14.6.137, APP-096].

- 5.7.64. The resulting noise levels at Seal Sands are predicted to be below the TTS and PTS thresholds. In addition, activity would not be continuous in the working day and seals are highly mobile. For these reasons, the Applicants concluded that there is no significant risk of detectable changes in the behaviour, abundance, distribution and conservation status of the seals [paragraphs 14.6.142 to 14.6.144, APP-096].

Changes in visual stimuli

- 5.7.65. It is proposed that construction lighting would be arranged so that glare and light spill into the marine environment would be minimised from both land-based lighting and lights on marine vessels. This is detailed in the Indicative Lighting Strategy [AS-017]. Given this, and the deterrence of fish from the area by noise, it is not anticipated that there would be significant effects on fish and shellfish from lighting [paragraphs 14.6.149 and 14.6.150, APP-096].
- 5.7.66. There is a spit of land between the PCC Site and Seal Sands, which means that the direct line of site between them is limited, and the significant construction works on the south side of the river are therefore not expected to cause visual disturbance to seals. The Tees Estuary is highly industrialised with regular marine traffic, and members of the public frequent the area to watch the wildlife. It is therefore expected that seals and other marine mammals would be habituated to anthropogenic sources of visual stimuli. In addition, visual stimuli from construction would be temporary and localised. For these reasons, the Applicants conclude that the effects on marine mammals, including the harbour seals that are a feature of the Teesmouth and Cleveland Coast SSSI would not be significant [paragraphs 14.6.153 to 14.6.155, APP-096].

Invasive non-native species

- 5.7.67. INNS are most likely to be introduced via marine vessels from biofouling or discharge of ballast and bilge water. They could also be introduced via construction materials, such as through placement of the rock armour. However, given implementation of good practice and the small volume of rock armouring, the risk of INNS transmission is considered by the Applicants to be low [paragraph 14.6.159, APP-096].

Collisions between vessels and marine mammals

- 5.7.68. The exact number and types of vessels required for construction of the outfall and the CO₂ export pipeline is unknown. However, the majority are expected to be less than 80m in length, slow moving and stationary for long periods of time [paragraph 14.6.166, APP-096]. The number of marine mammals in the vicinity of the Proposed Development is expected to be low, with the exception of seals. However, most vessels would be operating away from Seal Sands and given the likely occurrence of other disturbance effects, such as underwater sound, displacement of the seals

from the construction area is already probable, reducing the risks of collision. A small risk to juvenile seal pups is considered to remain. However, any effect would be at a local level with no impact to the conservation status of the species [paragraphs 14.6.166 to 14.6.169, APP-096].

Operational phase

- 5.7.69. Modelling of the thermal plume emitted from the outfall was provided in Appendix 14E [APP-321]. The exact location of the discharge point is unknown, so a number of discharge points were modelled, and sensitivity analysis undertaken [paragraph 14.6.189, APP-096]. The Applicants consider that the reporting is highly precautionary for the reasons given in paragraph 14.6.191, APP-096. The largest plume was identified for a neap tide under normal discharge conditions, due to tidal velocities reducing the rate of dispersion of the excess temperature [paragraph 14.6.192, APP-096].
- 5.7.70. The likely extent of the thermal plume above 2°C extends to 599m and 398m during the flood and ebb tides respectively [paragraph 14.6.195 and Table 4-19, APP-096]. Far-field modelling indicated temperature excesses of up to 0.3°C to about 1.5km from the outfall for all simulations [paragraph 14.6.197, APP-096], which the Applicants conclude is negligible compared to the background annual average temperature.
- 5.7.71. Consideration was given to the potential cumulative effects of thermal discharge from the Proposed Development with the thermal uplift from Hartlepool nuclear power station approximately 5km to the west of the Order Limits. Details of its discharge were unavailable, but a qualitative assessment indicated that there may be some overlap at the extremities of the plume. However, once reviewed against natural variability, the Applicants concluded that there would be no discernible change in marine effects [paragraphs 14.6.200 to 14.6.202, APP-096].
- 5.7.72. The potential effects of the thermal plume on plankton, intertidal habitats and their communities, subtidal habitats and their communities, INNS, fish and shellfish, marine mammals, which are a feature of the Teesmouth and Cleveland Coast SSSI, were all considered by the Applicants and were found not to be significant [section 14.6, APP-096].
- 5.7.73. Discharge of treated effluent could result in changes to marine water quality and ecology. The Applicants drew attention to the highly regulated wastewater treatment system [paragraphs 14.6.225 and 14.6.226, APP-096], the low rate of discharge and the expected rapid dispersion. They concluded that, for these reasons, the potential for adverse effects from treated effluent on marine water quality was low [paragraph 14.6.227, APP-096].
- 5.7.74. Air quality dispersion modelling indicated that nitrogen deposition from the Proposed Development would be at its peak around Coatham Sands, which contains intertidal mudflats and sandflats. However, the hydrodynamic conditions and open nature of the coastline mean that the

area is subject to frequent tidal washing, which would rapidly disperse nitrogen deposits. The impacts on intertidal habitats and species from air pollution were therefore also considered to be negligible [paragraphs 14.6.230 to 14.6.234, APP-096].

- 5.7.75. An assessment of the impact of operational noise on seals at the Seal Sands mudflats was undertaken based on the TTS and PTS. These thresholds were not predicted to be exceeded taking into account baseline conditions, and the effects are therefore predicted not to be significant [paragraphs 14.6.235 to 14.6.243, APP-096].

Decommissioning

- 5.7.76. During decommissioning the worst-case scenario for the marine environment would be if the outfall head and rock armouring were removed [paragraph 14.6.250, APP-096]. This is because this infrastructure could potentially provide artificial reef habitat and its removal could lead to loss of benthic habitat and associated species. However, removal would also potentially allow for habitat gains from re-colonisation and the re-establishment of the sandflat habitat. However, the area is very small and the Applicants conclude that any changes would be negligible [paragraph 14.6.251, APP-096].
- 5.7.77. The DEMP, secured via R32 of the dDCO would provide a framework within which to mitigate and manage any potential risks, in addition to a requirement to update ecological surveys. For this reason, the risks from decommissioning activities are not considered to be significant [paragraph 14.6.255, APP-096].

Ornithology

- 5.7.78. The purpose of ES Chapter 15 [APP-097] is to assess the potential effects of the Proposed Development on all ornithological designations, and populations of birds and species, regardless of their habitat associations. This chapter also includes an assessment of the effects on the habitats on which these species rely. Baseline ornithological data are provided in Appendices 15A and 15B [APP-322 to APP-326].
- 5.7.79. The assessment was undertaken in line with the CIEEM Guidance. The key ornithological features and their characteristics are set out in Table 12-5 [APP-097]. An assessment of the potential effects on the Teesmouth and Cleveland Coast SPA and Ramsar site is set out in Chapter 6. Of the nearby sites with national statutory conservation designations, the following were scoped in for assessment of potential impacts:
- Teesmouth and Cleveland Coast SSSI (including the Teesmouth NNR), to the immediate north of the PCC Site. This site supports over 20,000 non-breeding waterbirds and an aggregation of non-breeding birds on a mosaic of coastal and freshwater habitats. Risks have been identified to roosting and nesting sites from changes in air quality on habitats and noise disturbance.

- Salthome RSPB Reserve approximately 1.15km west of the PCC Site and adjacent to the CO₂ gathering network at Bran Sands. Much of the site lies within the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site. The site supports one of the largest breeding colonies of common terns in the UK.

- 5.7.80. In addition, a number of Annex 1 qualifying species and other protected species were scoped in for assessment from habitat loss and disturbance. A full list of these can be found in Table 12-5 [APP-097].
- 5.7.81. The potential impacts during construction and operation were screened to determine which would still be significant following application of measures adopted to meet the regulatory requirements, including the CEMP (R16 of the dDCO [REP12-0003]). The results of this exercise are in Table 15-6 [APP-097] and discussed in the sections below.

Habitat loss and degradation

- 5.7.82. Some habitats would be removed permanently on the PCC Site. This would result in the loss of one breeding site for a single pair of ringed plover, up to two breeding sites for a pair of barn owls and loss of a breeding bird assemblage that includes small numbers of lapwing, herring gull, skylark and meadow pipit. However, given the presence of similar habitat nearby, measures to replace sites in the Indicative Landscape and Biodiversity Strategy [REP12-040] (secured by R4 of the dDCO) and the small scale of impacts, these were not judged by the Applicants to be significant effects [paragraph 15.6.14, APP-097].
- 5.7.83. Up to 25.9ha of bare ground and 12.2ha of semi-improved neutral grassland would be temporarily lost and small stands of shrub permanently lost within the Teeswork temporary laydown. These habitats are regularly used by herring gull and a small number of breeding birds, including song thrush and small numbers of green list species such as wren and whitethroat. However, new scrub plantings would be provided within the PCC Site in accordance with the Indicative Landscape and Biodiversity Strategy [REP12-040]. In addition, the area affected is small in comparison to the known distribution of gulls and, given its temporary nature, the loss is not considered to be significant [paragraph 15.6.15, APP-097].
- 5.7.84. There would be no direct effects on habitats from construction of the new outfall, which would not physically disturb the dunes or foreshore [15.6.29 APP-097].

Noise and vibration

- 5.7.85. NE has agreed an upper noise limit of 70dB at the receptors for disturbance to be considered significant [paragraph 15.3.34, APP-097]. Baseline monitoring included sites in Coatham Dunes adjacent to the SSSI and at Bran Sands [APP-093].
- 5.7.86. Non-percussive bored piling has been confirmed as the most likely method and noise contours have been generated for associated continuous noise emissions [Figure 11-2, REP12-086]. Noise contour

plots have also been produced for the construction of the pipelines [REP12-087 to REP12-089].

- 5.7.87. The data presented indicate that the existing sound environment is very variable. Average sound levels are not particularly high, but very high sound levels are experienced over short periods. The Applicants conclude that birds in this area are likely to be habituated to a significant impulsive sound element, including to a variety of industrial sound emissions [paragraph 15.6.20, APP-097].
- 5.7.88. The 70dB noise contour arising from construction of the PCC Site maps to the approximate boundary of the PCC Site, affecting a small area of Coatham Dunes immediately adjacent to South Gare Road, which the Applicants conclude is of negligible significance given its small scale. However, levels across approximately 5ha of Coatham Dunes close to the PCC Site, including part of one of the ponds, would be 20dB above average background noise levels and 5-10dB above baseline maximum sound levels at this location, which might elicit minor behavioural responses for some breeding bird species in small numbers and from roosting redshank and lapwing. However, this is a small proportion of the SSSI as a whole and the impact is temporary and reversible. For these reasons, the Applicants conclude that the effects from construction noise on ornithology would be insignificant [paragraphs 15.6.21 and 15.6.22, APP-097].
- 5.7.89. Although noise generated from tunnelling for the outfall would not be percussive, baseline noise levels were elevated at Coatham Sands, so noise modelling with and without a noise barrier between the launch pit on the PCC Site and the SSSI was undertaken. The results are provided in Tables 15-7 and 15-8 of the ES [APP-097]. Predicted levels remain below 70dB beyond 65m without a barrier and 24m with a barrier. This is a small proportion of the SSSI and the bird population would already be habituated to daytime percussive noise emissions exceeding the predicted levels from the Proposed Development. The effects of noise emissions on ornithological receptors during installation of the water discharge and CO₂ export pipeline are therefore assessed as not significant for designated sites, species and species assemblages.

Visual disturbance

- 5.7.90. Visual disturbance from construction of the PCC Site is not expected within the Teesmouth and Cleveland Coast SSSI because of the screening afforded by existing buildings and the natural topography of the sand dune system interrupting the line of sight. The PCC Site is within an already industrialised landscape characterised by artificial lighting and the lighting scheme secured by R6 of the dDCO would be designed to protect nocturnal species and serve to reduce the potential effects on birds. The effects on birds, including barn owl, would not be significant [paragraphs 15.6.24 and 15.6.25, APP-097].

Disturbance of marine birds by boats

- 5.7.91. Construction of the new outfall would require vessels to enable works at the discharge point for a period of up to a year. The activity would occur below MLWS so there would be no impacts on shorebirds or terrestrial birds.
- 5.7.92. Any species that occur exclusively or predominantly offshore would be deterred from foraging in the vicinity for short periods of time. However, even allowing for a standoff distance around the works, the area affected would be insignificant in the context of the wider availability of the habitat. It is concluded that the presence of boats during construction would not materially alter the behaviour or distribution of foraging terns or other fishing birds and therefore this is assessed as not significant [paragraph 15.6.37, APP-097].

Pipeline construction

- 5.7.93. New pipework would typically be constructed through areas characterised by existing industrial infrastructure, which provides a degree of screening, crossing semi-improved grasslands and small areas of scrub that are suboptimal habitats for birds [paragraphs 15.6.42 and 15.6.43, APP-097]. Detailed consideration was given to the effects of habitat loss from the Navigator Terminals laydown, the Saltholme laydown, Haverton Hill laydown and the electrical connection corridor [section 15.5, APP-097]. In all cases, the effects from construction in these areas were not deemed to be significant.
- 5.7.94. Noise emissions would mostly occur because of non-percussive activities including pipe stringing, pipe bending, direct drilling, pipe laying and welding. Modelling indicates that the 70dB noise response threshold for birds is only exceeded within 50m from the connection corridor network [Figure 11-3, REP12-087]. The higher noise levels would affect only 20% of the breeding bird assemblage in the area, on a short-term basis [paragraph 15.6.52, APP-097]. The 70dB threshold would be exceeded for small areas of terrestrial habitat south of the PCC Site that are used as high tide roosts by lapwing. The small area of habitat affected, and the short-term nature of the activity is highly unlikely to alter the use by this species to the extent that there would be a detectable adverse effect [paragraph 15.6.53, APP-097]. Barn owls within the area would be largely resistant to noise and visual disturbance [paragraph 15.6.54, APP-089].
- 5.7.95. The impact of visual disturbance north of the River Tees would be limited because the working areas are restricted and close to locations already in industrial use, which also provides screening. Construction along the northern edge of Saltholme RSPB Reserve would be restricted to works on the existing pipe racking and access track immediately alongside it, south of which lies a band of improved grassland approximately 100m wide that is suboptimal for breeding birds. The Applicants report that this was discussed with the RSPB prior to the Application being submitted [paragraph 15.6.56, APP-097]. For these reasons, visual disturbance

north of the River Tees during construction is not considered to be significant.

Operation

- 5.7.96. Operational noise levels from CO₂ compression and operational plant would produce a worst-case unmitigated sound level of 85dB 1m from source, however this falls away to a minimum of 55 dB LAeq within the footprint of the PCC Site. These levels are comparable to or lower than existing baseline sounds and below the threshold of 70dB. The effects from noise emission on birds from operation would therefore not be significant [paragraph 15.6.62 of APP-097].
- 5.7.97. The main cause of visual disturbance during operation would be from artificial lighting. However, the PCC Site is in an existing industrial setting and some degree of bird habituation is expected. The Indicative Lighting Strategy secured by R6 of the dDCO would take into account nocturnal species and can be adapted to consider the needs of other birds. The Applicants conclude that visual disturbance of ornithological receptors from lighting during operation is therefore unlikely to result in adverse effects [paragraphs 15.6.63 to 15.6.65, APP-097].

Decommissioning

- 5.7.98. There would be no requirement to remove or disturb habitats to remove buried infrastructure during decommissioning. This would avoid direct impacts on the sand dune system of Teesmouth and Cleveland Coast SSSI, the foreshore and marine subtidal habitats of Coatham Sands [paragraph 15.6.70, APP-097].
- 5.7.99. Sound emissions for the decommissioning period would need modelling to determine the extent and severity of any percussive sound emissions from activities such as breaking of concrete and buildings. However, these are expected to be lower than those for construction because piling would not occur. Significant visual impacts on birds are not expected because existing buildings, infrastructure and landscape features would be expected to provide effective visual screening [paragraphs 15.6.72 and 15.6.73, APP-097].
- 5.7.100. Decommissioning activities would be conducted according to the DEMP (R32 of the dDCO [REP12-003]), through which ornithological surveys can be commissioned as appropriate [paragraph 15.6.74, APP-097]. On this basis, no significant effects on ornithological receptors are predicted from decommissioning.

Examination Matters

Terrestrial ecology

- 5.7.101. In response to BIO.1.2 at ExQ1, the Applicants confirmed that it was appropriate to rely on the original ecological surveys, with the exception of those for water vole and otter [REP2-016]. These were updated and submitted at D5 [REP5-029]. The EA agreed with this position [REP2-062].

- 5.7.102. We noted that the CIEEM Guidance had been updated in 2022 and questioned the implications of this. The Applicants stated that the impact assessment had been prepared in accordance with the precautionary principle and the minor amendments to the guidance would therefore not affect the conclusions [ExQ1 BIO.1.21, REP2-016].
- 5.7.103. We queried how assessments of inaccessible waterbodies, such as Ponds 113 and 114, could be relied upon. The EA agreed that these waterbodies should be included in the assessment, and it did not necessarily consider the ponds inaccessible. However, if access is not possible then a precautionary approach must be adopted, and appropriate mitigation and method statements should be included [REP2-062]. The Applicants stated that survey data were not needed for these waterbodies because no pathways or impacts were predicted [ExQ1 BIO.1.5, REP2-016].
- 5.7.104. Great crested newts were scoped out for further assessment in Table 12.5 [APP-094]. In response to our question on this matter the Applicants stated that they had not been recorded locally and the only two waterbodies of relevance were distant [ExQ1 BIO.1.3, REP2-016].
- 5.7.105. The Applicants confirmed that the only connection that would not follow existing pipe racking or utilities corridors is the CO₂ Export Pipeline and the replacement outfall in response to our question. Impacts along these routes would be mitigated through trenchless drilling, noise barriers and visual screens [ExQ BIO.1.4, REP2-016].
- 5.7.106. Through ExQ1 BIO.1.10 and BIO.1.18 [PD-012] and BIO.2.5, we sought to clarify the status of the Landscaping and Biodiversity Plan, Strategy and associated figure. In [REP2-016] the Applicants confirmed that the plan should be appended to the strategy and that this is secured via R4 of the dDCO [REP12-003]. The Applicants clarified the correct terminology in REP6-121 and this was reflected in the dDCO [REP12-003].
- 5.7.107. We asked RCBC and STDC if they were content with the proposal for a brief annual monitoring report to record compliance with the Landscape and Biodiversity Protection Plan [ExQ1 BIO.1.20, PD-012] and whether this should include a formal sign-off process. RCBC responded to say that it was generally happy with the approach [REP2-094]. The Applicants agreed to insert a new sub-paragraph in R4(5) specifying that monitoring of the plan must be according to set timescales, approved by the RPA and provided to STDC [REP6-121 in response to BIO.2.6]. STDC agreed that a formal sign-off on the monitoring report may be beneficial to ensure that it could deliver its own biodiversity commitments [REP6-144].
- 5.7.108. In response to our query about where the Arboricultural Method Statement was secured, the Applicants stated that the dDCO submitted at D2 had been amended to specify that the Landscape and Biodiversity Protection Plan under limb (4) of R4 must be in accordance with the Indicative Landscape and Biodiversity Strategy that contains the arboricultural measures [ExQ1 BIO.1.14, REP2-016].

- 5.7.109. We asked whether reinstatement of lost or damaged habitats should be secured through the dDCO. The Applicants confirmed that the final CEMP (R16) and the Landscape and Biodiversity Protection Plan [APP-079] secured by R4 would achieve this [ExQ1 BIO.1.16, REP2-016]. The EA confirmed that details of reinstatement should be in the final CEMP and that compliance with the Indicative Landscape and Biodiversity Strategy, including reinstatement, should be secured through the dDCO [REP2-062].
- 5.7.110. We requested updates to the ES relating to the Environment Act (2021) and any implications from this. The Applicants are not expecting the Act to have direct relevance to the Proposed Development, including the provisions for Biodiversity Net Gain, although they are committed to providing this anyway [ExQ1 BIO.1.1, BIO.1.6, BIO.1.17, REP2-016].

Marine ecology

- 5.7.111. Paragraphs 14.9.18 and 14.9.21 of the ES [APP-096] state that it is unlikely dredging operations or piling associated with cumulative developments would occur simultaneously. We queried the basis on which this conclusion was made. The Applicants responded that dredging in Tees Bay prior to installation of the new outfall head could be timed to avoid other dredging activities in the River Tees. However, if piling activities were to overlap with other developments, an acoustic barrier would not be formed and the impact zones would not overlap because of the likely distance between them [ExQ1 BIO.1.9, REP2-016].
- 5.7.112. The Applicants confirmed that both the MMO and Cefas were satisfied with the location of additional intertidal benthic sampling at Coatham Sands and confirmed that these were representative of the area in which the replacement outfall would be constructed [ExQ1 BIO.1.22 and BIO.1.23, REP2-016].
- 5.7.113. We asked for details of the maintenance activities that are anticipated in the marine ecology study area and further information about any impacts from these. The Applicants confirmed that there would be no routine maintenance works in the intertidal or subtidal zone, but there may be visual inspection of the outfall. This activity would be highly localised and short in duration. The effects of this on the marine environment would be negligible [ExQ1 BIO.1.25, REP2-016].
- 5.7.114. The Applicants confirmed that it was still too early to determine the details of vessel movements for the construction of the outfall and delivery of materials to RBT. However, they are still content that the number of vessel movements required would be low relative to the vessel activity in the area. For this reason, it was not considered that vessel monitoring would be necessary during offshore works [ExQ BIO.1.30 and BIO.1.38, REP2-016].
- 5.7.115. It was clarified that directing HDD from onshore to offshore is considered the worst-case scenario because it would require additional vessels to support the pipeline string prior to pulling it through the bore. We also asked whether the effects on marine ecology from HDD beyond the

standard hours of working had been assessed. The Applicants stated that continuous drilling had been assumed in the ES. The HDD bores would typically be drilled 10m below the seabed, so sound effects would only be expected at the start and end of tunnelling, which would be short-term and in soft sediment. For this reason, the effects are predicted to be negligible [ExQ1 BIO.1.31 and 1.36, REP2-016].

- 5.7.116. The MMO raised questions regarding the potential effects from noise on migratory fish such as salmon [RR-037]. The Applicants stated that a precautionary approach had been undertaken based on sources of literature, emphasising that dredging in the Tees Estuary is no longer required and that works away from the River Tees would be of very short duration [ExQ1 BIO.1.32, REP1-045 and REP2-016].
- 5.7.117. The MMO identified detonation of UXO as a high risk activity that should be managed in a separate Marine Licence, in part to ensure that the most up to date evidence and technology could be applied. It stated that while the approach to modelling underwater explosions was not overly clear, they were content that the predicted impacts ranges looked reasonable [RR-037, REP2-086]. At REP6-113 the MMO stated that it was satisfied with the assessment of the impacts of UXOs presented in the ES. Discussions continued between the parties during the Examination to agree a form of wording to insert in the DML [REP6-136, REP7-013, REP8-055, REP9-029]. The MMO confirmed [REP11-034] that there were no outstanding issues in relation to the wording of the DMLs control of underwater explosions.
- 5.7.118. The EA requested that if dredging takes place it should avoid peak migration times [RR-024]. The Applicants do not consider that this is necessary because the extent of dredging is small and would not result in a barrier to diadromous fish. In addition, the location and timings of dredging would be included in a Marine Method Statement, secured in the DML, and it was agreed with the EA that it would be consulted on the sample plan and analysis in the DML and Framework CEMP [REP2-016].
- 5.7.119. We asked the IPs if other developments, including the Tees Bank Quarry, should be included in the assessment of cumulative and combined effects on marine ecology. NE confirmed that it was not aware of other developments that should be included [ExQ1 BIO.1.33, REP2-065]. No other sites were brought to our attention.
- 5.7.120. The Applicants stated that the details of the marine pollution contingency plan required by Condition 11(1)(a) of Schedules 10 and 11 of the DML of the dDCO [AS-004] would be the responsibility of the contractor undertaking the works. However, an example of such a document was provided in REP2-018 following our request [BIO.1.39, PD-012].

Ornithology

- 5.7.121. We asked for more information regarding the assumption that tidal washing would rapidly disperse nitrogen deposits from the Teesmouth and Cleveland Coast SSSI. Tidal washing occurs daily up to the line of MHWS. This may remove deposited nitrogen, but the main effect is that

inundating the foreshore with saline water significantly restricts the ability of undesirable vegetation that is responsive to atmospheric nitrogen to establish or thrive [ExQ1 BIO.1.53, REP2-016].

- 5.7.122. NE confirmed that they were content with the approach and scope of the ornithological impact assessment [ExQ2 BIO.2.1 and BIO.2.2, REP6-137].
- 5.7.123. We queried why the scope of ornithological monitoring could not be established in R16 and sought clarification on NE's position on this. NE was satisfied that its concerns would be addressed because it would be consulted on discharge of the Requirement [ExQ1 BIO.2.3, REP6-137]. The Applicants explained that the monitoring regime would depend on confirmatory surveys prior to construction and that putting details in the Requirement would therefore be premature [REP6-121].

Examining Authority's Response

- 5.7.124. We are satisfied that the ES has appropriately set out the potential effects from all phases of the Proposed Development on designated sites, protected species and on habitats and species of principal importance, as required by paragraph 5.3.3 of EN-1. The Applicants have satisfactorily responded to our queries and those of the IPs in this respect. Significant harm to biodiversity conservation interests would be avoided through integrated mitigation, satisfying paragraph 5.3.7 of EN-1.
- 5.7.125. Requirements of the dDCO would secure mitigation measures and monitoring, as recommended in paragraph 5.3.15 and 5.3.11 of EN-1. Management and mitigation plans include the final CEMP, which contains, among other things, provision for a Site Waste Management Plan (SWMP), an INNS management plan and ornithological monitoring (R16), and the External Lighting Scheme (R6). We have reviewed the indicative or Framework versions of these plans and are satisfied that they would achieve their aims. The DEMP (R32) would provide appropriate protection of biodiversity during decommissioning.
- 5.7.126. We have noted that not all the ponds were surveyed. However, based on the information provided it appears likely that they are of low value to biodiversity, and we accept the Applicants conclusion that there are unlikely to be impacts. We are satisfied that the approach taken is precautionary and that the mitigation of potential effects from the Proposed Development would be protective of these.
- 5.7.127. The Applicants have demonstrated that the Proposed Development would take advantage of opportunities to conserve and enhance biodiversity, in line with paragraph 5.3.4 and 5.3.15 of EN-1. This is secured in the Landscape and Biodiversity and Enhancement Plan in R4 of the dDCO [REP12-003], which also contains provision for an annual monitoring report to be submitted for approval to the RPA.
- 5.7.128. STDC stated that they would welcome a formal 'sign off' on the annual monitoring report required by R4 to ensure that it could deliver its own biodiversity commitments [REP6-144]. R4 requires approval of this

report by the RPA, which must then be provided to STDC. We are satisfied that this is a reasonable approach.

- 5.7.129. The Applicants have demonstrated that the minor losses of shrub and OMH may benefit from a degree of disturbance and that reinstatement of vegetation is best left to natural processes, which we consider meets the requirements of EN-4. The Applicants have set out measures to avoid, mitigate or compensate for adverse effects during these works in their Framework CEMP (R16), and the Landscape and Biodiversity Protection Plan (R4).
- 5.7.130. The loss of habitat on the PCC Site would result in the loss of one breeding site for a single pair of ringed plover, up to two breeding sites for one pair of barn owls and loss of a breeding bird assemblage that includes small numbers of lapwing, herring gull, skylark and meadow pipit. However, given that there are similar habitats nearby and replacement of the habitats is secured in the Landscape and Biodiversity Protection Plan in R4, we are satisfied that these effects would not be significant.
- 5.7.131. Noise from construction of the PCC Site would increase levels at Coatham Dunes, which may elicit changes in behaviour from small numbers of roosting redshank and lapwing. However, this is a small proportion of the SSSI as a whole and the impact is temporary and reversible. For these reasons, we are satisfied that the effects would not be significant. The noise threshold could be exceeded in the immediate vicinity of pipeline works. However, this is a small area of habitat and works would be short-term. The overall effects of noise from pipeline works would also be insignificant.
- 5.7.132. There would be a permanent loss of subtidal sandflats, which are a habitat of principal importance, under the footprint of the discharge point of the outfall. However, the affected area is small and the effects, including the loss of habitats for fish and shellfish, would not be significant. It is possible that the rock armouring would provide new habitats for food sources and refuge that would some extent offset the loss. Condition 30 of the DML (Schedules 10 and 11 of the dDCO [REP12-003]) requires that the final extent of the Wastewater Discharge Connection Corridor (Work No. 5B) should not give risk to new or different environmental effects that those set out in Chapter 9 of the ES.
- 5.7.133. Any dredging associated with the new outfall would be controlled by the DMLs in the dDCO. A CEMP is required as a condition of the DMLs (Schedules 10 and 11 of the dDCO [REP12-003]). This must include details of a marine pollution contingency plan. The MMO would have to approve this plan which would ensure that it was appropriate to avoid adverse effects. A sediment sampling plan would be required prior to dredging and disposal, and a marine method statement must be provided detailing the methods of dredging and disposal arrangements.
- 5.7.134. UXO detonations and geophysical surveying could lead to short-term harm to of fish and injury to the hearing of both pinnipeds and

cetaceans. There also remains the potential for permanent hearing threshold damage for all marine mammals from dredging and vessel movement. However, mitigation measures secured via the dDCO [REP12-003] and the DMLs should ensure that the effects would be localised and not significant. A small risk to juvenile seal pups remains from collision with vessels. However, we are satisfied that the number of vessels is likely to be small and any effect would be at a local level with no impact to the conservation status of the species.

- 5.7.135. Appropriate Requirements have been proposed for the protection of water quality, including inland surface water, transitional waters and coastal waters, as stipulated by paragraph 5.15.4 of EN-1. This is secured in the CEMP (R16) and associated SWMP, and DMLs in Schedules 10 and 11 of the dDCO [REP12-003].
- 5.7.136. Modelling of the thermal plume from the outfall has been provided and we are satisfied that this has been undertaken on a precautionary basis. We are content that the extent of the likely increase in temperature is negligible compared to the background temperature. The Applicants have therefore appropriately considered the effects of cooling water on water quality, as required in EN-2.

Conclusions

- 5.7.137. The Applicants have appropriately considered the potential effects from all phases of the Proposed Development on designated sites, protected species and on habitats and species of principal importance, as required by EN-1 and the draft EN-1. Modelling of the thermal plume from the outfall has been provided in accordance with EN-4, which demonstrates that there would be no adverse effects.
- 5.7.138. Significant harm to biodiversity conservation interests would be avoided through integrated mitigation. Mitigation measures and monitoring are secured via Requirements in the dDCO in accordance with EN-1 and EN-4, and their respective draft versions, including: R4, the Landscape and Biodiversity Protection Plan and the Landscape and Biodiversity Management and Enhancement Plan; R6 the External Lighting Scheme; R16, the CEMP; and R32, the DEMP. Further controls on marine activity, including dredging and management of unexploded ordnance, would be provided via the DMLs in Schedules 10 and 11 of the dDCO.
- 5.7.139. The Applicants have also demonstrated that the Proposed Development would take advantage of opportunities to conserve and enhance biodiversity, in line with EN-1. Draft EN-1 encourages the applicant to consider how their proposal can contribute towards Biodiversity Net Gain. The Applicants have identified the opportunities for biodiversity gain on the Site. We accept that provision of a formal assessment of Biodiversity Net Gain is not yet a requirement for NSIPs and are satisfied that the extent of information provided is consistent with the draft policy.
- 5.7.140. Consequently, we can conclude that biodiversity and ecology matters would not give rise to any likely significant adverse effects. We

acknowledge the benefits that the commitment to enhancement of biodiversity on the PCC Site would bring and apply moderate positive weight to these in the planning balance.

5.8. GEOLOGY, HYDROGEOLOGY AND LAND CONTAMINATION

Introduction

- 5.8.1. Geology, hydrogeology and land contamination were listed in the IAPI [Annex C, PD-009]. This included the timing, scope and responsibility for ground investigation, remediation and monitoring, and the assessment of risks to human health and controlled waters. Potential issues also included potential geotechnical risks and access to safeguarded mineral deposits.

Policy Considerations

- 5.8.2. Paragraph 5.10.8 of EN-1 states that for developments on previously developed land, applicants should ensure that they have considered the risk posed by land contamination. Specific legislation on contaminated land is principally in Part IIA of the Environmental Protection Act 1990. The legislation endorses the principle of a 'suitable for use' approach. Paragraph 4.10.3 states that the decision maker should assume that the other regulatory regimes will be properly applied and enforced by the relevant regulator.
- 5.8.3. Paragraph 5.10.9 of EN-1 states that applicants should safeguard any mineral resources on the proposed site as far as possible. Paragraph 5.10.22 states that *'Where a proposed development has an impact upon a Mineral Safeguarding Area (MSA), the [decision maker] should ensure that appropriate mitigation measures have been put in place to safeguard mineral resources'*.
- 5.8.4. Underground cavities and unstable ground conditions may present particular risks to pipeline projects. Paragraph 2.23.2 of EN-4 requires applicants to assess ground conditions and consider matters such as stability, including the use of HDD. Where the applicant proposes to use HDD as the means of installing a pipeline under a National or European Site, the assessment should cover whether the geological conditions are suitable for HDD.
- 5.8.5. EN-1 also requires that applicants identify any effects on soil quality and sites of geological conservation importance (paragraphs 5.10.8 and 5.3.3).
- 5.8.6. Further details of planning policy and legislation relating to the water environment are provided in section 10.2 of Chapter 9 [APP-092].

The Applicants' Case

- 5.8.7. The Applicants' case was set out in ES Chapter 10: Geology and Contaminated Land [APP-092]. Supporting appendices provided a

Preliminary Sources Study Report [APP-292], a conceptual site model [APP-293], a contaminated land environmental risk assessment [APP-294] and a geotechnical risk register [APP-295]. These were supported by 25 figures, re-issued twice to reflect the change requests. The final version of the figures was submitted at D12 [REP12-060 to REP12-084]. A Hydrogeological Impact Assessment was submitted at D4 [REP4-027].

- 5.8.8. The Order land has been subject to extensive industrial development since before the date of the earliest Ordnance Survey map for the area from 1854. Previous contaminative uses include iron and steel works, coking works, railways, tar macadam and slag works, brine works, cement manufacture, anhydrite mining, landfill and chemical works. Buried UXO is also identified as a risk. UXO clearance, remediation of hotspots of contamination, soil remediation and active groundwater remediation and long-term monitoring are anticipated by the Applicants [section 10.6, APP-092].
- 5.8.9. The results of a scheme specific ground investigation were not available by the close of the Examination. It is proposed that ground investigation, assessments and remediation would be undertaken prior to the detailed design and construction of the project, and the findings would feed into the Final CEMP. RCBC confirmed that STDC had obtained planning permission during the period of the Examination for engineering operations associated with ground remediation and preparation of the PCC Site on behalf of the Applicants [REP2-079a and REP11-022].
- 5.8.10. The results of previous ground investigations on parts of the Site have identified that the subsurface is contaminated [APP-292]. The Applicants recognised that the baseline assessment would need to be reviewed in light of future, more comprehensive investigative works [section 10.4, APP-092].
- 5.8.11. R13 of the dDCO requires that a scheme to deal with land contamination and groundwater must be approved by the RPA in consultation with the EA and STDC. This would require a desk top study supported by a site investigation and a risk assessment, including a hydrogeological impact assessment. Any subsequent remediation works must be verified. A Materials Management Plan (MMP) must be included that sets out long-term measures in respect of contamination. The scheme must also include details of how any unexpected contamination would be dealt with. A long-term monitoring plan in respect of contamination, including groundwater and surface water, with appropriate contingency actions and mitigation measures must be provided.
- 5.8.12. The quality of groundwater could also be affected by piling, dewatering and earthworks. A Piling and Penetrative Foundation Design Method Statement is required (R23) to ensure that such works would be undertaken in line with current guidelines to ensure protection of groundwater quality. Mitigation measures are proposed in the Framework CEMP, which form the basis of the final CEMP (R16) to ensure that best practice is adopted, including from spillages of fuels, oils and chemicals during all phases.

- 5.8.13. The 'geotechnical risk register' [APP-295] identifies the likely geotechnical challenges on the Order land, including the potential for structural failure caused by sub surface conditions, such as expanding slag, aggressive ground chemistry and unexploded ordnance. A 'Foundations Optioneering Appraisal' was submitted at D2 that assessed the suitable foundation options for structures according to the 'threat' posed [REP2-048]. This demonstrated that options were available, although these would need to be re-assessed following ground investigation works and the FEED process.
- 5.8.14. The Applicants still propose to use HDD to install the onshore section of the CO₂ export pipeline (Work No. 8) and replacement outfall. This would traverse beneath the dune system and the intertidal habitats of the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site.
- 5.8.15. Ten dormant mineral sites were identified in the area, including an anhydrite mine at Billingham that has recently had new conditions for extraction approved. There are brinefields near Seal Sands and at Wilton with extant planning permissions. Permission was also granted in 2009 for the extraction of natural gas from limestone beneath Kirleatham [section 10.4, APP-092]. The local Mineral Safeguarding Area includes salt and gypsum at depth extending beneath the Order land. Safeguarded marine dredged sand and gravel are present locally at Tees Dock, which may extend below the footprint of the Order land. Tees Dock itself is identified as a Safeguarded Wharf. The Applicants state that the Proposed Development would not preclude the potential future extraction of minerals beneath the site [paragraph 10.6.11, APP-092].
- 5.8.16. The Site is underlain by Grade 4 or 5 soils that are already largely covered in made ground and by industrial use. The impact from any loss is therefore considered negligible. There are no protected geological formations in proximity to the Order land [section 10.6, APP-092].
- 5.8.17. The Applicants' assessment of cumulative effects reviewed nearby development in the context of land contamination and piling [section 10.9, APP-092]. It was concluded that if all developments are undertaken in accordance with their permissions, then significant cumulative effects would not occur.

Examination Matters

- 5.8.18. During the Examination, we sought clarification on several aspects of the future ground investigation, conceptual modelling, environmental and hydrogeological risk assessments [PD-012, PD-016] and at ISH4 [REP5-027]. These questions sought to clarify, among other things, the scope, responsibility for and timing of investigation and the appropriateness of the methodology for the qualitative risk assessment. We also sought to clarify the status of the water in the dune slacks on the foreshore as a potential receptor of contamination [ExQ1 GH.1.5, PD-012]. These were all responded to satisfactorily by the Applicants.

- 5.8.19. The EA noted that ground investigation works and risk assessment are typically an iterative process and while it sought to secure as much detail as possible through the Examination, was content to rely on R13 to ensure that risks would be appropriately understood and managed post consent [REP2-049, REP8-054]. The EA was engaged throughout the Examination to secure appropriate wording for R13 [REP3-029, REP5-032, REP6-133, REP7-012, REP8-054, REP9-027, REP11-031].
- 5.8.20. A Final CEMP linking to the hydrogeological risk assessment in R13(2)(f) to ensure protection of groundwater during construction is secured by R16. The Applicants' addressed the EA's concerns regarding the wording of R16 [REP5-032, REP6-133, REP8-054]. The EA stated that they are satisfied with the wording of both R16 and R23 (piling and penetrative foundation design) in the dDCO at D11 [REP11-031].
- 5.8.21. At D8 [REP8-003], the Applicants also inserted a requirement for the EA to be consulted on R32 of the dDCO (decommissioning) following the EA's request [REP6-132].
- 5.8.22. RCBC's LIR stated that to ensure full characterisation of the site, the standard 'contaminated land condition' should be applied to the wording of R13 [REP1-046]. RCBC also requested that sampling at the boundary of the site is undertaken to assess any migration of contamination. In REP4-041, RCBC also recommended that further investigative works would be necessary once the site is cleared of structures. At D11 RCBC confirmed it was satisfied that the revised wording of R13 would achieve these objectives [REP11-022].
- 5.8.23. Responding to NPL's concern regarding contamination in the vicinity of its site [REP1-025], at ISH4 the Applicants confirmed that R13 would provide a comprehensive answer to any contamination found [REP5-027].
- 5.8.24. With reference to the requirements of EN-4 in respect of HDD, questions were asked of the Applicants at ISH4 regarding whether the geological conditions are suitable for HDD [REP5-027]. The Applicants stated that ground investigation work had been carried out in 2021 and this had confirmed that the geology in the area is suitable for HDD.
- 5.8.25. We requested further information from the Applicants and RPAs regarding the likelihood of nearby mineral sites resuming extraction and the future access to safeguarded mineral deposits beneath the site [GH.1.7 and GH.1.8, PD-012]. No concerns about the assessment undertaken or the future of these sites was raised by the RPAs.

Examining Authority's Response

- 5.8.26. The Applicants have appropriately considered the risks posed by land contamination, as required by section 5.10 of EN-1. Ground investigation and the assessment of risks to the environment is necessarily an iterative process. We would not necessarily expect fully detailed site investigations at the application stage, but instead would look for a robust investigation, risk assessment, remediation and monitoring strategy to

be implemented prior to works commencing. This is provided for all areas of the Order land by R13 of the dDCO [REP12-003]. In addition, Part IIA of the Environmental Protection Act 1990 requires that the site is suitable for use. For these reasons, we are satisfied that contamination beneath the Order land would not give rise to significant adverse effects.

- 5.8.27. The quality of groundwater would also be protected through the Piling and Penetrative Foundation Design Method Statement (R23) and the measures outlined in the Framework CEMP that would be secured by R16.
- 5.8.28. Geotechnical conditions and matters such as stability have been appropriately assessed, as required by EN-4, and it has been demonstrated that viable options for foundations are available. We consider it reasonable that the details of these would not be finalised until ground investigation works and the FEED process are complete. The Requirements above would ensure that there would not be significant adverse effects to the environment, regardless of the options chosen.
- 5.8.29. There are several dormant mineral sites in the area and the site coincides with a MSA for salt and gypsum. The Applicants have explained that development of these would not be precluded by the development, and this has not been disputed by the RPS. We see no reason to come to a different conclusion and consider the requirements of section 5.10 of EN-1 satisfied in this respect.
- 5.8.30. The Order land is underlain by Grade 4 and 5 soils that are already largely covered in made ground and by industrial use. There are no protected geological formations in the vicinity. There would therefore be no significant adverse effects on soil or protected geological formations from the Proposed Development, nor would there be conflict with paragraphs 5.10.8 and 5.3.3 of EN-1.
- 5.8.31. The Applicants proposed to drill beneath the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site and have confirmed through ground investigation that the conditions are suitable for HDD. This has not been challenged by any IPs and we are therefore content that the requirements of EN-4 have been met in this respect.

Conclusions

- 5.8.32. The Applicants have appropriately considered the risk posed by land contamination, as required by section 5.10 of EN-1 and the draft EN-1. We are satisfied that the additional investigative work, risk assessment and remediation would be secured by R13 of the dDCO and that R23 would protect groundwater quality during construction of penetrative foundations. We are satisfied that contamination beneath the Order land would not give rise to likely significant effects. Geotechnical conditions and matters such as stability have been appropriately assessed, as required by EN-4 and the draft EN-4.
- 5.8.33. The Applicants have demonstrated that the Proposed Development would not have an impact on the MSA nor preclude access to mineral resources

beneath the area and have satisfied section 5.10 of EN-1 and the draft EN-1 in this respect. There would be no significant effects on soil quality and there are no protected geological formations in the vicinity. There would therefore be no conflict with the requirements of 5.10 of EN-1 and the draft EN-1 in relation to these issues.

5.8.34. The Applicants propose to drill beneath the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site and have confirmed through ground investigation that the conditions are suitable for HDD, as required by EN-4 and the draft EN-4.

5.8.35. To conclude on matters relating to geology, hydrogeology and land contamination, we consider that there would be no likely significant effects and as such the effect in the planning balance would be neutral.

5.9. MATERIAL RESOURCES AND WASTE MANAGEMENT

Policy Considerations

5.9.1. Policy on waste is intended to protect human health and the environment by producing less waste and using it as a resource. Where this is not possible, regulations ensure that waste is disposed of in a way that is least damaging to the environment and to human health (Paragraph 5.14.1 of EN-1).

5.9.2. Paragraph 5.14.2 of EN-1 sets a waste hierarchy approach to manage waste. Paragraph 5.14.6 states that the applicant should set out arrangements for managing any waste produced in a SWMP.

The Applicants' Case

5.9.3. An overview of the proposed construction programme and management of this is provided in Chapter 5 of the ES [APP-087].

5.9.4. Spoil would arise from demolition of existing above ground structures, removal and crushing of some underground structures, and treatment of historical contamination. During enabling works and construction, spoil would be temporarily stockpiled within the Order Limits. It would then either be re-used on site for construction of the development platform or be taken off-site by HGV, either for treatment at Teesworks' proposed soil treatment hub, or for off-site treatment or disposal at another local permitted facility [section 5.3, APP-087].

5.9.5. The Applicants anticipate that the bulk of spoil generated would be beneficially used within the Order land. Spoil would be stockpiled in areas at low risk of flooding within the Order Limits, on the Teesworks site or on the laydown area at Seal Sands. A typical working width of 35m around pipelines is proposed, which includes space for soil to be stockpiled prior to backfilling. Stockpile heights would be low and there is sufficient area within the Order Limits to accommodate the volume of spoil expected to be generated.

- 5.9.6. The removal of up to 10,000m³ of spoil per month for re-use, treatment or disposal has been allowed for in the HGV movements for construction in the traffic assessment [APP-098].
- 5.9.7. Spoil would also arise from the construction of tunnels, shafts and bores associated with Work Nos. 2, 5, 6 and 8. Drill cuttings from the construction of the CO₂ Export Pipeline (Work No. 8) would be recovered in the drilling fluids and separated before being loaded onto a service barge and brought onshore for disposal. A worst-case estimate has been provided of approximately 50,000m³ of spoil produced during drilling, boring and tunnelling [Section 5.3, APP-087]. This figure includes spoil from a crossing beneath the River Tees for the CO₂ Gathering Network Corridor, which was removed during the Examination. The volume of spoil generated would therefore be considerably less than this estimate.
- 5.9.8. Management of spoil would be managed via the final CEMP, secured through R16 of the dDCO [REP12-003], following approval from RCBC and STBC. This would be accompanied by a number of management plans, including a SWMP (R24), a framework for which has been provided [Appendix A, APP-246]. The SWMP would require the waste streams to be estimated and monitored and goals must be set in regard to the waste produced. The SWMP also requires that the contractor segregates waste streams on-site prior to them being taken to a waste facility for recycling or disposal.
- 5.9.9. An MMP would also be appended to the final CEMP. The MMP would require that contaminated material is managed in accordance with best practice.

Examination Matters

- 5.9.10. Responding to our questions about the likely balance of spoil generation and usage at the Proposed Development, the potential visual effects of stockpiling and the suitability of soils beneath the PCC Site for re-use, the Applicants confirmed that platform construction is anticipated to be neutral in terms of cut and fill. Any excess spoil could be used for landscaping or across the wider STDC area. For this reason, the Applicants do not consider a visual assessment of stockpiles necessary because the volume and height of material would remain low and would be temporary. The Applicants confirmed that an assessment of the suitability of potentially contaminated soils for re-use had been undertaken [ExQ1 GEN.1.9, REP2-016].
- 5.9.11. We also questioned if it would be more effective to have all of the management plans that support the final CEMP referenced in the CEMP itself. The Applicants consider that the list in R16 satisfies this purpose. However, the wording of R24 in relation to the Construction Waste Management Plan was amended during the Examination to ensure that it was produced in line with the SWMP [ExQ1 GEN.1.15, REP2-016].
- 5.9.12. The Applicants responded to our enquiry regarding absence of a Framework MMP to say that it would necessarily be prepared by

contractors following the detailed design of the Proposed Development. This is because it would need to detail material types, volumes and handling methods [ExQ2 GEN2.12, REP6-121].

5.9.13. We specifically asked the RPAs for their comments on the Framework CEMP, given their role in approving the scheme. Although not specifically answered, they have not expressed any concerns regarding the CEMP and their role in approving this, and there are no outstanding matters raised by RCBC in its final statement of common ground [ExQ2 GEN2.12, REP6-121].

5.9.14. At D5, the EA [REP5-032] asked for clarification regarding pigging of the CO₂ export pipeline from the Endurance reservoir towards shore during ongoing maintenance, resulting in Naturally Occurring Radioactive Material waste. In response to our question on this matter [GEN.3.4, PD-021], the Applicants explained that the Endurance store was an aquifer rather than a hydrocarbon reservoir. Therefore, no pigging would be required, and no radioactive waste created [REP11-018].

Examining Authority's Response

5.9.15. Based on the above, we are content that the Applicants have satisfactorily answered all our queries in relation to material resources and waste management. They have acknowledged the waste hierarchy in accordance with EN-1 and the draft EN-1, and this would be implemented and managed via the final CEMP (R16), which also includes a MMP. We are satisfied that these controls would ensure that the Proposed Development does not give risk to significant adverse effects from issues relating to material resources and waste management.

5.9.16. A SWMP must be provided at R24 in accordance with the Framework SWMP, as required by paragraph 5.14.6 of EN-1 and the draft EN-1. We are content that the Framework SWMP is necessarily indicative but that the requirement for approval from the RPAs would ensure that the final SWMP is sufficient to protect against any adverse effects.

Conclusions

5.9.17. The Applicants have satisfactorily answered all our queries in relation to material resources and waste management. In line with EN-1 and the draft EN-1, the management of spoil at the Proposed Development would be according to the waste hierarchy, which would be implemented via the CEMP (R16) and a SWMP is secured by R24 based on the framework version submitted to the Examination.

5.9.18. We are satisfied that the issues relating to material resources and waste management would not give rise to likely significant effects. Such matters therefore do not affect the planning balance.

5.10. MAJOR ACCIDENTS AND NATURAL DISASTERS

Introduction

- 5.10.1. Major accidents and natural disasters were listed in the IAPI [Annex C, PD-009]. Such matters included examination of the methodology to assess the risks, proposed mitigation measures and potential effects on the safety of surrounding sites.

Policy Considerations

- 5.10.2. The Order land would be subject to stringent safety standards under the Hazardous Substances Act 1990 and Hazardous Substances Regulations 2015, which are enforced by RCBC in consultation with the Health and Safety Executive (HSE). If required, a COMAH licence would also be obtained from the HSE. The EP, enforced by the EA, also would also regulate safety aspects of the installation. These regulations aim to prevent major accidents involving dangerous substances and limit the consequences if any do occur throughout the life cycle of the facility. Paragraph 4.11.3 of EN-1 reiterates that the decision maker should assume the other regulatory regimes will be properly applied and enforced by the relevant regulator.
- 5.10.3. Paragraph 4.11.4 of EN-1 states that the decision maker should be satisfied that an assessment of whether the inherent features of the design are sufficient to prevent, control and mitigate major accidents has been done if required and that the competent authority has assessed that it meets the safety objectives.
- 5.10.4. Paragraph 4.12.1 of EN-1 states that all establishments wishing to hold stocks of certain hazardous substances require consent from the HSE. Where hazardous substances consent is applied for, the decision maker will consider whether to make an order directing that hazardous substances consent shall be deemed to be granted alongside making an order granting development consent.
- 5.10.5. The decision maker should be satisfied that the effects on civil and military aviation sites should be addressed by the applicant and any adverse impacts minimised (paragraph 5.4.14, EN-1). This includes consideration of lighting of tall structures (paragraph 5.4.16).
- 5.10.6. The principal legislation governing the safety of the pipelines (Pipelines Safety Regulations 1996) requires that pipelines are designed, constructed and operated so that the risks are as low as is reasonably practicable (ALARP) and is enforced by the HSE. Paragraph 2.19.5 of EN-4 states that the decision maker should seek advice from the HSE about safety issues in relation to pipelines when considering an application.

The Applicants' Case

- 5.10.7. The Applicants' case is set out in ES Chapter 22: Major Accidents and Natural Disasters [APP-104]. This was accompanied by a figure showing

HSE Consultation Zones, the latest version of which was received at D12 [REP12-110].

- 5.10.8. There is no specific guidance available setting out an approach for undertaking an assessment of the risks from major accidents and natural disasters within an EIA. The Applicants have therefore referred to HSE guidance notes, including those on pipelines and carbon capture technology, in addition to wider UK guidelines and established best practice. The assessment identifies the reasonably foreseeable worst-case environmental consequences and the likelihood of these occurring. The output is a qualitative measure of tolerability, taking into account embedded mitigation measures [section 22.3, APP, 104].
- 5.10.9. Potential accidents during construction and operation were identified including fire or explosion from disturbance of UXO, ground instability and leaks and spillages of chemicals or fuel. Extreme weather, vandalism, aircraft impact, terrorism, a pandemic and potential domino effects during construction have also been considered [section 22.6, APP-104].
- 5.10.10. Avoidance measures would be incorporated in the design and layout of the Proposed Development, including provision for isolation, emergency shutdown and, if required, depressurisation [section 22.5, APP-104]. A design hazard management plan would continue to be developed during the design process. The Framework CEMP contains details for protection against accidents involving hazardous materials; the final CEMP based on this is secured by R16 of the dDCO [REP12-003]. A Major Accident Prevention Plan would also be required to inform an application for a COMAH licence. On cessation of operations a DEMP would be prepared to ensure that there would be no adverse effects during this phase.
- 5.10.11. The potential for major accidents associated with carbon dioxide releases has been specifically considered [section 22.7, APP-104]. As an asphyxiant, CO₂ displaces air and is a threat to life and ecological receptors from its toxicological impact. The Proposed Development has been sited to maximise the distance from sensitive receptors and other industrial operations, including siting the high-pressure CO₂ compressor on the shoreline to minimise risk given the prevailing wind direction. Where the CO₂ gathering network is close to potential receptors the Applicants state that the design would incorporate embedded mitigation, such as thickened pipe walls [paragraph 22.7.9, APP-104].
- 5.10.12. All of the operators on the HSE's list of consultation zones were consulted and no responses raising specific concerns were raised. Operations at neighbouring facilities including the CATS pipeline, Bran Sands WwTP, the Billingham, Seal Sands and North Tees Industrial Area and Redcar Renewable Energy Centre were reviewed to assess the potential for domino effects [section 22.8, APP-104]. It was concluded that existing safety precautions at neighbouring industrial sites in addition to implementation of the CEMP at the Proposed Development, would mitigate the risk of domino effects occurring [Table 22-2, APP-104].

- 5.10.13. The HSE confirmed that a Hazardous Substances Consent may be needed, but the Applicants stated that this can only be applied for once the design has been progressed [Table 22-1, APP-104].
- 5.10.14. The Applicants concluded that the Proposed Development would be regulated by appropriate permissions and that engineering design would reduce the risks of accidents to ALARP, as required by the regulators. This would result in the risk from major accidents and natural disasters to be 'tolerable' or 'tolerable if ALARP', and therefore 'not significant'.

Examination Matters

- 5.10.15. We asked for evidence that the likely hazards during decommissioning were manageable in principle. The Applicants responded that the main hazards would be well understood because trained operators would be highly familiar with the plant, which by then would have been operational for 25 years, and that they would be able to prepare in advance [ExQ1 MA.1.1, REP2-016]. This phase would be controlled by the DEMP (required under R32 of the dDCO) and a Site Closure Plan required as part of the EP prior to decommissioning.
- 5.10.16. During the consultation period, the EA raised concerns about the cumulative effects of minor events, particularly in reference to slow leakage of CO₂ below the Teesside and Cleveland Coast SSSI, SPA and Ramsar site. In response, the Applicants stated that pipelines would be designed to international design standards, fully welded under the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site, and subjected to non-destructive testing and on-going preventative maintenance [ExQ1 MA.1.2, REP2-016].
- 5.10.17. The EA also questioned the capacity of the firewater containment system [APP-104], later confirming that this would be reviewed as part of the determination of the EP [REP6-132]. Following our request for confirmation on this matter [ExQ1 MA.1.4, PD-012], the Applicants demonstrated that sufficient capacity would be achievable on the PCC Site.
- 5.10.18. CNSL raised concerns regarding safety issues around its pipeline, Beach Valve Station and associated infrastructure in relation to pipeline and cable crossings and sterile zones [RR-017]. Ineos Nitriles also raised concerns regarding access to their infrastructure for inspection and leak detection [RR-019]. Responding to ExQ1 MA.1.11 [PD-012], the Applicants confirmed that the scale of interaction had been reduced through the change request, but that some interaction with existing apparatus was unavoidable and that they continued to engage with these parties. During the construction phase, permit to work systems and activity planning would be used to minimise impact on operators of existing apparatus [REP2-016].
- 5.10.19. We requested clarification on how various mitigation measures and the 'Major Accident Prevention Document' would be secured and the Applicants did not consider it necessary to have specific controls in the

dDCO because the measures would already be secured via a COMAH licence or EP [ExQ1 MA.1.12, REP2-016].

- 5.10.20. The Applicants confirmed that the Civil Aviation Authority had been consulted and directed us to R27 and R28 of the dDCO which secure appropriate warning lighting and provision to information relating to air safety [ExQ1 MA.1.8, REP2-016].
- 5.10.21. We also consulted with the UK Health Security Agency (UKHSA) for its comments on the Applicants' approach, particularly in light of the proposed novel technologies. UKHSA responded to say that it was satisfied the assessment was appropriate [ExQ1 MA.1.13 and ExQ2 MA.2.4 and 2.5, REP6-146].
- 5.10.22. We asked the Applicants to explain how a conclusion of 'no significant effects' had been obtained, given the novel elements of the proposed scheme. The Applicants referred us to BP's 'Technology Readiness Level' approach, which they had successfully used on numerous occasions in the past for this purpose [ExQ MA.1.14, REP2-016].
- 5.10.23. A COMAH gas pipeline crosses the PCC Site, operated by South Tees Site Company (part of STDC). STDC confirmed that the application to the HSE to decommission the pipeline had been submitted and that it anticipated the land would cease to be a COMAH facility by August 2023 [REP2-097b].
- 5.10.24. In ExQ1 and ExQ2, we also sought clarification on the hazards from ground stability, loss of water supply, the effect of staff shortages, progress on dense phase CO₂ dispersion modelling and the loss of containment of hazardous substances. The Applicants provided full responses on all these matters [REP2-016 and REP6-121].

Examining Authority's Response

- 5.10.25. The Order land would be subject to stringent safety standards under the appropriate legislation. The HSE, RCBC and the EA have not raised any specific concerns, nor indicated that the required permissions are not achievable in principle. A final decision regarding the details of a hazardous substances consent would be made once the design of the Proposed Development has been finalised and we concur that this is appropriate in the circumstances.
- 5.10.26. The Applicants have fully answered all questions put to them and have provided detailed information on how risks would be managed to ALARP during construction through the final CEMP, which would be secured through R16 of the dDCO. We are satisfied that the currently uncertain risks during decommissioning would be highly likely to be manageable and adequately controlled through a DEMP and the EP.
- 5.10.27. The concern raised by IPs and APs regarding the safety risk of losing access to their pipelines is noted. Matters regarding access for safety checks must be negotiated between the parties and/or are addressed through protective provisions in Chapter 9.

- 5.10.28. For these reasons, we are satisfied that an assessment of whether the inherent features of the design are sufficient to prevent, control and mitigate major accidents has been undertaken to a standard sufficient for the purposes of the Examination, as required by section 4.11 of EN-1.
- 5.10.29. We are also satisfied that the effects on aviation sites have been addressed and the impacts minimised through the Requirements in the dDCO for appropriate lighting and provision of information for air safety, as required by section 5.4 of EN-1.
- 5.10.30. EN-4 states that advice from the HSE about safety issues in relation to pipelines should be sought when assessing an application. The HSE was consulted by the Applicants prior to the application and its comments incorporated in the assessment [Chapter 22, APP-104]. We are therefore satisfied that this requirement has been met.

Conclusions

- 5.10.31. The Order land would be subject to stringent safety standards under the appropriate legislation. There would be additional controls during construction and decommissioning secured via the final CEMP (R16) and the DEMP (R32). The Applicants have demonstrated that the inherent features of the design would be sufficient to prevent, control and mitigate major accidents, including the risks to aviation, as required by EN-1 and the draft EN-1. This has included consideration of the particular risks from CO₂ releases and the potential for domino effects with neighbouring installations.
- 5.10.32. We are satisfied that the issues relating to major accidents and natural disasters would not give rise to likely significant effects and conclude that such matters would not have an effect on the planning balance.

5.11. NOISE AND VIBRATION

Introduction

- 5.11.1. The issue of noise and vibration was listed in the IAPI [Annex C, PD-009] and includes the assessment of the effects on residents, businesses, recreational users and wildlife, and their mitigation, management and monitoring.
- 5.11.2. The effects of noise and vibration on ecological receptors are considered in section 5.7 above and are not considered further in this section.

Policy Considerations

- 5.11.3. The Government's Noise Policy Statement for England (Defra, 2010) is referenced in paragraph 5.11.1 of EN-1. The long-term aim of this policy is to promote good health and quality of life within the context of sustainable development, providing guidance on how to define 'significant effects' and 'adverse effects'. Similar considerations should also apply to the effects from vibration, which can additionally cause damage to buildings.

- 5.11.4. Paragraphs 5.11.4 and 5.11.6 of EN-1 outline the requirements for a noise assessment and require that the principles of the British Standards and other guidance should be adhered to when assessing operational and construction noise. Paragraph 5.11.9 states that development should not be granted unless the proposals would avoid significant adverse impacts, mitigate and minimise other adverse impacts and, where possible, contribute to improvements in health and quality of life through the effective management of noise.
- 5.11.5. Mitigation measures may be needed and can include engineering to reduce and contain noise at the point of generation, sensitive layout and design, and administrative measures to restrict activities to certain times and limits (EN-1, paragraph 5.11.12).
- 5.11.6. Consideration should be given to including measurable requirements or specifying mitigation measures in the DCO to ensure noise levels do not exceed any limits specified in the development consent (EN-1, paragraph 5.11.10).
- 5.11.7. EN-2 sets out policy specific to fossil fuel power stations. In paragraph 2.7.1 potential sources of noise are identified, including the gas and steam turbines that operate continuously during normal operation and air-cooled condensers.
- 5.11.8. Specific noise and vibration considerations applying to gas and oil pipelines are described in Chapter 2.20 of EN-4, such as the effects of seismic surveys, HGV traffic, use of air compressors and construction of a new above ground installation. Various mitigation measures for noise and vibration are listed in paragraph 2.20.7.
- 5.11.9. Further details of planning policy and legislation relating to noise and vibration are provided in section 11.2 of Chapter 11 [APP-093].

The Applicants' Case

- 5.11.10. The Applicants' case is set out in ES Chapter 11: Noise and Vibration [APP-093]. This was accompanied by figures showing noise sensitive receptors and plans of the predicted noise generated during construction and operational the PCC Site. The figures were revised to reflect the change requests and final versions were submitted at D12 [REP12-085 to REP12-090].
- 5.11.11. Noise Sensitive Receptors (NSRs) were identified within a study area that extended 2km from the PPC Site and 800m from the Order Limits. Six residential locations were identified, the closest being Marsh House Farm, which is approximately 150m from the Order Limits and 650m from the PCC Site. The other residential locations were representative of larger groups of houses towards Redcar in the east and Billingham in the west. Two office locations were identified, one at Bran Sands WwTP and the other at Seal Sands, both of which would be in proximity to the Order Limits [section 11.3, APP-093].

- 5.11.12. Until a contractor is appointed the Applicants do not have specific details of construction activity. Indicative noise predictions have therefore been calculated using the ABC method and thresholds set out in the 'Code of practice for noise and vibration control on construction and open sites': BS 5228 (BSI, 2014) [section 11.3, APP-093]. The noise generated during decommissioning was assumed to be similar to that from construction [paragraph 11.6.66, APP-093].
- 5.11.13. No significant effects on residential properties were predicted from construction on or off the PCC Site [section 11.6, APP-093]. There may be minor adverse effects at the distance of Marsh House Farm and at the two offices, the levels at which would potentially exceed the daytime thresholds.
- 5.11.14. These effects would be minimised as far as possible through implementation of the thresholds and embedded mitigation outlined in the Framework CEMP [section 11.7, APP-093]. Embedded mitigation measures in the Framework CEMP include noise limits and restrictions on timing of work, routing of traffic, choice of plant and liaison with the local authorities REP9-007]. R21 of the dDCO [REP12-003] requires that a scheme for the monitoring and control of noise is approved by the RPA prior to commencement of construction works. This must specify monitoring locations, the method of measurement, maximum noise levels and control measures. Noise would be controlled during decommissioning through the DEMP, which is secured through D32 of the dDCO.
- 5.11.15. Construction traffic noise was assessed in accordance with the Department for Transport's 'Calculation of Road Traffic Noise' (1988) and the Design Manual for Roads and Bridges using the traffic data from Appendix 16A of the ES [APP-327 to APP-332]. There would be no change or very low change in road traffic noise resulting in negligible adverse effects at receptors from the Proposed Development [section 11.6, APP-093].
- 5.11.16. An assessment of the combined effects from noise during construction was undertaken [paragraphs 11.6.67 to 11.6.69, APP-093]. Calculated daytime levels were well below the noise limit values. The Applicants state that if work was undertaken on the PCC Site simultaneously with works beyond this, the timing and effects would be taken into consideration in the Final CEMP [REP9-007].
- 5.11.17. The cumulative effects of the construction noise from the Proposed Development with other planned projects was also assessed, based on the assumption that construction of all the sites occur simultaneously [paragraph 11.6.70 onwards, APP-093]. Effects around the residential area of Broadway West could increase to be minor adverse from noise, but this is not assessed to be to a significant degree.
- 5.11.18. A three-dimensional model noise propagation model of the PCC Site was developed to assess operational noise, based on sound level data from similar projects. The CCP, HP Compressor and CO₂ absorber tower would

be designed to remain below the sound pressure threshold used in the assessment. The model also conservatively assumes that the prevailing wind direction is always from the source to the receiver. The predicted noise levels were assessed using the guidance in the 'Methods for rating and assessing industrial and commercial sound': BS 4142 (BSI, 2014) [section 11.3, APP-093].

- 5.11.19. The effects on residential receptors during operation of the PCC Site were predicted to be negligible, with the exception of Marsh House Farm where slightly elevated levels have the potential to cause minor adverse effects that were not deemed to be significant [section 11.6, APP-093].
- 5.11.20. The cumulative ambient sound level during operation would increase at all NSRs. However, this is largely as a result of other developments. There would be an increase of approximately 1dB in the ambient sound level at Marsh House Farm, which would not be perceptible under normal conditions. It was therefore concluded that this was not a significant adverse effect [paragraph 11.6.76, APP-093].
- 5.11.21. R22 of the dDCO [REP12-003] requires that a scheme for the management and monitoring of noise is approved by the RPA prior to Work Nos. 1 or 7 being brought into commercial use. R22 specifies a maximum increase in noise level for daytime and night time at the nearest residential properties. Noise emissions from the PCC Site would also be regulated through the requirement for BAT via the EP.
- 5.11.22. Given the significant distance between the PCC Site and NSRs, no effects from vibration were anticipated and therefore no further assessment was undertaken. However, pipeline construction is close to the two offices and, although it was concluded that building damage was unlikely, the vibration impacts could cause annoyance to the occupants of the offices [section 11.6, APP-093]. Mitigation measures and monitoring of noise and vibration to minimise these effects are outlined in Table 5A-5 of the Framework CEMP [REP9-007].

Examination Matters

- 5.11.23. We questioned the decision to scope out the effects of noise from installation of the water supply and discharge corridors given the proximity of residential properties. In response, the Applicants reiterated that the distance between the locations and minor nature of the works meant that noise impacts were considered too low to require further assessment [ExQ1 NV.1.8, REP2-016]. The RPAs did not specifically respond to our query on this matter at ExQ2 [NV.2.2, PD-016] but it is not an outstanding matter in their respective SoCGs [REP6-121 and REP8-036].
- 5.11.24. RCBC responded to our query about the potential effects on Redcar Beach Caravan Park to confirm that one of the modelled residential locations corresponded with the nearby caravan park [ExQ1 NV.2.1, REP4-041]. It also confirmed that one of the modelled locations was

representative of users of the golf course, the beach and other recreational facilities.

- 5.11.25. RCBC also confirmed that the baseline monitoring locations had been discussed with them prior to monitoring and did not raise any specific concerns about the duration and timing of the dataset [REP4-041].
- 5.11.26. The assessment of operational noise was based on data from other power stations that already included significant embedded mitigation. Through comparison with other projects, the CCGT plant sound power levels were increased by 7dB LA to allow modelling of an unmitigated scenario. RCBC enquired what the 7dB figure was based on [REP1-046]. The Applicants responded [REP2-059] to say that they considered 7dB to be a conservative estimate and that, notwithstanding this, R22 of the dDCO [REP12-003] would ensure that noise from the Proposed Development would not exceed 5dB above the background sound level.
- 5.11.27. RCBC recommended that validation of modelling noise outputs is carried out during construction and commissioning [REP1-046]. The Applicants did not provide a specific response to this request at D2, but we note that no outstanding issues were identified in the final SoCG between the parties [REP9-009].
- 5.11.28. Through ExQ1, clarification was also sought regarding baseline data, noise monitoring, the choice of methodology for calculations, the sensitivity of the outputs to the digital terrain model and the assessment of cumulative effects. The Applicants responded satisfactorily to all these queries at D2 [ExQ1 NV.1.1, NV.1.2, NV.1.4, NV.1.6 and NC.1.7, REP2-016].

Examining Authority's Response

- 5.11.29. Although details of the noise and vibration generated at each phase are not yet available, the Applicants have undertaken appropriate indicative and conservative modelling of the likely effects on nearby residential and commercial receptors based on current guidance and best practice. We are satisfied that this is consistent with the requirements of paragraphs 5.11.4 and 5.11.6 of EN-1, EN-2 and EN-4.
- 5.11.30. The results of the modelling indicate that there could be minor adverse effects from noise at Marsh Farm during both construction and operation, and at two offices at Bran Sands and Seal Sands during construction. There could also be minor annoyance from vibration at the two offices during construction. However, the effects of noise and vibration from the Proposed Development would be insignificant during all phases, including at these locations.
- 5.11.31. Mitigation measures and monitoring for both noise and monitoring have been embedded in the Framework CEMP [REP9-007] and would be refined in the Final CEMP when more details of the works become available. Requirements R21 and R22 would ensure that any impacts from noise are monitored and minimised during the construction and operational phases respectively. R22 would restrict noise during

operation to certain times and limits, as recommended in paragraphs 5.11.10 and 5.11.12 of EN-1.

- 5.11.32. We are content that R21 satisfies RCBC's request that validation of modelling noise outputs is carried out during construction. In addition, noise levels would be controlled to BAT standards through the EP for the installation. The potential effects of noise during decommissioning would be controlled via the DEMP (R32). For these reasons, we are satisfied that the Application meets the requirements of paragraph 5.11.9 of EN-1.

Conclusions

- 5.11.33. The Applicants have undertaken appropriate indicative and conservative modelling of the likely effects from noise and vibration on nearby residential and commercial receptors based on current guidance and best practice. Mitigation would be embedded in the design of the infrastructure and no significant adverse effects from noise and vibration are predicted. This is consistent with the requirements of EN-1, EN-2 and EN-4 and their draft versions.
- 5.11.34. Mitigation measures and monitoring of noise levels are secured for all phases through the CEMP (R16), control of noise (R21, R22) and R32 (DEMP) of the dDCO [REP12-003].
- 5.11.35. We are satisfied that the issues relating to noise and vibration would not give rise to likely significant effects. These issues therefore have a neutral effect on the planning balance.

5.12. TRAFFIC, TRANSPORT AND PUBLIC RIGHTS OF WAY

Introduction

- 5.12.1. This section addresses the potential effects from the construction, operation and decommissioning of the Proposed Development arising from traffic and transport. These issues, in addition to PRoW, were listed in the IAPI [Annex C, PD-009] and included the potential effects during construction on the surrounding road network, alternative access points to those proposed, the approach to the delivery of abnormal loads, and the effects on non-motorised users including users of the PRoW network.

Policy Considerations

- 5.12.2. Paragraph 5.13.3 to 5.13.4 of EN-1 state that if a project is likely to have significant transport implications, the ES should provide a transport assessment, prepare a travel plan and details of proposed mitigation measures. Improvements in access by public transport, walking and cycling should also be considered. Water-borne or rail transport is preferred over road transport at all stages of the project, where cost-effective (paragraph 5.13.10 of EN-1).
- 5.12.3. Where there is likely to be substantial HGV traffic, requirements may be added to a consent that control numbers of movements to a specified

period, make provision for parking and ensure satisfactory arrangements for abnormal disruption (paragraph 5.13.11 of EN-1).

- 5.12.4. Paragraph 2.26 of EN-2 additionally states that applicants should locate new generating stations in the vicinity of existing transport routes wherever possible.
- 5.12.5. Further details of planning policy and legislation relating to traffic and transport are provided in section 16.2 of ES Chapter 16 [APP-098].

The Applicants' Case

- 5.12.6. The Applicants' case is set out in Chapter 16 of the ES [APP-098]. This was accompanied by a Transport Assessment [Appendix 16A, APP-327 to APP-332], a Framework Construction Worker Travel Plan (CWTP) [APP-333] and a Framework Construction Traffic Management Plan (CTMP) [APP-334]. A plan indicating the locations of construction access and laydown locations (and the main PCC entrance) is provided in Figure 5-1 [REP12-041]. Figures illustrating the traffic study area, HGV routes and traffic count locations are provided in Figures 16-1 to 16-3 [AS-115 to AS-117]. In addition, two technical notes outlining additional sensitivity testing of the traffic modelling were submitted during the Examination, REP3-013 and REP4-026.
- 5.12.7. It is anticipated that the construction workforce would peak at approximately 1,870 workers per day. This would comprise approximately 750 one-way trips to the main car park associated with the PCC Site. Approximately 120 pipeline workers would be transferred to the working area at Dabholm Gut by minibus [section 16.6, AP-098].
- 5.12.8. The number of HGVs movements during construction is estimated to be 80 two-way daily vehicle movements at the peak of construction associated with the PCC Site and 10 movements associated with pipeline construction. No HGV deliveries would normally be undertaken outside of core working hours and arrivals would be spread evenly over the day as far as reasonably practicable [section 16.6, APP-09].
- 5.12.9. It is proposed to import most of the large modular plant and Abnormal Indivisible Loads (AIL) components for Work No. 1 using the existing ship offloading facilities at the RBT. AILs would be moved from the RBT wharf to the PCC Site using the existing internal road through Teesworks known as 'Red Main'. The import of AILs through RBT would result in approximately 40 ship movements over a period of two years [section 16.6, APP-098]. For smaller containerised loads and smaller AILs, the facilities at Teesport could be used, and transported by HGV to the Site [section 16.6, APP-098].
- 5.12.10. The additional traffic caused during construction of the Proposed Development would result in small, temporary increases of traffic flows, including HGVs on the roads leading to the Site. No significant effects in regard to severance, pedestrian amenity, fear and intimidation, highway safety and driver delay are predicted. The Applicants' assessment does

not predict that there would be a significant effect on any of the measures from construction traffic [section 16.6, APP-098].

- 5.12.11. A Framework CTMP has been provided [APP-334], which must be adhered to through R18. This requires, among other things, details of the routes to be used for delivery of construction materials, the strategy for AILs and details of monitoring. A Framework CWTP has also been provided [APP-333] which includes measures to promote the use of sustainable transport by construction staff, details of parking and monitoring.
- 5.12.12. Once operational there could be a maximum of approximately 60 full-time staff working in three shifts and around 40 corporate staff based at the site working normal office hours. Conservatively, this equates to 71 cars per day. In addition, there would be a maximum of four HGVs per day generated by deliveries of plant and equipment [section 16.6, APP-98]. Routine maintenance would be undertaken annually with major overhauls occurring approximately once every five years. These maintenance activities will require around 200 additional contractors to work on site. Due to the very low traffic flows the overall effects during operation are considered in the transport assessment to be negligible [APP-098]
- 5.12.13. The traffic during decommissioning is expected to be no greater than that during construction and therefore insignificant [paragraph 16.6.44, APP-098]. The DEMP must include traffic management arrangements during any demolition, removal and remediation works. This is secured by R32(5)(h) of the dDCO and must be approved by the RPA.
- 5.12.14. The assessment inherently includes cumulative effects with other shortlisted developments and no significant effects are predicted.

Public Rights of Way

- 5.12.15. PRoWs within 2km of the Site are shown at Figure 17-2 [REP12-101]. There are no PRoWs crossing the PCC Site [Table 16-4, APP-098]. PRoWs located within the connection corridors may be temporarily affected if any temporary diversion or closures are put in place. There are multiple PRoWs in close proximity to the Order land, which may require temporary diversion [section 20.6, APP-102]. These include the England Coast Path, Teesdale Way and PRoW 116/31.
- 5.12.16. The power to do this is conferred through Article 13 of Part 4 of the dDCO for the locations listed in Part 2 of Schedule 6, which also sets out the detailed process to be followed in the event that diversion is required [REP12-003].

Examination Matters

- 5.12.17. STDC did not support the Applicants' proposed HGV and construction traffic access via the A1053 Tees Dock Road because it relies upon the opening of an SDTC owned gated access and there is a third party dispute regarding this access [RR-035, REP2-097 and numerous

subsequent submissions]. We therefore asked for details of alternative access points and comments on any potential delays caused by the controlled access [ExQ1 TT.1.2, [PD-012]. The Applicants subsequently undertook an assessment of access from the Lackenby Gate roundabout on the A1085 Trunk Road, which was the alternative HGV access suggested by STDC. A technical note describing the additional modelling was provided at D3 [REP3-013], which concluded that the conclusions of the original traffic assessment [APP-098] were still valid.

- 5.12.18. No capacity analysis of the Tees Dock Road access was undertaken, in agreement with RCBC. However, in response to our question on this matter, the Applicants explained that at peak hours this would only amount to seven HGV movements during the morning and afternoon peak based on the data in the Transport Assessment [APP-331], which would have a negligible impact on flow at the junction [ExQ1 TT.1.2, REP2-016].
- 5.12.19. In their technical note [REP3-013], the Applicants also undertook sensitivity analysis of the modelling in response to our question [ExQ1 TT.1.1, PD-012]. This investigated the effects of increasing the number of construction worker movements to 1200 from 750, use of a new roundabout on the A1085 for construction workers and an update of the peak year of construction to 2025. It was concluded that the conclusions of ES Chapter 16 [APP-098] were still valid.
- 5.12.20. Given that the commencement date for the Proposed Development has slipped beyond the modelled dates, we sought confirmation that the growth factors and future baseline were still appropriate. The Applicants responded that they still considered them broadly acceptable, but that if the project were further delayed, the assessment would be updated [ExQ1 TT.1.3, REP2-016].
- 5.12.21. The Applicants also undertook additional sensitivity tests for the A1085 Trunk Road/A1042 Kirkleatham Lane [REP4-026] in response to a request in RCBC's LIR [REP1-046] for demonstration that the junction had sufficient capacity to deal with construction traffic. It was concluded that the change in effects from a later peak construction year of 2025 and up to 1200 workers were small and would therefore remain insignificant.
- 5.12.22. However, in a scenario where the 'all red' pedestrian stage of the junction is called every cycle, the Degree of Saturation (a measure of whether queuing is likely) at the A1085 Trunk Road/A1042 Kirkleatham Lane junction was above 90%, with a maximum queue length of 7 vehicles. The Applicants recommended that this impact is managed through the CWTP. RCBC agreed that mitigation measures would be required at the Kirkleatham signals for residents' connectivity and that these would be secured via the CWTP [REP11-022].
- 5.12.23. Paragraph 16.4.18 of the ES [APP-098] indicates that a quantitative assessment of operational traffic, which would include a predicted 200 additional staff during outages (an interruption in power supply), had not

been undertaken. RCBC confirmed that it was acceptable that the temporary staff during outages had not been included in the modelling, but this was on the provision that they were covered by a Travel Plan to be agreed with the Council. RCBC also confirmed that it was content with the CTMP and CWTP if monitoring was secured [ExQ TT.1.4 and TT.1.5, REP2-094]. The Applicants' response highlighted that a standard approach was taken and that RCBC had previously confirmed they were happy with the proposed methodology for the Transport Assessment [section 19.0, REP3-011].

- 5.12.24. RCBC was asked to provide an update on its position regarding junction surveys following the Applicants' response to its query in relation to this matter [REP2-094]. The Applicants regarded the methodology as standard, and it had been agreed between the parties in January 2020 [REP3-011]. At D11, RCBC stated that the Applicants' proposal for link counts for one week may not fully reflect conditions on the ground [ExQ3 TT.3.1, REP11-022].
- 5.12.25. We sought RCBC's views on the additional traffic modelling that it had requested. RCBC responded that, although two of the approaches to the Westgate roundabout would be over their effective capacity, this would be acceptable for the duration of the construction period. RCBC stated that it would welcome similar mitigation for workers as those secured for the Kirkleatham roundabout coming from the west via Westgate Roundabout [ExQ3 TT.3.1, REP11-022].
- 5.12.26. We questioned NH about the proposals [TT.1.4, TT.1.5, TT.1.7, PD-012]. NH explained that it had been in consultation with the Applicants and highlighted the requirement for more information to be provided with regard to the traffic impacts on the Strategic Road Network. At D2 [REP2-064], NH stated that it had also sought clarity on the impact at the A1085/A1053 junction. However, NH was content that if the CTMP and CWTP were used as a mechanism to mitigate any impacts then any outstanding issues would fall away. In response to ExQ1 TT.1.7 [PD-012], NH confirmed that it was content with the Framework CTMP and CWTP and the approach to additional journeys during outages [AS-039 and REP2-064]. A SoCG was finalised with NH which sets out the matters agreed, including methodology and mitigation measures. It also confirms that there are no outstanding matters to be agreed with NH [REP4-021].
- 5.12.27. We also sought to clarify questions on the assessment of transport of AILs, the description of residual effects, closure of crossings and discussions with PD Ports. In each case the clarification provided by the Applicants satisfactorily addressed our concerns [ExQ1 TT.1.6, TT.1.9, TT.1.10 and TT.1.12, REP2-016].
- 5.12.28. STDC raised the issue of a potential park and ride for construction workers in a number of their submissions [including RR-035 and REP2-097]. The Applicants were in broad agreement that STDC's site indicated at Steel House could be utilised, however would not commit to this until it has been secured in relevant legal agreements. We consider this at Chapter 8 section 8.39 of this Report.

Examining Authority's Response

- 5.12.29. A satisfactory transport assessment using appropriate methodologies was provided with the application, in consultation with statutory consultees, as required by paragraph 5.13.3 of EN-1.
- 5.12.30. The Proposed Development is in an accessible location in the vicinity of existing transport routes for delivery of construction materials, fuel, waste and equipment, as well as for employees. This meets paragraph 2.2.5 of EN-2.
- 5.12.31. R18 requires submission of a detailed CTMP in accordance with the framework document [APP-334]. It would include details of construction routes, AILs, notification procedures, the construction programme, carriageway protection measures and details of monitoring. The document would need to be approved by the RPAs following consultation with a number of statutory authorities and IPs. We are satisfied that the control of HGV traffic would be in accordance with paragraph 5.13.11 of EN-1. The use of water-borne transport from RBT would be an appropriate means of delivering AILs to the PCC Site in accordance with EN-1 paragraph 5.13.10.
- 5.12.32. We consider that R19 would be adequate in requiring submission of a detailed final CWTP, in accordance with the framework plan [APP-333]. It would include measures to promote sustainable transport modes, details of construction parking and monitoring and would need to be agreed with the RPAs. We are satisfied that the provisions of the CWTP would meet the requirements of paragraph 5.13.4 of EN-1.
- 5.12.33. Construction worker parking may take place at a park and ride site proposed by STDC at Steel House, however as set out in Chapter 8 section 8.39 of this Report this has not yet been secured. Should the matter be resolved following close of the Examination, this can be appropriately dealt with in the CWTP via R19.
- 5.12.34. We are satisfied that both the CTMP and CWTP would cover the issues raised by RCBC during the Examination and would minimise any residual effects during the construction phase. The relatively low levels of operational traffic are not considered to justify any mitigation, given the capacities of the local highway network.
- 5.12.35. The dispute between STDC and the Applicants regarding HGV access via Tees Dock Road was not resolved by the end of the Examination, but this largely related to matters of TP of land for construction rather than traffic/highway safety issues. CA and TP matters relating to access are set out in Chapter 8 (section 8.39) of this Report. STDC had expressed concerns about delays caused by the gated access onto this route, but as it would only comprise seven HGV movements during peak times, RCBC were content that this did not require specific assessment. Consequently, we are satisfied that use of this access point would not lead to significant adverse effects.

- 5.12.36. Notwithstanding this, the Applicants provided additional modelling demonstrating that there would be no additional adverse effects from use of the Lackenby Gate roundabout as an alternative HGV access. On this basis, we are satisfied that an appropriate, safe alternative is available, should the suggested alternative to TP of the HGV access via Tees Dock Road be secured with STDC.
- 5.12.37. RCBC stated a preference for a revised junction turning count methodology and longer period of monitoring to provide a more robust baseline data set. We are content that the baseline dataset was sufficient to inform the assessment for the purpose of the application. RCBC also requested that mitigation was included for workers coming from the west via Westgate roundabout. Further refinement of any mitigation and monitoring would be adequately secured via the CTMP (R18) and CWTP (R19), following approval from the RPAs.
- 5.12.38. We welcome the additional sensitivity analysis of the transport assessment undertaken during the Examination. This has demonstrated that traffic flows would not be significantly affected even if the number of construction workers was significantly increased, or the project delayed. Where minor impacts are predicted, such as at the A1085 Trunk Road/A1042 Kirkleatham Lane junction, we are satisfied that this can be managed through the CTMP (R18) and CWTP (R19).
- 5.12.39. We welcome the SoCG with NH, which confirms there are no outstanding matters to be agreed regarding the strategic road network.
- 5.12.40. We are satisfied that no permanent severance of PRowS would occur. Potential temporary diversions to PRowS including the Teesdale Way and PRow 116/31 as shown on ES Figure 17-2 [REP12-101] would be temporary and spatially limited. In respect of the Teesdale Way, both Work Nos. 5 and 8 would take place via trenchless construction and access is expected to remain throughout the construction period. Initial testing, start-up and pressurisation of the CO₂ export pipeline may necessitate temporary restrictions but these are expected to be over a limited area and a very short duration. Other impacts would relate to visual effects on users, which is dealt with in section 5.5 of this Report. No additional mitigation is necessary.

Conclusions

- 5.12.41. The Applicants have provided an appropriate transport assessment that demonstrates there would be no significant adverse effects on the surrounding transport network at any phase in accordance with EN-1 and the draft EN-1. The Proposed Development is in an accessible location in the vicinity of established transport routes.
- 5.12.42. The CWTP (R19) would include measures to promote the use of sustainable transport modes during construction and would also secure monitoring and review of any agreed measures. The CTMP (R18) would provide control and monitoring of HGV traffic during construction. Water-borne transport from RBT would be used for AILs. The Applicants have

sought to avoid closures or diversions of PRowS where possible. If necessary, impacts would be temporary and spatially limited. For these reasons, we are satisfied that the requirements of EN-1 and EN-2, and their draft versions, are met.

- 5.12.43. We are satisfied that the issues relating to traffic and transport would not give rise to likely significant effects. These issues therefore have a neutral effect on the planning balance.

5.13. SOCIO-ECONOMICS and TOURISM

Introduction

- 5.13.1. The IAPI included socio-economics and tourism [Annex C, PD-009]. It covered the effects on the local and wider economy during construction and operation, and the effects on recreational users and tourism. These issues were raised solely in writing during the Examination.

Policy Considerations

- 5.13.2. For matters relating to the socio-economic effects of development, section 5.12 of EN-1 requires the assessment of a number of relevant impacts including the creation of jobs and training opportunities, any change in local population dynamics which may alter the demand for local services, and the effects on tourism, together with cumulative impacts (paragraph 5.12.3).
- 5.13.3. In reaching a decision the SoS should have regard to the potential socio-economic effects identified by the applicant and from any other sources; give limited weight to assertions of socio-economic effects that are not supported by evidence; and consider provisions and proposals to mitigate effects (paragraphs 5.12.6 to 5.12.9).

The Applicants' Case

- 5.13.4. The most relevant elements of the application to the consideration of socio-economic matters are contained in ES Chapter 20 [APP-102]. This is supported by an Economic Benefits Report at Appendix 20A [APP-340]. Cumulative and combined effects are set out in paragraphs 24.5.130 to 24.5.133 of ES Chapter 24 [APP-106].
- 5.13.5. The Applicants have assessed the potential effects on jobs and tourism, including the availability of accommodation, and the potential effects on the regional labour market. Social effects have also been assessed with regard to direct effects on economic activity, community infrastructure and the local population.
- 5.13.6. The four combined Local Super Output Areas of Redcar and Cleveland (003D and 003F) and Stockton-on-Tees (003B and 004B) have been taken to be the Direct Impact Area of the Proposed Development. The Wider Impact Area is taken to be the Middlesbrough and Stockton Travel to Work Area (TTWA) [Diagram 20-2, APP-102].

- 5.13.7. Data from the 2011 Census was utilised by the Applicants to establish the existing baseline in terms of demographic profile, skills, employment and economic activity. Deprivation is assessed using the 2019 Index of Multiple Deprivation. The results set out in Table 20-2 [APP-102] indicate the Local Super Output Areas for Redcar and Cleveland (003F) as being as within the top 6% most deprived areas in England.
- 5.13.8. Tourism and amenity facilities are noted in ES Chapter 20 paragraphs 20.4.23 to 20.4.25, and include the beaches at Coatham Sands, Cleveland Golf Links, fishing at South Gare and popular walking routes. Redcar Beach Caravan Park is also noted.
- 5.13.9. Construction is anticipated to take up to four years to complete, creating employment opportunities of varying types and levels throughout this time period. The Applicants estimate a figure of 1,760 for the average number of gross construction workers over the peak years of construction of the Proposed Development [paragraphs 20.6.2 and 20.6.3, APP-102].
- 5.13.10. Indirect employment growth is also considered, through manufacturing services and suppliers to the construction process and increased local spending. An additional 1,120 net indirect jobs in the TTWA are estimated during the construction period [paragraphs 20.6.9 and 20.6.10, APP-102]. Taking this into account, a total of 2,440 net construction jobs are estimated, 1220 of which are expected to be from the Middlesbrough and Stockton TTWA [paragraph 20.6.11, APP-102]. The full time equivalent (FTE) based on HM Treasury guidance would be approximately 240 FTE permanent jobs during the construction period and in this respect the Applicants conclude that development is likely to have a major beneficial short-term effect on the TTWA's economy [paragraph 20.6.12, APP-102].
- 5.13.11. A number of other impacts were identified during the construction phase including benefits associated with an increased demand for short term accommodation. Existing businesses in the area are expected to be able to operate as usual during the construction process. The effect is assessed to be not significant [paragraphs 20.6.14 to 20.4.25, APP-102].
- 5.13.12. Tourism is considered at paragraphs 20.6.26 to 20.6.28, with local destinations being assessed to have a negligible adverse impact (non-significant) due to the limited restrictions to such amenities. In terms of recreation, there are multiple PRow proximate to the site and along the coastline, some of which may require temporary diversions during the construction phase. Walkers accessing the PRow close to the connection corridors may be affected by temporary diversions or closures.
- 5.13.13. In respect of skills, an employment support programme would help local residents and unemployed workers into roles, which would have a minor beneficial (non-significant) effect on the skills and employability of local people during the construction phase.

- 5.13.14. Effects during decommissioning are expected to be similar to during the construction phase, having an overall minor beneficial effect on employment in the area.
- 5.13.15. Employment at the operational development is expected to total up to 100 FTE gross direct jobs per annum, arising from operative, management and maintenance roles [Appendix 20A, APP-340]. Leakage of jobs to residents outside of the TTWA is assumed to be low (13%) for operational employment, given the closures of existing power and industrial facilities in the region. Displacement is also predicted to be low at 25%. Together, all types of employment created by the operation of the Proposed Development are predicted to have a moderate beneficial long-term effect (non-significant).
- 5.13.16. The scale of operational employment is not anticipated to be sufficient to affect the demographic characteristics of the area, due to the low amount of in-migration expected. Therefore, no perceptible difference from baseline conditions is expected in relation to accommodation, local services, amenity or community disruption [paragraphs 20.6.52 to 53, APP-102].
- 5.13.17. Given that no significant adverse effects are predicted during any phase of the Proposed Development, the Applicants do not propose any specific mitigation. Nonetheless, due to the size and novel type of development, the Applicants are committed to enhancement by way of the provision of skills and education programmes in conjunction with local education providers (R30), and a mechanism for managing questions and concerns via the establishment of a local liaison group (R29) [section 20.7, APP-102].
- 5.13.18. All the developments listed in Chapter 24 [APP-106] would generate additional employment opportunities and associated socio-economic benefits. This is likely to include the Anglo-American (York Potash Order 2016) development which is in close proximity to the site. There is a short-term risk of temporary labour shortage and a deficit in local accommodation, but overall the cumulative socio-economic effects are expected to be significantly beneficial [section 20.9, APP-102].

Examination Matters

- 5.13.19. The local investment, economic benefits and job creation arising from the Proposed Development were cited in a number of RRs including Loftus Town Council [RR-005], Durham County Council [RR-011], HBC [RR-015] and STDC [RR-035].
- 5.13.20. The LIR from RCBC stated that the positive impact of the Proposed Development would be far reaching. It would assist in safeguarding thousands of skilled, well-paid jobs, bring brownfield land back into use, and bring business rates income to deliver much needed services locally. The opportunity for targeted recruitment was also highlighted, to safeguard well paid jobs locally and offering opportunity to highly skilled personnel currently employed at power and industrial facilities around the

world and who wish to return to work in Tees Valley. RCBC welcomed the positive partnership approach with the Applicants and concluded that *“this significant project sends out a very strong message that Redcar and Cleveland is a beacon for investment and will encourage more businesses to consider our borough as a prime location for future investment”* [REP1-046].

- 5.13.21. STBC in their LIR [REP1-047] concluded that the social, environmental and economic benefits would make a significant contribution to meeting national targets and policies and would support local businesses and create jobs for local people having a positive impact on the Borough.
- 5.13.22. Matters relating to socio-economics and tourism were not examined at any oral hearings, and instead we sought further information by way of written questions. Responding to ExQ1 SET.1.1 and SET.1.3, both RPAs were satisfied with the assessment methodology and baseline, and the estimated employment figures [REP2-094 and REP4-044].
- 5.13.23. Additional information was provided by the Applicants in response to questions which we raised [ExQ1 SET.1.2, SET.1.4 and SET.1.7] including matters relating to the employment figures, the skills plan and tourism/recreation [REP2-016].
- 5.13.24. Regarding R30, the Applicants provided further information regarding skills and education. An early supply chain engagement session had already taken place (May 2022), and a memorandum of understanding with Redcar and Cleveland College signed (April 2022). This would fund development of a range of programmes to equip local people with new career skills in clean energy, which would be relevant to the development and other proposed projects in the region [ExQ1 SET.1.4, REP2-016].
- 5.13.25. The Applicants responded to RCBC’s comments on Redcar Town Football Club [REP3-011] and did not consider there would be any significant effects during any phase given its location and the road capacity of the A1085. At D11, RCBC confirmed satisfaction with the Applicants’ response [ExQ3 SET.3.1, REP11-022].
- 5.13.26. RCBC confirmed satisfaction with R29 of the dDCO, which relates to the establishment of a local liaison group. They stated that they would take an active role and were used to participating in similar groups in the locality [SET.1.8, REP2-094]. At ISH3 [EV6-001 to 010] the membership of such a group was discussed. The dDCO was subsequently amended to specify at part 2 of R29 that the undertaker must invite the RPA, Sembcorp, STDC, NSMP and other relevant interest groups as may be agreed with the RPA.
- 5.13.27. The SoCGs with RCBC [REP9-009] and STBC [REP8-036] both include agreement that socio-economic effects would be beneficial and that the Proposed Development would make a positive contribution towards growth and regeneration, support local businesses and create jobs.

Examining Authority's Response

- 5.13.28. The Proposed Development would generate a significant number of net jobs, particularly during construction, which would result in benefits for the local area in terms of employment and related local spending. We agree with the Applicants that the overall socio-economic effects would be beneficial.
- 5.13.29. The socio-economic assessment lacked detail on some issues, particularly in relation to tourism and recreation. There are numerous facilities in close proximity to the PCC Site in particular given its location adjacent to the coastline and a number of PRowS. Overall, the information in ES Chapter 20 as supplemented by answers to written questions is sufficient for us to conclude on this topic, and effects during construction on holiday makers to the caravan parks and users of nearby recreational facilities are likely to be minor adverse. Overall, effects would not be significant.
- 5.13.30. As a result, we are content that specific mitigation is not required. Nonetheless, R29 (local liaison group) and R30 (employment, skills and training plan) of the dDCO [REP12-003] would secure appropriate enhancement measures and would assist in informing and up-skilling local people.

Conclusions

- 5.13.31. The Applicants have adequately assessed relevant impacts including the creation of jobs and training opportunities, changes in local population dynamics which may alter the demand for local services, and the effects on tourism. We are satisfied that this issue has been given proper consideration and agree with the assessment of impacts as set out in ES Chapter 20, which is in compliance with section 5.12 of EN-1 and section 5.13 of draft EN-1. Mitigation is unnecessary, but enhancement would arise from securing R30 (employment, skills and training plan) in particular, in assisting in promoting employment opportunities for local people.
- 5.13.32. Overall, we consider socio-economic effects associated with the Proposed Development to be beneficial and apply moderate positive weight in the planning balance.

5.14. HISTORIC ENVIRONMENT

Introduction

- 5.14.1. The historic environment was listed in the IAPI [Annex C, PD-009], including the effects on both designated and non-designated heritage assets (NDHA) and their settings, and the effects on archaeological remains. A range of issues were raised in writing during the Examination which are reported below.

Policy Considerations

- 5.14.2. Regulation 3 of the IPD Regulations states that:
- When deciding an application which affects a listed building or its setting, the [Secretary of State] must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.
 - When deciding an application relating to a conservation area, the [Secretary of State] must have regard to the desirability of preserving or enhancing the character or appearance of that area.
 - When deciding an application for development consent which affects or is likely to affect a scheduled monument or its setting, the [Secretary of State] must have regard to the desirability of preserving the scheduled monument or its setting.
- 5.14.3. Overarching national policy for energy in relation to heritage assets is set out in section 5.8 of EN-1. Paragraphs 5.8.4 to 5.8.6 refer to NDHA. Here it stresses that the absence of designation for heritage assets with archaeological interest does not indicate lower significance, and that if such a NDHA may be affected by the proposed development then it should be considered subject to the same policy considerations as designated heritage assets. Paragraphs 5.8.8 to 5.8.10 of EN-1 require the applicant to describe the significance of the affected heritage assets and the contribution of their setting to that significance. The level of detail should be proportionate to the importance of the heritage asset.
- 5.14.4. In terms of decision making, paragraph 5.8.14 of EN-1 sets out the presumption in favour of the conservation of designated heritage assets, in proportion with significance. It notes that significance can be harmed through development within its setting. At paragraphs 5.8.19 to 5.8.22 it sets out the importance of recording documentary evidence of the affected heritage asset, proportionate to the nature and level of the asset's significance.
- 5.14.5. The NPPF at section 16 sets out broadly similar policies relating to the historic environment and provides more up-to-date definitions of 'significance' and 'setting' in Annex 2. Paragraph 199 states that great weight should be given to the asset's conservation, irrespective of the level of harm to its significance.
- 5.14.6. Policy NE-HER-1 of the North East Marine Plan requires proposals to demonstrate that they will conserve and enhance the significance of heritage assets, and any harm to their significance should be avoided, minimised or mitigated. If it is not possible to mitigate, then public benefits of the proposal must outweigh the harm to the significance of the heritage assets.
- 5.14.7. Relevant development plan policies regarding the historic environment are summarised at paragraphs 18.2.15 to 18.2.21 of ES Chapter 18 [APP-100].

- 5.14.8. South Tees Area SPD [REP2-054] development principle STDC8 refers to the identification of industrial assets which it is appropriate and viable to retain as part of the development of an 'industrial heritage trail'. It requires development proposals to avoid unacceptable harm to the significance of any retained heritage assets, including NDHAs. STDC11 specifically refers to the development zone in which the PCC Site is situated (North Industrial Zone). It recognises the potential of the Redcar blast furnace as an industrial heritage asset of importance to the borough and wider Teesside area.

The Applicants' Case

- 5.14.9. The most relevant elements of the application to the consideration of the on-shore historic environment are contained in ES Chapter 18 [APP-100], a Cultural Heritage Baseline Report at Appendix 18A [APP-338] and Cultural Heritage Gazeteer at Appendix 18B [APP-339]. Figure 18-1 indicates the designated heritage assets within a 5km study area [REP12-106], and Figure 18-2 shows the NDHAs in a 1km study area [REP12-107].
- 5.14.10. In terms of marine heritage, such matters are contained in ES Chapter 19 [APP-101] and Figure 19-1 [AS-127]. The figures were updated at D6 and D12 to reflect the revised Order Limits following change requests; they do not indicate any additional heritage assets designated since submission of the application.
- 5.14.11. The ES concludes that no significant effects are predicted to occur in relation to both onshore and marine heritage matters in operation or decommissioning. In terms of the construction phase, section 18.10 of the ES [APP-100] refers to the adoption of a protocol for managing unknown archaeological deposits with appropriate measures to record or stabilise the asset in order to avoid significant effects to the resource, to be secured by R14 in the DCO. This requires that a written scheme of investigation (WSI) be submitted to and approved by the RPA, and that it shall be in accordance with Chapter 18 of the ES.
- 5.14.12. Condition 15 of the DMLs in Schedules 10 and 11 of the dDCO relates to a WSI for marine archaeology, in accordance with Chapter 19 of the ES.

Examination Matters

- 5.14.13. Only one RR referred to any heritage matters; from HBC, who confirmed that Tees Archaeology agreed with the mitigation methodology proposed in Chapter 18 [RR-015].
- 5.14.14. Matters relating to heritage assets were not examined at any oral hearings, and instead we sought further information by way of written questions. Additional information was provided by the Applicants in response to questions which we raised [REP2-016, REP3-005, REP4-028, REP7-010 and REP11-018].
- 5.14.15. RCBC and STBC did not make any comments regarding heritage matters in their LIRs [REP1-046 and REP1-047]. The SoCGs with RCBC [REP6-

111] and STBC [REP8-036] note that it is agreed that there are no further comments to raise with regard to the assessment of effects on the historic environment. Notwithstanding this, a number of further written questions were directed to RCBC relating to archaeology, industrial heritage and setting of heritage assets [ExQ1 HE.1.2, HE.1.3, HE.1.4, HE.1.5, HE.1.6, REP2-094] and [HE.3.1, HE.3.3, HE.3.4 and HE.3.5, REP11-022].

- 5.14.16. The MMO made no comments in respect of marine heritage assets in their WRs nor is there any reference to the historic environment in the SoCG [REP1-008]. In their answer to ExQ1 HE.1.1 [REP2-085] and D5 submission (in response to REP4-028), they deferred such matters to HE.
- 5.14.17. HE did not submit a RR, but they provided answers to ExQ1 and ExQ2 [REP2-063 and REP9-028]. The signed SoCG [REP8-045] sets out the consultation with HE, including pre-application, and a range of agreed matters including:
- R14 of the dDCO, and R15 of the DML in relation to WSIs for archaeology;
 - the identification of and assessment of impacts on known designated heritage assets, including their settings;
 - confirmation that the Redcar blast furnace is no longer within the Order Limits;
 - the identification and assessment of known marine NDHAs and mitigation measures; and
 - the update to the CEMP [REP9-007] to include procedures for reporting, protection and management of unexpected archaeological discoveries (both terrestrial and marine).
- 5.14.18. It should be noted, however, that the SoCG pre-dates HE's response to ExQ2 HE.2.1, HE.2.2 and HE.2.3 [REP9-028].
- 5.14.19. No other IPs raised any issues in relation to heritage matters.
- 5.14.20. The issues raised via the ExA's questions are considered in more detail in the sections below.

Designated Heritage Assets

- 5.14.21. There are no designated heritage assets within the Order Limits. Heritage assets within 5km of the Order Limits are assessed in ES Chapter 18 and Appendix 18A [APP-100 and APP-338] and shown on Figure 18-1 [REP12-106]. RCBC [REP2-094], STBC [REP4-044], HBC [REP4-038], the MMO [REP2-085] and HE [REP2-063] agreed with or had no comments to make on the methodology or study area for the designated heritage asset assessment.
- 5.14.22. The baseline conditions are set out in Appendix 18A [APP-338] and a gazetteer of the heritage assets provided in Appendix 18B [APP-339]. Of the heritage assets shown on Figure 18-1, the majority of them were scoped out of the assessment in Chapter 18 following the baseline

assessment. Three listed buildings, four conservation areas and a Scheduled Monument were further considered in the final assessment.

- 5.14.23. The aforementioned IPs stated in their responses to ExQ1 HE.1.4 that they were satisfied with the assessment of impacts to heritage assets. Nonetheless, we were concerned that the submission lacked an adequate identification of the significance and effect on the setting of some of the heritage assets most directly affected by the Proposed Development. At ExQ1 HE.1.6 and ExQ2 HE.2.6 we asked for more detailed assessments of significance and effects on five conservation areas (Coatham, Kirkleatham, Yearby, Wilton and Seaton Carew) and the nearest listed buildings (at Marsh Farm, Warrenby).

Listed Buildings

- 5.14.24. The nearest designated heritage assets are situated at Marsh Farm, some 650 metres to the east of the PCC Site at Tod Point Road in Warrenby. The Grade II listed group includes Marsh Farmhouse and cottage (Ref. 1160308), its garden wall (Ref. 1139619), stable and barn (Ref. 1139620).
- 5.14.25. We viewed the location and setting of the group of listed buildings at Marsh Farm as part of their USI 1 [EV1-001] and the setting from within the Order Limits at the ASI [EV1-002].
- 5.14.26. The listed buildings and their setting are briefly described at paragraph 18.6.15 of Chapter 18 [APP-100], however we were concerned that the assessment of significance was lacking and did not meet the requirements of EN-1 paragraphs 5.8.8 to 5.8.10. The level of detail was insufficient for us to make an informed assessment of impact in accordance with Regulation 3(1) of the IPD Regulations, and therefore at ExQ2 [HE.2.6, PD-016] a more detailed assessment was requested.
- 5.14.27. The Applicants submitted a more detailed assessment of significance and effects on setting at D7 [REP7-010], which RCBC were satisfied with [ExQ2 HE.2.6, REP11-022]. Taking account of this and our own observations on site, our assessment of its significance and setting is set out below.
- 5.14.28. The historic interest of the farmhouse, believed to date from 1770, derives in part from its location which was originally in an isolated position proximate to the sea. The heritage assessment indicates that the farmhouse would likely have been a landmark for travellers (with suggestions that it may have been used by smugglers due to its isolated position near the sea) as well as a focal point for locals travelling along the footpath on their way to the iron and steel works. An OS map surveyed in 1893 [Plate 2, REP7-010] indicates a growing residential community at Warrenby, but by the mid 20th century the dwellings and community buildings had been replaced with range of industrial buildings and uses.
- 5.14.29. Architecturally the farmhouse, prior to its later cottage extension and 20th century alterations, represents a brick and tile double-fronted

detached house typical of the period. The later cottage extension is subservient to the main house with the same use of materials. The historic maps suggest that the form and layout of the buildings has changed little since they were constructed. Its special interest derives from the group as a whole as representing a relatively cohesive example of a farmstead built of local materials.

- 5.14.30. In terms of archaeological interest, the List description [REP7-010] for the Farmhouse indicates '*May incorporate remains of C13 chapel of St. Sepulchre*'. Sandstone has been incorporated in the northern corner of the barn. However, given the Applicants were unable to inspect the buildings on site this has not been corroborated.
- 5.14.31. In terms of setting, the isolated coastal landscape setting of the group of listed buildings at Marsh Farm has substantially altered over time. Few buildings remain of the Victorian community of Warrenby and Marsh Farm now stands in an industrial area where the activities taking place will have altered the experience of the group both visually and in terms of noise for many years, and certainly prior to Listing of the group in 1988. Any appreciation of the buildings' former relationship with the lost community of Warrenby and the sea has been significantly eroded by the industrial development and the progressive growth of Coatham Dunes (following the construction of South Gare breakwater in the late 1800s). A large grassed earth bund obscures views of the former steel works infrastructure remaining nearby.
- 5.14.32. The listed buildings' significance lies in their age and rarity in this 20th century industrial setting, the lone survivors of an age prior to the development of the iron and steel works. As a group, they have a small and discrete setting of their own derived from the buildings within the group and their associative relationship with one another. Following industrial development of the area, the landscape setting fails to contribute to the heritage interests of the group. We agree with the Applicants' overall assessment in ES Chapter 18 [paragraph 18.6.5, APP-100], that the group of listed buildings, and their setting, is of medium value.
- 5.14.33. Construction activity at the PCC Site has the potential to temporarily affect the setting of the buildings as a result of noise during peak construction activity. Whilst such noise would have a temporary minor adverse effect it would not diminish the ability to appreciate the assets' setting. Decommissioning activities would have a similar temporary effect.
- 5.14.34. When completed, it is possible that the higher elements of the structures associated with the operational PCC Site would be partially visible from certain locations from the area around Marsh Farm. The setting is dominated by cranes, warehousing and outdoor storage associated with neighbouring commercial uses which are not associated with the Proposed Development or Teesworks.

- 5.14.35. We therefore conclude that the significance of Marsh Farm and the associative relationship between the buildings would continue to be appreciable in this somewhat degraded setting. Whilst the Proposed Development would result in a change to its wider setting, the significance of the more discrete setting of the group would not be harmed and such effects would be neutral.

Conservation Areas

- 5.14.36. Out of 17 conservation areas within the 5km study area [Table 18-4, APP-339], four were selected for further assessment of potential effects (Coatham, Kirkleatham, Yearby and Wilton). The remainder were scoped out as not likely to experience any change to their character or setting due to their distance from the boundary. The selected four are all to the south of the River Tees, in closest proximity to the PCC Site. A description and brief assessment of each of the four conservation areas is set out at paragraphs 18.6.14 to 18.6.27 of ES Appendix 18A, the Cultural Heritage Baseline Report [APP-338].
- 5.14.37. At USI 1 [EV1-001] we visited the wider area around the Order Limits and views of the PCC Site were noted from in and around Seaton Carew conservation area in particular, as set out in section 5.5 of this Report in relation to LVIA viewpoints. Furthermore, the initial assessment [APP-338] was considered insufficient for us to establish the significance of each of the four selected conservation areas and their setting in accordance with EN-1 paragraphs 5.8.8 to 5.8.12. We therefore asked for an assessment of the setting of each of the four selected conservation areas, with the addition of Seaton Carew. Responses from the Applicants to ExQ1 HE.1.6 were provided at D2 [REP2-016] and D4 [REP4-028]. Copies of the relevant Conservation Area Appraisals (CAAs) were provided by RCBC [REP4-041] and HBC at D4 [REP4-038]. No comments were received from RCBC or HBC regarding the assessment of setting. We visited all of the conservation areas at either USI 1 or 2 [EV1-001 and EV-003].
- 5.14.38. **Coatham conservation area** is situated approximately 1.7km to the east of the PCC Site. It is a primarily residential area of mid to late Victorian and Edwardian buildings to the north-western edge of the town of Redcar in a coastal setting. Part of the planned layout reflects the settlement's medieval origins. The Coatham CAA 2011 [REP4-041] highlights the influence of the industrialisation of the wider Tees Valley area on the growth of the settlement but makes no point regarding any impact of the industrial infrastructure on views into and out of it, indicating a lack of sensitivity to the wider setting of the conservation area.
- 5.14.39. Very few glimpses of the remaining steel works' infrastructure and surrounding industry are possible from within the conservation area, due to the built-up nature of the area. The clearest views of the PCC Site would be from its northern and western edges over the golf course and Coatham Green. The change in view would not affect the ability to appreciate the historic and architectural character of the conservation area. The impact is assessed by the Applicants to be very low, resulting

in a minor adverse effect which is not significant [paragraph 5.2.3, REP4-028] and we would agree with this assessment.

- 5.14.40. **Kirkleatham conservation area** lies some 3.5km to the south-east of the PCC Site. It contains a high concentration of listed buildings of the highest significance which include the Grade I Church of St Cuthbert and Sir William Turner's Hospital. The Kirkleatham CAA 2011 describes its character in detail. Its high-quality architecture, historical importance and intact historical context, together with its woodland parkland landscape setting results in a high heritage value of outstanding interest.
- 5.14.41. The mature woodland within and around Kirkleatham, bounded and bypassed by the A174 and A1042, gives it a secluded character notably distinct from the industrial and residential areas nearby. Views into and out of the conservation area from the heavy industrial areas, despite its proximity, are virtually non-existent due to this landscape setting. Open views are instead possible from a southerly direction, towards the more sparsely populated Cleveland Hills.
- 5.14.42. Consequently, there would be no changes to the character of the conservation area either during construction nor as a result of views of the operational development. The impact is assessed to be neutral and not significant [paragraph 5.3.5, REP4-028] and we concur with this conclusion.
- 5.14.43. **Yearby conservation area** is located approximately 4.7km south-east of the PCC Site, south of Kirkleatham. Its significance is primarily derived from its layout and landscape setting either side of Yearby Road. The Applicants assessment notes the conservation area to be of medium value due to the existence of a number of mid 20th century dwellings.
- 5.14.44. Effects on the heritage values of the conservation area and its setting are limited by its distance from the site and the lack of views towards the north and north east, which are obscured by mature trees. We agree with the Applicants' assessment of impact as neutral and not significant [paragraph 5.4.5, REP4-028].
- 5.14.45. **Wilton conservation area** is situated around 4.9km south of the PCC Site, on a gentle slope towards the Eston Hills. Its special historic and architectural interest arises from its origins as an early 19th century planned estate village associated with Wilton Castle. It includes a large area of historic parkland (now a golf course) which stretches to the south towards industrial and chemical works at Wilton International at Lazenby.
- 5.14.46. The Wilton CAA 2011 notes that there are few views into and out of the conservation area owing to its woodland parkland setting which screens and subdivides the village. The higher buildings and infrastructure at Wilton International are partially visible, in particular from the raised platform of the Castle forecourt and sections of the avenue leading towards the A174.
- 5.14.47. Beyond the dominating influence of Wilton International from this direction, the PCC site would not represent a noticeable change in the

view. The impact on the character of the conservation area would be neutral and not significant [paragraph 5.5.5, REP4-028] and we would agree with this assessment.

- 5.14.48. **Seaton Carew conservation area** is located to the north-western edge of the 5km study area. It is a linear shaped area concentrated around the seafront of the settlement, including primarily late Victorian and Edwardian terraces of two and three storeys many of which enjoy extensive coastal views. Long range views are also experienced by users of the seafront promenade and gardens, also within the conservation area.
- 5.14.49. The Seaton Carew CAA 2009 [REP4-041] highlights the extensive views into and out of the settlement in its appraisal of setting, and notes that much of its atmosphere is given by the visibility of industry to the south of the Tees beyond the undulating sand dunes of North Gare and the Tees estuary.
- 5.14.50. From considerable sections of the conservation area, clear and somewhat striking views of the remaining infrastructure of the Redcar Steel Works can be obtained (as set out in section 5.5 of this Report). Whilst the Applicants consider that the PCC Site would not represent a noticeable change to these views [paragraph 5.6.4, REP4-028], we hold a different view in terms of landscape and visual impact. Correspondingly, this impact would extend to the (long distance) setting of the conservation area. This change would not result in direct harm to the character or appearance of Seaton Carew conservation area, but we disagree with the Applicants that the impact would be neutral. Instead, it is considered to have a minor adverse effect. In ES terms, this is not significant.

Scheduled Monuments: Eston Nab Iron Age Hillfort

- 5.14.51. Eston Nab (ref. 1011273) is a designated Scheduled Monument located some 6.7km from the Order Limits within the Eston Hills. The monument includes a Bronze Age hillfort, a palisaded settlement, at least one Bronze Age bowl barrow and a 19th century beacon, situated on a steep, north facing scarp edge with extensive views in all directions. Such views form part of its setting and contribute to its heritage values. Its setting is established by its visually prominent position on the escarpment, towering above the Tees Valley. The importance of its location is reinforced by its later 19th century use as a beacon [paragraph 18.5.10, APP-338]. The scheduled monument is assessed to be of high value.
- 5.14.52. From a visit to Eston Nab on USI 2 [EV1-003] we noted the extensive views to the north from Eston Nab, and that the majority of the area of the Order Limits are visible from here, albeit from some distance and at a great height. The Proposed Development would represent a new component into the existing industrial landscape which extends across the Tees Valley. Given the coastal location and the scale of the proposed buildings, the development at the PCC Site would be easier to locate from Eston Nab than other proposed works. Nonetheless, it would not dominate the visual setting nor interrupt longer range views to the coast and across the Tees Estuary. No direct impacts to setting or the heritage

values of the Scheduled Monument would arise at any stage, and therefore we agree with the Applicants' assessment of effects as neutral and not significant [paragraph 18.6.22, APP-100].

Non-Designated Heritage Assets

- 5.14.53. NDHAs within a study area of 1km of the Order Limits were assessed in Chapter 18 of the ES [APP-100] and are displayed on Figure 18-2 [REP12-107]. The desk-top study includes data from the local Historic Environment Record and a range of other sources as listed in paragraph 18.3.1 of the Cultural Heritage Baseline Report [APP-338]. The full list of 184 NDHAs is set out at Section 18.5 of ES Appendix 18B (Cultural Heritage Gazetteer) [APP-339].

Terrestrial Archaeology

- 5.14.54. Paragraphs 18.4.7 to 18.5.40 [APP-338] set out the archaeological and historical background of the study area, from the Palaeolithic period to twentieth century industrial archaeology. Figure 18-2 [REP12-107] indicates the concentrations of NDHAs around certain areas including Kirkleatham, Eston, Wilton and Coatham Marsh.
- 5.14.55. Within the original Order Limits at the time of the application, there were 23 NDHAs located within the boundary, representing primarily 20th century industrial structures associated with the steelworks and iron works, including former tramways. There are a number of structures associated with WWI defences at Coatham Sands [paragraphs 18.5.34 to 18.5.40, APP-338]. Palaeoenvironmental buried deposits may be encountered as part of HDD for the CO₂ export pipeline (Work No. 8) [paragraphs 18.5.1 to 18.5.3, APP-338].
- 5.14.56. Within the area of the CO₂ gathering network (Work No. 6) and gas connection corridor (Work No. 2) there are a number of NDHAs. However, the proposed pipeline infrastructure would be above-ground therefore there would be little to no impact on buried deposits.
- 5.14.57. There is low potential for buried features of archaeological interest to be present within the Order Limits. This is due to the presence of the subsurface of made ground, and the removal of previous land uses. The Applicants identified potential for organic deposits or artefacts to be present within alluvium located within former river channels, which are likely to be at depth [section 18.8, APP-338].

Other Non-Designated Heritage Assets – Blast Furnace

- 5.14.58. The Redcar Steelworks was constructed in the 1970s, with the blast furnace commencing operation in 1979. It was the last such structure constructed in England, and at the time of construction it was the largest in Europe. The works ceased production in 2015. Its importance to the industrial history of the UK contributes to its heritage value [paragraphs 18.5.38 to 18.5.40, APP-338].

- 5.14.59. The PCC Site and the land around it incorporates a range of redundant structures relating to the former Redcar Steelworks complex, the most prominent of which was the blast furnace, situated outside but immediately to the north-west of the Order Limits.
- 5.14.60. We agree with the Applicants' assessment [APP-338 and ExQ1 HE.1.5, REP2-016] that collectively, the structures provide a very visible and well preserved feature of the industrial heritage of the region. A number of ancillary structures within the Order Limits provide the functional setting to the blast furnace and collectively they represent a well-known landmark of regional value, contributing to local identity.
- 5.14.61. HE's pre-application response [APP-068] referred to the Redcar blast furnace as being a key heritage issue. Their later responses to ExQ1 HE.1.5 [REP2-063] highlighted the historic significance of Teesside's iron industry as being of undoubted national importance but deferred the question of its status as a NDHA to RCBC. HE's answer to HE.2.2 [REP9-028] confirmed that the blast furnace was considered for listing but did not meet the requirements for designation. At ISH4 [EV9-001 to 006] RCBC agreed that the structure was iconic, but that it was not possible to retain it as part of the wider redevelopment of Teesworks.
- 5.14.62. We are aware that the blast furnace was demolished shortly after close of the Examination, and this followed the removal of a number of other structures as part of the ongoing clearance and remediation of the site. Impacts on the blast furnace as a NDHA and its setting are therefore no longer relevant, however HE confirmed that detailed pre-demolition historic building recording has taken place and provided a link to the results with a significant number of photographs which provide a useful context for the industrial heritage of the site and its surroundings [ExQ1 HE.1.5, REP2-063].
- 5.14.63. The industrial heritage of the former Steelworks is recognised in policy STDC8 of the SPD [REP2-054] which refers to a heritage trail, and the Design Guide [REP2-055] also refers to the creation of an identity for the wider Teesworks development. The Applicants pointed out that much of the former infrastructure had been demolished and deferred matters of an industrial heritage trail to STDC as landowners. They clarified that it would not be appropriate to route such a trail through the PCC Site given that it will be a secure COMAH classified site [ExQ2 HE.2.4, REP6-121].

Marine Archaeology

- 5.14.64. Chapter 19 of the ES [APP-101] specifically relates to the marine archaeological resource below MHWS. A range of known marine heritage assets within the area are shown at Figure 19-1 [REP12-109].
- 5.14.65. There are no designated assets within the study area however a range of undesigned maritime assets were identified [paragraph 19.4.20, APP-101]. The likelihood of encountering any unknown maritime assets, including aviation assets, within the survey areas is stated to be very low, but a possibility remains [APP-101].

- 5.14.66. In terms of the palaeoenvironment, a single recorded palaeochannel has previously been recorded in the eastern limits of the site at South Gare and Coatham Rocks (HER 6396) as part of a geophysical survey previously carried out for Teesside Offshore Wind Farm [Table 19-5, APP-101]. There is potential for further examples to be present and to extend into the site of the CO₂ export pipeline. The assessment notes it to be of regional importance and therefore of medium value, and the likelihood of encountering previously unrecorded submerged prehistoric remains is assessed as medium [paragraph 19.4.18, APP-101].
- 5.14.67. Impacts on undesignated assets are likely to be to the palaeochannel only, from the construction of the launch site and HDD for the CO₂ export pipeline (Work No. 8) and replacement water discharge outfall (Work No. 5). The impact is assessed to be low, resulting in a minor adverse effect [paragraphs 19.6.5 to 19.6.5, APP-101]. There would be no additional impacts during operation or decommissioning. We agree with this overall assessment of impacts on marine heritage assets.

Mitigation

- 5.14.68. No mitigation is proposed by the Applicants in respect of designated heritage assets, given that it is concluded that any effects would be neutral.
- 5.14.69. In terms of terrestrial archaeology, no outline WSI has been provided in advance, but R14 of the dDCO [REP12-003] requires such a scheme to be submitted. The dDCO was updated at D2 [REP2-002] to include a process for dealing with unexpected finds and is supported by measures set out in Table 5A-12 of the Framework CEMP [REP9-007].
- 5.14.70. In terms of marine heritage assets, it is proposed to undertake a geoarchaeological assessment prior to construction to determine the extent of any deposits and paleoenvironmental features that may extend to the offshore Order Limits. The outline WSI for marine archaeology [Appendix B, REP4-028] sets out the broad principles and methodology of mitigation, for a future site specific WSI. This would be secured by Condition 15 of the DML (dDCO Schedules 10 and 11 [REP12-003]), together with measures set out in Table 5A-13 of the Framework CEMP [REP9-007].
- 5.14.71. In their answer to ExQ1 HE.1.1 [REP2-085] the MMO deferred such matters to HE. At D9, HE confirmed their satisfaction with the inclusion of measures to record and preserve unexpected archaeological finds as set out in the Framework CEMP [REP9-007] [HE.2.3, REP9-028]. This and the agreed amendments to DML Condition 15 is also recorded in the SoCG [REP8-045].

Cumulative Effects

- 5.14.72. None of the shortlisted developments identified in Chapter 24 of the ES [APP-106] are likely to result in additional impacts to the setting of designated heritage assets nor on NDHA whether on land or marine and were scoped out of further assessment.

Examining Authority's Conclusions

- 5.14.73. As required by Regulation 3 of the IPD Regulations, we have given specific consideration to the desirability of preserving listed buildings and scheduled monuments or their setting or any features of special architectural or historic interest which they possess, and the desirability of preserving or enhancing the character or appearance of conservation areas. Further to our requests for further information, we consider that a description of heritage assets has been provided in a level of detail proportionate to the importance of the heritage assets. We also consider that the significance of impacts on both the onshore and offshore archaeological and cultural heritage has now been adequately assessed for all phases of the Proposed Development.
- 5.14.74. We have found that the Proposed Development would not lead to any adverse effects on the historic environment and therefore there would be no conflict with the objectives of EN-1, nor the more recent policy set out in section 16 of the NPPF and draft policy set out in draft EN-1 section Accordingly, we agree with the overall findings of ES Chapters 18 and 19 which indicate that effects would not be significant. Given that the effects on listed buildings and conservation areas overall would be neutral, as would the setting of Eston Nab scheduled monument, we are satisfied that no mitigation would be necessary in respect of these onshore heritage assets.
- 5.14.75. Whilst the existence of some NDHAs (both terrestrial and marine archaeology) is not yet known, we agree that any unexpected finds and effects on archaeological potential would be adequately mitigated through R14 and DML condition 15, together with the measures set out in the Framework CEMP.
- 5.14.76. Taking all these matters into consideration we conclude that the Proposed Development would have no likely significant effects on the historic environment and that the effect in the planning balance would be neutral.

5.15. CUMULATIVE AND COMBINED EFFECTS

Introduction

- 5.15.1. Cumulative and combined effects were listed in the IAPI [Annex C, PD-009]. The assessment of cumulative and combined effects is presented in Chapter 24 [APP-106] which draws on the assessment of impacts provided in ES Chapters 8 to 23 [APP-090 to APP-105].

Policy Considerations

- 5.15.2. A cumulative assessment of the likely significant effects from the Proposed Development is required under the EIA Regulations.
- 5.15.3. EN-1 states that the ES should provide information on how the effects of the proposal would combine and interact with the effects of other development, including those for which consent has been sought or

granted (paragraph 4.2.5). It must then be considered how the accumulation of, and interrelationship between, cumulative effects might affect the environment, economy or community (paragraph 4.2.6).

The Applicants' Case

- 5.15.4. The Applicants have defined 'combined effects' as those resulting from different effects from the Proposed Development on a single receptor. They have defined 'cumulative effects' as those that occur when the effects from the Proposed Development interact with those from other planned development. The effects from decommissioning have not been included in the assessment of cumulative effects because the Applicants state that it is not possible to predict the likely developments in the area in 25 years' time [section 24.3, APP-106].
- 5.15.5. A long list, narrowed down to a short list, of other developments is considered in the assessment. Updates to the list were provided at regular intervals in the Examination [REP4-029, REP6-102 and REP6-103, REP11-012], with a visual representation of their locations provided at D12 [REP12-112 and REP12-113]. The location of the short-listed other developments is indicated at ES Figure 24-3 [REP12-113] which is reproduced at Figure 7 of this Report.

Combined effects

- 5.15.6. The study area and sources of data for the assessment of combined effects is defined by those used in the individual topic chapters of the ES. The potential combined effects on ecology, geology and soils, and waterbodies are considered in their respective chapters, so Chapter 24 [APP-106] considers the combined effects on human receptors only.
- 5.15.7. The assessment includes any effects judged to be 'minor adverse' or worse during construction or operation. Table 24-16 [APP-106] sets out that there would be no combined visual and noise effects on residential or commercial receptors during construction, including the nearest residential property at Marsh House Farm. There is predicted to be combined effects on Viewpoint 5 and users of South Gare Breakwater due to temporary restrictions on access and visual effects. As the effects from construction would be temporary and on receptors that are able to move location, they have been assessed as minor adverse (not significant).
- 5.15.8. The combined effects on air quality, noise, landscape, visual, socio-economic and tourism during the operational phase were also considered. It was recognised that there would be a moderate adverse effect on visual receptors, including recreational users of the England Coastal Path during operation, and minor adverse effects elsewhere. There would also be a minor adverse effect at Marsh House Farm from noise during operation of the PCC. The assessment sets out such effects would be no greater than for the Proposed Development alone and as such there would not be combined effects [APP-106].

Cumulative effects

- 5.15.9. The methodology for the assessment of cumulative effects follows the four-stage approach in the Planning Inspectorate's Advice Note 17: '*Cumulative effects assessment relevant to nationally significant infrastructure projects*'. Indicative zones of influence were identified for each environmental topic and a search across 15km undertaken to establish a long list of other developments. Within the zones, all major developments, DCO applications and allocations were identified. Ninety-one developments were identified in the area and listed in Appendix 24A [APP-344]. These were filtered into tiers following discussion with the local authorities and other stakeholders [Appendix 24B, APP-345].
- 5.15.10. These sites were then shortlisted based on the level of information available and professional judgement. Application of Stages 3 and 4 then further narrowed down the number of sites to 23 based on more detailed information and included the offshore transport and storage infrastructure for captured CO₂. The offshore works are the subject of a separate consent and ES, but it was recognised that the environmental effects of the wider NZT Project (as defined in section 2.1.1 of this Report) need to be considered [paragraph 24.5.2, APP-106].
- 5.15.11. Where there was no predicted residual effect from the Proposed Development in a 'worst-case' year of construction, these activities were scoped out of the cumulative assessment. The remaining issues included air quality, surface water, noise and vibration, flood risk and water resources, ecology and ornithology, landscape and visual impact, and socio-economic.

Air Quality

- 5.15.12. Assessment of changes in air quality were included as part of ES Chapter 8 [APP-090]. Additional dispersion modelling was undertaken for the four developments scoped in for the assessment of operational cumulative air quality effects, including the nearby Redcar Energy Centre. No significant effects on human receptors from operational activities were identified for the common pollutant of NO_x, CO, and NH₃, as well as acid deposition. The assessment was based on tight controls on dust on all construction sites being in place, in line with standard practice. The risk of cumulative impacts from dust was therefore assessed as insignificant [APP-090 and paragraphs 25.4.8 to 24.5.13, APP-106].
- 5.15.13. The air quality impacts from NO_x are above the criteria for significance at Teesmouth and Cleveland Coast SPA, SSSI and Ramsar site, and above the criteria for NH₃ at the SPA, Coatham Marsh LWS and Eston Pumping Station LWS. However, in all cases the predicted concentrations remain below the critical levels as explained further in sections 5.4, 5.7 and Chapter 6 of this Report.
- 5.15.14. The assessment of the effects of nutrient nitrogen on the Teesmouth and Cleveland SSSI follows the approach taken at the Tees Combined Cycle Power Plant DCO and agreed by NE as being an appropriate approach during determination of the Redcar Energy Centre application. This reflects the much lower cumulative nitrogen dose to habitats following the closure of the former steelworks, under which the dune habitats were

established and maintained in favourable condition. On this basis, it is concluded that the cumulative effect from nutrient nitrogen is not significant [paragraph 24.5.26, APP-106].

Surface water, flood risk and water resources

- 5.15.15. Table 24-3 of the cumulative assessment [APP-106] summarises effects on water related matters. As set out in section 5.6, the cumulative risk can be effectively managed and there would not be any significant increase in risks to any waterbodies. In terms of water quality, with the proposed mitigation in place, a temporary and slight adverse effect to Tees Bay would remain with regard to mobilisation of fine sediment, but this is not significant [paragraph 25.5.30, APP-106]. Effects during construction are set out to be neutral [paragraph 24.5.31, APP-106].

Noise and Vibration

- 5.15.16. The noise cumulative assessment is set out in Table 24-8 of the assessment, and it is concluded that cumulative construction noise effects at all NSRs would be the same as for the Proposed Development alone. The exception is at NSR3 (131 Broadway West) the effects at which would be minor adverse, slightly more than the negligible adverse effects predicted for the Proposed Development in isolation [paragraph 24.5.43, APP-106]. During operation, an increase in ambient noise levels of 1dB is expected at NSR4 (Marsh House Farm) with other developments. This is below the level of increase that is perceptible under normal environmental conditions and would not constitute more than a minor effect, which is the same as for the Proposed Development alone [paragraph 24.5.48, APP-106].

Ecology

- 5.15.17. Potential pathways for cumulative effects relate to operational air quality impacts from the PCC Site and other developments on designated sites, and cumulative losses of terrestrial habitats within the South Tees area during construction of the PCC and surrounding developments. Tables 24-10 and 24-11 of the assessment summarise the predicted effects, which concludes that the Proposed Development would not result in significant cumulative effects relating to terrestrial nor aquatic ecology [paragraphs 24.5.57 and 24.5.64, APP-106].

Ornithology

- 5.15.18. Cumulative effects on ornithology are assessed in terms of habitat losses, air quality impacts and noise and vibration in the relevant chapters of the ES. Noise was given further consideration in the assessment, and it was found that noise impacts both during construction and operation would not result in any significant adverse cumulative effects on ornithology receptors [paragraphs 24.5.91 to 106, APP-106].

Landscape and Visual

- 5.15.19. ES Chapter 24 Tables 24-13 and 24-15 summarise the assessment of cumulative landscape and visual effects. The landscape types and

viewpoints as set out in section 5.5 of this Report are all assessed for any residual cumulative effects during construction and operation. It concludes that recreational viewpoints at South Gare Breakwater (viewpoint 5) and recreational and residential receptors at Redcar seafront (viewpoint 8) would be subject to a moderate adverse cumulative effect during construction, reducing to a minor adverse effect during operation. The effects on the views from the England Coast Path at Warrenby (viewpoint 7) would remain moderate adverse for both construction and operation. However, none of the cumulative effects are any greater than those from the Proposed Development alone [paragraphs 24.5.120 to 123, APP-106].

Socio-Economic

- 5.15.20. Whilst there might be a short-term risk of temporary labour shortage or local accommodation shortage should multiple projects progress simultaneously, the cumulative socio-economic effects of the other developments together with the Proposed Development, are considered to be significantly beneficial overall [paragraph 24.5.133, APP-106].

Climate Change

- 5.15.21. An in-combination climate change impact assessment was provided [APP-103], which addressed the effects of a change climate and the Proposed Development on receptors in the surrounding environment. This concluded that there would be no significant effects.
- 5.15.22. The cumulative effects of GHG emissions on the global climate were acknowledged by the Applicants as being potentially significant, but that it was not possible to quantitatively assess these effects. The Applicants stated that the cumulative effects could not be assessed on a sectoral basis because sufficient data were not available [paragraph 24.5.142, APP-106].

Other Cumulative Effects

- 5.15.23. The cumulative assessment also considers effects on archaeology and cultural heritage including marine heritage, traffic and transportation, and navigation and shipping. No significant cumulative effects were identified.

Examination Matters

- 5.15.24. RCBC provided updates to the status of developments listed in the long and short lists at numerous points during the Examination, as well as providing details of additional major proposals in the area in response to ExQ1 [GEN.1.37, REP4-041] and ExQ3 [GEN.3.2, REP11-022]. STBC and HBC confirmed that they were not aware of any additional proposals not identified in the cumulative assessment [REP1-047, REP4-038].
- 5.15.25. No issues in relation to the assessment of combined and cumulative events are outstanding in the completed SoCGs with both RCBC [REP9-009] and STBC [REP5-015], which confirmed agreement that the list of

projects at Table 24-5 of ES Chapter 25 used for the cumulative and combined effects assessment of the Proposed Development is appropriate.

- 5.15.26. STDC referenced the Foundry and Long Acres sites [REP2-097c]. In response to our question on this [ExQ2 COM.2.1, PD-016], the Applicants confirmed that both schemes had been included in the assessment [REP6-121].
- 5.15.27. Further information was supplied by the Applicants in relation to cumulative NO_x levels, in respect of Table C5 of Annex C of ES Appendices 8A and 8B [APP-247 and APP-248] which detail other large potential sources of NO_x in the area, including from construction and operational traffic [ExQ1 AQ.1.10(iv) and AQ.1.12, REP2-016].
- 5.15.28. We also questioned critical threshold levels of NO_x in the cumulative effects assessment and the Applicants provided further clarification in their response to ExQ1 AQ.1.13 [REP2-016]. NE also requested further information, as set out in section 5.4 of this Report [REP2-065].
- 5.15.29. We asked if other developments, including the Tees Bank Quarry, should be included in the assessment of cumulative and combined effects on marine ecology. NE confirmed that it was not aware of other developments that should be included [ExQ1 BIO.1.33, REP2-065]. No other sites were brought to our attention.
- 5.15.30. Throughout the Examination we asked a range of questions regarding the cumulative visual assessment, given the changing baseline in the area as a result of demolitions and new developments. Such matters are set out in section 5.5 of this Report.
- 5.15.31. In terms of socio-economics and tourism, we questioned whether an assessment of cumulative effects on tourism had been undertaken, including on recreational users of PROWs. The Applicants' response confirmed that no combined or cumulative effects are predicted [ExQ1 SET.1.7, REP2-016].
- 5.15.32. The combined effects on GHG emissions from the construction and operation of the onshore works, including the upstream well-to-tank emissions and construction of offshore elements of the wider NZT project were provided at D6 [REP6-123]. This followed our enquiry about the matter at [ExQ1 CC.1.5, PD-012].
- 5.15.33. The Applicants stated that all GHG emissions are significant and contribute to climate change and that the receptor is the global climate. The emissions should therefore be compared against the UK Carbon Budgets, which are inherently cumulative [REP1-045]. The Applicants concluded that the operation of the Proposed Development would not significantly affect the ability of the UK to meet its Carbon Budgets and there would therefore be no significant effects cumulatively [APP-103].

- 5.15.34. They did not consider it necessary or appropriate to undertake a cumulative assessment on a local or regional scale because of the wide reaching nature of a large generating station [REP5-028].
- 5.15.35. We a later sought confirmation that we had a comprehensive list of all the environmental effects from the NEP Project and Endurance store, including those that potentially wouldn't interact with effects from the Proposed Development [PD-019]. The Applicants responded that the ES for the offshore works was at an advanced drafting stage. Additional information had been added on accidental events, including the leakage of CO₂ from the system. Given the mitigation provided by engineering design, accidents were unlikely to occur. In light of this, the magnitude of potential impacts and sensitivity of receptors, the Applicants concluded that the overall impact would not be significant in the offshore ES. No additional environmental effects from planned activities were identified [REP9-019].
- 5.15.36. At ISH6, we asked for a more detailed update on the potential effects from the offshore transport and storage works [EV11-001 to 005]. The Applicants listed the matters that had been agreed should be covered in the offshore ES and reiterated that there was no potential for combined or in-combination effects with the Proposed Development that had not already been considered in ES Chapter 24 [REP11-017].

Combined and Cumulative effects on Hornsea Project 4

- 5.15.37. Cumulative effects from the Proposed Development and the offshore wind farm proposed as part of the HP4 DCO application were screened out by the Applicants because the NZT Order Limits are approximately 150km from the HP4 Order Limits.
- 5.15.38. In its response to the hearings held during May 2022 Orsted stated that it believed there to be an obligation on the Applicants to carry out an assessment of the impacts of the wider NEP Project on HP4 as part of this Examination [REP5-038].
- 5.15.39. Orsted provided a legal opinion which drew paragraph 5.10.5 of EN-1 to our attention. This requires that the ES identifies any effects of preventing a development or use on a neighbouring site from continuing. It argued that the effect on HP4 falls within the EIA regime as impacts of material assets and climate change (the loss of renewable energy) of the project should be taken into account [Appendix 1 of REP6-139].
- 5.15.40. The Applicants disputed this interpretation. The debate continued throughout the Examination and included further legal opinions on the matter from Orsted [REP9-032] and the Applicants [Annex 1 of REP6-121, REP8-049].
- 5.15.41. In response to our question at ExQ2 the Applicants stated that the likely combined significant effects from the Proposed Development and offshore transport and storage project were considered as part of ES Chapter 24 [APP-106], supplemented by an assessment of the impact of

offshore elements of the NEP Project on the HP4 Project [REP4-030] [ExQ2, COM.2.2, REP6-121],

- 5.15.42. The Applicants concluded that there would be a major adverse effect on the HP4 Project [REP4-030] based on how much generational capacity would be lost and the high value both regionally and nationally placed on the site. With mitigation this would potentially reduce, although Orsted disputed this [REP5-038].

Examining Authority's Response

- 5.15.43. We are satisfied with the methodology and cumulative assessment as set out in ES Chapter 24 [APP-106]. The Applicants answered all our queries in relation to the extent the assessment of combined and cumulative effects on various environmental matters throughout the Examination.

Cumulative effects from GHG emissions

- 5.15.44. There would be CO₂ emissions from the Proposed Development, even with significant abatement [REP6-123]. We have therefore concluded that the effects from the Proposed Development alone would be significantly adverse in accordance with the draft EN-1 (see section 5.3).
- 5.15.45. While we accept that contextualisation on a geographical basis is not appropriate, there is scope for an assessment of the cumulative effects on a sectoral basis. We accept the Applicants' statement that insufficient data are available to quantify this. However, we consider it inevitable that there would be emissions from across the wider sector and conclude that cumulatively the effects from GHG across the sector would be adverse and significant.

Combined and Cumulative Effects on Hornsea Project 4

- 5.15.46. We are satisfied that the NZT DCO would not in itself or cumulatively with other development have any effect on the HP4 Project. The question of effects on HP4 only arises because NZT is dependent on the offshore licence to commence and is therefore inseparable from it. Together they can be viewed as a 'project'. The limit of the licence for the Endurance store would overlap with the HP4 Order Limits.
- 5.15.47. We have noted the debate between the Applicants and Orsted about whether or not there is a legal obligation to consider the impact on HP4 under the EIA Regulations. The Applicants have, regardless, provided an assessment of the potential effects of the project on HP4 to assist us, with reference to paragraph 5.10.5 of EN1.
- 5.15.48. We accept the finding that there would be a major adverse effect on the HP4 Project from the NEP Project without mitigation. Planning Inspectorate Advice Note 7 says that '*only mitigation measures which are a firm commitment and can be shown to be deliverable should be taken into account as part of the assessment*'. The offshore works are subject to their own EIA under the EA2008 and a detailed assessment of the

potential options for mitigation of the effects would be the subject of the offshore application assessment.

Conclusions

- 5.15.49. The Applicants' assessment of how the identified effects from the proposal and other development might affect the environment, economy and community complies with EN-1. The Applicants satisfactorily answered all of our queries in relation to the extent and timing of the assessment of combined and cumulative effects.
- 5.15.50. The Applicants have also undertaken an assessment of the potential effects on the proposed HP4 Project and have demonstrated that the NZT DCO would not in itself or cumulatively with other developments have any effect on HP4.
- 5.15.51. Cumulatively, the effects from GHG across the sector would be adverse and significant.
- 5.15.52. There would be minor adverse effects from accumulated construction noise at residential properties in the vicinity of Broadway West, and significant visual effects on a range of coastal viewpoints at South Gare Breakwater, Redcar seafront, and the England Coast Path at Warrenby. However, the effects as assessed in isolation would not increase to any significant degree when considered with other projects.
- 5.15.53. There would potentially be a significant benefit from cumulative development to the local economy, including employment opportunities from other projects in the area.
- 5.15.54. We acknowledge that there is a great deal of current and forthcoming development activity in the immediate area of the Order land and the wider Teesside area, both on and offshore, as set out in sections 2.5 and 2.6 of this Report. Numerous cumulative and combined effects are therefore possible, but overall, no significant effects with other projects have been identified that would result in adverse effects over and above those associated with the Proposed Development alone. We consider such matters to be neutral when considered in the planning balance.

5.16. OTHER CONSIDERATIONS

- 5.16.1. This section of the Report addresses various remaining policy topics and important and relevant considerations that need to be taken into account in the planning balance. They were not identified within the IAPI or during the Examination but are matters which are addressed in energy NPSs or otherwise cover other legislative and policy considerations drawn to our attention.

Combined Heat and Power

- 5.16.2. EN-1 (paragraph 4.6.1) notes that Combined Heat and Power (CHP) may either supply steam direct to customers or capture waste heat for low-pressure steam, hot water or space heating purposes after it has been

used to drive electricity generating turbines. CHP is technically feasible for all types of thermal generating stations but to be economically viable (paragraph 4.6.5) as a CHP plant, a generating station needs to be located close to industrial or domestic customers with heat demands.

- 5.16.3. Paragraph 4.6.6 of EN-1 states that CHP Guidance requires any application to develop a thermal generating station under s36 of the Electricity Act 1989 to either include CHP or contain evidence that the possibilities for CHP have been fully explored and that the same principle applies to any thermal power station which is subject to an application for development consent under the PA2008.
- 5.16.4. The Applicants have assessed the feasibility of CHP in accordance with the NPS and the EA's guidance 'CHP Ready Guidance for Combustion and Energy from Waste Plants'. The CHP Assessment [AS-026] explains that the Applicants have explored the potential to operate in CHP mode through applying the three BAT Tests outlined in the EA's guidance. This indicated that the use of CHP would be limited due to the CCGT plant operating intermittently. Additionally, the electricity and steam demand required by the CCP is provided from the CCGT to maximise heat integration between the two components. Consequently, less residual heat would be available for export to third party users than would be the case from a CCGT operating without carbon capture.
- 5.16.5. The CHP Assessment [AS-026] identified that there were potential heat users within a 15km radius of the PCC Site. There are also a number of developments being advanced within the Teesworks area that could be future heat users. However, taking account of economic factors and the intended dispatchable role of the CCGT the Applicants concluded that none of the identified heat clusters were viable for the beneficial use of available heat. Nevertheless, the Applicants considered that there is future potential to provide Teesworks with available waste heat in the future.
- 5.16.6. No IPs questioned the Applicants' approach to or conclusions about CHP. The SoCG between the Applicants and the EA [REP13-017] records that the CHP Assessment [APP-073] adequately demonstrates the CHP Ready status of the Proposed Development. It is also agreed that R26 of the dDCO [REP12-003] adequately ensures that space and routes have been secured for the later provision of CHP during the operational life of the Proposed Development (should CHP become commercially viable in the future). During the Examination we asked a number of questions about the CHP Assessment [APP-073] (ExQ1. GEN.1.24 and GEN.1.28, ExQ2 GEN.2.15 and GEN.2.16) and the Applicants' responses [REP2-016 and REP6-121] clarified such matters.

Conclusions

- 5.16.7. We are satisfied that the Proposed Development has been designed to be CHP Ready in line with the requirements of EN-1, EN-2 and EA guidance, should any future opportunities arise to introduce CHP in the future. Such matters do not affect the planning balance.

Grid Connection

- 5.16.8. EN-1 (paragraph 4.9.1) addresses the connection of a generation plant to the electricity network. The Applicants should ensure there will be the necessary infrastructure and capacity within the transmission and distribution network to accommodate the electricity generated. Whilst it is not necessary to have received or accepted a formal grid connection offer at the time of submitting a DCO application, the SoS should be satisfied that there is no obvious reason why a grid connection would not be possible.
- 5.16.9. EN-2 (paragraphs 2.2.10 - 2.2.11) highlights that the technical feasibility of the export of electricity from a generating station is dependent on the capacity of the grid network together with the voltage and distance of the connection. Even if the precise route of a connection has not been identified, any application must include information on how the generating station is to be connected and whether there are any particular environmental issues likely to arise from that connection.
- 5.16.10. The Application includes an Electricity Grid Connection Statement [REP6-042]. It sets out the proposed grid connection and seeks to demonstrate that there is no reason why the connection is not possible. The Electrical Connection would be between the substation on the PCC Site and NGET's Tod Point substation. The existing Tod Point substation would also be extended by NGET to the north and south to facilitate the electrical connection. The cables will be installed below ground along most of the connection corridor. No new overhead lines are proposed.
- 5.16.11. NGET has confirmed that there is sufficient capacity at the existing Tod Point substation to accommodate the export of electricity from the Electricity Generating Station, that no wider upgrades are required to support it, and a connection offer has been agreed between NGET and the Applicants [REP6-042].

Conclusions

- 5.16.12. We are satisfied that the Electricity Grid Connection Statement, together with the submissions from NGET, demonstrate that it is feasible to connect the Low Carbon Electricity Generating Station to the National Electricity Transmission System and that there do not appear to be any impediments to the grid connection being provided. Therefore, the provisions of EN-1 and EN-2 would be met in this respect, and the matter does not affect the planning balance.

Land Use

- 5.16.13. Section 5.10 of EN-1 considers land use matters including open space and green infrastructure, which have been assessed by the Applicants in ES Chapter 20 [APP-102]. Section 5.10 of EN-1 also refers to the re-use of previously developed land for new development as being able to make a major contribution to sustainable development by reducing the amount of countryside and undeveloped greenfield land that needs to be used. Paragraph 5.10.5 requires the ES to identify existing and proposed land

uses near the project, including the effects of preventing a development or use on a neighbouring site from continuing.

- 5.16.14. The vast majority of the Order land has been previously developed and there would be no above ground development on greenfield or agricultural land, including the sand dunes and foreshore at Coatham sands.
- 5.16.15. Paragraph 5.10.16 of EN-1 refers to the need to consider the impact on maintaining coastal recreation sites and features, with an expectation for applicants to take advantage of opportunities to maintain and enhance access to the coast. In doing so, implications for a continuous signed and managed route around the coast (as provided for in the MCAA) should be considered. The England Coast Path national trail runs alongside the PCC Site. Effects on users of the path and other PRoWs in relation to visual effects and tourism are considered in sections 5.5 and 5.13 of this Report. The routes would be maintained during construction and operation due to the use of HDD construction methods for Work Nos. 5 and 8, except for short periods when testing and maintaining the CO₂ export pipeline is necessary.
- 5.16.16. No questions were asked on such matters by us during the Examination and no objections were raised by IPs.

Conclusions

- 5.16.17. We have considered potential effects on land use in accordance with section 5.10 of EN-1 and do not find conflict with the policy. The effective re-use of previously contaminated brownfield land is considered to be a benefit of the Proposed Development and therefore carries positive weight in the planning balance.

Health

- 5.16.18. Section 4.13 of EN-1 addresses health. It recognises that access to energy is clearly beneficial to society, but that the production, distribution and use of energy may have negative impacts on some people's health. The ES should assess these effects for each element of the project, identifying any adverse health impacts, and identifying measures to avoid, reduce or compensate for these impacts as appropriate.
- 5.16.19. Generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation which will constitute effective mitigation of them, so that it is unlikely that health concerns will either constitute a reason to refuse consents or require specific mitigation under the PA2008. Account should be taken of health concerns when setting requirements relating to a range of impacts (paragraph 4.13.5).
- 5.16.20. The Applicants' case in terms of population and human health is set out in Chapter 23 of the ES [APP-105]. Tables 23-4 to 23-6 of the ES set out the baseline health profiles for the study area, which indicate a higher

than average level of health equalities than for England. The Applicants assessment recognises that susceptibility to new or increased adverse health effects is likely to be increased in areas with lower than average current health statistics.

- 5.16.21. Potential impacts and effects on population and human health as set out in Chapter 23 [APP-105] include air quality, traffic, noise, and water quality which were all predicted to be not significant in the relevant individual chapters of the ES. Economy and tourism are also of relevance, with ES chapter 20 [APP-102] setting out that there would be beneficial effects arising from employment during operation. Overall, no significant effects on population and human health were identified and as such, no mitigation measures have been put forward.
- 5.16.22. No IPs raised concerns specifically in relation to this matter, unless already specified in the individual sections of this Report. The Applicants provided an update to the baseline health profiles in response to a question from the ExA, which sets out that there have been no changes that would materially alter the conclusions of the original assessment [ExQ1 SET.1.9, REP2-016].

Conclusions

- 5.16.23. We have considered potential effects on population and human health in accordance with section 4.13 of EN-1 and concur with the Applicants' assessment that effects would not be significant, and we do not find conflict with the policy. As such, these matters are neutral in the planning balance.

Security

- 5.16.24. Security considerations are considered in section 4.15 of EN-1. Government policy is to ensure that, where possible, proportionate protective security measures are designed into new infrastructure projects at an early stage in the project development. Where applications for development consent for infrastructure covered by NPS EN-1 relate to potentially 'critical' infrastructure, there may be national security considerations.
- 5.16.25. Paragraph 4.5.4 of EN-1 stresses that in considering the proposed design, the SoS should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements, which the design has to satisfy.
- 5.16.26. The PCC would be a secure site of potentially critical infrastructure where there may be national security considerations that will need to be notified to BEIS by the Centre for Protection of National Infrastructure. Requirement 9 of the dDCO [REP12-003] secures the submission of a scheme detailing security measures [paragraphs 6.2.154 to 6.2.157, REP1-003].
- 5.16.27. The approach to landscaping at the PCC Site has been influenced by these considerations, and the security fencing, gates and other ancillary

structures would also need to take account of operational and security considerations given the nature and use of the operations [paragraph 6.2.69, REP1-003].

- 5.16.28. Numerous IPs raised issues regarding security, however this was largely in relation to their own pipeline infrastructure, a matter which is dealt with in Chapters 8 and 9 of this Report in respect of CA and protective provisions.

Conclusions

- 5.16.29. We have considered matters of security in accordance with section 4.15 of EN-1 and, with the inclusion of Requirement 9 to secure security measures, do not find conflict with the policy. The effect on the planning balance is considered to be neutral.

Shipping, Navigation and Other Marine Users

- 5.16.30. The construction of the Proposed Development both on and offshore has the potential to effect shipping and navigation as well as the activities of other marine users such as recreational fishing and diving. EN-3 paragraph 2.6.136 requires consideration of disruption to the fishing industry and paragraph 2.6.162 requires the SoS to be satisfied that the site selection has been made with a view to avoiding or minimising disruption or economic loss to the shipping and navigation industries with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade, and recreational users of the sea.
- 5.16.31. ES Chapter 20 [APP-102] notes the importance of Teesport as a major port (paragraph 20.4.34). The Order land lies some 1km from a range of marine uses based at South Gare, including South Gare Marine Club and the British Sub Aqua Club (BSAC), which occupy land owned by PDT, and are accessed via South Gare Road which would be bisected by the Proposed Development (Work Nos. 5 and 8). These recreational activities, including fishing at South Gare, could be temporarily affected during construction by temporary diversions or realignment of South Gare Road for the CO₂ export pipeline.
- 5.16.32. The High Voltage export cable for the Teesside Wind Farm directly overlaps the route of the proposed CO₂ export pipeline (Work No. 8). Given the wind farm is in operation only small maintenance vessels are likely to be affected within the connection corridors for Work Nos. 5 and 8.
- 5.16.33. A number of Marine Licences which exist in the vicinity of the site are set out at paragraph 20.4.35 of Chapter 20, and Figure 20B-4 of the Navigational Risk Assessment [ES Appendix 20B, APP-341] including a range of dredging activities and works associated with the Teesside Wind Farm. The Proposed Development is subject to DMLs from the MMO as discussed in Chapter 9 of this Report.

- 5.16.34. The highest areas of vessel density were identified by the risk assessment as being within the River Tees and Teesmouth, with the area to the east of the Estuary mouth in the vicinity of the Proposed Development much lower in density primarily due to shallow waters. Navigational risks at the outfall tunnel and head location were considered in the Navigational Risk Assessment, including the risk of collision, constrained navigation and loss of components becoming a navigational hazard. The risks were identified as low in all instances, and able to be suitably managed by conditions in the DMLs [Schedules 10 and 11, REP12-003] to ensure PDT and other relevant stakeholders are informed of Final CEMP by the MMO, and to ensure mariners are made fully aware of works such that they can plan safe passage.
- 5.16.35. MMO raised no concerns regarding shipping and navigational risk in their WRs, and in its answer to ExQ1 SET.1.5 [REP2-085] and within the SoCG [REP13-016] agreed that they would defer such matters to navigational stakeholders (including the Maritime and Coastguard Agency (MCA), PDT and Trinity House) would take the lead [REP13-016].
- 5.16.36. The RR from Trinity House [RR-009] set out their role as General Lighthouse Authority, and their answer to SET.1.5 confirmed that they considered the scope of the risk assessments and associated data in respect of marine users to be appropriate [REP2-080]. The MCA deferred comments regarding the hazards identified in the assessment to PDT [RR-025 and REP2-087].
- 5.16.37. PDT (the statutory harbour authority) confirmed that the scope of the navigational risk assessment was adequate and appropriate [ExQ1 SET.1.5, REP6-141]. The SoCG with PDT at D9 notes that the Applicants shared construction programme information with the harbour master on 7 July 2022 and stated they would continue to engage as the design develops and the construction programme is refined [REP9-010].
- 5.16.38. The potential for vessel displacement from the Proposed Development was considered in combination with the construction of the offshore works in ES Chapter 24 [APP-106] and Appendix 20B [APP-341] and it was concluded that there could be some temporary displacement of mariners. Taking into consideration the potential nature, size and capability of third-party mariners, the Applicants concluded it highly unlikely that their navigation would be impeded by simultaneous works and marine exclusion zones. There would therefore be a very low risk of a significant potential cumulative effect on shipping and navigation [paragraph 24.5.140].

Conclusions

- 5.16.39. Commercial shipping and fishing activities within the Tees Bay and surrounding area could be temporarily disrupted by construction works and supporting vessels, but such works would be short in duration and spatially limited. Should there be any remaining residual risk, the deemed Marine Licence would include a range of conditions to minimise such disruption. In terms of the wind farm, works associated with this

DCO would be beyond the wind farm boundary, short in duration, and outside of the main vessel access route.

- 5.16.40. In relation to the recreational and other users of South Gare Road, given the proposed method of construction (HDD) of Work Nos. 5 and 8, such effects would be limited to short periods of time when testing and maintenance is being carried out, during which times a suitable diversion would be secured by protective provisions for PDT [Part 14, Schedule 12 REP12-003]. Consequently, there would be no conflict with paragraphs 2.6.136 and 2.6.162 of EN-3.
- 5.16.41. Overall, we agree with the Applicants' conclusions that there would be a minor adverse (non-significant) effect on marine users, both alone and cumulatively with other projects, and any risk to marine users can be minimised through the conditions in the DMLs. We consider the effect in the planning balance to be neutral.

5.17. CONCLUSIONS

- 5.17.1. We are satisfied that there has been a thorough consideration of the principal environmental and other issues in the Examination. We apply the planning balance in Chapter 7 of this Report following consideration of the HRA matters outlined in Chapter 6.

6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

6.1. INTRODUCTION

- 6.1.1. This Chapter sets out our analysis and conclusions relevant to the HRA. This will assist the SoS for BEIS, as the competent authority, in performing their duties under the Habitats Regulations.
- 6.1.2. This Chapter is structured as follows:
- Section 6.2 sets out our findings in relation to likely significant effects (LSE) on the UK national site network and other European sites;
 - Section 6.3 addresses the conservation objectives for sites and features; and
 - Section 6.4 sets out our findings in relation to adverse effects on integrity (AEoI).
- 6.1.3. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s)² and no reasonable scientific doubt remains³.
- 6.1.4. Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 3 of this Report.
- 6.1.5. We have been mindful throughout the Examination of the need to ensure that the SoS has such information as may reasonably be required to carry out their duties as the competent authority. We have sought evidence from the Applicants and IPs, including NE as the Appropriate Nature Conservation Body (ANCB), through written questions and ISHs.

² For the purposes of this chapter, in line with the Habitats Regulations and relevant Government policy, the term "European sites" includes Special Areas of Conservation (SAC), candidate SACs, possible SACs, Special Protection Areas (SPA), potential SPAs, Sites of Community Importance, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites. For ease of reading, this chapter also collectively uses the term "European site" for 'European sites' defined in the Conservation of Habitats and Species Regulations 2017 and 'European Marine Sites' defined in the Conservation of Offshore Marine Habitats and Species Regulations 2017, unless otherwise stated. "UK National Site Network" refers to SACs and SPAs belonging to the United Kingdom already designated under the Directives and any further sites designated under the Habitats Regulations.

³ CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij

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- 6.1.6. We produced the RIES [PD-018] which compiled, documented and signposted relevant information provided in the DCO application and Examination representations up to D7 (1 September 2022). The RIES was issued to set out our understanding on HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time.
- 6.1.7. Consultation on the RIES took place between 17 September 2022 and 6 October 2022. Comments were received from the Applicants [REP9-021] at D9; these comments have been taken into account in the drafting of this Chapter. No comments were received from any other IP.
- 6.1.8. The ExA's recommendation is that the RIES and consultation on it may be relied upon as an appropriate body of information to enable the SoS to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations, should the SoS wish to do so.

Proposed Development Description and HRA Implications

- 6.1.9. The Proposed Development is described in Chapter 2 of this Report. The spatial relationship between the Order Limits of the Proposed Development and European sites is shown on Figure 1 of Appendix D of the Applicants' Habitats Regulations Assessment Report [AS-018] and subsequent iterations.
- 6.1.10. The Proposed Development is not directly connected with, or necessary to the management of a European site. As described below, LSE on European sites have been identified. Therefore, the SoS must make an 'appropriate assessment'(AA) of the implications of the Proposed Development on potentially affected European sites in light of their conservation objectives.
- 6.1.11. The Applicants' assessment of effects was initially reported in their Habitats Regulations Assessment Report (the Applicants' HRA Report) [APP-080]. Updated versions were submitted during the Examination, in response to our advice, comments from IPs and several change requests [AS-018, AS-194, AS-195, REP3-002, REP6-044, REP6-045, REP6-109, REP6-110, REP9-003, REP9-004, REP12-120 and REP12-121]. Unless otherwise specified, references in this Chapter to the Applicants' HRA Report should be read as a reference to the versions submitted at D12 [REP12-120 (clean) and REP12-121 (tracked changes)].
- 6.1.12. The Applicants made three change requests [AS-047 to AS-195, REP6-105, REP12-116] as described in Chapter 2 of this Report. The change requests covered the broad areas listed below:
- First change request:

- Removal of new build options for the gas connection (options 1A and 1B).
- Changes to the means of crossing the River Tees including the trajectory/direction of the HDD for the CO₂ gathering network.
- Alternations in the extent of land required within the Order Limits.
- Second change request:
 - Removal of option 2 (crossing of the River Tees by HDD) for the CO₂ gathering network.
 - Removal of option 1B for the electrical connection as well as the removal of land parcels subject to TP.
- Third change request:
 - Removal of the option to re-use the existing STDC outfall.

6.1.13. We considered that the changes were non-material and accepted them into the Examination [PD-010, PD-017, PD-023]. As part of their change requests the Applicants provided updated versions of their HRA Report which reflected the proposed changes but did not identify any new or different effects on European sites.

6.1.14. We note that most of the proposed changes involved the removal of options/reduction in land within the Order Limits assessed in the original HRA Report [APP-080]. The change most likely to lead to additional effects on European sites was the change in the trajectory/direction of the HDD for the CO₂ gathering network corridor. However, the option of using HDD to cross the River Tees for the construction of the CO₂ gathering network corridor (Work No. 6) was removed by the second change request.

6.1.15. We are satisfied that the version of the Applicants' HRA Report submitted at D12 [REP12-120] adequately reflects the effects of the proposed changes.

6.1.16. The Applicants' HRA Report identified potential effects on the River Tweed SAC which is a cross-border site. We wrote to NatureScot, the ANCB with responsibility for Scotland, inviting it to take part in the Examination as an "*Other Person*" [PD-013]. NatureScot [REP3-029] advised that in its view the Proposed Development is unlikely to affect European sites in Scotland and therefore did not wish to be involved in the Examination.

6.1.17. The Applicants did not identify any LSE on European sites in European Economic Area (EEA) States in its HRA Report [REP12-120] and/or within its ES [APP-081 to APP-107, AS-049 to AS-050 and REP6-106 to REP6-107]. Only European sites which form part of the UK National Site Network are addressed in this Report. No potential transboundary impacts were raised for discussion by any IPs during the Examination.

6.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

- 6.2.1. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for AA and the activities, sites or plans and projects to be included for further consideration in the AA.
- 6.2.2. Section 3 of the Applicants' HRA Report [REP12-120] describes the broad selection process undertaken to identify European sites and qualifying features which could be affected by the Proposed Development. The key criteria used to identify sites/qualifying features were:
- Potential for air quality effects on European sites located within 15km of the Proposed Development (based on EA guidance for assessing aerial emissions for large emitters).
 - Potential effects on mobile species such as marine mammals and migratory fish. The Applicants' HRA Report does not identify a zone of influence for the effect pathways but includes a number of European sites where these species are qualifying features.
- 6.2.3. The screening exercise initially identified potential for effects on the following European sites:
- Berwickshire and North Northumberland Coast SAC;
 - Durham Coast SAC;
 - Humber Estuary SAC;
 - North York Moors SAC;
 - North York Moors SPA;
 - Northumbria Coast SPA;
 - Northumbria Coast Ramsar site;
 - River Tweed SAC;
 - Southern North Sea SAC;
 - Teesmouth and Cleveland Coast SPA;
 - Teesmouth and Cleveland Coast Ramsar site;
 - The Wash and North Norfolk Coast SAC; and
 - Tweed Estuary SAC.
- 6.2.4. The Applicants concluded [REP12-120] that LSE could be excluded for:
- Berwickshire and North Northumberland Coast SAC;
 - Durham Coast SAC;
 - Humber Estuary SAC;
 - Northumbria Coast SPA;
 - Northumbria Coast Ramsar site;
 - River Tweed SAC;
 - The Wash and North Norfolk Coast SAC; and
 - Tweed Estuary SAC.

- 6.2.5. NE agreed with the conclusions of the Applicants' HRA Report in relation to these sites [RR-026, REP2-065]. No comments were made by any other IPs in relation to these sites during the Examination.
- 6.2.6. The Applicants initially identified LSE on the remaining European sites from the effect pathways described in Table 2.1 of the RIES [PD-018]. We noted that the Applicants' HRA Report excluded LSE from direct habitat loss within the Teesmouth and Cleveland Coast SPA and Ramsar site. This was on the grounds that although the CO₂ export pipeline and the replacement outfall would cross the sand dunes and intertidal habitats within the SPA/Ramsar site, the use of HDD and micro-boring would avoid direct habitat loss. This raised the possibility that the use of HDD/micro-boring represented mitigation measures which, following the 'People Over Wind'⁴ case, cannot be taken into account when determining if LSE would arise.
- 6.2.7. In response to ExQ1 BIO.1.43 [PD-012], the Applicants advised that, the HDD/tunnel microboring constituted an intrinsic part of the Proposed Development which can be considered at the screening stage of the HRA, consistent with advice published by NatureScot [REP2-016].
- 6.2.8. NE also raised concerns [RR-026, REP2-065] about the potential for additional LSE on the Teesmouth and Cleveland Coast SPA and Ramsar site from:
- Placement of rock armour around the outfall head leading to a loss of foraging resources for the bird species which are qualifying features of the sites.
 - Direct habitat loss as a result of HDD bore collapse or accidental release of drilling fluid.
- 6.2.9. The Applicants revised their HRA Report to include LSE from these impacts on the Teesmouth and Cleveland Coast SPA and Ramsar site [REP12-120].

Likely Significant Effects from the Proposed Development Alone

- 6.2.10. As described in Section 4.0 of the Applicants' HRA Report [REP12-120], LSE were identified for the following European sites and features:

Table 1: European sites and features for which LSE were identified

Teesmouth and Cleveland Coast SPA	
European site/features	Nature of LSE
Avocet (<i>Recurvirostra avosetta</i>) - breeding	Noise and visual disturbance to birds during construction and decommissioning

⁴ People Over Wind & Sweetman v. Coillte Teoranta (C-323/17) [2018]

Red knot (<i>Calidris canutus</i>) - breeding	Effects on foraging resources for all phases of the Proposed Development
Common redshank (<i>Tringa totanus</i>) – non-breeding	Water quality effects on supporting habitats for all phases of the Proposed Development
Common tern (<i>Sterna hirundo</i>) - breeding	Direct habitat loss due to HDD collapse/leakage of drilling fluid
Little tern (<i>Sterna albifrons</i>) - breeding	
Sandwich tern (<i>Sterna sandvicensis</i>) – non-breeding	
Ruff (<i>Calidris pugnax</i>) – non-breeding	
Waterbird assemblage – non-breeding	
Avocet (<i>Recurvirostra avosetta</i>) - breeding	Air quality effects on supporting habitats during operation
Common tern (<i>Sterna hirundo</i>) - breeding	
Little tern (<i>Sterna albifrons</i>) - breeding	
Teesmouth and Cleveland Coast Ramsar site	
European site/features	Nature of LSE
Ramsar criterion 5 – assemblages of international importance	Noise and visual disturbance to birds during construction
Wintering waterfowl assemblage	Effects on foraging resources during construction and operation
Ramsar criterion 6 – species occurring at levels of international importance:	Water quality effects on supporting habitats for all phases of the Proposed Development
Common redshank – non-breeding	
Red knot – breeding	Direct land take due to HDD collapse/leakage of drilling fluid
North York Moors SAC	
European site/features	Nature of LSE
North Atlantic wet heaths with <i>Erica tetralix</i>	Emissions from the Proposed Development leading to increased nitrogen deposition during operation
European dry heaths	
North York Moors SPA	
European site/features	Nature of LSE
Merlin (<i>Falco columbianus</i>) – breeding	Emissions from the Proposed Development leading to increased nitrogen deposition during operation affecting supporting habitats
Golden plover (<i>Pluvialis apricaria</i>) – breeding	

Southern North Sea SAC	
European site/features	Nature of LSE
Harbour porpoise (<i>Phocoena phocoena</i>)	Disturbance of animals using functionally linked habitat during construction

- 6.2.11. The full list of features for each site, including those for which LSE was not identified by the Applicants, can be found in Annex 1 of the RIES [PD-018].

Likely Significant Effects from the Proposed Development In Combination with Other Plans and Projects

- 6.2.12. Section 7.0 of the Applicants' HRA Report [REP12-120] provides a qualitative assessment of the in-combination effects relating to the Proposed Development. However, the assessment does not make a clear distinction between determining LSE and considering AEoI of European sites. In response to our question (ExQ2 BIO.2.7 [PD-016]) as to whether this approach was appropriate, the Applicants stated that the Proposed Development was [REP6-121]):

"...deemed to potentially result in Likely Significant Effects (LSEs) alone, before considering potential cumulative impacts. Therefore, the in-combination assessment section was placed after the AA for simplicity. However, all pathways with potential cumulative impacts with other plans and projects have been considered in the table, not just the ones with LSEs alone and for which an AA was undertaken. For example, Table 7.1 considers impacts on SPA / Ramsar bird flight lines during construction, operation and decommissioning in-combination, an impact that was screened out for the Proposed Development alone. In summary, the table does also consider impact pathways with potential in-combination LSEs"

- 6.2.13. The plans and projects considered in the Applicants' assessment are listed in Table 7.1 of the Applicants' HRA Report [REP12-120] and comprise:
- the CO₂ export pipeline below MLWS and the geological storage facility ("*the offshore project elements*");
 - the UK Government Clean Growth Strategy 2017;
 - Redcar and Cleveland Local Plan (adopted May 2018);
 - Stockton-on-Tees Local Plan and Policies Map (adopted January 2019);
 - Tees Valley Joint Minerals and Waste Development Plan Document (adopted September 2011);
 - South Tees Regeneration Master Plan 2017;
 - Tees Valley Combined Authority Strategic Economic Plan (2016), Investment Plan (2019) and Infrastructure Plan;
 - ICL Tees Dock;

- York Potash Order 2016 and associated overhead conveyor and storage facilities;
- Dogger Bank Teesside A and Sofia Offshore Wind Farm;
- Redcar Energy Centre (application R/2020/0411/FFM);
- Grangetown Prairie scheme (R/2019/0767/OOM); and
- Teesside Combined Cycle Power Plant.

6.2.14. Based on the information in Table 7.1 and Appendix B of the Applicants' HRA Report [REP12-120], it is our view that in-combination LSE have been identified for the following sites and features:

Table 2: European sites and features for which in-combination LSE were identified

Teessmouth and Cleveland Coast SPA	
European site/features	Nature of LSE
Avocet - breeding Red knot - breeding Common redshank – non-breeding Common tern - breeding	Noise disturbance during construction/decommissioning in combination with the South Tees Regeneration Master Plan, ICL Tees Dock and Dogger Bank Teesside A and Sofia Offshore Wind Farm
Little tern - breeding Sandwich tern – non-breeding Ruff – non-breeding Waterbird assemblage – non-breeding	Construction and operational water quality effects in combination with the wider project elements, ICL Tees Dock, and York Potash Order 2016 and associated applications
	Potential impacts on foraging resources in combination with York Harbour Facilities Order and associated applications
	Potential impacts on bird flightlines for all phases of the Proposed Development in combination with the Dogger Bank Teesside A and Sofia Offshore Wind Farm
Avocet - breeding Common tern - breeding Little tern - breeding	Operational air quality effects on supporting habitat in combination with the Redcar Energy Centre, Grangetown Prairie scheme and the Teesside Combined Cycle Power Plant.
Teessmouth and Cleveland Coast Ramsar site	
European site/features	Nature of LSE
Ramsar criterion 5 – assemblages of international importance Wintering waterfowl assemblage	Noise disturbance during construction/decommissioning in combination with the South Tees Regeneration Master Plan, ICL Tees

Ramsar criterion 6 – species occurring at levels of international importance: Common redshank – non-breeding Red knot – breeding	Dock and Dogger Bank Teesside A and Sofia Offshore Wind Farm
	Construction and operational water quality effects in combination with the wider project elements, ICL Tees Dock, York Potash Order 2016 and associated applications.
	Potential impacts on bird flightlines for all phases of the Proposed Development in combination with the Dogger Bank Teesside A and Sofia Offshore Wind Farm.
	Potential impacts on foraging resources in combination with York Harbour Facilities Order and associated applications
North York Moors SAC	
European site/features	Nature of LSE
North Atlantic wet heaths with <i>Erica tetralix</i> European dry heaths	Operational air quality effects
North York Moors SPA	
European site/features	Nature of LSE
Merlin – breeding Golden plover – breeding	Operational air quality effects
Southern North Sea SAC	
European site/features	Nature of LSE
Harbour porpoise	Disturbance in functionally linked habitat during construction with the offshore project elements

- 6.2.15. No points were raised in relation to the Applicants' in-combination assessment by any IP in the course of the Examination.

Likely Significant Effects Assessment Outcomes

- 6.2.16. We consider that the Applicants' position that HDD microboring beneath the Teesmouth and Cleveland Coast SPA and Ramsar site (Work No. 8) represents an integral part of the Proposed Development rather than mitigation is debatable.
- 6.2.17. At ExQ1 BIO.1.43 [REP2-016] the Applicants stated that the HDD is not being considered "*purely as mitigation, but also because it was the overall best option in terms of protected species, other protected sites... and amenity for users of the dunes and foreshore*". The NatureScot

guidance referred to only identifies that elements intrinsic to the project can be considered at the screening stage, which is not in dispute.

- 6.2.18. However, ES Chapter 6 [APP-088] states that trenchless construction was adopted from “*that presented in the PEI Report (PEIR Figure 3-2A) ... to minimise the potential for impacts on Coatham Dunes and Sands on the habitats and species at the Teesside and Cleveland Coast SSSI/SPA/Ramsar site*”. We have not identified a reference to protection of amenity for users of the dunes or foreshore, nor an assessment of the options for drilling in this respect.
- 6.2.19. The quote in paragraph 6.2.17 implies that the choice of trenchless technique is, at least in part, mitigation of potential adverse effects to the European Site and we have not been provided with evidence that this technique would have been chosen for other reasons. It has therefore not been comprehensively demonstrated the use of trenchless technology was an intrinsic part of the project.
- 6.2.20. With the exception of the potential LSE from construction of the CO₂ export pipeline across the European Site, we are satisfied, on the basis of the information provided, that the final version of the Applicants’ HRA Report [REP12-120] has identified all the relevant impact pathways on European sites and qualifying features. The sites and features listed in the tables above are those for which LSE cannot be excluded.

6.3. CONSERVATION OBJECTIVES

- 6.3.1. The conservation objectives for each of the 13 European sites that were screened for LSE are described in Section 3 of the Applicants’ HRA Report [REP12-120]. NE also provided links to the conservation objectives for Teesmouth and Cleveland Coast SPA, the North York Moors SAC, the North York Moors SPA and the Southern North Sea SAC (Annex B [REP2-065]).

In response to our query, NE confirmed [REP2-065] that it is appropriate to use the conservation objectives for the Teesmouth and Cleveland Coast SPA in the assessment of the corresponding Ramsar site.

6.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

- 6.4.1. The five European sites and qualifying features listed in Section 6.2 as subject to LSE above were further assessed in Sections 6 and 7 of the Applicants’ HRA Report [REP12-120] to determine if they would be subject to AEoI. The Applicants’ conclusion was that, with the appropriate mitigation in place, AEoI could be excluded for all the European sites assessed in the Applicants’ HRA Report [REP12-120].

Teesmouth and Cleveland Coast SPA and Ramsar Site

Noise and visual disturbance to all bird species during construction and decommissioning

- 6.4.2. The Applicants' assessment concluded that there would be no AEoI (paragraphs 6.1.1 to 6.1.20 and Appendix C, Table 13 of the Applicants' HRA Report [REP12-120] from the Proposed Development alone as noise levels would be below the 70dB disturbance threshold identified by NE as being significant.
- 6.4.3. For the installation of the CO₂ gathering network and CO₂ export pipelines, mitigation measures including noise reduction techniques and visual screening would be required at some receptor locations to avoid a significant effect, eg works within 24m of the SPA/Ramsar site pools and lagoons and Dabholm Gut. The measures are summarised at paragraph 6.1.19 of the Applicants' HRA Report [REP12-120] and secured in Table 5A-9 of the Framework CEMP [REP9-007].
- 6.4.4. In addition to these mitigation measures, if HDD for the CO₂ export pipeline is carried out between November and March, simultaneous vantage point monitoring would be undertaken. This measure is secured through Table 5A-6 of the Framework CEMP [REP9-007]. In response to a query from us (ExQ1 BIO.1.50 [PD-012]), the Applicants advised that monitoring would be carried out on a precautionary basis by the Ecological Clerk of Works. If disturbance was likely to arise then consideration would be given to changing the plan, the use of additional shielding to reduce noise and visual impact or temporary cessation to the noisiest work activity. This is secured through Table 5A-6 of the Framework CEMP [REP9-007].
- 6.4.5. For the construction of the PCC Site, bored piling would be undertaken. The predicted noise levels during construction are predicted to be below the 70dB disturbance threshold. However, R23 of the dDCO [REP12-004] also provides for controls on piling with the Applicants required to submit a written piling and penetrative foundation design method statement for approval by the RPA in consultation with NE and the EA. Decommissioning is expected to require piles to be cut off below the surface rather than to be completely removed.
- 6.4.6. In Table 7.1 of the Applicants' HRA Report [REP12-120], in-combination effects were excluded on the basis that, with mitigation in place, effects would be below the 70dB disturbance threshold and there would be no other projects affecting the same parts of the SPA/Ramsar site as the Proposed Development.
- 6.4.7. NE confirmed that it agrees that with the proposed mitigation in place, there would be no AEoI from noise or visual disturbance during construction [RR-026, REP13-018]. No other IPs made any other comments on this matter.

Effects on foraging resources for all phases of the Proposed Development for all bird species

- 6.4.8. LSE was identified by the Applicants as a result of the emplacement of the outfall head and associated rock armour leading to a permanent loss of 100m² of subtidal habitat which could affect the availability of prey species for birds. Other potential effects on foraging resources could involve the introduction of INNS associated with the presence of the rock armour or through effects on coastal processes affecting sediment transport processes (paragraphs 6.1.21–6.1.24 [REP12-120]).
- 6.4.9. The Applicants concluded that the extent of direct habitat loss would represent a small loss of the available sandflat. The species associated with the SPA/Ramsar site likely to feed in the open water around the outfall are the tern species, which are not highly selective in their choice of prey. The rock armour is likely to provide artificial reef habitat which may be colonised by species which could therefore also provide prey items for the terns.
- 6.4.10. The presence of the rock armour is not predicted by the Applicants to pose a high risk of introducing INNS. This is on the grounds that the extent of the rock armour hard substrate would be very small relative to the surrounding areas of sandflats. In addition, the absence of other areas of hard substrate in the wider area make it unlikely that INNS associated with rocky habitats would be able to colonise the rock armour.
- 6.4.11. In addition, Table A5-8 of the Framework CEMP [REP9-007] requires contractors to follow industry best practice and implement a biosecurity protocol for the installation of the rock armour to limit the risk of introducing INNS.
- 6.4.12. Appendix F of the Applicants' HRA Report [REP12-120] presents the evidence on the likely effects of the rock armour on sediment transport processes. Provided the rock armour is limited to maximum diameter of approximately 10 – 12m, a height above seabed level less than 1m, armour size of approximately 0.1m and the side slopes are shallow then effects would only be localised.
- 6.4.13. These dimensions are not explicitly secured in the dDCO or DML. However, the DML in Schedules 10 and 11 of the dDCO [REP12-004] require a marine method statement to be submitted to the MMO for approval before construction begins. The statement must include details of the rock armour specification, provenance and installation technique (Condition 13). Work No. 5B is not authorised to the extent that it gives rise to environmental effects that are materially new or different to those identified based on the maximum parameters of Chapter 9 of the ES (Condition 30).
- 6.4.14. Table 7.1 of [REP12-120] excludes in-combination effects with the York Potash Order and associated applications on the grounds that the effects from the Proposed Development would be so small as to be imperceptible and therefore in-combination effects would not arise.

- 6.4.15. NE agree that there would be no AEoI from the Proposed Development on foraging resources for birds [REP13-018]. There were no comments from other IPs on this matter during the Examination.

Air quality effects on supporting habitats during operation

- 6.4.16. The Applicants' assessment focused on the potential for increased nitrogen deposition to affect the supporting habitat used by little tern, common tern and avocet. These species are stated to be the only ones among the qualifying features which are sensitive to the effects of nitrogen deposition on their supporting habitat (paragraphs 4.2.13 and 4.2.19 the Applicants' HRA Report [REP12-120]).
- 6.4.17. Based on the air quality modelling reported in Chapter 8 of the ES [APP-090], the Applicants' assessment predicted that the Proposed Development alone would contribute less than 1% of the critical load threshold for the relevant habitats at the main nesting sites for these species (paragraphs 6.1.25 – 6.1.38 and Appendix C of the Applicants' HRA Report [REP12-120]).
- 6.4.18. The Applicants assessed the combined effects of the Proposed Development with the Redcar Energy Centre, Grangetown Prairie scheme and Teesside Combined Cycle Power Plant (Table 7.1 and paragraphs 7.1.3 – 7.1.6 of the Applicants' HRA Report [REP12-120]). While the predicted combined nitrogen deposition in parts of the SPA would exceed 1% of the relevant critical loads, the Applicants concluded that AEoI would not arise as the nitrogen sensitive species do not nest in this area of the SPA (Coatham Dunes). Effects are expected to be considerably smaller at the avocet and tern nesting sites.
- 6.4.19. NE agreed that atmospheric emissions during operation would not lead to AEoI of the SPA [RR-026, REP13-018].
- 6.4.20. We noted that the dDCO does not include a minimum height for the stack of the Low-Carbon Electricity Generating Station. This raised the possibility that the stack heights could be reduced to an unknown and uncontrolled extent following the FEED project stage. We requested an explanation from the Applicants as to why the modelled levels of effects on air quality could be relied on, given that stack height is a key parameter in the air quality modelling (AQ2.2 [PD-016] and [EV8-006]). The Applicants responded that Requirement 3(1)(c) of the dDCO [REP12-004] requires the final stack height to be approved by the RPA as part of the detailed design; the stack height must be at a level at which the environmental effects would be no worse than those identified in Chapter 8 of the ES.
- 6.4.21. NE advised that it had been under the impression that the Applicants' air quality modelling had been carried out based on the lowest possible stack height and that Chapter 8 of the ES states that if a lower stack becomes a viable option, the reduction would be subject to further modelling. NE felt that the Applicants should state what the lowest possible stack height would be, and updated modelling should be provided in the HRA Report (ExQ2 AQ.2.2) [REP6-137].

- 6.4.22. We consider that R3(1)(c) provides sufficient reassurance that the operational air quality effects would not be worse than those reported in the ES. In addition, the Proposed Development will require the appropriate EPs before operation can begin which would also be subject to HRA for which the EA are the competent authority [REP6-132]. We are satisfied that the Applicants' assessment of air quality effects on European sites has not been undermined by the absence of a control on the minimum height of the stack in the dDCO.

Direct habitat loss from pipeline installation

- 6.4.23. In section 6.2 of this Report, we concluded that the choice of trenchless drilling beneath the Teesmouth and Cleveland SPA and Ramsar site is, at least in part, a form of mitigation. This is accepted and direct habitat loss can be excluded. However, the potential also exists for habitat loss to occur as a result of HDD collapsed or leakage of drilling fluid.
- 6.4.24. The Applicants' assessment (paragraphs 6.1.56 – 6.1.57 the Applicants' HRA Report [REP12-120]) concludes that the standard measures included in the design of the HDD would be sufficient to avoid the risk of habitat loss. These include the use of a conductor pipe to reduce the use of frac-out offshore and of water-based drilling fluids that are inert in the marine environment.
- 6.4.25. The results of the Preliminary Onshore Ground Investigation [REP2-043] gave the Applicants confidence that HDD can be successfully undertaken, subject to detailed design post-consent. NE were concerned that there was no mechanism to deal with the effects of HDD collapse or a leak of drilling fluid and requested that a contingency plan should be provided [REP2-065, REP6-137].
- 6.4.26. Following discussions with NE and requests from us [EV8-006, PD-016], the Applicants provided an example contractor drilling method statement (Appendix GH.2.6 [REP6-121]). The final version of the Framework CEMP [REP9-007] includes the following commitments:
- A commitment to producing a Code of Construction Practice which would specify measures designed to minimise the risk of collapse of any HDD crossing.
 - Tables 5A-3/5A-7/5A-8: A requirement for the contractor's drilling method statement to form the basis of contingency plans which provide details of specific clean-up and pollution control measures which would be used in the event of an accidental spillage. NE would be consulted on the effectiveness of the proposed measures in reducing effects on designated sites.
 - Table 5A-3/5A-7/5A-8: A requirement for the contractor's drilling method statement to include pollution prevention measures that would be used to minimise the risk of accidental spillage.
- 6.4.27. NE agreed that the Applicants' approach addressed its concerns, and it was able to agree that AEoI could be excluded in relation to the risk of HDD bore collapse/drilling fluid leakage [REP13-018].

Potential impacts on bird flightlines for all phases of the Proposed Development

- 6.4.28. The Applicants' assessment notes the possibility of in-combination effects with the Dogger Bank Teesside A and Sofia Offshore Wind Farm in relation to potential effects on flight lines for birds caused by tall structures. However, the assessment concludes that there is no realistic pathway which would lead to a combined effect (Table 7.1 of the Applicants' HRA Report [REP12-120]).
- 6.4.29. No comments have been received on this matter from any IP.

Water quality effects on supporting habitats for construction and decommissioning of the Proposed Development

- 6.4.30. The Applicants' assessment of effects on water quality during construction and decommissioning concluded that AEoI could be excluded, subject to the delivery of the mitigation measures summarised in the HRA Report (paragraphs 6.1.39 – 6.1.48 and Appendix C [REP12-120]). These measures are designed to reduce surface run-off, dispersion of suspended sediments and spillage risk. They include a temporary drainage system to reduce the risk of accidental spillages and minimise surface/groundwater flow to the pools of Coatham Sands which are used by the bird species which are qualifying features of the SPA/Ramsar site.
- 6.4.31. Table 5A-3 in the final version of the Framework CEMP [REP9-007] lists the measures to be employed by contractors to avoid the deposition of fine sediment, leakage or accidental spillage of pollutants during construction. R11 of the dDCO [REP12-003] secures the delivery of the temporary surface and foul water drainage systems. The details must be approved by the RPA in consultation with other bodies including the EA. It must include the means of pollution control in accordance with the Framework CEMP.
- 6.4.32. The dDCO [REP12-003] does not secure the equivalent measures for decommissioning but under R32, a decommissioning plan, including a DEMP, must be approved by the RPA in consultation with the EA.
- 6.4.33. NE agreed that AEoI can be excluded for construction and decommissioning [REP13-018].

Water quality effects on supporting habitats during operation of the Proposed Development

- 6.4.34. The Applicants' initial HRA Report [APP-080] concluded that effects on marine water quality would be mitigated by a drainage strategy and quality testing of any treated water prior to discharge. AEoI could therefore be excluded.
- 6.4.35. NE raised concerns relating to operational discharges into Tees Bay leading to an increase in nutrient loading in the estuarine system [RR-026, REP2-065]. The discharges of particular concern were surface waters which could be contaminated, process waters (including ammonia and urea) and blowdown waters. The ES also identified a potential risk

from aerial deposition of nitrogen to contribute to nutrient nitrogen levels [RR-024] but subsequently agreed with the Applicants that this is not likely to be a significant source of nutrient nitrogen [REP6-115].

- 6.4.36. In response to ExQ1 BIO.1.47 [PD-012], the Applicants advised that process effluent treatment and disposal would be regulated by the EA through an EP and the operator would need to demonstrate as part of the permitting application that discharged water could be appropriately treated, tested and managed to avoid unacceptable pollutant levels (ExQ1 BIO.1.47 [REP2-016]). NE's position on this point was that the DCO application should demonstrate an absence of AEOI to avoid the risk of granting consent for a project which could not ultimately be constructed [REP2-016]).
- 6.4.37. NE also advised at D2 that on 16 March 2022 it issued a letter to all competent authorities regarding development proposals with the potential to increase nutrient loading in aquatic systems in European sites. The generic advice provided was that where a European site is already in unfavourable condition as a result of excessive nutrient levels, any plan or project that would contribute nutrients, however small, requires mitigation. Mitigation may involve a 'nutrient neutrality' approach where a developer undertakes to reduce nutrient inputs elsewhere in an aquatic ecosystem equivalent to the inputs from its own project (Annex D [REP2-065]).
- 6.4.38. The SPA/Ramsar site was identified by NE as a site that is in an unfavourable condition due to excessive nitrogen levels and where the nutrient neutrality approach should be applied. NE highlighted particular risks to the Seal Sands area within the Tees Estuary where algal mats are already present. These mats are reducing the available foraging areas for qualifying bird features including knot, redshank and the waterbird assemblage [RR-026, REP2-065].
- 6.4.39. NE advised that while most industrial developments would not be within the scope of its advice on nutrient neutrality, as the Proposed Development would lead to the discharge of industrial wasted water containing nitrates to Tees Bay, it is possible that a sufficient quantity of this will be washed back into the estuary and modelling is therefore required to demonstrate whether it is likely to reach Seal Sands. NE's position is that there is no established de minimis threshold for any additional nitrogen entering the catchment of the SPA/Ramsar site because it is already in unfavourable condition due to excess nitrogen levels around Seal Sands [REP4-040].
- 6.4.40. NE requested that the Applicants undertake further modelling to determine the predicted nutrient loading of the discharges and the extent to which these would contribute to the background loading of nutrients and re-enter the estuarine system. In response to ExQ1 BIO.1.47 [PD-012], the Applicants undertook to do this with a view to submission of a discharge modelling report at D4 [REP2-016].

- 6.4.41. The modelling report was not provided at DL 4; the Applicants advised that they were holding consultations with NE and EA on the draft modelling report [REP4-025, REP5-025, REP6-121]. At DL8 the Applicant submitted a Nutrient Nitrogen Briefing Paper which reported on the modelling work [REP8-050]. An updated version was submitted at D9 [REP9-015 to REP9-017].
- 6.4.42. The key points presented in the Nutrient Nitrogen Briefing Paper [REP9-015] are as follows:
- The effluent from the Proposed Development will contain DIN in the form of ammonia.
 - Blowdown from the Direct Contact Cooler (DCC) will contain the majority of nitrogen containing effluent produced by the PCC Site which is estimated to contain up to 24.7 kilogrammes of nitrogen per hour (kgN/hr).
 - Cooling water is expected to be raw, untreated River Tees water provided by NWL (use of the Low Worsall abstraction point is assumed in the modelling).
 - The raw water from the River Tees already contains nitrogen. Levels would not be increased by the operation of the Proposed Development. Discharging it into Tees Bay would reduce the quantity of nitrogen passing through the Tees Estuary by 14 kgN/hr.
 - Discharge options included in the modelling are the 'base case' which would see effluent treated at Bran Sands WwTP and discharged to the Tees Estuary via Dabholm Gut and 'Option A' where the effluent is treated at Bran Sands WwTP then returned to the Proposed Development site for discharge into Tees Bay via the new outfall.
 - The inflows and outflows to the PCC Site are the same for the base case and Option A, apart from the fact that under Option A, a volume of treated effluent from existing municipal and industrial effluent streams containing an equivalent quantity of nitrogen to the DCC blowdown would be returned for discharge to Tees Bay.
 - Returned effluent from the Bran Sands WwTP may include DIN or particulate nitrogen. As data were available for DIN, the modelling is based on the volume of water containing an equivalent nitrogen load in the form of DIN. If further data shows that the Bran Sands effluent contains dissolved organic nitrogen and/or particulate nitrogen a lower volume would be required to achieve equivalency however the total nitrogen load returned from Bran Sands WwTP would remain consistent.
 - Surface water runoff has not been included in the Applicants' modelling on the grounds that the Proposed Development would not lead to a significant change in land use and so there is no potential for the development to alter the nutrient load from existing site runoff.
 - Foul water discharged from the Proposed Development has not been included in the modelling since it would be discharged via the Marske-on-Sea WwTP and would not, according to hydrodynamic modelling, reach the SPA/Ramsar site. In addition, the Applicants have drawn our attention to NE's guidance, which states that where staff also live in the catchment, foul water discharges are effectively part of the baseline.

- Atmospheric deposition has been excluded as a source of nutrient nitrogen as modelling suggests that it would make a negligible contribution to DIN.

- 6.4.43. The detailed modelling has been provided in Appendix A (the base case) and Appendix B (Option A) of the Nutrient Nitrogen Briefing Paper [REP9-015]. For Option A, the results show that average concentrations of DIN in Tees Bay would increase to 10% above background in the vicinity of the outfall. For the Tees Estuary, average concentrations of DIN would be up to 2.5% above background in some locations but these increases are limited to the bottom half of the water column in the dredged channel of the River Tees.
- 6.4.44. These increases were not predicted by the Applicants to affect supporting habitats for the SPA/Ramsar site. The qualifying features that use the affected area of Tees Bay are expected to be the tern species which are stated to be generalist feeders. As such, the biomass of available prey is likely to be more important than the availability of particular prey species. An increase in plankton blooms as a result of increased DIN is also not expected to affect prey capture success by the terns, based on published research relating to little and common terns [REP12-120/121, paragraph 6.1.42].
- 6.4.45. At Seal Sands, under Option A, modelling shows the increase in DIN concentrations would be less than 1% (0.94kgN/hr). This is offset by the removal of nitrogen from the Tees Estuary as a result of the cooling water abstraction at Low Worsall, calculated to be 2.2kgN/hr. This means that the net removal of nitrogen from the Tees Estuary is calculated to be 1.2kgN/hr. A justification as to why the modelling represents a conservative estimate of likely nitrogen loading in the Tees Estuary is presented in paragraph 7.2.7 of the Nutrient Nitrogen Briefing Paper [REP9-015].
- 6.4.46. In contrast, for the base case, the modelling demonstrated a net addition of nutrient nitrogen to Dabholm Gut/the Tees Estuary. The Applicants conclude that, based on advice from NE, the base case could adversely affect the SPA/Ramsar site. However as there would be no average net nutrient deposition at Seal Sands under Option A, AEoI could be excluded.
- 6.4.47. The Applicants' position is that the final decision on how operational effluent from the Proposed Development would be treated and discharged would be determined post-consent. The modelling of Option A demonstrates that it would be feasible to operate the Proposed Development without leading to AEoI from impacts of increased nutrient nitrogen on SPA/Ramsar supporting habitats.
- 6.4.48. NE advised that its standard guidance on assessing impacts from nutrient nitrogen does not apply to industrial, point source discharges such as the Proposed Development. The Applicants' approach is novel but in NE's view is a valid way of assessing the potential impacts on the SPA/Ramsar site [REP13-028]. NE is satisfied that the Applicants have demonstrated that Option A or a similar approach could be implemented without

leading to AEoI as a result of nutrient nitrogen discharges from the Proposed Development [AS-209, REP11-035, REP11-036, REP13-018, REP13-028].

- 6.4.49. The EA considered that while the Applicants' general approach to modelling was acceptable, it had concerns about some of the details which required further clarification [REP11-031, REP11-032]. Major points of concern were the overall ammonia load, effluent discharges at Bran Sands WwTP, the potential for atmospheric emissions to contribute to nitrogen loads (as apparently shown by the modelling in the Nutrient Nitrogen Briefing Paper [REP9-015]), contradictions in statements about the implications for Seal Sands and the fact that an EA model shows around 19% of the DIN affecting Seal Sands is washed into the Tees Estuary on incoming tides from offshore.
- 6.4.50. The Applicants responded to the EA's points at D12 [REP12-133]. It noted that the modelling in Appendix B of the Nutrient Nitrogen Briefing Paper [REP9-015] shows that DIN from the proposed new outfall can be washed into the Tees Estuary on incoming tides. Other sources of offshore DIN are captured in the baseline as the modelling uses monitored background seawater DIN concentrations at Teesmouth. The extent of impact of atmospheric nitrogen deposition has been considered through a simple mass balance analysis which concluded (and was agreed with the EA) that the impact on nitrogen concentrations within the waterbody would be insignificant.
- 6.4.51. We issued a request for further information in relation to the Applicants' assessment of nutrient neutrality to the Applicants, NE and the EA [PD-022]. The EA was asked to confirm its position on the Applicants' modelling work. No response was received from the EA by the close of the Examination. However, the final SoCG between the EA and the Applicants agreed that there was no need for further modelling of the effects of atmospheric emissions on water quality within the SPA/Ramsar site. The SoCG also states that both parties agree that a design solution for the discharge of wastewater to Tees Bay can be developed and implemented that would achieve WFD compliance [REP13-017].
- 6.4.52. As noted above, the dDCO does not specify that the discharge of effluents during the operation of the Proposed Development must be in line with Option A. Instead, the Applicants have sought to develop a requirement in consultation with NE and the EA that ensures the design solution which is ultimately implemented would not lead to AEoI on the SPA/Ramsar site. The Applicants' final version of the requirement is at R37 of the dDCO [REP12-003].
- 6.4.53. NE [REP13-018, REP13-028] confirmed that it was satisfied that the wording of R37 is sufficient to ensure that AEoI of the SPA/Ramsar site would be avoided, given that the Applicants have demonstrated that it is feasible that a design solution can be found.
- 6.4.54. In response to a Request for Further Information (Question 3 [PD-022]), NE confirmed that it was satisfied that R37 would be enforceable.

However, this was based on the assumption that the wording of R37(3)(a) would refer to nitrogen loads rather than nitrogen concentrations. This would be to link to the conclusions in the Nutrient Nitrogen Briefing Paper, in particular the conclusion that the net additional load of nutrient nitrogen at Seal Sands would be less than 0.94kgN/hr minus 2.2kgN/hr, leading to a net removal of potentially 1.2kgN/hr. The wording in the dDCO [R12-003] and the wording of R37 in the SoCG [REP13-018] (which NE stated it agreed with) both refer to nitrogen concentrations rather than loads.

In-combination water quality effects on supporting habitats for all phases of the Proposed Development

- 6.4.55. In-combination effects with the wider project elements, the ICL Tees Dock, and York Potash Order 2016 and associated applications are excluded on the grounds that the Proposed Development will implement sufficient mitigation measures (Table 7.1 [REP12-120]).

The Examining Authority's conclusions on adverse effects on integrity of Teesmouth and Cleveland Coast SPA and Ramsar Site

- 6.4.56. We are satisfied that the Applicants have demonstrated that adequate mitigation has been secured through the dDCO to ensure that the achievement of the conservation objectives would not be affected. AEoI on the SPA and Ramsar site, both alone and in combination with other plans and projects can be excluded for the following effects on qualifying features:
- Noise and visual disturbance to all bird species during construction and decommissioning.
 - Effects on foraging resources for all phases of the Proposed Development for all bird species.
 - Air quality effects on supporting habitats during operation for little tern, common tern and avocet.
 - Direct habitat loss for all bird species due to HDD collapse/leakage of drilling fluid.
 - In combination effects on bird flightlines for all bird species.
 - Water quality effects on supporting habitats for all bird species during construction and decommissioning.
- 6.4.57. In relation to AEoI of water quality effects on supporting habitats, we consider that the Applicants have broadly demonstrated that it would be possible to find a design solution that would avoid increasing nutrient nitrogen levels in the area. R37 of the dDCO would constrain the Applicants to ensure that the final design of the Proposed Development would be as effective as 'Option A'. In addition, the Applicants would be required to obtain an EP for the operational discharges which would not be granted unless it could be demonstrated that AEoI on the SPA and Ramsar site would not arise.
- 6.4.58. There are two significant caveats to these conclusions. We did not receive final confirmation from the EA that its concerns about the Applicants' approach to modelling had been addressed. While the SoCG

[REP13-017] between the Applicants and the EA can be read as implying agreement on the methods and conclusions of the nutrient nitrogen modelling, it does not contain an explicit statement of agreement on this point. We acknowledge that NE, as the ANCB is satisfied on this point, but also note that NE advised that it was for us to satisfy ourselves that the modelling was robust and supported the Applicants' conclusions [AS-209, REP11-036]. As the EA is likely to be the statutory consultee with the greatest expertise in this type of modelling, we remain concerned that agreement on the appropriateness of the modelling was not explicitly agreed during the Examination.

- 6.4.59. The second caveat deals with the wording of R37 in the dDCO [REP12-003]. We are concerned, in the light of NE's advice [REP13-028], that R37(3)(a) still refers to nitrogen concentrations rather than nitrogen loading. We remain concerned that R37 as currently worded may be difficult to enforce. As such, it is open to doubt whether the requirement provides sufficient reassurance that AEoI would ultimately be avoided.
- 6.4.60. We consider that a provisional conclusion of no AEoI of the Teesmouth and Cleveland Coast SPA and Ramsar site can be reached but this is subject to:
- the SoS satisfying themselves that the EA is content with the Applicants' approach to the modelling of nutrient nitrogen associated with the Proposed Development; and
 - the final version of the DCO being amended so that R37(3)(a) reads *'...not cause a net increase in total nitrogen loads in water within the Tees Estuary at the Seal Sands mud flats'*.

North York Moors SAC

Air quality effects during operation

- 6.4.61. Based on the air quality modelling presented in Chapter 8 of the ES, operation of the Proposed Development would lead to nitrogen deposition equivalent to 0.2% of the critical loads for the wet and dry heath qualifying features. This is considered by the Applicants to represent an imperceptible increase in nitrogen deposition (Section 6.2 [REP12-120]) which would not have any effects on the plant community composition.
- 6.4.62. The Applicants consider that as the contribution from the Proposed Development is below 1% of the relevant critical loads and no other developments have been identified which could affect the same part of the SAC, no in-combination effects could arise (Appendix C [REP12-120]).
- 6.4.63. NE agrees that AEoI can be excluded for this site [REP2-065, REP13-018]. No other IPs have made any comment on this matter.

ExA's conclusions on adverse effects on integrity of North York Moors SAC

- 6.4.64. We are satisfied that the Proposed Development would not affect the achievement of the SAC conservation objectives either alone or in combination with other plans or projects for North York Moors SAC. AEoI can therefore be excluded.

North York Moors SPA

Air quality effects during operation

- 6.4.65. Based on the air quality modelling presented in Chapter 8 of the ES, operation of the Proposed Development would lead to nitrogen deposition equivalent to 0.2% of the critical loads for the heathland which provides supporting habitat for merlin and golden plover. Based on similar reasoning as that presented for the North York Moors SAC, the Applicants concluded that AEoI could be excluded for the SPA both alone and in combination with other plans or projects (Section 2 and Appendix C [REP12-120]).
- 6.4.66. NE agrees that AEoI can be excluded for this site [REP2-065, REP13-018]. No other IPs have made any comment on this matter.

ExA's conclusions on adverse effects on integrity of North York Moors SPA

- 6.4.67. We are satisfied that the Proposed Development would not affect the achievement of the SAC conservation objectives either alone or in combination with other plans or projects. AEoI can therefore be excluded.

Southern North Sea SAC

Disturbance from underwater noise

- 6.4.68. Based on underwater noise modelling reported in Chapter 14 of the ES [APP-096], the Applicants' assessment predicted the area of sea which is likely to be affected by UXO detonations. The assessment considered Permanent Threshold Shifts (PTS) which could lead to permanent injury to harbour porpoise and Temporary Threshold Shift (TTS) which has been used by the Applicants as a proxy for behavioural disturbance (Section 6.3 [REP12-120]).
- 6.4.69. The calculations considered 55kg and 100kg charge weights of Trinitrotoluene (stated to be a typical World War II ordnance). The predicted impact zones are as shown below (taken from Table 4.1 of the Applicants' HRA Report [REP12-120]).

Table 3: Predicted impact zones from UXO detonations

55kg charge weight		100kg charge weight	
PTS	TTS	PTS	TTS
6.1km	Greater than 10km	7.4km	Greater than 10km

- 6.4.70. The extent and number of UXO detonations will not be known until the post-consent stage. However, the Applicants consider that numbers are likely to be low given that the extent of marine works would be limited. Effects are expected to be infrequent and short-term with harbour porpoise able to return to the area after clearance has been completed.
- 6.4.71. The Applicants stated that measures designed to minimise the risk of injury or disturbance to marine mammals would be employed. These measures would be drawn from the JNCC guidance. The DMLs (Schedules 10 and 11 of the dDCO [REP12-003]) include the following conditions:
- Condition 20 which requires the use of 'soft start procedures'
 - Condition 22(1) which requires the approval of a UXO clearance methodology and marine mammal mitigation protocol by the MMO following consultation with NE and the EA;
 - Condition 22(4) which requires the marine mammal mitigation protocol to include measures to prevent auditory or other injury to marine mammals following current best practice as advised by the relevant statutory nature conservation bodies; and
 - Condition 22(5) which requires the removal or detonation of UXO to be undertaken in accordance with the clearance methodology and marine mammal mitigation protocol approved under Condition 22(1).
- 6.4.72. Disturbance to harbour porpoise within the SAC was assessed against the 26km Effective Deterrence Range identified in the relevant JNCC guidance. As the offshore elements of the Proposed Development are around 102km from the Southern North Sea SAC, the distance between any UXO detonations is beyond the range which is likely to lead to disturbance of animals using the SAC.
- 6.4.73. Based on the mitigation measures proposed, the distance between the Proposed Development and the SAC and the relatively small number of porpoise recorded using Tees Bay, the Applicants have concluded that no AEoI would arise from the Proposed Development alone or in combination with other plans or projects.
- 6.4.74. The MMO initially raised concerns about the adequacy of the assessment of effects on marine mammals [REP1-045, REP4-039, REP6-136] but later advised that it defers to NE on HRA issues [REP7-013].

- 6.4.75. NE confirmed that it agreed with the Applicants' conclusions on the absence of AEoI both alone and in combination with other plans or projects [REP13-018].

ExA's conclusions on adverse effects on integrity of Southern North Sea SAC

- 6.4.76. We are satisfied that Conditions 20 and 22 in the DMLs adequately secure mitigation measures to minimise the risk of injury to harbour porpoise from increases in underwater noise.
- 6.4.77. The baseline evidence gathered by the Applicants suggests that harbour porpoise are only occasionally present in Tees Bay. In relation to disturbance of harbour porpoise by increases in underwater noise, we consider that the distance between the Proposed Development and the SAC make it very unlikely that UXO clearance would disturb porpoise within the SAC boundaries, either alone or in combination with the wider project. Disturbance from underwater noise associated with the construction of the Proposed Development is not likely to be on a scale which could lead to population level effects.
- 6.4.78. We note the MMO's concerns but we are content to rely on the position of NE, as the ANCB, that AEoI of the SAC would not arise either alone or in combination with other plans or projects.

6.5. HRA CONCLUSIONS

- 6.5.1. We find that an AEoI from the Proposed Development, alone or in combination with other plans and projects, can be excluded beyond reasonable scientific doubt for the following sites and qualifying features:
- North York Moors SAC (North Atlantic wet heaths with *Erica tetralix* and European dry heaths);
 - North York Moors SPA (breeding populations of merlin and golden plover); and
 - Southern North Sea SAC (harbour porpoise).
- 6.5.2. We also find that AEoI can be excluded beyond reasonable scientific doubt for all qualifying features of the Teesmouth and Cleveland Coast SPA and Ramsar site, subject to the following:
- the SoS satisfying themselves that the EA is content with the Applicants' approach to the modelling of nutrient nitrogen associated with the Proposed Development; and
 - the final version of the DCO being amended so that R37(3)(a) reads '*...not cause a net increase in total nitrogen loads in water within the Tees Estuary at the Seal Sands mud flats*'.

7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1. INTRODUCTION

- 7.1.1. This Chapter considers the overall planning merits of the Proposed Development and the case for development consent. It brings together the legal and policy context set out in Chapter 3, and findings in relation to the planning issues in Chapters 4 and 5. Whilst the HRA has been considered separately in Chapter 6, relevant matters are also taken fully into account.
- 7.1.2. Examination library references are not included in this summary, but the full references are available from the corresponding sections of Chapters 5 and 6 of this Report.

7.2. SUMMARY OF THE PLANNING ISSUES AND COMPLIANCE WITH NATIONAL POLICY

The Need for and Scope of the Proposed Development and Consideration of Alternatives

- 7.2.1. The Proposed Development would address the urgent need for new electricity capacity as set out in EN-1, the use of natural gas for energy generation (EN-1 and EN-4) and the urgent need for gas-fired electricity generation with CCS and CCS infrastructure as highlighted in draft EN-1. As CCGT with CCS it would add to the energy mix of the UK and would help deliver the Government's net zero commitment by 2050. In providing CCS the Proposed Development would be in line with the Government's wider policy statements on energy and climate change which constitute important and relevant matters. The UK Marine Policy Statement and the North East Marine Plan are supportive of the deployment of CCS/CCUS in the UK Marine Area, while local policies of RCBC and STDC back the move to a low carbon economy and a CCUS network in the area.
- 7.2.2. As part of the wider NZT Project and the ECC Plan we are content that the Applicants have demonstrated that a suitable area of deep geological storage offshore exists and that it has sufficient capacity to store the CO₂ captured by the Proposed Development in line with EN-1. Moreover, the Applicants' approach to the offshore consenting process appears entirely reasonable in the context of the PA2008 regime. Similarly, we are content that a process is in place to add industrial emitters to the backbone pipeline system provided by the CO₂ gathering network.
- 7.2.3. The issue of alternatives has been appropriately addressed by the Applicants in line with NPS policies and EIA Regulations, demonstrating that a range of alternative technologies, locations/sites and the choice of network infrastructure corridors were considered. Specific legislative requirements to address alternatives have been addressed while having regard to recent case law.

- 7.2.4. The combination of R31 and the EPs would require the operation of the CCGT and the capture plant to achieve a specified capture rate and would provide appropriate controls to ensure that the normal commercial operation of the CCGT would involve the capture of CO₂ to the standard of BAT and secure transportation for offshore storage. Through Work Nos. 6-8 a backbone pipeline system for the collection of CO₂ from local emitters would be created. While the potentially substantial benefits of capturing CO₂ from local businesses are not accounted for in the planning balance because they are not part of the Proposed Development, we do give some weight to the benefit of providing the CO₂ gathering network.
- 7.2.5. Finally, we have concluded that the DCO does not need to and should not interfere with the offshore elements of the NZT Project or with the interface with the HP4 Project.
- 7.2.6. We therefore conclude that the need for the Proposed Development is clearly justified through EN-1, EN-2, EN-4 and draft EN-1 as well as a range of other more recent Government energy policies. On this basis we give substantial weight to the need for the Proposed Development.

Climate Change

- 7.2.7. It has been demonstrated to our satisfaction that the Proposed Development would be resilient to climate change over its lifetime and would not increase risks to the surrounding environment either on its own or in-combination with other development, as required by section 4.8 of EN-1, and EN-2, EN-4 and EN-5.
- 7.2.8. GHG emissions have been assessed from all stages of the Proposed Development, including upstream and downstream emissions. We are satisfied that the assessment of likely significant effects over the lifetime of the Proposed Development meets the requirements of the EIA Regulations. The need for such an assessment is not identified in current NPSs, but we have had regard to the draft NPSs and other government policy in coming to this conclusion.
- 7.2.9. Conservatively allowing for 90% capture during operation, the total onshore GHG emissions would be over 16MtCO₂e over the lifetime of the Proposed Development. Based on the policy in the draft EN-1, we conclude that these emissions would have a significant, adverse effect on carbon emissions, even with deployment of CCS technology. Although quantitative data are not available, we have also concluded that there would be a significant adverse effect from cumulative emissions across the sector. However, this conclusion is of moderate weight in the planning balance because it is based on draft policy. We accept that in isolation the emissions would not measurably harm the Government's ability to meet its national targets or have a significant effect on the UK Carbon Budgets. Nevertheless, considering the draft EN-1, which is an important and relevant matter, and the clear direction of Government policy towards significantly reducing GHG emissions (section 3.6), we have given more weight to the draft policy than a comparison with the UK Carbon Budgets for the assessment of significance.

- 7.2.10. The Applicants have estimated that the captured emissions from third parties would be over 42MtCO₂e. When viewed in its broader context, the NZT Project could therefore facilitate a significant positive contribution to the reduction of CO₂ emissions. However, because the Proposed Development does not secure capture of third party GHG emissions, this likely overall reduction in the emissions is not a matter that we can include in the planning balance.
- 7.2.11. Notwithstanding the benefits which the wider NZT Project would bring in terms of reducing CO₂ emissions, we judge that the emissions of GHG over the lifetime of the Proposed Development would have a significant adverse effect, which is of moderate weight in the planning balance.

Air Quality and Emissions

- 7.2.12. The Applicants have satisfactorily described the significant air emissions and mitigation of these, as required by section 5.2 of EN-1 and the draft EN-1.
- 7.2.13. Best practice, mitigation and monitoring of emissions, including those from dust and NRMM during construction and decommissioning would be secured via the Final CEMP (R16). Based on this, we are satisfied that there would not be significant adverse effects during construction.
- 7.2.14. Although air dispersion modelling is highly indicative, we are satisfied that the Proposed Development can in principle achieve statutory limits during operation. These would be controlled through an EP to ensure that all appropriate limits are met, with additional approval from the RPAs via R3 of the dDCO to control the height of stacks.
- 7.2.15. Matters relating to air quality and emissions therefore have no effect on the planning balance.

Design and Landscape and Visual Effects

- 7.2.16. We consider that the Proposed Development, specifically Works Nos 1 and 7 at the PCC Site, would fail to meet the requirements of EN-1 and EN-2 in terms of its significant adverse effects on the visual amenity of a number of viewpoints predominately along the coast. Such effects would be long-term in the case of viewpoints 2 and 7, and predominately during construction for viewpoints 5 and 8.
- 7.2.17. Draft EN-1 and EN-2 also recognise that power CCS facilities will have an impact on the surrounding landscape and visual amenity, but that 'good design' should be applied from an early stage, with consideration of use of design review. We are not satisfied that this has been adequately carried out.
- 7.2.18. The PCC Site proposals would also partly conflict with Policy NE-SCP-1 of the North East Marine Plan in that the design of proposals has not adequately taken account of the character, quality and distinctiveness of the seascape and landscape.

- 7.2.19. The detailed design of the PCC Site has the potential to partially mitigate the effect. However, the indicative designs fail to achieve good design as required by section 4.5 of NPS-1 and NIC guidance, as well as failing to reflect the Teesworks Design Guide. The detailed design process for the PCC Site would need to balance functionality with aesthetics, with the involvement of RCBC and STDC to ensure a collaborative engagement to achieve high quality design.
- 7.2.20. We consider the approach to assessment of other components of the Proposed Development including the electricity substations and the AGI's is proportionate given the lack of visibility and their industrial context.
- 7.2.21. We find that the effects of the Proposed Development on the surrounding landscape would be neutral. However, the visual impact would be negative due to the prominent coastal location of the PCC Site, and adverse effects on the views of sensitive receptors including residents, recreational and PRoW users. We would expect RCBC, in consultation with STDC and assisted by the Design Guide, to agree a high quality detailed design post-consent secured through R3 of the dDCO. This is because the adverse visual effect has the potential to further increase if the detailed design does not achieve sufficient quality.
- 7.2.22. Overall, in respect of design, landscape and visual impacts we ascribe negative effects of moderate weight in the planning balance.

Water Environment

- 7.2.23. The Applicants have undertaken an assessment of the potential impacts from the Proposed Development on water quality, water resources and the physical characteristics of the water environment, as required in section 5.15 of EN-1 and the draft EN-1.
- 7.2.24. There is potential for adverse effects on water quality from construction activities, including the new outfall in Tees Bay and construction of pipelines, and during operation, particularly from discharge of effluent. There could also be effects during decommissioning. However, these potential effects would be minimised, mitigated and monitored through Requirements 11, 16, 32 and 37 of the dDCO and the DMLs (Schedules 10 and 11 of the dDCO).
- 7.2.25. Potential impacts to Tees Bay and the estuary from the discharge of DIN via the outfall have been considered in detail during the Examination, including through additional modelling of the likely plume. Although the predicted impacts would be small at a waterbody scale, the modelling has demonstrated that the discharge has the potential to effect water quality at the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site, which has implications for the WFD Assessment. However, we are satisfied that appropriate discharge concentrations are achievable in principle and that the nutrient nitrogen safeguarding scheme would be protective of water quality. We are mindful that the details of the discharge are also subject to the environmental permitting regime. Taken together, we are content that no adverse effects would arise.

- 7.2.26. It has been demonstrated to our satisfaction that the Proposed Development would not have an adverse effect on the achievement of the environmental objectives established under the WFD, as required by section 5.15 of EN-1.
- 7.2.27. Policy NE-WQ-1 provides support for proposals that protect and enhance water quality. Based on the conclusions above, we are therefore satisfied that the requirements of this policy are also met by the proposals.
- 7.2.28. The application was accompanied by an FRA and SuDS have been incorporated in the Proposed Development, as required by section 5.7 of EN-1. A Sequential Test for the whole site was undertaken and, as some areas would fall in Flood Zones 2 and 3, an Exception Test provided. All strands of the test were passed, including that the Proposed Development would be safe from flooding and would not increase the flooding elsewhere.
- 7.2.29. However, a sequential approach should be applied at a site level according to paragraph 5.7.9 of EN-1. This has not been clearly demonstrated for the two laydown areas at Saltholme (Works No. 9D and 9E) and it is possible that other locations at lower risk of flooding could have been found. However, we are satisfied that the risks would be satisfactorily managed through a scheme for the mitigation of flood risk, and a flood emergency response and contingency plan (R12 of the dDCO). The Final CEMP, secured through R16 of the dDCO, would also ensure that best practice is adhered to and risks minimised during construction. We conclude that the risks from flooding are not significant.
- 7.2.30. We therefore conclude that matters relating to the water environment would have no effect on the planning balance.

Biodiversity and Ecology

- 7.2.31. The Applicants have appropriately considered the potential effects from all phases of the Proposed Development on designated sites, protected species and on habitats and species of principal importance, as required by EN-1 and the draft EN-1. Modelling of the thermal plume from the outfall has been provided in accordance with EN-4, which demonstrates that there would be no adverse effects.
- 7.2.32. Significant harm to biodiversity conservation interests would be avoided through integrated mitigation. Mitigation measures and monitoring are secured via Requirements in the dDCO in accordance with EN-1 and EN-4, and their respective draft versions, including: R4, the Landscape and Biodiversity Protection Plan and the Landscape and Biodiversity Management and Enhancement Plan; R6 the External Lighting Scheme; R16, the CEMP; and R32, the DEMP. Further controls on marine activity, including dredging and management of unexploded ordnance, would be provided via the DMLs in Schedules 10 and 11 of the dDCO.
- 7.2.33. The Applicants have also demonstrated that the Proposed Development would take advantage of opportunities to conserve and enhance biodiversity, in line with EN-1. Draft EN-1 encourages the applicant to

consider how their proposal can contribute towards Biodiversity Net Gain. The Applicants have identified the opportunities for biodiversity gain on the Site. We accept that provision of a formal assessment of Biodiversity Net Gain is not yet a requirement for NSIPs and are satisfied that the extent of information provided is consistent with the draft policy.

- 7.2.34. Consequently, we can conclude that biodiversity and ecology matters would not give rise to any likely significant adverse effects. We acknowledge the benefits that the commitment to enhancement of biodiversity on the PCC Site would bring and apply moderate positive weight to these in the planning balance.

Geology, Hydrogeology and Land Contamination

- 7.2.35. The Applicants have appropriately considered the risk posed by land contamination, as required by section 5.10 of EN-1 and the draft EN-1. We are satisfied that the additional investigative work, risk assessment and remediation would be secured by R13 of the dDCO and that R23 would protect groundwater quality during construction of penetrative foundations. We are satisfied that contamination beneath the Order land would not give rise to likely significant effects. Geotechnical conditions and matters such as stability have been appropriately assessed, as required by EN-4 and the draft EN-4.
- 7.2.36. The Applicants have demonstrated that the Proposed Development would not have an impact on the MSA nor preclude access to mineral resources beneath the area and have satisfied section 5.10 of EN-1 and the draft EN-1 in this respect. There would be no significant effects on soil quality and there are no protected geological formations in the vicinity. There would therefore be no conflict with the requirements of 5.10 of EN-1 and the draft EN-1 in relation to these issues.
- 7.2.37. The Applicants propose to drill beneath the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site and have confirmed through ground investigation that the conditions are suitable for HDD, as required by EN-4 and the draft EN-4.
- 7.2.38. To conclude on matters relating to geology, hydrogeology and land contamination, we consider that there would be no likely significant effects and as such the effect in the planning balance would be neutral.

Material Resources and Waste Management

- 7.2.39. The Applicants have satisfactorily answered all our queries in relation to material resources and waste management. In line with EN-1 and the draft EN-1, the management of spoil at the Proposed Development would be according to the waste hierarchy, which would be implemented via the CEMP (R16) and a SWMP is secured by R24 based on the framework version submitted to the Examination.
- 7.2.40. We are satisfied that the issues relating to material resources and waste management would not give rise to significant adverse effects. Such matters therefore do not affect the planning balance.

Major Accidents and Natural Disasters

- 7.2.41. The Order land would be subject to stringent safety standards under the appropriate legislation. There would be additional controls during construction and decommissioning secured via the final CEMP (R16) and the DEMP (R32). The Applicants have demonstrated that the inherent features of the design would be sufficient to prevent, control and mitigate major accidents, including the risks to aviation, as required by EN-1 and the draft EN-1. This has included consideration of the particular risks from CO₂ releases and the potential for domino effects with neighbouring installations.
- 7.2.42. We are satisfied that the issues relating to major accidents and natural disasters would not give rise to significant adverse effects, and conclude that such matters would not have an effect on the planning balance.

Noise and Vibration

- 7.2.43. The Applicants have undertaken appropriate indicative and conservative modelling of the likely effects from noise and vibration on nearby residential and commercial receptors based on current guidance and best practice. Mitigation would be embedded in the design of the infrastructure and no significant adverse effects from noise and vibration are predicted. This is consistent with the requirements of EN-1, EN-2 and EN-4 and their draft versions.
- 7.2.44. Mitigation measures and monitoring of noise levels are secured for all phases through the CEMP (R16), control of noise (R21, R22) and R32 (DEMP) of the dDCO.
- 7.2.45. We are satisfied that the issues relating to noise and vibration would not give rise to significant adverse effects. These issues therefore have a neutral effect on the planning balance.

Traffic and Transport and Public Rights of Way

- 7.2.46. The Applicants have provided an appropriate transport assessment that demonstrates there would be no significant adverse effects on the surrounding transport network at any phase in accordance with EN-1 and the draft EN-1. The Proposed Development is in an accessible location in the vicinity of established transport routes.
- 7.2.47. The CWTP (R19) would include measures to promote the use of sustainable transport modes during construction and would also secure monitoring and review of any agreed measures. The CTMP (R18) would provide control and monitoring of HGV traffic during construction. Water-borne transport from RBT would be used for AILs. The Applicants have sought to avoid closures or diversions of PRoWs where possible. If necessary, impacts would be temporary and spatially limited. For these reasons, we are satisfied that the requirements of EN-1 and EN-2, and their draft versions, are met.

- 7.2.48. We are satisfied that the issues relating to traffic and transport would not give rise to likely significant effects. These issues therefore have a neutral effect on the planning balance.

Socio-Economics and Tourism

- 7.2.49. The Applicants have adequately assessed relevant impacts including the creation of jobs and training opportunities, changes in local population dynamics which may alter the demand for local services, and the effects on tourism. We are satisfied that this issue has been given proper consideration and agree with the assessment of impacts as set out in ES Chapter 20, which is in compliance with section 5.12 of EN-1 and section 5.13 of draft EN-1. Mitigation is unnecessary, but enhancement would arise from securing R30 (employment, skills and training plan) in particular, in assisting in promoting employment opportunities for local people.
- 7.2.50. Overall, we consider socio-economic and tourism effects associated with the Proposed Development to be beneficial and attribute moderate positive weight in the planning balance.

Historic Environment

- 7.2.51. As required by Regulation 3 of the IPD Regulations, we have given specific consideration to the desirability of preserving listed buildings and scheduled monuments or their setting or any features of special architectural or historic interest which they possess, and the desirability of preserving or enhancing the character or appearance of conservation areas. Further to our requests for further information, we consider that a description of heritage assets has been provided in a level of detail proportionate to the importance of the heritage assets. We also consider that the significance of impacts on both the onshore and offshore archaeological and cultural heritage has now been adequately assessed for all phases of the Proposed Development.
- 7.2.52. We have found that the Proposed Development would not lead to any adverse effects on the historic environment and therefore there would be no conflict with the objectives of EN-1, nor the more recent policy set out in section 16 of the NPPF and draft policy set out in draft EN-1 section 5.9. Accordingly, we agree with the overall findings of ES Chapters 18 and 19 which indicate that effects would not be significant. Given that the effects on listed buildings and conservation areas overall would be neutral, as would the setting of Eston Nab scheduled monument, we are satisfied that no mitigation would be necessary in respect of these onshore heritage assets.
- 7.2.53. Whilst the existence of some NDHAs (both terrestrial and marine archaeology) is not yet known, we agree that any unexpected finds and effects on archaeological potential would be adequately mitigated through R14 and DML condition 15, together with the measures set out in the Framework CEMP.

- 7.2.54. Taking all these matters into consideration we conclude that the Proposed Development would have no likely significant effects on the historic environment and that the effect in the planning balance would be neutral.

Cumulative and Combined Effects

- 7.2.55. The Applicants' assessment of how the identified effects from the proposal and other development might affect the environment, economy and community complies with EN-1. The Applicants satisfactorily answered all of our queries in relation to the extent and timing of the assessment of combined and cumulative effects.
- 7.2.56. The Applicants have also undertaken an assessment of the potential effects on the proposed HP4 Project and have demonstrated that the NZT DCO would not in itself or cumulatively with other developments have any effect on HP4.
- 7.2.57. Cumulatively, the effects from GHG across the sector would be adverse and significant.
- 7.2.58. There would be minor adverse effects from accumulated construction noise at residential properties in the vicinity of Broadway West, and significant visual effects on a range of coastal viewpoints at South Gare Breakwater, Redcar seafront, and the England Coast Path at Warrenby. However, the effects as assessed in isolation would not increase to any significant degree when considered with other projects.
- 7.2.59. There would potentially be a significant benefit from cumulative development to the local economy, including employment opportunities from other projects in the area.
- 7.2.60. We acknowledge that there is a great deal of current and forthcoming development activity in the immediate area of the Order land and the wider Teesside area, both on and offshore, as set out in sections 2.5 and 2.6 of this Report. Numerous cumulative and combined effects are therefore possible, but overall, no significant effects with other projects have been identified that would result in adverse effects over and above those associated with the Proposed Development alone. We consider such matters to be neutral when considered in the planning balance.

Other Considerations

- 7.2.61. **Combined Heat and Power:** We are satisfied that the Proposed Development has been designed to be CHP Ready in line with the requirements of EN-1, EN-2 and EA guidance, should any future opportunities arise to introduce CHP in the future. Such matters do not affect the planning balance.
- 7.2.62. **Grid Connections:** We are satisfied that the Applicants have demonstrated that it is feasible to connect the Low Carbon Electricity Generating Station to the National Electricity Transmission System and that there do not appear to be any impediments to the grid connection

being provided. Therefore, the provisions of EN-1 and EN-2 would be met in this respect, and the matter does not affect the planning balance.

- 7.2.63. **Land Use:** We have considered potential effects on land use in accordance with section 5.10 of EN-1 and do not find conflict with the policy. The effective re-use of degraded previously developed land is considered to be a benefit of the Proposed Development and therefore carries positive weight in the planning balance.
- 7.2.64. **Health:** We have considered potential effects on population and human health in accordance with section 4.13 of EN-1 and concur with the Applicants' assessment that effects would not be significant, and we do not find conflict with the policy. As such, these matters are neutral in the planning balance.
- 7.2.65. **Security:** We have considered matters of security in accordance with section 4.15 of EN-1 and, with the inclusion of R9 to secure security measures, do not find conflict with the policy. The effect on the planning balance is considered to be neutral.
- 7.2.66. **Shipping, Navigation and Other Marine Users:** Commercial shipping and fishing activities, and activities associated with the offshore wind farm in the Tees Bay and surrounding area could be temporarily disrupted during construction, but such works would be short in duration and spatially limited. Effects on recreational and other users of South Gare Road would be limited to short periods of time when testing and maintenance is being carried out, during which times a suitable diversion would be secured by protective provisions for PDT. Consequently, there would be no conflict with paragraphs 2.6.136 and 2.6.162 of EN-3.
- 7.2.67. We agree with the Applicants' conclusions that effects on marine users would not be significant and any that risk to marine users can be minimised through the conditions in the DMLs. We consider the effect in the planning balance to be neutral.

Habitats Regulations Assessment

- 7.2.68. HRA is a matter for the SoS to undertake as the competent authority in respect of the Proposed Development.
- 7.2.69. We find that an AEoI from the Proposed Development, alone or in combination with other plans and projects, can be excluded beyond reasonable scientific doubt for the following sites and qualifying features:
- North Moors SAC (North Atlantic wet heaths with *Erica tetralix* and European dry heaths);
 - North Moors SPA (breeding populations of merlin and golden plover); and
 - Southern North Sea SAC (harbour porpoise).
- 7.2.70. We also find that AEoI can be excluded beyond reasonable scientific doubt for all qualifying features of the Teesmouth and Cleveland Coast SPA and Ramsar site, subject to the following:

- the SoS satisfying themselves that the EA is content with the Applicants' approach to modelling of nutrient nitrogen associated with the Proposed Development; and
- the final version of the DCO being amended so that R37(3)(a) reads '*...not cause a net increase in total nitrogen loads in water within the Tees Estuary at the Seal Sands mud flats*'.

7.2.71. We consider that there is sufficient information before the SoS to enable them to fulfill their duty under the requirements of the Habitats Regulations.

7.3. THE PLANNING BALANCE

7.3.1. In examining this application, we have been mindful of the legal framework within which the SoS must make a decision. Together s104(2) and 104(3) of the PA2008 set out the matters to which the SoS must have regard in deciding an application. These comprise relevant NPSs and appropriate marine policy documents, LIRs, prescribed matters and any other matters that the SoS thinks are important and relevant to the decision. This is subject to certain exceptions as specified in subsections 104(4) to (8).

7.3.2. S105 of the PA2008 applies to an application where s104 does not apply. In such cases, the SoS must have regard to LIRs, prescribed matters and any other matters which the SoS thinks are both important and relevant to their decision.

7.3.3. We find that the Low Carbon Electricity Generating Station (Work No. 1) falls within the threshold of an NSIP under s14 and s15 of the PA2008. We also find that the Gas Connection (Work No. 2); Electrical Connection (Work No. 3); Water Supply Connection Corridor (Work No. 4); Water Discharge Connection Corridor (Work No. 5); Laydown Areas (Work No. 9); and Access and Highway Works (Work No. 10) are associated development under s115(1)(b) of the PA2008. NPSs that are relevant to these aspects of the Proposed Development are EN-1, EN-2, EN-4 and EN-5.

7.3.4. A Direction under s35 of the PA2008 made by the SoS for BEIS in 2019 confirmed that Specified Elements of the proposed NZT project were to be treated as development for which development consent is required. The three Specified Elements correspond to the remaining parts of the Proposed Development, namely Work No. 6 (CO₂ Gathering Network Corridor), Work No. 7 (High Pressure Compressor Station) and Work No. 8 (CO₂ Export Pipeline). Furthermore, the SoS determined that the Overarching Policy Statement for Energy (EN-1) has effect in relation to an application for development consent under the Direction. Consequently, we agreed with the Applicants' position when the application was submitted that the application as a whole was subject to s104 of the PA2008.

7.3.5. The High Court judgment in the case of EFW Group Limited v Secretary of State for Business, Energy and Industrial Strategy [2021] EWHC 2697 (Admin) determined that development subject to a s35 Direction (albeit

one that did not specifically direct that the relevant NPS had effect in relation to the proposed development) should be determined pursuant to the decision-making framework in s105 of the PA2008, rather than s104.

- 7.3.6. The Proposed Development can be distinguished from the EFW case because the s35 Direction in the EFW case did not specify which NPS applies, whereas in the NZT case the s35 Direction specifies that EN-1 has effect. Consequently, we have considered the Proposed Development under s104 of the PA2008. However, should the SoS for BEIS decide that the Direction does not have that intended legal effect and that the Specified Elements should be determined pursuant to s105 we also present our findings and recommendation on that basis.
- 7.3.7. We have concluded that the Proposed Development as a whole should be decided in accordance with the relevant NPSs namely EN-1, EN-2, EN-4 and EN-5. With respect to marine policy documents, we have recognised the support that the North East Marine Plan provides for the Proposed Development. There is no conflict with relevant development plans as set out in Chapters 3 and 4 of this Report, while the LIRs confirm that both host local authorities support the Proposed Development. No prescribed matters have been identified. We have, however, identified a range of important and relevant matters, namely energy and climate change legislation, and policy which postdates the publication of the energy NPSs in 2011. We have ascribed significant weight to these matters. Equally, this legislation and policy represents important and relevant matters in the context of s105 of the PA2008. Additionally, we have had regard to draft NPSs which can be considered to be important and relevant matters in respect of s104 and s105 of the PA2008.
- 7.3.8. We have found that the urgent need for new electricity generating capacity (as set out in EN-1) and the urgent need for gas-fired electricity generation with CCS and CCS infrastructure (set out in draft EN-1) provide a strong case for the Proposed Development. Additionally, recent Government policy on energy and climate change strengthen this case.
- 7.3.9. In applying the overall planning balance, the benefits of the Proposed Development comprise the substantial weight given to the need, together with the moderate beneficial weight accorded to the socio-economic effects arising from employment provision and training and skills opportunities available for the local population. Positive environmental benefits would also arise from the use of previously developed land and enhancements to biodiversity.
- 7.3.10. In terms of adverse effects, we have identified that notwithstanding the future benefits that the wider NZT Project could bring in terms of reducing CO₂ emissions, over its lifetime the Proposed Development would emit a significant volume of GHG, and this would be an adverse effect of moderate weight, both when considered individually and cumulatively with the sector. Additionally, the development of the PCC Site would result in significant visual effects to recreational and PRow users in a number of locations including Seaton Carew seafront, the England Coastal Path at Warrenby and Redcar seafront both during

construction and when operational. Agreement of a high-quality final design and use of materials with RCBC and STDC in accordance with the SPD and the principles of the Masterplan and Design Guide may assist in mitigation of such effects.

- 7.3.11. Other matters bring both benefits and adverse effects, but none of those, either individually or cumulatively, lead us to a different conclusion in terms of the overall balance of benefits and adverse impacts. Adverse effects identified during construction would be time-limited and minimised by application of the CEMP and other measures secured by the relevant Requirements in the DCO.
- 7.3.12. There is nothing to indicate that the application should be decided other than in accordance with national policy and we find that the Proposed Development would be in accordance with relevant NPSs. Moreover, the benefits of the Proposed Development significantly outweigh the limited harms such that there is no conflict with s104(7) of the PA2008. However, should the SoS take the position that the Specified Elements are not to be determined in accordance with s104 of the PA2008 we find that recent energy and climate change policy constitute important and relevant matters which would justify approval of those matters under s105 of the PA2008.
- 7.3.13. We therefore conclude that the case for Development Consent is made.

8. COMPULSORY ACQUISITION AND RELATED MATTERS

8.1. INTRODUCTION

- 8.1.1. The Applicants seek powers contained in the dDCO [REP12-003] for the Compulsory Acquisition (CA) of land, rights over land, and related matters, including Temporary Possession (TP). The Applicants seek to assemble land and associated rights within the Order land which it considers necessary to construct, operate and maintain the Project.

8.2. LEGISLATION AND GUIDANCE

- 8.2.1. CA powers can only be granted if the conditions set out in s122 and s123 of the PA2008 are met.
- 8.2.2. S122(2) of the PA2008 states that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.
- 8.2.3. S122(3) of the PA2008 states that there must be a compelling case in the public interest which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. This does not mean however that the CA proposal can be considered in isolation from the wider consideration of the merits of the Proposed Development.
- 8.2.4. S123 of the PA2008 requires the SoS to be satisfied that one of the conditions in subsections (2) to (4) be met by the proposal:
- (2) the application for the order granting development consent included a request for compulsory acquisition of the land to be authorised; or
- (3) all persons with an interest in the land consent to the inclusion of the provision; or
- (4) the prescribed procedure has been followed in relation to the land.
- 8.2.5. 'The Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land' (the CA Guidance) advises that the applicant should demonstrate that the land or interest to be acquired is no more than is reasonably required (paragraph 11), and that the public benefit must outweigh the private loss (paragraph 13).
- 8.2.6. As included in paragraphs 8 to 10 of the CA Guidance, factors to be taken into account in the decision to authorise the CA of land include a number of general considerations, namely that:
- there is a need for the project;

- all reasonable alternatives to CA, including modifications to the project, have been explored;
- the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and necessary and proportionate;
- the applicant has a clear idea of how the land to be acquired is to be used;
- there is a reasonable prospect of the requisite funds for CA becoming available; and
- the purposes are sufficient to justify interfering with the human rights of those with an interest in the land affected, with particular reference to Article 1 of the First Protocol of the European Convention on Human Rights.

8.2.7. The CA Guidance also advises (paragraphs 17-18) that:

- an application must be accompanied by a Funding Statement that explains how the CA is to be funded and includes as much information as is available about how the project as a whole is to be funded and the business case; and
- the applicant should demonstrate that adequate funding will be available for CA within the statutory time period.

8.2.8. Paragraph 32 of the CA Guidance states further that the applicant should submit with the application a Statement of Reasons (SoR) that justifies the CA powers to be sought, explains why there is a compelling case in the public interest and gives reasons for the creation of new rights.

8.2.9. Further to Part 1 of Schedule 5 of the PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. The PA2008 and the CA Guidance do not contain the same level of specification in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. However, they must be justifiable and compatible with the Human Rights tests as discussed below.

8.3. THE REQUEST FOR CA AND TP POWERS

8.3.1. The Proposed Development is described in Chapter 1 of this Report. The application for development consent included a request for CA of land to be authorised in accordance with s123(2) of the PA2008. The Applicants seek the CA of land and rights over land both for construction and operation.

8.3.2. At the commencement of the Examination, the application was accompanied by the following documents and plans:

- Book of Reference (BoR) [AS-139];
- Statement of Reasons (SoR) [AS-141];
- Funding Statement [APP-009 to APP-015 and AS-201];
- Land Plans [AS-146]; and
- Crown Land Plans [AS-147].

- 8.3.3. Taken together, these documents set out the land and rights sought by the Applicants with the reasons why it is needed and how compensation would be funded. Where the Examination and due diligence processes required changes to this documentation, new versions were submitted throughout the Examination. By the close of the Examination, the most up-to-date versions of these documents were as follows:
- BoR [REP12-008];
 - SoR [REP12-010];
 - Funding Statement [APP-009 to APP-015 and AS-201];
 - Land Plans [REP12-015]; and
 - Crown Land Plans [REP12-016].
- 8.3.4. The plots sought for CA and TP are shown on the Land Plans [REP12-015] which comprise 13 sheets. The proposed CA of freehold land is coloured pink and plots where new rights are proposed to be acquired are coloured blue. Proposed TP of land is coloured yellow. In relation to both CA and TP it includes proposals to extinguish easements, servitudes and other private rights.
- 8.3.5. The dDCO [REP12-003] includes a number of Articles which seek both permanent and temporary powers to construct, operate and maintain the Proposed Development. The EM [REP12-006] provides details as to the purpose of each Article, including reference to previously made Orders that the Applicants consider to be applicable to this application.

8.4. THE PURPOSES FOR WHICH LAND IS REQUIRED / CA and TP POWERS ARE SOUGHT

- 8.4.1. The Applicants' justification for seeking CA powers is to enable them to construct, operate and maintain the Proposed Development. This is so that the Government's policies in relation to the timely delivery of new generating capacity and achieving ambitious net zero targets are met [paragraph 6.1.8, REP12-010]. The Applicants consider that the relevant powers are no more than is required to facilitate the Proposed Development, its construction and future maintenance [paragraphs 6.1.14 and 6.1.15, REP12-010].
- 8.4.2. The Applicants consider that in the absence of powers of CA, the Order land may not be assembled, uncertainty would continue to prevail, and its objectives and Government policy objectives would not be achieved [paragraph 6.1.12, REP12-010].
- 8.4.3. Section 7 of the SoR sets out the Applicants' 'compelling case' for the use of the powers of CA, referring to the Planning Statement [REP1-003] and Project Need Statement [AS-015], with reference to the need for energy infrastructure set out in EN-1 together with the Government's key energy and climate change objectives. In summary, the Applicants consider that there is a clear and compelling national need for the Proposed Development as:
- The Proposed Development would make a major contribution toward addressing the need that exists for new electricity

generating capacity in the UK and that it will add to the security, diversity and resilience of UK electricity supplies and support the transition to low carbon electricity generation;

- The onshore CO₂ gathering network would make a major contribution to the UK's decarbonisation of several industrial sectors; and
- the Applicants have selected the Site on which to construct and operate the Proposed Development for technical, environmental and commercial reasons.

- 8.4.4. The BoR identifies all the plots of land required, shown on each corresponding sheet of the Land Plans [REP12-015]. The plot numbers on the Land Plans correspond with those set out within the BoR [REP12-008].
- 8.4.5. Part 1 of the BoR [REP12-008] lists plots from 1 to 540, the corresponding Land Plans sheet number, and the Category 1 and 2 interests in each plot of land. Numerous plots have been subdivided to a, b, c, and so on, and many are no longer used following the submitted change requests and removal of large areas of the Order land.
- 8.4.6. Part 2 of the BoR lists the potential claims to a range of plots under Category 3.
- 8.4.7. Part 3 of the BoR lists APs with easements or other private rights. It describes the type of interest, which are largely in respect of easements, apparatus, gas and water mains, pipelines, cables and access, which the Applicants propose to interfere with, suspend or extinguish.
- 8.4.8. Part 4 of the BoR refers to Crown interests, which at the end of the Examination related to plot numbers 218, 528 and 530 only. Special Category land is listed at Part 5 of the BoR. This relates to open space only, affecting plot numbers 379, 448, 494, 499, 501, 526 to 529 and 539.
- 8.4.9. Numerous plots relate to Statutory Undertakers' land, and powers are sought to acquire land and interfere with interests and apparatus. All the land involved is included in Parts 1 and 3 of the BoR.
- 8.4.10. A number of plots are listed in the BoR as unknown or unregistered: plots 99, 139, 274, 362, 468, 494, 501, 514, 523, 537 and 538.
- 8.4.11. The status of negotiations with the relevant APs was updated at regular intervals throughout the Examination according to the CA Schedule. The final version of the CA Schedule was submitted at D12 [REP12-131]. At D13 an 'End of Examination Negotiation Status' table was submitted, including only the APs who had participated in the Examination [REP13-021].
- 8.4.12. The details of the powers sought in order to implement the required CA, including interference with third party rights, the related TP of land and other CA powers, are set out in Part 5, Articles 22 to 36 of the dDCO [REP12-003]. Schedule 7 (Table 7) lists the plots in which rights over

land may be required or restrictive covenants may be imposed in relation to each Works Number. Schedule 8 sets out the modification of compensation and enactments for the creation of new rights and the imposition of new restrictive covenants. Schedule 9 lists the plots in which TP of land may be taken, for each Works Number and its purpose.

8.5. TEMPORARY POSSESSION

- 8.5.1. The Applicant's case for the use of TP powers is set out in the SoR [Section 6.19, REP12-010], and given effect in the draft Order through Articles 31 and 32 [REP12-003]. The dDCO limits TP to land which is listed in Schedule 9, and any other Order land where powers of CA to facilitate construction have not been exercised.
- 8.5.2. The land identified in Schedule 9 may only be used for TP for the purposes set out in the Schedule for each particular plot that is coloured yellow on the Land Plans [REP12-015]. These include areas required for temporary use as construction and laydown areas (Work No. 9), and some of the areas required for access and highway improvements (Work No. 10). These are areas of land in which the Applicants do not require any interest in the land on a permanent basis.
- 8.5.3. The construction working width allowed for is generally around 35m for the gas and electrical connections, except where this needs to be wider in order to accommodate crossings (of watercourses, drains, roads or similar), for construction compounds, and for access points, or where the corridor has been sized to 'match' the extent of an existing apparatus corridor. The construction area allowed for a particular crossing depends on the likely method to be employed. For instance, a larger area is allowed for use of trenchless techniques, to allow the necessary flexibility in routing the apparatus underground and to facilitate the start and end points for crossings [Section 6.19, REP12-010].
- 8.5.4. Article 31 would permit the Applicants to take TP of any other part of the Order land where they have not yet exercised powers of CA. This would allow them to initially take TP of the whole width of corridors required for connections for natural gas, electricity, water supply, wastewater disposal, the CO₂ gathering network and the CO₂ export pipeline corridor. For each of these, the dDCO includes the powers to acquire new rights in order to construct, maintain and operate the relevant apparatus. Once the Applicants have carried out detailed surveys and installed the relevant apparatus, the Applicants could then acquire new rights within a narrower strip in which permanent rights are required. This phased approach to occupation and acquisition allows the permanent rights corridor to be defined after construction, and to be only that which is necessary for the operation, maintenance and protection of the apparatus. Such an approach has precedent amongst other DCOs including the Eggborough Gas Fired Generating Station Order 2018 and the Drax Power (Generating Stations) Order 2019 [Section 6.19, REP12-010].

8.6. EXAMINATION OF THE CA AND TP CASE

8.6.1. CA and TP matters were both identified by us in the IAPI prepared under s88(1) of the PA2008 and set out in Annex C of the ExA's Rule 6 Letter [PD-009]. We examined the case for CA and TP in writing through written questions and orally at hearings:

- CAH1 held on 11 May 2022 [EV5-001 to 003]
- CAH2 held on 23 July 2022 [EV7-001 to 006]
- CAH3 held on 19 October 2022 [EV10-001 to 005]

8.6.2. The following APs raised objections relating to the request for the grant of CA powers:

- Air Products (Chemicals) Teesside Limited, Air Products Renewable Energy Limited, Air Products plc (**Air Products**)
- Anglo American Plc / Woodsmith Project / York Potash Ltd (**Anglo American**)
- CATS North Sea Limited (**CNSL**)
- CF Fertilisers UK Limited (**CFL**)
- Exolum Seal Sands Ltd and Exolum Riverside Ltd (**Exolum**)
- Huntsman Polyurethanes (UK) Limited (**HPU**)
- Ineos Nitriles (UK) Limited (**Ineos Nitriles**)
- Ineos UK SNS Limited
- National Grid Electricity Transmission Plc (**NGET**)
- National Grid Gas Plc (**NGG**)
- Network Rail Infrastructure Limited (**NR**)
- North Tees Group (**NTG**)
- Northern Powergrid (**NPG**)
- Northumbrian Water Limited (**NWL**)
- NPL Waste Management Limited (**NPL**)
- PD Teesport Limited (**PDT**)
- Redcar Bulk Terminal Limited (**RBT**)
- Sembcorp Utilities (UK) Limited (**Sembcorp**)
- SABIC UK Petrochemicals Limited (**SABIC**)
- South Tees Development Corporation (**STDC**)
- Teesside Gas Processing Plant/ Teesside Gas and Liquids Processing (**TGPP**), collectively referred to as North Sea Midstream Partners (**NSMP**)
- Teesside Wind Farm Limited (**TWF**)

8.6.3. A CAH was specifically requested by STDC, Sembcorp, NTG, RBT and PDT.

8.6.4. Non-material changes to the Proposed Development were sought as set out in section 2.4 of this Report. Each of the proposed changes involved a reduction in the Order land, and a consequent reduction in the number of plots sought for CA. Only the first change, accepted by the ExA in May 2022 [PD-010] included an additional area of land (at Seaton Carew Road, plot 67a) for Work No. 9. The relevant consultation processes required under the CA Regs were undertaken by the Applicants, notwithstanding the land is required for TP.

- 8.6.5. The two subsequent non-material changes as were agreed by the ExA [PD-017 and PD-023] only sought reductions in the Order land. In total, the area of the Order land has reduced from approximately 462ha to 246ha, as shown in Figure 6 in section 2.4 of this Report. The 'Guide to Land Plan Plots' submitted with each change request [AS-143, REP6-011 and REP12-012] sets out the plot numbers against which changes have been made.
- 8.6.6. Throughout the Examination the Applicants engaged with landowners, tenants, lessees and occupiers with the aim of completing voluntary agreements. However, by the end of the Examination, only one of the above listed objections to CA had been withdrawn. This was from NWL, received at the close of the Examination [AS-210].

8.7. REASONABLE ALTERNATIVES TO CA

- 8.7.1. Paragraph 8 of the CA Guidance states that the applicant should be able to demonstrate that all reasonable alternatives to CA (including modifications to the scheme) have been explored.
- 8.7.2. Alternatives to CA are considered at paragraphs 6.1.21 to 6.1.35 of the SoR [REP12-010]. The Applicants state that the 'do nothing' scenario is inappropriate given the established national need for new energy generation and the urgent need for transition to a low carbon economy to meet Net Zero 2050 commitments. They state that the other key disadvantage of the 'do nothing' scenario would be the lack of additional investment in the local economy.
- 8.7.3. In relation to the PCC Site (Work Nos 1 and 7) the location was selected for a number of reasons as set out in paragraph 6.1.23 of the SoR [REP12-010], Chapter 6 [APP-088] and summarised in section 5.2 of this Report. A number of options for routing of connections required for the Proposed Development were considered as set out in paragraphs 6.1.27 to 6.1.30 of the SoR [REP12-010].
- 8.7.4. The Applicants concluded their case on alternatives by stating that none of the alternatives would provide the compelling benefits that the Proposed Development would. They would involve additional impacts or disadvantages in terms of land take, environmental, technical or other considerations. The Applicants continue to seek to acquire the land and rights by voluntary agreement. They require the powers of CA sought in order to provide certainty that they will have all the land required to construct and operate the Proposed Development, in order to realise its very significant public benefits [paragraphs 6.1.34 and 6.1.35, REP12-010].

8.8. STATUTORY UNDERTAKERS' LAND – s127 and s138

- 8.8.1. PA2008 s127 is applicable in relation to Statutory Undertakers' land. At subsection (2) it provides that a DCO may include provisions authorising the CA of Statutory Undertakers' land only to the extent that the SoS is satisfied with the matters set out in subsection (3). The matters set out

in subsection (3) are that the nature and situation of the land are such that:

- it can be purchased and not replaced without serious detriment to the carrying on of the undertaking;
- or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

8.8.2. Similarly, s127(5) and (6) of the PA2008 in relation to the creation of new rights, are that the nature and situation of the land are such that:

- the right can be purchased without serious detriment to the carrying on of the undertaking;
- or any detriment to the carrying on of the undertaking, in consequence of the acquisition of the rights, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

8.8.3. S138(4) provides that a DCO may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, only if the SoS is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the order relates. This is incorporated in the dDCO [REP12-003] at Article 33:

- 33. Subject to the provisions of Schedule [12] (protective provisions), the undertaker may—
 - (a) acquire compulsorily the land belonging to Statutory Undertakers within the Order land;
 - (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, Statutory Undertakers on, under, over or within the Order land; and
 - (c) create and acquire compulsorily rights or impose restrictions over any Order land belonging to Statutory Undertakers.

8.8.4. The Applicants propose to acquire land and/or rights from the following Statutory Undertakers who have made representations about the application:

- National Grid Electricity Transmission Plc (**NGET**);
- National Grid Gas plc (**NGG**);
- Network Rail Infrastructure Limited (**NR**);
- Northern Gas Networks Limited;
- Northern Powergrid (Northeast) plc and Northern Powergrid Limited (**NPG**);
- Northumbrian Water Limited (**NWL**);
- PD Teesport Limited (**PDT**); and
- BT plc / Openreach Limited.

- 8.8.5. S138 of the PA2008 is engaged because the Applicants seek powers to interfere with the apparatus of Statutory Undertakers as described in paragraphs 9.1.24 to 9.1.32 of the SoR [REP12-010].
- 8.8.6. We asked questions in relation to Statutory Undertakers' land at each of the CAHs, as well as in every set of written questions. Updates were provided in respect of the above listed undertakers which are set out in further detail later in this chapter.

8.9. SPECIAL CATEGORY LAND – s132

- 8.9.1. The Applicants' case for the CA of special category land is set out in paragraphs 9.1.6 to 9.1.22 of the SoR [REP12-010]. S132 provides for exceptions to special parliamentary procedure in relation to the special category land. S132(3) states that it would not be required if the Order land will be 'no less advantageous than it was before' to those with interests in the land, including the public.
- 8.9.2. The Applicants seek to engage s132 of the PA2008, regarding land forming open space. No freehold CA of land is proposed under s131, only new rights (and TP). Special Category land is listed at Part 5 of the BoR. The CA affects plot numbers 379, 448, 494, 499, 501, 526 to 529 and 539, and this wholly relates to foreshore and beach at Coatham Sands and Coatham Sand Dunes, which is used for public recreation purposes. The freehold owners of the plots are STDC, RCBC or the Crown. One plot (501) is unregistered.
- 8.9.3. Works on the open space land would comprise the installation of part of the water discharge pipeline (Work No. 5B) and part of the CO₂ export pipeline (Work No. 8). The trenchless installation of both the water discharge outfall tunnel and the CO₂ export pipeline would take place within the same connection corridor. No works are proposed on the surface of the open space land, and access to it is expected to remain open throughout the construction period. The physical appearance of the open space land would be unaffected.
- 8.9.4. In respect of the CO₂ export pipeline, initial testing, start-up and pressurisation may necessitate temporary restrictions on access. The Applicants expect such restrictions to be over a limited area and a very short duration (a maximum of 24 hours). Furthermore, testing is expected to be done at night where possible so that it has a negligible impact on users of the open space. Maintenance would largely be via non-intrusive visual inspections with no restrictions to open space land expected.
- 8.9.5. The TP of the land would allow the use of the relevant land to remain with or revert back to the relevant landowner. New rights would permit the Applicants' infrequent use of the open space to easements for maintenance.
- 8.9.6. No other type of special category land is affected. No objections were submitted in relation to special category land.

- 8.9.7. The Applicants set out the case for special category land at CAH1, in which the above information as included within the SoR [REP12-010] was clarified. We did not request any further information in relation to special category land.

8.10. CROWN LAND - s135

- 8.10.1. There are Crown interests within the Order land, as shown on the Crown Land Plans [REP12-016]. At the end of the Examination, after the deletion of Order land in relation to accepted non-material amendments, three Crown-owned plots remain within Part 4 of the BoR:
- Plot 218 –Tunnel across the River Tees, its bed and banks [Sheet 5, REP12-016] and
 - Plots 528 and 530 – Foreshore at South Gare and Coatham Dunes [Sheet 10, REP12-016].
- 8.10.2. New rights are sought over the above plots, which are necessary to construct and maintain the CO₂ gathering network corridor across the River Tees (Work No.6), the CO₂ export pipeline connection corridor (Work No. 8), as well as the waste water disposal connection to the North Sea (Work No. 5).
- 8.10.3. S135(1) of the PA2008 precludes the CA of interests in Crown Land unless the land is held 'otherwise than by or on behalf of the Crown', and the appropriate Crown authority consents to the acquisition. S135(2) precludes a DCO from including any provision applying to Crown Land or Crown rights without consent from the appropriate Crown authority.
- 8.10.4. We requested updates on obtaining s135 consent at all three CA hearings and in writing at ExQ2. The Applicants also provided more regular updates in the CA Schedule at each deadline.
- 8.10.5. At CAH2, the Applicants advised that Heads of Terms with the Crown had been concluded and were with the parties' respective legal teams to review, and that they were optimistic that negotiations with the Crown would be concluded before the end of the Examination [Item 6, EV7-001 to 006 and REP5-026].
- 8.10.6. However, at D9 the Applicants explained that a query had since been raised in relation to land within sheet 9 of the Land Plans, and they were working together to confirm any interest in the land [ExQ2, CA.2.19, REP9-020]. They stated that "*The Crown have confirmed that a s135 consent will be granted in relation to the land within the Order limits and it is anticipated that this will be issued prior to the end of examination. A further update will be provided at the next Deadlines*". They remained confident that s135 would be obtained shortly.
- 8.10.7. We voiced our concerns at CAH3 that the expected completion of s135 consent had slipped at each Deadline. The Applicants' stated at the Hearing that they knew of no reason why Crown consent would not be granted, and that they expected it would be provided before the end of the Examination. Examples were provided of other DCOs where Crown

consent was granted following close of the Examination [Item 6, EV10-001 to 005, and REP11-016].

- 8.10.8. The 'End of Examination Negotiation Status' table provided at D13 reiterated that Heads of Terms had been agreed and that "*the solicitor acting for the Crown has confirmed that he is clarifying a couple of points with the Crown before preparing draft legal documents for review*" [REP13-021]. However, no detail was provided on the outstanding matters and no update was provided at the end of the Examination on the matter of expected timescales for obtaining s135 consent.

8.11. AVAILABILITY AND ADEQUACY OF FUNDING

- 8.11.1. EN-1 (paragraph 4.1.9) and CA Guidance, at paragraph 9, set out that an applicant should be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available.
- 8.11.2. The application documents included a Funding Statement [APP-009 to APP-015]. A supplement was submitted with the first change request in May 2022 [AS-201]. Following questioning at CAH1 [EV5-001 to 003] the Applicants explained that the only change involved the Project partners, with the deletion of Eni UK Limited (from both NZT Power and NSNS Storage) and Total Gas and Power Chartering Limited (from NZT Power only; Total remain a partner in NZNS Storage).
- 8.11.3. An updated Funding Statement and Appendices (copies of audited yearly accounts) for each of the Project partners were provided at D13 [REP13-003 to REP13-011]. The accounts demonstrate that the remaining Project partners between them have total net assets of over £400,000 million. The supplement also confirms there is no change to the estimated cost of £1,800 million for the Proposed Development [REP1-037 and AS-201].
- 8.11.4. At ExQ1, we sought to clarify matters in the Funding Statement [APP-009] concerning CCUS business models, which relate to separate entities who would be responsible for electricity generation with post-combustion carbon capture (including the gas, water and electricity connections); CO₂ gathering (from industrial emitters), CO₂ compression and CO₂ export and storage; and industrial (including hydrogen production) carbon capture and connections to the CO₂ gathering network. The Applicants explained that there are multiple business models being developed by BEIS which will provide the commercial framework for each distinctive element of a CCUS system. These include support via i) Transport and Storage Regulatory Investment, ii) Dispatchable Power Agreement, iii) Industrial Carbon Capture, and iv) Low Carbon Hydrogen [ExQ1 CA.1.25, REP2-016].
- 8.11.5. Given the 'split chain' nature of the business models and range of potential projects, each element of the CCUS value chain will attract potentially different investors. A transport and storage company would be a separate element to serve all users neutrally, and in this case NZNS Storage would be such a company. NZT Power would receive a contract under the Dispatchable Power Agreement model, which is similar to the

Contract for Difference used for renewable energy projects. Both are led by BP as the operator [ExQ1 CA.1.25, REP2-016].

- 8.11.6. The Funding Statement refers at paragraph 4.1.2 to part funding from UK Research and Innovate (UKRI). The Applicants explained that UKRI support the development of low-carbon technologies and provide grant funding for FEED and associated studies leading up to a final investment decision, which is currently scheduled for mid-2023 [ExQ1, CA.1.26 RP2-016].
- 8.11.7. In response to ExQ2 CA.2.20, the Applicants confirmed that the changes to the Order Limits had not resulted in a reduction in the Proposed Development cost, since the total development costs only accounted for single options, and the optionality had since been reduced via the change request. There would be a minor impact on the associated land costs which would be insignificant in the context of the overall development cost. Therefore, no update to the Funding Statement was necessary [REP6-121].
- 8.11.8. Further to concerns raised by Ineos Nitriles Ltd [ExQ1 CA.1.11, REP2-084], the Applicants' response referred to a decommissioning fund through BEIS' Transport and Storage business model [paragraph 9.2.3, REP3-011]. This was followed up in the Applicants' response to a question at ExQ2, where clarification was provided regarding the required mechanism for decommissioning funds. A copy of the 'Carbon Capture, Usage and Storage – An update on the business model for Transport and Storage' was appended to the Applicants' answer to ExQ2 GEN.2.13 [REP6-121]. At Section 9 it sets out that the transport and storage company would make regular payments into its decommissioning fund derived from revenue charged to users. We are not aware of any further update to the business model having been provided by BEIS since the aforementioned document was published in January 2022.
- 8.11.9. STDC in their RR [paragraph 5.17, RR-035] refer to the lack of a separate estimate for land acquisition costs in the Funding Statement. We asked the Applicants at CAH1 [EV5-001 to 003] if they were able to provide a separate figure for CA costs in an update to the Funding Statement [Section 5.0, APP-009]. The Applicants replied that this was not possible due to commercial sensitivity, and that there are good public interest reasons why disclosure of specific values would not be appropriate. They provided assurances that the overall figure is correct, is based on proper professional advice, and that it includes CA costs.

8.12. HUMAN RIGHTS

- 8.12.1. The Applicants have considered potential infringement of the European Convention on Human Rights (ECHR) (as codified in the Human Rights Act 1998) as a consequence of the CA and TP powers included within the dDCO. This is set out in Section 11 of the SoR [REP12-010], where Articles 1, 6 and 8 are covered.

- 8.12.2. The Order has the potential to infringe the human rights of persons who own property or hold interests in the land within the Order Limits under Article 1 of the First Protocol. Such an infringement is authorised by law so long as:
- the statutory procedures for making the Order are followed and there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the Order; and
 - the interference with the convention right is proportionate.
- 8.12.3. The Applicants consider that there would be very significant public benefits arising from the making of the Order for the Project (as set out in the SoR, Project Need Statement and Planning Statement). Those benefits can only be realised if the Order includes CA powers, and the purpose for which the land is sought is legitimate. The Applicants consider that significant public benefits outweigh the effects on persons who own interests in relevant land or who may be affected by the Project, and as such that there is a compelling case in the public interest for the exercise of such powers of CA.
- 8.12.4. In terms of Article 6, the Applicants have carried out consultation with the persons set out in the categories contained in s44 of the PA2008. IPs have had the opportunity to make representations regarding the Proposed Development both in writing and orally in person at Hearings. In relation to matters of compensation for land to be acquired, affected persons have the right to apply to the Upper Tribunal (Lands Chamber) to determine the compensation payable.
- 8.12.5. STDC in its RR [paragraphs 2.14, 5.2 and 6.11 to 6.14, RR-033] raised objections to the proposed use of an access for construction on Tees Dock Road, (plots 274 and 279 on the Land Plans, as set out in section 8.39 of this Report). Numerous written and oral submissions were subsequently made on this matter by STDC. At D6, STDC referred to a potential conflict with Article 1 to the First Protocol of the ECHR. Their case in this respect stated *"the human rights implications of TP mean that a compelling case in the public interest must be made out for TP, in the same way that it must be made out for CA (albeit accepting that the extent of private loss is time limited). It follows that in considering whether a compelling case is made out, consideration must be given as to whether a reasonable alternative is available and should be adopted"* [ExQ2 CA.2.7, REP6-144 and REP7-017].
- 8.12.6. We questioned STDC and the Applicants on the matter at CAH3 [EV10-001 to 005], and this was followed up by a WR [pages 3-5, REP11-041]. Whilst accepting that the 'compelling case in the public interest' is applicable to CA and not TP as set out in s122 of the PA2008, STDC put that nevertheless TP interferes with private property rights and may do so over a significant extent and period of time. Therefore, in applying Article 1 to TP, STDC stated that it must be necessary and in the public interest, and there must be no disproportionate or unjustified interference with property rights.

- 8.12.7. STDC identified an alternative means of access (at Lackenby Gate) and they considered that because the Applicants had assessed it as being acceptable, it is not therefore 'necessary' (in the wording of Article 1) for the Applicants to form a means of access at Tees Dock Road. STDC considered that the decision taken by the Applicants not to proceed with the alternative option until the wider negotiations with STDC (in relation to the PCC option agreement) were concluded is inadequate justification for failing to adopt the reasonable alternative [REP11-041]. STDC reiterated their stance on the matter in their closing submissions at D12 [paragraphs 4.12 to 4.22, REP12-166].
- 8.12.8. The Applicants do not consider that we need to be satisfied that there are no reasonable alternatives to the proposed TP powers over plots 274 and 279. They stressed that they propose only TP powers for construction access, and that the proposed access (via plots 274 and 279) provides an appropriate and direct route for construction traffic which is acceptable in planning terms. The fact that an alternative route may exist does not render the proposed access route unacceptable or inappropriate. The Applicants confirmed that, nonetheless, they are discussing terms with STDC to enable the use of an alternative access route which, if secured, will allow plots 274 and 279 to be removed from the Order Limits [ExQ2 CA.2.7, REP6-121].
- 8.12.9. The Applicants reiterated at D12 that STDC's suggestion of an alternative does not mean that the powers of TP powers sought in the Order are not required [REP12-133], and the matter remains as an outstanding disagreement in the latest version of the SoCG with STDC [REP12-122].
- 8.12.10. The Applicants proposed drafting changes to the DCO to remove the Tees Dock Road plots 274 and 279, in the event that the alternative access is secured by legal agreement prior to the determination of the application by the SoS [REP12-005].
- 8.12.11. We conclude on this matter only in relation to Human Rights at section 8.48 of this Chapter.

8.13. THE DEVELOPMENT CONSENT ORDER

- 8.13.1. Part 5, Articles 22 to 36 of the dDCO set out the details of the powers sought in order to implement the proposed CA, including interference with third party rights, the related TP of land and other compulsory purchase powers. Schedule 7 (Table 7) lists the plots in which rights over land may be required or restrictive covenants may be imposed in relation to each Works Number. Schedule 8 sets out the modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants. Schedule 9 lists the plots in which TP of land may be taken, for each Works Number and its purpose.
- 8.13.2. At D2, Article 31(4) was amended to specify the period during which the undertaker may remain in temporary possession of land. This was stated to be the earlier of: i) where Schedule 9 specifies a purpose for which

possession may be taken relating to particular Work Nos, the end of the period of one year beginning with the date of final commissioning of the relevant works; or ii) the end of the period of one year beginning with the date of final commissioning of the authorised development [REP2-002 and REP2-004].

8.13.3. Article 25 was amended at D4. This was in relation to the acquisition of rights for the benefit of statutory undertakers. The drafting was simplified to provide control over the potential exercise of the powers in Article 25 by statutory undertakers and is in line with various recent DCOs (such as the Cleve Hill Solar Park Order 2020 and the Riverside Energy Park Order 2020) [REP4-002 and REP4-004].

8.13.4. At D5, Articles 27 and 32 were amended in the dDCO. Article 27 relates to a minor change to the heading in relation to the 1981 Act (which is in the Definitions). Article 32 was amended to ensure consistency with Article 31(5) in relation to restoration of land [REP5-002 and REP5-004].

8.14. COMPULSORY ACQUISITION SCHEDULE

8.14.1. Appendix 1 of the initial SoR [AS-141] listed the status of negotiations with 14 landowners. The status of negotiations had not been updated since July 2021, but the first CA Schedule [REP1-044] provided a detailed update. It set out the persons listed in the BoR, identified whether they had submitted a representation, the relevant plots and their interests in them, the powers sought by the Applicants over those plots, and the status of negotiations with each AP. This initial CA Schedule listed 196 APs, 30 of whom had submitted representations to the Examination.

8.14.2. The SoS should note that some of the companies listed in the SoR [AS-141] and CA Schedule [REP1-044] have been combined and/or re-named for ease of reference. They will hereafter be referred to in this Report as:

- **Air Products** – including Air Products (Chemicals) Teesside Limited and Air Products Renewable Energy Limited
- **Anglo American** –
 - Anglo American Woodsmith Limited previously acquired Sirius Minerals plc, which was a named undertaker in the York Potash Order 2016. Since April 2022 this company name is Anglo American Crop Nutrients.
 - York Potash Limited, also a named undertaker in the 2016 DCO, is now known as Anglo American Woodsmith Limited.
 - York Potash Processing and Ports Limited is now known as Anglo American Woodsmith (Teesside) Limited.
 - Together, the group of companies are defined in paragraph 288 of Schedule 12, Part 18 of the dDCO as simply '**Anglo American**' [paragraph 2.5, REP2-073].
- **Exolum** – including Exolum Seal Sands Limited and Exolum Riverside Limited, defined in paragraph 89 of Part 8 of Schedule 12.
- **Teesside Windfarm Limited** – Operated by EDF Energy Renewables Limited. EDF were removed from the dDCO at D5

(Schedule 12, Part 21) as it does not have a land interest, but protective provisions for the benefit of Teesside Windfarm Limited were retained.

- **North Tees Group** – collectively made up of North Tees Limited, North Tees Rail Limited and North Tees Land Limited (as defined in Schedule 12, Part 27, paragraph 366).
- **South Tees Development Corporation** – including Teesworks Limited and South Tees Developments Limited (as defined in Schedule 12, Part 20, paragraph 255).

8.14.3. At CAH2 we raised the issue of whether the current CA Schedule was fit for purpose, given the complexity of the land ownership and rights issues [EV7-001 to 006]. We suggested a new CA Schedule which would contain the information it needed to assist us through the Examination, and to simplify and amalgamate other details which were superfluous. Consequently, a revised version was submitted at D5 [REP5-024] which was updated at each deadline.

8.15. CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES

8.15.1. Although this section of our Report specifically considers objections raised by APs we appreciate that these represent only a proportion of the plots of land that would be affected. Even though a specific objection may not have been raised in relation to a particular plot of land, we have nevertheless applied the relevant tests to the whole of the land that would be subject to the powers of CA or TP in reaching its overall conclusions.

8.15.2. 23 objections regarding the request for the grant of CA and TP powers were submitted to the ExA.

- Air Products plc [RR-021, RR-021A and RR-021B]
- Anglo American [RR-014]
- CATS North Sea Limited [RR-017]
- CF Fertilisers UK Limited [RR-018]
- Exolum [AS-196]
- Huntsman Polyurethanes (UK) Limited [AS-096]
- Ineos Nitriles (UK) Limited [RR-019]
- Ineos UK SNS Limited [RR-010]
- National Grid Electricity Transmission Plc [RR-012]
- National Grid Gas Plc [RR-013]
- Network Rail Infrastructure Limited [RR-027]
- North Sea Midstream Partners [REP3-018]
- North Tees Group [RR-016, RR-022, RR-028 and RR-029]
- Northern Powergrid (Northeast) Plc [RR-030]
- Northumbrian Water Limited [RR-031]
- NPL Waste Management Limited [RR-032]
- PD Teesport Limited [RR-033]
- Redcar Bulk Terminal Limited [RR-001]
- SABIC UK Petrochemicals Limited [RR-038]
- Sembcorp Utilities (UK) Limited [RR-034]

- South Tees Development Corporation [RR-035]
- Teesside Wind Farm Limited [PDA-003].

8.15.3. The Applicants responded to CA objections throughout the course of the Examination. At various points throughout the Examination the Applicants provided an update on progress on negotiations via the CA Schedule [REP12-131], as well as verbally at the CA Hearings. The End of Examination Negotiations Status document provides a summary of the position specifically with those APs who had engaged in the Examination [REP13-021].

8.15.4. A summary of the CA and TP matters arising in the Examination relating to each AP is set out below, followed by our conclusions on each.

8.16. Air Products

8.16.1. 'Air Products' refers to the collective of the group of companies who submitted RRs: Air Products (Chemicals) Teesside Limited, Air Products Renewable Energy Limited, and Air Products plc. They are not freehold landowners but are tenants (plots 143, 145, 146, 150) and/or occupiers of a number of plots of land which contain their pipeline infrastructure which are affected by Work Nos. 6 and 10. The CA of rights is proposed for the majority of the plots, with TP of plot numbers 138a, 141a, 142a, and 191c which are located to the edges of those proposed for CA of rights.

8.16.2. Air Products raised objections based on the lack of information regarding how their gas pipeline infrastructure would be protected, inadequate evidence to demonstrate that the Applicants are capable of delivering the project, that the CA of land and rights is not proportionate or necessary, and that it fails to ensure that Air Products is granted sufficient rights to maintain its established use and ensure consistency of supply, safe use and maintenance of infrastructure. They were also concerned about lack of information regarding construction process, method and timing [RR-021, REP2-071 and REP2-072].

8.16.3. The Applicants responded to Air Products' concerns, including protective provisions at Schedule 12 of the dDCO, and stated that separate negotiations were taking place regarding the form of an asset protection agreement. They confirmed a commitment to continue to engage with Air Products as the FEED develops, including sharing of design and construction information for Work No. 6 [section 21, REP1-045 and section 2, REP3-012].

8.16.4. Air Products did not submit any further WRs and whilst they registered to attend hearings they did not participate. Further updates were provided by the Applicants, with the final CA Schedule [REP12-131] indicating that an asset protection agreement was being discussed between the parties, alongside the protective provisions. The End of Examination Negotiation Status document [REP13-021] reported that the Applicants had received a response from Air Products on 4 November and were continuing to seek agreement.

Conclusion

- 8.16.5. There has been no further correspondence from Air Products since D2 to indicate that they have any additional or ongoing concerns. Therefore, we expect that agreement is likely to be reached in the post-Examination period.
- 8.16.6. The Applicants have provided sufficient justification for the CA of rights and TP. We are satisfied that the proposed powers of CA in relation to the Objectors' land would be necessary for the delivery of the Proposed Development and justified in the public interest.

8.17. Anglo American

- 8.17.1. The area of the York Potash Harbour Facilities Order 2016 intersects with the Proposed Development in a number of locations as shown on the 'shared areas plan' [REP8-008]. Anglo American are freehold owners of a significant number of plots as set out in the BoR [REP12-008]. The CA of their land is proposed for plots 325, 328, 329, 330 and 333, with numerous others proposed for CA of rights as listed in the BoR and shown on sheets 5, 6, 7, 8 and 12 of the Land Plans [REP12-015].
- 8.17.2. As set out in section 2.6 of this Report, Anglo American are the developers of the Woodsmith Project (formerly York Potash), which is developing an underground mine for winning and working of polyhalite together with its handling and transportation. Anglo American highlighted that the project will generate very large exports and make a significant and long-lasting contribution to the regional and national economy, creating thousands of jobs. Having commenced construction in 2017, by the end of 2020 the project had already made a contribution of £750m to the regional economies of Yorkshire and the North-East (paragraph 3.9, REP3-016).
- 8.17.3. Anglo American's RR [RR-014] and WR [REP2-073] set out that they have no objection in principle to the Proposed Development and acknowledged that extensive discussions had already taken place. They raised concerns about lack of detail, potential constraints to their DCO, the extent of the work areas, and generally regarding uncertainty and risk. Whilst a number of their concerns related to protective provisions, they confirmed that drafts of a side agreement were actively under consideration with Heads of Terms of a property agreement being discussed. An update was provided at D3 [REP3-016] where they outlined concerns regarding the ability for the Applicants to use CA powers over areas within which Anglo American would be constructing and operating its harbour facility, which may prejudice its delivery and operation.
- 8.17.4. Anglo American attended ISH2 [EV4-001 to 005], CAH1 [EV5-001 to 003], ISH3 [EV6-001 to 010] and CAH2 [EV7-001 to 006], where they provided verbal updates confirming that they were in active discussions with the Applicants regarding the property agreements and protective provisions.

- 8.17.5. Following a request by us at CAH2, a 'Justification of Pipeline Widths' document was provided by the Applicants and section 1.3 specifically refers to Anglo American's land interests [Appendix 1, REP5-026]. In response Anglo American confirmed that agreement had been reached in respect of reducing the width of the permanent easement relating to Work No. 2A (buried gas pipeline) as referred to in paragraph 1.3.4 of the document, and that this would be reflected in the property agreements [ExQ2 CA.2.10, REP6-126].
- 8.17.6. Anglo American clarified that it had acquired sufficient land and interests to deliver its own project, the harbour being the '*last piece in the jigsaw*', through the CA powers included in its DCO. However, they raised concerns that the delivery and/or operation of its project may be prejudiced by the Applicants' proposed CA and that a '*level playing field*' between the two NSIPs was not being sought in the DCO [ExQ2 DCO.2.7, REP6-126].
- 8.17.7. At D11 Anglo American stated that the required easement widths were being captured within the property agreements, along with the necessary rights along a construction and maintenance strip. They also confirmed that the 'shared areas plan' submitted at D8 [REP8-008] was agreed. [ExQ3 CA.3.6, REP11-023].
- 8.17.8. No further SoCG was provided beyond the initial draft at D1 [REP1-030] but instead a Joint Statement between the Applicants and Anglo American was submitted by both parties [REP12-130 and REP12-135]. This statement set out that the side agreement had not yet been completed but good progress was being made. The protective provisions included in the final dDCO [REP12-003] at Schedule 12 Part 17 had been largely agreed as discussed in Chapter 9, from section 9.4.182 of this Report.
- 8.17.9. At D13 the Applicants confirmed the property agreements were in near final form and that they were still aiming to complete them prior to the end of the Examination, if not shortly after [REP13-019 and REP13-021].

Conclusion

- 8.17.10. We recognise the importance of Anglo American's Woodsmith Project to the region and have had regard to the timetable for its delivery, with the harbour works being the '*last piece in the jigsaw*' for their project. The interface between the two projects is inevitable but has been dealt with appropriately in the dDCO and we also note that discussions have been ongoing and productive, with good progress made on the property agreements. Subject to the matters of protective provisions the agreements are capable of being completed shortly.
- 8.17.11. We are satisfied that the Applicants have provided reasoned justification for the extent of the proposed CA of land and rights in respect of Anglo American's land. The Applicants' CA of interests in the land would be necessary in order to implement the Proposed Development and it would be reasonable and proportionate to do so in this instance. We do not find

that the matters raised would, in themselves, preclude the exercise of the CA powers sought.

8.18. CATS North Sea Limited

- 8.18.1. CNSL are located at Seal Sands Road where they operate CATS gas terminal which processes North Sea gas and distributes to local industrial users as well as into the National Transmission System. CNSL also operates a 404km pipeline that transports gas from the North Sea to its terminal at Seal Sands. CNSL are leaseholders of plots 110, 112, 113 and 114 from PDT who have the freehold ownership [sheet 3, REP12-015] which are illustrated in Figure 11 [land plans, sheet 3, REP12-015] below. The CA of land is proposed for plot 112, for the purpose of a gas compound AGI associated with Work No. 2 (the gas connection). The other plots are proposed for CA of rights. PDT (as freeholder) confirmed that the Applicants would deal directly with CNSL with a view to reaching a voluntary agreement for underlease of plot 112 and associated pipeline easement and access rights on adjacent plots 110, 113 and 114. We viewed plot 112 and the surrounding land during ASI1 [EV1-002].

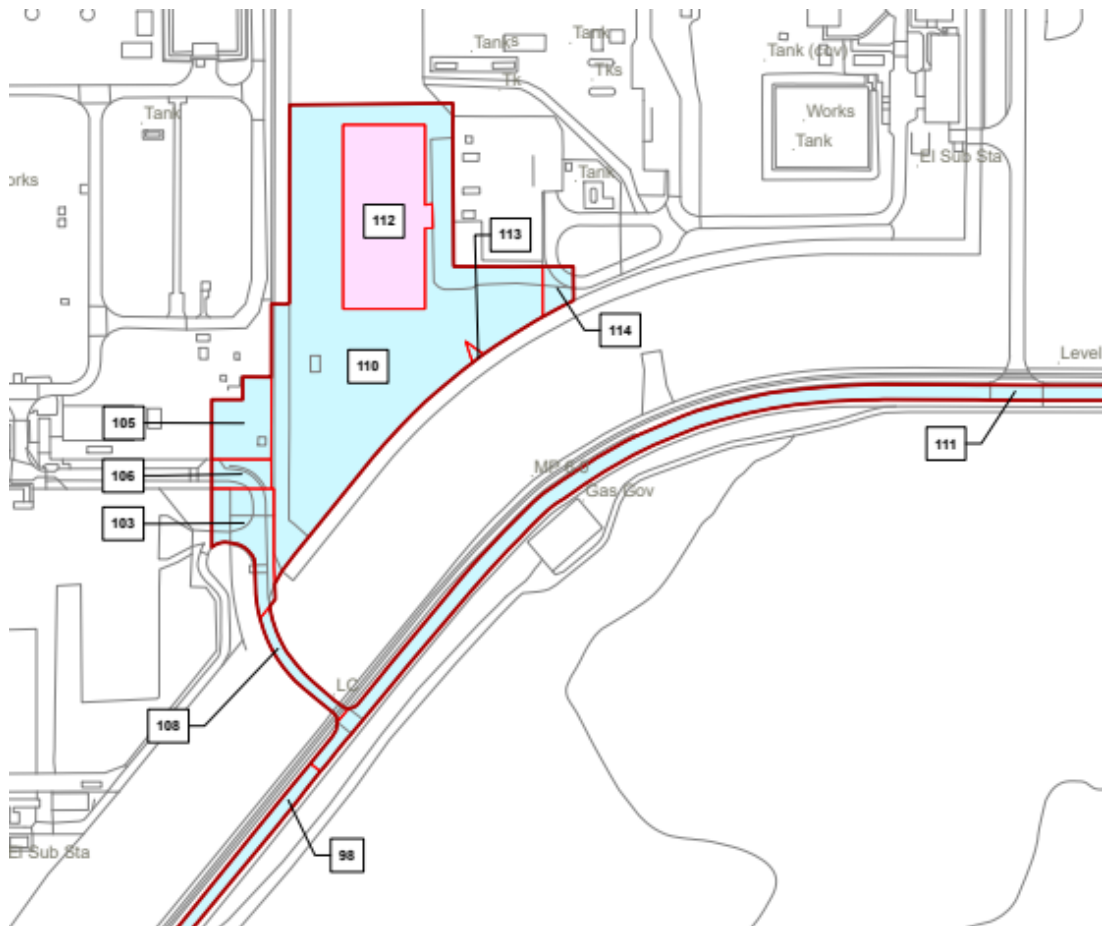


Figure 11: Plots around CATS and TGPP terminals, Seal Sands

- 8.18.2. CNSL's initial objection related to the unnecessary CA of land which could have an adverse impact on their current and future operations [RR-017].

At D2, CNSL's WR further explained their concerns. Whilst they do not oppose the principle of infrastructure being located within the terminal lease site, it could adversely impact their ability to deliver the sufficient volumes and flow rates of gas required for existing CATS terminal customers, and for both the Proposed Development and Sembcorp's power stations. Additionally, they stated it could adversely affect their ability to conduct critical inspection and maintenance activities and rapidly investigate and rectify certain emergency situations [REP2-081].

- 8.18.3. Furthermore, CNSL raised concerns that the CA of plot 112 could prejudice development proposals in respect of the H2 NorthEast Project plans, published by its parent company Kellas Midstream Limited. Although that project is in the early stages of development, CNSL wish to minimise the loss of land from its lease of the terminal site that might be used for the project. It considered that the Applicants had not suitably considered alternatives to the proposed acquisition [REP2-081].
- 8.18.4. In response to ExQ1 CA.1.8 and CA.1.10, CNSL provided plans to show the locations of CATS' operations (including its own pipeline, Navigator pipeline and SABIC pipeline) [REP2-082].
- 8.18.5. The Applicants' justification for selection of plot 112 was provided in their response to CNSL. These relate to its location proximate to the CATS terminal and the National Grid national transmission system. The plot is currently vacant [paragraph 3.4.2, REP1-021]. The Applicants confirmed in their D3 response that they are in regular dialogue with CNSL on both technical and commercial matters and working towards a voluntary agreement for plot 112. Their preference is to conclude such an agreement for the necessary land and rights, but to ensure that the Proposed Development can be delivered, CA powers are required and justified.
- 8.18.6. The Applicants confirmed that they are continuing to work with CNSL during their FEED process to address any design or operational concerns but highlighted that there is no current CATS infrastructure at plot 112 so there would be no direct impact. The Applicants went on to clarify that they had assessed an alternative location for Work No. 2B adjacent to the terminal, but it was found that the alternative would increase the length of connections to the national transmission system and the Sembcorp south pipeline. It would increase engineering and construction complexity as well as risk due to the number of crossings of existing apparatus [section 4.0, REP3-012].
- 8.18.7. The Applicants went on to confirm that they have initiated a study with CNSL to support the development of a commercial agreement, and their preference remains to secure a voluntary agreement for a sub-lease of the Order land [section 2.0, REP5-028].
- 8.18.8. At D6, CNSL stated that if the compound within the CATS terminal is the only possible connection point to the NTS, and if it was chosen in order to source natural gas from the CATS terminal this would require a commercial agreement and be subject to technical commercial feasibility,

but no such agreement has yet been reached. They considered that the Applicants had not fully explained whether all reasonable alternatives for a gas connection had been demonstrated. They also questioned how access to plot 112 would be gained. Finally, CNSL confirmed that if an agreement could be reached that allowed a sub-lease to be entered into then the issue of a preferred alternative would no longer be relevant [ExQ2 CA.2.9, REP6-128].

8.18.9. CNSL did not submit any further representations to the Examination beyond D6, however a final signed SoCG was issued at D13 [REP13-013]. This confirmed a number of additional discussions had taken place between the parties. Agreed matters include the following:

- No objection to the principle of the Proposed Development;
- The Applicants are dealing with CNSL directly (rather than PDT as landowner) with a view to reaching a voluntary agreement for a 60-year underlease of plot 112 (or an agreed portion thereof), as well as the associated pipeline and access rights in the adjacent plots 110, 113 and 114;
- Plot 112 was selected due to the strategic location, being in close proximity to the CATS terminal and the National Grid national transmission system;
- Both parties have shared pre-FEED level data on their respective development plans to support alignment and co-operation;
- The technical study is expected to complete in November 2022 and support the progression of property agreements;
- The Applicants understand the particular risks associated with the CATS pipeline and the liquids pipelines and the impacts of any incident resulting in damage or requiring the pipelines to shut down. The Applicants are engaging with CNSL to progress protective provisions so as to ensure that the DCO includes appropriate protection for existing infrastructure;
- The parties have agreed to continue with engagement during the design of the Proposed Development to minimise or mitigate the impact it will have on existing apparatus and future plans for the terminal; and
- The parties have agreed the form of the side agreement annexing bespoke protective provisions and will now seek to obtain final internal and co-venturer sign off.

8.18.10. Matters to be agreed include the following:

- There is broad consensus around the basis of the commercial terms for grant of an underlease to the Applicants for plots 110, 112, 113 and 114 but discussions are still in active Heads of terms negotiations; and
- The Applicants will continue to engage as the design progresses in order to address their comments and concerns.

8.18.11. The SoCG does not provide any commentary regarding the issue of a reasonable alternative to plot 112 and no further comment was provided by CNSL on this matter following their statement that if an underlease is granted, the issue will fall away.

- 8.18.12. The End of Examination Negotiation Status document [REP13-021] indicates that the parties have now agreed the form of side agreement and annexed protective provisions which are going through final internal sign-off processes ahead of completion.

Conclusion

- 8.18.13. Whilst there are relatively few plots associated with CNSL they are critical to the delivery of the Proposed Development in providing a gas connection. We note that CNSL are leaseholders not landowners, but that PDT as freeholders have stated that the voluntary agreement for underlease would be agreed directly with CNSL. We also acknowledge the national importance of the CATS terminal facility in treatment and processing facilities which handle the gas supplied by the CATS pipeline.
- 8.18.14. We understand that technical studies are ongoing to establish whether an alternative access into plot 112 for the AGI (Work No. 2B), through the CATS terminal, could be utilised instead of the proposed access via the TGPP terminal (see section 8.30 below).
- 8.18.15. Whilst there are continuing issues with both NSMP and CNSL related to the permanent acquisition of plot 112 and the rights over the plots around it, the proposals before us remain as originally submitted. There is a necessity for the gas connection to supply gas to power the CCGT generating station (Work No. 1A) via a tie-in to the AGI to the national transmission network at Seal Sands Road. The underground high pressure gas pipeline (Work No. 2A) from the AGI is required to connect it to the national transmission network, and access is necessary to enable its construction and maintenance. Without the gas infrastructure the Proposed Development could not proceed.
- 8.18.16. Potential future development at CNSL carries little weight as there are no proposals before the ExA. The land is currently vacant and is in a location which can viably connect to the transmission network. We consider that the Applicants have provided a satisfactory explanation for the selection of the location for the AGI and gas connection. Technical studies may demonstrate that an alternative access may be possible, to negate the necessity to access the plots via the TGPP terminal access, however no reasonable alternatives have been put before us for the location of the AGI.
- 8.18.17. The Applicants have adequately justified the extent of the land within the scope of the CA powers sought. We are satisfied that the proposed powers of CA in relation to the land at the CATS terminal would be necessary for the achievement of the Applicant's reasonable objectives and the public benefit is sufficient to outweigh private harm.

8.19. CF Fertilisers UK Limited

- 8.19.1. CFL are manufacturers and distributors of ammonia fertiliser and nitric acid, together with a range of other chemicals and utilities including a by-product of food grade CO₂. These are supplied to neighbouring Teesside businesses and nationally critical supply chains in the food and drinks

industry. Its Billingham facility is located off Haverton Hill Road and they have a number of land interests in the Billingham area. CFL have freehold land ownership of several plots (plot numbers 10/10a, 12/12a, 15 to 17, 19 to 26, 28/28a, 30 to 33, and 36) within the Order land located to the north and south of the B1275 Belasis Avenue, which are proposed as part of Work No. 6, the CO₂ gathering network corridor [sheet 1, REP12-015].

- 8.19.2. The SoCG states that CFL would be a beneficiary and emitter to NZT's CO₂ gathering network and that they are supportive of the Applicants' Proposed Development, which would assist in the achievement of their environmental goals [REP12-125].
- 8.19.3. CFL's RR sets out their concerns regarding the potential for effects on its pipeline and cabling infrastructure including proposed new pipelines. Concerns are also raised regarding decommissioning. Its objection states that the uninterrupted use, maintenance of and unhindered access to its infrastructure is critical to CFL's continued operations, and also sets out the highly integrated nature of the infrastructure and local businesses [RR-018]. CFL provided plans to show the locations of their pipelines, and options for the proposed route for their new gas pipeline. CFL also clarified that a predicted 665,000 tonnes of CO₂ per year would be captured by their plant to be fed into the gathering network [ExQ1 CA.1.8 and CA.1.14, REP2-078].
- 8.19.4. The End of Examination Negotiation Status document stated that the side agreement and annexed protective provisions were going through final internal sign-off ahead of completion. Heads of Terms for an option agreement for a Deed of Grant of Easement are agreed, and the Applicants stated that the legal documentation is currently with CFL and progress is hoped to be made shortly after the Examination [REP13-021].

Conclusion

- 8.19.5. We note that limited representations were made by CFL relating to the Deed of Grant of Easement and that they did not make specific objections relating to CA of land or rights. It is also noteworthy that CFL will be a beneficiary and emitter to the CO₂ gathering network. A voluntary option agreement is being progressed and we see no reason why this would not proceed in the post-Examination period.
- 8.19.6. In the absence of such an agreement, we consider that the Applicants have provided sufficient justification for the CA of rights. We are satisfied that the proposed powers of CA in relation to the Objectors' land would be necessary for the delivery of the Proposed Development and justified in the public interest.

8.20. Exolum (including Exolum Riverside Limited and Exolum Seal Sands Limited)

- 8.20.1. Exolum operates a network of fuel distribution pipelines as part of the UK's supply system. They are not listed as freehold landowners but they are occupiers of a large number of plots as listed in the BoR [REP12-008]

which are proposed for CA of rights as well as TP [sheets 1, 3, 4, 5, 12, REP12-015]. Their apparatus is predominately affected by the CO₂ gathering network corridor (Work No. 6), and the gas connection (Work No. 2).

- 8.20.2. Exolum stated that they do not have concerns with the Proposed Development as a whole but are concerned with any impact on access to or the operation of its apparatus. They object to any interference with, extinguishment or suspension of the land rights relating to its apparatus or any activity that risks the operation of its apparatus or rights [AS-196].
- 8.20.3. The Applicants submitted an initial draft SoCG with Exolum at D5 [REP5-021] which notes that the parties are progressing protective provisions and a side agreement, but no later update was provided.
- 8.20.4. At ISH3 [EV6-001 to 010] Exolum stated they are negotiating an asset protection agreement, and followed it up at D5, confirming that agreement had not been reached to date, and attaching their preferred protective provisions [REP5-033].
- 8.20.5. The End of Examination Negotiation Status table [REP13-021] notes that the form of side agreement and annexed protective provisions have been agreed and are going through the final internal sign off process.

Conclusion

- 8.20.6. Exolum do not have freehold ownership of any plots within the Order Limits but they have significant rights related to occupation of its apparatus. We note that no submissions had been received from Exolum since D5, which related primarily to protective provisions, and the SoCG did not progress beyond the first draft. Nonetheless, final sign-off of a side agreement appears to be imminent.
- 8.20.7. We are satisfied that there is a need for CA of rights in order to secure the delivery of the proposed CO₂ gathering network and gas connection, and that the matters raised by Exolum would be appropriately dealt with via protective provisions. The public benefits of the Proposed Development would outweigh any loss of private interests in respect of Exolum's rights.

8.21. Huntsman Polyurethanes (UK) Limited

- 8.21.1. HPU's initial RR was accepted as an additional submission [AS-046]. HPU operates facilities at Wilton International, where they manufacture the production of nitrobenzene and aniline, connecting via the Link Line corridor and No. 2 Tunnel to facilities north of the Tees. We viewed the Sembcorp Link Line corridor, the headhouses/entrances to Tunnel no.2, and the connection to the Exolum terminal as requested by HPU [REP1-048] at ASI1 [EV1-002].
- 8.21.2. HPU's concerns in relation to powers of CA were set out in Section 5 of their D2 WR [REP2-068]. Their interests in the Link Line corridor consist

of rights to maintain their apparatus. HPU raised concerns that their existing rights to access and maintain its apparatus would be over-riden and that this could have profound consequences in terms of public and private loss to the company. They sought for protective provisions to be tightened to safeguard its pipeline infrastructure [REP2-068].

- 8.21.3. However, HPU are not listed in the final BoR [REP12-008]. They were listed up to the D4 version [REP4-005] as having Category 2 interests in plots 132, 132a and 132b which is land to the south of Seal Sands Road owned by NTG and leased by SABIC (sheet 4 of the Land Plans). The relevant plots were deleted at D6 as a result of the reduction in the area of Order land arising from change number 16 as set out in the change request [REP6-105] which was agreed by the ExA [PD-017].
- 8.21.4. The Applicants responded [REP3-012] that the protective provisions would provide a robust basis for protecting HPU's infrastructure and operations and drafted a SoCG for agreement with HPU at D1 [REP1-033], however this did not progress beyond the initial draft.
- 8.21.5. The final CA Schedule [REP12-131] and the end of Examination Negotiation Status table [REP13-021] indicates that a side agreement is being negotiated between the parties, alongside the protective provisions. No further submissions were received from HPU beyond D2, nor did they provide a set of their preferred protective provisions.

Conclusion

- 8.21.6. HPU are not listed in the final BoR, nonetheless the SoS may wish to seek an update with regard to the completion of any voluntary agreement regarding HPU's interest in apparatus along the CO₂ gathering network corridor (Work No. 6).

8.22. Ineos Nitriles (UK) Limited

- 8.22.1. Ineos Nitriles are landowners and occupiers of numerous plots around Seal Sands Road to the north of the River Tees (Land Plans sheets 3 and 4, REP12-015]. The land is proposed for TP for a construction compound and laydown area and access at plots 122 and 123 (Work Nos. 9C and 10), as well CA of rights relating to the CO₂ gathering network (Work No. 6). We viewed the location of the compound at ASI1 [EV1-002].
- 8.22.2. Ineos Nitriles support the project in principle but have concerns that the Proposed Development would have the potential to prevent access to critical infrastructure, adversely affect their offices, give rise to safety hazards, and that decommissioning had not been adequately addressed. The proposed temporary construction compound and accessway was supported in principle, but they note that the plots are currently an office car park so would cause major disturbance to their office buildings and would be unnecessary given the amount of vacant land available as an alternative [RR-019].
- 8.22.3. The Applicants responded in full at D1 [section 19.0, REP1-045], and stated that it considered the land identified for TP for the construction

compound is proportionate but would consider any proposals put forward by Ineos Nitriles. Ineos Nitriles confirmed that they are in discussions with the Applicants regarding an agreement for the necessary rights which would allow them to provide alternative routes through its land to avoid impacts on its current or future operations. Ineos Nitriles also stated that their operations are currently undergoing significant change with demolition of their chemical plant currently taking place (expected to be completed by June 2023), and that the use of the land could change as future options for the site are considered [ExQ1 CA.1.8 and CA.1.11, REP2-084].

- 8.22.4. An initial draft of a SoCG was provided by the Applicants at D1 [REP1-023] stating that the parties are working towards a voluntary agreement and Heads of Terms are being negotiated, and that the agreement would provide a mechanism to secure suitable alternative locations for the compound, laydown and access. No further iteration of the document was issued.
- 8.22.5. There was no further engagement from Ineos Nitriles regarding CA matters until D11, when they confirmed that the drafting of a side agreement and protective provisions are at an advanced state and were expected to complete imminently and prior to the close of the Examination [REP11-033].
- 8.22.6. The Applicants' final CA Schedule [REP12-131] and End of Examination Negotiation Status document [REP13-021] indicate that Heads of Terms have been agreed subject to board approval but following a lack of progress because of a lapse in communication from Ineos Nitriles, the Applicants had then proactively drafted and issued draft legal agreements for their consideration. The Applicants continue to attempt to engage with Ineos Nitriles to progress matters.

Conclusion

- 8.22.7. We note the willingness of the Applicants to consider alternative proposals in relation the location of the construction and laydown area at plots 122/123, but in the absence of an update from the parties this area of land remains as originally proposed. At the time of ASI1 the wider area of land formerly in use as a chemical plant was being demolished. It has not been confirmed by Ineos Nitriles whether their objection to the TP of these plots remains, given that the site is no longer in active use. Nonetheless, the land owned by Ineos Nitriles is proposed for TP, not CA, and as such it is not necessary to demonstrate that all reasonable alternatives have been explored.
- 8.22.8. With regard to CA of rights in relation to Work No. 6, we are satisfied that the Applicant has provided reasoned justification for the extent of the proposed CA of rights. There is a need for this land to be utilised in connection with the Proposed Development. We are satisfied that the proposed powers of CA are justified in the public interest.

8.23. Ineos UK SNS Limited and One-Dyas UK Limited: 'The Breagh Pipeline Owners'

- 8.23.1. Ineos UK SNS Limited is the operator and co-owner with One-Dyas UK Limited of Breagh, a southern North Sea gas field with pipeline connected to Teesside Gas Processing Plant at Seal Sands Road. The pipeline is a nationally significant asset that is integral to the UK's current and future energy security, and Ineos UK SNS Limited raised concerns that the safe and efficient operation of the pipeline should not be put at risk [RR-010].
- 8.23.2. Both Ineos UK SNS Limited and One-Dyas hold a number of land rights and interests within the DCO Order Limits as set out in the BoR [REP12-008]. The majority are proposed for CA of rights. Whilst Ineos UK SNS Limited is not a landowner, One-Dyas are listed in the BoR as freehold owners of a small area of land at plot 356 and lessee/tenants of numerous plots [sheets 3, 4, 5, 7, 8 and 12, REP12-015]. The Breagh apparatus is predominately affected by the CO₂ gathering network corridor (Work No. 6), and the gas connection corridor (Work No. 2).
- 8.23.3. There was no further engagement from Ineos UK SNS Limited during the Examination beyond their RR, and One-Dyas did not engage at any point. No update to the SoCG was provided beyond the initial draft [REP1-031] which set out that the parties were negotiating bespoke protective provisions and a side agreement in order to provide appropriate protection for the Breagh Pipeline. The protective provisions for the benefit of the Breagh Pipeline Owners are provided at Schedule 12 Part 21 of the dDCO [REP12-003].
- 8.23.4. The final version of the CA Schedule [REP12-131] and End of Examination Status table [REP13-021] indicate that agreement has been reached, subject to final sign off.

Conclusion

- 8.23.5. We note the lack of engagement from Ineos UK SNS Limited beyond submission of their RR. One-Dyas are landowners and leaseholders but did not engage in the Examination. We acknowledge that agreement has been reached subject to sign-off, and nevertheless we are satisfied that the CA is needed in order to secure the delivery of the proposed CO₂ gathering network and gas connection, and that the matters raised would be appropriately dealt with via protective provisions for the Breagh Pipeline Owners.

8.24. National Grid Electricity Transmission plc

- 8.24.1. NGET are not landowners but they are Statutory Undertakers, and occupiers of numerous plots that are proposed for CA of rights or TP. NGET has a number of substations and overhead transmission lines within or in close proximity to the Order land, including at the site of the proposed connection at Tod Point substation (Work No .3) to upload electricity from the CCGT [sheet 12, REP12-015].

- 8.24.2. NGET do not object in principle to the Proposed Development but object to any CA powers for land or rights or TP where it would affect its land interests, rights, apparatus or right to access and maintain its apparatus, unless suitable protective provisions and related agreements have been secured. They confirmed that they would continue to liaise with the Applicants with a view to reaching a satisfactory agreement [RR-012 and REP2-066]. The Applicants responded that the final details of layout and line routes remain subject to final design and agreement with NGET [section 8.0, REP3-012].
- 8.24.3. An initial draft SoCG was submitted by the Applicants at D1. It sets out that the parties have agreed the Tod Point substation connection agreement, which comprises all the necessary elements to enable electricity to be imported to the power generation equipment when shutdown, and export to the National Grid network when the Proposed Development is in operation. The new equipment and modifications required at the existing Tod Point substation would be designed, constructed, owned and operated by NGET. The connection from the existing Tod Point substation and a new substation/compound would be designed, constructed, owned and operated by the Applicants [REP1-011].
- 8.24.4. The SoCG also sets out that preliminary work on the grid connection layout has been completed and that there is sufficient room within the Order Limits for the construction and future operation of the grid connection at the proposed location at Tod Point. The final layout of the facilities including cable routing has not been finalised, nonetheless an indicative layout is included at Appendix A of the SoCG. Finally, it confirmed that discussions regarding protective provisions and a side agreement are progressing [REP1-011]. No further SoCG was drafted, and NGET did not participate in the Hearings.
- 8.24.5. At D11, NGET confirmed they are in proactive discussions with the Applicants and considers agreement on the final terms is likely, and there are not any substantial concerns that cannot be addressed between the parties [REP11-024].
- 8.24.6. The final CA Schedule [REP12-131] confirms that agreements are in place with NGET for the bilateral connection agreement, construction agreement, Connection and Use of System Code accession agreement and transmission related agreement.
- 8.24.7. The End of Examination Negotiation Status document states that the parties are continuing to engage in negotiating a side agreement and protective provisions, with the latest set of drafts issued by the Applicants on 28 October 2022. If Agreement is not reached, the Applicants' position remains that compulsory acquisition powers should be granted for the reasons given in the SoR [REP12-010] and notes that NGET would benefit from the protection of the draft Order protective provisions provided at Part 3 of Schedule 12 to the DCO [REP12-003].

Conclusion

- 8.24.8. The need for the proposed substation at Tod Point and electrical connections have been satisfactorily demonstrated by the Applicants. The amount of land where CA of rights is proposed has been reduced through further technical design work followed by the approval of the relevant change requests.
- 8.24.9. We understand that further design work is ongoing but for the purposes of s138 of the PA2008 we are satisfied that the extinguishment of rights and interference with apparatus sought by the Applicants in relation to the relevant plots would be necessary for the purpose of carrying out the Proposed Development. The dDCO contains appropriate protective provisions for the protection of NGET.

8.25. National Grid Gas plc

- 8.25.1. NGG are not landowners but are Statutory Undertakers and occupiers of numerous plots that are proposed for CA of rights or TP. NGG has a high pressure gas transmission pipeline and AGI within and in close proximity to the Order land including the proposed gas connection for Work No. 2 [sheet 3, REP12-015]. A tie in point into the NGG Teesside AGI is proposed to offtake gas for the CCGT.
- 8.25.2. NGG confirmed that they are working with the Applicants to enter into connection agreements and other commercial arrangements at the relevant time. They do not object in principle to the Proposed Development, but object to any CA powers for land or rights or TP where it would affect its land interests, rights, apparatus or right to access and maintain its apparatus, unless suitable protective provisions and related agreements have been secured [RR-013 and REP2- 067].
- 8.25.3. The Applicants responded that subject to agreements with landowners and NGG as applicable, the Applicants do not foresee the requirement for CA of land or rights or other related powers to acquire land temporarily, override or otherwise which would interfere with NGG easements or rights or stop up public or private rights of access [section 9.0, REP3-012].
- 8.25.4. An initial draft SoCG was submitted by the Applicants at D1 [REP1-012]. It sets out that a gas connection application was formally accepted by NGG on 7 February 2021. NGG confirmed to the Applicants that sufficient capacity was available in the gas network and advised that the full connection application was not required. Both parties then agreed to continue working together with respect to the requirements for the Gas Connection with a view to submitting a full application for a Connection Offer in early 2023.
- 8.25.5. The SoCG also sets out that preliminary work on the Gas Connection layout has been completed, but the Minimum Offtake Connection including the pipeline has not yet been finalised and the location of the Remote Telemetry Unit is not yet agreed. The nature of connection onto

the National Grid Transmission System is also not yet agreed but would be discussed at detailed design stage.

- 8.25.6. The SoCG confirms that it has been agreed that there is sufficient room within the Order Limits for the construction and future operation of the Gas Connection at the location proposed (CATS terminal at Seal Sands, as shown on sheet 5 of the Gas Connection and AGI Plans [AS-159]). It sets out that NZT will need to sign a Gas Construction Agreement and agree to National Grid Standard Conditions of Contract for the Gas Connection. It is agreed that NZT will secure the necessary temporary permissions, consents and land rights, including those for access, to enable NGG to construct the Gas Connection. No further SoCG was submitted beyond D1, and NGG did not participate in the Hearings.
- 8.25.7. At D11, NGG confirmed they are in proactive discussions with the Applicants and considers agreement on the final terms is likely, and there are not any substantial concerns that cannot be addressed between the parties [REP11-025].
- 8.25.8. The final CA Schedule [REP12-131] confirms that the Applicants received a draft side agreement from NGG for review on 26 October 2022. A Planning and Advanced Reservation of Capacity Agreement is required and will be progressed in 2023.
- 8.25.9. The End of Examination Negotiation Status document states that the parties are continuing to engage in negotiating a side agreement and protective provisions, with the latest set of drafts issued by the Applicants on 28 October. If Agreement is not reached, the Applicants' position remains that CA powers should be granted for the reasons given in the SoR [REP12-010] and notes that NGG would benefit from the protective provisions provided at Part 4 of Schedule 12 to the DCO [REP12-003].

Conclusion

- 8.25.10. The need for the proposed AGIs and gas connections in the relevant plots have been satisfactorily demonstrated by the Applicants. The SoS is directed to our conclusions on CNSL and NSMP regarding the CATS and TGPP terminals respectively, which overlap with the land occupied by NGG (sections 8.18 and 8.30 of this Report).
- 8.25.11. We acknowledge that further design work is ongoing but for the purposes of s138 of PA2008 we are satisfied that the extinguishment of rights and interference with apparatus sought by the Applicants in relation to the relevant plots would be necessary for the purpose of carrying out the Proposed Development. The dDCO contains appropriate protective provisions for the protection of NGG.

8.26. Navigator Terminals North Tees Limited and Navigator Terminals Seal Sands Limited

- 8.26.1. Navigator are freehold owners, tenants and occupiers of a number of plots predominately located at Seal Sands Road, which are proposed for

CA of rights and TP for Work Nos. 6, 9 and 10. These are primarily detailed on Sheet 19 of the Works Plans [REP12-107] and Sheet 5 of the Land Plans [REP12-015].

8.26.2. Navigator did not participate in the Examination, nonetheless they are significant landowners affected by the CA of rights (and TP) proposed. There are bespoke protective provisions for the benefit of Navigator at Part 24 of Schedule 12 of the dDCO [REP12-003].

8.26.3. The Applicants updated the Examination via the CA Schedule. The final version [REP12-131] confirms that Heads of Terms for an Option Agreement and Deed of Grant of Easement have been agreed between the parties, and the draft legal documents have been issued but negotiations are continuing, following the most recent comments from Navigator on 18 October 2022.

Conclusion

8.26.4. Navigator are landowners and occupiers of numerous plots proposed for CA of rights and TP. We note that Heads of Terms have been agreed and that negotiations are continuing. Nonetheless in the absence of a voluntary agreement we are satisfied that the CA is needed in order to secure the delivery of the Proposed Development and that protective provisions for Navigator would be secured in the recommended DCO.

8.27. Network Rail Infrastructure Limited

8.27.1. NR have a range of interests within the Order Limits including railway corridors to the south of the B1275 Belasis Avenue in Billingham, the south of Seal Sands Road, and to the north of the A1085 in the vicinity of Bran Sands and Teesworks [sheets 1, 3, 8 and 12, REP12-015]. The land is required for a range of works including the CO₂ gathering network corridor, gas, electricity and water connections. Network Rail is a Statutory Undertaker.

8.27.2. NR raised concerns that the information supplied in the application was not sufficiently detailed to fully assess potential impacts on railway safety and operations. NR stated that they seek protection from the exercise of CA powers over their operational land both during construction and operation, and that their standard protective provisions would need to be included in the DCO. Additionally, a number of legal and commercial agreements would need to be entered into, including property agreements, which NR is prepared to discuss subject to a number of terms [RR-027].

8.27.3. The Applicants' consider there is sufficient information to understand how the proposed works would interact with the operational railway, and that they are in discussions to ensure that the project would not impact on operational safety, with protective provisions included in the dDCO. Their response also confirms their preference to obtain all necessary land and rights by voluntary agreement rather than relying on CA powers [REP1-045].

- 8.27.4. An initial draft SoCG was submitted by the Applicants at D1, which confirms that the relevant clearances for all rail crossings have been received and approved by NR, which allow negotiations to open. They have engaged with NR's asset protection team to enter into the necessary licences and land rights to implement the scheme. They also seek to ensure that the design and construction would not have an adverse impact on railway operations via protective provisions in the dDCO. It states that the parties are negotiating a Framework Agreement and working to conclude a voluntary agreement for an option and lease [REP1-019].
- 8.27.5. The final CA Schedule [REP12-131] and the End of Examination Negotiation Status document state that Heads of Terms have been reviewed by NR and that a proposal has been provided by the Applicants for a commercial agreement. It adds that the parties are continuing to seek to reach agreement on voluntary agreements following close of the Examination [REP13-021].

Conclusion

- 8.27.6. We note that NR did not engage any further with the Examination beyond submission of their RR. We are satisfied that the extinguishment of rights and interference with apparatus sought by the Applicant in relation to NR's land interests would be necessary for the purpose of carrying out of the Proposed Development. The dDCO includes bespoke Protective Provisions for the benefit of NR in order to safeguard its interests and assets.

8.28. Northern Gas Networks Limited

- 8.28.1. Northern Gas are not landowners but are a Statutory Undertaker and occupiers of a range of plots as included in Category 1 of the BoR [REP12-008] which are proposed for CA of rights and TP. They did not participate in the Examination, but protective provisions were entered into the D4 dDCO, and are set out at Schedule 12 Part 26 [REP12-003].
- 8.28.2. The End of Examination Negotiation Status document [REP13-021] refers to an asset protection agreement being negotiated between the parties, but there is limited information regarding anticipated timescales for reaching agreement.

Conclusion

- 8.28.3. For the purposes of s138 of PA2008 we are satisfied that the extinguishment of rights and interference with apparatus sought by the Applicants in relation to the relevant plots would be necessary for the purpose of carrying out the Proposed Development. The dDCO contains appropriate protective provisions for the protection of NGET.

8.29. Northern Powergrid (Northeast) plc

- 8.29.1. NPG are not landowners but are category 2 occupiers of a number of plots which are proposed for CA of rights or TP. NPG are Statutory Undertakers.
- 8.29.2. In their RR, NPG stated that they are supportive of the Proposed Development in principle but have concerns regarding impacts on its existing assets and their ability to serve clients in the future. They pointed out that insufficient information has been provided to enable them to adequately assess the impact that the Proposed Development would have on their network. They are also not satisfied that the dDCO includes adequate land rights for works required to relocate their apparatus nor to afford them with the necessary rights to access and maintain their apparatus [RR-030].
- 8.29.3. The Applicants responded that it is their preference to conclude an agreement with NPG to regulate matters between its land and assets and the Proposed Development but seek CA powers to enable it to construct, maintain and operate it. They confirmed that technical information had been shared between the parties and they will utilise the data to engage further with NPG to minimise or mitigate the impact on NPG's apparatus. Following the amendment submitted in April 2022 [PD-010] the extent of Work No. 2A was reduced. The Applicants also clarified that NPG would be given the opportunity to review the design and take part in engineering and safety reviews [Section 27.0, REP1-045].
- 8.29.4. Two versions of a SoCG were submitted by the Applicants at D1 [REP1-014] and D4 [REP4-011] but no final signed version was submitted, nor did NPG engage further in the Examination.
- 8.29.5. The final CA Schedule [REP12-131] and End of Examination Negotiation Status document [REP13-021] set out that the parties are making progress on the draft side agreement and protective provisions, and will continue to seek to reach agreement following the close of the Examination but the Applicants' position remains that CA powers should be granted for the reasons set out in the SoR [REP12-010] and that NPG would benefit from the protective provisions set out at Part 12 of Schedule 12 of the dDCO [REP12-003].

Conclusion

- 8.29.6. We are satisfied that the extinguishment of rights and interference with apparatus sought by the Applicant in relation to NPG's land interests would be necessary for the purpose of carrying out of the Proposed Development. The dDCO includes bespoke Protective Provisions for the benefit of this company in order to safeguard its interests and assets, and we consider these to be sufficient.

8.30. North Sea Midstream Partners: Teesside Gas Processing Plant/Teesside Gas and Liquids Processing

- 8.30.1. The interests of TGPP and TGLP are managed by NSMP who own the TGPP plant at Seal Sands Road, a national energy infrastructure installation delivering gas into the national transmission system. The plant supports the operation of approximately 30 natural gas fields in the North Sea, and as such it has high standards of security and is classified as an upper tier COMAH site. They are freehold owners of plots 103, 105, and 106, which are adjacent to the proposed site of the AGI and gas connection at plot 112. They also have rights of access and easements on nearby land including plots 98, 108 and 111 which contain sections of the sole access road into the TGPP [sheet 3, REP12-015]. The plots are required in relation to Work No. 2, the gas connection.
- 8.30.2. The plots referred to in this section are illustrated on Figure 11 and in section 8.18 of this Report in relation to the land interests of CNSL.
- 8.30.3. NSMP did not submit a RR but we accepted their engagement in the Examination as an AP from D3 [REP3-018]. Their detailed written submission at D5 [REP5-041] raised the following concerns:
- Disruption in use of the road would have severe consequences for their ability to safely operate the plant and maintain a stable flow of gas to the national supply;
 - Seek to maintain 24 hours unimpeded access to its land and operations during all phases of the Proposed Development;
 - Seek to retain and protect its rights to access, maintain and develop its plant;
 - The DCO should ensure that construction traffic to plots 105, 110 and 112 would not take place via its access road (plots 103, 106 and 108) and an alternative should be sought via the CATS terminal;
 - Work No. 2A, the underground high pressure gas pipeline, should be constructed only within plot 105 and not in plots 103 and 106;
 - NSMP operates and benefits from various easements and rights of access in a number of other plots;
 - Any works undertaken in the relevant Plots that contain pipelines supplying, exporting from or benefiting the TGPP must not risk or impede the safe operation of the Plant nor access to the NSMP site or relevant pipelines; and
 - Failure to adequately consult at an earlier stage, which has put them in a disadvantaged negotiating position.
- 8.30.4. NSMP sought for alternative access to be secured within a legal agreement and for its position to be protected through the DCO, and in the meantime it would maintain its objection [REP5-041].
- 8.30.5. The Applicants responded that access to plots 105, 110 and 112 for Work Nos. 2A and 2B via the existing TGPP access road (plots 103, 106 and

108) is necessary in order to deliver the Proposed Development, and that the continued access and operation of the plant can be protected and managed through protective provisions. If voluntary agreement with CNSL was secured the CATS terminal entrance would be used instead to access plots 110 and 112. However, access to plot 105 would still be required via plots 103, 106 and 108 because security fencing between the two terminals prevents access, but it would be subject to stringent safeguards in protective provisions. The Applicants also explained the addition of plot 106 to Schedule 7 of the dDCO at D6 [REP6-002] in connection with Work No. 10 (access). They clarified that work within plot 105 is the responsibility of Sembcorp who also would also benefit from protective provisions [section 11.0, REP6-122].

- 8.30.6. NSMP appeared at CAH3 [EV10-001 to 005] and confirmed that whilst they were in active and positive discussions regarding the protective provisions and side agreement, Heads of Terms for a voluntary land agreement were unlikely to be agreed before the close of the Examination. NSMP acknowledged that access over plots 103, 106 and 108 to carry out Work No. 2A on plot 105 is needed by the Applicants, and that it would be the appropriate route subject to necessary controls and management through the protective provisions. They requested a new Work number to be created to grant new rights of access over plot 106, to be restricted to the construction, use and maintenance of plot 105 only (and not plots 110/112) [REP9-035 and Appendix 3, REP11-040].
- 8.30.7. A final SoCG was submitted at D13, which clarifies that the parties have agreed that the Applicants would not use plots 105 and 106 for access to plots 110, 112, 113 and 114. The SoCG also sets out that the Applicants are seeking an additional strip of access road outside of the Order Limits which may be included within a potential voluntary agreement, which widens the access into plot 105. It is stated that this is beneficial to the project but not essential and is in principle acceptable to NSMP [sections 4.2-4.3, REP13-015].
- 8.30.8. The interplay with other APs is also noted in the SoCG. The tie-in point within plot 105 would affect the lease from NSMP to Sembcorp of this area of land and involve a tripartite agreement between all three parties. PDT are the owners of plot 108 and access rights would be secured directly from them as the freeholder, draft Heads of Terms having been issued to them. The SoCG also confirms the Applicants are pursuing a voluntary agreement with CATS for alternative access [section 4.5, REP13-015].
- 8.30.9. NSMP are concerned that the rights are restricted to non-construction traffic other than for plot 105 but they are prepared to allow construction access via plots 103 and 106 for the part of the pipeline and tie-in point which fall within plot 105 only, subject to protective provisions and other measures to address their access concerns [section 4.3, REP13-015].

- 8.30.10. Whilst initial Heads of Terms had been issued and subsequent drafts exchanged at the time of the SoCG, the structure of the legal agreements remains to be defined.

Conclusion

- 8.30.11. We acknowledge the national importance of the TGPP in view of its role in processing of large volumes of North Sea gas. NSMP's concerns largely centre around use of the access into the TGPP site and its relationship with the adjoining plots which are on land leased by CNSL within the CATS terminal. Safety and operational issues would be appropriately dealt with via the protective provisions as discussed at Chapter 9, from paragraph 9.4.231 of this Report.
- 8.30.12. The CA Guidance requires the Applicants to demonstrate that "*all reasonable alternatives to CA (including modifications to the scheme) have been explored*". We consider that there is ample evidence of the Applicant's efforts to do just that, and to have regard to the conflicting concerns of different parties in considering the various options.
- 8.30.13. The potential alternative access has been raised by NSMP, but this is reliant on agreements with a number of other parties including CNSL, PDT and Sembcorp. Occupiers of the relevant plots also include Statutory Undertakers responsible for gas transmission. We understand that discussions are ongoing regarding an alternative access via the CATS terminal, and a voluntary agreement on this matter would satisfy many of NSMP's concerns. However, such an agreement is not before us and the plots remain as proposed via the TGPP access.
- 8.30.14. The protective provisions at the end of the Examination would ensure that if an alternative access is secured, these plots would not be needed for such purposes. In the event that agreements with the other APs are not secured, we consider that the protective provisions would adequately cover NSMP's safety concerns (Chapter 9, from paragraph 9.4.231).
- 8.30.15. Whilst the Applicants acknowledge that some plots sought may not ultimately need to be the subject of the CA powers, they are not yet in a position to confirm that to be the case. The Applicants would not use these powers if they were not needed for the Proposed Development or if an alternative could be agreed between parties. We consider this to be a reasonable approach.
- 8.30.16. The Applicants have provided sufficient justification for the CA of rights of the plots owned and occupied by NSMP for the TGPP. We are therefore satisfied that the proposed powers of CA would be necessary for the delivery of the Proposed Development for Work No. 2 and are justified in the public interest.

8.31. North Tees Group

- 8.31.1. NTG comprises North Tees Limited, North Tees Rail Limited and North Tees Land Limited (as defined in Schedule 12, Part 27, paragraph 366 of the dDCO).

- 8.31.2. NTG are freehold landowners of land which lies within the Link Line pipeline corridor to the south of Seal Sands Road [plots 119 to 121, 124 (a, b and d) and 128/128a sheet 4, REP12-105]. They are also lessee/tenants of plots 81 and 83 to 88 [sheet 3, REP12-105]. The land is required for the construction and maintenance of the CO₂ gathering network corridor (Work No. 6). At D7 NTG provided plans to show the extent of their land interests, overlaid with the Order land, together with photographs of relevant apparatus along the pipeline corridor as well as other constraints including fencing and access roads/crossings [REP7-014]. We viewed plots 124 and 128 and the general extent of NTG's interests and their occupiers at ASI2 [REP10-001].
- 8.31.3. NTG's initial RR [RR-016, RR-022, RR-028 and RR-029] included the following comments:
- the extent of the Order land is excessive;
 - the nature of the rights being sought is too extensive, wide ranging and partly inappropriate, including the proposed CA of rights in perpetuity;
 - proper consideration had not been given to the impact on their adjacent landholdings and wider plans, resulting in blight and sterilisation of the established corridor;
 - there are safety issues as well as environmental considerations for the established multi-user service corridor;
 - CA would give rise to an unregulated pipe with no basis for control and protection within a heavily regulated corridor where occupiers have specific covenants and obligations; and
 - commercial terms can be readily agreed where there is full engagement.
- 8.31.4. The Applicants' response pointed out that the accepted change request [PD-010] had reduced the impacts on NTG land. They stated that the extent of land is considered necessary to ensure the safe and efficient design, construction and ongoing operation and maintenance of the CO₂ gathering network pipeline, and that the final routeing is subject to further engineering assessment. They did not agree that the current Order Limits would constrain NTG's development plans and that whilst their preference is for a voluntary agreement, the protective provisions would be adequate in the event that the Applicants have to rely on CA powers [section 16.0, REP1-045].
- 8.31.5. NTG continued to engage throughout the Examination, with their concerns broadly including the following: the extent and duration of rights; sterilisation of land; TP of plots 124a and 128a; crossing points; and management responsibilities.
- Extent and Duration of Rights*
- 8.31.6. NTG made numerous comments during the Examination regarding the extent and duration of rights proposed along the pipeline corridor, citing a lack of engineering or technical justification supporting the case for the width and duration of rights sought.

- 8.31.7. NTG pointed out that the width of plots 124 and 128 would be in excess of 90m, which is excessive for a 22inch (550mm) pipe with a one metre easement [ExQ1 CA.1.19, REP2-070a]. They considered that a suitable position for the proposed pipe would be along the empty centre space within the existing pipe zone. They also set out that the new rights should not include the access road as this is required for essential maintenance and safety at all times [AS-207, REP11-043].
- 8.31.8. In response to NTG's concerns (and similar concerns from other APs) at D8 the Applicants submitted a revised 'Justification of Pipeline Corridor Widths' document [REP8-051], including reference to NTG controlled pipeline corridors in section 2.2. Cross section C provides a visual representation of plots 124 and 124b which were updated following the acceptance of the D6 change request [PD-017]. This is shown below.

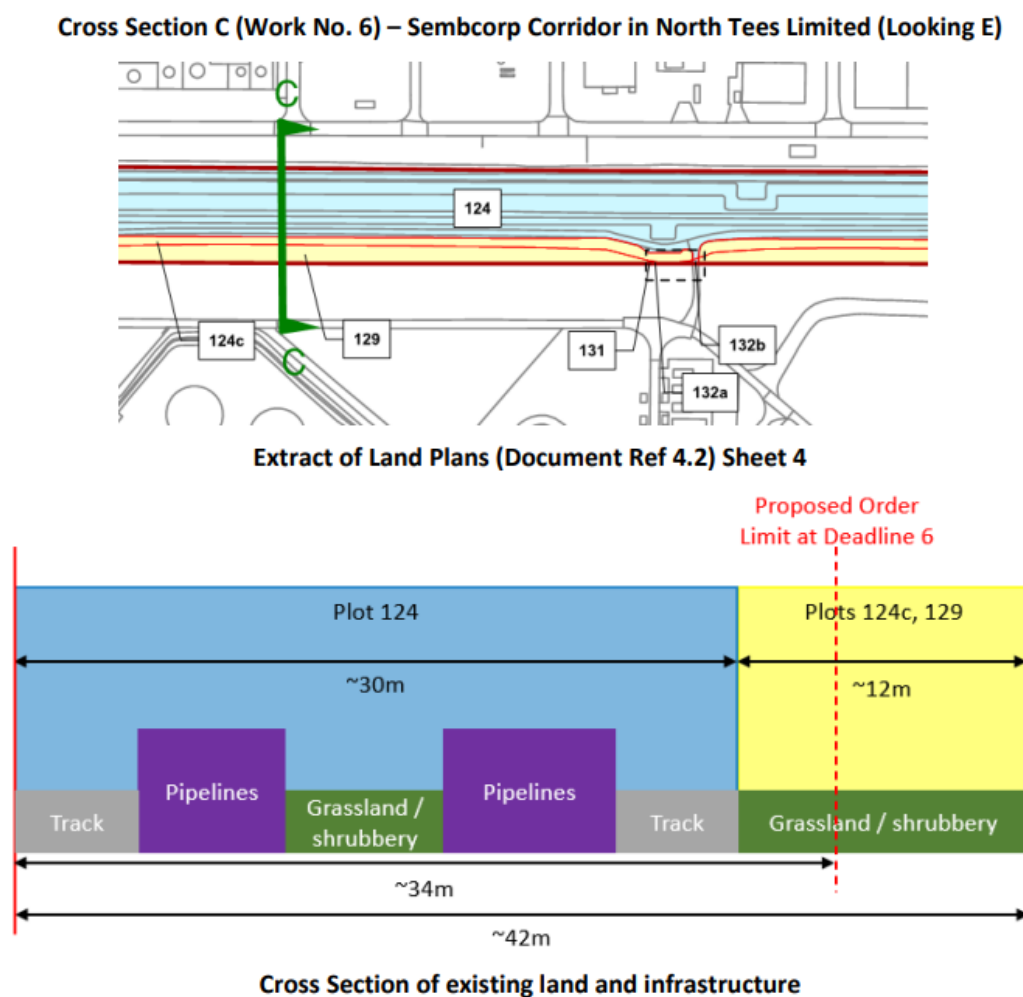


Figure 12: Cross Section C: Pipeline corridor in North Tees Limited

- 8.31.9. Further to this document [REP8-051] NTG considered that the Applicants' flexible approach to the pipeline routing is not reasonable or proportionate, and pointed out that there is ample empty space in the middle of the corridor for a new pipeline, as viewed by us on their visit ASI2 [REP10-001]. NTG maintained that very little engineering or

technical justification had been provided for the selected widths, and without reference to existing apparatus, and that recent projects had comfortably fitted within the existing pipezone area. NTG pointed out that cross section C (as shown above at Figure 12 [REP8-051]) is one of the narrowest sections of the corridor and does not take account of 3D imaging and surveying carried out by the Applicants [REP11-043].

- 8.31.10. The Applicants responded that the purpose of the cross sections is to illustrate the Order Limits and powers in relation to the existing pipeline corridor and access routes, and supplement the basis and justification set out in Justification of Corridor Widths [REP8-051]. The objective is not to outline the specific location of individual apparatus, such as via a 3D survey. Instead, cross section C outlines the fundamental features at that point of the pipeline corridor in relation to the extent of rights sought [REP12-133].
- 8.31.11. NTG also pointed out that the pipeline would probably have a lifetime of around 30 years therefore seeking a right of perpetuity is inappropriate, particularly over emergency routes and that there was a lack of justification for rights in perpetuity [ExQ1 CA.1.24, REP2-070a]. The Applicants clarified that the actual operational period is not known at this point, and it is appropriate to seek the acquisition of permanent rights over land to allow for its continued safe operation as required.
- 8.31.12. The Applicants stated that there was a need for flexibility to be maintained to ensure that the Proposed Development can be delivered. They highlighted that the approach is not unusual for a major piece of nationally significant infrastructure at this stage in the consenting, engineering and land process, and that rights would only be acquired to the extent required following conclusion of the relevant processes. They pointed out that if the Applicants were to seek reduced rights, then there would be a very real risk that they could not deliver the Proposed Development, and the lack of rights would present an impediment to it proceeding [section 11.0, REP12-133].
- 8.31.13. Regarding NTG's comments on the available space in the middle of the pipeline corridor, the Applicants clarified that they have conducted surveys of the pipeline corridor to establish the existing conditions and support the routing design and would look to utilise available space wherever possible to minimise the impact on existing apparatus. However, the Applicants note that the routing of the pipeline would be inconsistent along the length of the pipeline corridor; existing apparatus enters and exits the corridor at numerous points, therefore the available space varies. Their proposed routing would take into account these constraints, and any other constraints that may exist following further surveys, liaison or development by others [section 11.0, REP12-133].
- 8.31.14. The Applicants also clarified that if Work No. 6 is to be located in the centre of the pipeline corridor, they would still need permanent access rights between the existing access track and the pipeline position, to construct, maintain and operate the pipeline. These rights would be continuous and extend between the final position of the pipeline and the

existing access track, over all existing apparatus in between. Rights would also still be required over the existing access track. The Order Limits would not, given those circumstances, be any different even if positioning the pipe in the centre of the corridor were possible [section 11.0, REP12-133].

- 8.31.15. The Applicants would be content to include appropriate controls, covenants and obligations in the voluntary agreements, but require the powers to ensure that the project can be delivered. Work No. 6 can be designed and installed within the Link Line corridor in a manner such that it co-exists with the existing infrastructure. Once constructed, their apparatus would operate in a similar manner to existing users of the Link Line corridor and so would not prevent future developments [section 7.0, REP6-122 and section 12.0, REP7-009].

Sterilisation of Land

- 8.31.16. NTG made written submissions regarding potential economic harm through loss of employment and a detrimental effect on future developments [REP5-036 and CA.2.13, REP6-138]. They highlighted that its land and vital infrastructure serves a range of manufacturing, distribution and industrial processes operating across Teesside. It set out that easement rights should be secured via commercial agreement, which should be in common with all other users [REP2-070], and that that CA of rights would sterilise the entire corridor for investment given the lack of protection and certainty [AS-207, REP11-043].
- 8.31.17. In relation to NTG's submissions regarding economic harm and the potential to sterilise future investment, the Applicants referred to their response to ExQ2 CA.2.8: *"NTG has not provided any evidence of the development proposals that the exercise of CA powers is alleged to affect. It has not identified an existing consent or proposed application for any such proposals or identified any specific development plan policies which support any such development proposals... the Applicants consider that very limited weight should be afforded to the alleged impacts of the proposed CA powers on future projects proposed by NGT"* [REP6-121].

Plots 124a and 128a (TP)

- 8.31.18. Plots 124a and 128a are located in a triangular-shaped area of land to the north west corner of the North Tees section of pipeline corridor. A fire water tank, pumps and ancillary equipment are located within these plots, and NTG pointed out that the equipment serve the whole of the North Tees chemical works of around 350 acres. They were concerned that TP should not be taken of these plots for safety reasons [AS-207, REP11-043].
- 8.31.19. The plots are shown in the extract below at Figure 13 [REP12-015] and we viewed them during ASI2.

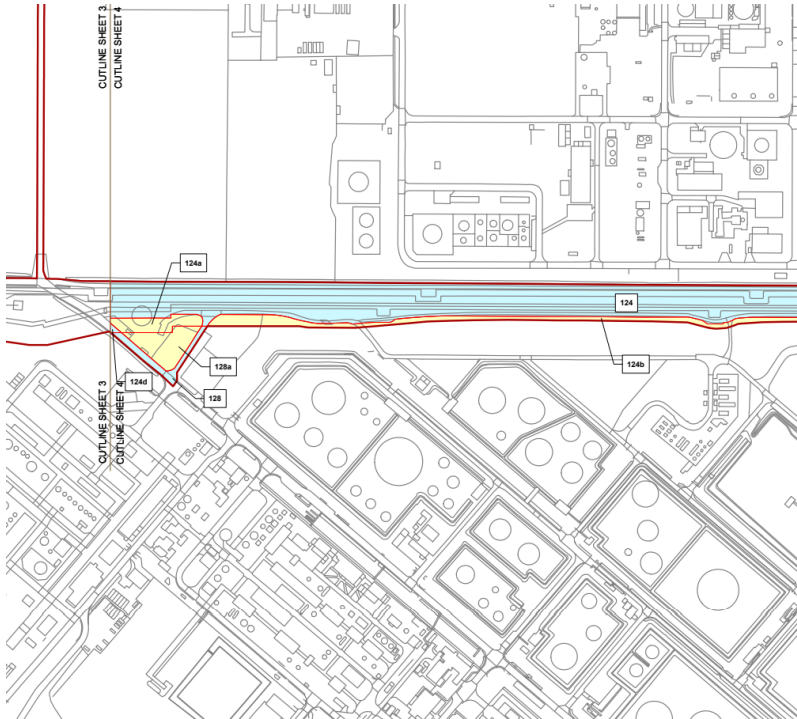


Figure 13: Extract from Sheet 4 Land Plans to show plots 124/128

- 8.31.20. The Applicants explained that scale of the area was required due to the presence of a pipe bridge and the aforementioned safety equipment. A crane would be required to install equipment in this location, and the width was required in order to allow room for this and to ensure continued use of the safety equipment.

Crossing Points

- 8.31.21. The matter of a plan 'Appendix A1' (relating to the matter of removing crossing points) being missing from the Applicant's submission of the third draft of the NTG SoCG [REP7-004] was initially raised at CAH3. It was subsequently attached to NTG's representations at D11 [Annex 2, REP11-043]. Whilst the Applicants explained that the access issue would be covered by the protective provisions, this was not accepted by NTG which sought for the plan to be agreed. The plan includes a cross-hatched area specifying a 'reduction of rights' within the area proposed for TP within plot 124b. The plan was then included in the latest draft of the SocG [REP11-016].
- 8.31.22. The Applicants' response at D12 confirmed that Appendix A1 to the SoCG was submitted at D11 [REP11-016], which was developed during engagement with NTG to illustrate the positive impact of the change request submitted at D6. As the Applicants received no detailed comments, and NTG's D7 response made no reference to the change request, there is no reference to removal of crossing points within the draft SoCG [section 11.0, REP12-133].
- 8.31.23. The final SoCG [REP12-127] set out NTG's view that Appendix A1 is important as it shows the principle of removing crossing points to the access track, and they maintain that a significant proportion of land over

which permanent rights are being sought could be removed. Whilst the plan is included at Appendix A1, it is marked as 'unapproved issue' and does not carry through to the final submitted Land Plans [REP12-015].

Ownership and Management Responsibilities

- 8.31.24. NTG set out their responsibilities for managing the corridor which is heavily regulated and controlled through health and safety and permitting requirements [ExQ1 CA.1.19, REP2-070a].
- 8.31.25. As with the rest of the Pipeline Corridor, there are a range of other APs who have interests within the North Tees land. NTG clarified that it is the freehold owner of the North Tees pipeline corridor and that it has control over new apparatus laid within it. Subject to an easement in favour of Sembcorp dated 31 December 1998 and leasehold rights, NTG retains legal possession of the corridor and all apparatus and structures not owned by Sembcorp. NTG has control of the additional apparatus which may be laid within the pipeline corridor, with supervisory, management and monitoring responsibilities [REP11-043].
- 8.31.26. The Applicants explained that there are separate protective provisions in the dDCO for both Sembcorp and NTG, and our conclusions on these are set out from paragraph 9.4.172 and from paragraph 9.4.224 respectively of Chapter 9 of this Report.

Position at the End of the Examination

- 8.31.27. The fourth version of the SoCG submitted at D12 (unsigned) notes that it is agreed that there should be a collaborative interface management between the parties in terms of use of the corridor but the mechanism for this is yet to be agreed [REP12-127].
- 8.31.28. At D13 NTG provided their preferred protective provisions [Annex 1, REP13-030] as well as a further response to the Applicants comments on CA matters, maintaining that they do not believe that there is a compelling case for CA and TP powers over their property and that they are willing to engage on a voluntary basis [section 2, REP13-030].
- 8.31.29. The final CA Schedule [REP12-131] and End of Examination Negotiation Status document [REP13-021] state that Heads of Terms for a voluntary Option Agreement for a Deed of Grant of Easement are currently being negotiated by the parties, and that the Applicants will continue to engage with NTG in relation to the voluntary agreement. No timescale was provided for this.

Conclusion

- 8.31.30. We acknowledge that NTG is a significant landowner in the area and have responsibility for a number of users of the Link Line pipeline corridor which runs along the northern boundary of their land interests and beyond. Safety issues are paramount for the pipelines and this is a common theme with many of the APs who have engaged in the Examination. As with Sembcorp, the management of the corridor both during construction and operation is a key issue which dominated written

and oral submissions, together with the contention that future investment might be sterilised by the Applicants CA proposals.

- 8.31.31. NTG's concerns regarding the widths of the pipeline corridor being excessive are also noted and we have already considered such matters in the sections above, relating to Sembcorp in particular. The widths vary for a variety of reasons as outlined, largely because of the flexibility required before full engineering design is carried out. In relation to the 90m width quoted, the majority of this is proposed for TP and the area of land is triangular shaped. On ASI2, we noted the presence of the fire water tank and other equipment located within plots 124a and 128a, and that the existing pipelines cross this area via a pipe bridge. The presence of this infrastructure, which the Applicants have stated would not be interfered with, means that the area around it (for construction equipment, crane oversails and so on) is much wider than at other parts of the pipeline.
- 8.31.32. The protective provisions in the dDCO ensure that NTG would be given reasonable notice and details of works prior to commencing any part of the Proposed Development which would have an effect on operations or access. Suitable provisions for access for construction and maintenance are also set out in separate protective provisions for other APs who occupy the pipeline corridor. We therefore do not consider it necessary to reduce rights for crossing points within plot 124b.
- 8.31.33. We note NTG's concerns as regards the progress of negotiations and the expressed desire to reach an agreement as an alternative to CA. Nevertheless, the Applicants have set out the contact which has taken place between the parties in the SoCG [REP12-127] and have provided regular updates throughout the Examination via the CA Schedule. The Applicants have indicated their willingness to continue discussions regarding voluntary agreements and protective provisions. Whilst no agreement between the parties had been reached by the close of the Examination, we consider that the Applicants' actions in taking forward in parallel both CA procedures and negotiations to acquire land by agreement for this scheme have been appropriate and reflect the CA Guidance.
- 8.31.34. The interests of NTG and the various occupiers of the pipeline corridor would be adequately protected through the provisions in Schedule 12 of the Recommended DCO. The Applicants have provided a satisfactory explanation for the extent of the land and duration of powers. The Applicants would not use the proposed CA powers if they were not needed for the Proposed Development or if a narrower easement could be agreed between parties. We consider that to be a reasonable approach.
- 8.31.35. We have found there to be a compelling case in the public interest for the CA powers sought. We are satisfied that the proposed powers of CA in relation to plots which NTG own and have an interest in would be necessary and are justified in the public interest.

8.32. Northumbrian Water

- 8.32.1. NWL are operators of Bran Sands WwTP, and have interests in numerous plots of land both north and south of the Tees which contain their apparatus both for water supply and waste water, as well as land which they have rights and access over for their operations and maintenance. The Applicants seek to obtain CA rights and TP over NWL land at numerous locations but concentrated around the NWL plant at Bran Sands which is directly adjacent to the proposed CO₂ gathering network corridor [sheets 7, 8 and 12, REP12-015]. NWL are a Statutory Undertaker.
- 8.32.2. In their RR and WR, NWL stated that they do not object to the proposal in principle but have concerns in relation to the impact of CA powers upon its operational requirements and sought to agree protective provisions. The Order land includes NWL apparatus which would be crossed by the proposed CO₂ gathering network [RR-031, REP2-075].
- 8.32.3. The Applicants responded that they have accepted NWL's request to use its own bespoke set of protective provisions and noted that following the acceptance of their change request [PD-010] the remaining interaction between NWL apparatus and Work No. 2A (the gas connection) would be limited [section 28.0, REP1-045 and section 12.0, REP3-012].
- 8.32.4. The final SoCG sets out that the form of the side agreement annexing bespoke protective provisions has been agreed and was awaiting final sign off [REP13-012]. This is also reflected in the final CA Schedule [REP12-131] and End of Examination Negotiation Status document [REP13-021].

Conclusion

- 8.32.5. At the close of the Examination NWL confirmed that they had voluntarily entered into an Agreement on 9 November 2022 and therefore wished to withdraw their objections [AS-210]. No further agreement in relation to CA and TP matters is required to be considered by the SoS.

8.33. NPL Waste Management Limited

- 8.33.1. NPL are freehold owners of a number of plots located at Billingham [sheet 1, REP12-015], which relate to a disused anhydrite mine. The Applicants seek CA of rights and TP over the mine for the purposes of the construction and maintenance of the CO₂ gathering network corridor.
- 8.33.2. NPL raised concerns in their RR regarding the lack of detail and the extent of rights being sought, as well as ongoing and future liability and the financial capability of the Applicants to pay compensation and decommission the apparatus. NPL sought for their mineral rights to be removed from the application given that they are not required [RR-032]. A response was provided by the Applicants at D1 regarding such matters [REP1-045], together with an initial draft SoCG [REP1-025].

- 8.33.3. The SoCG was updated at D4 [REP4-019]. This sets out that the parties are negotiating Heads of Terms for an Option Agreement and Easement for the installation and operation of apparatus required for the Proposed Development and are working to agree the outstanding terms together with protective provisions. It also confirms that the development would be carried out so not to interact with NPL's underground mining activities, and that the Applicants would not exercise rights over NPL's mineral interests [REP4-019]. This was confirmed in the D4 version of the BoR [REP4-005].
- 8.33.4. After NPL stated they were unable to respond regarding Heads of Terms until their fees had been paid [REP7-015], the Applicants clarified these matters, and noted that they continued await comments from NPL [REP8-049]. No further submissions were received from NPL into the Examination.
- 8.33.5. The final CA Schedule [REP12-131] and the End of Examination Negotiation Status document [REP13-021] set out that Heads of Terms are still in negotiation and that they continue to await a response from NPL on the final set of terms.

Conclusion

- 8.33.6. We note that NPL did not make any submissions beyond the pre-Examination period [RR-032 and AS-203], aside from in relation to their fees at D7 [REP7-015]. The Applicants have provided sufficient justification for the CA of rights and TP. We are satisfied that the proposed powers of CA in relation to the plots occupied by NPL would be necessary for the delivery of the Proposed Development and justified in the public interest.

8.34. PD Teesport Limited

- 8.34.1. PDT is the statutory harbour authority for Teesport, with powers and duties imposed on them under the Teesport Acts and Orders 1966 and 2008, meaning that it is a Statutory Undertaker for the purposes of s127 of the PA2008.
- 8.34.2. PDT are freehold owners and or/occupiers of numerous plots to both sides of the River Tees. Their interests around Seal Sands Road to the north of the Tees would be affected by the construction and maintenance of the CO₂ gathering network corridor (Work No. 6) and the gas connection (Work Nos. 2A and 2B) [sheets 3 to 5, REP12-015]. To the south side, PDT would be affected by the temporary construction and laydown areas and access (works 9b and 10) at RBT (plot 222) and Teesworks (plots 474, 475, 477), and water discharge connection corridor (Work No. 5) and CO₂ export pipeline (Work No. 8) at South Gare Road (plot 378) [sheets 8, 9 and 11, REP12-015].
- 8.34.3. Their RR [RR-033] highlighted that the harbour area has land interest complications, with a vast number of businesses relying on the Port's activities, historic rights and infrastructure. PDT seek to protect these broader interests, and for further details of design to fully understand

and minimise impacts. The SoCG [REP9-010] sets out that their freehold land contains a range of overlapping interests relating to CA of land and rights with other APs who have engaged in the Examination, including CNSL, NSMP, RBT and Sembcorp.

- 8.34.4. Their initial concerns regarding the riverside roll-on/roll-off ships (Ro-Ro) and the consented Northern Gateway Container Terminal at Teesport are no longer applicable (to CA matters) as the relevant plots (224 and 225) were removed from the DCO following the acceptance of the initial change request [PD-010]. Potential dredging of the Tees for a new CO₂ gathering network pipeline tunnel was also removed from the DCO in favour of use of the existing tunnel [REP6-105 and PD-017].
- 8.34.5. In relation to South Gare Road, PDT set out that they own and control South Gare Breakwater. The road also provides access for numerous users and tenants including pilotage, fisherman's huts, and sub aqua clubs. PDT seeks for its access to the Breakwater to be retained at all times [paragraph 2.13, RR-033]. This issue has also been raised by Teesside 43 BSAC [RR-008], a tenant of PDT.
- 8.34.6. PDT's concerns regarding the terminal at RBT relate to their rights of access [paragraph 2.16, RR-033]. PDT own the freehold to the terminal itself at plot 222 and lease to RBT.
- 8.34.7. PDT also owns plot 112, which is proposed for CA of the land for the purpose of a gas compound [Work No. 2]. The plot forms part of land leased by CNSL for the CATS gas terminal, as set out in section 8.18 above. PDT indicated that an alternative plot in their ownership might be more suitable [paragraph 2.18, RR-033]. In response to a question at ExQ2, PDT as freeholders of plot 112 confirmed that should a sub-lease be agreed between the Applicants and CATS, the issue of a preferred alternative location for the gas connection would fall away, and they made no further comments in relation to alternatives [REP6-141].
- 8.34.8. PDT also has freehold ownership of much of the pipeline corridors and access roads around Seal Sands Road. Here, they seek to ensure that the Applicants' use of the corridors is safe and avoids interruption to other critical infrastructure and local businesses [paragraph 2.19, RR-033].
- 8.34.9. Plans of PDT's land interests in the area, including the Northern Gateway masterplan layout, and where their interests overlap the Order land were provided by PDT in response to ExQ1 [ExQ1 CA.1.8 and CA.1.20, REP2-093].
- 8.34.10. The Applicants responded that they are in negotiations on Heads of Terms, working towards a voluntary agreement for the interests and rights sought, together with associated protective provisions. This includes separate negotiations with RBT and CATS regarding voluntary agreements and protective provisions for use/sub-lease of the terminals. The Applicants also confirmed that further technical work is ongoing as part of the detailed design to minimise land take and provide a practical

operational solution and are in discussions with all parties regarding protective provisions [section 30.0, REP1-045 and section 17, REP3-011].

- 8.34.11. PDT attended all CA Hearings and at each they provided a brief update to confirm that discussions were ongoing. At CAH3 the Applicants stated that whilst the protective provisions were agreed, the Heads of Terms for the land agreements were still in draft [EV10-001 to 005]. Subsequently at D11 PDT confirmed that the form of a draft side agreement and protective provisions were agreed between the parties [REP11-038].
- 8.34.12. The final CA Schedule [REP12-131] sets out that updated commercial terms had been offered and Heads of Terms negotiations continue to progress. The End of Examination Negotiation Status document [REP13-021] states that it has been possible to narrow down the rights and interests that are being sought under a voluntary agreement, and Heads of Terms in respect of Easements for part of the CO₂ pipeline and for access over plots 91 and 92, and plot 108 (which provides access to TGPP) [sheet 3, REP12-015].

Conclusion

- 8.34.13. We note that PDT are major landowners in the area as well as Statutory Undertakers, as the harbour authority. They have granted leases to a range of other APs involved in this Examination, including RBT, CNSL and NSMP. The SoS should refer to the ExA's separate conclusions on the proposed CA of plots leased by these parties, including matters relating to alternatives.
- 8.34.14. In terms of access on South Gare Road, as set out in section 8.43 of this Report, this is unlikely to be affected due to the methods of construction of Work Nos. 5 and 8, and if closure is required, the protective provisions require the Applicants to provide an alternative route. We understand that the protective provisions as set out in Part 14 of Schedule 12 of the dDCO are largely agreed between the parties.
- 8.34.15. Whilst the parties have been in regular discussions and positive progress has been made, negotiations are still ongoing with regard to Heads of Terms before they can progress to legal agreements. We consider they are capable of completion in the post-Examination period.
- 8.34.16. We are satisfied that there is a need for the CA of land in order to secure the delivery of the Proposed Development and it would be reasonable and proportionate to do so. The concerns raised by PDT would not, in themselves, preclude the finding that there would be a compelling case in the public interest for the CA powers sought.

8.35. Redcar Bulk Terminal Limited

- 8.35.1. The BoR [REP12-008] lists RBT as freehold owners of plot 223 and lessee/tenant of plot 222 (owned by PDT) [sheet 9, REP12-015]. They are also occupiers of a number of plots within Teesworks [sheets 8, 11 and 12, REP12-015].

- 8.35.2. RBT operates a deep marine terminal on the south bank of the River Tees. Its 320m long quay has two rail mounted gantry cranes used for loading and unloading bulk and irregular sized cargo, and the terminal includes an area for storage and processing of bulk cargos as well as rail freight handling facilities [RR-001 and REP2-095].
- 8.35.3. The Applicants seek to use RBT land and facilities for unloading of outsized loads during the construction phase with powers sought over plot 222 which is a section of quay, and plot 223 which is an access corridor across RBT's storage area.
- 8.35.4. RBT did not object in principle to the Proposed Development but raised concerns regarding impacts on its ongoing operations at the terminal and that of its customers. Initial representations from RBT focused on the use of cranes or Ro-Ro as a method of unloading AILs for delivery to the PCC Site.
- 8.35.5. Initial concerns were raised regarding CA of rights for an underground high pressure gas pipeline through plot 288 which is part of RBT's rail loading station and access. Plot 288 was removed following the acceptance of the first change request [PD-010].
- 8.35.6. At D2, RBT provided further details and an update on negotiations. RBT state that they have concerns regarding the physical extent of the plots over which CA powers have been sought because no justified reason or calculation had been provided by the Applicants. They were concerned that land would be taken for an undefined temporary period, preventing RBT from using their quay effectively. They also raised the issue of oversail of the crane over their offices and welfare facilities [REP2-095].
- 8.35.7. RBT also raised concerns that the TP of plot 223 would enable NZT to have exclusive occupation of the 'Red Main' access corridor during construction for an average of one day per month. This would be both excessive and unnecessarily disruptive, preventing both RBT and their customers from using it for their own purposes. They considered that alternatives to this route had not been considered by the Applicants. Overall, RBT considered that there is insufficient detail in the application for them to assess on an operational level the impact on their ongoing operations at the Terminal and that of its customers, lessees and licensees if CA powers were exercised, leading to uncertainty. Consequently, RBT argued that the tests within s112 of the PA2008 had not been met [REP2-095].
- 8.35.8. The Applicants confirmed at D3 that they had agreed the Heads of Terms with RBT and once the agreements and protective provisions were mutually finalised, they anticipated that no CA powers would be required over RBT land. The agreed Heads of Terms outline the Applicants' commercial use of the Terminal as a customer, for the unloading of loads during construction, and temporary use of land [REP3-012].
- 8.35.9. The Applicants also acknowledged that discussions to date had focused on plots 222 and 223 which are the key areas related to unloading of

modules from vessels but had since commenced discussions on the other plots listed in the CA Schedule which are in STDC ownership. The protective provisions would ensure that RBT's consent is sought prior to commencement of works which would affect the operation and maintenance of RBTs facilities or the access to them. The parties are both in agreement that the Ro-Ro is the preferred method of unloading outsize loads, but this is subject to ongoing design and reviews, so the crane option remains [paragraphs 11-16, REP3-012].

- 8.35.10. The Applicants clarified that plot 223 consists of the laydown area for installation and removal of the crane to unload AILs and that use of plots 222 and 223 would be infrequent during the construction phase, but powers are necessary and justified as use of the terminal is required to import AILs and ensure a deliverable scheme. They consider the extent of the quayside to be appropriate and justified as the land is required to facilitate unloading operations from vessels. In terms of oversailing, they have allowed laydown area for the crane. [paragraphs 22-25, REP3-012].
- 8.35.11. At CAH2 [EV7-001 to 006] RBT set out their concerns regarding plots 222 and 223. They seek for the Applicants to be on RBT's standard commercial terms as if they were a paying customer, with standard dispute resolution procedures. Following CAH2, RBT provided their preferred set of protective provisions and confirmed they were continuing to negotiate a side agreement, completion of which would put the relationship between the parties onto RBT's standard contractual arrangements for their customers [REP5-040].
- 8.35.12. AT D9 RBT provided an updated set of protective provisions which they stated had been agreed in principle with the Applicants, with the exception of the indemnity provisions which were still under negotiation. They confirmed their intention to complete legal agreements with the Applicants prior to close of the Examination [REP9-034]. RBT attended ISH5 [EV9-001 to 007] and CAH3 [EV10-001 to 005] where they confirmed that the side agreements still required completion but were confident that agreement could be reached within the Examination timetable.
- 8.35.13. AT D11, D12, and D13 RBT provided updates to confirm they were continuing to engage on the side agreement and associated legal agreements which comprise an Upgrade Works Agreement, Materials Handling Agreement and Option and Lease, which the side agreement acts as a framework to put these into place [REP11-039, REP12-139 and REP13-013].
- 8.35.14. The D13 submission confirmed that protective provisions had been agreed but negotiations were continuing on the side agreement and associated legal agreements. RBT made their position clear that in default of the completion of the side agreement and associated legal agreements, RBTs position is as argued in within its WR [REP2-095] and submissions at the previous ISH3 and CAH2, that the agreement of protective provisions is without prejudice to RBT's position that TP and CA powers should not be imposed over RBT interests.

- 8.35.15. The End of Examination Negotiation Status table [REP13-021] notes that the agreements are in near final form and were still aiming to complete prior to the end of the Examination.

Conclusion

- 8.35.16. No further update from either party was submitted at the end of the Examination, therefore the final position is that no final signed agreement is before us and as such RBTs objection remains. We note however that negotiations between the parties have progressed well throughout the Examination and have no reason to believe that the relevant agreements will not be signed imminently.
- 8.35.17. We consider it is necessary for the Applicants to have sufficient and appropriate access to the PCC Site, particularly given that AILs would be delivered by sea. The use of water borne transport for AILs is encouraged in relevant policy (including paragraph 5.13.10 of EN-1). The Applicants have identified that using RBT's facility is viable, efficient and sustainable given the short distance of the PCC Site from the terminal. They seek TP powers in the DCO for use of RBT's facility not permanent rights. Their intended use of the facility is required to facilitate the Proposed Development.
- 8.35.18. CA of rights is proposed on other plots, owned primarily by STDC, over which RBT have rights for utilities and access to their terminal. The acquisition of rights is necessary in the absence of a voluntary agreement in order to deliver the Proposed Development. We consider that there is sufficient evidence to demonstrate that all reasonable alternatives have been explored. In the event that the 'Red Main' is required for another development in the future (or is unsuitable for another reason), dDCO Article 182 of Schedule 12 Part 15 includes provision for co-ordination of activities with a view to ensuring RBT operations can continue.
- 8.35.19. The Applicants have provided a satisfactory explanation for the extent of the land within the scope of the CA powers sought. We are satisfied that the proposed powers of CA in relation to the Objectors' land would be necessary for the achievement of the Applicant's reasonable objectives and justified in the public interest.

8.36. Redcar and Cleveland Borough Council

- 8.36.1. RCBC owns plots 499, 526, 527, 529 and 539 which are all located at Coatham Sands, including the foreshore [Land Plans sheets 10 and 11, REP12-015]. The plots are proposed for the CA of rights for Work Nos 5 and 8 (water discharge connection corridor and CO₂ export pipeline corridor). The plots are classed as open space, which is discussed in section 8.9 of this Report.
- 8.36.2. RCBC were active participants in the Examination but did not make any submissions in relation to CA matters.

- 8.36.3. The final CA Schedule [REP12-131] and the End of Examination Negotiation Status document [REP13-021] note that Heads of Terms have been agreed, and an option agreement for a Deed of Grant of Easement is agreed in principle and awaiting final approval by RCBC's solicitor for exchange as soon as possible after the end of the Examination.

Conclusion

- 8.36.4. We note that RCBC made no submissions in respect of CA such matters and that completion of the agreement is imminent, and likely to be finalised in the post-Examination period.
- 8.36.5. We are satisfied that the Applicants have provided reasoned justification for the extent of the proposed CA of rights in respect of the Objectors' land. There is a need for the land to be utilised in connection with the water discharge connection CO₂ export pipeline corridors, which are fundamental elements of the Proposed Development in connecting it to the offshore elements of the NZT Project.

8.37. SABIC Petrochemicals UK Limited

- 8.37.1. SABIC operates 'The Cracker' and the 'LDPE Plant' at Wilton International where they manufacture ethylene and low density polyethylene respectively. Its facilities connect to its North Tees terminals and storage facilities via the Link Line corridor. It also operates a cross country network, and substantial logistical facilities to the north and south of the Tees. They are landowners of plots 65, 67, 67a and 68 (proposed for TP for Works no. 9, a construction and laydown area to the east of the A178 Seaton Carew Road) [sheet 2, REP12-015], and lessees/tenants or occupiers of numerous other plots primarily along the Link Line corridor. SABIC's footprint in the pipeline corridors is shown at Appendix 1 of REP2-100.
- 8.37.2. In its RR SABIC raised concerns regarding the potential effects upon its pipelines in numerous locations, and the proposed CA of rights which are not compatible with its existing rights. It is concerned that the Proposed Development would compromise the safety and operation of the Link Line corridors, its uninterrupted access, and navigation to the River Tees [RR-038].
- 8.37.3. The Applicant responded at D1 that they had since removed a number of options through the approved change request [PD-010] and the only remaining interaction with the high pressure gas pipeline is within the Link Line corridor, where they proposed to utilise Sembcorp's existing processes and procedures for all construction, operation and maintenance work, which would consider the relevant safety and access restrictions. They confirmed there would be no construction or operation activities within the River Tees which would affect navigation [Section 35.0, REP1-045].
- 8.37.4. An initial draft SoCG was also supplied by the Applicants at D1 [REP1-027]. This sets out that a voluntary agreement has been reached that

the existing SABIC compound would be used as a construction compound, and legal documents are in discussion. SABIC have given written confirmation that a small area of land adjoining their compound site can be included (also for TP) within the Order Limits following acceptance of the change request [PD-010].

- 8.37.5. SABIC's WR set out the private losses that it might encounter in the event of its facilities being taken off line, with multi-million pound losses arising from a temporary loss of production. It set out concerns regarding the safety and operation of the Link Line corridors and retention of uninterrupted access [REP2-100].
- 8.37.6. In response, the Applicants explained that the works within the Link Line corridor and Tunnel No.2 would be subject to Sembcorp's existing processes and procedures including safety management. As an existing operator within the corridor SABIC would be consulted as part of the approval process. Safe and efficient techniques would be used in accordance with the controls secured through the protective provisions and the required national and international standards in order to secure an operating licence [Section 15.0, REP3-012].
- 8.37.7. The final CA Schedule [REP12-131] and End of Examination Negotiation Status document [REP13-021] state that Heads of Terms regarding an option agreement for a compound lease were agreed in December 2021, and the draft legal documents are currently in negotiation.

Conclusion

- 8.37.8. SABIC did not engage in the Examination beyond their WR at D2 [REP2-100], apart from the provision of a copy of its preferred protective provisions at the close of the Examination [AS-213]. They do not appear to take objection to the TP of plots in their ownership (plots 65, 67, 67a and 68 at Seaton Carew Road), rather their concerns were in relation to CA of rights of the pipeline corridor. This is in common with many other users of the pipeline corridor in relation to effects on their assets including safety matters. Such matters are being dealt with via the landowners, predominately Sembcorp and would be secured via protective provisions both with Sembcorp and separately for the benefit of SABIC.
- 8.37.9. The Applicants have provided sufficient justification for the CA of rights and TP. We are satisfied that the proposed powers of CA in relation to the plots occupied by SABIC would be necessary for the delivery of the Proposed Development and the public benefits are justified.

8.38. Sembcorp Utilities (UK) Limited

- 8.38.1. Sembcorp's industrial power and utility assets are based at Wilton International, where it supplies major industrial businesses as well as securing additional inward investment. Sembcorp is described in its RR as an industrial and manufacturing hub of national importance, with Wilton International forming part of an important cluster of petrochemical, speciality and other process manufacturing businesses which play a vital

role in the regional and national economy. Its pipeline corridor contains critical infrastructure used for import and export of various chemicals and gases linking Wilton International with other major industrial clusters on Teesside. The entire pipeline corridor stretches from Wilton International, via a tunnel under the River Tees through to Seal Sands and onto Billingham. The route totals around 12km [RR-034 and REP2-098].

- 8.38.2. We viewed the pipeline corridor and the entrances to No.2 Tunnel on both sides of the Tees at ASI1 [EV1-002], and the Link Line corridor to the north of the Tees at ASI2 [REP10-001]. The locations and diameters of the existing pipelines were noted, as were the access roads, pipe racks and bridges and associated infrastructure.
- 8.38.3. Sembcorp supported the Proposed Development in principle, acknowledging the contribution it could make towards the shared goal of reducing GHG, but raised concerns regarding the potential impact on its operations through the proposals to CA its land and rights as well as to extinguish existing easements and rights over its land. Sembcorp considered it imperative that the existing businesses at Wilton International are not disrupted, and future development is not impeded. It stated that the easements around the pipeline corridor are excessive in both extent and duration and sought for its footprint to be no more than is reasonably required to enable the Proposed Development to be constructed. [RR-034 and REP2-098]. Sembcorp also made comments regarding the draft NPS EN-1 regarding CCS development [REP3-025]. These matters are dealt with at section 5.2 of this Report.
- 8.38.4. Sembcorp has significant land interests within and around the Order land, both as owner and lessee/tenant, as well as numerous rights held under deeds of grant and easements as set out in section 1.2 of the draft SoCG [REP1-028]. Its RR highlighted the potential disruption to its complex legal arrangements through which it manages its pipeline corridors. It sought for any new rights granted to NZT to not only protect current apparatus but to safeguard the rights of existing businesses to lay new apparatus and avoid sterilising its pipeline corridors [RR-034 and REP2-098].
- 8.38.5. Sembcorp appeared at CAH1 [EV5-001 to 003], where it stated its concerns about the impact of the project on its site at Wilton International and associated pipeline corridors, and that it is willing to grant rights on a commercial basis to facilitate the project, and as such a compelling case in the public interest for the grant of CA powers does not exist [REP1-055]. At D2, a detailed WR was submitted by Sembcorp setting out its concerns [REP2-098]. A plan of its overall interests was also provided at D2, including the route of its pipeline corridors between Wilton International, Seal Sands and Billingham. This plan is reproduced from REP2-099a below at Figure 14 [REP2-099a].

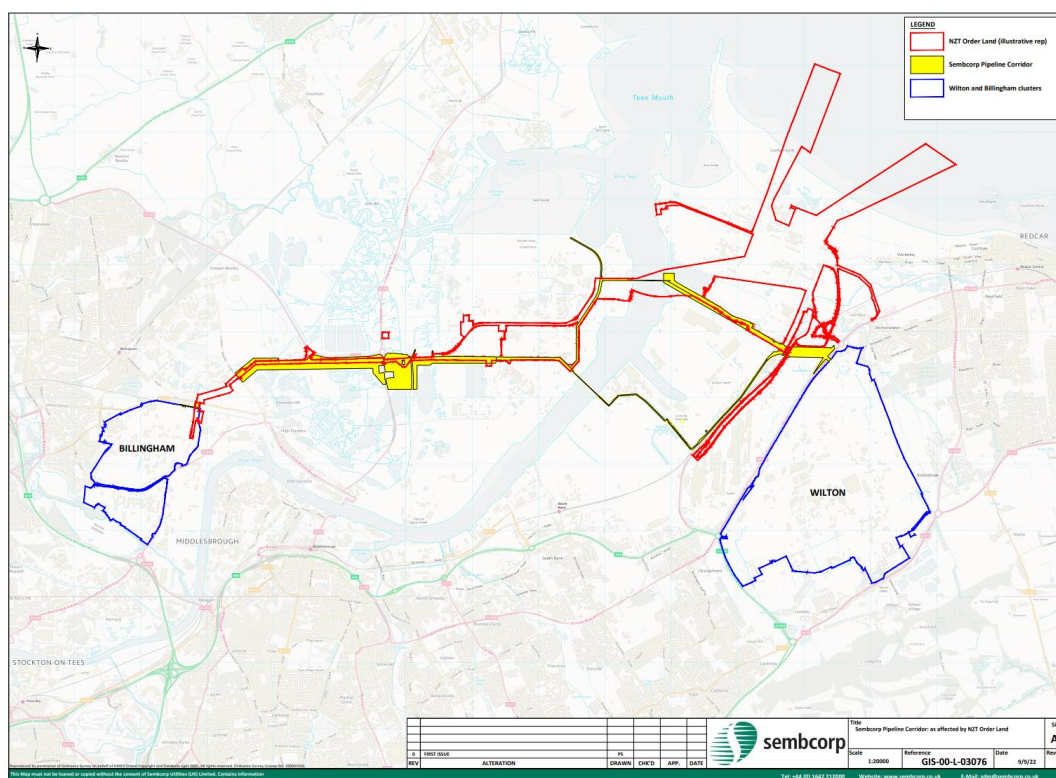


Figure 14: Sembcorp Pipeline Corridor

- 8.38.6. Sembcorp set out in their answer to ExQ1 CA.1.21 the list of users of their pipeline corridor, many of which have made submissions to the Examination (including SABIC, CATS, CFL, Ineos, Breagh, Northern Gas Networks, NPG, HPU, NWL and Air Products). Sembcorp also confirmed that they were in discussions regarding the feasibility of using their 'No 2 Tunnel' beneath the River Tees for the proposed CO₂ gathering network pipeline [REP2-099].
- 8.38.7. At D3, the Applicants clarified that they do not propose to manage the pipeline corridor as a whole and that the protective provisions would provide for the continued operation or replacement of apparatus, and maintenance of access for Sembcorp. They stated their preference would be to reach voluntary agreement with Sembcorp for the rights they require and have agreed Heads of Terms for those rights. However, to protect the delivery of the Proposed Development the Applicants must retain its CA powers over the Order land to facilitate the construction, maintenance and operation of the pipelines [section 16.0, REP3-012].
- 8.38.8. In terms of the extent of Order land required, the Applicants noted that sufficient space is required running parallel to the intended pipeline route for a range of works:
- The positioning of side-booms to lift the pipeline into position;
 - construction, welding and testing of the pipeline;
 - storage of equipment and materials; and
 - a haul road to bring machinery, materials and personnel to and from the site safely.

- 8.38.9. During operation, sufficient space is required to gain access, store equipment and materials, and undertake inspection/maintenance. The Applicant stated that these are all activities that must be permitted on an ongoing basis throughout the life of the asset. Consequently, the Order Land corridor width of up to 35m is considered necessary to ensure the safe and efficient design, construction and ongoing operation and maintenance of the pipeline [section 16.0, REP3-012].
- 8.38.10. The Applicants went on to confirm that they would only acquire rights over such parts of the corridor as would be required following the detailed design process, and such works would need to be approved by Sembcorp where they would have an effect on their operations or access to them, as set out in the protective provisions.
- 8.38.11. In terms of Sembcorp's concerns regarding rights being sought in perpetuity, the Applicants stated that they do not currently know what the operational life of the Proposed Development would be, but it would be a regulated asset with relevant regulatory obligations. Powers of TP would be sufficient for construction purposes but would be inadequate to allow the ongoing maintenance of the CO₂ gathering network and access to it [section 16.0, REP3-012].
- 8.38.12. At D3 Sembcorp set out further details of its concerns relating to the physical and temporal extent of CA rights sought by the Applicants to its pipeline corridor, including making comparisons to a narrower corridor proposed over STDC's land [REP3-025]. The Applicants dismissed this comparison, given that the Sembcorp corridor is an established multi-user corridor and subject to different design and access considerations than the STDC easement corridor [section 11.0, REP4-025].
- 8.38.13. Sembcorp stressed that the integrated nature of the corridor and the diverse, complex and potentially hazardous industrial apparatus within it necessitates holistic oversight and management of the whole corridor. Sembcorp stated that they cannot do that effectively unless appropriate protective provisions are in place to control the otherwise unfettered use of compulsory powers by the undertaker which could have significant adverse effects on the continued safe and economic operation of the Sembcorp Pipeline Corridor and the businesses which depend upon it. The inclusion of effective protective provisions in the dDCO is a matter of imperative concern to them [paragraphs 9 to 12, REP4-036]
- 8.38.14. Furthermore, Sembcorp put forward that the installation and operation of Work No. 6 would be fundamentally different to the current arrangements in the Sembcorp Pipeline Corridor because the rights that they are seeking in the dDCO would (a) operate on a compulsory, not a consensual basis and (b) would be capable of unilaterally and automatically extinguishing the existing rights of others in the Corridor. This would materially affect Sembcorp's ability to continue with the holistic management of the Corridor as a whole, since the Applicants have made clear that they have no intention of taking this vital responsibility on themselves [paragraph 13a, REP4-036].

- 8.38.15. Sembcorp appeared at CAH2 [EV7-001 to 006] where it confirmed that subject to ongoing engineering and commercial discussions, the use of their No.2 River Tunnel was broadly agreed. It was noted that ongoing commercial negotiations to secure rights were constructive. Sembcorp also maintained their concerns about the justification for the scope of CA powers sought and inconsistency in corridor widths as well as the proposed duration of rights [REP5-031].
- 8.38.16. We requested further justification for the pipeline corridor widths at CAH2, seeking visual representations of parts of the pipeline and utility corridors in order to better understand the extent of areas of land proposed for CA. Subsequently a 'Justification of Pipeline Corridor Widths' document [Appendix 1, REP5-026] was provided by the Applicants. At section 1.2 it referred specifically to the Sembcorp corridor with the provision of cross sections to indicate the existing land and infrastructure in four locations between Wilton and Billingham, including proposed amendments to Order Limits (later submitted at D6). The cross sections indicate areas of 'blue' land proposed for CA of rights, and 'yellow' land proposed for TP at the area of pipeline corridor between Cowpen Bewley Road and the A1185 [sheets 1 and 2], at North Tees [sheet 4] and alongside Dabholm Gut [sheet 5, REP12-015].
- 8.38.17. The different parts of the pipeline corridor have varying widths as illustrated in the cross sections, reflecting the lack of consistency in number of pipes and available space to each side of the structures.
- 8.38.18. The document explains the Applicants' approach to defining the extent of new rights sought, which extend from close to the outside edge of the access tracks to each side of the pipeline, with an additional strip on the outside edge where required and appropriate if the proposed CO₂ pipeline (of up to 550mm in diameter) is required to be installed on the outside of the existing pipe racks, in order to extend the access track widths accordingly [paragraph 1.2.3, Appendix 1, REP5-026].
- 8.38.19. The document [Appendix 1, REP5-026] also explains the inclusion of additional land solely for TP to the edges of the area proposed for CA of rights in numerous locations along the corridor. The Applicants explain that this would enable them to construct the pipeline safely and efficiently while minimising impacts to ongoing operations and would include the following:
- Material staging and laydown;
 - Parking and operation of construction vehicles;
 - Welfare facilities; and
 - Provide temporary diversions along the pipeline corridor to maintain access for operators with existing apparatus.
- 8.38.20. The Applicants' wish to maintain flexibility during the design process so that they can install the pipeline in the optimum position, and that the routing would be finalised as the design develops. Following this process, the actual area over which new rights are acquired can be refined. Without the inclusion of the full extent of the existing pipeline corridor, the Applicants would be restricted to selecting a route before adequate

site assessment and engineering has been completed, which would lead to risk to the project. Furthermore, the Applicants note the possibility that other works will take place within the corridor before detailed design is completed; the flexibility sought will enable the Applicants to take account of these and adapt the detailed design as necessary. The Applicants therefore conclude that it is justified for them to seek rights which ensure the deliverability of the Proposed Development. One of the cross sections, near to the A1185, is shown below to illustrate the submissions [paragraphs 1.2.4 to 1.2.10, Appendix 1, REP5-026].

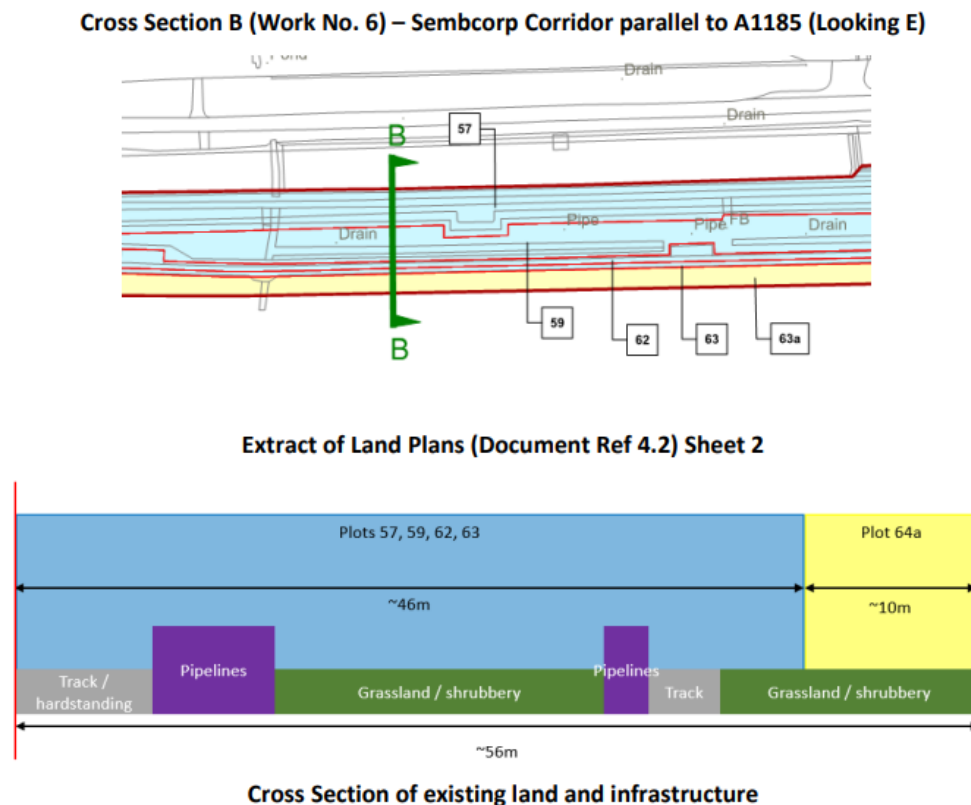


Figure 15: Cross Section B – Sembcorp Pipeline Corridor

- 8.38.21. Sembcorp subsequently provided comments on the 'Justification of Pipeline Corridor Widths' document at D6 [ExQ2 CA.2.5, REP6-130]. Sembcorp accepted that construction activities require significantly more land than that is need for maintenance and repairs, but that little actual engineering justification for the widths selected over each part of the corridor had been provided by the Applicants. It pointed to works already carried out by its existing users, eg SABIC, which had been comfortably accommodated within the central land bounded by the access tracks without the need for additional land. It accepted there may be a need for flexibility in certain areas where potential pipeline clashes will occur but did not consider that this would justify the overly broad rights being sought by the Applicants along the entire corridor. Sembcorp noted that the right to be able to inspect and maintain the apparatus would be better secured by private agreement, in common with all other operators

who share the space, with Sembcorp scheduling and co-ordinating any works in an effort to avoid conflicts and reduce risk.

- 8.38.22. In terms of duration of rights, Sembcorp set out that its own experience demonstrates that a common design life of utilities pipelines is 15 to 25 years, and a term of 60 years would be sufficient. It referred to practice adopted for other major infrastructure projects where appropriate temporary rights are provided for both the construction and operational/maintenance phases. As such, it considers that permanent rights are unnecessary [ExQ2 CA.2.5, REP6-130].
- 8.38.23. The Applicants responded that it is not currently possible to select the final pipeline routing for Work No. 6 until detailed engineering work has completed, therefore they require flexibility to route the pipeline. They clarified that the strip of Order land on the outside edge of the existing access track is considered to be justified and proportionate in the event that the pipeline is installed on the outside of the existing pipe racks and supports [6.2.7, REP7-009].
- 8.38.24. The Applicants disagreed that future development would be prevented, because protective provisions include arrangements for the approval of works details by Sembcorp, and co-operation arrangements that would facilitate development proposals coming forward alongside the NZT development. This supplements the broader protections for apparatus to be replaced and equivalent rights granted where the NZT development affects any existing development that may come forward before it [6.2.15, REP7-009].
- 8.38.25. The Applicants agreed that in principle the inspection and maintenance arrangements (including coordination with third party users) could be secured by private agreement. However, to date no such agreement has been entered into between the parties therefore in order to ensure the deliverability of the Proposed Development the powers should remain. They maintain that protective provisions would provide an effective safeguard in the absence of a private agreement [6.2.16, REP7-009].
- 8.38.26. In terms of the time period for CA of rights, the Applicants considered that arbitrarily selecting a period now to limit the extent of new rights presents significant risks to their ability to comply with their regulatory obligations (in particular as CO₂ transport and storage operator) which could curtail the benefits of the Proposed Development [6.2.16, REP7-009].
- 8.38.27. In response to ExQ3 CA.3.4 Sembcorp repeated their concerns regarding the extent and duration of rights along the corridor and referred to the protective provisions included in the Dogger Bank Teesside DCO which could be replicated. It was confirmed that the agreements for option and easement were unlikely to be concluded before the close of the Examination. Nonetheless, the inclusion of appropriate protective provisions to restrict use of CA powers by the Applicants may enable their objection to be withdrawn even if voluntary agreements are not concluded [REP11-029]. Subsequently at D12 Sembcorp provided a set

of its preferred protective provisions together with a position statement, explanatory memorandum and associated plans [REP12-140 to REP12-163]. Protective provisions for Sembcorp at Part 17 of Schedule 12 of the DCO are discussed at Chapter 9 from paragraph 9.4.172 of this Report.

- 8.38.28. At D13 Sembcorp clarified that they are not proposing that CA powers are removed from the DCO altogether, but that before they are exercised the undertaker must first engage with Sembcorp to ensure that the potential adverse risks to the pipeline corridor are appropriately managed (similar to the Dogger Bank Teesside DCO) [REP13-023].
- 8.38.29. The End of Examination Negotiation Status document [REP13-021] sets out that Heads of Terms for a gas transmission agreement have been agreed and the legal documents are processing. The terms for the use of Tunnel No.2 have been agreed in principle and a legal agreement is being progressed in this respect. It states that negotiations are ongoing to conclude legal agreements but due to their complex nature would not be before the close of the Examination but are anticipated to be completed as soon as possible in the post-Examination period and before determination is made by the SoS. Whilst an initial draft SoCG was submitted by the Applicants at D1 [REP1-028], no further iterations of the SoCG were submitted to the Examination.

Conclusion

- 8.38.30. We have given careful consideration to the submissions made by Sembcorp and the responses from the Applicants throughout the Examination. The pipeline corridor between Wilton International and Seal Sands and Billingham is an important asset which transports a number of highly significant gases and chemicals, and which is subject to stringent safety standards. We understand the role that Sembcorp have not only as landowner of large sections of the corridor but their management role over the corridor which is subject to complex regulatory arrangements.
- 8.38.31. Progress has been made on a number of matters, and it is clear that the parties have been in regular dialogue to seek to achieve voluntary agreements and in relation to protective provisions. The amount of Sembcorp land subject to CA and TP has also been reduced significantly through the change requests.
- 8.38.32. Differences in position remain between Sembcorp and the Applicants regarding the width of the pipeline corridors subject to CA of rights, and the duration of such rights. The Applicants have sought to justify such matters in their numerous responses, including by submission of the 'Justification of Corridor Widths' document, and we are satisfied that such matters have been appropriately justified. The Applicants would not use the proposed CA powers if they were not needed for the Proposed Development or if a narrower easement could be agreed between parties. We consider that to be a reasonable approach.
- 8.38.33. Protective provisions are considered in detail in from paragraph 9.4.172 of this Report. We consider that the application of protective provisions in Part 17 of Schedule 12 of the dDCO, which have been tightened and

amended in response to Sembcorp's concerns, would provide adequate protection for the interests of Sembcorp.

- 8.38.34. We have found there to be a compelling case in the public interest for the CA powers sought. We are satisfied that the proposed powers of CA in relation to Sembcorp's plots would be necessary and are justified in the public interest.

8.39. South Tees Development Corporation

- 8.39.1. The status and role of STDC as a Mayoral Development Corporation is set out in section 2.5 of this Report. Collectively, STDC also encompasses the entities of Teesworks Limited and South Tees Developments Limited, as defined in paragraphs 255 and 256 of Part 20 of Schedule 12 of the dDCO [REP12-003]. STDC are responsible for around 1,820 hectares of land to the south of the River Tees, much secured by compulsory purchase order of land relating to the former steelworks. The wider development site 'Teesworks' forms a large part of the area granted Freeport status in 2021. Clearance, remediation and redevelopment of the Teesworks site, including within the Order land, is ongoing as set out in paragraphs 2.6.9 to 2.6.12 of this Report.
- 8.39.2. STDC are the freehold owners of a significant number of plots and the largest areas of land proposed for CA and TP of land and rights which are required for the construction, operation and maintenance of the PCC Site (Works Nos 1 and 7) together with all other elements of the Proposed Development.
- 8.39.3. STDC's RR [RR-035] and WR [REP2-097] note support of the Proposed Development in principle but objected on a number of land related issues. Those objections which were retained throughout the Examination [REP12-166] are summarised as follows:
- Excessively wide land requirements in the utilities/easement corridor;
 - An alternative access to Tees Dock Road should be considered;
 - Alternative construction worker parking would be available at a park and ride, so a number of plots would be unnecessary;
 - Potential sterilisation of development land from CA and TP of various plots (including access to RBT); and
 - The preference for entering into voluntary legal agreements for a lease as opposed to permanent acquisition of land and rights.
- 8.39.4. The Applicants' response to STDC's RR sets out that on 21 December 2021 a letter between the Applicants and the Mayor on behalf of the Tees Valley Combined Authority was signed to affirm the common commitment of both parties to conclude the option agreement and associated documentation, including the service supply agreements in respect of site utilities and options for easement in respect of CO₂, natural gas, nitrogen and effluent water. The Applicants confirmed that the land needed has been agreed in principle and the draft option agreement and lease for the main site are now in a mature form. They

include confirmation of the principal commercial terms for the service supply agreements and options for easement, and an obligation on the parties to act in good faith in relation to agreement of the form of service supply agreements and options for easement [section 32.0, REP1-045].

- 8.39.5. STDC engaged with the Examination throughout and attended each of the CA Hearings. All matters were also included in numerous iterations of the SoCG [REP1-007, REP3-006, REP5-017, REP8-037 and REP12-122] which also set out a full summary of the extent and nature of discussions between the parties to date. Their broad areas of concern as identified above, and the Applicants' responses, are summarised below.

Width of Utilities Corridor

- 8.39.6. STDC raised concerns that the widths of the Order Land around the utilities corridors, broadly located between the PCC Site and Bran Sands/the Sembcorp Pipeline Corridor, would be too wide and this could prevent other developments coming forward [REP2-097].
- 8.39.7. The Applicants highlighted that because the Proposed Development is a 'First of a Kind' for this type of infrastructure therefore the design must incorporate a degree of flexibility to allow for the future selection of the preferred design, technology and contractors for construction. They stated that the proposed easements and access tracks are comparable to similar apparatus in the Teesside region and take account of the site conditions, topography and access requirements, and that reductions to the Order Limits had been made and plots changed to TP as part of the change request [section 32.0, REP1-045].
- 8.39.8. The Applicants clarified that following detailed surveys and installation of the relevant apparatus installed (such as pipes or cable), they could then acquire new rights within a narrower strip in which permanent rights are required within the wider construction corridor. This phased approach to occupation and acquisition allows the permanent rights corridor to be defined after construction, and to be only that which is necessary for the operation, maintenance, and protection of the apparatus (with reference to Article 31 of the dDCO) [section 32.0, REP1-045 and section 17.0, REP3-012].
- 8.39.9. Following the ExA's request at CAH2, the Applicants provided a 'Justification of Pipeline Corridor Widths' document [Appendix 1, REP5-026], updated at D8 [REP8-051]. Section 1.4 of the document refers specifically to STDC land broadly comprising plots 395, 401, 408 and 409 [sheet 8, REP12-015]. It notes that three pipelines are proposed for gas, waste water and CO₂, together with electricity cables. The document explains that there is not an existing easement corridor along the proposed route within Teesworks (unlike the corridors operated by Sembcorp and NTG), but it would be utilised for all the proposed services. The width of the new rights sought would provide flexibility to design and construct the works, allowing for adjustment where challenges arise and to potentially adapt it to reduce the sterilisation of land for other developments. A cross section visual representation is

shown on page 11 of the document, where the entire corridor is proposed for CA of rights [REP5-026 and REP8-051].

- 8.39.10. STDC responded to the corridor widths document, accepting that flexibility was required but maintained there was a lack of detail and justification for the width of approximately 85m [ExQ2 CA.2.6, REP6-144].

Tees Dock Road Access (Plots 274 and 279)

- 8.39.11. STDC argued throughout the Examination that plots 274 and 279 [sheet 13, REP12-015] which would enable construction access from Tees Dock Road, should be removed from the Order Limits in favour of an alternative route for construction access via Lackenby Gatehouse roundabout [Appendix 2, REP2-097a].
- 8.39.12. The Applicants stated that the proposed construction access via plots 274 and 279 are required to allow HGVs to access the site without using the trunk road so reducing traffic. The gate that links PD Ports to STDC is connected between Plots 274 and 279. The Applicants stated that they have since been informed of a third-party dispute and look towards an alternative solution with all access rights guaranteed by STDC and offered as part of the voluntary agreement. In the absence of the voluntary agreement, plots 274 and 279 are required for TP [section 32.0, REP1-045].
- 8.39.13. The Applicants also stated that they are not aware of any impact that using the Tees Dock Road access gate could impose on future redevelopment plans for the Teesworks site but were in discussions with STDC on alternative access via the Lackenby Gatehouse for HGVs importing material from PD Ports. They confirmed that the alternative route is acceptable in principle, but their position remains that this must be secured via a legally binding agreement before they could consider amending the Order Limits, otherwise the Applicants may not be in a position to construct the Proposed Development [section 17.0, REP3-012].
- 8.39.14. STDC made further submissions at CAH2 regarding the Tees Dock Road access. They stated that a 'lift and shift' mechanism for the access was not an acceptable solution, and that Lackenby Gate is a reasonable alternative. This would be TP so would not engage the CA Regulations, and it could be secured by agreement which STDC are willing to expedite. The Applicants did not accept that the existing access was unsuitable [EV7-001 to 006, REP5-042 and REP5-026].
- 8.39.15. We asked a question [CA.2.7iii] about whether reasonable alternatives need to be demonstrated for the Tees Dock Road access, given that the proposals for the construction access relate to TP and not CA. In response, STDC referred to the Sizewell C (Nuclear Generating Station) Order 2022 recommendation report, which states that the request for the power in order to enable the Proposed Development to be implemented and maintained must be justified together with the inevitable interference with human rights. STDC also referred to Article 1 to the

First Protocol of the ECHR; this matter is set out in section 8.12 of this Report. STDC maintained that there is no compelling case for the inclusion of the means of access at plots 274/279, and the interference is not proportionate given there is a reasonable alternative route that has been accepted by the Applicants as feasible [CA.2.7, REP6-144 and REP7-017].

- 8.39.16. At CAH3 [EV10-001 to 005] the matter of Tees Dock Road access continued to be debated, and it was confirmed that negotiations were continuing regarding the option agreements, but they were not expected to be concluded before the end of the Examination. The Applicants confirmed at CAH3 that removal of plots 274 and 279 would only take place upon securing the alternative access at Lackenby gate in a legal agreement. STDC provided additional commentary on their argument regarding reasonable alternatives and Human Rights in respect of the proposed TP of the Tees Dock Road access following the Hearing [REP11-041].
- 8.39.17. This was followed up by the Applicants at D12, where they stated their strong disagreement that the exercise of powers of TP over plots 274 and 279 is unnecessary, and the suggestion of an alternative does not mean that the powers of TP are not required [section 17.0, REP12-133].
- 8.39.18. Table 3.6 of the final version of the SoCG submitted by the Applicants at D12 [REP12-122] sets out the parties' position on CA matters, including the Tees Dock Road access. The Applicants clarified that a lift and shift provision had been added to the protective provisions to address STDCs concerns and confirmed that they are committed to removing the plots if an agreement is entered into with STDC to secure an alternative access in the post-Examination period [paragraph 9.2.13, REP13-019].

Construction Worker Parking – Plots 292 and 293

- 8.39.19. STDC argued that plots 292, 293 and 295 [sheet 6, REP12-015], proposed for TP for Work No. 9, should be reduced as their forthcoming park and ride facility at Steel House could be used for construction parking instead [RR-035 and REP2-097].
- 8.39.20. The Applicants responded that they continue to explore alternatives with STDC including a Park and Ride facility, but need to retain plots 292, 293 & 295 to provide equivalent car parking capacity unless and until a voluntary agreement is reached on use of a Park and Ride, which STDC should demonstrate as deliverable [section 32.0, REP1-045].
- 8.39.21. The Applicants stated that they needed to maintain land for construction car parking in the event that the park and ride is not delivered in time [section 17.0, REP3-012]. Plot 295 was then deleted following the change request at D6 [PD-017], but plots 292 and 293 remain.
- 8.39.22. STDC noted within the D12 SoCG that park and ride provisions had been agreed between the parties as part of the option agreement for the main site, however the agreement had not yet been concluded. The SoCG states that STDC is content with the principle of 'lift and shift' and that

this can be dealt with via protective provisions, however the terms of this remained outstanding [Item 34, REP12-122].

Sterilisation of Development Land

- 8.39.23. STDC highlighted that they are bringing forward other developments of national economic importance which may be hindered by the CA proposals. Other development proposals in this area may be disrupted so would require 'lift and shift' provisions in the dDCO for the route of the utility corridors and access routes to be amended where necessary. They also pointed out the lack of a detailed programme from the Applicants and interface agreement risks would impact on STDC's ability to bring forward other proposals on its land. [REP2-097].
- 8.39.24. Updates were provided by STDC on other developments proposed for Teesworks, to which STDC considered their public benefits risk being sterilised if CA powers were granted to the Applicants [ExQ2 CA.2.6, REP6-144]. Much of the land benefits from outline planning consent as set out in paragraph 2.6.9 of this Report.
- 8.39.25. STDC objected to the location of water discharge outfall option Work No. 5A due to potential sterilisation of development in this location, where they were in detailed discussions regarding a significant national economic growth project (on land known as 'the Foundry' shown on the plan at Appendix 1 of their WR [REP2-097a]). STDC sought for the alternative route (5B) to be put forward following survey and the Applicants responded that a study is being undertaken to establish whether it will be carried forward [section 17.0, REP3-012].
- 8.39.26. Towards the end of the Examination Work No. 5A was removed in favour of Work No.5B for a new outfall. The change request [REP12-116] resulted in the deletion of plots 297, 304, 305, 306, 307, 308, 310, 311, 312, 326 and 371 from the Order Limits, and STDC confirmed its support of this change at D13 [REP13-035].
- 8.39.27. A similar argument was raised by STDC in respect of plots 290, 291, 298 and 299 relating to 'Red Main' which provides access to RBT. STDC were content for it to be used for construction access from RBT to transfer large components to the site, but sufficient controls within the DCO are required to make it available for others and an alternative access should be available via use of a 'lift and shift' mechanism in the dDCO [REP2-097].
- 8.39.28. The Applicants confirmed that plots 290 and 291 and the route to RBT via 'Red Main' are required to deliver AILs from the terminal to the construction site, but alternative solutions for routing are being discussed and intended to be part of the voluntary agreements. In the absence of voluntary agreements to date, Plots 290, 291, 298 and 299 are required for temporary use in order to construct the Proposed Development [section 17.0, REP3-012]. The plots would also facilitate pipeline stringing for Work Nos 5B and 8 but was no longer required for the purposes of Work No. 9A and subsequently plots 309 and 335 were

removed from the Order Land at D6 following the acceptance of the change request [PD-017].

- 8.39.29. Within the same change request plots 290, 291, 298 and 299 were reduced in size and this was welcomed by STDC as set out in the SoCG [item 32, REP12-123]. The SoCG also confirms that STDC agrees with the principle of the 'lift and shift' provisions in respect of Red Main but had not agreed its terms.
- 8.39.30. STDC also questioned why plot 425 was required for Work No. 4 (water supply connection) and 10 (temporary access) [REP2-097]. Applicants replied that they had no issue in principle with alternative routing of water supply pipeline and temporary access route, but needed to retain it until the necessary consents have been secured. Following the D6 change request [PD-017] plot 425 was split, resulting in Work No. 4 being limited to plot 425a only, and this was welcomed by STDC in the SoCG [REP12-123].
- 8.39.31. In general response to STDC's concerns about sterilisation of development land, the Applicants highlighted that they had already included protective provisions in the dDCO to effectively manage the interaction with other development across the Teesworks site and has identified additional protections in response to the concerns raised by STDC, including new lift and shift provisions and arrangements for managing the programming of works. Their position is that the protective provisions would ensure that the Proposed Development is capable of being constructed and operated in tandem with other development across the Teesworks site and is compliant with the policy under the South Tees Area SPD. They confirmed they are in dialogue with STDC, seeking a voluntary agreement setting out the arrangements for the Proposed Development to be constructed and operated alongside other projects across the Teesworks site [section 17.0, REP3-012].

Options for Lease

- 8.39.32. STDC's WR confirmed that they are prepared to enter into voluntary agreements with the Applicants, and that a lease arrangement is being pursued rather than an outright acquisition. STDC confirmed they were engaging with the Applicants on an option agreement for lease of the PCC Site. They considered the request could be secured by amendment to the protective provisions to protect STDC's interests from the unacceptable effects of the Applicants' CA, should the Applicant and STDC fail to conclude voluntary agreements by the end of examination. STDC supported the use of STDC's existing utility corridors but sought to enter into separate option agreements for the connection corridor easements given that they fall outside of the PCC main site option agreement [REP2-097].
- 8.39.33. The Applicants replied that extensive efforts are being made to acquire the necessary interests in STDC's land by negotiation wherever practicable. CA powers are sought in the DCO in order to ensure that the Proposed Development is delivered, and the substantial environmental and socio-economic benefits are realised. In respect of the utility

corridor, the Applicants confirmed that separate easement agreements would be negotiated but to date efforts had concentrated on the main site option for the PCC Site. They pointed out that it is not possible to impose a lease on STDC in the absence of a voluntary agreement; the alternative available to the Applicants in order to deliver the Proposed Development is to seek CA powers where less intrusive powers of TP are not sufficient to deliver the Proposed Development [section 17.0, REP3-012].

- 8.39.34. Updates regarding negotiations into voluntary agreements were provided throughout the Examination, at CA Hearings and in the CA Schedule at each deadline.
- 8.39.35. STDC put forward its final position at D12, stating that whilst it continues to negotiate positively with the Applicants on option agreements, it retains its concerns around the CA of its land and interests and the deficiencies in protective provisions. STDC stated that separate option agreements for easements for the pipeline connections running through Teesworks are not as advanced as the main PCC Site option [REP12-164 and REP12-166].
- 8.39.36. The Applicants responded at D13 [REP13-019] that they have made very significant attempts to enter into voluntary property agreements with STDC since May 2020 as evidenced in the final SoCG [REP12-122] and CA Schedule [REP12-131], and that the option for lease is in a mature form. They confirmed that in terms of the CA of rights along the connection corridor, the form of easement agreement is expected to replicate the main site option, therefore their focus has been on entering into the main site option.

Position at the End of the Examination

- 8.39.37. The final version of the SoCG was submitted at D12 [REP12-122]. CA matters as set out in table 3.6 of the SoCG sets out the parties' position where it is stated that the concerns set out above could be largely controlled via protective provisions subject to agreement of terms. STDC's D12 submission set out that if agreements were to be reached, they anticipate that a number of its outstanding concerns could fall away [REP12-164].
- 8.39.38. The Applicants clarified that a 'lift and shift' provision has been added to the protective provisions to address STDC's concerns regarding the Tees Dock Road access, and that they are committed to removing the plots if an agreement is entered into with STDC to secure an alternative access in the post-Examination period [paragraph 9.2.13, REP13-019]. Similar 'lift and shift' provisions have also been included in the final dDCO regarding the construction access from RBT, the construction laydown/parking area, and the water connection corridor [9.2.14 to 9.2.18, REP13-019].
- 8.39.39. At the close of the Examination, together with a revised set of preferred protective provisions, STDC maintained their objection that the land in

the 85m easement corridor would be blighted as a result of the shadow of CA powers [AS-214].

- 8.39.40. The final CA Schedule [REP12-131] and End of Examination Negotiation Status document [REP13-021] state that the parties are continuing to work together to finalise the option agreements for leases on the main site and easements, and that an interface agreement is being negotiated alongside the protective provisions.

Conclusion

- 8.39.41. The location of the proposed PCC Site within the Teesworks site, and the associated utility and pipeline connections to it, means that STDC control the largest areas of Order land proposed for CA and TP. We understand that negotiations have been regular and ongoing in relation to voluntary agreements regarding options for lease, centred around the PCC 'main site' option and followed by the easement option. Whilst dialogue has been productive, and optionality reduced in a number of areas of the Order Land resulting in significant reductions in the amount of land proposed for CA and TP, a number of STDC's objections remain outstanding as set out above and in their final comments.
- 8.39.42. However, the issues do not appear to be unsurmountable. Given the extensive tracts of land within the Teesworks site and controlled by STDC, there are a number of alternative options which have the potential to be agreed under voluntary agreement. We recognise that there are a range of 'lift and shift' provisions now contained within the dDCO which may assist with STDC's concerns and allow other forthcoming development proposals at Teesworks to come forward. The protective provisions as put forward by both parties at the end of the Examination are dealt from paragraph 9.4.196 of this Report.
- 8.39.43. Notwithstanding this, such alternative options for easements and accesses are not before us as part of the Proposed Development. At the end of the Examination, no voluntary agreements had been completed and as such we consider the proposals for CA and TP as applied for. The Applicants have provided extensive justification for the numerous plots of land which STDC has objected to, which are required to construct, implement and maintain the Proposed Development.
- 8.39.44. In relation to the Tees Dock Road access, we have considered this to be acceptable in terms of highway safety and traffic and aside from a dispute between STDC and PDT which we are not party to, we see no reason why an alternative to Tees Dock Road plots 274 and 279 is necessary. The access is proposed for TP, for construction access only and as such the effects would be time limited. Without a completed voluntary agreement regarding the suggested alternative access via Lackenby Gate roundabout, we cannot be assured that HGV construction access can be achieved. Matters regarding human rights are dealt with at section 8.48 of this Report.
- 8.39.45. Likewise, whilst we understand that alternative construction worker parking could be provided at STDC's proposed park and ride site, there is

currently no legal agreement that would secure this, and as such plots 292 and 293 must remain as proposed for TP. The area of land involved for Work No.9 has been appropriately reduced through the second change request. The same conclusion applies to land relating to the 'Red Main' access to RBT and other areas of STDC land where there may be an alternative, but which has not been secured voluntarily.

- 8.39.46. We are satisfied that the CA of rights easement corridor for utilities has been demonstrated, through the Applicants' responses to our questions and within the 'Justification for Pipeline Corridors Widths' document. As we have concluded for other APs, we understand the need for flexibility and that on completion of further technical work that such corridors are likely to substantially decrease in width. Article 31 of the dDCO would allow the Applicants to initially take TP of the whole width of corridors required for connections. Once detailed surveys have been carried out and the relevant apparatus installed the Applicants could then acquire new rights within a narrower strip in which permanent rights are required, within the wider construction corridor. This phased approach to occupation and acquisition allows the permanent rights corridor to be defined after construction, and to be only that which is necessary for the operation, maintenance, and protection of the apparatus.
- 8.39.47. We also recognise that the wide areas applied for would also allow for flexibility in the positioning of services in the event that another developer has similar requirements for the land, therefore we do not accept that the proposed width of the easement corridor would sterilise or blight future developments.
- 8.39.48. Overall, the land interests of STDC would be adequately protected through the provisions in Schedule 12 Part 20 of the recommended DCO. The Applicants have provided a reasoned explanation for the extent of proposed CA of land and rights. There is a justified need for the land for the land to be utilised for and in connection with the Proposed Development.
- 8.39.49. Whilst the Applicants acknowledge that some plots sought may not ultimately need to be the subject of the CA powers, they are not yet in a position to confirm that to be the case. The Applicants would not use these powers if they were not needed for the Proposed Development or if a narrower easement could be agreed between parties. We consider that to be a reasonable approach.
- 8.39.50. The concerns raised by STDC would not, in themselves, preclude the finding that there would be a compelling case in the public interest for the CA powers sought. We are satisfied that the proposed powers of CA in relation to STDC's plots would be necessary and are justified in the public interest.

8.40. Stockton-on-Tees Borough Council

- 8.40.1. STBC is a freehold landowner of a number of plots in the Billingham area, which comprise public highway land at Belasis Avenue, Nelson Avenue,

Cowpen Bewley Road and Seaton Carew Road [sheets 1 and 2, REP12-015]. The highway land would be crossed by the CO₂ gathering network corridor (Work No. 6).

Conclusion

- 8.40.2. We note that STBC participated in the Examination as one of the RPAs but did not make any submissions in relation to land matters relating to its highways, nor is it a matter covered by the final SoCG [REP8-036]. The final CA Schedule [REP12-131] specifies that a voluntary agreement is not required in respect of the highway land.

8.41. Suez Recycling and Recovery UK Limited

- 8.41.1. Suez are freehold owners of plots 7 and 8 located in the Billingham area. The Applicants seek CA of rights and TP to enable the western extent of the CO₂ gathering network (Work No. 6) [sheet 1, REP12-015].
- 8.41.2. Suez did not participate in the Examination, nonetheless there are bespoke protective provisions for the benefit of Suez at Part 19 of Schedule 12 of the dDCO [REP12-003].
- 8.41.3. The final CA Schedule sets out that Heads of Terms for an Option Agreement for a Deed of Grant of Easement have been agreed between the parties, and the draft documents (issued on 1 June 2022) are being negotiated between the parties. However, the Applicants are awaiting a substantive response from Suez.

Conclusion

- 8.41.4. We note that Heads of Terms have been agreed and that negotiations are continuing. Nonetheless in the absence of a voluntary agreement we are satisfied that the proposed CA is needed in order to secure the delivery of the Proposed Development, and that satisfactory protective provisions for Suez would be secured in the recommended DCO.

8.42. Teesside Wind Farm Limited (EDF Energy Renewables Limited)

- 8.42.1. TWF comprises 27 turbines located off the coast of Coatham Sands. EDF, as operators of the windfarm, raised concerns in their WR that the Proposed Development had the potential to adversely affect their electricity export cable which runs from the wind turbines to the National Grid substation at Warrenby. They stated that the uninterrupted use, maintenance of and unhindered access to their infrastructure was critical to their continued operations [PDA-003]. EDF/TWF are not landowners but occupy a number of plots in the area of Coatham dunes which are proposed for CA of rights for the purposes of the development of the CO₂ export pipeline (Work No. 8) and the water discharge connection corridor (Work No. 5).
- 8.42.2. EDF Energy Renewables Limited were deleted from the BoR at D6 and all subsequent correspondence and documents therefore refer to TWF only.

TWF continued to raise concerns that Work Nos 5 and 8 may cause issues for the operation of the wind farm, both on and offshore [REP6-131]. The Applicants replied that they are continuing to engage and were confident that agreement would be made during the Examination [REP7-009].

- 8.42.3. TWF provided an update to negotiations at D11 [REP11-042], explaining that the form of a draft side agreement and protective provisions were agreed and expected to complete imminently. This was confirmed by the Applicants in the End of Examination Negotiation Status table [REP13-021].

Conclusion

- 8.42.4. We note that completion is expected imminently and, in the absence of this, we are satisfied that the proposed powers of CA in relation to TWF rights would be necessary for the achievement of the Applicants' reasonable objectives and justified in the public interest.

8.43. Other Affected Persons

- 8.43.1. The **Teesside 43 BSAC** diving club submitted a RR which notes that they have unfettered rights of access from South Gare Road which they do not wish to be challenged [RR-008]. They are tenants of PDT as landowners (refer to section 8.34 above), amongst numerous other occupiers and users of South Gare including the following who are listed in the BoR [REP12-008]:

- British Sub-Aqua Club;
- South Gare Marine Club;
- Tees and Hartlepool Pilotage Company Limited; and
- Numerous individuals listed as members of the South Gare Fisherman's Hut Association

- 8.43.2. The Applicants responded that they are not seeking any permanent stopping up powers to South Gare Road, nor does the DCO indicate that they intend to carry out any street works or alter the access, so that it would be maintained for all users. The Applicants explained that CA of rights is sought over a section of South Gare Road to lay and maintain pipes for the CO₂ export pipeline (Work No. 8) and water discharge outfall (Work No. 5B) [sheet 11, REP12-015]. Such powers would only be exercised if agreement cannot be reached with PDT to facilitate access and ensure the Proposed Development is deliverable. Protective provisions for PDT under Part 14 of Schedule 12 of the DCO are also relevant to its occupiers including the diving club. Article 159 specifically refers to the right for parties authorised by PDT to use South Gare Road, and article 163 requires the undertaker not to hinder or prevent access to South Gare (and provide an alternative diversionary route if necessary). No separate agreement is therefore required with the occupiers of South Gare Road including Teesside 43 BSAC, and the club made no further submissions to the Examination.

- 8.43.3. The **Church Commissioners for England** are listed as freehold owners of multiple plots around Seal Sands Road, but only in relation to below ground mineral rights. The Applicants do not envisage the need to acquire an interest in such rights.
- 8.43.4. The **Environment Agency** are listed as owners and occupiers of plots 218 and 232a, which comprises the pipe tunnel across the River Tees. The EA are included as a regulator in respect of main rivers, where the Crown Estate is owner, as dealt with in section 8.10 of this Report. The EA made no representations in relation to Crown land matters.
- 8.43.5. The BoR [REP12-008] also lists a range of other parties who are not freehold landowners nor did they participate in the Examination but may be affected by the Proposed Development as Category 1 occupiers or have a Category 2 interest. The CA Schedule sets out that the Applicants have included protection in Part 1, Schedule 12 of the dDCO for these parties. These include privately owned and operated mains, pipelines and cables which are not otherwise covered by bespoke protective provisions in Schedule 12 [REP12-131]. 'Utility undertaker' is defined in Article 2 of Part 1 to capture owners of apparatus not normally caught by the protection offered by the standard protective provisions. This is set out further in paragraph 9.4.123 of this Report.

8.44. STATUTORY UNDERTAKERS

- 8.44.1. As set out in section 8.8 of this Report, s127 and s138 of PA2008 are engaged in relation to the proposals to acquire land and/or rights, seeking powers to interfere with the apparatus of the Statutory Undertakers as described in paragraphs 9.1.24 to 9.1.32 of the SoR [REP12-010]: NGET, NGG, NR, Northern Gas, NPG, NWL, PDT and BT/Openreach.
- 8.44.2. By the end of the Examination, agreement had been reached with NWL only. The position with the other Statutory Undertakers who engaged in the Examination is set out in the preceding sections.
- 8.44.3. At CAH2 [EV7-001 to 006] the Applicants stated that no operators of electronic communications code networks had been identified in the BoR to date, and this was followed up by a note at D5 [Appendix 2, REP5-026]. This identified a number of operators who may have apparatus within the Order Limits, but nonetheless had been informed of the DCO Application and the ongoing Examination. No substantive responses had been received by the Applicants to confirm whether the listed operators have any assets or interests which may be affected, nor in relation to the draft protective provisions. We followed this up with questions EXQ2 CA.2.15 and CA.2.16, and no responses were received from the telecommunications operators.
- 8.44.4. The Applicants set out in their answer to CA.2.15 that BT had confirmed the location of two of their operational sites outside of the Order Limits, and that Openreach would operate apparatus within the Order Limits. Subsequently the Applicants included them in the D6 version of the BoR.

Therefore, the protective provisions in Part 2 of Schedule 12 of the dDCO would protect BT/Openreach together with any other telecommunications operators that the Applicants were not previously aware of [ExQ2 CA.2.15, REP6-121]. The Applicants confirmed they had not received any further communications from the relevant operators at [REP11-016 and ExQ3 CA.3.1, REP11-018].

- 8.44.5. The Applicants stated in the CA Schedule [REP12-131] that they continue to seek agreement with the other undertakers and to include in the DCO protective provisions to protect their interests.

Conclusion

- 8.44.6. All of the affected Statutory Undertakers whose rights and apparatus would be interfered with by the delivery of the Proposed Development (and secured by the inclusion of Article 33 in the Recommended DCO) have been dealt with in sections 8.X to 8.X above.
- 8.44.7. This is with the exception of BT plc/Openreach Limited, who are now listed in the BoR but did not make representations to the Examination. As such, whilst s127 could apply to this undertaker its provisions are not triggered in their case.
- 8.44.8. Schedule 12 of the recommended Order includes protective provisions for the undertakers as described in paragraphs 9.1.24 to 9.1.28 of the SoR [REP12-010], and we are satisfied that the interference with apparatus and rights is necessary for the purposes of carrying out the development.
- 8.44.9. Accordingly, having regard to the provisions of s138(4) of the PA2008 we recommend to the SoS that the Order may include provision for the extinguishment of the relevant rights or the removal of the relevant apparatus.

8.45. SPECIAL CATEGORY LAND

- 8.45.1. As set out in section 8.9 above, open space is the only special category land affected by the Proposed Development. The CA of rights over the land is required to enable delivery of Work Nos. 5 and 8. We agree with the Applicants' reasoning that the exemption in s.131(5) of the PA2008 would apply, and special parliamentary procedure does not apply.
- 8.45.2. The preamble to the dDCO (page 5, REP12-003] includes a statement as to compliance with section 132(3), in order to comply with section 132(2). We therefore conclude that the test under s.132(3) of the PA2008 is satisfied, as the open space land would be no less advantageous than it was before.

8.46. CROWN LAND

- 8.46.1. The powers over Crown land are necessary for Work Nos. 5 and 8 and the connection to the offshore elements of the Project which would enable storage of CO₂. The Proposed Development cannot be implemented without such powers. Despite the Applicants' assurances at

every stage during the Examination unfortunately s135 Crown consent has not been forthcoming. No detail or update on outstanding matters to explain the delay was provided by the Applicants at the end of the Examination.

- 8.46.2. Nonetheless, from the evidence submitted into the Examination, it is likely that Crown authority in relation to Crown rights in favour of the Applicants will be forthcoming in due course. We recommend that the Order should not be granted until it has been confirmed that the necessary Crown authority, consistent with the BoR and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.
- 8.46.3. Following the death of Her Majesty the Queen, we recommend that both the BoR and Article 43 of the dDCO should be revised so that the reference to "Her Majesty" in each case should be changed to "His Majesty".

8.47. FUNDING

- 8.47.1. Having had regard to the information in the Funding Statement and the net assets of the Project partners set out in its appendices, we are satisfied that there is security of funding for the implementation of the Proposed Development within the statutory period following the Order being made.

8.48. HUMAN RIGHTS ACT

- 8.48.1. In assessing whether there is a compelling case in the public interest for the land to be acquired compulsorily, it is necessary to consider the interference with human rights which would occur, if CA powers were granted.
- 8.48.2. The Applicants have considered potential infringement of the ECHR as a consequence of the CA and TP powers included within the draft DCO. This is set out in Section 11 of the SoR [REP12-010].
- 8.48.3. STDC have set out detailed arguments in relation to use of the Tees Dock Road access and reasonable alternatives as summarised in section 8.12 of this Report. We agree with the Applicants that HGV construction access from Tees Dock Road would be acceptable in planning terms and would not give rise to highway safety or capacity issues. The Applicants have stated that they would be willing to use STDC's preferred access at Lackenby Gate but are unwilling to delete the currently proposed access before completion of the relevant land option agreements. We have found, in section 8.39, that the TP of plots 274 and 279 is necessary in association with the construction of the Proposed Development.
- 8.48.4. The exercise of these rights of TP and use of land would infringe ECHR rights, but we consider that they are proportionate in relation to the Proposed Development, legitimate and in the public interest. There is provision for compensation to be paid to APs in the various protective provisions. We are therefore in agreement with the Applicants that the SoS does not need to be satisfied whether there are reasonable

alternatives to the Tees Dock Road access, in the event that STDC retain their objection on this matter.

- 8.48.5. No other representations were submitted in terms of other human rights considerations. Whilst Article 1 would be engaged in general terms in relation to the impact on businesses, we are content that the Applicants have taken a number of steps to ensure that its approach to land acquisition is proportionate and would not give rise to interference with private rights beyond that which would be absolutely necessary. The Applicants have sought to ensure that the land affected has been kept to a minimum and use of TP rather than CA has been sought where possible. The Applicants have also sought to reach voluntary agreements with all APs.
- 8.48.6. We are satisfied that the Applicants have endeavoured to minimise the impact that CA would have upon businesses affected by the Proposed Development through use of protective provisions. In addition, compensation would be payable for both CA of land and rights together with temporary use required to construct the development. We accept that in relation to Article 1 of the First Protocol and Article 8, the proposed interference with rights would be for legitimate purpose that would justify such interference in the public interest. The extent of that interference would be proportionate.
- 8.48.7. In relation to Article 6, the Applicant has consulted the persons set out in the categories contained in s44 of the PA2008 which include owners of the land subject to CA. All APs had the opportunity to participate in the Examination process and to make WRs and attend the CAH. We are therefore satisfied that the requirements of Article 6 have been met.

8.49. EQUALITY ACT

- 8.49.1. S149 of the Equality Act 2010 requires a public authority, in the exercise of its functions to:
- have due regard to the need to eliminate discrimination harassment and victimisation and any other conduct prohibited by or under the Act;
 - advance equality of opportunity between persons who share a relevant protected characteristics and persons who do not share it; and
 - foster good relations between persons who do share it.
- 8.49.2. There is no evidence that the Proposed Development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not, or any indication that allowing the Application would have any harmful equality implications.
- 8.49.3. We are satisfied that we have complied with the duties under s149 Equality Act 2010 throughout the Examination.

8.50. TEMPORARY POSSESSION

- 8.50.1. In some instances, TP has been sought as an alternative to CA. The dDCO includes powers for TP in Schedule 9, for the purposes of facilitating the construction of the Proposed Development and Work Nos. 9 and 10.
- 8.50.2. TP powers are not CA powers and accordingly the tests under s122 and s123 of PA2008 are not applicable. However, the request for the powers in order to enable the Proposed Development to be implemented and maintained must be justified. Likewise, the inevitable interference with human rights should also be justified, and there must be adequate compensation provisions in place for those whose land is affected. We have already established that these matters are acceptable.
- 8.50.3. We consider the TP powers are appropriate for inclusion to support the delivery of the Proposed Development in respect of all plots noted for TP in the BoR.

8.51. SUMMARY OF EXAMINATION MATTERS

- 8.51.1. CA matters relating to the delivery of the Proposed Development are complex. The area covered is vast and the number of plots are extensive. There are numerous overlapping and interlinked land and rights interests in the Teesside area in which a significant number and range of businesses are located. Many of the operations carried out by such businesses are nationally significant in their own right. They involve the manufacturing and transportation of chemicals and gases on which the country is dependent and provide economic benefits both to the Teesside area and the UK. Many are dependent on each other in the supply chain, in manufacturing and for transportation.
- 8.51.2. Furthermore, STDC have a unique position in being a Mayoral Development Corporation, Teesworks is a substantial redevelopment site with ongoing clearance and remediation. New development is already taking place and further investment being sought. The wider area is designated a Freeport. The Applicants are in negotiations with STDC relating to options for lease on the largest areas of the Order land, led by the main site option for the PCC Site where the most visible aspects of the Proposed Development would be located.
- 8.51.3. Some common points made by APs who have submitted objections are summarised below:
- Lack of design detail leading to uncertainty;
 - Excessive land take, particularly around pipeline corridors;
 - Excessive duration of rights;
 - Lack of consideration for reasonable alternatives;
 - Effects on ongoing business operations including access and safety considerations, including potential risks to nationally significant pipeline assets;
 - Potential sterilisation of land and future development/ investment; and

- Current and future management of the pipeline corridor.

- 8.51.4. We have taken account of the representations and objections made by landowners, business owners, Statutory Undertakers and other parties, and the Applicants' responses on the matters raised. There are only 17 landowners affected by CA, most of whom are also occupiers of land within the Order Limits, with some also having leaseholder status. Numerous other APs are not landowners or leaseholders but are occupiers with significant rights, principally in relation to the pipeline corridors and/or are Statutory Undertakers. The summary at Table 4 below specifies the status of each AP together with our understanding of the current status of negotiations. Taking in turn the common points as set out above, we comment as follows.
- 8.51.5. **Lack of design detail leading to uncertainty:** The 'First of a Kind' status of the project means that many details are unknown until full surveys and engineering designs are carried out. Whilst work on such matters was clearly ongoing throughout the Examination, as evidenced by the significant reduction in Order Limits through the change requests, there remain details that are likely to take longer to finalise and are dependent on several external factors. We accept the need for flexibility and are satisfied that the proposed parameters within the confines of the Rochdale Envelope provide sufficient certainty to understand the effects of the Proposed Development and in order to make recommendations to the SoS.
- 8.51.6. **Excessive land take:** This is related to the need for design flexibility as set out above. The Applicants have provided sufficient explanation in the 'Justification of Corridor Widths' document and other written submissions that the various widths around pipeline corridors and other infrastructure is required to deliver the Proposed Development. Aside from design details still being finalised, a range of other factors mean that routes of pipelines and other utilities need to remain flexible. These include unknown site conditions prior to full surveys, presence of other infrastructure, access requirements and the likelihood of other developments coming forward in the same area. In some cases widths have already been reduced, or changed to TP. The dDCO also includes provision for the land take to be reduced following the detailed design process.
- 8.51.7. **Excessive duration of rights:** Several APs raised this as an issue, stating that the CO₂ pipeline is likely to have a limited design life, so rights in perpetuity are unnecessary. The Applicants have adequately explained that the operational life of the Proposed Development is currently unknown, and may well operate beyond its design life, but as it would be a regulated asset the rights would be required for ongoing maintenance and access to enable its continued safe operation.
- 8.51.8. **Lack of consideration for reasonable alternatives:** This was a particular theme in representations from STDC (Tees Dock Road access), CNSL and NSMP (CATS and TGPP terminals). Should voluntary agreements be secured in the post-Examination period with the relevant

APs which secure alternative locations for accesses or infrastructure, such issues would fall away. In the event that voluntary agreements are not achieved, there are mechanisms in the protective provisions where relocation could take place if another development comes forward requiring the same area of land ('lift and shift').

- 8.51.9. **Effects on ongoing business operations including access and safety considerations, including potential risks to nationally significant pipeline assets:** Such matters would be adequately covered by the protective provisions, many of them bespoke to each operator, as well as to Sembcorp and NTG. There are also strict regulatory controls, outside of the DCO regime, which would provide protection for the pipelines.
- 8.51.10. **Potential sterilisation of land and future development:** Whilst this was raised by a number of APs, few of the proposals referred to are developments before us in the long list of developments as identified on Figure 24-2 of the ES. We accept that the area around the Tees is subject to a range of ongoing developments and investment. Existing occupiers may also wish to expand or add additional pipeline infrastructure. However, with the protective provisions and the flexible approach to land take proposed by the Applicants, we consider there would be adequate safeguards in place to ensure that future development and investment is not sterilised.
- 8.51.11. **Current and future management of the pipeline corridor:** We agree with Sembcorp and other APs including NTG that the integrated nature of the corridor and the diverse, complex and potentially hazardous industrial apparatus within it necessitates holistic oversight and management of the whole corridor. However the Applicants do not propose to manage the corridor as a whole, and the inspection and maintenance arrangements are capable of being secured by private agreement. In the absence of such agreements, if rights are compulsorily acquired, the management of pipeline assets would be secured through the relevant protective provisions, and these include notification to and consultation with the relevant occupiers.
- 8.51.12. We recognise that the Applicants have made efforts to refine the design of the Proposed Development by reducing the options for certain works, In doing so they have vastly reduced the area of Order land and thereby the number of plots affected by CA and TP. It is also clear that the Applicants have made substantial progress towards voluntary agreements with the APs and as indicated in Table 4 below, many of them are very close to conclusion. However, the number of outstanding agreements at the close of the Examination is considerable.
- 8.51.13. The resolution of such matters should have occurred during the Examination, and this would have greatly assisted our reporting and the SoS's consideration of our Report. Consequently, in addition to the need to obtain the consent of The Crown Estate the SoS may wish to seek an update on negotiations with the APs listed below before a decision is

taken. The ExA's understanding of the status of negotiations with each of the APs at the end of the Examination can be summarised as follows.

Table 4: Summary of position of each AP at the end of the Examination

Name of AP	Summary of position	Landowner or Leaseholder or Occupier
Air Products (Chemicals) Teesside Limited, Air Products Renewable Energy Limited, and Air Products plc (Air Products)	Negotiation continuing on asset protection agreement; no known issues of concern	Occupier
Anglo American	Property agreements in near final form ahead of sign off	Landowners
CATS North Sea Limited (CNSL)	Form of side agreement agreed prior to final sign off, property agreements awaiting conclusion of technical study	Leaseholders
CF Fertilisers Limited (CFL)	Legal documentation for option agreement for Deed of Grant of Easement in progress	Landowners
Exolum Riverside Limited and Exolum Seal Sands Limited (Exolum)	Side agreement going through the final sign off process	Occupier
Huntsman Polyurethanes (UK) Limited (HPU)	Side agreement in negotiation	Not listed in BoR
Ineos Nitriles (UK) Limited (Ineos Nitriles)	Legal agreements drafted but a lack of engagement from Ineos Nitriles.	Landowners
Ineos UK SNS Limited and One-Dyas UK Limited: 'The Breagh Owners'	Agreement reached subject to final sign off	Occupier
National Grid Electricity Transmission plc (NGET) (Statutory Undertaker)	Agreements in place for the bilateral connection agreement, construction agreement, Connection and Use of System Code accession agreement and transmission related agreement. Continuing to negotiate a side agreement alongside protective provisions.	Occupier

National Grid Gas plc (NGG) (Statutory Undertaker)	Draft side agreement in negotiation alongside protective provisions.	Occupier
Navigator Terminals North Tees Limited and Navigator Terminals Seal Sands Limited (Navigator)	Heads of Terms for an Option Agreement and Deed of Grant of Easement have been agreed between the parties, and negotiations are continuing on the draft legal documents.	Landowners
Network Rail Infrastructure Limited (NR) (Statutory Undertaker)	Clearance process completed and Heads of Terms for voluntary agreements are being reviewed.	Landowners
Northern Gas Networks Limited (Northern Gas) (Statutory Undertaker)	Asset protection agreement being negotiated.	Occupier
Northern Powergrid (Northeast) plc (NPG) (Statutory Undertaker)	Making progress on draft side agreement alongside protective provisions.	Occupier
North Sea Midstream Partners (NSMP) : Teesside Gas Processing Plant / Teesside Gas and Liquids Processing	Heads of Terms and voluntary land agreement remain to be agreed.	Landowners and leaseholders
North Tees Group (NTG) : North Tees Limited, North Tees Rail Limited and North Tees Land Limited	Heads of Terms for a voluntary Option Agreement for a Deed of Grant of Easement are currently being negotiated.	Landowners and leaseholders
NPL Waste Management Limited (NPL)	Heads of Terms in negotiation.	Landowners
PD Teesport (PDT) (Statutory Undertaker)	Heads of Terms negotiations continuing.	Landowners
Redcar Bulk Terminal Limited (RBT)	Agreements in near final form ahead of sign off	Landowners
Redcar and Cleveland Borough Council (RCBC)	Option agreement agreed in principle and awaiting exchange.	Landowners
SABIC Petrochemicals UK Limited (SABIC)	Heads of Terms for option agreement for a compound lease agreed and draft legal documents are in negotiation.	Landowners
Sembcorp Utilities (UK) Limited (Sembcorp)	Heads of Terms for a gas transmission agreement agreed and legal agreements progressing. Use of Tunnel	Landowners

	No.2 terms agreed and legal agreement being progressed.	
South Tees Development Corporation (STDC)	Agreement for main site option lease is in a mature form, easement agreement less advanced but expected to replicate the main site option. Commercial service agreements for utilities ongoing. Interface agreement being negotiated.	Landowners
Suez Recycling and Recovery UK Limited (Suez)	Heads of Terms for an Option Agreement for a Deed of Grant of Easement have been agreed and the draft documents are being negotiated between the parties.	Landowners
Teesside Wind Farm Limited (TWF)	Expected to complete imminently	Occupiers

8.52. OVERALL CONCLUSIONS

Purpose for which CA may be authorised - s122(2) of PA2008

- 8.52.1. We are satisfied that the legal interests in all the plots of land included in the revised BoR and shown on the Land Plans are required for the Proposed Development. The purpose for each of the plots required is clearly defined and the need for the development in each of the plots has been demonstrated. We consider therefore that the requirements of s122(2)(a) and (b) of the PA2008 would be met.

Whether there is a compelling case in the public interest - s122(3) of PA2008

- 8.52.2. Our conclusions below are predicated on the SoS finding that the national and local need and benefits of the Proposed Development represents a substantial public interest argument in its favour; that the application would be in accordance with the NPS and the adverse impact of the development would not outweigh its benefits thus justifying the grant of development consent for the Proposed Development.
- 8.52.3. In considering whether there is a compelling case in the public interest, we are satisfied that the Applicants have endeavoured to minimise the impact that CA would have on those APs who would be affected. Throughout the Examination the Applicants have made efforts to reduce amount of the Order land and hence limit the use of CA powers necessary to deliver the Proposed Development, and through the use of TP powers, to minimise both land-take and the extent of rights and interests to be acquired.
- 8.52.4. We have taken into account the points made by various objectors in relation to alternatives and are satisfied that the Applicants have

explored all reasonable alternatives to CA. These include modifications to the Proposed Development (which are likely to continue in the post-Examination period), as well as efforts to secure acquisition by negotiation and voluntary agreements. The objections raised do not dissuade us from the conclusion that there are no alternatives to the CA powers sought which ought to be preferred.

- 8.52.5. We have had regard to the objections raised by APs but nevertheless note that the majority of APs support the Proposed Development in principle. We have therefore concluded that there is a compelling case in the public interest to acquire each of the plots listed in the BoR, and the public benefit derived from the CA outweighs the private loss that would be suffered by those whose land is affected.

Land to which authorisation of compulsory acquisition can relate – s123 of PA2008

- 8.52.6. We conclude that, as required by s123, there is appropriate provision for CA in the Applicants' dDCO. In accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009, the Applicant has included and updated throughout the Examination a SoR, a Funding Statement, Land Plans and a BoR. The land related powers in the DCO would be necessary and justified for the Proposed Development to proceed.

Statutory Undertakers

- 8.52.7. The SoS can be satisfied that the CA of the Statutory Undertakers' land or rights over that land would meet the prescribed tests set out in subsections 127(3) or (6). In addition, the extinguishment of the relevant right or the removal of the relevant apparatus would be necessary for the purpose of carrying out the development to which the DCO relates, and it should include the CA powers sought in relation to Statutory Undertakers' land.

Special Category Land

- 8.52.8. CA of rights over open space land at Coatham Sands would not result in the land being any less advantageous than it was before. We conclude that the test in s132(3) of the PA2008 is satisfied.

Crown Land

- 8.52.9. The powers over Crown land are necessary for Work Nos. 5 and 8 and the connection to the offshore elements of the Project which would enable storage of CO₂. The Proposed Development cannot be implemented without such powers. Therefore, the Order should not be granted until it has been confirmed that the necessary Crown authority, consistent with the BoR and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.

Temporary Possession

- 8.52.10. The TP powers sought would be necessary both to facilitate implementation of the Proposed Development and to maintain it. Adequate compensation provisions are in place in the Recommended DCO.

Funding

- 8.52.11. The Applicants have demonstrated that there is a reasonable prospect of the requisite funds both for acquiring the land and implementing the Proposed Development becoming available.

Human Rights and Equality

- 8.52.12. We are satisfied that the proposed interference with the human rights of individuals would be for a legitimate purpose and to a proportionate extent. We are also satisfied that we have complied with the necessary duties under s149 Equality Act 2010.
- 8.52.13. Lastly, with regard to the incorporation of other statutory powers pursuant to s120(5)(a), we are satisfied that as required by s117(4), the DCO has been drafted in the form of a statutory instrument and further that no provision of the DCO contravenes the provisions of s126 which precludes the modification of compensation provisions.

Overall Conclusion

- 8.52.14. On the basis of the conclusions drawn above we conclude that, the Applicant's case for CA and TP has been made in its own right. We also conclude that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.52.15. We recommend that subject to receipt of s135 Crown consent:
- the compulsory acquisition powers included in the Recommended DCO be granted;
 - the temporary possession powers included in the Recommended DCO be granted;
 - the compulsory acquisition powers sought in respect of Crown land should be granted;
 - the powers authorising the compulsory acquisition of Statutory Undertakers' land and rights over land included in the Recommended DCO be granted;
 - the powers authorising the extinguishment of rights, and removal of apparatus, of Statutory Undertakers included in the Recommended DCO be granted;
 - the powers authorising the compulsory acquisition of land and rights over land that forms part of open space included in the Recommended DCO be granted; and
 - the powers included in the Recommended DCO to apply, modify or exclude a statutory provision be granted.

9. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

9.1. INTRODUCTION

- 9.1.1. A dDCO [APP-005] (Revision 1) and an EM [APP-006] (Revision 1) were submitted by the Applicants as part of the application. The EM describes the purpose of the dDCO and each of its articles and schedules. The dDCO [APP-005] and subsequent iterations are in the form of a statutory instrument as required by s117(4) of the PA2008.
- 9.1.2. This Chapter outlines the changes made between the original submission dDCO and the Applicants' final preferred draft version at D12 [REP12-003] (Revision 9). It proposes changes to the Applicants' final dDCO in order to arrive at the Recommended DCO in Appendix C to this Report.
- 9.1.3. The following sections of this Chapter report on:
- the structure and functions of the dDCO;
 - how the dDCO was examined including its progress through the Examination;
 - the main matters addressed in the Examination and summarise changes made to the dDCO during the Examination;
 - the final changes proposed; and
 - the relationship between the DCO and other consents and legal agreements.

9.2. THE STRUCTURE OF THE DRAFT DEVELOPMENT CONSENT ORDER

- 9.2.1. This section records the structure of the dDCO based on the Applicants' final dDCO [REP12-003], explained more fully in the final EM [REP12-006]. In summary:
- Part 1 (Articles 1 to 3) sets out how the Order may be cited and when it comes into force. Article 2 sets out the meaning of various terms used in the Order. Article 3 sets out the position on electronic communications for the purposes of the Order;
 - Part 2 (Articles 4 to 9) contains the principal powers in relation to the Order. Article 4 provides development consent for the authorised development. Articles 5 and 6 respectively allow the authorised development to be maintained and operated. Articles 7 and 8 respectively set out who has the benefit of the powers of the Order and how (and to whom) those powers can be transferred. Article 9 provides for modifications and amendments to the York Potash Order 2016 and modifies local legislation which benefits PDT as the statutory harbour authority on the River Tees;
 - Part 3 (Articles 10 to 16) "Streets" provides for the undertaker to be able to carry out works to and within streets, to create or improve accesses, to temporarily stop up streets and rights of way, and to regulate traffic;

- Part 4 (Articles 17 to 21) sets out supplemental powers relating to the discharge of water, felling or lopping of trees and removal of hedgerows, carrying out protective works to buildings, provides authority to survey and investigate land and for the removal of human remains;
- Part 5 (Articles 22 to 36) provides for powers of compulsory acquisition and to take temporary possession of land for the purposes of the authorised development, and also deal with various related land matters;
- Part 6 (Articles 37 to 48) includes various miscellaneous and general provisions in relation to the Order:
 - Article 37 provides for Schedule 10 and Schedule 11 which include DMLs that authorise licensable activities in the marine environment for the benefit of NZT Power and NZNS Storage respectively;
 - Articles 38 to 40 include provisions relating to the application of landlord and tenant law, operational land, and defence to proceedings in respect of statutory nuisance;
 - Article 41 provides protection for Statutory Undertakers and others through the protective provisions in Schedule 12;
 - Articles 42 to 48 include provisions for saving rights of Trinity House; the protection of Crown rights; the procedure in relation to certain approvals as set out under Schedule 13; certification of plans as set out under Schedule 14; the service of notices; arbitration procedure in the event of a dispute; and funding for CA compensation; and
 - Articles 49 and 50 provide for the modification of the Interface Agreement.

9.2.2. There are 15 Schedules to the Order, providing for:

- the description of the authorised development (Schedule 1);
- the Requirements applying to the authorised development (Schedule 2);
- modifications and amendments to the York Potash Harbour Facilities Order 2016 (Schedule 3);
- matters in relation to streets and access (Schedules 4 to 6);
- matters in relation to the CA and TP of land (Schedules 7 to 9);
- the DML for Project A (Schedule 10);
- the DML for Project B (Schedule 11);
- protective provisions (Schedule 12 Parts 1 to 28);
- the procedure for discharge of Requirements (Schedule 13);
- documents and plans to be certified (Schedule 14); and
- design parameters (Schedule 15).

9.2.3. We find that the structure of the DCO is fit for purpose and no changes to the structure as outlined above are recommended.

9.3. THE EXAMINATION OF THE DCO

- 9.3.1. Prior to the Examination commencing the Applicants submitted revised versions of the dDCO [AS-004] (Revision 2), [AS-135] (Revision 3) and the EM [AS-005] (Revision 2) and [AS-137] (Revision 3). The latter versions of the dDCO and EM were submitted in April 2022 as part of the first change request. The Examination of the dDCO commenced with ISH2 on 11 May 2022 (described in Chapter 1 above) with the agenda for the hearing set out in the Rule 6 Letter (Annex G) [PD-009]. ISH2 was based on dDCO [AS-135] (clean) and [AS-136] (tracked) (Revision 3) and EM [AS-137] (clean) and [AS-138] (tracked) (Revision 3). The hearing resulted in 37 Action Points [EV-005].
- 9.3.2. Having held an early ISH into the dDCO we asked no written questions related to the dDCO when ExQ1 [PD-012] was published. Further ISHs into the dDCO were held on 12 July 2022, (ISH3 with agenda at [EV6-001] and Action Points at [EV6-010]) and on 18 October 2022 (ISH5 with agenda at [PD-020] and Action Points at [EV9-007]). ExQ2 [PD-016] included 19 questions in relation to the dDCO. Responses to these were provided at D6. One further question in relation to the dDCO was asked at ExQ3 [PD-021] with a response at D11.
- 9.3.3. The Applicants updated the dDCO and EM several times during the Examination, responding to issues raised in written questions, to WRs and to address matters raised in hearings. For each revision, the Applicants submitted a clean copy and a copy showing tracked changes from the previous clean copy version. With each iteration of the dDCO the Applicants also provided a Schedule of Changes to the dDCO. Table 5 below shows the iterations of the dDCO (clean), EM (clean) and the Schedule of Changes. It also summarises the main changes proposed. For a complete picture of the changes occurring with each iteration of the dDCO refer to the appropriate Schedule of Changes. The ExA did not issue a consultation dDCO.

Table 5: Iterations of the dDCO

Rev . No.	DCO Library Reference	EM Library Reference	Schedule of Changes to the DCO Reference	Notable Changes Made
1	[APP-005]	[APP-006]	N/A	N/A
2	[AS-004]	[AS-005]	N/A	Work No 1 includes new sub-section E.
3	[AS-135]	[AS-137]	N/A	First Change Request covering: • selection of the gas connection route for Work No. 2A; • the CO₂ gathering network route crossing the River Tees from the north and forming part of Work No. 6 to the PCC Site reduced in area; and

				updates made to land parcels across the Order Limits.
4	[REP2-002]	N/A	[REP2-004]	Article 8. Specifies that a transfer or lease covering Work No. 5A will be to Teesworks Limited or such other entity as STDC may confirm. Article 49. New article specifies the Interface Agreement shall no longer have effect. Schedule 2. R31. Changes made as set out during ISH2 [REP1-036]. Schedule 3. The inserted protective provisions are in a new Schedule 12 of the York Potash Order 2016. Schedule 12. New and amended protective provisions.
5	[REP4-002]	N/A	[REP4-004]	Article 25. Clarifies how the powers may be exercised by a Statutory Undertaker where the undertaker transfers the power to them. Schedule 2. R36. New requirement covering consultation with STDC. Schedule 12. Amendments to various provisions to reflect the positions agreed between the parties.
6	[REP5-002]	[REP5-005] (Rev. 4)	[REP5-004]	Article 8. Specifies the conditions for notification where a transfer of the benefit is made and relates to the STDC area. Article 49. Amendments to modify the Interface Agreement instead of disapplying it. Schedule 2. Sembcorp added as a consultee in respect of various Requirements. R31. Confirms that two EPs are required: for Work Nos. 1 and 7 as agreed with the EA. R37. New requirement setting out when and how consultation with Sembcorp should occur.

				Schedule 12. Deletion of EDF Energy from Part 21 and removal of Part 22 (Low Carbon Limited).
7	[REP6-002]	[REP6-005] (Rev. 5)	[REP6-004]	Second Change Request. Articles 49 and 50. Article 49 [REP5-002] replaced by new Articles 49 and 50. Schedule 1. Deletions within Work No. 6 to remove references to Option 2 and Option 3 with the selection of Option 3. Schedule 7. Amendments to plot numbers to reflect changes to rights. Schedule 9. Amendments to plot numbers to reflect changes to temporary rights. Schedule 11. Removal of references to Work No. 6. Schedule 12. Part 19 - changes to the AIL access route land, PCC Site access route land and water connection land.
8	[REP8-003]	[REP8-006] (Rev. 6)	[REP8-005]	Article 8. Clarifies how the MMO and EA must be notified of the powers to be transferred under a DML. Schedule 2. R3. Details of the works involving trenchless technologies must be provided for identified Work Nos. R13. Specifies that the preliminary risk assessment will include a desk top study and full risk assessment, and the requirements of any remediation strategy. R23. Specifies that the piling/penetrative foundation design method statement must be consistent with any approved ground monitoring plan. R3. Confirms the details to be included within the DEMP. R37. Extends the consultation where there is an impact on Sembcorp's operations outside the Order Limits. R38. A new Requirement to reflect the inclusion of TGLP and TGPP as consultees where their interests could be affected.

				Schedule 10. Amendments to address the MMO's comments, including to ensure that schemes approved by the MMO are implemented. Schedule 12. Substantive updates to numerous protective provisions, to reflect the discussions with relevant parties. Schedule 14. A new "shared areas plan" gives effect to protective provisions for the benefit of Anglo American under Part 17.
9	[REP12-003]	[REP12-006] (Rev. 7)	[REP12-005]	Third Change Request. Article 8. Deletion of power to transfer or lease all or part of Work No. 5A to Teesworks Limited and confirmation of notice periods. Article 37. Amendment to reflect that there are now only two parts to the DMLs. Schedule 1. Work No. 5A deleted. Schedule 2. R3. Deletion of the requirement to submit details of the method of works to existing water discharge pipelines above MLWS in respect of Work No. 5. R13 Various changes reflecting an agreement with the EA. R37. A new requirement specifying the conditions under which an effluent nutrient nitrogen safeguarding scheme must be submitted and implemented. R37 and R38. Deletion of previous requirements. R38. A new requirement specifies that references to Sembcorp and the TG entities must be interpreted by reference to the protective provisions for those parties. Schedule 9. Deletion of various plots for temporary use to facilitate carrying out of Work Nos. 5A and 10.

				Schedules 10 and 11. Various amendments to address comments from the MMO including to remove licensed activities and related conditions associated with Work No. 5A Schedule 12. Substantive updates to reflect discussions with the relevant parties on the protections required. Schedule 14. Various changes to include new certified documents or change details.

- 9.3.4. No IP raised any concern with the description of the authorised development during the Examination. No IP raised any concern with the description of the works or the documents to be certified. Our concerns with some definitions in the dDCO submitted with the application [APP-005] were resolved during the Examination.

9.4. DEVELOPMENT CONSENT ORDER MATTERS ADDRESSED THROUGH THE EXAMINATION

Introduction

- 9.4.1. In this section we comment on those changes made during the Examination which we consider to be significant. This is based on the application version [APP-005] (Revision 1) of the dDCO and EM [APP-006] (Revision 1) unless otherwise referenced. Where an amendment has been made to the EM to provide further justification for a proposed provision in the dDCO and we are content with that clarification it is not reported in this section.
- 9.4.2. We do not report on every change made in the updated versions of the dDCO. This is because many amendments were made as a result of: typographical or referencing errors; slight revisions of the wording following either discussion between the Applicants and relevant IPs or from their WRs; and as a result of minor changes following ExQ1 [PD-012], ExQ2 [PD-016], ExQ3 [PD-021], ISH2 [EV4-001 to EV4-005], ISH3 [EV6-001 to EV6-010] and ISH5 [EV9-001 to EV9-007]. We confirm our finding where there was a difference of opinion between parties; where we accept a change which was agreed between parties we do not necessarily comment.

Article 2 – Interpretation

- 9.4.3. Definitions of the **"2009 Act"** (the Marine and Coastal Access Act 2009), **"CCGT"** (combined cycle gas turbine), **"CCP"** (CCP), **"carbon capture and storage licence"**, **"carbon capture and storage licence"**, **"consenting authority"** and **"Royal Mail"** were added [REP2-002].

- 9.4.4. There was no change between Revision 1 and Revision 9 to the definition of **"commence"**. However, the MMO [RR-037] noted that the definition did not include pre-construction monitoring surveys approved under the DML and that it was not clear within either DML where pre-construction monitoring surveys were required. Responding, the Applicants [REP1-045] stated that they intended to delete reference to pre-construction surveys in the dDCO submitted at D2. With no further discussion on this matter, we are content that that it is adequately dealt with through the DMLs.
- 9.4.5. Following discussions at ISH2, the Applicants amended the definition of **"date of final commissioning"** so that it means the date on which the authorised development commences operation on a commercial basis or where specified in the Order, the date on which a specified Work No. commences operation on a commercial basis [REP2-002].
- 9.4.6. The definition of **"design and access statement"** was added to reflect its insertion in Schedule 14 and the definition of **"framework construction environmental management plan"** was amended to reflect the change to this document in Schedule 14 [REP5-002].
- 9.4.7. The definition of **"ES addendum"** was added [AS-135] and the definition of **"Limits of deviation"** was deleted [AS-004] prior to the Examination. A change to the definition of **"indicative landscaping and biodiversity strategy"** and a new definition inserted of the **"updated landscaping and biodiversity plan"** were made at D2 [REP2-002].
- 9.4.8. In the MMO's RR [RR-037] it was recommended that the definition of **"maintain"** was amended to remove references to *"adjust"*, and *"improve"*, noting that the definition was not in-line with the MMO's interpretation of maintain/maintenance; *"upkeep or repair an existing structure or asset wholly within its existing three-dimensional boundaries"*. The Applicants [REP1-045] stated that they did not propose to amend the definition as it provided a reasonable degree of flexibility whilst not permitting the undertaker to carry out maintenance operations which would cause materially new or materially different environmental effects to those identified in the ES. The Applicants also referenced the precedence provided in The Eggborough Gas Fired Generating Station Order 2018. We accept the Applicants' position that the definition provides reasonable flexibility.
- 9.4.9. Concerns about the impact and extent of **"permitted preliminary works"** (PPW) were raised in written submissions by STDC [RR-035, REP2-097a and REP5-042] and Sembcorp [REP3-025] and during hearings (ISH3 and ISH5). The IPs sought clarification about the controls over PPW and to understand why the PPW did not follow the approach in other made Orders.
- 9.4.10. The Applicants confirmed [REP1-045, REP3-012, REP4-025 and REP5-025] that the list of PPW was prescriptive and involved largely non-intrusive and minor works. PPW were required to provide the information to discharge requirements or carry out initial construction-related

activities necessary prior to discharging requirements. The Applicants acknowledged that the list of PPW included some works that are not listed in other made Orders but recognised that the scope of the PPW is necessarily bespoke to each specific project. Moreover, the concept of PPW does not apply in protective provisions which specify that before commencing the undertaker is obliged to submit works details to the party benefitting from the protective provisions for approval.

- 9.4.11. Amendments to the protective provisions in Part 19 of Schedule 12, agreed between STDC [REP11-041] and the Applicants [REP11-015], and as reflected in the final dDCO [REP12-003], require the undertaker to submit works details to STDC for approval prior to the carrying out of any PPW within the area of numbered works [REP12-005 and REP12-133]. At D13 the Applicants confirmed that they had amended the protective provisions to include consent for works details related to PPW [REP12-003]. The Applicants also explained why the consent to works details (including PPW) should not extend to Work Nos. 1 and 7 located at the PCC Site [REP13-019]. This issue is addressed below in Table 6.
- 9.4.12. At D11 Sembcorp confirmed that with respect to the definition of PPW, it was satisfied that its concerns in terms of potential adverse impacts on its interests arising from undertaking the authorised development, could be adequately overcome through the inclusion of appropriate protective provisions in the dDCO. Consequently, no further amendment was required to the definition of PPW to overcome Sembcorp's concerns [REP11-029]. At D12 the Applicants confirmed that PPW would be addressed through protective provisions [REP12-133].
- 9.4.13. Based on these submissions, we consider that the definition of PPW in Article 2 is appropriate and any outstanding concerns of STDC and Sembcorp can be dealt with through protective provisions.
- 9.4.14. Definitions of **"Interface Agreement"** and the parties to it (**"BP Exploration Operating Company Limited, Carbon Sentinel Limited, Orsted, Hornsea Project Four Limited and Smart Wind Limited"**) were inserted in Article 2, reflecting the introduction of a new Article 49 [REP2-002].
- 9.4.15. The definition of **"relevant highway authority"** was added at D4, to enable both the highway authority and NH to be referenced in Requirements [REP4-002].
- 9.4.16. The definition of **"Sembcorp operations"** was moved from the Sembcorp protective provisions at Part 16 of Schedule 12 to apply additionally to the Requirements under Schedule 2 [REP5-002] but was subsequently deleted [REP8-003]. This followed changes to R37 to extend consultation on certain Requirements to circumstances where there is an impact on Sembcorp's "interests" (whether those are within the Order Limits or not). The definition of "Sembcorp's operations" is only now used in the protective provisions for the benefit of Sembcorp in Part 16 of Schedule 12 of the DCO. Accordingly, the definition was inserted in that part of the Order instead of Article 2 [REP8-003]. The definition of

"Sembcorp Utilities (UK) Limited" was added at D4 [REP4-002], changed to **"Sembcorp"** [REP5-002] and deleted at D12 when the operative definitions were included within the protective provisions in Schedule 12 [REP12-003].

- 9.4.17. The definition of **"Sembcorp Pipeline Corridor protective provisions supporting plans"** was added at D8 [REP8-003] and deleted at D12 [REP12-003] when it was included in Part 17 of Schedule 12 for the protection of the Sembcorp Pipeline Corridor.
- 9.4.18. The definition of **"shared areas plan"** was added [REP8-003] to reflect its status as a certified plan under Article 45 and was amended to refer to Schedule 12 Part 18 (for the protection of Anglo American) at D12 [REP12-003].
- 9.4.19. The definition of **"STDC area"** was added [REP4-002] reflecting its inclusion in new Article 36.
- 9.4.20. At D8 the definition of **"TG entities"** was inserted, as TGPP and TGLP were added as consultees to certain Requirements following a request by the TG entities [REP8-003]. However, this was subsequently deleted as the operative definitions are within the relevant sets of protective provisions in Part 28 of Schedule 12 [REP12-003] while R38 confirms that TG entities means the same as the definition of **"NSMP entity"** in Part 28.
- 9.4.21. The definition of **"undertaker"** was changed to make the definition also subject to Article 7 [REP2-003].

Article 4 - Development consent etc. granted by this Order

- 9.4.22. At ISH2, in their post-hearing submissions [REP1-036] and in responding to ExQ2 DCO.2.6. [PD-016], the Applicants explained that the dDCO [APP-005] no longer adopted limits of deviation [AS-004]. Instead, as set out in paragraph 3.3.2 of the EM [AS-005], each numbered work must be situated within the corresponding numbered area shown on the Works Plans [AS-148], as secured by Article 4. Therefore, whilst each numbered work may be carried out within the coloured work area as shown on the Works Plans, the boundary of each "work" is not flexible and therefore acts in a similar way to a limit of deviation [REP6-121].
- 9.4.23. In its WRs STDC sought clarification from the Applicants on why the dDCO did not refer to vertical limits of deviation for works at Teesworks, whereas other DCOs do contain such limits [REP2-097a]. During ISH3, and subsequently [REP3-012 and REP5-025] the Applicants confirmed that all land directly above pipeline and service corridors would be sterilised, making vertical limits of deviation redundant. As a result, STDC accepted that vertical limits of deviation were not required [REP5-042].

Article 8 - Consent to transfer benefit of this Order

- 9.4.24. At D2 Article 8(8)(iv) was changed at STDC's request to clarify the meaning of "*nominate*" [REP2-002]. However, the Applicants' final dDCO included the deletion of power to transfer or lease all or part of Work No. 5A reflecting the proposed change seeking to remove Work No. 5A from the Order. Consequently, Article 8(8)(iv) was deleted [REP12-003].
- 9.4.25. A new provision was also inserted at Article 8(13) to require notification of the MMO and EA of any transfer of the benefit of the DML specifying the content of the notice [REP2-002 and REP2-004].
- 9.4.26. At ISH5 and in their post-hearing submission the Applicants explained that the general approach to transferring the benefit of a DCO can be found in numerous recent DCOs [REP5-025]. Further changes were made to Article 8(13) to clarify that the MMO and EA must be notified of the powers "*to be*" transferred under a DML within 10 working days of an agreement to that effect. This change was to remove potential ambiguity as to the timing of the notice [REP8-003].
- 9.4.27. At D5 two new paragraphs were inserted. Sub-paragraph 14 specified that where a transfer or grant of the benefit of the Order is made and relates to the STDC area, the undertaker must notify STDC within 10 working days of the date the transfer or grant taking effect. A new sub-paragraph 15 specifies what must be included in the notice to STDC [REP5-002].
- 9.4.28. STDC's representations requested that it should be notified before the transfer or grant of powers. STDC sought an amendment so that it received notice "*before*" the Applicants transferred powers, in line with the drafting in Article 8(9). STDC argued that without prior notice a third party would have rights over the STDC area without STDC's or its tenants' knowledge. Given the scale of the development within the STDC landholding and the level of cooperation required between the parties, STDC considered it reasonable to be informed of transfers of powers prior to the transfer, regardless of whether powers are due to be exercised. Additionally, STDC noted that its request did not impose an unnecessary burden on the Applicants [REP6-143, REP8-057, REP11-041 and REP12-166]. The Applicants' justification for these powers in the EM [REP8-006] did not account for STDC's unique position as owner of the site required for the main facility and connection corridors.
- 9.4.29. STDC proposed the deletion of Article 8(14) and (15) and that Article 8(9) was amended to provide for the Applicants to give STDC advance notice of any transfer of powers affecting STDC's land, citing the precedent of Article 8(5) of the Thurrock Flexible Generation Plant Development Consent Order 2022 [REP11-041].
- 9.4.30. The Applicants disagreed with STDC's position and noted that they would notify STDC within 10 working days of the transfer and therefore STDC would know who had powers very shortly after they were transferred [REP7-009]. At D12 [REP12-133] and confirmed at D13 [REP13-019] the

Applicants explained that STDC was seeking a potential role in influencing a transfer, not merely being notified of it, commenting that the SoS requires advance notification, but it would not be appropriate for other parties. The Applicants disagreed that the Order cited by STDC provided precedent for its proposal and that the Thurrock DCO does not reflect precedent in other recently made DCOs where prior notification must only be given to the SoS, not landowners. The Applicants also argued that the comparison with non-energy generation projects was not appropriate given the arrangements sought in Article 8 specifically relate to parties holding an electricity licence under the Electricity Act 1989. As set out in the EM [REP12-004] it is not necessary or proportionate to require the approval of transfer of DCO powers to electricity undertakers with similar standing. The mechanism in the DCO for transferring powers without SoS approval would not provide an appropriate basis for STDC requiring prior notification. The absence of a requirement for SoS approval where a transfer is to another electricity undertaker demonstrates that the SoS is satisfied that this not necessary.

- 9.4.31. STDC's proposed changes would only ensure that STDC is notified a matter of days before the undertaker is already obliged to notify them. The Applicants also rejected the idea of a dual notification obligation for the benefit of Teesworks Limited, which is a majority privately owned company with no public authority responsibilities. Nevertheless, the Applicants indicated that they were willing to include an additional restriction, so that notice must be given to STDC within 10 working days of the transfer or grant, and prior to the exercise of any powers by the transferee or grantee making the change at D12 [REP12-003].
- 9.4.32. While recognising the scale of STDC's landholding and interests and having considered the other DCOs which were cited and the limited administrative burden STDC's proposed amendment would create, we are not convinced that STDC should be informed of the transfer of powers prior to it occurring. We consider the time periods proposed by the Applicants, particularly incorporating the proposed amendment at D12 [REP12-003] would provide adequate notice and is in line with other recently made DCOs including the Immingham Open Cycle Gas Turbine Order 2020 and The Hornsea Three Offshore Wind Farm Order 2020.
- 9.4.33. NTG stated that Article 8(8) should include a test of financial standing for any proposed transferee. It argued that any transferee would become bound by the protective provisions in Schedule 12 under which there are obligations for works and or indemnities. Such obligations would become meaningless if the transferee had inadequate financial standing [AS-208].
- 9.4.34. The Applicants noted that Article 8(8) comprises standard DCO drafting and has been accepted in multiple granted DCOs. They acknowledged that there were very limited circumstances in which the SoS's consent would not be required prior to transfer of the benefit. Where the SoS's consent is required, the Applicants considered that it would not be necessary to make explicit that he or she must have regard to financial considerations, as the SoS can be relied upon to exercise their judgment

reasonably and to take account of all relevant matters (including, where appropriate, financial matters) [REP11-014].

- 9.4.35. Having regard to other made DCOs, the situations where the SoS's consent is required and the judgments which must be made, and in the absence of clear reasons why the Applicants' approach should not be accepted we are content with the wording of Article 8(8) in the Applicants' dDCO [REP12-003].

Article 10 - Power to alter layout etc. of streets

- 9.4.36. At D5 the Applicants made changes to the drafting of Article 10(1) to provide greater clarity about the references to Schedule 4 [REP5-002 and REP5-004].

Article 12 - Construction and maintenance of new or altered means of access

- 9.4.37. Responding to our question at ISH2, at D2 the Applicants amended Article 12(4) to provide for the wording after "*displayed*" to have general effect in respect of limbs a) to e) [REP2-002]. In commenting on Article 12, STDC referenced its objection to the Applicants' construction of a new access on the Tees Dock Road (Part 2 to Schedule 5 of the dDCO) [RR-035]. This was addressed by the Applicants at D1 (paragraph 4.18.1 of REP1-045] and is addressed in Chapter 8 section 8.39.

Article 13 - Temporary stopping up of streets, public rights of way and access land

- 9.4.38. Responding to our question at ISH2, the Applicants explained [REP1-036] that restrictions in relation to the access land would be subject to consultation with NE under Article 13(4)(c). At D5 Article 13(3) and (9) were amended to provide greater clarity about the references to Schedule 6 [REP5-002].
- 9.4.39. The Applicants responded to STDC's query [RR-035] about the application of Article 13 through Schedule 6 of the dDCO with reference to the amended dDCO [AS-004]. STDC had no further comments [REP2-097c] and we are content that this adequately addresses STDC's concerns and is in an appropriate form for inclusion in the Recommended DCO.

Article 19 - Protective works to buildings

- 9.4.40. At D2 the Applicants amended Article 19(2)(b) to specify that protective works may be carried out to buildings at any time up to the end of the period of five years beginning with the date "*that those works are completed*". It had previously referred to the "*date of final commissioning*" [REP2-002 and REP2-004]. We are content to accept this further clarification which provides a more effective trigger point.

Article 25 - Compulsory acquisition of rights etc.

- 9.4.41. STDC [RR-035 and REP2-097a] noted that although they agreed that in principle Statutory Undertakers may need to exercise rights in the dDCO directly, they objected to the transfer of the benefit of the Order to unknown Statutory Undertakers. If the Applicants know at this stage that they will be transferring the benefit of CA powers to third parties, it is reasonable for parties receiving and enforcing rights over STDC's land to be named.
- 9.4.42. The Applicants stated [REP1-045] that there is precedent for a general transfer power in DCOs which was appropriate for the Proposed Development. This was because the engineering design was not sufficiently advanced to know whether diversions may be required and therefore which Statutory Undertakers may require such power. New rights may need to be acquired by the relevant Statutory Undertaker, to enable them to enjoy the benefit of those rights in association with the remainder of their statutory undertaking and therefore this provision is required to be included in Article 25 [REP3-012]. Where rights are acquired under the Order for the benefit of such parties, liability for the payment of compensation to the owners of the land which will be burdened by the new rights remains with the Applicants.
- 9.4.43. Article 25 was amended to specify that the powers may only be exercised by a Statutory Undertaker (and others with apparatus, under Article 25(8)) where the undertaker transfers the power to them, and that this may only be done with the consent of the SoS. This provides an appropriate control over the potential exercise of the powers by Statutory Undertakers and is in line with other recently made DCOs [REP4-002 and REP5-025]. Various changes to referencing in R25(4) were also made to provide greater clarity [REP5-002].
- 9.4.44. At D5 STDC [REP5- 042] noted the updated drafting in Article 25 of the dDCO and confirmed that this partially addressed its concerns around powers over STDC land being transferred while maintaining its concerns about Article 8.
- 9.4.45. In the absence of further concerns being expressed by STDC we consider the amendments to Article 25 [REP5-002] are appropriate.

Article 31 - Temporary use of land for carrying out the authorised development

- 9.4.46. Responding to our questions at ISH3 about the relationship between Article 31 and Article 25 the Applicants advised that the revised wording of Article 31(1)(a)(ii) enabled the Applicants to take TP of land over which powers of permanent acquisition existed but had not yet been exercised. Temporary powers would be exercised in the first instance to allow works to be carried out so that subsequent permanent acquisition could be refined and limited to the land that is ultimately needed for the project. The right to take TP under Article 31(1)(a)(ii) can only be exercised in respect of land identified as subject to permanent

acquisition. TP could not be taken pursuant to Article 31(1)(a)(ii) of land that was not subject to powers of CA under the Order [REP5-025].

- 9.4.47. Article 31(4) was changed to specify the period during which the undertaker may remain in TP of land [REP2-002 and REP2-004]. Various changes to referencing in R31(1) were also made to provide greater clarity in respect of Schedule 9 [REP5-002 and REP5-004].

Article 32 - Temporary use of land for maintaining the authorised development

- 9.4.48. An amendment was made to Article 32(6) to clarify that the undertaker is not required to replace a building, or any debris removed where it is restoring land used temporarily. This is the same drafting as in Article 31(5) and ensures the two provisions are consistent [REP5-002].

Article 37 - Deemed marine licence

- 9.4.49. At D12 [REP12-003] an amendment was made to reflect that the numbering of the Parts to Schedules 10 and 11 had been changed with only two parts to the DMLs since the D8 update to the dDCO [REP8-003].

Article 43 – Crown Rights

- 9.4.50. Following the death of Her Majesty the Queen, we recommend that the Applicants' final dDCO [REP12-003] should be revised in respect of the references in Article 43(1)(a), (b) and (c). The reference to "*Her Majesty*" in each case should be changed to "*His Majesty*".

Article 44 - Procedure in relation to certain procedures

- 9.4.51. Following our question about the scope of Article 44 at ISH2, the definition of "consenting authority" in Article 44(6) was removed and relocated to Article 2 [REP2-002]. At ISH3 the Applicants clarified the relationship between Article 44 and the DMLs. Article 44(1) specifies that it applies where an application is made to, or a request is made of, a "*consenting authority*". The definition of "*consenting authority*" does not include the MMO which is responsible for approval of conditions under the DMLs in Schedules 10 and 11 of the DCO. The ordinary statutory framework for the approval of conditions of marine licences accordingly applies in respect of the DMLs [REP5-025].

Article 47 – Arbitration

- 9.4.52. Responding to Trinity House's concerns that the exercise of its statutory functions might be regarded as being subject to the arbitration provisions in the DCO [REP3-020] an insertion was made to Article 47(1) to include "*subject to article 42 (saving for Trinity House)*" at the beginning of the article [REP4-002]. Trinity House confirmed that the changes to the drafting in the DCO submitted at D4 addressed its concern [REP5-025].

Article 49 -Modification of interface agreement (alternative one) and Article 50 - (Modification of interface agreement (alternative two)

- 9.4.53. Article 49 (Disapplication of interface agreement) was included within the dDCO at D2 [REP2-002]. At D5 this was replaced by the new Article 49 which provided for modifications to the interface agreement instead of its disapplication [REP5-002]. Further amendments were made at D6 with the replacement of Article 49 with the new Articles 49 and 50 [REP6-002]. An explanation of the drafting in Articles 49 and 50 is set out in the EM [REP6-004]. Issues relating to the Interface Agreement are addressed fully in section 5.2 of this Report. This concludes that Articles 49 and 50 of the Applicants' final dDCO [REP12-003] should be removed from the ExA's Recommended DCO.

Schedule 1 - Authorised Development

- 9.4.54. Work No. 1C (v) was amended to include "*water washing equipment*" and "*acid washing equipment*" in the description of development and "*hydrogen storage*" was added to the description in Work No. 7D [REP2-004]. The Applicants made these changes following comments from the EA which noted that they were considered and assessed in the ES.
- 9.4.55. Responding to s51 advice [PD-002], which noted that subsection (e) of Work No. 1 contained works not identified on the Works Plans, Work No. 1E was also amended prior to the Examination from "*in connection with and in addition to*" to "*Work No. 1E - ancillary works in connection with*" [AS-004].
- 9.4.56. Also responding to s51 advice [PD-002], the description of Work No. 2A was amended [AS-004] to identify the optionality for the gas connection. This amendment was removed prior to the Examination [AS-135] with an explanation of the change provided in the EM [AS-137] alongside the removal of references to various plots which included options for various connections.
- 9.4.57. The application version of the dDCO [APP-005] provided for Work No. 5 (wastewater disposal works). The options comprised Work No. 5A (repair and upgrade of the existing water discharge infrastructure to the Tees Bay) or Work No. 5B (a new water discharge pipeline to the Tees Bay). The Applicants' change request at D12 sought to remove Work No. 5A from the Order. This was accepted by the ExA [PD-023] with the Applicants' final dDCO [REP12-003] reflecting this change.
- 9.4.58. Prior to the Examination, Work No. 6 was amended with reference made to Option 1 or Option 2 [AS-004] and an explanation of the options provided in the EM [AS-005]. This amendment was subsequently deleted, and reference made to Option 2 (HDD or Option 3 (Sembcorp Tunnel) [AS-135] (explained in the EM [AS-137]) during the pre-Examination phase. With the selection of the Sembcorp Tunnel, Work No. 6 was further amended to remove references to Options 2 and 3 [REP6-002].

Consequently, the final dDCO made no reference to optionality in the description of Work No. 6 [REP12-003 and REP12-005].

- 9.4.59. Work No. 9B was also amended prior to the Examination to clarify that it covered Navigator Terminal "and Seal Sands" [AS-135].

Schedule 2 - Requirements

- 9.4.60. In response to a request originally made in its RR [RR-035] STDC was added as a consultee to Requirements 3, 4, 7, 8, 11, 12, 13, 16, 18, 19, 23, 24, 25 where information must be submitted to and approved by the RPA [REP2-002, REP2-004, REP4-002 and REP4-004]. At D5 STDC was also added as a consultee to R29 [REP5-004]. At the end of the Examination STDC maintained its position that it should have an approval role over these requirements, as opposed to the consultee role [REP5-042, REP11-041, REP12-123 and REP12-166].
- 9.4.61. The justification for this approval role was that STDC is distinguishable from a "typical" landowner by reason of its status as a public body with statutory functions to secure the regeneration of Teesside [REP2-025]. Although STDC does not retain a planning function, its powers include regeneration or development of land and it is reasonable for STDC to retain a greater level of control over activities taking place on its land. In its view an approval role would ensure that the achievement of its objectives is not compromised. Should STDC be given an approval role, STDC argued that R36 should also be amended to reflect that the role only applies to the extent that the matters submitted for approval related to the STDC area. Acknowledging that it had commercial interests in the Order Limits, STDC considered this to be immaterial, given that land owned by local authorities is also subject to CA [REP5-042].
- 9.4.62. The Applicants' response to STDC noted that as local planning authorities have the task of enforcing compliance with requirements in the public interest they should have the related task of approval of details under those same requirements, building upon their statutory planning functions. The approval functions must be retained by RCBC and STBC in their respective capacity as the RPA under Part 8 (Enforcement) of the PA2008. The Applicants also opposed STDC having an approval role because it would fetter the discretion of the local planning authority by adding a further layer of approval noting that STDC does not have such a role in respect of applications under the TCPA. In any event STDC would benefit from protective provisions where appropriate to protect its interests [REP3-012 and REP5-025].
- 9.4.63. At ISH3, in their post hearing note [REP5-025], and in response to Sembcorp's D3 submissions [REP3-025] the Applicants argued that it was not appropriate to specify individual private landowners as consultees because protective provisions provided for them to have an appropriate degree of control over any works affecting their interests. The Applicants recognised that Sembcorp has overall responsibility for managing the operation of the Sembcorp Pipeline Corridor and as a 'pipeline authority' is in a unique position. Consequently, Sembcorp was added as a party to

be consulted by the RPA prior to the discharge of Requirements 3, 4, 7, 8, 11, 16, 18, 21, 23, 25, 29 and 32. A new requirement was inserted (originally R37) to specify that Sembcorp need only be consulted where the discharge of the Requirement relates to Sembcorp's land interest or in the RPA's opinion could affect Sembcorp's land interest. A revised R38 clarified the terms for consultation with Sembcorp [REP12-003]. At D13 Sembcorp confirmed that the revised Requirements in Schedule 2 were acceptable [REP13-023].

- 9.4.64. While acknowledging that STDC has unique statutory functions across the Order Limits we consider that the case to provide it with an approval role has not been made. Such a role would potentially cause conflict with the local planning authority, recognising that STDC's recently secured powers do not include a statutory planning function. We do however agree that STDC and Sembcorp should be consulted where relevant and therefore support the provisions set out in that respect in the Applicants' final dDCO [REP12-003].

R2 - Notice of start and completion of commissioning

- 9.4.65. Responding to our questioning at ISH2 about the timescales in R2, at D2 the Applicants accepted that the 14-day period was longer than is required and proposed that the maximum period for notifying the RPA to be within seven days from the date that commissioning started. The Applicants noted that the seven-day period was used in other recently made Orders [REP1-036]. Additionally, the Applicants intended that notice of the proposed date of final commissioning of each of Work Nos. 1 and 6 must be given to the RPA within a maximum of seven days instead of 14 days of final commissioning [REP2-002]. However, at D4 R2 was further amended to revert to the original time periods of 14 days [REP4-002]. These changes align the notice period to that provided in Sembcorp's protective provisions which the Applicants considered appropriate in order that the RPA is afforded the same notice as Sembcorp [REP4-004 and REP5-025]. We are content for this consistency to be provided and therefore accept that R2 would remain as originally submitted.

R3 - Detailed design

- 9.4.66. The Applicants noted that while consultation is generally at the discretion of the RPA, it is appropriate to add the TG entities as a consultee to parts of R3 (in addition to STDC and Sembcorp) followings a request by the TG entities [REP9-035]. This reflects the specific land interests which they hold within the Order Limits north of the River Tees relating to their gas processing plant (see section 8.30 of Chapter 8).
- 9.4.67. A new sub-paragraph (R13(13)) was added to secure that the detailed design submitted and approved is in accordance with the DAS [REP5-002] (see paragraph 5.5.120 above). The exact number of cathodic protection posts will be determined at the detailed design phase and as such the word "*approximate*" was removed from R3. Details of the works involving trenchless technologies including their location must now be provided as part of the detailed design process for Work Nos. 2A, 2B, 3,

4, 5, 6, and 8. [REP6-121]. The Applicants committed to make these changes in their responses to ExQ2 DCO.2.2 and ExQ2 2.8 respectively [REP8-003 and REP8-005].

9.4.68. The requirement to submit details of the method of works of any upgrade or repairs to any existing water discharge pipelines above MLWS in respect of Work No. 5 was also deleted [REP12-003].

9.4.69. As set out in paragraph 5.4.47 we recommend that the reference to "stack" in R3(1)(c) is amended to "stacks" to reflect the position that Work No. 1 covers more than one stack.

R4 - Landscape and biodiversity protection management and enhancement

9.4.70. In response to ExQ2 BIO.2.6 [REP6-121] the Applicants committed to specify that the landscape and biodiversity management and enhancement plan approved must include monitoring measures and a process for submission to and approval by the RPA of an annual monitoring report as well as the provision of the monitoring report to STDC. These changes were included as sub-paragraph R4(5)(f) at D8 [REP8-003].

R7 - Highway access

9.4.71. At D2 changes were made to R7(1) and (2) to specify that the reinstatement of accesses after construction must be carried out in accordance with an approved programme and reinstated in accordance with the timing specified in the programme. A change was also made to R7(3) to provide that details of any new or modified means of permanent access to a highway must be approved by the RPA prior to the date of final commissioning "*of each relevant Work No.*" [REP2-002].

R8 - Means of enclosure

9.4.72. At D2 the Applicants amended R8(2) to specify that the temporary means of enclosure must be removed in accordance with the programme approved pursuant to R8(1). Changes were also made to R8(3) and R8(4) respectively to specify that details of any permanent means of enclosure must be approved, and the must be completed, prior to the date of final commissioning "*of each relevant Work No.*" [REP2-002].

R10 - Fire prevention

9.4.73. Based on discussion at ISH2, Cleveland Fire Authority and the Health and Safety Executive were added as consultees on the fire prevention method statement that must be submitted to and approved by the RPA [REP2-002].

R13 - Contaminated land and groundwater

9.4.74. Submissions by the EA [RR-024, REP3-027, REP5-032, REP6-133, REP7-012, REP8-054 and REP9-027] raised concerns about various aspects of R13. The Applicants responded to each of these submissions and made

amendments at various deadlines [REP2-008, REP4-002, REP5-002, REP8-003 and REP12-003].

- 9.4.75. Changes were made to R13(2) to specify that the scheme to deal with contaminated land must be consistent with any CEMP submitted under R16(1). It identified the need for a preliminary risk assessment (a desk top study) (R13(2)(a)), an appraisal of remediation options (R13(2)(b)), a remediation strategy including details of the preferred remediation option and a verification plan (R13(2)(c)) and for an MMP to be in accordance with the prevailing code of practice (R13(2)(d)). R13(2)(f) makes it clear that the hydrogeological impact assessment must include a hydrogeological conceptual model. R13(2)(g) specifies that the long-term monitoring and maintenance plan must include monitoring of groundwater and surface water and a plan for managing or otherwise decommissioning any boreholes installed for the investigation of soils, groundwater or geotechnical purposes (R13(2)(h)).
- 9.4.76. R13(3) specifies that monitoring must be carried out in accordance the approved contaminated land scheme. R13(4) has also been amended to require that a verification report must be submitted to the RPA and EA following completion of the remediation measures (R13(5)) and specifies the timescales for completion of the outstanding remediation measures (R13(6)). Changes were also made to require arrangements for seeking the approval of the RPA (in consultation with the EA) where the undertaker intends to rely on a contaminated land scheme that has previously been approved in respect of Work Nos. 1, 7, 9A and 10 (R13(7)) [REP2-002].
- 9.4.77. R13(8) specifies that where the RPA has issued notice that the undertaker may rely on a previously approved land contamination scheme, the undertaker must implement that scheme. R13 (9) specifies that the remedial validation report must include details of any ongoing monitoring requirements, and R13(10) has been inserted which requires compliance with those monitoring requirements [REP4-002]. Sub-paragraphs 3, 8 and 9 were amended to require that any approval by the RPA must be subject to prior consultation with the EA. The EA confirmed that it was satisfied with R13 in its submission at D11 [REP11-031].

R14 – Archaeology

- 9.4.78. In response to a request from HE [REP2-063] the Applicants amended R14(4) to specify that the written scheme of archaeological investigation must set out a process for how unexpected finds would be dealt with [REP2-002].

R16 - Construction environmental management plan

- 9.4.79. Following discussions at ISH2 changes were made to include the EA as a consultee on any CEMP that is submitted to the RPA for their approval (R16(1)) and to specify that the approved CEMP must be in accordance with the surface and foul water drainage scheme pursuant to R11 (R16(2)(g)) [REP2-002]. At D3 amendments were made (R16(2)(f)) to include "*businesses*" in relation to notification of any significant

construction impacts and to remove extraneous wording in relation to handling any complaints received from businesses or local residents, to address comments from Sembcorp [REP4-002].

- 9.4.80. At D8 further changes were made [REP8-003]. The Applicants updated the details of what must be included in the Final CEMP (R16(2)(i)) to include: a groundwater monitoring plan which must take into account the updated hydrogeological impact assessment and any further ground investigation reports and groundwater monitoring required by R13(2)(f); a MMP in accordance with ES Chapter 5 (R16(2)(j)); a hazardous materials management plan in accordance with ES Chapter 10 (R16(2)(k)); and any other management or mitigation plans set out in the Framework CEMP (R16(2)(l)). The Applicants committed to include the groundwater monitoring plan taking into account updated assessments in its response to the EA at D6 [REP6-122], while other changes reflected the Applicants' responses to ExQ2 GEN.2.12, ExQ2 WE.2.3 and ExQ2 DCO.2.19 [REP6-121]. The EA confirmed that it was content with R16 of the dDCO [REP11-031].

R18 - Construction traffic management plan

- 9.4.81. At D2 R18(1) was amended to include Royal Mail as a consultee on any CTMP, to clarify that the CTMP may be discharged "in part" in the same way as other construction stage Requirements and to add an additional limb in R13(3) to require the CTMP to include a mechanism to inform major road users about works affecting local highways [REP2-002].
- 9.4.82. At D4 NH was added as a consultee to R18(1) and it was specified that the plans submitted and approved must include the profile of activity across the day during construction (R18(3)(d)). An amendment to "*relevant highway authority*" was introduced to make clear that the RPA must consult both the local highway authority and NH [REP4-002]. At D8 Sembcorp and the TG entities were included as consultees to R18 [REP8-003]. Responding to ExQ2 TT.2.2 [REP6-121], a new limb was added to R18(3)(f) to specify that the final CTMP must include details of the monitoring to be undertaken as included in the Framework CTMP [REP8-003].

R19 - Construction workers travel plan

- 9.4.83. At D4 NH was added as a consultee to R19(1) and it was specified that the plans submitted and approved must include the profile of activity across the day during construction (R19(3)(e)). An amendment to "*relevant highway authority*" was introduced to make clear that the RPA must consult both the local highway authority and NH [REP4-002].

R21 - Control of noise and vibration – construction

- 9.4.84. R21 was amended so that the scheme for the monitoring and control of construction noise must be in accordance with the principles set out in ES Chapter 11. Reference to "vibration" in R21 was deleted, with vibration controls during construction set out in the Framework CEMP secured by R16 [REP2-003].

R22 - Control of Noise – operation

- 9.4.85. At D2 R22 was amended so that the scheme that must be submitted to control operational noise must be in accordance with the principles set out in ES Chapter 11 [REP2-003].

R23 - Piling and penetrative foundation design

- 9.4.86. Changes were made to R23(1) at D2 to ensure that the required piling and penetrative foundation design method statement is in accordance with the piling mitigation measures in ES Chapter 10, the principles set out in ES Chapter 11 and the Framework CEMP. In addition to STDC and the EA, NE was added as a consultee on the method statement to be submitted to and approved by the RPA (R23(2)) [REP2-022]. A further amendment specified that the piling and penetrative foundation design method statement must be consistent with any details included in any approved ground monitoring plan [REP8-003]. The EA confirmed it was satisfied with the final version of R23 [REP11-031].

R24 - Waste management on site - construction wastes

- 9.4.87. At D2 R24 was amended so that the Construction SWMP must be in accordance with Framework SWMP (which is included as Annex A to the Framework CEMP) [REP2-002].

R25 - Restoration of land used temporarily for construction

- 9.4.88. Changes were made to R25 to specify that prior to the date of final commissioning "*of each relevant Work No.*", a scheme for the restoration of land is to be submitted to and approved by the RPA. Additionally, land used temporarily for construction must be restored within one year of the date of final commissioning "*of each relevant Work No.*". This is instead of within three years of the date of final commissioning [REP2-002]. The EA confirmed it was satisfied with the final version of R25 [REP11-031].
- 9.4.89. To address comments from the EA, a new sub-paragraph R25(3) was included at D4 to specify that a scheme for the restoration of any land within the Order Limits which has been used temporarily for construction must include remediation of contamination caused by the undertaker's activities [REP4-002]. A new sub-paragraph (R25(3)) was also inserted to specify that the scheme submitted must take into account the updated hydrogeological impact assessment and any further ground investigation reports and groundwater monitoring required by R13 [REP8-003].

R29 - Local liaison group

- 9.4.90. Responding to its request [REP9-035] TG entities was added as a party that must be invited to nominate a representative to join the local liaison group.

R31 Carbon dioxide storage consent

- 9.4.91. Discussions about R31 took place at ISH2, ISH3 and ISH5. This is also reported in section 5.2 of this Report. As discussed at ISH2 and subsequently confirmed in writing [REP1-036] the Applicants amended R31(1) [REP2-002 and REP5-002] so that no part of the authorised development may commence, save for the PPW, until details of the following have been submitted to and approved by the RPA: (a) that the CO₂ storage licence has been granted; (b) that the EPs have been granted for Work No. 1 and Work No. 7; and (c) that any pipeline works authorisation required by section 14 of the Petroleum Act 1998 for offshore pipeline works from Work No. 8 to the CO₂ storage site has been granted.' The amendment to include Work No. 1 and Work No. 7 was made at D5 to reflect the permitting approach agreed with the EA, that two EPs are required for each Work No.
- 9.4.92. R31(2) was also amended with the deletion of original text and replacement with *"The undertaker must not (save where the benefit of the Order has been transferred pursuant to Article 8) without the consent of the SoS (a) dispose of any interest held by the undertaker in the land required for Work No. 1C and Work No. 7; or (b) do anything, or allow anything to be done or to occur, which may reasonably be expected to diminish the undertaker's ability, within two years of such action or occurrence, to prepare Work No. 1C and 7 for construction."*
- 9.4.93. A new sub-paragraph R31(3) stated that Work No. 1A may not be brought into commercial use without Work Nos. 1C (the CCP), 7 (the CO₂ compression station) and 8 (the CO₂ export pipeline) also being brought into commercial use. The title of R31 was also changed to *"Carbon dioxide capture transfer and storage"*. At D11 the EA confirmed that it was satisfied with the revised wording of R31 [REP11-003].
- 9.4.94. Paragraphs 5.2.60 to 5.2.73 of this Report refer to ClientEarth's proposed requirement to provide that at least 90% of the total carbon emissions generated by the power plant must be captured at all times during the plant's commercial operation. ClientEarth provided illustrative drafting for a requirement, and as an alternative stated that the approach in the preferred DCO of the Keadby 3 Order would be appropriate. We asked ClientEarth and the Applicants to comment on the Keadby 3 approach (ExQ2 DCO.2.13) and about the operation of the CCGT and carbon capture plan more generally [PD-019]. Responses were provided by ClientEarth [REP6-129 and REP9-025] and the Applicants [REP6-121 and REP9-019].
- 9.4.95. After the close of the NZT Examination the SoS for BEIS made the Keadby 3 Order. R33 of the Keadby 3 Order addresses the Carbon Capture and Compression Plant. It mirrors the version that ClientEarth submitted to the NZT Examination at D5 [REP5-030]. It differs from the Applicants' final dDCO [REP12-003] in its title *"Carbon capture and compression plant"* which it defines, and in the definition of *"commercial use"*. It also specifies in sub-paragraph (1)(a) that *"evidence that Development Consent is in place for the construction of the National Grid Carbon Gathering Network"* should be provided. The SoS also amended the Recommended Order for clarity, with the omission of *"save where the*

benefit of the Order has been transferred pursuant to article 6" in R33(2).

- 9.4.96. We have considered the case put forward by ClientEarth and had regard to R33 of the Keadby 3 Order. We do not consider the different approaches to "*commercial use*", and "*commissioning*" between the two Orders to be material. The definition of "*carbon capture and compression plant*" in the Keadby 3 Order specifies a minimum capture rate of 90% CO₂ emissions. As the commercial use of the NZT authorised development would be controlled through the EPs which would be subject to BAT, and therefore provide the opportunity to tighten emission controls as technologies evolve, it is not necessary to define the capture rate within the DCO. Additionally, there is no need to mirror sub-paragraph (1)(a) of the Keadby 3 Order because the NZT DCO itself would provide development consent for the equivalent carbon gathering network. Nevertheless, we do recommend two changes to the Applicants' dDCO in R31(2) based on the Keadby 3 Order. The first is to include "*Prior to the start of commissioning of the authorised development*" at the start of R31(2) to establish a timescale within which this part of the requirement applies. The second change is to *delete* "*(save where the benefit of the Order has been transferred pursuant to article 8)*" for clarity.

R32 – Decommissioning

- 9.4.97. Recognising its relatively short lifespan, we identified the importance of decommissioning when the operation of the authorised development ceases. Consequently, we raised this as an issue at ISH and throughout the Examination. Various changes were made to R32 following discussion at ISH2. These specified that a DEMP must be submitted to the RPA for approval within 12 months of the permanent cessation of operation of the authorised development and must include evidence of any planning consents for the decommissioning. No decommissioning works may be undertaken until the RPA has approved the DEMP and confirmed that it is satisfied that all planning consents for decommissioning have been secured. A new sub-paragraph R32(3)(g) specified that the DEMP must include details of the traffic management arrangements [REP2-002].
- 9.4.98. At D4 a new limb addressed concerns about the potential difficulty in enforcement and the undertakers failed to take any further action. This amendment was to address comments from CFF, Ineos Nitriles (UK) Limited and PDT [REP4-002]. At D12 R32(3) was amended to ensure that the undertaker will always be obliged to continue to seek approval of details of decommissioning, where previous details have been refused [REP12-003].
- 9.4.99. Responding to concerns raised on behalf of PDT, the Applicants rejected the request to provide any definition of the words "*permanently ceases operation*" noting that if the local planning authority considers that operations have permanently ceased and requisite steps have not been taken within 12 months of that date, it can take enforcement action [REP5-025].

- 9.4.100. The Applicants amended R32(2) at D8 to include the EA as a consultee on the DEMP in response to the EA's RR [RR-024]. Responding to submissions by Sembcorp [REP6-130], changes were made to specify the content of the DEMP submitted pursuant to R32(1) [REP8-003]. In its response to ExQ2 NV.2.1 the Applicants added a limb to specify that the DEMP submitted must include details of mitigation for any potential noise impacts [REP8-003].
- 9.4.101. We are content with the various amendments made to R32 during the Examination. While understanding PDT's concerns about the meaning of "*permanently ceases operation*", we accept that it should be given its ordinary meaning as to do otherwise could cause further difficulty.

R36 - Consultation with South Tees Development Corporation

- 9.4.102. A new Requirement was introduced at D4, to provide that where a requirement specifies that the RPA must consult STDC, that applies to the extent that the matters submitted for approval relate to any part of the authorised development which is within the "STDC area" or in the RPA's opinion could affect the "*STDC area*" [REP4-002].

R37 - Effluent nutrient nitrogen safeguarding scheme

- 9.4.103. The Applicants inserted a new requirement at D12 specifying that no part of the authorised development other than the PPW may commence until an effluent nutrient nitrogen safeguarding scheme has been submitted to and, after consultation with NE and the EA, approved by the RPA. R37(2) specifies the details that must be included in the scheme. R37(3) requires that the scheme must demonstrate how nitrogen in effluent from operation of the authorised development is controlled and discharged. R37(4) requires the undertaker to implement the scheme as approved. A full explanation of this change is set out in the Applicants Written Summary of Oral Submission at ISH6 [REP11-017].
- 9.4.104. Having reviewed the Applicants' proposed form of R37 [REP12-003] we consider that for the reasons provided in Chapter 6 a change is required. This would involve amending the Applicants' final dDCO [REP12-003] so that R37(3)(a) reads '*...not cause a net increase in total nitrogen loads in water within the Tees Estuary at the Seal Sands mud flats*'. This is included in our Recommended DCO (Appendix C).

R38 - Consultation with Sembcorp and TG entities

- 9.4.105. A previous Requirement [R37 [REP5-002] set out when the RPA must consult with Sembcorp. It specified that the undertaker and Sembcorp must provide information on the location and nature of Sembcorp's operations following a request by the RPA [REP5-002]. Amendments were made to extend the provision to include a requirement to consult where there is an impact on Sembcorp's operations outside the Order Limits as requested by Sembcorp at D6 [REP6-130]. These changes were made at D8 [REP8-003]. Additionally, at D8 the Applicants included a new Requirement (R38) which specified when the TG entities should be

consulted. The wording mirrored that in R37 applying to Sembcorp [REP8-003].

- 9.4.106. At ISH5 and in their post-hearing note [REP11-015] the Applicants explained that the approach to R37 and R38 had been rethought and both would be deleted. They were replaced with a single Requirement at D12 (R38) specifying that references to Sembcorp and the TG entities must be interpreted by reference to the protective provisions for the benefit of those parties. R38 addresses the concerns which Sembcorp expressed about the earlier version at ISH5 and at D13 Sembcorp confirmed that the revised Requirements in Schedule 2 were acceptable [REP13-023]. Accordingly, we are content with the revised version of R38 [REP12-003].

Schedule 3 - Modifications to and Amendments of the York Potash Harbour Facilities Order 2016

- 9.4.107. Various submissions were made throughout the Examination by Anglo American commenting on Schedule 3 [RR-014, REP2-073, REP3,016, REP6-126, REP8-008, REP9-024 and REP11-023] with the Applicants responding at subsequent deadlines. Discussions between the Applicants and Anglo American culminated in the submission of a Joint Statement between the Applicants and Anglo American at D12 [REP12-130 and REP12-135]. It noted that the version of the protective provisions for the benefit of the Applicants was incorporated into the York Potash Order 2016 through Schedule 3 of the Applicants' DCO [REP12-003] and were agreed in their entirety. Accordingly, Schedule 3 provides a new Schedule 12 of the York Potash Order 2016.
- 9.4.108. On the basis that these matters are agreed between the parties we are content with the form of Schedule 3 [REP12-003].

Schedule 5 – Access

- 9.4.109. In Part 1, Table 2 (Accesses to be Maintained by the Highway Authority) a row has been deleted that referred to A1185/unnamed private track. This change, made at D12, recognises that no rights are required for this nor are they shown on the Access and Rights of Way Plans [REP12-003].

Schedule 6 - Temporary Stopping Up of Streets, Public Rights of Way and Access Land

- 9.4.110. In Part 2, Table 5 (Those Public Rights to be Temporarily Stopped Up) the Applicants deleted rights to temporarily stop up parts of the public footpath forming part of the Teesdale Way. This temporary stopping up was originally required in connection with Work No. 5A (repair and upgrade of the existing water discharge infrastructure to the Tees Bay). As the Applicants have sought to remove Work No. 5A from the Order and the ExA accepted the proposed change [PD-024] these associated temporary stopping up powers are not required [REP12-003] and this deletion is appropriate.

Schedule 7 - Land in Which New Rights etc. May be Acquired

- 9.4.111. Amendments were made to certain plot numbers (including sub-division of plots) shown on the Land Plans to reflect the changes to the nature and extent of rights. Details of the changes to the Land Plans are set out in full in the Guide to Land Plan Plots. Three versions of the Guide were provided to reflect the three change requests [AS-143, REP6-011 and REP12-012]. Explanation of the amendments is provided in Chapter 8.

Schedule 9 - Land of Which Temporary Possession May be Taken

- 9.4.112. Amendments were made to certain plot numbers (including sub-division of plots) shown on Land Plans to reflect the changes to the extent of temporary rights. Details of the changes to the Land Plans are set out in full in the Guide to Land Plan Plots. Three versions of this Guide were provided to reflect the three change requests [AS-143, REP6-011 and REP12-012].

Schedules 10 and 11 – Deemed Marine Licence Under the 2009 Act: Project A and Project B

- 9.4.113. The MMO made numerous comments about Schedules 10 and 11 throughout the Examination [RR-037, REP1-050, REP2-086, REP3-017, REP4-039, REP5-034, REP7-013, REP8-055 REP9—029 and REP11-037]. The Applicants responded to the various submissions and made amendments to the dDCO to address the MMOs' comments [REP2-002, REP4-002, REP5-002, REP6,002, REP8-003 and REP12-003]. At D13 the signed SoCG between the Applicants and the MMO [REP13-016] confirmed that the MMO agree with the wording of the DMLs in Schedules 10 and 11 with the exception of paragraph 7 in each Schedule. Specifically, the MMO disagree with the disapplication of s72(7) (power of MMO to transfer or vary a licence following an application) and (8) (prohibition on transfer except by way of an approval under 72(7)) of the MCAA where the procedure under Article 8 (consent to transfer the benefit of the Order) has effect. Its position is that any transfer of the DMLs must be decided by the MMO pursuant to an application under s72(7) of the MCAA.
- 9.4.114. The MMO expanded on this concern [REP13-027] noting that Planning Inspectorate Advice Note 11 advises that where a developer chooses to have a marine licence deemed by a DCO, the MMO will seek to ensure that any DML is generally consistent with those issued independently by the MMO. The MMO are responsible for enforcing marine licences regardless of whether these are "*deemed*" by a DCO or consented independently, and it is important that all marine licences are clear and enforceable.
- 9.4.115. S72(7)(a) of the MCAA permits a licence holder to make an application for a marine licence to be transferred, and where it is approved for the MMO to vary the licence accordingly (s72(7)(b)). Article 8(2) of the dDCO

with Article 8(1) would not require the licence holder (the Undertaker) to make an application for a licence to be transferred which is a departure from the MCAA. This process involves the SoS providing consent to the transfer, rather than the MMO as the regulatory authority considering the merits of any application. The MMO also questioned why, if it is the intention of the applicant for DMLs to be transferred by the Undertaker under the terms of the DCO it is necessary or appropriate for the SoS to "approve" the transfer.

- 9.4.116. The MMO considered it unusual that a decision to transfer a licence is not the decision of the regulatory authority in that area although neither the licence holder nor the SoS would have any power to vary the terms of a marine licence to reflect that it has been transferred to another entity.
- 9.4.117. There is no mechanism either in the dDCO or in the MCAA for a marine licence to revert to the licence holder after the agreed lease period. The MMO needs to be aware of who has the benefit of marine licences to carry out its regulatory functions. The mechanism currently proposed for the transfer of a licence departs from the existing process without clear justification as to why such a departure is necessary or appropriate. The MMO's position, therefore, is that the DML should be regulated in accordance with the provisions of s72 of the MCAA.
- 9.4.118. The Applicants commented on the issue of disapplication of s72(7) and (8) of the MCAA at D13 despite not having seen the MMO's submissions on this matter [REP13-019]. They noted that paragraph 7 of Schedules 10 and 11 makes clear that the general position is that section 72 of the MCAA applies to the DMLs. It follows that the entirety of the MMO's powers to revoke, suspend, transfer or vary a licence generally have effect. The Applicants acknowledge that any issue regarding the management and enforcement of the DMLs is a matter for the MMO. The latter part of paragraph 7 deals specifically with the process for the transfer of the DMLs. It states that s72(7) and s72(8) of the MCAA would not apply where Article 8 of the NZT DCO [REP12-003] has effect.
- 9.4.119. Article 8(3) specifies that the SoS must consult the MMO prior to approving the transfer of DMLs. Article 8(13) specifies that the Undertaker must also notify the MMO within ten days of the transfer taking effect.
- 9.4.120. Responding to the MMO's concerns about the administrative and practical difficulties of the Article 8 approach the Applicants noted that the MMO would have an opportunity to advise the SoS whether a transfer should be approved with the expectation that the SoS would then take account of the advice of its marine advisors in making the determination.
- 9.4.121. The Applicants consider that the process under Article 8 is a reasonable alternative to the transfer process under s72(7) and (8). It avoids duplication of procedures between Article 8 and the MCAA and ensures that all powers under the DCO can be transferred pursuant to a single application to the SoS. That simplifies transfer arrangements for Undertakers but also reduces the administrative burden on regulatory

bodies (whilst ensuring appropriate safeguards for the MMO). The arrangements in paragraph 7 are very well established in DMLs. They have been accepted by the SoS in many recent DCOs, including The East Anglia TWO Offshore Wind Farm Order 2022, The Hornsea Project Three Wind Farm Order 2020 and The York Potash Order 2016. The Applicants' position is that this provision should be included in the final NZT Order, in line with precedent in other DCOs and taking into account the Applicants' clear rationale for including this provision.

- 9.4.122. While acknowledging the MMO's concerns about the disapplication of s72&) and (8) of the MCAA and noting the practical and administrative changes which would arise through Article 8 of the NZT dDCO, we do not consider these to be unsurmountable or unreasonable. Moreover, the Applicants have cited various other made DCOs which indicate to us that such an approach is not unique. On that basis we are content for paragraph 7 in Schedules 10 and 11 to remain.

Schedule 12 Protective Provisions

Part 1 - Electricity, Gas, Water and Sewerage Undertakers

- 9.4.123. Standard protective provisions for electricity, gas, water and sewerage undertakers apply where those undertakers are not covered by Parts 2 to 28 of Schedule 12. The only change which the Applicants made to Part 1 during the Examination was to amend the definitions of "*apparatus*" and "*utility undertaker*" to include owners or operators of mains, pipelines or cables so that the protection is not limited to Statutory Undertakers, but other owners or operators of apparatus [REP12-005]. No representations were made during the Examination seeking to amend Part 1 and therefore we are content with the form of Part 1.

Part 2 - Operators of Electronic Communications Code Networks

- 9.4.124. These standard protective provisions for operators of electronic communications code networks provide appropriate protection to ensure no detrimental effect of the proposed scheme on their network. No representations were made during the Examination seeking to amend Part 2 and therefore we are content with the form of Part 2.

Part 3 – National Grid Electricity Transmission as Electricity Undertaker

- 9.4.125. At D11 NGET advised that it was in proactive discussions with the Applicant regarding the protective provisions to be included in the DCO and considered that agreement on the final terms was likely. NGET does not currently consider there are any substantial concerns that cannot be addressed between NGET and the Applicant [REP11-024].
- 9.4.126. At D12 the Applicants confirmed that they had discussed the protective provisions with NGET at the end of October 2022 and were working collaboratively and negotiating those documents with a view to reaching agreement as soon as possible. It was noted that the protective provisions in Part 3 did not reflect NGET's preferred position [REP12-005]. The Applicants' final position [REP13-021] was that the parties

would continue to seek to reach agreement on the protective provisions following the close of Examination. However, if Agreement is not reached, CA powers should be granted for the reasons given in the SoR [REP12-010] and notes NGET would benefit from the protective provisions provided at Part 3 of Schedule 12 [REP12-003].

- 9.4.127. In the absence of comments from NGET on the Applicants' latest protective provisions or the submission of NGET's own preferred protective provisions we consider that the Applicants' version (Part 3 [REP12-003]) should be accepted. However, prior to making a decision, the SoS may wish to seek NGET's comments on Part 3 if agreement has not been reached between the parties.

Part 4 – National Grid Gas PLC as Gas Undertaker

- 9.4.128. At D11 NGG advised that it was in proactive discussions with the Applicants regarding the protective provisions to be included in the DCO and considered that agreement on the final terms was likely. NGG does not currently consider there to be any substantial concerns that cannot be addressed between NGG and the Applicant [REP11-025]. At D12 the Applicants confirmed that they had discussed the protective provisions with NGG at the end of October 2022 and were working collaboratively and negotiating those documents with a view to reaching agreement as soon as possible. It was noted that the protective provisions in Part 3 did not reflect NGG's preferred position [REP12-005]. The Applicants' final position [REP13-021] was that the parties would continue to seek to reach agreement on the protective provisions following the close of Examination. However, if Agreement is not reached, CA powers should be granted for the reasons given in the SoR [REP12-010] and notes NGG would benefit from the protective provisions provided at Part 4 of Schedule 12 [REP12-003].
- 9.4.129. In the absence of comments from NGG on the Applicants' latest protective provisions or the submission to the Examination of NGG's own preferred protective provisions we consider that the Applicants' version (Part 4 [REP12-003]) should be accepted. However, prior to making a decision, the SoS may wish to seek NGG's comments on Part 4 if agreement has not been reached between the parties.

Part 5 – Air Products PLC

- 9.4.130. Air Products' RR raised concerns regarding the lack of information regarding protection of their gas pipeline infrastructure [RR-021, RR-021a and RR-021b], as set out in section 8.16 of this Report.
- 9.4.131. The Applicants advised that protective provisions had been provided by Air Products PLC in March 2022 and the parties had discussed outstanding matters in October 2022. The Applicants position was that the provisions in Part 5 would adequately protect Air Products [REP12-005]. At D13 the Applicants commented that they received comments on the latest protective provisions Air Products on 4 November 2022 and indicated that they would continue to seek to reach agreement with Air Products following the close of Examination [REP13-021].

- 9.4.132. In the absence of comments from Air Products PLC on the Applicants' protective provisions or the submission to the Examination of Air Products' own preferred protective provisions we consider that the Applicants' version (Part 5 [REP12-003]) should be accepted. However, prior to making a decision, the SoS may wish to seek Air Products' comments on Part 5 if agreement has not been reached between the parties.

Part 6 – CATS North Sea Limited

- 9.4.133. Section 8.18 of this Report sets out the role of CNSL in operating the CATS terminal at Seal Sands and the associated gas pipeline and their concerns regarding their ability to carry out ongoing safety and maintenance. The section also explains that the Applicants are undertaking technical studies and are in continued negotiations regarding the location of the AGI and access via the terminal.
- 9.4.134. The Applicants noted at D12 that they had been in dialogue with CNSL in relation to protective provisions throughout the Examination. The provisions seek to protect the CATS pipelines by requiring CNSL's consent prior to commencing any part of the authorised development that is within 50m of the pipelines and by identifying requirements that must be complied with by the undertaker, reflecting those sought by CNSL in discussions. The Applicants therefore considered that the protective provisions appropriately address and manage the potential impact of the proposed development on the CATS pipelines [REP12-005]. At D13 it was reported that the parties had agreed the form of a side agreement and annexed bespoke protective provisions. These were going through final internal sign-off processes ahead of completion [REP13-021] as confirmed in the signed SoCG [REP13-013].
- 9.4.135. In the absence of comments from CNSL on the Applicants' protective provisions or the submission to the Examination of CNSL's own preferred protective provisions we consider that the Applicants' version (Part 6 [REP12-003]) should be accepted. However, prior to making a decision, the SoS may wish to seek CNSL's comments on Part 6 if agreement has not been reached between the parties.

Part 7 – CF Fertilisers UK Limited

- 9.4.136. Section 8.19 of this Report sets out CFL's concerns regarding effects on its pipeline infrastructure as well as future new gas pipeline.
- 9.4.137. It was stated at D12 that the Applicants and CFL had agreed the form of protective provisions to be included in the DCO and had agreed a separate side agreement and private protective provisions which were going through the final approval and execution process [REP12-005]. This position was confirmed by the Applicants at D12 [REP13-021]. An unsigned SoCG between the parties [REP12-125] indicated that the Applicants and CFL had agreed the form of protective provisions which were included in the final dDCO [REP12-003].

- 9.4.138. In the absence of comments from CFL on the Applicants' protective provisions or the submission to the Examination of CFL's own preferred protective provisions we consider that the Applicants' version (Part 7 [REP12-003]) should be accepted. However, prior to making a decision, the SoS may wish to seek CFL's comments on Part 7 if agreement has not been reached between the parties.

Part 8 - Exolum Seal Sands Ltd and Exolum Riverside Ltd

- 9.4.139. Section 8.20 of this Report explains that Exolum have concerns regarding impact on access to and the operation of its apparatus. At D12 the Applicants stated that they had agreed a separate side agreement and private protective provisions with Exolum, which were going through the final approval and execution process [REP12-005]. Exolum submitted their own preferred set of protective provisions to the Examination at D5 [REP5-033] which the Applicants commented on [REP12-005]. At D13 the Applicants noted that the parties had agreed the form of side agreement and annexed protective provisions which were going through final internal sign-off processes ahead of completion [REP13-021].
- 9.4.140. At D12 [REP12-005] the Applicants commented on Exolum's draft protective provisions [REP5-033]. Exolum has not provided justification as to why its provisions should be favoured over those of the Applicants. In addition, we have not received a response from Exolum to the Applicants' comments on Exolum's draft. In that context and having found the Applicants' draft protective provisions (Part 8 [REP12-003]) to provide appropriate protection to Exolum we find that the Applicants' version should be accepted. However, prior to making a decision, the SoS may wish to seek Exolum's comments on Part 8 if agreement has not been reached between the parties.

Part 9 - Ineos Nitriles (UK) Limited

- 9.4.141. Section 8.22 of this Report explains that Ineos Nitriles have concerns regarding access to infrastructure and safety matters, and that the former chemical plant is currently being cleared.
- 9.4.142. At D11 Ineos Nitriles commented that the drafting of a side agreement and protective provisions were at an advanced stage and were expected to complete imminently, and in any event prior to the close of the Examination [REP11-033].
- 9.4.143. The Applicants commented that the protective provisions provided by Ineos Nitriles require the consent of Ineos Nitriles prior to commencing any part of the authorised development that would affect the operation or maintenance of operations or access to them, and for an indemnity to Ineos Nitriles for relevant loss or damage. The Applicants considered that the definition of "*Ineos operations*" relating to the Order Limits is appropriate given that the Ineos site is vacant and its operations there have ceased. The Applicants therefore considered that the protective provisions appropriately address and manage the potential impact of the Proposed Development on Ineos [REP12-005].

- 9.4.144. At D13 [REP13-021] the Applicants reported that the parties were engaged in negotiating a side agreement and protective provisions, with the latest draft issued to the Applicants in November. They state that they would seek to reach agreement with Ineos following the close of Examination. If agreement is not reached, the Applicants' position remains that CA powers should be granted for the reasons given in the SoR [REP12-010] and notes that Ineos Nitriles would benefit from the protective provisions provided at Part 9 of Schedule 12 [REP12-003].
- 9.4.145. Having reviewed the Applicants' comments [REP12-005] and in the absence of Ineos Nitriles' own preferred protective provisions being submitted to the Examination, we consider that adequate protection would be provided for the benefit of Ineos particularly in terms of requiring the consent of Ineos prior to commencing the authorised development. Consequently, we find the Applicants' version (Part 9 [REP12-003]) should be accepted. However, prior to making a decision, the SoS may wish to seek Ineos Nitriles' comments on Part 9 if agreement has not been reached between the parties.

Part 10 - Marlow Foods Limited

- 9.4.146. The Applicants have reported that despite initial contact with Marlow Foods prior to and during the Examination no substantive comments on the draft protective provisions have been received. The Applicants noted that Marlow Foods utilise part of Nelson Avenue as their primary access to their operational site at Billingham. The protective provisions prevent the undertaker from exercising powers to prevent Marlow Foods being able to access their adjacent site and require advanced notice to be given to Marlow Foods before doing works that utilise the highway route at Nelson Avenue. The Applicants therefore consider that the protective provisions appropriately address and manage the potential impact of the proposed scheme on Marlow Foods' operations [REP12-005].
- 9.4.147. In the absence of comments from Marlow Foods on the Applicants' protective provisions or the submission to the Examination of Marlow Foods' own preferred protective provisions we consider that the Applicants' version (Part 10 [REP12-003]) should be accepted. However, prior to making a decision, the SoS may wish to seek Marlow Foods' comments on Part 10 if agreement has not been reached between the parties.

Part 11 – Network Rail Infrastructure Limited

- 9.4.148. Section 8.27 of this Report summarises NR's concerns regarding protection of their operational land. The Applicants and NR have been engaged in dialogue on the protective provisions with NR providing the Applicants with draft protective provisions which were returned by the Applicants in June 2022. Since then, no substantive comments have been provided by NR. Consequently, the Applicants acknowledge that the protective provisions included at Part 10 of Schedule 12 do not take account of NR's preferred position. In the absence of substantive engagement on the Protective Provisions, the Applicants consider the form of protective provisions in the Order are appropriate and adequate

to protect NR's interests, including in relation to its statutory undertaking [REP12-005].

9.4.149. At D13 [REP13-021] the Applicants confirmed that the parties would continue to seek to reach agreement on protective provisions following the close of Examination. If Agreement is not reached, the Applicants' position was that CA powers should be granted for the reasons given in the SoR [REP12-010] and noted that NR would benefit from the protective provisions provided at Part 11 of Schedule 12 [REP12- 003].

9.4.150. While acknowledging the Applicants' comment that its protective provisions at Part 11 do not take account of NR's preferred position, NR has not submitted to the Examination its preferred protective provisions in spite of stating that it has standard protective provisions which would need to be included in the DCO as a minimum [RR-027]. Consequently, we are content to recommend the inclusion of Part 11 in the Recommended DCO but recognise that the SoS may wish to encourage NR and the Applicants to reach agreement on revised protective provisions which more fully address NR's interests.

Part 12 - Northern Powergrid (Northeast) PLC

9.4.151. Northern Powergrid raised concerns about the effect of the Proposed Development on its infrastructure. Specifically, it considered that the Applicants' proposed protective provisions did not take account of site-specific issues and did not accord with Northern Powergrid's standard protective provision requirements [RR-030].

9.4.152. At D12 the Applicants noted that they had been in discussion with Northern Powergrid prior to and during the Examination about a side agreement and annexed set of protective provisions with the last exchange of draft documents in October 2022. The DCO protective provisions for the benefit of Northern Powergrid acknowledge the s127 and s138 tests and ensure that the statutory undertaking is protected. The Applicants consider that the DCO protective provisions contain appropriate and proportionate protection for Northern Powergrid [REP12-005].

9.4.153. The parties advised that they were engaged in negotiating a side agreement and protective provisions and would seek to reach agreement on the documents following the close of Examination [REP13-021]. If agreement was not reached, the Applicants' position remained that CA powers should be granted for the reasons given in the SoR [REP12-010] and noted that Northern Powergrid would benefit from the protection provided at Part 12 of Schedule 12 [REP12-003].

9.4.154. We acknowledge the Applicants' comment that protective provisions at Part 12 do not take account of Northern Powergrid's concerns, but these concerns have not been presented to us by either Northern Powergrid or the Applicants. Northern Powergrid's has not submitted to the Examination its preferred protective provisions in spite of stating that it has standard protective provisions which would need to be included in the DCO [RR-030]. Consequently, we are content to recommend the

inclusion of Part 12 in the Recommended DCO but recognise that the SoS may wish to encourage Northern Powergrid's and the Applicants to reach agreement on revised protective provisions which more fully address Northern Powergrid's interests.

Part 13 – NPL Waste Management

- 9.4.155. Section 8.33 of this Report sets out NPL's interests regarding a disused anhydrite mine. The Applicants and NPL exchanged comments on draft protective provisions throughout the Examination. The Applicants consider the form of Protective Provisions included in the Order are appropriate in the absence of an alternative being presented by NPL, and adequate to protect NPL's interests, including in particular the need for it to have access to its mineral operations [REP12-005].
- 9.4.156. At D13 [REP13-021] the Applicants recorded that the parties were engaged in negotiating a side agreement and protective provisions and would seek to reach agreement following the close of Examination. If agreement is not reached, the Applicants' position remains that CA powers should be granted for the reasons given in the SoR [REP12-010] and notes that NPL would benefit from the protection of the protective provisions provided at Part 13 of Schedule 12 [REP12-003].
- 9.4.157. In the absence of comments from NPL on the Applicants' protective provisions or the submission to the Examination of NPL's own preferred protective provisions we consider that the Applicants' version (Part 13 [REP12-003]) should be accepted. However, prior to making a decision, the SoS may wish to seek NPL's comments on Part 13 if agreement has not been reached between the parties.

Part 14 – PD Teesport Limited

- 9.4.158. Section 8.34 of this Report explains the role of PDT as statutory harbour authority and freehold landowner responsibilities for numerous areas north and south of the Tees, including the accesses at Seal Sands Road, Tees Dock Road, South Gare Road and at RBT. These accesses are used and occupied by a number of other parties, some of whom have submitted separate representations to the Examination.
- 9.4.159. At D12 the Applicants recorded that an agreed form of protective provisions for the benefit of PDT had been provided at D8 [REP8-003]. The Applicants anticipated that a side agreement would also be completed imminently [REP12-005]. At D13 the Applicants stated that the protective provisions included in the Applicants' final dDCO [REP12-003] were agreed and an associated side agreement has also been agreed and signed by the parties [REP13-021].
- 9.4.160. Although there is no signed SoCG or confirmation from PDT that matters are fully agreed, in the absence of PDT's comments on the Applicants' protective provisions or the submission to the Examination of PDT's own preferred protective provisions we consider that the Applicants' version (Part 14 [REP12-003]) should be accepted. However, prior to making a

decision, the SoS may wish to seek PDT's comments on Part 14 if agreement has not been reached between the parties.

Part 15 - Redcar Bulk Terminal Limited

- 9.4.161. Section 8.35 of this Report sets out RBT's deep marine terminal operations and their concerns regarding its use and access to it.
- 9.4.162. At the start of the Examination RBT stated that it had entered into commercial negotiations relating to the use of the Redcar Bulk Terminal by the Applicants. However, it would also require protective provisions to be included within the Order to ensure that RBT's interests are adequately protected, that NZT's use is compatible with RBT's use and relevant safety standards are complied with [RR-001 and REP2-095]. RBT commented on the Applicants' protective provisions [REP4-042] and submitted its own form of protective provisions [REP5-040] which were updated at D9 [REP9-034]. At D11 [REP11-039] RBT confirmed that the protective provisions submitted at D9 had been agreed in principle between the parties except for its indemnity provisions. At D12 [REP12-139] RBT confirmed that the Applicants' protective provisions [REP12-003] were agreed except for two changes to paragraph 184 which were required for the protective provisions to be acceptable to RBT.
- 9.4.163. At D13 both RBT [REP13-031] and the Applicants [REP13-019] confirmed that agreement had been reached in respect of a set of protective provisions with the only changes from the D12 version [REP12-003] being in relation to paragraph 184 concerning indemnity. The first change which both parties have confirmed is agreed, is to delete the paragraph 184(1)(b) and replace it with the following:
- "(b) make compensation to RBT for any other expenses, loss, damages, penalty or costs reasonably incurred by RBT (including, without limitation, all costs for the repair or replacement necessitated by physical damage), by reason or in consequence of any such damage or interruption or denial of any service provided by RBT."*
- 9.4.164. The second change which RBT has identified is to delete paragraph 184(3) and replace it with the following:
- "(3) RBT must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim is to be made without the consent of the undertaker such consent not to be unreasonably withheld."*
- 9.4.165. RBT objected to the D12 proposed wording because it would enable the Applicants to take over any litigation conducted by RBT under this provision, should the Applicant not agree with any settlement or compromise that RBT reaches with a third party because of that litigation.
- 9.4.166. The Applicants' final version [REP13-019] was as follows:
- "(3) RBT must give the undertaker reasonable notice of any claim or demand that has been made against it in respect of the matters in sub-*

paragraph (1)(a) and (b) and no settlement or compromise of such a claim is to be made without the consent of the undertaker such consent not to be unreasonably withheld.”

- 9.4.167. RBT also restated their position that in default of the completion of the side agreement and associated legal agreements, RBTs position is [REP2-095] that the agreement of protective provisions is without prejudice to RBT’s position that TP and CA powers should not be imposed over RBT interests [REP13-031].
- 9.4.168. Although the Applicants state that its final version of paragraph 184(3) is agreed, the Applicants’ version does differ from the version which RBT indicated was agreed at D13. Having considered both versions we find the Applicants’ version to provide greater clarity. However, the SoS may wish to seek their views of the parties on paragraph 184(3) for completeness.

Part 16 – SABIC

- 9.4.169. Early in the Examination SABIC noted that protective provisions had been proposed by the Applicants but needed to be tightened to offset the potential for private and public loss and reduce its weight when set against the potential public benefit of the Proposed Development [RR-038 and REP2-100]. Following this early engagement SABIC did not participate in the Examination until it submitted its own protective provisions on 10 November 2022 [AS-213].
- 9.4.170. Discussions between the Applicants and SABIC with respect to protective provisions took place during the pre-Examination and Examination periods. The Applicants accepted the principle of using SABIC’s preferred form of protective provisions which is reflected in the dDCO submitted at D12. However, some outstanding matters remain related to the interaction of the proposed scheme with SABIC’s apparatus within the Order Limits, the facilities its apparatus is connected to at North Tees, and access with respect to both its apparatus and the North Tees facilities. To address these concerns, the Applicants accepted various detailed provisions proposed by SABIC. With these protections in place, the Applicants considered that the protective provisions, as updated in the dDCO for D12, appropriately and adequately protect SABIC’s interests [REP12-005]. Moreover, at D13 the Applicants commented that the parties were engaged in negotiating protective provisions and a side agreement and would continue to seek to reach agreement with SABIC following the close of Examination [REP13-026].
- 9.4.171. SABIC’s own protective provisions [AS-213] were submitted on the final day of the Examination. Apart from noting that they were based on the precedent of the York Potash Order 2016 and explaining the reasoning for including the inventory owner in the protective provisions, no justification was provided for departing from the Applicants’ proposed protective provisions which the parties had been discussing throughout the Examination. In addition, SABIC had not provided any commentary to the Examination on the Applicants’ proposed protective provisions and the Applicants have not had the opportunity to respond to the detail of

SABIC's preferred protections. We consider that the Applicants' version (Part 16 [REP12-003]) would adequately address SABIC's concerns and should be accepted. However, prior to making a decision, the SoS may wish to seek comments from the Applicants and SABIC on their respective proposals if agreement has not been reached between the parties.

Part 17 - The Sembcorp Pipeline Corridor

- 9.4.172. Sembcorp played a very active role in the Examination submitting representations throughout. In addition to a RR [RR-034] and WR which included protective provisions [REP2-098], Sembcorp's position is set out through its Explanatory Memorandum [REP12-142], Position Statement [REP12-143], its own protective provisions [REP12-144] and other supporting documents at D12. Its final position is set out in its D13 Submission [REP13-023] alongside an updated version of its protective provisions [REP13-026].
- 9.4.173. Section 8.38 of this Report sets out Sembcorp's role both as freeholder and integrated infrastructure provider to the Wilton Complex and notes the role of the Wilton Complex as an industrial and manufacturing hub of national economic significance. The role of Sembcorp in the strategic management of the pipeline corridor and associated infrastructure between the Wilton Complex and Billingham via North Tees is also recognised.
- 9.4.174. We see no reason to depart from the findings of the Dogger Bank Teesside DCO ExA which gave considerable weight to the businesses of the Wilton Complex served by the Sembcorp Pipeline Corridor, in providing a significant contribution to the national economy. The public benefit provided by the operation of the Wilton Complex as a whole is an important and relevant matters under the PA2008. Furthermore, we agree with Sembcorp that the Applicants must accept that they are part of a wider 'ecosystem' of operators, producers and businesses in the Teesside chemical clusters.
- 9.4.175. We have also had regard to the principles which the Dogger Bank Teesside DCO ExA identified for the application of protective provisions, namely: that compulsory powers should be secured through the Order and should apply to the Wilton Complex; the exercise of powers should not be permitted without the consent of the relevant landowner or apparatus operator; consent is not to be unreasonably withheld; and if the undertaker considers that consent is being unreasonably withheld the matter can be referred to an independent arbitrator.
- 9.4.176. Sembcorp's own protective provisions [REP12-144] are largely based on the protective provisions incorporated for the protection of Sembcorp and the Wilton Complex in the Dogger Bank Teesside DCO. The Applicants have been in contact with Sembcorp since before the Examination and the parties have been actively engaged to reach agreement on the protective provisions and side agreement. The Applicants noted that the protective provisions included in the dDCO are to a substantial degree in agreed form [REP12-005]. At D13 the Applicants commented that the

parties were working hard to reach agreement before the end of the Examination and confirmation of any agreement reached would be provided [REP13-021].

- 9.4.177. Table 6 sets out the main outstanding matters at the end of the Examination. It is based on the final submissions of Sembcorp [REP13-023] and the final comments of the Applicants [REP13-019] although each is based on the earlier submission of the other party rather than comments being directly comparable.

Table 6: Outstanding Matters Between Sembcorp and the Applicants

Sembcorp's Concern	Applicants' Response	ExA's Comments
The " <i>Sembcorp Pipeline Corridor protective provisions supporting plan</i> " [REP12-029] fails to show the full extent of relevant infrastructure and should be replaced by Sembcorp's plans [REP12-146 to REP12-161].	Sembcorp's other interests are not included in the protective provisions supporting plan [REP12-029] as this is beyond the purpose of the document. Sembcorp's other interests are addressed within the wider definition of Sembcorp's operations in Part 17.	The purpose of the protective provisions supporting plan is not to show the full extent of relevant infrastructure. There is no evidence that through the definitions and controls in Part 17 that Sembcorp's concerns would not be addressed. No change is required.
No justification is provided for using a different approach to protective provisions to that in the case of the Dogger Bank Teesside DCO.	Reference is made to the Order Limits' interaction with the pipeline corridor and the CA of rights for an easement, only acquired following detailed investigation, design and engineering. A limited impact on particular apparatus is therefore likely. The Dogger Bank proposals had the potential for a more direct effect on the Wilton Complex itself.	The Applicants drew an important distinction between the two schemes. We are content that the overall approach to CA and protective provisions is sound. No change is required.
Securing third party consent in addition to that of Sembcorp creates duplication and delay but Sembcorp should retain oversight provisions.	At D12 Part 17 was amended to provide that where third party owners or operators are required to approve works under other protective provisions, Sembcorp's role is overarching. At D13 the position of Sembcorp on approvals by third parties was	The Applicants' proposed amendments to paragraph 214 appropriately clarifies the position of the parties and are accepted. See below.

	accepted but Sembcorp's drafting is revised as it implies consent of third parties is otherwise required under Part 17, which is incorrect. See new paragraph 214.	
The need for Sembcorp to take account that third party approval is being sought is vague and impractical and should be replaced by Sembcorp's proposed approach.	See above.	The Applicants' amendments at D12 and D13 adequately address the respective roles of Sembcorp and third parties.
The provisions place restrictions on matters which Sembcorp considers are inappropriate and not in the public interest (paragraph 214(1)).	The Applicants have not commented directly on this matter.	The matters which may be considered by Sembcorp to be inappropriate appear to be overly restrictive. Further consideration may be beneficial.
The need for consistency between the Sembcorp protective provisions and those applying to third parties lacks foundation.	A consistent approach is preferred across protective provisions where several owners or operators within the pipeline corridor have separate protection under their own protective provisions. Additionally, the protective provisions with Sembcorp provide protection for Sembcorp and various other owners and operators.	We are content that the overall approach to protective provisions is sound. No change is required.
Unfettered compulsory powers over the Sembcorp Pipeline Corridor are inappropriate and the provisions in paragraphs D and E of Sembcorp's protective provisions would address this.	CA powers are necessary over the Order land to facilitate the construction, maintenance and operation of the pipelines and deliver an NSIP.	We are content that the overall approach to the CA of land and protective provisions is sound. No change is required.
Before compulsory powers are exercised the Applicants must engage with Sembcorp to ensure potential adverse risks are appropriately	The Applicants would only acquire rights over such parts of the corridor as are required, following the detailed design process. The protective	We consider that adequate safeguards to protect Sembcorp's interests are in place through Part 17. No change is required.

managed, by obtaining consent prior to exercising powers.	provisions include for Sembcorp to approve the 'works details' in relation to any works which would have an effect on Sembcorp's operations or access to them. Sembcorp may, in approving those details, specify reasonable requirements for the continuing safe operation of their operations and reasonable access to them.	
Sembcorp related definitions need to be included in Part 17.	The definition of Sembcorp should be added to Part 17 with amendments to other definitions.	The Applicants' proposed changes are agreed. See below.
Part 17 paragraph 212 [REP12-003] should provide for the disapplication of Article 44(4) and (5).	Article 44 (procedure in relation to certain approvals) provides an important backstop position, ensuring that the NSIP cannot be held up.	We are content that the overall approach to the CA of land and protective provisions is sound. No change is required.
Insurance should include cover in respect of any consequential loss and damage suffered by Sembcorp.	This is a commercial matter for discussion between the parties outside of protective provisions.	Sembcorp cite the precedent of the Dogger Bank Teesside DCO. This provides inadequate justification for including loss and damage in protective provisions. No change is required.
Two options for dispute resolution were provided for the Applicants' consideration.	The Applicants' preference is for Option One which aligns with paragraph 226 but does not preclude the parties agreeing an alternative.	Paragraph 226 would provide an appropriate dispute resolution mechanism with scope to consider an alternative approach.

9.4.178. At D13 [REP13-019] the Applicants confirmed that they agreed with Sembcorp's proposed changes to Part 17 as follows:

Paragraph 213: Inset at the end of "*operator*":

"and is not a third party owner or operator".

Paragraph 213: Within the definition of "*owner*" sub-paragraph (b), insert after "*Wilton Complex, any owner*":

"(as defined in article 2(1) of the Order)".

Paragraph 213: Within the definition of "owner" the words "*but who is not a third party owner or operator*" should appear below sub-paragraph (b).

Paragraph 213: Insert, after the definition of "owner":

" Sembcorp" means Sembcorp Utilities (UK) Limited, with Company Registration Number 04636301, whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS and any successor in title or function to the Sembcorp operations in, under or over the Sembcorp Pipeline Corridor;" "

- 9.4.179. Based on our conclusion in Table 6 above, we recommend that paragraph 214 [REP12-003] is deleted and replaced with the following:

"214.—(1) Nothing in this Part of this Schedule removes any obligation on the undertaker to seek consent from Sembcorp for works details pursuant to this Part where such approval is also sought or obtained from a third party owner or operator pursuant to the third party protective provisions.

(2) Where the undertaker seeks consent for works details from a third party owner or operator pursuant to the third party protective provisions that also require consent from Sembcorp under this Part, the undertaker must provide Sembcorp with—

(a) the same information provided to the third party owner or operator at the same time; and

(b) a copy of any approval from the third party owner or operator given pursuant to the third party protective provisions."

- 9.4.180. Where the Applicants have not directly addressed an issue raised by Sembcorp, because of the submission of detailed material at D13, the SoS may wish to consider consulting the parties further about the issue.
- 9.4.181. There remained some disagreement between the parties in terms of the appropriate form of protective provisions at the end of the Examination. However, we consider that the protective provisions provided in Part 17 of the dDCO [REP12-003] together with the changes identified above would provide adequate protection for the interest of Sembcorp. Nevertheless, we recognise that prior to making a decision, the SoS may wish to seek the parties' further comments on Part 17 if agreement has not been reached between the parties.

Part 18 – Anglo American

- 9.4.182. Sections 2.6. and 8.17 of this Report explain the interests of Anglo American, operators of the Woodsmith Project which relates to the York Potash Order 2016.
- 9.4.183. At D12 [REP12-005] and as confirmed at D13 [REP13-021] the Applicants commented that protective provisions had been included in the dDCO [REP12-003] to reflect that the side agreements between the parties had not yet been completed. It was noted that the protective

provisions were agreed save for Anglo American's position regarding the use of the Applicant's CA and land powers in the DCO. This is addressed in the Joint Statement between the Applicants and Anglo American [REP12-130 and REP12-135].

- 9.4.184. The parties noted that both sets of protective provisions, (in Schedule 3 and Schedule 12) had been developed alongside the wider suite of agreements between the parties. The one matter not agreed is in relation to whether the protective provisions for the benefit of Anglo American should include a provision requiring Anglo American's consent to the Applicants' use of CA powers in the NZT DCO.
- 9.4.185. The Applicants' position is that no such provision should be included for the reasons set out at D4 [REP4-025]. There it was stated that provisions were originally included in the NZT dDCO to secure a reciprocal protection for the benefit of Anglo American as the "*mirror*" protection for the benefit of the Applicants to be inserted in the York Potash DCO. They were intended to manage the interaction between two NSIPs, where each benefitted from statutory powers of CA that could be exercised over the same land. However, following the expiry of the powers under of the York Potash Order 2016, the Applicants argued that there was no ongoing requirement for CA powers for the York Potash project as Anglo American had secured all the land and rights required to deliver the project.
- 9.4.186. With respect to the Proposed Development, the Applicants do not hold the necessary land and rights within the shared land. In the absence of a voluntary agreement with Anglo American, it required the powers of CA over this area to deliver the Proposed Development. Without such a provision, Anglo American would have a veto over the exercise of CA powers over the shared land [REP6-126].
- 9.4.187. The Applicants argued that while they needed CA powers over the shared land a general protective provision was provided under paragraph 232 specifying that the undertaker must not exercise any power granted under the NZT Order so as to hinder or prevent the construction, use or maintenance of the York Potash works within the shared land without the prior written consent of Anglo American. The general provision sits alongside other protections which provide for consultation and approval provisions that prohibit the Applicants from carrying out works in the shared land without the consent of Anglo American, and for such consent to be subject to the imposition of conditions by Anglo American.
- 9.4.188. Anglo American's position is that a provision requiring Anglo American's consent should be included, as it was in the submission dDCO [APP-005] and the D8 version [REP8-003], for the reasons it set out in the response to the D2 submissions of the Applicant [REP3-016] and its response to ExQ2 DCO.2.7 [REP6-126]. On this basis Anglo American considers that paragraphs (j) to (s) in the "*Regulation of Powers Over the Shared Area*" paragraph within the Schedule 12 Protective Provisions should be retained.

- 9.4.189. Anglo American objects to the deletion of the provision which would reward the Applicants for not having concluded agreements for the acquisition of land or rights needed for the Proposed Development. In contrast, Anglo American was being penalised for having reached agreements and not being reliant on CA powers. Moreover, the exercise of the CA powers would enable the Applicants to acquire land/rights which could prejudice the delivery and operation of the Anglo American NSIP [REP6-126].
- 9.4.190. Anglo American objects to CA powers sought in respect of the Anglo American interests both in terms of the principle of such rights being granted over land/rights required to deliver another NSIP and also in respect of the wide scope of powers sought in the absence of adequate detail of the scheme. The CA powers would give the Applicants a material advantage, potentially to the detriment of the delivery of the Anglo American NSIP. It has been made clear to the Applicants by Anglo American that it would co-operate in entering into the necessary property agreements to enable the Applicants to deliver its project [REP6-126].
- 9.4.191. Whilst the parties anticipated that agreement would be reached on this matter in the context of the wider suite of documents being discussed, in the absence of this, and prior to any update that may be able to be provided to the SoS during the Recommendation and Decision periods, the parties are content that this is a matter for the SoS to determine, on the basis of previous submissions [REP12-130 and REP12-135].
- 9.4.192. At D13 the Applicants noted that the D12 DCO mistakenly included Anglo American's preferred wording of the protective provisions providing at paragraph 232(3)(j) to (s) that Anglo American should be required to consent to the use of the land powers in the DCO. The Applicants do not agree to the inclusion of these provisions in the DCO for the reasons set out in the Joint Statement, and do not consider that they should form part of the DCO if made [REP13-019].
- 9.4.193. While acknowledging that we have recommended that the Applicants should be granted CA powers in other situations, this position is different. Through a DCO, Anglo American was granted its own CA powers to construct and operate an NSIP. We are therefore reluctant to recommend that another NSIP applicant should have CA powers which would effectively override a previous authorisation. We note that Part 18 would provide general protective provisions for the benefit of Anglo American. We also recognise that there is a real prospect of the parties reaching agreement. On balance we do not propose to recommend any changes to Part 18 of Schedule 12 which already indicates Anglo American's preferred wording [REP12-003].

Part 19- Suez Recycling and Recovery UK Limited

- 9.4.194. The Applicants have been in contact with Suez with respect to protective provisions since April 2022. Updated protective provisions and a side agreement were provided to Suez in July 2022 although no substantive response was received from Suez. The Applicants noted that they were aware that Suez has concerns about the interaction of the Proposed

Development with its proposed energy from waste facility. The protective provisions are therefore drafted so that if the Suez facility is being constructed, or has been constructed, at the point in time when the relevant part of the authorised development is commenced (Work No. 6) Suez would be required to approve certain works details for the authorised development. There are also provisions requiring the parties to cooperate in relation to the two developments. The Applicants considered that the provisions are adequate to protect Suez's interests [REP12-005].

- 9.4.195. As Suez has not engaged with the Examination, we are unable to comment on their reported concerns about the effect of the Proposed Development on their proposed energy to waste scheme. The Applicants' proposed protective provisions (Part 19 [REP12-003]) are specific to Suez's interests and on that basis, we consider that they should be accepted. However, prior to making a decision, the SoS may wish to seek Suez's comments on Part 13 if agreement is not reached between the parties.

Part 20 - South Tees Development Corporation

- 9.4.196. The status and role of STDC is set out in sections 2.5 and 8.39 of this Report. Protective provisions for the benefit of Teesworks Limited were included in the dDCO [APP-005] submitted with the application. Protective provisions were the subject of negotiation between the Applicants and STDC throughout the Examination with drafts exchanged at various points without their submission to the Examination.
- 9.4.197. STDC has engaged with the Examination including through its RR [RR-035], WR [REP2-097a] and responses to ExQ1 [REP2-097b] and ExQ2 [REP6-144] which provide the context for its final submissions. At D12 STDC provided its closing submissions [REP12-164] comprising a final summary of outstanding objections [REP12-166] and its preferred form of protective provisions [REP12-165]. The Applicants confirmed that they had submitted their preferred protective provisions to the DCO at D12 [REP12-003]. They also provided comprehensive justification for their final protective provisions in Appendix 1 to the Schedule of Changes to the DCO [REP12-005].
- 9.4.198. At D13 STDC submitted its preferred protective provisions [REP13-033] tracked against the Applicants' D12 version and a clean version [REP13-034]. At D13 the Applicants provided comments on STDC's D12 preferred protective provisions at Appendix 1 of the Applicants Comments on D12 Submissions [REP13-019].
- 9.4.199. Responding to the Applicants' D13 submissions STDC provided comments on the final day of the Examination [AS-214] together with updated tracked and clean versions of its preferred protective provisions [AS-215 and AS-216].
- 9.4.200. Table 7 sets out the main outstanding matters at the end of the Examination. It is based on the final submissions of STDC [AS-214 and AS-216] and the final comments of the Applicants [REP13-019] although

each is based on the earlier submission of the other party rather than comments being directly comparable. References to paragraph numbers relate to the Applicants' D12 dDCO [REP12-003].

Table 7: Outstanding Matters Between STDC and the Applicants

STDC's Concern	Applicants' Response	ExA's Comments
The definition of " <i>adequacy criteria</i> " in paragraph 256 is unnecessary given the criteria included in the " <i>diversion condition</i> ".	This provision confirms what the undertaker must not treat as constituting an inadequate alternative, subject to certain conditions (see paragraph 256(2)). It serves a separate purpose from the criteria in the " <i>diversion condition</i> " definition. A minor change to the definition of " <i>adequacy criteria</i> " was made to confirm that the criteria in paragraph 256(2) should apply.	The definition of " <i>adequacy criteria</i> " appears to be both complicated and unnecessary. Notwithstanding the Applicants' change to paragraph 256(2), the original version of the definition is preferred, and paragraph 256(2) amended accordingly. See below.
STDC opposes the Tees Dock Road access, and the definition will need to be removed if the Applicants' case for this access is not made or the Applicants decide to remove the access in post Examination stage.	The Applicants disagree that the creation of an access from Tees Dock Road (at plots 274 and 279) is not required. An alternative at Lackenby Gate has not been secured by legal agreement. There is no guarantee such an agreement will be entered into.	The case for the use of Tees Dock Road has been made and no alternative is agreed. However, should agreement on an alternative access be reached between the parties before the SoS makes a decision the DCO would need further amendment based on Part 3 of the Schedule of Changes to the dDCO [REP12-005]. No change is currently required.
Under " <i>diversion condition</i> " in paragraph 256(1), the text following (j)(iv) should be amended as the caveats have not been agreed as part of equivalent drafting in the main site option. It is unreasonable and unnecessary as it grants the Applicants	The drafting is consistent with the principles in the main site option negotiations, and it is in any case reasonable and proportionate to include in the protective provisions. It is reasonable for the undertaker to require	Without having seen the main site option agreement, such positions are unhelpful. The proposed wording following paragraph 256(1)(j)(iv) is both complicated and unnecessary, and STDC's proposed protective provisions

significant discretion beyond what is needed to implement the authorised development.	that any alternative land proposed by STDC for parking must be "suitable for such use".	would adequately address the Applicants' concerns. See below.
Additional text is required under " <i>identified power</i> " to capture any other powers exercised in the STDC area as powers within the DCO could cause significant disruption to STDC or its tenants and which should also be subject to the protective provisions.	The " <i>other powers</i> " in the Order could only be exercised by the Applicants with the benefit of an interest in STDC's land. The definition of " <i>identified power</i> " already deprives the Applicants of the ability to secure that under the Order by removing its powers of CA.	The additional wording is unnecessary as adequate protections are provided. No change is required.
The definition of " <i>red main criteria</i> " should be based upon the principles agreed between the parties and appropriate wording is proposed.	The Applicants agree with the definition provided by STDC which is replicated in sub-paragraphs (c) to (g) in the protective provisions. The Applicants have also included new sub-paragraphs (a) and (b).	STDC's confirmation that the Applicants' additions are acceptable, and the further minor amendments proposed by STDC appear reasonable and are proposed for inclusion in the Recommended DCO. See below.
The definition of " <i>the Teesworks site</i> " should apply to all works within the scope of the DCO which take place on land owned by STDC. STDC should have protective provisions that apply to all of the Applicants' works on its land, particularly where an option for PCC Site has not been agreed.	The Applicants disagree because the definition of "the Teesworks site" applies to the consent to works details process. STDC's proposed changes would apply protective provisions to activities associated with Work Nos. 1 and 7 at the PCC Site. It is not reasonable or necessary to effectively give the Teesworks entities a control over works that are not near to its interests and where no impact on its operations has been identified.	It does not appear unreasonable that protective provisions should apply to all STDC land when an option for the PCC Site has not been agreed. We recommend adoption of the STDC's amended definition. See below.
The purpose of paragraph 256(2) is to acknowledge that diversions etc. can be longer in distance/duration and still meet the diversion	There is no substantive difference in STDC's wording to necessitate a change to the drafting [REP12-003]. The wording proposed by the Applicants provides	Based on the Applicants' explanation of the link between the two parts we consider the Applicants' previous drafting [REP12-003] to be preferable.

condition (or conversely cannot be rejected simply on grounds that it is longer). This protection is already provided by paragraphs of the diversion condition and further qualification is not necessary.	greater protection to STDC than the proposed amendments. However, the Applicants disagree with the proposed amendment to paragraph 256(2) because this is integral to limiting the circumstances where an alternative proposal must be accepted.	
STDC argued for an amendment to paragraphs 257 and 258 to ensure that prior approval should apply to all works on land owned by Teesworks, STDC and STDL. In its view it would be unreasonable for the Applicants to carry out works on the Teesworks site without STDC's consent given the significant impacts this could have on STDC's wider estate and other tenants.	The consent to works details should not apply outside of the connection corridors land. Clarification has already been provided indicating that any consent to works details in respect of the PPW only has effect to the extent such PPW are within the connection corridors land and the vicinity of the Teesworks entities interests.	It does not appear unreasonable that protective provisions should apply to all STDC land when an option for the PCC Site has not been agreed. We recommend adoption of the STDC's amendments. See below.
STDC has proposed an additional paragraph (260B in its final preferred protective provisions [AS-216]) STDC has provided its preferred from of drafting to control the use of CA and TP powers over its land and interests. The provision is intended to allow STDC to either require acquisition by agreement, or alternatively for STDC to consent to the use of CA and TP powers over its land.	The Applicants strongly oppose this drafting and have not included it or similar wording in the final dDCO [REP12-003]. The Applicants' justification for its exclusion has already been set out in Appendix 1 to Applicants Schedule of Changes [REP12-005].	We are content that the overall approach to the CA and TP of land and protective provisions is sound. No change is required.
At paragraph 264 STDC considers that costs for arbitration should be included within the recoverable expenses, citing the possibility of	The Applicants oppose funding arbitration by STDC arguing that the parties must be incentivised to follow the diversion procedures in	While noting the Applicants' case that parties should be incentivised, it does not appear unreasonable that the Applicants

arbitration where necessary to pursue resolution of the diversion works process. It argued that were-STDC is liable for arbitration costs, it incentivises the Applicants to use the arbitration process to resist diversions.	the protective provisions before they move to arbitration. The Applicants' full justification is set out in Appendix 1 to Applicants Schedule of Changes to the DCO [REP12-005].	should be responsible for the costs incurred. We therefore recommend that the dDCO is amended as proposed by STDC. See below.
Paragraph 264(1)(c) and (d) should be updated to reflect that until such time as the Applicants have installed apparatus/works, the Applicants are wholly responsible for the costs of any diversion works.	The amendments would mean that the undertaker will always be liable for funding a "diversion work" even where it solely or partially benefits STDC, or benefits STDC. If STDC wish to suggest an alternative proposal, and that proposal would benefit STDC, it must be responsible for funding a proportion of the related costs.	The alternative provision proposed by STDC could lead to the unintended consequences which the Applicants outline. For that reason, we see no reason to depart from the Applicants' preferred wording. No change is required.
Under paragraph 268, STDC argued in favour of additional time to issue a diversion notice describing the process as technical and requiring considerable preparatory work. This would have implications for the time periods in paragraph 275.	The Applicants strongly disagree with STDC's proposed changes to the timescales for the procedures. The provisions specify time periods to provide certainty and to ensure that the undertaker can implement the authorised development. Other provisions allow STDC to request details of proposed works at any time.	Other provisions provide STDC with opportunities to request additional information. Together with paragraph 268, this would ensure a balance is provided between allowing STDC to appropriately engage and ensuring that the authorised development can proceed without undue delay. No change is required.

9.4.201. Based on our comments in Table 7 we recommend that the Applicants' final dDCO [REP12-003] is amended as follows:

Paragraph 256(1):

Delete "adequacy criteria" means the criteria at sub-paragraph (2); "

Paragraph 256(1):

Under "diversion condition", replace the text following (j)(iv) with the following:

"and that the number of car parking spaces specified would be available for use by the undertaker at all times during the periods specified, and

that the surface of any land designated for use as car parking spaces is suitable for such use, and that the undertaker will be able to operate a bus service that provides for the transport of personnel from the car parking spaces to construction areas during the construction of the authorised development; "

Paragraph 256(1):

Under "red main criteria", replace the existing text with the following:

" "red main criteria" means that—

(a) the diversion work must be along a route that must connect to plot 223 at the same location as the existing road;

(b) the diversion work must connect into the construction areas required for the construction of the authorised development at a location approved by the undertaker acting reasonably;

(c) the diversion work must accommodate cargo of 20 metre width by 20 metre height by 80 metre length, with an axle width of 10 metres, and with 5 metres of overhang each side;

(d) the diversion work must allow a minimum internal turning radius of 24 metres and a maximum outer turning radius of 53 metres;

(e) the longitudinal slope of the diversion work must not exceed 5%;

f) the transverse slope of the diversion work must not exceed 1.5%; and

(g) the diversion work must have a minimum ground bearing capacity of 100 kN/m² and sufficient protection provided if it crosses underground facilities; "

Paragraph 256(1):

Under "the Teesworks site" replace the existing text with the following:

" "the Teesworks site" means any land within the Order limits owned by STDC, Teesworks Limited and South Tees Developments Limited; "

Paragraph 256(2):

Replace the text with the following:

"For the purposes of this Part of this Schedule, a diversion work or associated interest in land is capable of meeting the diversion condition notwithstanding that:

(a) it is longer in distance than the relevant proposed work it is replacing; or (b) in the case of vehicular or staff access, it increases the time taken to travel to the authorised development compared to the relevant proposed work it is replacing;"

Paragraph 257:

Replace the text with the following:

"257. Before commencing the construction of any part of the authorised development including any permitted preliminary works within the

Teesworks site, the undertaker must first submit to the Teesworks entity for its approval the works details for the work and such further particulars as the Teesworks entity may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require."

Paragraph 258:

Replace the text with the following:

"258. No works comprising any part of the authorised development including any permitted preliminary works within the Teesworks site are to be commenced until the works details in respect of those works submitted under paragraph 257 have been approved by the Teesworks entity."

- 9.4.202. While there remains some disagreement between the parties in terms of the appropriate form of protective provisions, we are content to recommend the inclusion of Part 20 in the Recommended DCO based on the amendments above. However, we recognise that, prior to making a decision, the SoS may wish to seek further comments from the parties on Part 20 if agreement has not been reached between the parties.

Part 21 - The Breagh Pipeline Owners

- 9.4.203. Section 8.23 of this Report explains the composition and responsibilities of the Breagh Pipeline Owners.
- 9.4.204. Recognising that the CA could significantly affect their rights, with implications for the operation of the onshore pipeline Ineos UK SNS Limited sought appropriate amendments to the dDCO to protect its interests [RR-010]. At D4 the protective provisions were amended so that they are for the benefit of the Breagh Pipeline Owners instead of solely for Ineos UK SNS Limited [REP4-004]. The Applicants reported that the parties had agreed the form of protective provisions to be included in the DCO and a separate side agreement and private protective provisions which they were seeking to complete imminently [REP12-005].
- 9.4.205. In the absence of comments from the Breagh Pipeline Owners on the Applicants' protective provisions or the submission to the Examination of the Breagh Pipeline Owners' own preferred protective provisions we consider that the Applicants' version (Part 21 [REP12-003]) provide appropriate protection and should be accepted. However, prior to making a decision, the SoS may wish to seek the Breagh Pipeline Owners' comments on Part 21 if agreement has not been reached between the parties.

Part 22 - Teesside Windfarm Limited

- 9.4.206. The Applicants' original protective provision for the benefit of TWF Limited included EDF Energy Renewables Limited. However, EDF Energy Renewables Limited does not have a land interest to require the benefit of protective provisions and was therefore deleted from the provisions with the benefit of TWF Limited retained [REP5-002].

- 9.4.207. TWF commented on the potential effect of the Proposed Development on the operation of the windfarm and the need for protective provisions [REP6-130] and at D11 commented that the form of a draft side agreement and protective provisions were agreed between the parties and expected to be completed imminently, and in any event prior to the close of the Examination [REP11-042].
- 9.4.208. The Applicants confirmed [REP12-005 and REP13-021] that the parties had agreed a separate side agreement and private protective provisions, which were going through the final approval and execution process. The protective provisions take account of the submission made by TWF at D6 [REP6-131] including provisions providing for TWF approval of works potentially interacting with or impacting on the offshore windfarm.
- 9.4.209. We were not provided with a copy of the latest version of the protective provisions which the Applicants and TWF were discussing, or comments from TWF on the latest version of the Applicants' protective provisions. Nevertheless, we consider that the Applicants' version (Part 22 [REP12-003]) provides appropriate protections for TWF and should be accepted. However, prior to making a decision, the SoS may wish to seek TWF's comments on Part 22 if agreement has not been reached between the parties.

Part 23 - Huntsman Polyurethanes (UK) Limited

- 9.4.210. Through its RR [AS-046] and WR [REP2-069] HPU highlighted the need for protective provisions to offset the potential for private loss arising from the Proposed Development. Following this early engagement HPU did not participate in the Examination until it submitted its final comments and own protective provisions on 10 November 2022 [AS-211].
- 9.4.211. The Applicants were in contact with HPU about protective provisions throughout the Examination and accepted the principle of using HPU's preferred form of protective provisions, which are reflected in the final dDCO [REP12-003]. The Applicants considered that these were largely in an agreed form, although some matters remained outstanding [REP12-005]. To ensure adequate protection for HPU's interests, the Applicants accepted detailed provisions proposed by HPU. However, the Applicants' provisions did not include a restriction on CA powers, on the basis that these are required to enable the Proposed Development to be delivered.
- 9.4.212. The Applicants considered that, with HPU's proposed protections in place, the protective provisions in the final dDCO [REP12-003] appropriately and adequately protect HPU's interests [REP12-005]. At D13 the Applicants confirmed that the parties were engaged in negotiating protective provisions and a side agreement and that the Applicants would continue to seek to reach agreement with HPU following the close of Examination [REP13-031].
- 9.4.213. HPU's own preferred protective provisions, submitted on the final day of the Examination [AS-211] are essentially the same provisions as were submitted in relation to SABIC (as the same legal representatives were

acting in each case). They are based on the precedent contained in York Potash Order 2016 following representations relating to that scheme by SABIC and HPU. The provisions have been amended from the York Potash provisions by being put into a form where they are individual to HPU, rather than being of general application to pipeline operators. They also propose the inclusion of Huntsman Holland B.V. (alongside HPU) in the provisions noting that while Huntsman Polyurethanes (UK) Limited is the operator of apparatus used to store and process materials, it is owned by another group company, Huntsman Holland B.V. [AS-211].

- 9.4.214. The proposed amendment to "*Huntsman*" in paragraph 304 appears reasonable and we are content to recommend this change in the Recommended DCO.

Paragraph 308:

Delete existing definition of "Huntsman" and replace with the following:

" "Huntsman" means Huntsman Polyurethanes (UK) Limited , with Company Registration Number 03767067 whose registered office is at Concordia House Glenarm Road, Wynyard Business Park, Billingham, United Kingdom, TS22 5FB and Huntsman Holland B.V. a company registered in the Kingdom of the Netherlands (registered with the Chamber of Commerce under No. 24070891) whose registered address is at Merseyweg 10, 3197KG Botlek, Rotterdam, The Netherlands; "

- 9.4.215. HPU has not explained in detail the reasons for departing from the Applicants' proposed protective provisions which have been under discussion between the parties since early during the Examination. In addition, Huntsman has not provided any commentary to the Examination on the Applicants' proposed protective provisions and the Applicants have not been able to respond to the detail of Huntsman's preferred protections. Consequently, apart from amending the definition of Huntsman we consider that the Applicants' version provides appropriate protection for HPU (Part 23 [REP12-003]) and should be accepted. However, prior to making a decision, the SoS may wish to seek comments from the Applicants and HPU on their respective proposals if agreement has not been reached between the parties.

Part 24 - Navigator Terminals Seal Sands Limited

- 9.4.216. The Applicants provided protective provisions to Navigator Terminals Seal Sands Limited in March 2022 with comments provided in July 2022 [REP12-005]. The Applicants recorded that they had accepted most of the amendments proposed and made amendments in the dDCO submitted at D8 [REP8-004]. The Applicants' understanding (not confirmed by Navigator but based on the limited extent of the Applicants' comments received in July 2022), is that the dDCO provides appropriate protection for Navigator Terminals Seal Sands Limited's operations [REP12-005].
- 9.4.217. We note that in paragraph 330, under the definition of "*Navigator Terminals*" that the words "*in title or function*" were in square brackets.

This has not been explained and we consider it to be unnecessary. We therefore propose to remove the brackets.

- 9.4.218. Navigator Terminals Seal Sands Limited has not engaged in the Examination and we have not seen its comments on any version of prospective provision which the Applicants have submitted to the Examination. Having reviewed the Applicants' final version of protective provisions for the benefit of Navigator Terminals Seal Sands Limited (Part 24 [REP12-003]) we consider that these provide appropriate protections for Navigator Terminals Seal Sands Limited and should be accepted subject to the change in the previous paragraph. However, prior to making a decision, the SoS may wish to seek Navigator Terminals Seal Sands Limited's comments on Part 24 if agreement has not been reached between the parties prior to the SoS's decision.

Part 25 – Northumbrian Water Limited

- 9.4.219. Early in the Examination the Applicants and NWL agreed to use bespoke Northumbrian Water protective provisions as requested in NWL's RR [RR-031]. Throughout the Examination, negotiations took place about a separate side agreement and protective provisions. The Applicants consider that the form of protective provisions included in the Order are appropriate and adequate to protect NWL's interests, including in relation to its statutory undertaking [REP12-005].
- 9.4.220. At D13 the Applicants advised that the parties had agreed the form of a side agreement and annexed protective provisions which were going through final internal sign-off processes ahead of completion [REP13-021]. The Applicants also advised [REP13-019] that they wished to update the form of protective provisions in Part 25. This relates to paragraph 340 as follows:

Paragraph 340

Delete text after sub-section (b) and replace with the following:

"and in the event that such works are to be executed by the undertaker, they are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NW for the alteration or otherwise for the protection of the apparatus, or for securing access to it."

- 9.4.221. On the final day of the Examination confirmation was provided that NWL had voluntarily entered into an agreement dated 9 November 2022 with the Applicants. In pursuit of that agreement, it was confirmed that NWL was withdrawing its objections to the DCO application [AS-210]. Consequently, we are content to accept the Applicants' protective provisions included in Part 25 of the dDCO subject to the change in paragraph 340. [REP12-003].

Part 26 – Northern Gas Networks Limited

- 9.4.222. Throughout the Examination the Applicants and Northern Gas Networks Limited engaged in dialogue on protective provisions, with drafts of an

Asset Protection Agreement and protective provisions exchanged most recently at the beginning of October 2022. At D12 the Applicants recorded that the protective provisions included at Part 26 to the Order did not take account of Northern Gas Networks' preferred position but noted that the parties are committed to working together with a view to reaching agreement. The Applicants consider that the form of protective provisions included in the Order are appropriate and adequate to protect Northern Gas Networks Limited's interests including its statutory undertaking (pursuant to s138 of the PA2008) [REP12-005].

- 9.4.223. Northern Gas Networks has not engaged in the Examination, and we have not seen its comments on any version of prospective provision which the Applicants have submitted to the Examination. Having reviewed the Applicants' final version of protective provisions for the benefit of Northern Gas Networks (Part 26 [REP12-003]) we consider that these provide appropriate protections for Northern Gas Networks Limited and should be accepted. However, prior to making a decision, the SoS may wish to seek Northern Gas Networks Limited's comments on Part 26 if agreement has not been reached between the parties.

Part 27 - North Tees Limited, North Tees Rail Limited and North Tees Land Limited

- 9.4.224. NTG comprises North Tees Limited, North Tees Rail Limited and North Tees Land Limited. Section 8.31 of this Report sets out NTG's concerns regarding impacts on their own operations and pipeline infrastructure which they are responsible for managing within the sections of the Link Line corridor which intersect their land interests.
- 9.4.225. Discussions between the Applicants and NTG about protective provisions were ongoing at various stages of the Examination. NTG commented on the need to protect their interests [RR-016, RR-022, RR-028, RR-029, REP2-070, REP2-070a, REP5-036, REP6-138, REP7-014, REP11-043, REP12-136, REP13-030, AS-127 and AS-128] and the Applicants responded to NTG's representations at various points during the Examination as set out in section 8.31 of this Report.
- 9.4.226. At D11 the Applicants noted that protective provisions were being negotiated between the Applicants and NTG based on the draft protective provisions included in the dDCO at D4 [REP4-002]. Various drafts were subsequently considered by the parties. The Applicants consider that the protective provisions in the dDCO [REP12-003] provide appropriate and proportionate protection for the NTG's functions and roles as a landowner and leaseholder [REP12-005]. The Applicants have provided further comments on the protective provisions in the Applicants' Comments on D9 Submissions and Additional Submissions [REP11-014] including comments on the submissions made in respect of ISH5 [AS-208], and in the Applicant's Comments on D11 Submissions [REP12-133]. At D12 NTG's submissions [REP12-136] included NTG's proposed protective provisions while the Applicants responded at D13 [REP13-019] and NTG provided its own final comments at D13 [REP13-030].

- 9.4.227. Table 8 provides a summary of the main outstanding matters between the parties at D11 to D13. References in the table to paragraph numbers in Schedule 12 relate to the D12 version [REP12-003] unless otherwise stated.

Table 8: Outstanding Matters Between NTG and the Applicants

NTG Concern	Applicants' Response	ExA's Comments
Part 27 should reflect the protective provisions for the benefit of Sembcorp as NTG's position is similar to Sembcorp [AS-208].	Sembcorp operates the pipeline corridor on behalf of themselves and other operators, while NTG's role is as a landowner. Basing NTG's protective provisions on the management or operation of the corridor is inappropriate. Duplicating provisions could cause delay and inconsistency, especially where matters are properly within Sembcorp's remit. [REP11-014]	Sembcorp's role reflects its interests across most of the Order land, which NTG's interests do not extend to. Additionally, it is appropriate to avoid the duplication of controls. The Applicants' proposed protective provisions would give NTG control over works details and a right to request further information which provides an appropriate balance to the powers the Applicants are seeking. No change is required.
Part 27 should include the following paragraphs of Part 17 with references to Sembcorp substituted with references to NTG: 213, 215, 216, 217, 218, 219, 220, 221, 223 and 225 [AS-208].	As above.	As above. No change is required.
Paragraph 308(1) of NTG's proposed protective provisions [REP12-136] should include any part of the authorised development (and future access) which would have any effect on land owned by NTG within the Order Limits [AS-208].	Consent to works provisions at paragraph 308 include reference to NTG's land within the Order Limits and access to NTG's adjacent land [REP11-014].	As the issue is already addressed, no change is required to Part 27 [REP12-003]. No change is required.
Paragraph 309 of NTG's proposed protective provisions [REP12-136] concerning indemnity should be expanded and	The form of indemnity in paragraph 309(1) is appropriate and adequate. Paragraph 309(2)(b) will be deleted	The deletion of paragraph 309(2)(b) was made at D12 [REP12-003]. The reason for retaining

paragraph 309(2) deleted [AS-208].	but (a) should be retained as it is not reasonable for the undertaker to indemnify NTG where damage or obstruction is caused by NTG itself [REP11-014]	paragraph 309(2)(a) is accepted because the Applicants should not be responsible for any damage caused by NTG.
The DCO should specify that Work No. 6 should be always kept in proper repair in compliance with statutory obligations [AS-208].	The proposed changes are inappropriate in a DCO where criminal liability would apply to non-compliance and unnecessary to specify compliance with statutory obligations [REP11-014]	These matters are already addressed through the DCO or other legislation. No change is required.
The undertaker should remedy, at its expense, any contamination to the lands owned/leased by NTG [AS-208].	Criminal liability would apply to non-compliance while remediation is addressed through R13 [REP11-014].	These matters are already addressed through the DCO or other legislation. No change is required.
The undertaker should not remove apparatus or infrastructure where adequate space exists in the pipeline corridor, apart from where it is necessitated by engineering modifications to support apparatus [AS-208].	The Justification of Corridor Widths submission [REP8-051] provides technical justification. NTG's proposed restrictions would be an impediment to the delivery of the Proposed Development [REP11-014].	The Applicants have provided adequate justification for the width of the pipeline corridor. Is addressed at paragraphs 8.38.16-8.38.25 of this Report. No change is required.
Protective provisions should allow NTG and its contractors to enter the new rights corridor and TP areas to undertake maintenance and lay services without obstruction by the undertaker [AS-208].	The protective provisions provide NTG with sufficient information of the proposed works and an approval role prior to the undertaker commencing works [REP11-014]	The Applicants' protective provisions would provide NTG with adequate opportunities to engage with the Applicants about proposed works as well as a degree of control over them. No change is required.
Subject only to Sembcorp's limited interests, NTG retains legal possession of the pipeline corridor, apparatus and structures not owned by Sembcorp and NTG's protective provisions should reflect those of Sembcorp [REP11-043].	The Applicants dispute that NTG owns all apparatus and structures not owned by Sembcorp and should not have the same provisions as Sembcorp [REP12-133].	In the absence of clear evidence of the ownership of apparatus and structures the case for change has not been sufficiently made. The Applicants' proposed protective provisions would provide appropriate protection. No change is required.

The Applicants' protective provisions do not deal with any land within the Order Limits [REP12-136].	Paragraphs 366 and 367(1) provide for the benefit of NTG within the Order Limits [REP13-019].	Paragraphs 366 and 367 address NTG's interests within the Order Limits. No change is required.
The Applicants' protective provisions do not adequately address the protection of NTG assets and operations [REP12-136].	Part 27 specifies that no authorised works affecting NTG's operations or access adjacent to the Order Limits may commence until works details are approved by NTG. An additional protective provision (paragraph 370) is also proposed [REP13-019].	Paragraphs 367(2) and (3) provide appropriate protection to NTG and the addition of paragraph 370 would provide further protection and is supported. See below.
The Applicants' protective provisions do not address land contamination, repair and condition and decommissioning, among other matters and have therefore been included in NTG's proposed protective provisions [REP12-136].	The matters raised are either covered elsewhere within the dDCO or are not relevant or appropriate to include in protective provisions [REP13-019].	The Applicants' proposed protective provisions would provide adequate protection for NTG. No change is required.
Paragraphs 309(1) and 315(c) of NTG's proposed protective provisions seek the efficient and economic use of the NTG pipeline corridor [REP12-136].	A wide range of considerations would apply in considering the detailed design to deliver the authorised development in addition to the efficient and effective use of the corridor [REP13-019].	The Applicants' proposed protective provisions would provide adequate protection for NTG. No change is required.
Paragraph 331 of NTG's proposed protective provisions provides for additional controls where TP is required [REP12-136].	The proposed provision is unnecessary and duplicates other provisions under the approval of works mechanisms. Nevertheless, an amendment to " <i>works details</i> " is proposed [REP13-019].	The Applicants' proposed protective provisions would provide adequate protection for NTG in respect of works mechanisms but the amendment to " <i>works details</i> " would add to this and is supported. See below.
Paragraphs 324-327 of NTG's proposed protective provisions provides for participation in community groups [REP12-136].	Such provisions would duplicate paragraph 224 of Schedule 12 [REP13-019].	The Applicants' proposed protective provisions would provide adequate protection for NTG. NTG's proposed changes would duplicate

		matters. No change is required.
Paragraph 311 of NTG's proposed protective provisions provides for a six-month notification period [REP12-136].	A six-month notification is inconsistent with other protective provisions which are based on relevant precedent and made DCOs [REP13-019].	The Applicants' proposed protective provisions would provide adequate protection for NTG and are in line with good practice through other made DCOs. No change is required.

9.4.228. At D13 the Applicants confirmed that the parties were engaged in negotiating a side agreement and protective provisions, [REP13-021]. The Applicants will continue to seek to reach agreement with NTG following the close of Examination. If agreement is not reached, the Applicants' position remains that CA powers should be granted for the reasons given in, for instance, the SoR [REP12-010] and Applicants' Comments on D12 Submissions [REP13-019] and notes that NTG would benefit from the protection of the protective provisions provided at Part 27 of the DCO [REP12-003].

9.4.229. Based on our comments in Table 8 we recommend that the Applicants' final dDCO [REP12-003] is amended with the inclusion of the following:

Paragraph 366: In "works details", after "means" insert "including for land of which the undertaker intends to take only temporary possession under the Order".

Paragraph 370:

Apparatus

"370. Where, in exercise of powers conferred by the Order, the undertaker acquires any interest in land in which any apparatus owned by NTL, NTR or NTLL is placed and such apparatus is to be relocated, extended, removed or altered in any way, no relocation, extension, removal or alteration shall take place until NTL, NTR or NTLL (as the case may be) has approved contingency arrangements in order to conduct its operations, such approval not to be unreasonably withheld or delayed."

9.4.230. While there remains some distance between the parties in terms of the appropriate form of protective provisions, and in particular that NTG is seeking additional protections, we are content to recommend the inclusion of Part 27 in the Recommended DCO subject to the two amendments above. However, we recognise that, prior to making a decision, the SoS may wish to seek NTG's further comments on Part 27 if agreement has not been reached between the parties.

Part 28 - Teesside Gas & Liquids Processing, Teesside Gas Processing Plant Limited and Northern Gas Processing Limited

9.4.231. Section 8.30 of this Report explains that the above entities make up NSMP who own the gas processing plant at Seal Sands which supports North Sea gas fields in producing significant volumes of gas to the UK

energy supply through the National Transmission System. Their access is proposed to provide a route to the gas connection and AGI at the adjacent CATS terminal. Concerns raised by NSMP are set out at paragraphs 8.30.2, largely relating to safety and security of its terminal and access to it.

- 9.4.232. The Applicants and NSMP discussed draft protective provisions and a side agreement between July 2022 and the end of the Examination. The Applicants made updates to the draft protective provisions in the dDCO [REP12-003]. These are not agreed with NSMP but, in the Applicants' view, address NSMP's concerns, and requirements expressed through its representations.
- 9.4.233. Submissions on behalf of NSMP were made throughout the Examination [REP3-018, REP4-043, REP5-041, REP6-142, REP9-035, REP11-040, REP12-167 and REP13-032]. The final submission [REP13-032] confirms that both the Applicants [REP12-003] and NSMP [REP12-167] provided their form of protective provisions at D12, noting that the Applicants' D12 version was substantially different from their previous version [REP8-003]. NSMP identified a range of outstanding matters between the parties [REP13-032] which are summarised in Table 9 together with the Applicants' comments on outstanding matters at D13 [REP13-005 and REP13-019], recognising that the Applicants were not directly commenting on NSMP's D13 submission. References are to the Applicants' D12 dDCO [REP12-003] unless otherwise stated.

Table 9: Outstanding Matters Between NSMP and the Applicants

NSMP Concern	Applicants' Response	ExA's Comments
NSMP has concerns about potential impacts to the access road to its site and the potential risk to NSMP's ability to maintain the safe and continuous operation of its facilities.	The Applicants have created two works packages under the protective provisions. The proposed works in relevant works package A would be subject to more stringent controls than those for all other works with the potential to impact NSMP's operations elsewhere in the Order Limits and beyond.	A proportionate approach to managing access has been proposed, with bespoke approval principles and requirements applying to those areas of greatest concern for NSMP. No change is required.
Paragraph 389 would allow the undertaker to carry out works to the access road with respect to plots 103, 106 and 108 in the event the state of repair is not suitable for HGVs.	The Applicants need to retain the ability to undertake works in the event the access road ceases to be maintained. It would be unreasonable for NSMP to withhold consent for works in the	Based on how important the access road is to NSMP it is unreasonable to suggest that it would not maintain the access road to the required standard for HGVs. Consequently,

Paragraphs 389 and 390(a) should be deleted.	event of failure to maintain the access road.	paragraphs 389 and 390(a) are unnecessary and should be removed. See below.
A provision in NSMP's preferred protective provisions requires the Applicants to use all reasonable endeavours to secure a voluntary agreement for access to plots 110, 112, 113 and 114 over the neighbouring site in the ownership of CNSL.	Discussions are taking place with CNSL about an alternative access route, but there is no justification for provisions to seek such an alternative. The Applicants are prepared to commit to use an alternative access if that can be agreed and secured (paragraphs 399-401).	The Applicants' proposed protective provisions at paragraphs 399-401 adequately provide for the possibility of using an alternative access. No change is required.
Providing two separate works packages is unacceptable because it is unclear which infrastructure and rights might be affected by the authorised development. NSMP's approval should be sought for all works potentially affecting NSMP's operations.	There is potential for the authorised development to be unreasonably delayed if the Applicants are required to provide access to all interests of NSMP both within and outside the Order Limits in the way proposed for Work Package B.	The Applicants have proposed a proportionate approach with bespoke approval principles and requirements applying to those areas of greatest concern for NSMP. No change is required.
The requirement to comply with conditions or regulations must not be subject to the receipt by the Applicants of such details in the absence of a request.	Paragraph 374 addresses this issue, while outstanding matters related to practical completion and remediation of defects are better addressed through a side agreement.	Provisions provided through paragraph 374 would address the compliance issue. Given the level of detail required to address other matters, a side agreement would be an appropriate approach. No change is required.
Deemed approval provisions at paragraphs 372, 373, 378 and 384 should be deleted and in the case of dispute the arbitration provisions (paragraph 393 of NSMP's proposed protective provisions [REP13-032]) should apply.	Paragraph 372 provides the restriction on works commencing until approval of the design package and paragraph 374 secures implementation in accordance with approved details.	Deemed approval provisions do not appear unreasonable in the context of the wider process for approval and the need for the Proposed Development. No change is required.
The definition of "NSMP pipelines" should exclude "within the Order Limits"	The Applicants accept that the reference to "within the Order limits"	The proposed amendment is

as previously agreed with the Applicants.	should be replaced by " <i>within Teesside</i> ".	reasonable and supported. See below.
The indemnity protection is insufficient. Any losses as a result of the proposed works are likely to be economic in nature and not covered by protective provisions. NSMP acknowledges the need for a cap on the Applicants' liability and proposes a figure in its own protective provisions.	The level of the indemnity liability cap proposed by NSMP is not agreed. This is a commercial matter between the parties and should be agreed separately.	In the absence of the Applicants providing a liability cap figure or commenting on the figure provided by NSMP, this is a matter which should be agreed between the parties separately. No change is required.
The scope of protection in the protective provisions should be expanded to include a new " <i>NSMP group</i> " to reflect wider interests potentially affected by the authorised development.	There are no interests within the Order Limits owned by parties other than the three identified NSMP entities. No other interests are sought to be protected outside of the Order Limits that are owned by entities other than the NSMP entities. The protection proposed is adequate to protect the interests/assets identified as having the potential to be affected by the authorised development.	The inclusion of this wider definition during the later stages of the Examination has not allowed us to explore its appropriateness in depth. Consequently, we do not propose to amend the Applicants' protective provisions in this respect. No change is required.
CA rights should not be granted and should be replaced with a provision for rights to be sought voluntarily with consent not to be unreasonably withheld. Paragraphs 397-402 of NSMP's proposed protective provisions [REP12-167] should be applied.	In the absence of land agreements with the appropriate NSMP entities, the Applicants require CA powers to ensure that the Proposed Development can be built, maintained, and operated, and so that the public benefits of the NZT project can be realised.	We are content that the overall approach to the CA and TP of land and protective provisions is sound. No change is required.
A provision is required for it to be reasonable for NSMP to withhold consent for any works which would impact upon NSMP operations where works include crossing pipelines critical to NSMP's operation and	The Applicants accept that crossing agreements will be needed, but the terms of any crossing agreements with third parties would not need to be approved by NSMP. This matter is more appropriately dealt	This is a matter which can be appropriately addressed outside of protective provisions. No change is required.

where no pipeline crossing agreement exists.	with outside of the Order.	

- 9.4.234. Based on our comments in Table 9 we recommend that the Applicants' final dDCO [REP12-003] is amended with the inclusion of the following:
- 9.4.235. In paragraph 371 [REP12-003], within the definition of "*NSMP pipelines*" "*within the Order limits*" should be replaced by "*within Teesside*".
- 9.4.236. Paragraphs 389 and 390(a) to be deleted with sub-paragraph (b) merged into the preceding text.
- 9.4.237. The Applicants have stated that the parties are engaged in negotiating protective provisions and a side agreement. They are actively working together to reach agreement following the close of Examination [REP13-021].
- 9.4.238. We acknowledge the national importance of the terminal in supporting the production and distribution of gas and the significant concerns which NSMP have raised throughout the Examination particularly in relation to safety, and which remain unresolved at D13. We also understand that the ongoing discussions are in part dependent on other parties, including CNSL, PDT and Sembcorp.
- 9.4.239. We also note that that the Applicants have not had the opportunity to respond to D13 submission but that the parties are working to reach agreement outside of the Examination. On this basis, while we find that Part 27 of the dDCO [REP12-003] provides adequate protections for NSMP it has not fully addressed the concerns of either party. Therefore, prior to making a decision, the SoS may wish to consult the parties about the final submissions of each other and use responses to that consultation to revise Part 27.

Schedule 13 – Procedure for Discharge of Requirements

- 9.4.240. Paragraph 5(5)(b) refers to appeals "*made to [him]*". We propose changing "*him*" to the gender neutral "*them*".

Schedule 14 - Documents and Plans to be Certified

- 9.4.241. Throughout the Examination the Applicants made various amendments to Schedule 14 [AS-135, REP2-002, REP5-002, REP6-002, REP8-003, REP9-007 and REP12-007]. These reflected changes made to the application especially through the three change requests, responses to our written questions and matters arising from hearings. Some changes to Schedule 14 reflected revisions to documents while additional documents comprised: application guide; DAS; Endurance store protective provisions plan; ES Addenda (First, Second and Third); Framework CEMP; Net Zero Teesside Anglo American Shared Areas Plan; parking plan; PCC site access plan; Sembcorp Pipeline Corridor protective provisions supporting

plan; updated landscape and biodiversity plan; and water connection plan.

- 9.4.242. In the light of our recommended removal of Articles 49 and 50 from the Applicants final dDCO, the Endurance store protective provisions plan should be deleted from Schedule 14. Otherwise, we are content with the list of documents to be certified.

Schedule 15 - Design Parameters

- 9.4.243. The only change which the Applicants made to Schedule 15 during the Examination was to amend the inner diameter of the absorber stack from 6.5m to 6.6m to align with the maximum inner diameter used for the purposes of the dispersion modelling in ES Chapter 8 [APP-090]. This change was made at D2 and confirmed at D6 [REP2-002 and REP6-121].

9.5. EXA'S RECOMMENDED CHANGES

- 9.5.1. The changes which we are proposing in the Recommended DCO which differ from the Applicants' final dDCO [REP12-003] are as follows:

Article 2 – Interpretation

- 9.5.2. Delete the following definitions: "*BP Exploration Operating Company Limited*", "*Carbon Sentinel Limited*", "*interface agreement*", "*Orsted Hornsea Project Four Limited*" and "*Smart Wind Limited*".

Article 43 – Crown Rights.

- 9.5.3. Amend "*Her Majesty*" to "*His Majesty*" in 43(1)(a), (b) and (c).

Article 49 – Modification of interface agreement (alternative one).

- 9.5.4. Deletion of Article 49.

Article 50 – Modification of interface agreement (alternative two).

- 9.5.5. Deletion of Article 50.

Schedule 2 – Requirements

- 9.5.6. R3(1)(c). Delete "*stack*" and insert "*stacks*".
- 9.5.7. R31(2) Insert "*Prior to the start of commissioning of the authorised development*" and delete "(save where the benefit of the Order has been transferred pursuant to article 8)".
- 9.5.8. R37(3)(a). Delete the existing text and replace with "*...not cause a net increase in total nitrogen loads in water within the Tees Estuary at the Seal Sands mud flats*".

Schedule 12 - Protective Provisions.

Part 15 Redcar Bulk Terminal Limited.

Paragraph 184. Delete text in (1)(b) and (3) and replace with the following:

"(1)(b) make compensation to RBT for any other expenses, loss, damages, penalty or costs reasonably incurred by RBT (including, without limitation, all costs for the repair or replacement necessitated by physical damage), by reason or in consequence of any such damage or interruption or denial of any service provided by RBT."

"(3) RBT must give the undertaker reasonable notice of any claim or demand that has been made against it in respect of the matters in sub-paragraph (1)(a) and (b) and no settlement or compromise of such a claim is to be made without the consent of the undertaker such consent not to be unreasonably withheld."

Part 17 - Sembcorp Pipeline Corridor.

Paragraph 213. The definition of "operator" should include "and is not a third party owner or operator" at the end.

The definition of "owner" should be amended as part of sub-paragraph (b) with the inclusion after the words "Wilton Complex, any owner" of "(as defined in article 2(1) of the Order)".

Within the definition of "owner" the words "but who is not a third party owner or operator" should appear below sub-paragraph (b), not as part of sub-paragraph (b).

Insert the definition of "Sembcorp" after the definition of "owner" as follows:

" "Sembcorp" means Sembcorp Utilities (UK) Limited, with Company Registration Number 04636301, whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS and any successor in title or function to the Sembcorp operations in, under or over the Sembcorp Pipeline Corridor;"

Paragraph 214. Delete the existing text and replace with the following:

"(1) Nothing in this Part of this Schedule removes any obligation on the undertaker to seek consent from Sembcorp for works details pursuant to this Part where such approval is also sought or obtained from a third party owner or operator pursuant to the third party protective provisions.

(2) Where the undertaker seeks consent for works details from a third party owner or operator pursuant to the third party protective provisions that also require consent from Sembcorp under this Part, the undertaker must provide Sembcorp with—

(a) the same information provided to the third party owner or operator at the same time; and

(b) a copy of any approval from the third party owner or operator given pursuant to the third party protective provisions."

Part 24 – Navigator Terminals Seal Sands Limited

Paragraph 330: In "*Navigator Terminals*" remove the square brackets around the words "*in title or function*".

Part 25 – Northumbrian Water Limited

Paragraph 340

Delete text after sub-section (b) and replace with the following:

"and in the event that such works are to be executed by the undertaker, they are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NW for the alteration or otherwise for the protection of the apparatus, or for securing access to it."

Part 27 - North Tees Limited, North Tees Rail Limited and North Tees Land Limited

Paragraph 366. In "*works details*," after "*means*" insert "*including for land of which the undertaker intends to take only temporary possession under the Order*".

Insert new paragraph 370:

"Apparatus 370. Where, in exercise of powers conferred by the Order, the undertaker acquires any interest in land in which any apparatus owned by NTL, NTR or NTLL is placed and such apparatus is to be relocated, extended, removed or altered in any way, no relocation, extension, removal or alteration shall take place until NTL, NTR or NTLL (as the case may be) has approved contingency arrangements in order to conduct its operations, such approval not to be unreasonably withheld or delayed. "

Part 28 - Teesside Gas & Liquids Processing, Teesside Gas Processing Plant Limited and Northern Gas Processing Limited

Paragraph 371. In the definition of "*NSMP pipelines*" delete "*within the Order limits*" and insert "*within Teesside*".

Paragraphs 389 and 390(a). Deletion of paragraph 389 and sub-paragraph (a), with sub-paragraph (b) merged into the preceding text as follows:

"It will be unreasonable for the NSMP entity to withhold approval under sub-paragraphs 388(a) and (c), on grounds relating to access to the NSMP operations (as required under the NSMP requirements) if the design package submitted demonstrates that relevant works package A will be undertaken in accordance with any approved traffic management plan."

Schedule 13 – Procedure for Discharge of Requirements

9.5.9. Paragraph 5(5)(b): Delete "[*him*]" and insert "*them*".

Schedule 14- Documents and Plans to be Certified.

- 9.5.10. Delete reference to "*endurance store protective provisions plan*".
- 9.5.11. In addition to these specific comments, we have also removed square brackets [] which cover identified Schedule numbers throughout the Order.

9.6. LEGAL AGREEMENTS AND OTHER CONSENTS

- 9.6.1. Paragraphs 1.7.1 above notes that no other separate undertakings, obligations or agreements between the Applicants and IPs had been submitted to the Examination. As set out in Chapter 8 and in this Chapter the Applicants have sought to negotiate voluntary and side agreements with IPs and APs on matters of CA and TP of land and rights and the wording of protective provisions throughout the Examination. At D13 the Applicants submitted an End of Examination Negotiation Status [REP13-021] which includes the status of property agreements. Where relevant, comment on these agreements is discussed in Chapter 8. However, as none of these have either been completed or provided to us, we have not taken account of the detail in our Report.
- 9.6.2. There are no development consent obligations pursuant to s106 of the TCPA which the SoS needs to be aware of or take account in their decision.
- 9.6.3. The implications of these legal agreements and consents have been considered throughout the Examination. Without prejudice to the exercise of discretion by other decision makers, there are no obvious impediments to the delivery of the Proposed Development arising from these consents. Nor are there any additional matters arising from or relating to these consents which indicate against the grant of the DCO or for which the DCO should additionally provide.

9.7. CONCLUSION

- 9.7.1. We have considered all iterations of the dDCO as provided by the Applicants, from the application version (Revision 1) [APP-005] to the D12 version (Revision 9) [REP12-003] and considered the degree to which the Applicant's final version as addressed outstanding matters. Various provisions have been amended as set out in section 9.5 and are included in the Recommended DCO in Appendix C of this Report.
- 9.7.2. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in the remainder of this Report fully into account, if the SoS is minded to make the DCO, it is recommended to be made in the form set out in Appendix C.

10. SUMMARY OF FINDINGS AND CONCLUSIONS

10.1. INTRODUCTION

- 10.1.1. Together s104(2) and 104(3) of the PA2008 set out the matters to which the SoS must have regard in deciding an application. These comprise relevant NPSs and appropriate marine policy documents, LIRs, prescribed matters and any other matters that the SoS thinks are important and relevant to the decision. This is subject to certain exceptions as specified in subsections 104(4) to (8).
- 10.1.2. S105 of the PA2008 applies to an application where s104 does not apply. In such cases, the SoS must have regard to LIRs, prescribed matters and any other matters which the SoS thinks are both important and relevant to their decision.
- 10.1.3. For the reasons set out in Chapter 7 we have considered the Proposed Development under s104 of the PA2008. However, should the SoS decide that in the light of the EFW case development subject to a s35 Direction should be determined pursuant to s105 of the PA2008 we also present our findings and recommendation on that basis.
- 10.1.4. On 7 February 2023 the Government announced the creation of a new Department for Energy Security and Net Zero. References in this Report to BEIS and the SoS for BEIS should therefore be taken as relating to this new Department.

10.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

- 10.2.1. The Proposed Development has been promoted as a 'First of a Kind', commercial scale, full chain CCUS project initially capturing up to 4Mt of CO₂ emissions per annum. It comprises a number of elements, including a new gas-fired electricity generating station (with an electrical output of up to 860MW) with post-combustion carbon capture plant; gas, electricity and water connections, a CO₂ pipeline network for gathering CO₂ from a cluster of local industries on Teesside, a high-pressure CO₂ compressor station and an offshore CO₂ export pipeline. Carbon emissions from the generating station would be captured during the plant's commercial operation, as secured through R31 of the Recommended DCO, mirroring the approach of the SoS in the recent decision on the Keadby 3 DCO (as described in paragraphs 9.4.91-9.4.96 of this Report).
- 10.2.2. We have found that the Proposed Development as a whole would not be in conflict with the relevant NPSs namely EN-1, EN-2, EN-4 and EN-5. The North East Marine Plan provides support for the Proposed Development as do both host local authorities, which identify no conflict with relevant development plans. Energy and climate change legislation, and policy which postdates the publication of the energy NPSs carry significant weight as important and relevant matters in the context of s104 of the PA2008. Equally, this legislation and policy represents

important and relevant matters in the context of s105 of the PA2008. Additionally, we have identified no conflict with draft NPSs (EN-1, EN-2, EN-4 and EN-5) (September 2021) which can be considered to be important and relevant matters in respect of s104 and s105.

- 10.2.3. We have found that the urgent need for new electricity generating capacity (as set out in EN-1) and the urgent need for gas-fired electricity generation with CCS and CCS infrastructure (set out in draft EN-1) provide a strong case for the Proposed Development. Additionally, recent Government policy on energy and climate change strengthen this case. Other benefits include employment and training opportunities, and environmental benefits associated with the use of previously developed land and biodiversity enhancement. However, development of the PCC Site would cause significant adverse visual effects although detailed design secured through the Recommended DCO could reduce the effects. In addition, and notwithstanding the future benefits that the wider NZT Project could bring in terms of reducing CO₂ emissions, over its lifetime the Proposed Development would emit a significant volume of GHG, and this would be an adverse effect of moderate weight, both when considered individually and cumulatively with the wider sector.
- 10.2.4. We therefore find that the Proposed Development would be in accordance with relevant NPSs and that its benefits would significantly outweigh the limited harms.
- 10.2.5. We have considered whether the determination of this application would lead to the UK being in breach of any of its international obligations, including the Climate Change Act 2008 and the Paris Agreement 2015. We conclude that, in all respects, this would not be the case. Accordingly, s104(4) of the PA2008 is satisfied.
- 10.2.6. With regard to all other matters and representations received, we have found no other important and relevant matters that would individually or collectively lead to a different recommendation to that below.
- 10.2.7. In making the DCO, the SoS would be fulfilling their duty under the biodiversity duty in the NERCA. Whilst the SoS is the competent authority under the Habitats Regulations and will make the definitive assessment, we conclude that, subject to securing confirmation that the EA is content with the robustness of the Applicants' approach to modelling of nutrient nitrogen, the Proposed Development would not be likely to have significant effects on European sites, species or habitats and we have taken this finding into account in reaching our recommendation.
- 10.2.8. With regard to designated and non-designated heritage assets and in consideration of Regulation 3 of the IPD Regulations, as well as in terms of biodiversity in respect of Regulation 7 we are satisfied that, if development consent were to be granted, those Regulations would be complied with.
- 10.2.9. Many issues raised by IPs had not been resolved by the close of the Examination. However, in most cases the RPAs would have control over

approval of the submissions required to manage and mitigate outstanding matters which are secured by the Recommended DCO (Appendix C). The resolution of these matters through the discharge of Requirements does not undermine our ability to make our recommendation to the SoS. However, we have identified two matters on which we believe the SoS requires confirmation before development consent can be granted. These matters are set out in Table 10 below. Where issues are the subject of ongoing resolution by the Applicants, additional information or views we recommend that the SoS seeks the views of the relevant parties but, if unresolved, these are not matters which, in our view, would prevent the SoS from granting consent. These matters are set out in Table 11 below.

- 10.2.10. We consider that there is nothing to indicate that the application should be decided other than in accordance with national policy as set out in the NPSs. Alternatively, should the SoS take the position that the Specified Elements are not to be determined in accordance with s104 of the PA2008 we find that recent energy and climate change policies constitute important and relevant matters which would justify approval of those matters under s105 of the PA2008.

- 10.2.11. The CA and TP powers sought by the Applicants are necessary to implement the Proposed Development and the Applicants have a clear idea of how they intend to use the land. There is a need to secure the land and rights required, to construct the Proposed Development within a reasonable timeframe, and the Proposed Development itself represents a significant public benefit. The private loss to those affected is mitigated through the fact that the construction period would be limited, and the Applicants are seeking to acquire the minimum possible rights and interests that they would need to construct, operate and maintain the Proposed Development.

- 10.2.12. The Applicants have explored reasonable alternatives to the CA of land, rights and interests sought and there are no alternatives that ought to be preferred. We are satisfied that adequate and secure funding would be available to enable CA within the statutory period following the Order being made.

- 10.2.13. Evidence of consent from The Crown Estate had not been submitted by the end of the Examination. We recommend that the powers sought in connection with Crown rights should not be granted until it has been confirmed that the necessary Crown authority, consistent with the BoR and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.

- 10.2.14. At the close of the Examination there were outstanding objections from a number of Statutory Undertakers and as a consequence s127 and s138 of the PA2008 were engaged. We are satisfied that the protective provisions contained within the Recommended DCO would afford the Statutory Undertakers the protection that they require and ensure that they could continue to carry out their statutory functions without any serious detriment, irrespective of whether matters were agreed. As a

result, we consider that the Proposed Development would comply with s127 and s138 of the PA2008.

- 10.2.15. We have sought to ensure that all matters raised during the Examination on which we need to draw conclusions were complete at the end of the Examination. As is apparent from Chapters 8 and 9 there are many outstanding matters between the Applicants and IPs/APs. Additionally, as described in Chapter 1, only 10 SoCGs were agreed of which two were unsigned, and 25 remained incomplete, with many of these not progressing beyond D1. This has significantly affected our ability to conclude on numerous matters of detail. We note that the Applicants have indicated that CA, TP and protective provisions would be the subject of ongoing resolution after the close of the Examination. However, despite our pressing, and the Applicants' assurances throughout the Examination that many, if not most, matters were expected to be resolved prior to the closure of the Examination, many agreements remained incomplete. Having agreements in place and protective provisions agreed would have greatly assisted our reporting and the SoS's consideration of our Report. Nevertheless, in addition to the need to obtain the consent of The Crown Estate and the EA before consent can be granted, as set out in Table 10, for the reasons set out in Table 11 the SoS may wish to seek additional information or views on the matters identified before a decision is taken, although we believe the SoS's decision would not be dependent upon the resolution of matters in Table 11.

Table 10: Matters on which the SoS requires confirmation

Party	Reason	Reference in Report
The Crown Estate	<u>Crown Consent</u> The SoS must obtain confirmation that s135 Crown consent has been obtained before the Order can be made.	Chapter 8 Section 8.10
The EA	<u>Nutrient Nitrogen</u> The SoS should obtain confirmation that the EA is content with the Applicants' approach to the modelling of nutrient nitrogen.	Chapter 6

Table 11: Matters on which the SoS may wish to seek additional information

Party	Reason	Reference in Report
The Applicants	<u>Updated CA Schedule and BoR</u> There are a number of outstanding voluntary agreements that, at the close of the Examination, remained in discussion but not agreed. While we have found that a compelling case for CA exists, the SoS may wish to request that the Applicants update the CA Schedule, ensure that it is accurate, and provide an update to the SoS as to the status of the remaining unsigned agreements and to correct any anomalies in the CA Schedule and BoR. Following the death of Her Majesty the Queen, the SoS may wish to request that the BoR is revised with the reference to "<i>Her Majesty</i>" changed to "<i>His Majesty</i>".	Chapter 8 Sections 8.16 to 8.43
The Applicants and: NGET NGG Air Products CSNL CFL Exolum Ineos Nitriles Marlow Foods NR Northern Powergrid NPL PDT RBT SABIC Sembcorp Suez STDC Breagh Pipeline Owners TWF HPU Navigator Terminals	<u>Protective Provisions</u> Protective provisions were not agreed between the Applicants and the named party by the close of the Examination. We have made recommendations on the disputed matters. However, the SoS may wish to request an update on protective provisions from the parties or obtain the latest position in respect of the outstanding matters.	Chapter 9 Section 9.4

Seal Sands Limited Northern Gas Networks NTG NSMP		

- 10.2.16. We have had regard to the provisions of the Human Rights Act 1998. In respect of Article 6 (the right to a fair hearing), we have provided all IPs and all to whom other potential human rights effects might be argued to arise, with a right to participate fully in the Examination. The proposed interference with human rights would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree.
- 10.2.17. Throughout the Examination and in producing this Report we have had due regard to the PSED. The Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the PSED.
- 10.2.18. Considering all of the above factors together there is a compelling case in the public interest for the CA and TP powers sought in respect of the plots listed in the BoR. We conclude that the Proposed Development would comply with s122(2) and s122(3) of the PA2008.
- 10.2.19. In Chapter 9, we have considered the dDCO and made findings and recommended the changes to the preferred dDCO advanced by the Applicants at D12. The purpose of the changes is to provide the SoS with what we consider to be the best achievable form of dDCO on the basis of which the SoS could make the Order sought. That draft Order is set out at Appendix C to this Report and is recommended by the ExA.

10.3. RECOMMENDATION

- 10.3.1. For all of the above reasons and in light of our findings and conclusions on important and relevant matters set out in the Report, we recommend that, subject to the consent being obtained from The Crown Estate in relation to Crown land, and the Environment Agency confirming that it is content with the Applicants' approach to the modelling of nutrient nitrogen, the Secretary of State should make the Net Zero Teesside Project Order in the form recommended at Appendix C of this Report.

APPENDICES

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APPENDIX B: LIST OF ABBREVIATIONS..... B

APPENDIX C: THE RECOMMENDED DCO C

APPENDIX A: EXAMINATION LIBRARY

The 'Net Zero Teesside Project' Examination Library

Updated – 9 January 2023

Please note that the changes made on the 9 January 2023 were to correct inadvertent duplications and cosmetic changes. 11 documents were found to be published on the project page but had been accidentally excluded from the Examination Library. These documents can be found at references: AS-212, AS-213, AS-214, AS-215, AS-216, AS-217, PD-012a, PD-016a, PD-021a, PD-24 and PD-25;

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

Please note the following:

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

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Relevant Representations	RR-xxx
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APP-327	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.36 ES Vol III Appendix 16A Transportation Assessment Part 1
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APP-334	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.38 ES Vol III Appendix 16C Framework Traffic Management Plan
APP-335	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.39 ES Vol III Appendix 17A Landscape Character
APP-336	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.40 ES Vol III Appendix 17B LVIA Proposed Methodology
APP-337	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.41 ES Vol III Appendix 17C Potential Viewpoints
APP-338	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.42 ES Vol III Appendix 18A Cultural Heritage Baseline Report
APP-339	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.43 ES Vol III Appendix 18B Cultural Heritage Gazetteer
APP-340	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.44 ES Vol III Appendix 20A Economics Benefits Report
APP-341	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.45 ES Vol III Appendix 20B- Navigational Risk Assessment Part 1

APP-342	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.45 ES Vol III Appendix 20B- Navigational Risk Assessment Part 2
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APP-344	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.46 ES Vol III Appendix 24A Planned Development and Development Allocations
APP-345	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.47 ES Vol III Appendix 24B Assessment of Cumulative Effects Stages 1-3
APP-346	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.48 ES Vol III Appendix 24C Statement of Combined Effects
APP-347	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.4.49 ES Vol III Appendix 25A Commitments Register
APP-348	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Section 55 Checklist
Adequacy of Consultation Responses	
AoC-001	Durham County Council
AoC-002	Redcar and Cleveland Borough Council
AoC-003	Scarborough Borough Council
AoC-004	Stockton-on-Tees Borough Council
AoC-005	Tees Valley Combined Authority and South Tees Development Corporation
Relevant Representations	
RR-001	Russell-Cooke LLP on behalf of Redcar Bulk Terminal Limited
RR-002	Stephen Calloughway
RR-003	National Air Traffic Services Ltd
RR-004	ClientEarth
RR-005	Loftus Town Council
RR-006	Mike Blood (WITHDRAWN)
RR-007	National Grid Ventures
RR-008	Alexander Bousfield on behalf of Teesside 43 BSAC
RR-009	The Corporation of Trinity House of Deptford Strond
RR-010	INEOS UK SNS Limited
RR-011	Durham County Council
RR-012	Bryan Cave Leighton Paisner LLP on behalf of National Grid Electricity Transmission plc
RR-013	Bryan Cave Leighton Paisner plc on behalf of National Grid Gas plc
RR-014	Morag Thomson Freelance Solicitor on behalf of Anglo American plc (Woodsmith Project) (Anglo American plc (Woodsmith Project))
RR-015	Hartlepool Borough Council
RR-016	North Tees Land Ltd
RR-017	Borges Salmon LLP on behalf of CATS North Sea Limited
RR-018	Eversheds Sutherland (International) LLP (Eversheds Sutherland (International) LLP) on behalf of CF Fertilisers UK Limited

RR-019	Eversheds Sutherland (International) LLP (Eversheds Sutherland (International) LLP) on behalf of INEOS Nitriles (UK) Limited (INEOS Nitriles (UK) Limited)
RR-020	BNP Paribas Real Estate on behalf of Royal Mail Group
RR-021	Charles Russell Speechlys LLP on behalf of Air Products (Chemicals) Teesside Limited
RR-021a	Charles Russell Speechlys LLP on behalf of Air Products Renewable Energy Limited
RR-021b	Charles Russell Speechlys LLP on behalf of Air Products Public Company Limited
RR-022	Christopher Teasdale on behalf of North Tees Land Limited, North Tees Limited and North Tees Rail Limited
RR-023	Climate Emergency Planning and Policy
RR-024	Environment Agency
RR-025	Maritime Coastguard Agency
RR-026	Natural England
RR-027	Dentons UK & Middle East LLP on behalf of Network Rail Infrastructure Limited
RR-028	North Tees Ltd
RR-029	North Tees Rail Ltd
RR-030	Weightmans on behalf of Northern Powergrid (Northeast) PLC (Northern Powergrid (Northeast) PLC)
RR-031	Birketts LLP on behalf of Northumbrian Water Limited Submission Withdrawn by email dated 10 November 2022 [AS-210]
RR-032	Fisher German Priestner Limited on behalf of NPL Waste Management Limited
RR-033	Eversheds Sutherland (International) LLP (Eversheds Sutherland (International) LLP) on behalf of PD Teesport Limited
RR-034	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited (Sembcorp Utilities (UK) Limited)
RR-035	BDB Pitmans LLP on behalf of South Tees Development Corporation
RR-036	UK Health Security Agency (formerly Public Health England) (UK Health Security Agency (formerly Public Health England))
RR-037	Marine Management Organisation
RR-038	Womble Bond Dickinson (UK) on behalf of SABIC UK Petrochemicals Limited
RR-039	Orsted Hornsea Project Four Limited
Procedural Decisions and Notifications from the Examining Authority	
PD-001	Notification of Decision to Accept Application
PD-002	Section 51 advice to the Applicant
PD-003	Section 55 Checklist
PD-004	Notification of the appointment of the Examining Authority
PD-005	Examining Authority's Response to the Applicants' Letter of 26 January 2022
PD-006	Examining Authority's request for comments on the Applicants' letter of 4 February 2022

PD-007	Information from the Examining Authority in respect of the timing of the Preliminary Meeting
PD-008	Examining Authority's response to the Applicants letter of 18 February 2022
PD-009	Rule 6 letter - Notification of the Preliminary Meeting and matters to be discussed
PD-010	Examining Authority's response to the Applicants' request for proposed changes
PD-011	Rule 8 - Notification of timetable for the Examination
PD-012	Examining Authority's First Written Questions - ExQ1
PD-012a	Examining Authority's First Written Questions - ExQ1 Editable Word version of the Examining Authority's First Written Questions
PD-013	Letter to NatureScot inviting them to become an other person for the purpose of the Examination
PD-014	Rule 13 Letter - Notification of Hearings
PD-015	Request for further information - Rule 17 Letter requesting further information from Redcar and Cleveland Borough Council, Stockton-on-Tees Borough Council and Hartlepool Borough Council
PD-016	Examining Authority's Second Written Questions - ExQ2
PD-016a	Examining Authority's Second Written Questions - ExQ2 Editable Word version of the Examining Authority's Second Written Questions
PD-017	Procedural Decision and Rule 17 Procedural Decision made by the Examining Authority and Rule 17 inviting comments
PD-018	Report on the Implications for European Sites (RIES) Issued by the Examining Authority - 16 September 2022
PD-019	Notification of hearings and Accompanied Site Inspection, change to the timetable and request for further information
PD-020	Agenda for Issue Specific Hearing 5 and 6, Agenda for Compulsory Acquisition Hearing 3 and Accompanied Site Inspection 2 Itinerary
PD-021	Examining Authority's Third Written Questions - ExQ3
PD-021a	Examining Authority's Third Written Questions - ExQ3 Editable Word version of the Examining Authority's Third Written Questions - ExQ3
PD-022	Request for further information - Rule 17 Request for further information - Rule 17 from the Applicants, The Environment Agency and Natural England.
PD-023	Examining Authority's response to the Applicants' request for proposed changes
PD-024	Procedural Decision made by the Examining Authority Acceptance of Change Request 10 and inviting Interested Parties for Comments
PD-025	Notification of completion of the Examining Authority's Examination
Additional Submissions	

AS-001	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – Response to PINS s51 advice - Final - Accepted at the discretion of the Examining Authority
AS-002	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 1.2 - Application Guide - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-003	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 1.6 - Signposting Document re Update Application Documents - Final - Accepted at the discretion of the Examining Authority
AS-004	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 2.1 - Draft Development Consent Order - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-005	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission –DCO 2.2 - Explanatory Memorandum - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-006	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 4.2 - Land Plans - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-007	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 4.3 - Crown Land Plans - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-008	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 4.4 - Works Plans - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-009	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 4.5 - ARoW Plans - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-010	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 4.7.1 - Gas Connection Plans - Key Plan (Sheet 1) - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-011	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 4.7.8 - Gas Connection AGI Plans (Sheet 1) - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-012	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 4.7.9 - Gas Connection AGI Plans (Sheet 2) - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-013	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 4.7.10 - Gas Connection AGI Plans (Sheet 3) - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-014	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 4.8.1 - Electrical Connection Plans - Key Plan (Sheet 1) - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority

AS-015	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 5.2 Project Need Statement - Reprovided - Accepted at the discretion of the Examining Authority
AS-016	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 5.8 Combined Heat and Power Assessment - Reprovided(2) - Accepted at the discretion of the Examining Authority
AS-017	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 5.11 Indicative Lighting Strategy - Reprovided(2) - Accepted at the discretion of the Examining Authority
AS-018	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 5.13 - HRA Report - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-019	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission - DCO 6.2.4 - ES Vol I Chapter 4 - Oct 2021 - Accepted at the discretion of the Examining Authority
AS-020	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.3.24 - ES Vol II Figure 9-3 Ecological Designations - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-021	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.3.5 - ES Vol II Figure 3-4 Environmental Receptors within 2 km - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-022	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.3.52 - ES Vol II Figure 11-1 Noise Sensitive Receptors - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-023	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission –DCO 6.3.53 - ES Vol II Figure 11-2 PCC Site Piling Construction Phase - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-024	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.3.54 - ES Vol II Figure 11-3 CO2 Gathering Network Construction - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-025	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.3.55 - ES Vol II Figure 11-4a CO2 Export Pipeline Construction - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-026	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.3.56 - ES Vol II Figure 11-4b CO2 Export Pipeline Construction (with screening) - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-027	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.3.57 - ES Vol II Figure 11-5 PCC Site Operation Noise Levels - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority

AS-028	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.3.62 - ES Vol II Figure 15-3 Designated Sites - Oct 2021 Rev.2.0 - Accepted at the discretion of the Examining Authority
AS-029	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission –DCO 6.3.74 ES Vol II Figure 17-7a Viewpoint 1 - Albion Terrace Hartlepool (Summer) - Reprovided - Accepted at the discretion of the Examining Authority
AS-030	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.4.20 - ES Vol III Appendix 12C - Oct 2021 - Accepted at the discretion of the Examining Authority
AS-031	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.4.34 - ES Vol III Appendix 15A - Oct 2021 - Accepted at the discretion of the Examining Authority
AS-032	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.4.48 - ES Vol III Appendix 24C - Oct 2021 - Accepted at the discretion of the Examining Authority
AS-033	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – DCO 6.4.49 - ES Vol III Appendix 25A - Oct 2021 - Accepted at the discretion of the Examining Authority
AS-034	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – Request by the Applicants in respect of the timing of the Preliminary Meeting/Examination – Accepted at the discretion of the Examining Authority
AS-035	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – Applicants’ response to the Examining Authority’s letter of 31 January 2022 – Accepted at the discretion of the Examining Authority
AS-036	Anglo American Additional Submission – Response to the Examining Authority’s letter of 7 February 2022 – Accepted at the discretion of the Examining Authority
AS-037	Hartlepool Borough Council Additional Submission – Response to the Examining Authority’s letter of 7 February 2022 – Accepted at the discretion of the Examining Authority
AS-038	Loftus Town Council Additional Submission – Response to the Examining Authority’s letter of 7 February 2022 – Accepted at the discretion of the Examining Authority
AS-039	National Highways Additional Submission – Response to the Examining Authority’s letter of 7 February 2022 – Accepted at the discretion of the Examining Authority
AS-040	Natural England Additional Submission – Response to the Examining Authority’s letter of 7 February 2022 – Accepted at the discretion of the Examining Authority
AS-041	Redcar Bulk Terminal Limited

	Additional Submission – Response to the Examining Authority’s letter of 7 February 2022 – Accepted at the discretion of the Examining Authority
AS-042	South Tees Development Corporation Additional Submission – Response to the Examining Authority’s letter of 7 February 2022 – Accepted at the discretion of the Examining Authority
AS-043	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – Applicants’ cover letter regarding a notification of proposed changes – Accepted at the discretion of the Examining Authority
AS-044	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – Applicants’ notification of proposed changes – Accepted at the discretion of the Examining Authority
AS-045	Mike Blood Additional Submission – Withdrawal of Relevant Representation – Accepted at the discretion of the Examining Authority
AS-046	Huntsman Polyurethanes (UK) Limited Additional Submission – Accepted at the discretion of the Examining Authority
Change Request	
AS-047	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 7.5 - Letter Requesting Proposed Changes - Apr 2022
AS-048	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 7.6 - Consultation Statement Proposed Changes - Apr 2022
AS-049	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 7.7 - Environmental Statement Addendum - Non-Technical Summary - Apr 2022
AS-050	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 7.8.1 - Environmental Statement Addendum - Volume I - Apr 2022
AS-051	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 7.8.2 ES Addendum Vol II Cover and Contents
AS-052	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.1 Rev 2 ES Addendum Vol II Figure 1-1 Site Location Plan
AS-053	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.2 Rev 2 ES Addendum Vol II Figure 3-1 Site Boundary Plan
AS-054	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.3 Rev 3 ES Addendum Vol II Figure 3-2 Development Areas
AS-055	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd

	Additional Submission accepted at the discretion of the ExA – 6.3.4 Rev 2 ES Addendum Vol II Figure 3-3 Residential Receptors within 2km
AS-056	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.5 Rev 3 ES Addendum Vol II Figure 3-4 Environmental Receptors within 2km
AS-057	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.6 Rev 2 ES Addendum Vol II Figure 4-1 Indicative PCC Site Layout
AS-058	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.7 Rev 2 ES Addendum Vol II Figure 4-2 Indicative Landscaping and Biodiversity
AS-059	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.8 Rev 2 ES Addendum Vol II Figure 5-1 Access and Laydown
AS-060	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.9 Rev 2 ES Addendum Vol II Figure 5-2 Indicative Pipeline Routings
AS-061	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.10 Rev 2 ES Addendum Vol II Figure 5-3 Indicative Electrical Connection Routings
AS-062	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.11 Rev 2 ES Addendum Vol II Figure 6-1 Scheme and Site Boundary Changes since PEI Report
AS-063	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.12 Rev 2 ES Addendum Vol II Figure 7-1 Local Plan Areas
AS-064	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.13 Rev 2 ES Addendum Vol II Figure 8-1 Air Quality Study Area - Human Health Receptors and Monitoring
AS-065	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.14 Rev 2 ES Addendum Vol II Figure 8-2 Air Quality Study Area Ecological Receptors
AS-066	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.15 Rev 2 ES Addendum Vol II Figure 8-3 Air Quality Study Area Construction
AS-067	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.16 Rev 2 ES Addendum Vol II Figure 8-4 Air Quality Model Visualisation
AS-068	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd

	Additional Submission accepted at the discretion of the ExA – 6.3.17 Rev 2 ES Addendum Vol II Figure 8-5 Annual Mean NO2 Process Contribution
AS-069	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.18 Rev 2 ES Addendum Vol II Figure 8-6 1 hour Mean NO2 Process Contribution
AS-070	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.19 Rev 2 ES Addendum Vol II Figure 8-7 Annual Mean NOx Process Contribution
AS-071	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.20 Rev 2 ES Addendum Vol II Figure 8-8 Maximum 24 Hour Mean NOx Process Contribution
AS-072	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.21 Rev 2 ES Addendum Vol II Figure 8-9 Nutrient Nitrogen Deposition
AS-073	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.22 Rev 2 ES Addendum Vol II Figure 9-1 Surface Water Features and Attributes
AS-074	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.23 Rev 2 ES Addendum Vol II Figure 9-2 Groundwater Features and their Attributes
AS-075	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.24 Rev 3 ES Addendum Vol II Figure 9-3 Ecological Designations
AS-076	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.25 Rev 2 ES Addendum Vol II Figure 9-4 Environment Agency Fluvial Flood Zones
AS-077	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.26 Rev 2 ES Addendum Vol II Figure 9-5 Flood Risk from Surface Water
AS-078	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.27 Rev 2 ES Addendum Vol II Figure 10-1 Artificial Geology
AS-079	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.28 Rev 2 ES Addendum Vol II Figure 10-2 Superficial Geology
AS-080	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.29 Rev 2 ES Addendum Vol II Figure 10-3 Bedrock Geology
AS-081	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd

	Additional Submission accepted at the discretion of the ExA – 6.3.30 Rev 2 ES Addendum Vol II Figure 10-4 BGS Boreholes
AS-082	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.31 Rev 2 ES Addendum Vol II Figure 10-5 Quarrying and Landfill
AS-083	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.32 Rev 2 ES Addendum Vol II Figure 10-6 Waste Management
AS-084	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.33 Rev 2 ES Addendum Vol II Figure 10-7 Infilled Land - Non-Water
AS-085	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.34 Rev 2 ES Addendum Vol II Figure 10-8 Infilled Land - Water
AS-086	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.35 Rev 2 ES Addendum Vol II Figure 10-9 Hazardous
AS-087	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.36 Rev 2 ES Addendum Vol II Figure 10-10 Contaminated Land - Point
AS-088	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.37 Rev 2 ES Addendum Vol II Figure 10-11 Contaminated Land - Line
AS-089	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.38 Rev 2 ES Addendum Vol II Figure 10-12 Contaminated Land - Polygon
AS-090	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.39 Rev 2 ES Addendum Vol II Figure 10-13 Historic Tanks
AS-091	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.40 Rev 2 ES Addendum Vol II Figure 10-14 Sensitive Land Use
AS-092	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.41 Rev 2 ES Addendum Vol II Figure 10-15 Discharges and Incidents
AS-093	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.42 Rev 2 ES Addendum Vol II Figure 10-16 Flood Risk
AS-094	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.43 Rev 2 ES Addendum Vol II Figure 10-17 Bedrock Aquifer
AS-095	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd

	Additional Submission accepted at the discretion of the ExA – 6.3.44 Rev 2 ES Addendum Vol II Figure 10-18 Superficial Aquifer
AS-096	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.45 Rev 2 ES Addendum Vol II Figure 10-19 Flood Susceptibility
AS-097	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.46 Rev 2 ES Addendum Vol II Figure 10-20 Risk of Flooding from Rivers and Seas
AS-098	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.47 Rev 2 ES Addendum Vol II Figure 10-21 Stockton-on-Tees Local Plan Areas
AS-099	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.48 Rev 2 ES Addendum Vol II Figure 10-22 Redcar and Cleveland Local Plan Areas
AS-100	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.49 Rev 2 ES Addendum Vol II Figure 10-23 Historical Features
AS-101	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.50 Rev 2 ES Addendum Vol II Figure 10-24 Agricultural Land Classification
AS-102	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.51 Rev 2 ES Addendum Vol II Figure 10-25 BGS Buried Valleys
AS-103	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.52 Rev 3 ES Addendum Vol II Figure 11-1 Noise Sensitive Receptors
AS-104	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.53 Rev 3 ES Addendum Vol II Figure 11-2 PCC Site Piling Construction Phase
AS-105	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.54 Rev 3 ES Addendum Vol II Figure 11-3 CO2 Gathering Network Construction
AS-106	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.55 Rev 3 ES Addendum Vol II Figure 11-4a CO2 Export Pipeline Construction
AS-107	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.56 Rev 3 ES Addendum Vol II Figure 11-4b CO2 Export Pipeline Construction (with Screening)

AS-108	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.57 Rev 3 ES Addendum Vol II Figure 11-5 PCC Site Operational Noise Levels
AS-109	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.58 Rev 2 ES Addendum Vol II Figure 13-1 Surface Waterbodies within 200m
AS-110	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.59 Rev 2 ES Addendum Vol II Figure 14-1 Benthic Survey Study Area and Sampling Locations
AS-111	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd 6.3.60 Rev 2 ES Addendum Vol II Figure 15-1 Study Areas
AS-112	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.61 Rev 2 ES Addendum Vol II Figure 15-2 Survey Areas
AS-113	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.62 Rev 3 ES Addendum Vol II Figure 15-3 Statutory Designated Sites
AS-114	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.63 Rev 2 ES Addendum Vol II Figure 15-4 Non-Statutory Designated Sites
AS-115	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.64 Rev 2 ES Addendum Vol II Figure 16-1 Traffic Study Area
AS-116	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.65 Rev 2 ES Addendum Vol II Figure 16-2 HGV Routes to and from the Site
AS-117	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.66 Rev 2 ES Addendum Vol II Figure 16-3 Traffic Count Locations
AS-118	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.67 Rev 2 ES Addendum Vol II Figure 17-1 Landscape Context
AS-119	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.68 Rev 2 ES Addendum Vol II Figure 17-2 Public Rights of Way within 2km
AS-120	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.69 Rev 2 ES Addendum Vol II Figure 17-3 Landscape Character Plan
AS-121	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd

	Additional Submission accepted at the discretion of the ExA – 6.3.70 Rev 2 ES Addendum Vol II Figure 17-4 Zone of Theoretical Visibility and Potential Viewpoint Locations
AS-122	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.71 Rev 2 ES Addendum Vol II Figure 17-5 Topography
AS-123	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.72 Rev 2 ES Addendum Vol II Figure 17-6 Zone of Theoretical Visibility and Representative Viewpoint Locations
AS-124	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.121 Rev 2 ES Addendum Vol II Figure 18-1 Designated Heritage Assets in the 5km Study Area
AS-125	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.122 Rev 2 ES Addendum Vol II Figure 18-2 Non-designated Heritage Assets in the 1km Study Area
AS-126	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.123 Rev 2 ES Addendum Vol II Figure 18-3 Historic Landscape Character
AS-127	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.124 Rev 2 ES Addendum Vol II Figure 19-1 Marine Heritage Assets in the 1km Study Area
AS-128	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.125 Rev 2 ES Addendum Vol II Figure 22-1 HSE Consultation Zones
AS-129	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.126 Rev 2 ES Addendum Vol II Figure 24-1 Zones of Influence for Cumulative Effects Assessment
AS-130	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.127 Rev 2 ES Addendum Vol II Figure 24-2 Long List of Other Developments
AS-131	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.128 Rev 2 ES Addendum Vol II Figure 24-3 Short List of Other Developments
AS-132	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 6.3.129 ES Addendum Vol II Figure 6-2 Proposed Development Changes
AS-133	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 1.2 - Application Guide - Apr 2022
AS-134	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd

	Additional Submission accepted at the discretion of the ExA – 1.2 - Application Guide (Tracked) - Apr 2022
AS-135	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 2.1 - Draft DCO - Apr 2022
AS-136	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 2.1 - Draft DCO (Comparison with Oct 2021 version) - Apr 2022
AS-137	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 2.2 - Explanatory Memorandum - Apr 2022
AS-138	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 2.2 - Explanatory Memorandum (Tracked) - Apr 2022
AS-139	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 3.1 - Book of Reference - Clean - Apr 2022
AS-140	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 3.1 - Book of Reference - Tracked - Apr 2022
AS-141	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 3.2 - Statement of Reasons - Apr 2022
AS-142	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 3.2 - Statement of Reasons (Tracked) - Apr 2022
AS-143	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 3.4 - Guide to Land Plan Plots - Apr 2022
AS-144	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.1 Rev 2 - Site Location Plan Key Plan
AS-145	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.1 Rev 2 - Site Location Plan
AS-146	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.2 - Land Plans - Rev. 3.0 Apr 2022
AS-147	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.3 - Crown Land Plans - Rev. 3.0 Apr 2022
AS-148	Net Zero Teesside Power & and Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.4 Rev 2 - Works Plans Parts 1 - 2
AS-149	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.4 Rev 2 - Works Plans Key Plan
AS-150	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.5 - Access and Rights of Way Plans Rev 3.0 - Apr 2022

AS-151	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.6.1 Rev 1 - PCC Site Layout and Elevation Plan
AS-152	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.6.2 Rev 1 - PCC Plant Layout Plan
AS-153	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.6.3 Rev 1 - PCC Site 3-D View
AS-154	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.6.4 Rev 1 - PCC Site Elevations
AS-155	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.7.1 Rev 3 - Gas Connection and AGI Plans Sheet 1 - Key Plan
AS-156	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.7.2 Rev 3 - Gas Connection and AGI Plans Sheet 2
AS-157	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.7.3 Rev 3 - Gas Connection and AGI Plans Sheet 3
AS-158	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.7.4 Rev 3 - Gas Connection and AGI Plans Sheet 4
AS-159	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.7.5 Rev 3 - Gas Connection and AGI Plans Sheet 5
AS-160	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.7.6 Rev 3 - Gas Connection and AGI Plans Sheet 6
AS-161	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.7.7 Rev 3 - Gas Connection and AGI Plans Sheet 7
AS-162	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.8.1 Rev 2 - Electrical Connection Plans Sheet 1 Key Plan
AS-163	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.8.2 Rev 2 - Electrical Connection Plans Sheet 2
AS-164	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.8.3 Rev 2 - Electrical Connection Plans Sheet 3
AS-165	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.8.4 Rev 2 - Electrical Connection Plans Sheet 4
AS-166	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.8.5 Rev 2 - Electrical Connection Plans Sheet 5
AS-167	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd

	Additional Submission accepted at the discretion of the ExA – 4.8.6 Rev 2 - Electrical Connection Plans Sheet 6
AS-168	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.8.7 Rev 2 - Electrical Connection Plans Sheet 7
AS-169	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.9.1 Rev 1 - Water Connection Plan
AS-170	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.10.1 Rev 1 - HP Compressor Plans Sheet 1 Key Plan
AS-171	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.10.2 Rev 1 - HP Compressor Plans Sheet 2
AS-172	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.10.3 Rev 1 - HP Compressor Plans Sheet 3
AS-173	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.10.4 Rev 1 - HP Compressor Plans Sheet 4
AS-174	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.11.1 Rev 2 - CO2 Gathering Network Plans Sheet 1 Key Plan
AS-175	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.11.2 Rev 2 - CO2 Gathering Network Plans Sheet 2
AS-176	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.11.3 Rev 2 - CO2 Gathering Network Plans Sheet 3
AS-177	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.11.4 Rev 2 - CO2 Gathering Network Plans Sheet 4
AS-178	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.11.5 Rev 2 - CO2 Gathering Network Plans Sheet 5
AS-179	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.11.6 Rev 2 - CO2 Gathering Network Plans Sheet 6
AS-180	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.11.7 Rev 2 - CO2 Gathering Network Plans Sheet 7
AS-181	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.11.8 Rev 2 - CO2 Gathering Network Plans Sheet 8
AS-182	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.11.9 Rev 2 - CO2 Gathering Network Plans Sheet 9
AS-183	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.11.10 Rev 2 - CO2 Gathering Network Plans Sheet 10

AS-184	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.11.11 Rev 2 - CO2 Gathering Network Plans Sheet 11
AS-185	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.12 - CO2 Export Pipeline Plan - Rev 1 Apr 22
AS-186	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.13 Rev 1 - Surface Water Drainage Plan
AS-187	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.14.1 Rev 3 - Deemed Marine Licence Coordinates Key Plan
AS-188	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.14.2 Rev 3 - Deemed Marine Licence Coordinates Sheets 1 - 3
AS-189	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 4.15.1 - Landscaping and Biodiversity Plan Rev 2 - Apr 22
AS-190	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 5.4 - Design and Access Statement - Clean - Apr 2022
AS-191	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 5.4 - Design and Access Statement - Tracked - Apr 2022
AS-192	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 5.6 Gas Connection Statement Changes Rev 2 2022-04-26 Final
AS-193	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 5.6 Gas Connection Statement Changes Rev 2 Final 2022-04-26 Tracked Changes
AS-194	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 5.13 Habitat Regulations Assessment Report Rev 3 Final 2022-04- 26
AS-195	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission accepted at the discretion of the ExA – 5.13 Habitat Regulations Assessment Report Rev 3 Tracked
AS-196	Exolum Seal Sands Ltd Additional Submission - Accepted at the discretion of the Examining Authority
AS-197	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Additional Submission – Accepted at the discretion of the Examining Authority - Applicants’ proposed Additional Land Timetable
AS-198	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Additional Submission – Accepted at the discretion of the Examining Authority – Cover email
AS-199	Net Zero Teesside Power Limited & Net Zero North Sea Storage

	Limited Additional Submission – Accepted at the discretion of the Examining Authority – 3.1a Supplementary Book of Reference
AS-200	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Additional Submission – Accepted at the discretion of the Examining Authority – 3.2a Supplementary Statement of Reasons
AS-201	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Additional Submission – Accepted at the discretion of the Examining Authority – 3.3a Supplementary Funding Statement
AS-202	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Additional Submission – Accepted at the discretion of the Examining Authority – 4.4a Additional Land Plan
AS-203	NPL Waste Management Limited Additional Submission - Accepted at the discretion of the Examining Authority
AS-204	ESP Utilities Group Ltd Additional Submission - Accepted at the discretion of the Examining Authority
AS-205	FGP Limited Objection letter and marked up Statement of Common Ground – Accepted at the discretion of the Examining Authority
AS-206	Marine Management Organisation Additional Submission - Accepted at the discretion of the Examining Authority
AS-207	North Tees Group Additional Submission - Accepted at the discretion of the Examining Authority - Position statement for Compulsory Acquisition Hearing 3
AS-208	North Tees Group Additional Submission - Accepted at the discretion of the Examining Authority - Position Statement for Issue Specific Hearing 5 on the draft Development Consent Order
AS-209	Natural England Additional Submission - Accepted at the discretion of the Examining Authority - an update on Nutrient Neutrality for the forthcoming Issue Specific Hearing 6
AS-210	Northumbrian Water Limited Additional Submission – Accepted at the discretion of the Examining Authority - Withdrawal of Northumbrian Water Limited’s representations in respect of the DCO application
AS-211	Huntsman Polyurethanes (UK) Limited Additional Submission - Accepted at the discretion of the Examining Authority
AS-212	NPL Waste Management Limited Additional Submission - Objection letter and marked up Statement of Common Ground – Accepted at the discretion of the Examining Authority
AS-213	SABIC UK Petrochemicals Limited

	Additional Submission - Accepted at the discretion of the Examining Authority
AS-214	South Tees Development Corporation Additional submission – additional submission accepted at the discretion of the Examining Authority – End of Examination letter to PINS
AS-215	South Tees Development Corporation Additional submission – additional submission accepted at the discretion of the Examining Authority – Preferred Protective provisions – Tracked
AS-216	South Tees Development Corporation Additional submission – additional submission accepted at the discretion of the Examining Authority – Preferred Protective provisions - Clean
AS-217	NPL Waste Management Limited Submission in lieu of attendance at Compulsory Acquisition Hearing 1
Events and Hearings	
Site Inspections	
EV1-001	Note of Unaccompanied Site Inspection – 1 March 2022 (USI1)
EV1-002	Accompanied Site Inspection Itinerary – 12 May 2022
EV1-003	Note of Unaccompanied Site Inspection - 13 September 2022 (USI2)
Preliminary Meeting – 10 May 2022	
EV2-001	Recording of Preliminary Meeting - 10 May 2022
EV2-002	Preliminary Meeting - Transcript - 10 May 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event
EV2-003	Preliminary Meeting note
Issue Specific Hearing 1 – 10 May 2022	
EV3-001	Recording of Issue Specific Hearing 1 - Session 1 - 10 May 2022
EV3-002	Issue Specific Hearing 1 - Session 1 - Transcript - 10 May 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV3-003	Recording of Issue Specific Hearing 1 - Session 2 - 10 May 2022
EV3-004	Issue Specific Hearing 1 - Session 2 - Transcript - 10 May 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV3-005	ISH1 Action Points Action Points arising from Issue Specific Hearing 1 regarding the scope of the Proposed Development - 10 May 2022
Issue Specific Hearing 2 – 11 May 2022	
EV4-001	Recording of Issue Specific Hearing 2 - Session 1 - 11 May 2022

EV4-002	Issue Specific Hearing 2 - Session 1 - Transcript - 11 May 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV4-003	Recording of Issue Specific Hearing 2 - Session 2 - 11 May 2022
EV4-004	Issue Specific Hearing 2 - Session 2 - Transcript - 11 May 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV4-005	ISH2 Action Points Action Points arising from Issue Specific Hearing 2 regarding the draft Development Consent Order - 11 May 2022
Compulsory Acquisition Hearing 1 – 11 May 2022	
EV5-001	Recording of Compulsory Acquisition Hearing 1 - 11 May 2022
EV5-002	Compulsory Acquisition Hearing 1 - Transcript - 11 May 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV5-003	CAH1 Action Points Action Points arising from Compulsory Acquisition Hearing 1 - 11 May 2022
Issue Specific Hearing 3 – 12 July 2022	
EV6-001	Agenda for Issue Specific Hearing 3 on the draft Development Consent Order
EV6-002	Recording of Issue Specific Hearing 3 - Session 1 - 12 July 2022
EV6-003	Issue Specific Hearing 3 - Session 1 - Transcript - 12 July 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV6-004	Recording of Issue Specific Hearing 3 - Session 2 - 12 July 2022
EV6-005	Issue Specific Hearing 3 - Session 2 - Transcript - 12 July 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV6-006	Recording of Issue Specific Hearing 3 - Session 3 - 12 July 2022
EV6-007	Issue Specific Hearing 3 - Session 3 - Transcript - 12 July 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV6-008	Recording of Issue Specific Hearing 3 - Session 4 - 12 July 2022
EV6-009	Issue Specific Hearing 3 - Session 4 - Transcript - 12 July 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence

	voice to text and is unedited. The video recording remains as the primary record of the event.
EV6-010	ISH3 Action Points Action Points arising from Issue Specific Hearing 3 on the draft Development Consent Order - 12 July 2022
Compulsory Acquisition Hearing 2 – 13 July 2022	
EV7-001	Agenda for Compulsory Acquisition Hearing 2
EV7-002	Recording of Compulsory Acquisition Hearing 2 - Session 1 - 13 July 2022
EV7-003	Compulsory Acquisition Hearing 2 - Session 1 - Transcript - 13 July 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV7-004	Recording of Compulsory Acquisition Hearing 2 - Session 2 - 13 July 2022
EV7-005	Compulsory Acquisition Hearing 2 - Session 2 - Transcript - 13 July 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV7-006	CAH2 Action Points Action Points arising from Compulsory Acquisition Hearing 2 - 13 July 2022
Issue Specific Hearing 4 – 14 July 2022	
EV8-001	Agenda for Issue Specific Hearing 4 on environmental matters
EV8-002	Recording of Issue Specific Hearing 4 - Session 1 - 14 July 2022
EV8-003	Issue Specific Hearing 4 - Session 1 - Transcript - 14 July 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV8-004	Recording of Issue Specific Hearing 4 - Session 2 - 14 July 2022
EV8-005	Issue Specific Hearing 4 - Session 2 - Transcript - 14 July 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV8-006	ISH4 Action Points Action Points arising from Issue Specific Hearing 4 on environmental matters - 14 July 2022
Issue Specific Hearing 5 - 18 October 2022	
EV9-001	Recording of Issue Specific Hearing 5 - Session 1 - 18 October 2022
EV9-002	Issue Specific Hearing 5 - Session 1 - Transcript - 18 October 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence

	voice to text and is unedited. The video recording remains as the primary record of the event.
EV9-003	Recording of Issue Specific Hearing 5 - Session 2 - 18 October 2022
EV9-004	Issue Specific Hearing 5 - Session 2 - Transcript - 18 October 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV9-005	Recording of Issue Specific Hearing 5 - Session 3 - 18 October 2022
EV9-006	Issue Specific Hearing 5 - Session 3 - Transcript - 18 October 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV9-007	ISH5 Action Points Action Points arising from Issue Specific Hearing 5 on environmental matters - 18 October 2022
Compulsory Acquisition Hearing 3 - 19 October 2022	
EV10-001	Recording of Compulsory Acquisition Hearing 3 - Session 1 - 19 October 2022
EV10-002	Compulsory Acquisition Hearing 3 - Session 1 - Transcript - 19 October 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV10-003	Recording of Compulsory Acquisition Hearing 3 - Session 2 - 19 October 2022
EV10-004	Compulsory Acquisition Hearing 3 - Session 2 - Transcript - 19 October 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV10-005	CAH3 Action Points Action Points arising from Compulsory Acquisition Hearing 3 on environmental matters - 19 October 2022
Issue Specific Hearing 6 - 19 October 2022	
EV11-001	Recording of Issue Specific Hearing 6 - Session 1 - 19 October 2022
EV11-002	Issue Specific Hearing 6 - Session 1 - Transcript - 19 October 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.

EV11-003	Recording of Issue Specific Hearing 6 - Session 2 - 19 October 2022
EV11-004	Issue Specific Hearing 6 - Session 2 - Transcript - 19 October 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV11-005	ISH6 Action Points Action Points arising from Issue Specific Hearing 6 on environmental matters - 19 October 2022
Representations	
Procedural Deadline A – 29 April 2022 Deadline for receipt by the ExA of: • Written submissions on the examination procedure, including any submissions about the use of virtual procedures; and • Requests to be heard orally at the Preliminary Meeting Part 1.	
PDA-001	Andrew Boswell Procedural Deadline Submission
PDA-002	Client Earth Procedural Deadline Submission
PDA-003	Eversheds Sutherland on behalf of EDF Procedural Deadline Submission
PDA-004	Net Zero Teesside Power Limited "NZT Power" and Net Zero Procedural Deadline Submission
PDA-005	PD Teesport Limited Procedural Deadline Submission
PDA-006	BDB PITMANS on behalf of South Tees Development Corporation Procedural Deadline Submission
Deadline 1 – 26 May 2022 Deadline for receipt by the ExA of: • Comments on Relevant Representations (RRs) • Local Impact Reports (LIRs) from Local Authorities • Initial Statements of Common Ground (SoCGs) • Statements of Commonality for SoCGs • Update to Status of Negotiations Table to Appendix 1 of the Statement of Reasons • Submission of a separate Compulsory Acquisition Schedule • Notification of Statutory Parties of their wish to be considered as an Interested Party (IP) • Notification of wish to speak at an Open Floor Hearing (OFH) • Notification of wish to speak at any further Issue Specific Meeting (ISH) • Notification of wish to speak at any further Compulsory Acquisition Hearing (CAH)	

• Submission of suggested sites to be included in any further Accompanied Site Inspection (ASI) including reasons why the site needs to be visited on an accompanied basis and any access requirements • Notification of wish to attend a further ASI • Post-hearing submissions including written summaries of oral case put at any of the hearings held on 10 and 11 May 2022 • Deadline 1 action points • Any further information requested by the ExA under Rule 17 of the Examination Procedure Rules	
REP1-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - Cover Letter
REP1-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 1.2 Application Guide
REP1-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 5.3 Planning Statement
REP1-004	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 5.3 Planning Statement (Tracked)
REP1-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.1 Statement of Common Ground with Redcar and Cleveland Borough Council
REP1-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.2 Statement of Common Ground with Stockton-on-Tees Borough Council
REP1-007	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.3 Statement of Common Ground with South Tees Development Corporation, Tees Valley Combined Authority and Teesworks Limited
REP1-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.4 Statement of Common Ground with the Marine Management Organisation
REP1-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.5 Statement of Common Ground with the Environment Agency
REP1-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.6 Statement of Common Ground with Natural England
REP1-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 1 Submission - 8.8 Statement of Common Ground with National Grid Electricity Transmission Gas Plc
REP1-012	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.9 Statement of Common Ground with National Grid Gas Plc
REP1-013	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.10 Statement of Common Ground with Northern Gas Networks Limited
REP1-014	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.11 Statement of Common Ground with Northern Powergrid (Northeast) PLC and Northern Powergrid Limited
REP1-015	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.12 Statement of Common Ground with Northumbrian Water Ltd
REP1-016	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.13 Statement of Common Ground with PD Teesport Limited
REP1-017	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.14 Statement of Common Ground with Telefonica UK Limited
REP1-018	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.15 Statement of Common Ground with Vodafone and Cornerstone Telecoms
REP1-019	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.16 Statement of Common Ground with Network Rail Infrastructure Limited
REP1-020	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.17 Statement of Common Ground with Air Products Plc
REP1-021	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.18 Statement of Common Ground with CATS North Sea Limited
REP1-022	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.19 Statement of Common Ground with CF Fertilisers UK Limited
REP1-023	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 1 Submission - 8.21 Statement of Common Ground with Ineos Nitriles (UK) Limited
REP1-024	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.22 Statement of Common Ground with Marlow Foods Limited
REP1-025	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.23 Statement of Common Ground with NPL Waste Management Limited
REP1-026	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.24 Statement of Common Ground with Redcar Bulk Terminal Ltd
REP1-027	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.25 Statement of Common Ground with Sabic UK Petrochemicals Limited
REP1-028	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.26 Statement of Common Ground with Sembcorp Utilities (UK) Ltd
REP1-029	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.27 Statement of Common Ground with Suez Recycling and Recovery UK Ltd
REP1-030	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.28 Statement of Common Ground with Anglo American plc (Woodsmith Project)
REP1-031	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.29 Statement of Common Ground with INEOS UK SNS Limited
REP1-032	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.30 Statement of Common Ground with North Tees Limited, North Tees Land Limited and North Tees Rail Limited
REP1-033	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.35 Statement of Common Ground with Huntsman Polyurethanes (UK) Limited
REP1-034	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 8.36 Statement of Commonality
REP1-035	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 1 Submission - 9.2 Written Summary of Oral Submission for Issue Specific Hearing 1 (ISH1)

REP1-036	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 1 Submission - 9.3 Written Summary of Oral Submission for Issue Specific Hearing 2 (ISH2)
REP1-037	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 1 Submission - 9.4 Written Summary of Oral Submission for Compulsory Acquisition Hearing 1 (CAH1)
REP1-038	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 1 Submission - 9.4 - Written Summary of Oral Submission for CAH1 - Appendix 1: Eggborough DCO - Crown Estate's Response to the Secretary of State's Request for Further Comments
REP1-039	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 1 Submission - 9.4 - Written Summary of Oral Submission for CAH2 - Appendix 2: Latest Audited Accounts - BP Exploration Operating Company Limited
REP1-040	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 1 Submission - 9.4 - Written Summary of Oral Submission for CAH1 - Appendix 3: Latest Audited Accounts - Equinor New Energy Limited
REP1-041	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 1 Submission - 9.4 - Written Summary of Oral Submission for CAH1 - Appendix 4: Latest Audited Accounts - Shell U.K Limited
REP1-042	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 1 Submission - 9.4 - Written Summary of Oral Submission for CAH1 - Appendix 5: Latest Audited Accounts - Total Gas & Power Chartering Limited
REP1-043	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 1 Submission - 9.4 - Written Summary of Oral Submission for CAH1 - Appendix 6: Latest Audited Accounts - National Grid Carbon Limited
REP1-044	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 1 Submission - 9.5 Compulsory Acquisition Schedule
REP1-045	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 1 Submission - 9.6 Applicants' Comments on Relevant Representations
REP1-046	<u>Redcar and Cleveland Borough Council</u> Deadline 1 Submission - Local Impact Report
REP1-047	<u>Stockton on Tees Borough Council</u> Deadline 1 Submission - Local Impact Report

REP1-048	Womble Bond Dickinson UK LLP on behalf of Huntsman Polyurethanes (UK) Limited Deadline 1 Submission - ASI Suggested Locations
REP1-049	Environment Agency Deadline 1 Submission - Comments on Relevant Representations (RRs)
REP1-050	Marine Management Organisation Deadline 1 Submission - Comments on Relevant Representations and Statement of Common Ground
REP1-051	North Tees Limited Deadline 1 Submission - Notification of wish to speak at further hearings and wish to attend a further ASI
REP1-052	Orsted Hornsea Project Four Limited Deadline 1 Submission – Written Summaries of Oral Case at Issue Specific Hearing 1 and Issue Specific Hearing 2
REP1-053	Eversheds Sutherland on behalf of PD Teesport Limited Deadline 1 Submission - Notification of wish to speak at any further Issue Specific Hearing and Compulsory Acquisition Hearing
REP1-054	Redcar Bulk Terminal Limited Deadline 1 Submission - Notification of wish to speak at any further Issue Specific Hearing and Compulsory Acquisition Hearing
REP1-055	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Ltd Deadline 1 Submission – Written Summaries of Oral Submissions for Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1; Notification of wish to speak at further Issue Specific Hearings and Compulsory Acquisition Hearings
REP1-056	South Tees Development Corporation Deadline 1 Submission - Response to CAH1 Action Points; Notification of wish to speak at further Issue Specific Hearings and Compulsory Acquisition Hearings and wish to attend any further ASI

Deadline 2 – 9 June 2022

Deadline for receipt by the ExA of:

- Responses to the ExA's ExQ1
- Responses to comments on Relevant Representations
- Written Representations (WRs), including summaries of all WRs exceeding 1500 words
- Comments on LIRs
- Updated SoCGs
- Updated Statement of Commonality for SoCGs
- Revised Compulsory Acquisition Schedule (clean and tracked version)
- Updated dDCO (clean and tracked versions)
- Updated schedule of changes to the dDCO
- Revised Application Guide (clean and tracked versions)
- Comments on any other submissions received at Deadline 1

Deadline 2 action points Any further information requested by the ExA under Rule 17 of the Examination Procedure Rules	
REP2-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 1.2 Application Guide
REP2-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 2.1 Draft Development Consent Order
REP2-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 2.1 Draft Development Consent Order: Comparison between Version 3 submitted 28 April 2022 and Version 4 submitted 9 June 2022
REP2-004	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 2.1a Schedule of Changes to the draft Development Consent Order
REP2-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 3.1 Book of Reference (Clean)
REP2-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 3.1 Book of Reference (Tracked)
REP2-007	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 5.10 Other Consents and Licences (Clean)
REP2-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 5.10 Other Consents and Licences (Tracked)
REP2-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 8.7 Statement of Common Ground with Historic England
REP2-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 8.30 Statement of Common Ground with North Tees Limited ("NTL"), North Tees Land Limited ("NTLL") and North Tees Rail Limited ("NTRL") (Clean)
REP2-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 8.30 Statement of Common Ground with North Tees Limited, ("NTL"), North Tees Land Limited ("NTLL") and North Tees Rail Limited ("NTRL") (Tracked)
REP2-012	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 2 Submission - 8.33 Statement of Common Ground with National Highways
REP2-013	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 8.36 Statement of Commonality
REP2-014	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.5 Compulsory Acquisition Schedule (Clean)
REP2-015	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.5 Compulsory Acquisition Schedule (Tracked)
REP2-016	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.7 Applicants' Response to the Examining Authority's Written Questions
REP2-017	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Applicants' Response to the Examining Authority's Written Questions (Appendices)
REP2-018	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix BIO.1.39: Temporary Operations Oil Pollution Emergency Plan
REP2-019	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix DLV.1.7: Landscape Character Assessment Extracts
REP2-020	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix DLV.1.10: Updated Zone of Theoretical Visibility for new and extended substation
REP2-021	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GEN.1.2: Position Statement between Hornsea Project Four and BP
REP2-022	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GEN.1.11: PCC Layout Plan
REP2-023	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GEN.1.41a: The Tees Valley Combined Authority (Functions) Order 2017
REP2-024	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 2 Submission - 9.8 Appendix GEN.1.41b: The South Tees Development Corporation (Establishment) Order 2017
REP2-025	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GEN.1.41c: South Tees Development Corporation Constitution
REP2-026	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Final Factual Report Part 1
REP2-027	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 2
REP2-028	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 3
REP2-029	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 4
REP2-030	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 5
REP2-031	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 6
REP2-032	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 7
REP2-033	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 8
REP2-034	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 9
REP2-035	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 10
REP2-036	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 11
REP2-037	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 12
REP2-038	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 13
REP2-039	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 14
REP2-040	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 15
REP2-041	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 16
REP2-042	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1a: Factual Report Part 17
REP2-043	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1b: Preliminary Onshore Ground Investigation for Net Zero Teesside Ground Investigation Report
REP2-044	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1b: Appendix B Obstructions
REP2-045	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1b: Appendix D Material Properties
REP2-046	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1b: Appendix I Screening Tables
REP2-047	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.1b: Appendix K Foundations

REP2-048	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.2: Main Site Foundations Optioneering Appraisal
REP2-049	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.8a: Safeguarding Plan - Deep Resources
REP2-050	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix GH.1.8b: Safeguarding Plan - Shallow Resources
REP2-051	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix PPL.1.2a: Hartlepool Borough Council Policy Map with Order Limit Overlay
REP2-052	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix PPL.1.2b: RBCB and STCB policy maps with Order Limit Overlay
REP2-053	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix PPL.1.3a: South Tees Regeneration Master Plan
REP2-054	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix PPL.1.3b: South Tees Area Supplementary Planning Document
REP2-055	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix PPL.1.3c: Teesworks Design Guide
REP2-056	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix WE.1.12: PCC Site Topographic Survey
REP2-057	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix WE.1.15: Environment Agency Flood Zones and Defences
REP2-058	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.8 Appendix WE.1.27: Envirocheck Study Area
REP2-059	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 2 Submission - 9.9 Applicants' Comments on Local Impact Reports
REP2-060	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 2 Submission - 9.10 Applicants' Comments on Deadline 1 Submissions
REP2-061	Climate Emergency Policy and Planning (CEPP) Deadline 2 Submission - Cover Letter and Appendices A-J
REP2-062	Environment Agency Deadline 2 Submission - Responses to the Examining Authority's First Written Questions
REP2-063	Historic England Deadline 2 Submission - Responses to the Examining Authority's First Written Questions
REP2-064	National Highways Deadline 2 Submission - Responses to the Examining Authority's written questions and requests for information
REP2-065	Natural England Deadline 2 Submission - Written Representation
REP2-066	Bryan Cave Leighton Paisner LLP on behalf of National Grid Electricity Transmission PLC Deadline 2 Submission - Written Representation
REP2-067	Bryan Cave Leighton Paisner LLP on behalf of National Grid Gas PLC Deadline 2 Submission - Written Representation
REP2-068	Womble Bond Dickinson UK LLP on behalf of Huntsman Polyurethanes (UK) Limited Deadline 2 Submission - Written Representation
REP2-069	Womble Bond Dickinson UK LLP on behalf of Huntsman Polyurethanes (UK) Limited Deadline 2 Submission - Response to the Examining Authority's First Written Questions
REP2-070	North Tees Limited Deadline 2 Submission - Written Representation
REP2-070a	North Tees Limited Deadline 2 Submission - Response to Written Questions
REP2-071	Air Products Plc and Air Products Renewable Energy Limited Deadline 2 Submission - Development Consent Order Written Representations
REP2-072	Air Products Plc and Air Products Renewable Energy Limited Deadline 2 Submission - Summary of Development Consent Order Written Representations
REP2-073	Anglo American Crop Nutrients Limited Deadline 2 Submission - Written Representations and Response to First Written Questions

REP2-074	Birketts LLP on behalf of Northumbrian Water Limited Deadline 2 Submission - Cover Letter for Submission of Written Representation Submission Withdrawn by email dated 10 November 2022 [AS-210]
REP2-075	Birketts LLP on behalf of Northumbrian Water Limited Deadline 2 Submission - Written Representation Submission Withdrawn by email dated 10 November 2022 [AS-210]
REP2-076	Birketts LLP on behalf of Northumbrian Water Limited Deadline 2 Submission - Cover Letter for Submission of Examining Authority's First Written Questions Submission Withdrawn by email dated 10 November 2022 [AS-210]
REP2-077	Birketts LLP on behalf of Northumbrian Water Limited Deadline 2 Submission - Responses to the Examining Authority's Written Questions and Requests for Information Submission Withdrawn by email dated 10 November 2022 [AS-210]
REP2-078	Eversheds Sutherland (International) LLP on behalf of CF Fertilisers UK Limited Deadline 2 Submission - Responses to the ExA's ExQ1
REP2-079	ClientEarth Deadline 2 Submission - Written Representation and response to Applicant's Deadline 1 comments on ClientEarth's Relevant Representation (RR-004)
REP2-080	Corporation of Trinity House of Deptford Strond Deadline 2 Submission - Written Response to the Examining Authority's (ExA) First Round of Written Questions for Deadline 2
REP2-081	Burgess Salmon LLP on behalf of CATS North Sea Limited Deadline 2 Submission - Written Representation
REP2-082	CATS North Sea Limited Deadline 2 Submission - Response to the Examining Authority's First Written Questions
REP2-083	National Grid Carbon Limited Deadline 2 Submission - Responses to Written Questions GEN.1.4 and GEN.1.5 (Updated)
REP2-084	Eversheds Sutherland (International) LLP on behalf of INEOS Nitriles (UK) Limited Deadline 2 Submission - Cover Letter and Responses to EXQ1
REP2-085	Marine Management Organisation Deadline 2 Submission - Responses to the Examining Authority's First Written Questions
REP2-086	Marine Management Organisation Deadline 2 Submission - Responses to comments on Relevant Representations

REP2-087	Maritime and Coastguard Agency Deadline 2 Submission - Cover Letter and Examining Authority's First Written Questions (ExQs1)
REP2-088	Northern Powergrid Deadline 2 Submission - Response to the Examining Authority's First Written Questions - Mains Record
REP2-089	Orsted Hornsea Project Four Limited Deadline 2 Submission - Written Representation
REP2-090	Orsted Hornsea Project Four Limited Deadline 2 Submission - Summary of Written Representation
REP2-091	Orsted Hornsea Project Four Limited Deadline 2 Submission - Legal Submission Cover Letter
REP2-092	Orsted Hornsea Project Four Limited Deadline 2 Submission - Legal Submission Note
REP2-093	PD Teesport Limited Deadline 2 Submission - Responses to the Examining Authority's First Written Questions
REP2-094	Redcar and Cleveland Borough Council Deadline 2 Submission - Response to Examining Authority's First Written Questions
REP2-095	Redcar Bulk Terminal Limited Deadline 2 Submission - Written Representation
REP2-096	Russell Cooke on behalf of Redcar Bulk Terminal Limited Deadline 2 Submission - Responses to the Examining Authority's written questions
REP2-097a	South Tees Development Corporation Deadline 2 Submission - Written Representation
REP2-097b	South Tees Development Corporation Deadline 2 Submission - Responses to the Examining Authority's First Written Questions
REP2-097c	South Tees Development Corporation Deadline 2 Submission - Responses to comments on Relevant Representations
REP2-098	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Ltd Deadline 2 Submission - Written Representation
REP2-099	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Ltd Deadline 2 Submission - Responses to the Examining Authority's First Written Questions
REP2-099a	Sembcorp Utilities (UK) Ltd Deadline 2 Submission - Sembcorp Land Plan - Late submission accepted at the discretion of the Examining Authority
REP2-100	Womble Bond Dickinson UK LLP on behalf of SABIC UK Petrochemicals Limited Deadline 2 Submission - Written Representation
REP2-101	Womble Bond Dickinson UK LLP on behalf of SABIC UK Petrochemicals Limited

	Deadline 2 Submission - Response to the Examining Authority's First Written Questions
Deadline 3 – 23 June 2022 Deadline for receipt by the ExA of: - Comments on responses to the ExA's ExQ1 - Responses to comments on LIRs - Comments on WRs - Comments on any other information submitted at Deadline 2 - Updated SoCGs (clean and tracked versions) - Updated Statement of Commonality for SoCGs - Revised Compulsory Acquisition Schedule (clean and tracked versions) - Comments on the Applicants' dDCO - Revised Application Guide (clean and tracked versions) - Applicants to provide a draft itinerary for a further ASI (if required) - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP3-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 1.2 Application Guide
REP3-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 5.13 Habitat Regulations Assessment Report (Clean)
REP3-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 5.13 Habitat Regulations Assessment Report (Tracked)
REP3-004	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 6.3.26a - ES Figure 9-6a
REP3-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 6.3.123a - ES Figure 18-4
REP3-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 8.3 Statement of Common Ground with South Tees Development Corporation, Tees Valley Combined Authority and Teesworks Limited (Clean)
REP3-007	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 8.3 Statement of Common Ground with South Tees Development Corporation, Tees Valley Combined Authority and Teesworks Limited (Tracked)
REP3-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 8.36 Statement of Commonality
REP3-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 3 Submission - 9.5 Compulsory Acquisition Schedule (Clean)
REP3-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 9.5 Compulsory Acquisition Schedule (Tracked)
REP3-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 9.11 Applicants' Comments on Deadline 2 Submissions
REP3-012	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 9.12 Applicants comments on Written Representations
REP3-013	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 9.13 Sensitivity Test Construction Traffic Modelling – HGVs and Worker Vehicles
REP3-014	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - 9.14 Assessment of the Proposed Development against North East Marine Plan Policies
REP3-015	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 3 Submission - Draft Itinerary for a Further Accompanied Site Inspection
REP3-016	Anglo American Deadline 3 Submission - Comments on the Applicants' draft Development Consent Order
REP3-017	Marine Management Organisation Deadline 3 Submission - Comments on Written Representations
REP3-018	Shepherd and Wedderburn LLP on behalf of Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited Deadline 3 Submission - Affected Persons - CPO Land
REP3-019	CF Fertilisers UK Limited Deadline 3 Submission - Comments on the Applicants' draft Development Consent Order
REP3-020	Corporation of Trinity House of Deptford Strond Deadline 3 Submission - Comments on the Applicants' draft Development Consent Order
REP3-021	INEOS Nitriles (UK) Limited Deadline 3 Submission - Comments on the Applicants' draft Development Consent Order
REP3-022	Orsted Hornsea Project Four Limited Deadline 3 Submission - Comments on the Applicants' draft Development Consent Order
REP3-023	Birketts LLP on behalf of Northumbrian Water Limited Deadline 3 Submission - Comments on responses to the ExA's ExQ1

	Submission Withdrawn by email dated 10 November 2022 [AS-210]
REP3-024	PD Teesport Limited Deadline 3 Submission - Comments on the Applicants' draft Development Consent Order
REP3-025	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Ltd Deadline 3 Submission - Comments on Applicants responses to ExA ExQ1, Statement of Commonality, other IP WRs and dDCO
REP3-026	South Tees Development Corporation Deadline 3 Submission - Comments on responses to the ExA's ExQ1
REP3-027	Environment Agency Deadline 3 Submission - Comments on any other information submitted at Deadline 2
REP3-028	Redcar Bulk Terminal Limited Deadline 3 Submission - Comments on any other information submitted at Deadline 2
REP3-029	NatureScot Deadline 3 Submission
REP3-030	CAT North Sea Limited Deadline 3 Submission
Deadline 4 - 07 July 2022 For receipt by the ExA of: - Responses to comments on WRs - Comments on any other information submitted at Deadline 3 - Updated SoCGs (clean and tracked versions) - Updated Statement of Commonality for SoCGs - Updated dDCO (clean and tracked versions) - Updated schedule of changes to the dDCO - Revised Application Guide (clean and tracked versions) - Revised Compulsory Acquisition Schedule (clean and tracked versions) - Comments on the Applicants' draft itinerary for the ASI - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP4-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - 1.2 - Application Guide - July 2022 (D4)
REP4-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 2.1 - Draft DCO July 2022 (D4)
REP4-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 2.1 - Draft DCO (Comparison with June 2022) - July 2022 (D4)
REP4-004	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 2.1b - Schedule of Changes to the DCO July 2022 (D4)

REP4-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - 3.1 - Book of Reference (Clean) July 2022 (D4)
REP4-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - 3.1 - Book of Reference (Tracked) July 2022 (D4)
REP4-007	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.1 - RCBC SoCG (Clean) July 2022 (D4)
REP4-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.1 - RCBC SoCG (Tracked) July 2022 (D4)
REP4-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.2 - STBC SoCG (Clean) July 2022(D4)
REP4-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.2 - STBC SoCG (Tracked) July 2022(D4)
REP4-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.11 - Northern Powergrid SoCG (Clean) - July 22 (D4)
REP4-012	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.11 - Northern Powergrid SoCG (Tracked) - July 22 (D4)
REP4-013	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.12 - Northumbrian Water Ltd SoCG (Clean) July 2022 (D4)
REP4-014	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.12 - Northumbrian Water Ltd SoCG (Tracked) July 2022 (D4)
REP4-015	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.13 - PD Teesport Ltd SoCG (Clean) July 22 (D4)
REP4-016	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.13 - PD Teesport Ltd SoCG (Tracked) July 22 (D4)
REP4-017	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 4 Submission - DCO 8.18 - CATS SoCG (Clean) July 2022 (D4)
REP4-018	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.18 - CATS SoCG (Tracked) July 2022 (D4)
REP4-019	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.23 - NPL Waste Management SoCG (Clean) - July 2022 (D4)
REP4-020	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.23 - NPL Waste Management SoCG (Tracked) - July 2022 (D4)
REP4-021	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.33 - National Highways SoCG July 2022 (Final) (D4)
REP4-022	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 8.36 - Statement of Commonality - July 2022(D4)
REP4-023	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 9.5 - Compulsory Acquisition Schedule (Clean) July 2022 (D4)
REP4-024	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 9.5 - Compulsory Acquisition Schedule (Tracked) July 2022 (D4)
REP4-025	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 9.15 - Applicants' Responses to Deadline 3 Submissions July 2022 (D4)
REP4-026	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 9.16 - Sensitivity test traffic modelling A1085 A1042 July 2022 (D4)
REP4-027	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 9.17 - Hydrogeological Impact Assessment July 2022 (D4)
REP4-028	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 9.18 - Further information to Historic Environment Questions July 2022 (D4)
REP4-029	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 9.19 - Further Response to Written Question GEN.1.37 - July 2022 (D4)
REP4-030	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 4 Submission - DCO 9.20 - Applicants response to Orsted HP4 D3 Submission July 2022 (D4)
REP4-031	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 4 Submission - DCO 9.21 - Notification of Further Proposed Changes and Update on Remaining Optionality July 2022 (D4)
REP4-032	CATS North Sea Limited Deadline 4 Submission - Responses to comments on WRs
REP4-033	ClientEarth Deadline 4 Submission - Responses to comments on WRs
REP4-034	Climate Emergency Policy and Planning (CEPP) Deadline 4 Submission - Comments on any other information submitted at Deadline 3
REP4-035	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Ltd Deadline 4 Submission - Responses to comments on WRs
REP4-036	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Ltd Deadline 4 Submission - Responses to comments on WRs
REP4-037	Eversheds Sutherland (International) LLP on behalf of PD Teesport Limited Deadline 4 Submission
REP4-038	Hartlepool Borough Council Deadline 4 Submission - Response to Rule 17 letter of 23 June 2022
REP4-039	Marine Management Organisation Deadline 4 Submission - Comments on any other information submitted at Deadline 3
REP4-040	Natural England Deadline 4 Submission
REP4-041	Redcar and Cleveland Borough Council Deadline 4 Submission - Response to Rule 17 letter of 23 June 2022
REP4-042	Redcar Bulk Terminal Limited Deadline 4 Submission - Responses to comments on WRs
REP4-043	Shepherd and Wedderburn LLP on behalf of Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited Deadline 4 Submission - Other: Affected Persons - CPO Land
REP4-044	Stockton on Tees Borough Council Deadline 4 Submission - Response to the Rule 17 letter of 23 June 2022
REP4-045	The Crown Estate Deadline 4 Submission - Comments on any other information submitted at Deadline 3
REP4-046	The Crown Estate Deadline 4 Submission - Comments on any other information submitted at Deadline 3
REP4-047	Veale Wasbrough Vizards LLP on behalf of Exolum Seal Sands Ltd Deadline 4 Submission - Comments on any other information submitted at Deadline 3
REP4-048	Trinity House

	Deadline 4 Submission - Late submission accepted at the discretion of the Examining Authority
Deadline 5 - 02 August 2022 Deadline for receipt by the ExA of: - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings held during w/c 16 May 2022 - Comments on any other information submitted at Deadline 4 - Updated SoCGs (clean and tracked versions) - Updated Statement of Commonality for SoCGs - Revised Statement of Negotiations Schedule (clean and tracked versions) - Updated dDCO (clean and tracked versions) - Updated schedule of changes to the dDCO - Revised Application Guide (clean and tracked versions) - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP5-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 1.2 - Application Guide - August 2022(D5)
REP5-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 2.1 - Draft DCO - August 2022(D5)
REP5-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 2.1 - Draft DCO (Comparison with July 2022) - August 2022(D5)
REP5-004	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 2.1c - Schedule of Changes to the DCO - August 2022(D5)
REP5-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 2.2 - Explanatory Memorandum - August 2022(D5) - Clean
REP5-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 2.2 - Explanatory Memorandum - August 2022(D5) - Tracked
REP5-007	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 4.16.1 - AIL Access Route Plan August 2022(D5)
REP5-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 4.16.2 - Parking Plan August 2022(D5)
REP5-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 4.16.3 - PCC Site Access Plan August 2022(D5)

REP5-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 4.16.4 - Water Connection Plan August 2022(D5)
REP5-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 5.12 - Landscape and Biodiversity Strategy - August 2022(D5) - Clean
REP5-012	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 5.12 - Landscape and Biodiversity Strategy - August 2022(D5) - Tracked
REP5-013	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 6.4.5 ES Vol III Appendix 5A - Framework CEMP (Clean) August 2022 (D5)
REP5-014	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 6.4.5 ES Vol III Appendix 5A - Framework CEMP (Tracked) August 2022 (D5)
REP5-015	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 8.2 - STBC SoCG - August 2022(D5) - Clean
REP5-016	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 8.2 - STBC SoCG - August 2022(D5) - Tracked
REP5-017	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 8.3 - STDC SoCG - August 2022(D5) - Clean
REP5-018	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 8.3 - STDC SoCG - August 2022(D5) - Tracked
REP5-019	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 8.12 - Northumbrian Water Ltd SoCG - August 2022(D5) - Clean
REP5-020	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 8.12 - Northumbrian Water Ltd SoCG - August 2022(D5) - Tracked
REP5-021	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 8.20 - Exolum Seal Sands & Exolum Riverside SoCG - August 2022(D5)
REP5-022	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 5 Submission - 8.34 - Position Statement Orsted Hornsea Project 4 August 2022 (D5)
REP5-023	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 8.36 - Statement of Commonality - August 2022(D5)
REP5-024	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 9.5 - Compulsory Acquisition Schedule August 2022(D5)
REP5-025	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 9.22 - Written Summary of ISH3 - August 2022(D5)
REP5-026	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 9.23 - Written Summary of CAH2 - August 2022(D5)
REP5-027	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 9.24 - Written Summary of ISH4 August 2022 (D5)
REP5-028	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 9.25 - Applicants' Comments on Deadline 4 Submissions - August 2022(D5)
REP5-029	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 5 Submission - 9.26 - Riparian Mammal Report - August 2022(D5)
REP5-030	ClientEarth Deadline 5 Submission - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings held during w/c 16 May 2022
REP5-031	DLA Piper UK LLP on behalf of Sembcorp Utilities UK Ltd Deadline 5 Submission - Other: Written Summary of Oral Submissions at ISH 3 and CAH 2 / Response to Action Point 8
REP5-032	Environment Agency Deadline 5 Submission - Comments on any other information submitted at Deadline 4
REP5-033	Exolum Seal Sands Deadline 5 Submission - Comments on any other information submitted at Deadline 4
REP5-034	Marine Management Organisation Deadline 5 Submission - Comments on any other information submitted at Deadline 4
REP5-035	North Tees Deadline 5 Submission - Various matters
REP5-036	North Tees

	Deadline 5 Submission - Various Matter regarding Compulsory Acquisition Hearing 2
REP5-037	Orsted Hornsea Project Four Limited Deadline 5 Submission - Comments on any other information submitted at Deadline 4
REP5-038	Orsted Hornsea Project Four Limited Deadline 5 Submission - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings held during w/c 16 May 2022
REP5-039	Redcar and Cleveland Council Deadline 5 Submission: Update to ExQ1 responses
REP5-040	Redcar Bulk Terminal Limited Deadline 5 Submission - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings held during w/c 16 May 2022
REP5-041	Shepherd and Wedderburn on behalf of Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited Deadline 5 Submission - Other: Affected Persons - CPO Land
REP5-042	South Tees Development Corporation Deadline 5 Submission - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings held during w/c 16 May 2022
Deadline 6 – 23 August 2022 Deadline for receipt by the ExA of: - Responses to the ExA's ExQ2 - Comments on the Applicants' proposed changes to the dDCO - Comments on any other information submitted at Deadline 5 - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP6-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 1.2 - Application Guide - August 2022
REP6-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 2.1 - Draft DCO August 2022
REP6-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 2.1 - Draft DCO (Comparison with (D5) August 2022) - August 2022
REP6-004	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 2.1d - Schedule of Changes to the DCO August 2022
REP6-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 2.2 - Explanatory Memorandum (Clean) August 2022

REP6-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 2.2 - Explanatory Memorandum (Tracked) August 2022
REP6-007	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 3.1 - Book of Reference (Clean) August 2022
REP6-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 3.1 - Book of Reference (Tracked) August 2022
REP6-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 3.2 - Statement of Reasons (Clean) August 2022
REP6-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 3.2 - Statement of Reasons (Tracked) August 2022
REP6-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 3.4 - Guide to Land Plan Plots
REP6-012	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.1 Site Location Plan August 2022
REP6-013	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.1 Site Location Plan Key Plan August 2022
REP6-014	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.2 - Land Plans August 2022
REP6-015	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.3 - Crown Land Plans August 2022
REP6-016	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.4 Works Plans August 2022
REP6-017	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.4 Works Plan Key Plan August 2022
REP6-018	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.5 Access and Rights of Way Plan August 2022
REP6-019	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.5 Access and Rights of Way Plan Key Plan August 2022

REP6-020	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.6.1 - PCC Site Layout and Elevation Plan August 2022
REP6-021	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.6.2 - PCC Plant Layout Plan August 2022
REP6-022	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.8.1 - Electrical Connection plans Sheet 1 Key Plan August 2022
REP6-023	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.8.2 - Electrical Connection Plans Sheet 2 August 2022
REP6-024	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.8.3 - Electrical Connection Plans Sheet 3 August 2022
REP6-025	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.8.4 - Electrical Connection Plans Sheet 4 August 2022
REP6-026	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.11.2 - CO2 Gathering Network Plans Sheet 2 August 2022
REP6-026a	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.11.1 - CO2 Gathering Network Plans Sheet 1 Key Plan August 2022
REP6-027	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.11.3 - CO2 Gathering Network Plans Sheet 3 August 2022
REP6-028	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.11.4 - CO2 Gathering Network Plans Sheet 4 August 2022
REP6-029	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.11.5 - CO2 Gathering Network Plans Sheet 5 August 2022
REP6-030	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.11.6 - CO2 Gathering Network Plans Sheet 6 August 2022
REP6-031	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 6 Submission - 4.11.7 - CO2 Gathering Network Plans Sheet 7 August 2022
REP6-032	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.11.8 - CO2 Gathering Network Plans Sheet 8 August 2022
REP6-033	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.11.9 - CO2 Gathering Network Plans Sheet 9 August 2022
REP6-034	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.14 Deemed Marine Licence Coordinates Plan August 2022
REP6-035	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.14 Deemed Marine Licence Coordinates Plan Key Plan August 2022
REP6-036	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.15 Landscape and Biodiversity Plan August 2022
REP6-037	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.16.2 - Parking Plan August 2022
REP6-038	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.16.3 - PCC Site Access Plan August 2022
REP6-039	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 4.16.4 - Water Connection Plan August 2022
REP6-040	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 5.4 - Design and Access Statement - Clean - August 2022
REP6-041	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 5.4 - Design and Access Statement - Tracked - August 2022
REP6-042	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 5.5 Electricity Grid Connection Statement (Clean) August 2022
REP6-043	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 5.5 Electricity Grid Connection Statement (Tracked) August 2022

REP6-044	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 5.13 - Habitats Regulations Assessment Report (Clean) August 2022
REP6-045	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 5.13 - Habitats Regulations Assessment Report (Tracked) August 2022
REP6-046	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.1 - ES Vol II Figure 1-1 Site Location Plan August 2022
REP6-047	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.2 - ES Vol II Figure 3-1 Site Boundary Plan August 2022
REP6-048	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.3 - ES Vol II Figure 3-2 Development Areas Plan August 2022
REP6-049	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.4 - ES Vol II Figure 3-3 Residential Receptors within 2km August 2022
REP6-050	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.5 - ES Vol II Figure 3-4 Environmental Receptors within 2km August 2022
REP6-051	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.6 - ES Vol II Figure 4-1 Indicative PCC Site Layout Plan August 2022
REP6-052	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.7 - ES Vol II Figure 4-2 Indicative Landscape and Biodiversity Strategy August 2022
REP6-053	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.8 - ES Vol II Figure 5-1 Access and Laydown August 2022
REP6-054	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.9 - ES Vol II Figure 5-2 Indicative Pipeline Routings August 2022
REP6-055	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.10 - ES Vol II Figure 5-3 Indicative Electrical Connection Routings August 2022
REP6-056	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 6 Submission - 6.3.11 - ES Vol II Figure 6-1 Scheme and Boundary Changes since the PEI Report August 2022
REP6-057	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.12 - ES Vol II Figure 7-1 Local Plan Areas August 2022
REP6-058	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.13 - ES Vol II Figure 8-1 Air Quality Study Area - Human Health Receptors and Monitoring August 2022
REP6-059	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.14 - ES Vol II Figure 8-2 Air Quality Study Area - Ecological Receptors August 2022
REP6-060	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.15 - ES Vol II Figure 8-3 Air Quality Study Area - Construction August 2022
REP6-061	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.16 - ES Vol II Figure 8-4 Air Quality - Model Visualisation August 2022
REP6-062	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.17 - ES Vol II Figure 8-5 Annual Mean NO2 Process Contribution August 2022
REP6-063	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.18 - ES Vol II Figure 8-6 1 hour Mean NO2 Process Contribution August 2022
REP6-064	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.19 - ES Vol II Figure 8-7 Annual Mean NOx Process Contribution August 2022
REP6-065	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.20 - ES Vol II Figure 8-8 Maximum 24 hour Mean NOx Process Contribution August 2022
REP6-066	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.21 - ES Vol II Figure 8-9 Nutrient Nitrogen Deposition August 2022
REP6-067	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.22 - ES Vol II Figure 9-1 Surface Water Features and Attributes August 2022
REP6-068	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 6 Submission - 6.3.23 - ES Vol II Figure 9-2 Groundwater Features and Attributes August 2022
REP6-069	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.24 - ES Vol II Figure 9-3 Ecological Designations August 2022
REP6-070	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.25 - ES Vol II Figure 9-4 Environment Agency Fluvial Flood Zones August 2022
REP6-071	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.26 - ES Vol II Figure 9-5 Flood Risk from Surface Water August 2022
REP6-072	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.52 - ES Vol II Figure 11-1 Noise Sensitive Receptors August 2022
REP6-073	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.53 - ES Vol II Figure 11-2 PCC Site Piling Construction Phase August 2022
REP6-074	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.54 - ES Vol II Figure 11-3 CO2 Gathering Network Construction August 2022
REP6-075	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.55 - ES Vol II Figure 11-4a CO2 Export Pipeline Construction August 2022
REP6-076	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.56 - ES Vol II Figure 11-4b CO2 Export Pipeline Construction (with screening) August 2022
REP6-077	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.57 - ES Vol II Figure 11-5 PCC Site Operational Noise Levels August 2022
REP6-078	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.58 - ES Vol II Figure 13-1 Surface Waterbodies within 200m August 2022
REP6-079	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.59 - ES Vol II Figure 14-1 Benthic Survey Study Area and Sampling Locations August 2022
REP6-080	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.60 - ES Vol II Figure 15-1 Study Areas August 2022

REP6-081	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.61 - ES Vol II Figure 15-2 Survey Areas August 2022
REP6-082	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.62 - ES Vol II Figure 15-3 Designated Sites August 2022
REP6-083	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.63 - ES Vol II Figure 15-4 Non-Statutory Designated Sites August 2022
REP6-084	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.64 - ES Vol II Figure 16-1 Traffic Study Area August 2022
REP6-085	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.65 - ES Vol II Figure 16-2 HGV Routes to and from the Site August 2022
REP6-086	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.66 - ES Vol II Figure 16-3 Traffic Count Locations August 2022
REP6-087	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.67 - ES Vol II Figure 17-1 Landscape Context August 2022
REP6-088	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.68 - ES Vol II Figure 17-2 Public Rights of Way within 2km August 2022
REP6-089	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.69 - ES Vol II Figure 17-3 Landscape Character Plan August 2022
REP6-090	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.70 - ES Vol II Figure 17-4 Zone of Theoretical Visibility and Potential Viewpoint Location August 2022
REP6-091	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.71 - ES Vol II Figure 17-5 Topography August 2022
REP6-092	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 6 Submission - 6.3.72 - ES Vol II Figure 17-6 Zone of Theoretical Visibility and Representative Viewpoint Locations August 2022

REP6-093	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.77 - ES Vol II Figure 17-8A Viewpoint 2 The Cliff Seaton Carew - Summer
REP6-094	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.110 - Figure 17-20 - Viewpoint 2 The Cliff Seaton Carew - Massing
REP6-095	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.111 - Figure 17-21 - Viewpoint 2 The Cliff Seaton Carew - Photomontage
REP6-096	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.121 - ES Vol II Figure 18-1 Designated heritage assets in the 5 km Study Area August 2022
REP6-097	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.122 - ES Vol II Figure 18-2 Non - designated heritage assets in 1 km Study Area August 2022
REP6-098	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.123 - ES Vol II Figure 18-3 Historic Landscape Character August 2022
REP6-099	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.124 - ES Vol II Figure 19-1 Marine Heritage Assets in 1 km Study Area August 2022
REP6-100	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.125 - ES Vol II Figure 22-1 HSE Consultation Zones August 2022
REP6-101	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.126 - ES Vol II Figure 24-1 Zones of Influence for Cumulative Effects Assessment August 2022
REP6-102	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.127 - ES Vol II Figure 24-2 Long List of Other Developments August 2022
REP6-103	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.128 - ES Vol II Figure 24-3 Short List of Other Developments August 2022
REP6-104	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 6.3.129 - ES Vol II Figure 6-2 Proposed Development Changes August 2022
REP6-105	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 6 Submission - 7.9 - Letter Requesting Further Proposed Changes - August 2022
REP6-106	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 7.10 Second Environmental Statement Addendum - Non-Technical Statement August 2022
REP6-107	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 7.11.1 Second Environmental Statement Addendum - Volume I August 2022
REP6-108	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 7.11.2 Second ES Addendum Vol II Cover and Contents August 2022
REP6-109	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 7.12 - Habitats Regulations Assessment Report (Change Request) (Clean) August 2022
REP6-110	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 7.12 - Habitats Regulations Assessment Report (Change Request) (Tracked) August 2022
REP6-111	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 8.1 - RCBC SoCG - August 2022(D6) - Final - Clean
REP6-112	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 8.1 - RCBC SoCG - August 2022(D6) - Final - Tracked
REP6-113	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 8.4 - Marine Management Organisation SoCG (Clean) August 2022
REP6-114	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 8.4 - Marine Management Organisation SoCG (Tracked) August 2022
REP6-115	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 8.5 - Environment Agency SoCG (Clean) August 2-22
REP6-116	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 8.5 - Environment Agency SoCG (Tracked) August 2-22
REP6-117	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 8.36 - Statement of Commonality - August 2022

REP6-118	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 8.37 - SoCG - North Sea Midstream Partners Deadline 6 Submission
REP6-119	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 9.5 - Compulsory Acquisition Schedule (Clean) August 2022
REP6-120	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 9.5 - Compulsory Acquisition Schedule (Tracked) August 2022
REP6-121	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 9.27 Applicants' Response to the ExA's Second Written Questions - August 2022
REP6-122	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 9.28 - Applicants' Responses to Deadline 5 Submissions August 2022
REP6-123	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 9.29 - Cumulative GHG Onshore and Offshore Assessment August 2022
REP6-124	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 9.30 - ISH 4 Action 9 Contaminated Land Timeline August 2022
REP6-125	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 6 Submission - 9.31 - Response to Examining Authority's Written Questions DLV1.7 ii August 2022
REP6-126	Anglo American Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-127	British Telecommunications Plc Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-128	CATS North Sea Limited Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-129	ClientEarth Deadline 6 Submission - Comments on any other information submitted at Deadline 5
REP6-130	DLA Piper UK LLP on behalf of Sembcorp Utilities UK Ltd Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-131	EDF Energy Renewables Limited and Teesside Wind Farm Limited Deadline 6 Submission - Other: Written Representation following further discussion with the Applicant
REP6-132	Environment Agency Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-133	Lucy Mo on behalf of Environment Agency

	Deadline 6 Submission - Comments on any other information submitted at Deadline 5
REP6-134	INEOS Nitriles (UK) Limited Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-135	INEOS Nitriles (UK) Limited Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-136	Marine Management Organisation Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-137	Nick Lightfoot on behalf of Natural England Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-138	North Tees Limited Deadline 6 Submission - Responses to the ExA's ExQ2 and other matters
REP6-139	Orsted Hornsea Project Four Limited Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-140	PD Teesport Limited Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-141	PD Teesport Limited Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-142	Shepherd and Wedderburn LLP on behalf of Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited Deadline 6 Submission - Other: Affected Persons - CPO Land
REP6-143	South Tees Development Corporation Deadline 6 Submission - Comments on any other information submitted at Deadline 5
REP6-144	South Tees Development Corporation Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-145	The Crown Estate Deadline 6 Submission - Responses to the ExA's ExQ2
REP6-146	UK Health Security Agency Deadline 6 Submission - Responses to the ExA's ExQ2
Deadline 7 – 1 September 2022	
Deadline for receipt by the ExA of: - Comments on responses to the ExA's ExQ2 - Updated SoCGs (clean and tracked versions) - Updated Statement of Commonality for SoCGs - Revised Statement of Negotiations Schedule (clean and tracked versions) - Revised Application Guide (clean and tracked versions) - Comments on any other information submitted at Deadline 6 - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP7-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 7 Submission - 1.2 Application Guide
REP7-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 7 Submission - 6.4.49 Environmental Statement: Volume III Appendix 25A: Commitments Register (Clean)
REP7-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 7 Submission - 6.4.49 Environmental Statement: Volume III Appendix 25A: Commitments Register (Tracked)
REP7-004	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 7 Submission - 8.30 Statement of Common Ground with North Tees Limited, North Tees Land Limited and North Tees Rail Limited (Clean)
REP7-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 7 Submission - 8.30 Statement of Common Ground with North Tees Limited, North Tees Land Limited and North Tees Rail Limited (Tracked)
REP7-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 7 Submission - 8.36 Statement of Commonality
REP7-007	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 7 Submission - 9.5 Compulsory Acquisition Schedule (Clean)
REP7-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 7 Submission - 9.5 Compulsory Acquisition Schedule (Tracked)
REP7-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 7 Submission - 9.32 Applicants' Comments on Deadline 6 Submissions
REP7-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 7 Submission - 9.33 Response to Examining Authority's Written Question HE.2.6
REP7-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 7 Submission - 9.34 Updated List of Developments in Response to Second Written Question GEN.2.2(i)
REP7-012	Environment Agency Deadline 7 Submission - Comments on Deadline 6 Submissions
REP7-013	Marine Management Organisation Deadline 7 Submission - Comments on any other information submitted at Deadline 6
REP7-014	North Tees Limited Deadline 7 Submission - Response to the Examining Authority's Second Written Questions
REP7-015	Fisher German Priestner Limited on behalf of NPL Waste Management Limited

	Deadline 7 Submission - Response to the Deadline 6 Submission - Compulsory Acquisition Schedule
REP7-016	Orsted Hornsea Project Four Limited Deadline 7 Submission - Comments on the Applicant's Submissions at Deadline 6
REP7-017	BDB Pitmans LLP on behalf of South Tees Development Corporation Deadline 7 Submission - Comments on responses to the Examining Authority's Second Written Questions
Deadline 8 – 20 September 2022 Deadline for receipt by the ExA of: - Updated SoCGs (clean and tracked versions) - Updated Statement of Commonality for SoCGs - Revised Statement of Negotiations Schedule (clean and tracked versions) - Updated dDCO (clean and tracked versions) - Updated schedule of changes to the dDCO - Revised Application Guide (clean and tracked versions) - Comments on any other information submitted at Deadline 7 - Representations on the changes submitted by the Applicants on 23 August 2022 - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP8-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - Cover Email
REP8-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 1.2 - Application Guide
REP8-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 2.1 - Draft Development Consent Order (Clean)
REP8-004	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 2.1 - Draft Development Consent Order (Tracked Changes)
REP8-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 2.1e - Schedule of Changes to the draft Development Consent Order
REP8-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 2.2 Explanatory Memorandum (Clean)
REP8-007	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 2.2 Explanatory Memorandum (Tracked Changes)

REP8-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 4.17 Net Zero and Anglo-American Shared Areas Plan
REP8-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 5.13 Habitat Regulations Assessment Report (Clean)
REP8-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 5.13 Habitat Regulations Assessment Report (Tracked Changes)
REP8-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.27 - ES Vol II Figure 10-1 Artificial Geology
REP8-012	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.28 - ES Vol II Figure 10-2 Superficial Geology
REP8-013	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.29 - ES Vol II Figure 10-3 Bedrock Geology
REP8-014	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.30 - ES Vol II Figure 10-4 BGS Boreholes
REP8-015	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.31 - ES Vol II Figure 10-5 Quarrying and Landfill
REP8-016	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.32 - ES Vol II Figure 10-6 Waste Management
REP8-017	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.33 - ES Vol II Figure 10-7 Infilled Land – Non-Water
REP8-018	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.34 - ES Vol II Figure 10-8 Infilled Land – Water
REP8-019	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.35 - ES Vol II Figure 10-9 Hazardous
REP8-020	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 8 Submission - 6.3.36 - ES Vol II Figure 10-10 Contaminated Land – Point
REP8-021	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.37 - ES Vol II Figure 10-11 Contaminated Land – Line
REP8-022	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.38 - ES Vol II Figure 10-12 Contaminated Land – Polygon
REP8-023	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.39 - ES Vol II Figure 10-13 Historic Tanks
REP8-024	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.40 - ES Vol II Figure 10-14 Sensitive Land Use
REP8-025	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.41 - ES Vol II Figure 10-15 Discharge
REP8-026	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.42 - ES Vol II Figure 10-16 Flood Risk
REP8-027	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.43 - ES Vol II Figure 10-17 Bedrock Aquifer
REP8-028	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.44 - ES Vol II Figure 10-18 Superficial Aquifer
REP8-029	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.45 - ES Vol II Figure 10-19 BGS Flood Susceptibility
REP8-030	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.46 - ES Vol II Figure 10-20 Risk of Flooding from Rivers and Seas
REP8-031	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.47 - ES Vol II Figure 10-21 Stockton-on-Tees Local Plan
REP8-032	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 6.3.48 - ES Vol II Figure 10-22 Redcar and Cleveland Local Plan

REP8-033	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 8 Submission - 6.3.49 - ES Vol II Figure 10-23 Historical Features (Sheets 1 to 3)
REP8-034	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 8 Submission - 6.3.50 - ES Vol II Figure 10-24 Agricultural Land Classification (Sheets 1 & 2)
REP8-035	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 8 Submission - 6.3.51 - ES Vol II Figure 10-25 BGS Buried Valleys
REP8-036	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 8 Submission - 8.2 – Statement of Common Ground with Stockton-on-Tees Borough Council
REP8-037	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 8 Submission - 8.3 – Statement of Common Ground with South Tees Development Corporation, Tees Valley Combined Authority and Teesworks Limited (Clean)
REP8-038	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 8 Submission - 8.3 – Statement of Common Ground with South Tees Development Corporation, Tees Valley Combined Authority and Teesworks Limited (Tracked Changes)
REP8-039	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 8 Submission - 8.4 – Statement of Common Ground with the Marine Management Organisation (Clean)
REP8-040	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 8 Submission - 8.4 – Statement of Common Ground with the Marine Management Organisation (Tracked Changes)
REP8-041	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 8 Submission - 8.5 – Statement of Common Ground with Environment Agency (Tracked Changes)
REP8-042	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 8 Submission - 8.5 – Statement of Common Ground with Environment Agency (Clean)
REP8-043	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 8 Submission - 8.6 – Statement of Common Ground with Natural England (Tracked Changes)
REP8-044	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u>

	Deadline 8 Submission - 8.6 – Statement of Common Ground with Natural England (Clean)
REP8-045	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 8.7 – Statement of Common Ground with Historic England
REP8-046	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 8.36 - Statement of Commonality
REP8-047	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 9.34 – Updated List of Developments in Response to Second Written Question GEN.2.2(i) (Clean)
REP8-048	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 9.34 – Updated List of Developments in Response to Second Written Question GEN.2.2(i) (Tracked Changes)
REP8-049	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 9.35 – Applicants’ Comments on Deadline 7 Submissions
REP8-050	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 9.36 - Nutrient Nitrogen Briefing Paper
REP8-051	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 9.37 - Justification of Corridor Widths
REP8-052	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 9.5 Compulsory Acquisition Schedule (Clean)
REP8-053	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 8 Submission - 9.5 Compulsory Acquisition Schedule (Tracked Changes)
REP8-054	Environment Agency Deadline 8 Submission - Comments on any other information submitted at Deadline 7
REP8-055	Marine Management Organisation Deadline 8 Submission - Comments on any other information submitted at Deadline 7
REP8-056	Orsted Hornsea Project Four Limited Deadline 8 Submission - Comments on any other information submitted at Deadline 7
REP8-057	South Tees Development Corporation Deadline 8 Submission - Comments on any other information submitted at Deadline 7

Deadline 9 - 06 October 2022

Deadline for receipt by the ExA of:

- Comments on the RIES
- Updated SoCGs (clean and tracked versions)
- Updated Statement of Commonality for SoCGs
- Revised Statement of Negotiations Schedule (clean and tracked versions)
- Updated Book of Reference
- Updated Statement of Reasons
- Revised Application Guide (clean and tracked versions)
- Comments on any other information submitted at Deadline 8
- Comments on any representations on the changes submitted by the Applicants on 23 August 2022
- Notification of wish to speak at hearings to be held on 18 and 19 October 2022
- Submission of suggested sites to be included in Accompanied Site Inspection to be held on 20 October 2022, including reasons why the site needs to be visited on an accompanied basis and any access requirements
- Any further information requested by the ExA under Rule 17 of the Examination Rules

REP9-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - Cover email
REP9-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 1.2 - Application Guide Oct 2022
REP9-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 5.13 - Habitats Regulations Assessment Report (Clean) Oct 2022
REP9-004	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 5.13 - Habitats Regulations Assessment Report (Tracked) Oct 2022
REP9-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 6.4.49 - ES Vol III Appendix 25A Commitments Register Clean Oct 2022
REP9-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 6.4.49 - ES Vol III Appendix 25A Commitments Register Tracked Oct 2022
REP9-007	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 6.4.5 - ES Vol III Appendix 5A - Framework CEMP (Clean) Oct 2022
REP9-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 6.4.5 - ES Vol III Appendix 5A - Framework CEMP (Tracked) Oct 2022

REP9-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 8.1 - RCBC SoCG Sept 2022 (D9) - final signed
REP9-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 8.13 - PD Teesport SoCG (Clean) Oct 2022
REP9-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 8.13 - PD Teesport SoCG (Tracked) Oct 2022
REP9-012	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 8.36 - Statement of Commonality - October 2022
REP9-013	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 9.34 - Updated List of Developments (Clean) Oct 2022
REP9-014	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 9.34 - Updated List of Developments (Tracked) Oct 2022
REP9-015	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 9.36 - Nutrient Nitrogen Briefing Paper Clean Oct 2022
REP9-016	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 9.36 - Nutrient Nitrogen Briefing Paper Tracked Oct 2022
REP9-017	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 9.36 - Nutrient Nitrogen Briefing Paper (Tracked) Oct 2022
REP9-018	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 9.38 - Applicants' Comments on Deadline 8 Submissions Oct 2022
REP9-019	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 9.39 - Applicants' Response to ExA's RFI Oct 2022
REP9-020	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 9.40 - Applicants' Response to SWQ CA.2.19 Oct 2022
REP9-021	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 9 Submission - 9.41- Applicants' Response to ExA's RIES - Oct 2022
REP9-022	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 9.5 - Compulsory Acquisition Schedule Clean Oct 2022
REP9-023	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 9 Submission - 9.5 - Compulsory Acquisition Schedule Tracked Oct 2022
REP9-024	Anglo American Deadline 9 Submission - Other: Update and Comments on documents submitted at D8
REP9-025	ClientEarth Deadline 9 Submission - Any further information requested by the ExA under Rule 17 of the Examination Rules
REP9-026	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Ltd Deadline 9 Submission - Notification of wish to speak at hearings to be held on 18 and 19 October 2022
REP9-027	Environment Agency Deadline 9 Submission - Comments on any other information submitted at Deadline 8 - Late submission accepted at the discretion of the Examining Authority
REP9-028	Historic England Deadline 9 Submission - Comments on any other information submitted at Deadline 8
REP9-029	Marine Management Organisation Deadline 9 Submission - Comments on any other information submitted at Deadline 8
REP9-030	Natural England Deadline 9 Submission - Comments on any other information submitted at Deadline 8
REP9-031	North Tees Deadline 9 Submission - Comments on any other information submitted at Deadline 8
REP9-032	Orsted Hornsea Project Four Limited Deadline 9 Submission - Other: Response to the Applicant's Legal Opinion
REP9-033	Orsted Hornsea Project Four Limited Deadline 9 Submission - Comments on any other information submitted at Deadline 8
REP9-034	Redcar Bulk Terminal Limited Deadline 9 Submission - Other: Further submission to RBT's Deadline 5 Submission and notification to speak at ISH5 and CAH3
REP9-035	Shepherd and Wedderburn on behalf of Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited Deadline 9 Submission - Other: Affected Persons - CPO Land
Deadline 10 - 10 October 2022	

Deadline for receipt by the ExA of: - Notification of wish to attend Accompanied Site Inspection	
REP10-001	Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited Draft Itinerary for Accompanied Site Inspection 2
Deadline 11 - 26 October 2022	
Deadline for receipt by the ExA of: - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings - Responses to the ExA's ExQ3 (if required) - Responses to comments on the RIES - Comments on any other information submitted at Deadline 10 - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP11-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - Cover email
REP11-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 1.2 - Application Guide - Oct 2022 (D11)
REP11-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 4.18 - Endurance Store Protective Provisions Plan - Oct 2022 (D11)
REP11-004	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 5.10 - Other Consents and Licences - Oct 2022 D11 (Clean)
REP11-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 5.10 - Other Consents and Licences - Oct 2022 D11 (Tracked)
REP11-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 6.3.111 - Figure 17-21 - Viewpoint 2 The Cliff Seaton Carew - Photomontage - Oct 2022 (D11)
REP11-007	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 6.3.127 - ES Vol II Figure 24-2 Long List of Other Developments - Oct 2022 (D11)
REP11-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 6.3.128 - ES Vol II Figure 24-3 Short List of Other Developments - Oct 2022 (D11)
REP11-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 6.4.11 ES Vol III Appendix 9C WFD Assessment - Oct 2022 (D11) (Clean)

REP11-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 6.4.11 ES Vol III Appendix 9C WFD Assessment - Oct 2022 (D11) (Tracked)
REP11-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 7.13a - Notification of Further Proposed Changes - Oct 2022 (D11)
REP11-012	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 9.34 Updated List of Developments - Oct 2022 (D11) (Clean)
REP11-013	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 9.34 Updated List of Developments - Oct 2022 (D11) (Tracked)
REP11-014	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 9.42 - Comments on D9 Submissions & Additional Submissions - Oct 2022 (D11)
REP11-015	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 9.43 Written Summary of Oral Submissions at ISH5 - Oct 2022 (D11)
REP11-016	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 9.44 Written Summary of Oral Submissions for CAH3 - Oct 2022 (D11)
REP11-017	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 9.45 Written Summary of Oral Submission for ISH6 - Oct 2022 (D11)
REP11-018	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 9.46 Applicants' Response to the ExA's Third Written Questions - Oct 2022 (D11)
REP11-019	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 9.47 - Sensitivity Assessment of Construction Programme - Oct 2022 (D11)
REP11-020	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 9.5 - Compulsory Acquisition Schedule Clean - Oct 2022 (D11)
REP11-021	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 11 Submission - 9.5 - Compulsory Acquisition Schedule Tracked - Oct 2022 (D11)

REP11-022	Redcar and Cleveland Borough Council Deadline 11 Submission - Responses to the ExA's ExQ3
REP11-023	Anglo American Deadline 11 Submission - Responses to the ExA's ExQ3
REP11-024	BCLP on behalf of National Grid Electricity Transmission Deadline 11 Submission - Responses to the ExA's ExQ3
REP11-025	BCLP on behalf of National Grid Gas Deadline 11 Submission - Responses to the ExA's ExQ3
REP11-026	CF Fertilisers UK Limited Deadline 11 Submission - Other: Response to Hearing Action Points arising from Issue Specific Hearing 5
REP11-027	ClientEarth Deadline 11 Submission - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings
REP11-028	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Ltd Deadline 11 Submission - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings
REP11-029	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Ltd Deadline 11 Submission - Responses to the ExA's ExQ3
REP11-030	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Ltd Deadline 11 Submission - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings
REP11-031	Environment Agency Deadline 11 Submission - Comments on any other information submitted at Deadline 10
REP11-032	Environment Agency Deadline 11 Submission - Comments on any other information submitted at Deadline 10
REP11-033	INEOS Nitriles (UK) Limited Deadline 11 Submission - Other: Response to Hearing Action Points arising from Issue Specific Hearing 5
REP11-034	Marine Management Organisation Deadline 11 Submission - Comments on any other information submitted at Deadline 10
REP11-035	Natural England Deadline 11 Submission - Responses to the ExA's ExQ3
REP11-036	Natural England Deadline 11 Submission - Other: An update to the Examining Authority regarding topics to be discussed at Issue Specific Hearing 6

REP11-037	Orsted Hornsea Project Four Limited Deadline 11 Submission - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings
REP11-038	PD Teesport Limited Deadline 11 Submission - Other: Response to Hearing Action Points arising from Issue Specific Hearing 5
REP11-039	Redcar Bulk Terminal Limited Deadline 11 Submission - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings
REP11-040	Shepherd and Wedderburn LLP on behalf of Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited Deadline 11 Submission - Other: Affected Persons - CPO Land
REP11-041	South Tees Development Corporation Deadline 11 Submission - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings
REP11-042	Teesside Wind Farm Limited Deadline 11 Submission - Other: Response to Hearing Action Points arising from Issue Specific Hearing 5
REP11-043	The North Tees Group Deadline 11 Submission - Responses to the ExA's ExQ3
Deadline 12 – 01 November 2022 Deadline for receipt by the ExA of: - Comments on responses to the ExA's ExQ3 (if required) - Finalised SoCGs (clean and tracked versions) - Finalised Statement of Commonality for SoCGs - Finalised Statement of Negotiations Schedule (clean and tracked versions) - Finalised dDCO (clean and tracked versions) - Finalised schedule of changes to the dDCO - Finalised Explanatory Memorandum - Updated and finalised Environmental Statement - Finalised Application Guide (clean and tracked versions) - Comments on any other information submitted at Deadline 11 - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP12-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - Applicant - Cover email
REP12-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 1.2 - Application Guide - Nov 2022
REP12-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 2.1 - Final draft DCO (Clean) - Nov 2022

REP12-004	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 2.1 - Final draft DCO (Tracked) - Nov 2022
REP12-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 2.1f - Schedule of Changes to DCO - Nov 2022
REP12-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 2.2 - Explanatory Memorandum (Clean) - Nov 2022
REP12-007	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 2.2 - Explanatory Memorandum (Tracked) - Nov 2022
REP12-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 3.1 - Book of Reference (Clean) Nov 2022
REP12-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 3.1 - Book of Reference (Tracked) Nov 2022
REP12-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 3.2 - Statement of Reasons Clean Nov 2022
REP12-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 3.2 - Statement of Reasons Tracked Nov 2022
REP12-012	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 3.4 - Guide to Land Plan Plots - Outfall Change - Nov 2022
REP12-013	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.1 Site Location Plan - Key Plan
REP12-014	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.1 Site Location Plan
REP12-015	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.2 - Land Plans Sheets 1-13 Nov 2022
REP12-016	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.3 - Crown Land Plans Sheets 1-13 Nov 2022

REP12-017	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.4 - Works Plan Nov 2022
REP12-018	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.4 - Works Plan Key Plan Nov 2022
REP12-019	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.5- ARoW Plans Key Plan - Nov 2022
REP12-020	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.5- ARoW Plans Sheets 1 to 7 - Nov 2022
REP12-021	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.6.1 PCC Site Layout and Elevation Plan Nov 2022
REP12-022	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.6.2 PCC Plant Layout Plan Nov 2022
REP12-023	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.9 - Water Connection Plan Nov 2022
REP12-024	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.13 - Surface Water Drainage Plan - Nov 2022
REP12-025	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.14- DML Coordinates Plan Key Plan - Nov 2022
REP12-026	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.14 - DML Coordinates Plan Sheets 1 to 2 - Nov 2022
REP12-027	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.15 - Landscape & Biodiversity Plan - Nov 2022
REP12-028	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.16.2 - Parking Plan - Nov 2022
REP12-029	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 4.19 - Sembcorp Pipeline Corridor PP Plan - Nov 2022
REP12-030	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 5.4 - DAS (Clean) - Nov 2022

REP12-031	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 5.4 - DAS (Tracked) - Nov 2022
REP12-032	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 5.13 - HRA Report (Clean) - Nov 2022
REP12-033	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 5.13 - HRA Report (Tracked) - Nov 2022
REP12-034	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.1 - ES Vol II Figure 1-1 Site Location Plan Nov 2022
REP12-035	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.2 - ES Vol II Figure 3-1 Site Boundary Plan
REP12-036	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.3 - ES Vol II Figure 3-2 Development Areas Plan
REP12-037	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.4 - ES Vol II Figure 3-3 Residential Receptors within 2km Nov 2022
REP12-038	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.5 ES Vol II Figure 3-4 Environmental Receptors within 2km
REP12-039	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.6 ES Vol II Figure 4-1 Indicative PCC Site Layout Plan
REP12-040	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.7 ES Vol II Figure 4-2 Indicative Landscape and Biodiversity Strategy
REP12-041	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.8 ES Vol II Figure 5-1 Access and Laydown
REP12-042	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.9 ES Vol II Figure 5-2 Indicative Pipeline Routings
REP12-043	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 12 Submission - 6.3.10 - ES Vol II Figure 5-3 Indicative Electrical Connection Routings Nov 2022
REP12-044	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.11 - ES Vol II Figure 6-1 Scheme and Boundary Changes since the PEI Report Nov 2022
REP12-045	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.12 - ES Vol II Figure 7-1 Local Plan Areas Nov 2022
REP12-046	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.13 - ES Vol II Figure 8-1 Air Quality Study Area - Human Health Receptors and Monitoring Nov 2022
REP12-047	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.14 - ES Vol II Figure 8-2 Air Quality Study Area - Ecological Receptors Nov 2022
REP12-048	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.15 - ES Vol II Figure 8-3 Air Quality Study Area - Construction Nov 2022
REP12-049	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.16 - ES Vol II Figure 8-4 Air Quality - Model Visualisation Nov 2022
REP12-050	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.17 - ES Vol II Figure 8-5 Annual Mean NO2 Process Contribution Nov 2022
REP12-051	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.18 - ES Vol II Figure 8-6 1 hour Mean NO2 Process Contribution
REP12-052	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.19 - ES Vol II Figure 8-7 Annual Mean NOx Process Contribution
REP12-053	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.20 - ES Vol II Figure 8-8 Maximum 24 hour Mean NOx Process Contribution
REP12-054	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - DCO 6.3.21 - ES Vol II Figure 8-9 Nutrient Nitrogen Deposition
REP12-055	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 12 Submission - 6.3.22 - ES Vol II Figure 9-1 Surface Water Features and Attributes
REP12-056	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.23 - ES Vol II Figure 9-2 Groundwater Features and Attributes
REP12-057	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.24 - ES Vol II Figure 9-3 Ecological Designations
REP12-058	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.25 - ES Vol II Figure 9-4 Environment Agency Fluvial Flood Zones
REP12-059	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.26 - ES Vol II Figure 9-5 Flood Risk from Surface Water
REP12-060	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.27 - ES Vol II Figure 10-1 Artificial Geology
REP12-061	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.28 - ES Vol II Figure 10-2 Superficial Geology
REP12-062	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.29 - ES Vol II Figure 10-3 Bedrock Geology
REP12-063	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.30 - ES Vol II Figure 10-4 BGS Boreholes
REP12-064	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.31 - ES Vol II Figure 10-5 Quarrying and Landfill
REP12-065	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.32 - ES Vol II Figure 10-6 Waste Management
REP12-066	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.33 - ES Vol II Figure 10-7 Infilled Land – Non-Water
REP12-067	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 12 Submission - 6.3.34 - ES Vol II Figure 10-8 Infilled Land – Water
REP12-068	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.35 - ES Vol II Figure 10-9 Hazardous Nov
REP12-069	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.36 - ES Vol II Figure 10-10 Contaminated Land
REP12-070	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.37 - ES Vol II Figure 10-11 Contaminated Land
REP12-071	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.38 - ES Vol II Figure 10-12 Contaminated Land – Polygon
REP12-072	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.39 - ES Vol II Figure 10-13 Historic Tanks
REP12-073	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.40 - ES Vol II Figure 10-14 Sensitive Land Use
REP12-074	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.41 - ES Vol II Figure 10-15 Discharge
REP12-075	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.42 - ES Vol II Figure 10-16 Flood Risk
REP12-076	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.43 - ES Vol II Figure 10-17 Bedrock Aquifer
REP12-077	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.44 - ES Vol II Figure 10-18 Superficial Aquifer
REP12-078	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.45 - ES Vol II Figure 10-19 BGS Flood Susceptibility
REP12-079	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 12 Submission - 6.3.46 - ES Vol II Figure 10-20 Risk of Flooding from Rivers and Seas
REP12-080	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.47 - ES Vol II Figure 10-21 Stockton-on-Tees Local Plan
REP12-081	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.48 - ES Vol II Figure 10-22 Redcar and Cleveland Local Plan
REP12-082	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.49 - ES Vol II Figure 10-23 Historical Features (Sheets 1 to 3)
REP12-083	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.50 ES Vol II Figure 10-24 Agricultural Land Classification (Sheets 1 & 2)
REP12-084	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.51 ES Vol II Figure 10-25 BGS Buried Valleys
REP12-085	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.52 ES Vol II Figure 11-1 Noise Sensitive Receptors
REP12-086	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.53 ES Vol II Figure 11-2 PCC Site Piling Construction Phase
REP12-087	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.54 ES Vol II Figure 11-3 CO2 Gathering Network Construction
REP12-088	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.55 ES Vol II Figure 11-4a CO2 Export Pipeline Construction
REP12-089	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.56 ES Vol II Figure 11-4b CO2 Export Pipeline Construction (with screening)
REP12-090	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.57 ES Vol II Figure 11-5 PCC Site Operational Noise Levels
REP12-091	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 12 Submission - 6.3.58 ES Vol II Figure 13-1 Surface Waterbodies within 200m
REP12-092	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.59 ES Vol II Figure 14-1 Benthic Survey Study Area and Sampling Locations
REP12-093	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.60 ES Vol II Figure 15-1 Study Areas
REP12-094	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.61 ES Vol II Figure 15-2 Survey Areas
REP12-095	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.62 ES Vol II Figure 15-3 Designated Sites
REP12-096	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.63 ES Vol II Figure 15-4 Non-Statutory Designated Sites
REP12-097	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.64 ES Vol II Figure 16-1 Traffic Study Area
REP12-098	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.65 ES Vol II Figure 16-2 HGV Routes to and from the Site
REP12-099	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.66 ES Vol II Figure 16-3 Traffic Count Locations
REP12-100	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.67 ES Vol II Figure 17-1 Landscape Context
REP12-101	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.68 ES Vol II Figure 17-2 Public Rights of Way within 2km
REP12-102	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.69 ES Vol II Figure 17-3 Landscape Character Plan
REP12-103	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited

	Deadline 12 Submission - 6.3.70 ES Vol II Figure 17-4 Zone of Theoretical Visibility and Potential Viewpoint Location
REP12-104	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.71 ES Vol II Figure 17-5 Topography
REP12-105	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.72 ES Vol II Figure 17-6 Zone of Theoretical Visibility and Representative Viewpoint Locations
REP12-106	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.121 - ES Vol II Figure 18-1 Designated heritage assets in the 5 km Study Area Nov 2022
REP12-107	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.122 - ES Vol II Figure 18-2 Non - designated heritage assets in 1 km Study Area Nov 2022
REP12-108	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.123 - ES Vol II Figure 18-3 Historic Landscape Character Nov 2022
REP12-109	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.124 - ES Vol II Figure 19-1 Marine Heritage Assets in 1 km Study Area Nov 2022
REP12-110	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.125 - ES Vol II Figure 22-1 HSE Consultation Zones Nov 2022
REP12-111	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.126 - ES Vol II Figure 24-1 Zones of Influence for Cumulative Effects Assessment Nov 2022
REP12-112	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.127 - ES Vol II Figure 24-2 Long List of Other Developments Nov 2022
REP12-113	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.128 - ES Vol II Figure 24-3 Short List of Other Developments Nov 2022
REP12-114	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.3.129 - ES Vol II Figure 6-2 Proposed Development Changes Nov 2022
REP12-115	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 6.5 ES Navigation Guide

REP12-116	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 12 Submission - 7.13b Letter Requesting Further Proposed Change
REP12-117	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 12 Submission - 7.14 Third Change ES Addendum - Non-Technical Summary
REP12-118	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 12 Submission - 7.15.1 Third Change ES Addendum Volume I – Main Text
REP12-119	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 12 Submission - 7.15.2 Third ES Addendum Volume II – Figures
REP12-120	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 12 Submission - 7.16 Habitat Regulations Assessment Report (Clean)
REP12-121	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 12 Submission - 7.16 Habitat Regulations Assessment Report (Tracked)
REP12-122	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 12 Submission - 8.3 Statement of Common Ground with South Tees Development Corporation, Tees Valley Combined Authority and Teesworks Limited (Clean)
REP12-123	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 12 Submission - 8.3 Statement of Common Ground with South Tees Development Corporation, Tees Valley Combined Authority and Teesworks Limited (Tracked)
REP12-124	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 12 Submission - 8.6 Statement of Common Ground with Natural England
REP12-125	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 12 Submission - 8.19 Statement of Common Ground with CF Fertilisers UK Limited (Clean)
REP12-126	<u>Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited</u> Deadline 12 Submission - 8.19 Statement of Common Ground with CF Fertilisers UK Limited (Tracked)

REP12-127	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 8.30 Statement of Common Ground with North Tees Limited, North Tees Land Limited and North Tees Rail Limited (Clean)
REP12-128	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 8.30 Statement of Common Ground with North Tees Limited, North Tees Land Limited and North Tees Rail Limited (Tracked)
REP12-129	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 8.36 Statement of Commonality
REP12-130	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 8.38 Joint Statement between the Applicants and Anglo American Crop Nutrients Limited
REP12-131	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 9.5 Compulsory Acquisition Schedule (Clean)
REP12-132	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 9.5 Compulsory Acquisition Schedule (Tracked)
REP12-133	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 9.48 Applicants' Comments on Deadline 11 Submissions
REP12-134	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 12 Submission - 9.49 Response to Issue Specific Hearing 6 Actions
REP12-135	Anglo American Deadline 12 Submission - Joint Statement between Anglo American and Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited
REP12-136	North Tees Limited Deadline 12 Submission
REP12-137	Northumbrian Water Limited Deadline 12 Submission - Response to Deadline 5 Submission Submission Withdrawn by email dated 10 November 2022 [AS-210]
REP12-138	Orsted Hornsea Project Four Limited Deadline 12 Submission - Comments on the Applicant's Submissions at Deadline 8 and 11
REP12-139	Russell Cooke on behalf of Redcar Bulk Terminal Limited Deadline 12 Submission

REP12-140	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Dogger Bank Teesside A and B Offshore Wind Farms Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Energy and Climate Change
REP12-141	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015
REP12-142	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Explanatory Memorandum
REP12-143	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective provisions position statement requested by ExA
REP12-144	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective provisions position statement requested by ExA - Part 1 (Clean)
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REP12-146	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans Key Plan Ref: GIS-00-L-030
REP12-147	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited (Deadline 12 Submission - Protective Provisions Supporting Plans Sheet 1 Ref: GIS-00-L-03086
REP12-148	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans Sheet 2 ref: GIS-00-L-03086
REP12-149	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans Sheet 3 Ref GIS-00-L-03086
REP12-150	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans Sheet 4 Ref: GIS-00-L-03086
REP12-151	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans Sheet 5 Ref: GIS-00-L-03086
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REP12-153	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans Sheet 7 Ref: GIS-00-L-03086
REP12-154	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans Sheet 8 Ref: GIS-00-L-03086
REP12-155	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans Sheet 9 Ref: GIS-00-L-03086

REP12-156	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans Sheet 10 Ref: GIS-00-L-03086
REP12-157	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans Sheet 11 Ref: GIS-00-L-03086
REP12-158	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans Sheet 12 Ref: GIS-00-L-03086
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REP12-162	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans WILTON COMPLEX Ref: GIS-00-L-03036
REP12-163	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 12 Submission - Protective Provisions Supporting Plans 24" PIPELINE SEAL SANDS TO WILTON LAND OWNERSHIP Ref: GIS-00-L-03066
REP12-164	South Tees Development Corporation Deadline 12 Submission - Cover Letter
REP12-165	South Tees Development Corporation Deadline 12 Submission - Preferred form of Protective Provisions for inclusion in the made Order
REP12-166	South Tees Development Corporation Deadline 12 Submission - Final Summary of Outstanding Objections and Closing Submissions
REP12-167	Shepherd and Wedderburn LLP on behalf of Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited Deadline 12 Submission
Deadline 13 - 07 November 2022	
Deadline for receipt by the ExA of: - Comments on any other information submitted at Deadline 12 - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP13-001	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - Applicant - Cover email
REP13-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 1.2 - Application Guide - Nov 2022

REP13-003	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 3.3 - Funding Statement - Appendix 1 (Clean) - Nov 2022
REP13-004	Duplicate of reference REP13-003
REP13-005	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 3.3 - Funding Statement - Appendix 1 (Tracked) - Nov 2022
REP13-006	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 3.3 - Funding Statement - Appendix 1 (Tracked) - Nov 2022
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REP13-008	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 3.3 - Funding Statement - Appendix 3 - Shell - Nov 2022
REP13-009	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 3.3 - Funding Statement - Appendix 4 - Total - Nov 2022
REP13-010	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 3.3 - Funding Statement - Appendix 5 - Equinor - Nov 2022
REP13-011	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 3.3 - Funding Statement - Appendix 6 - NG - Nov 2022
REP13-012	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 8.12 - NWL SoCG - Final - Nov 2022
REP13-013	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 8.18 - CATS SoCG - Final (signed) - Nov 2022
REP13-014	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 8.36 - Statement of Commonality - Nov 2022
REP13-015	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 8.37 - SoCG - North Sea Midstream Partners - Final - Nov 2022

REP13-016	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 8.4 - MMO SoCG - Final (signed) - Nov 2022
REP13-017	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 8.5 - EA SoCG - Final (signed) - Oct 2022
REP13-018	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 8.6 - Natural England SoCG - Final (signed) - Oct 2022
REP13-019	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 9.50 - Applicants' Comments on D12 Submissions - Nov 2022
REP13-020	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 9.51 - Applicants' Response to ExA's RFI dated 2 Nov 2022 - Nov 22
REP13-021	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Deadline 13 Submission - 9.52 - End of Examination Negotiation Status - Nov 2022
REP13-022	Climate Emergency Policy and Planning (CEPP) Deadline 13 Submission - Other: Final submission
REP13-023	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 13 Submission - Late submission accepted at the discretion of the Examining Authority – Comments of any other submission received at Deadline 12
REP13-024	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 13 Submission - Late submission accepted at the discretion of the Examining Authority - preferred Protective Provisions – Track changes
REP13-025	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 13 Submission - Late submission accepted at the discretion of the Examining Authority - Protective Provisions – Clean
REP13-026	DLA Piper UK LLP on behalf of Sembcorp Utilities (UK) Limited Deadline 13 Submission - Late submission accepted at the discretion of the Examining Authority - Protective Provisions
REP13-027	Marine Management Organisation Deadline 13 Submission - Comments on any other information submitted at Deadline 12
REP13-028	Natural England Deadline 13 Submission - Any further information requested by the ExA under Rule 17 of the Examination Rules

REP13-029	Duplicate of reference REP13-028
REP13-030	North Tees Limited Deadline 13 Submission - Letter to Planning Inspectorate Deadline 13 Various matters
REP13-031	Redcar Bulk Terminal Limited Deadline 13 Submission - Comments on any other information submitted at Deadline 12
REP13-032	Shepherd and Wedderburn LLP on behalf of Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited Deadline 13 Submission - Other: Affected Persons - CPO Land
REP13-033	South Tees Development Corporation Deadline 13 Submission - Other: STDC's preferred form of Protective Provisions for inclusion in the made Order (Tracked changes)
REP13-034	South Tees Development Corporation Deadline 13 Submission - Other: STDC's preferred form of Protective Provisions for inclusion in the made Order (clean copy)
REP13-035	South Tees Development Corporation Deadline 13 Submission - Other: D13 - Cover letter
Other Documents	
OD-001	TCUP – Regulation 32 Transboundary Screening
OD-002	Net Zero Teesside Power Limited & Net Zero North Sea Storage Limited Section 56 Notice
OD-003	Net Zero Teesside Power Ltd & Net Zero North Sea Storage Ltd Certificates of Compliance
OD-004	Net Zero Teesside Power & Net Zero North Sea Storage Ltd Notice of Issue Specific Hearing 1 into the scope of the Proposed Development on 10 May 2022 at 2pm; Issue Specific Hearing 2 into the draft DCO on 11 May 2022 at 10am and; Compulsory Acquisition Hearing 1 on 11 May 2022 at 2pm

APPENDIX B: LIST OF ABBREVIATIONS

Appendix B: List of Abbreviations

Abbreviation or usage	Reference
AA	Appropriate assessment
AELs	Associated Emission Levels
AEoI	Adverse Effects on Integrity
AEP	Annual Exceedance Probability
AGI	Above Ground Installation
AIL	Abnormal Indivisible Load
ALARP	As low as is reasonably practicable
ANCB	Appropriate Nature Conservation Body
AOD	Above Ordnance Datum
AP(s)	Affected Person(s)
AQD	Air Quality Directive
ASI	Accompanied Site Inspection
BAT	Best Available Technique
BEIS	(Department of) Business, Energy and Industrial Strategy
BoR	Book of Reference
BSAC	British Sub Aqua Club
BP	BP Exploration Operating Company Limited
CA	Compulsory Acquisition
CAA	Conservation Area Appraisal
CA Guidance	The Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (DCLG September 2013)
CAH	Compulsory Acquisition Hearing
CA Schedule	Compulsory Acquisition Schedule
CCA2008	Climate Change Act 2008
CCC	Climate Change Committee
CCGT	Combined Cycle Gas Turbine
CCR	Carbon Capture Readiness
CCRR	Climate Change Resilience Review
CCS	Carbon Capture and Storage
CCUS	Carbon Capture Usage and Storage
CEPP	Climate Emergency Policy and Planning
CEMP	Construction Environmental Management Plan
CFL	CF Fertilisers UK Limited
CHP	Combined Heat and Power
CIEEM	Chartered Institute of Ecology and Environmental Management
CIAS	Cleveland Industrial Archaeology Society
CNSL	CATS North Sea Limited
CO	Carbon Monoxide
CO ₂	Carbon Dioxide
COMAH	Control of Major Accidents and Hazards
COSHH	Control of Substances Hazardous to Health Regulations
CTMP	Construction Traffic Management Plan
CWTP	Construction Worker Travel Plan

Abbreviation or usage	Reference
D	Deadline
DAS	Design and Access Statement
dB	Decibel
DCC	Direct Contact Cooler
DCO	Development Consent Order
dDCO	draft Development Consent Order
Defra	Department for Environment, Food and Rural Affairs
DIN	Dissolved Inorganic Nitrogen
DEMP	Decommissioning Environmental Management Plan
Design Guide	Teesworks Design Guide for Development
DLUHC	Department for Levelling Up, Housing and Communities
DML	Deemed Marine Licence
DPA	Dispatchable Power Agreement
EA	Environment Agency
EA2008	Energy Act 2008
ECC	East Coast Cluster
ECHR	European Convention on Human Rights
EEA	European Economic Area
EIA	Environmental Impact Assessment
the EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EM	Explanatory Memorandum
EN-1	Overarching National Policy Statement for Energy (EN-1)
EN-2	National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2)
EN-4	National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)
EN-5	National Policy Statement for Electricity Networks Infrastructure (EN-5)
EP	Environmental Permit
EQS	Environmental Quality Standard
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
ETS	Emissions Trading System
EU	European Union
EUWA2018	The European Union (Withdrawal) Act 2018
ExA	Examining Authority
Exolum	Exolum Seal Sands Ltd and Exolum Riverside Ltd
ExQ1	Initial written questions
ExQ2	Further (second) written questions
ExQ3	Further (third) written questions
FEED	Front End Engineering Design
FRA	Flood Risk Assessment
FTE	Full time equivalent
GHG	Greenhouse Gas

Abbreviation or usage	Reference
GLVIA3	Guidelines for Landscape and Visual Impact Assessment (Landscape Institute, 2013)
GW	
GWh	Gigawatt hour
ha	hectare
the Habitats Regulations	Conservation of Habitats and Species Regulations 2017 (as amended)
HBC	Hartlepool Borough Council
HDD	Horizontal Directional Drilling
HE	Historic England
HGV	Heavy Goods Vehicle
HLP	Hartlepool Local Plan 2018
HP	High Pressure
HP4	Hornsea Project 4
HPU	Huntsman Polyurethanes (UK) Limited
HRA	Habitats Regulations Assessment
HRSG	Heat Recovery Steam Generator
HSE	Health and Safety Executive
HPU	Huntsman Polyurethanes (UK) Limited
IAP	Initial Assessment of the Principal Issues
ICCI	In-combination Climate Change Impacts
IED	Industrial Emissions Directive
IEMA	Institute for Environmental Management and Assessment
the IEMA Guidance	Assessing Greenhouse Gas Emissions and Evaluating their Significance, 2017
the updated IEMA Guidance	Assessing Greenhouse Gas Emissions and Evaluating their Significance, 2022
INNS	Invasive Non-Native Species
IP(s)	Interested Party/ Parties
IPD Regulations	Infrastructure Planning (Decisions) Regulations 2010
ISH	Issue Specific Hearing
JNCC	Joint Nature Conservation Committee
kg	Kilogram
kgN/hr	Kilogrammes of Nitrogen per hour
km	Kilometre
kV	Kilovolts
LCA	Landscape Character Area
LIR	Local Impact Report
LNR	Local Nature Reserves
LSE	Likely Significant Effects
LV	Limit Values
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Sites
m	metre
Masterplan	South Tees Regeneration Masterplan
MBT	Micro-Bored Tunnel
MCA	Maritime and Coastguard Agency

Abbreviation or usage	Reference
MCAA	Marine and Coastal Access Act 2009
MHWS	Mean High Water Springs
MLWS	Mean Low Water Springs
MMO	Marine Management Organisation
mm	millimetres
MMP	Materials Management Plan
MPS	Marine Policy Statement
MSA	Mineral Safeguarding Area
MW	Megawatts
MWe	Megawatts electric
mph	miles per hour
Mt	Million tonnes
MTPA	Million tonnes per annum
NCA	National Character Area
NDHA	Non-designated heritage asset
NE	Natural England
NEP	Northern Endurance Partnership
NERCA	Natural Environment and Rural Communities Act 2006
NGET	National Grid Electricity Transmission PLC
NGG	National Grid Gas Plc
NH	National Highways
NH ₃	Ammonia
NIA	Noise Important Area
NIC	National Infrastructure Commission
NIP	National Infrastructure Delivery Plan
NNR	National Nature Reserve
NO ₂	Nitrogen Dioxide
NO _x	Nitrogen Oxide
NPG	Northern Powergrid (North East) Plc and Northern Powergrid Limited
NPL	NPL Waste Management Limited
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NR	Network Rail Infrastructure Limited
NRMM	Non-road mobile machinery
NSIP	Nationally Significant Infrastructure Project
NSMP	North Sea Midstream Partners (incorporating Teesside Gas Processing Plant Limited / Teesside Gas and Liquids Processing)
NTG	North Tees Group (incorporating North Tees Limited, North Tees Rail Limited and North Tees Land Limited)
NSR	Noise Sensitive Receptors
NSTA	North Sea Transition Authority
NWL	Northumbrian Water Limited
NZT	Net Zero Teesside
OFH	Open Floor Hearing
OMH	Open mosaic habitats

Abbreviation or usage	Reference
OPRED	Offshore Petroleum Regulator for Environment and Decommissioning
Orsted	Orsted Hornsea Project Four
PA1998	Petroleum Act 1998
PA2008	Planning Act 2008 (as amended)
PC	Process Contribution
PCC	Power Capture and Compression
PDT	PD Teesport Limited
PEC	Predicted Environmental Concentration
PTS	Permanent Threshold Shift
PM	Preliminary Meeting
PM _{2.5}	Particulate Matter which is 2.5 micrometres or less in diameter
PM ₁₀	Particulate Matter which is 10 micrometres or less in diameter
PPW	Permitted preliminary works
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
R	Requirement
the 2010 Regulations	Storage of Carbon Dioxide (Licensing) Regulations 2010
the 2020 Regulations	Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020
RBT	Redcar Bulk Terminal Limited
RCBC	Redcar and Cleveland Borough Council
RCLP	Redcar and Cleveland Local Plan 2018
RIES	Report on the Implications for European Sites
Ro-Ro	Roll on/Roll off ships
RPA(s)	Relevant Planning Authority/ Authorities
RR	Relevant Representation
s	Section (in Act)
SABIC	SABIC UK Petrochemicals Limited
SAC	Special Area of Conservation
Sembcorp	Sembcorp Utilities (UK) Limited
SNCB	Statutory Nature Conservation Body
SO ₂	Sulphur Dioxide
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SPA	Special Protection Area
SPD	Supplementary Planning Document
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
STBC	Stockton-on-Tees Borough Council
STLP	Stockton-on-Tees Local Plan 2019
STDC	South Tees Development Corporation

Abbreviation or usage	Reference
SuDS	Sustainable Drainage Systems
SWMP	Site Waste Management Plan
TCPA	Town and Country Planning Act 1990
TGLP	Teesside Gas and Liquids Processing
TGPP	Teesside Gas Processing Plant/ Teesside Gas and Liquids Processing
TP	Temporary Possession
TTS	Temporary Threshold Shift
TTWA	Travel To Work Area
UK	United Kingdom
UKHSA	UK Health Security Agency
UKRI	UK Research and Innovate
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
USI	Unaccompanied Site Inspection
UXO	Unexploded Ordnance
WCA	Wildlife and Countryside Act 1981
WFD	Water Framework Directive
WR	Written Representation
WSI	Written Scheme of Investigation
WwTP	Wastewater Treatment Plant
ZTV	Zone of Theoretical Visibility

APPENDIX C: THE RECOMMENDED DCO

202* No.

INFRASTRUCTURE, PLANNING

The Net Zero Teesside Order 202*

Made - - - - ****

Coming into force - - ****

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PROCESSING, TEESSIDE GAS PROCESSING PLANT
LIMITED & NORTHERN GAS PROCESSING LIMITED
- SCHEDULE 13 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS
- SCHEDULE 14 — DOCUMENTS AND PLANS TO BE CERTIFIED
- SCHEDULE 15 — DESIGN PARAMETERS

An application has been made to the Secretary of State under section 37 (applications for Orders granting development consent) of the Planning Act 2008(a) (the “2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by a panel appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c). The panel having considered the application with the documents that accompanied the application, and the

(a) 2008 c.29. Section 37 was amended by section 137(5) of, and Schedule 13 to, the Localism Act 2011 (c.20).
(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378, and S.I. 2019/734.
(c) S.I. 2010/103, amended by S.I. 2012/635.

representations made and not withdrawn, has, in accordance with section 83(a) of the 2008 Act, submitted a report and recommendation to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn, the report and recommendation of the appointed panel and having taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(b) and having had regard to the documents and matters referred to in section 104(2) (decisions in cases where national policy statement has effect) of the 2008 Act has determined to make an Order granting development consent for the development comprised in the application on terms that, in the opinion of the Secretary of State, are not materially different from those comprised in the application.

The Secretary of State is satisfied that open space comprised within the Order land, when burdened with the new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public and that, accordingly, section 132(3)(c) of the 2008 Act applies;

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115, 120(d) and 149A of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Net Zero Teesside Order 202* and comes into force on 20[x].

Interpretation

- 2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(e);
“the 1965 Act” means the Compulsory Purchase Act 1965(f);
“the 1966 Act” means the Tees and Hartlepool Port Authority Act 1966(g);
“the 1974 Order” means the Tees and Hartlepool Port Authority Revision Order 1974(h);
“the 1980 Act” means the Highways Act 1980(i);
“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(j);
“the 1984 Act” means the Road Traffic Regulation Act 1984(k);
“the 1986 Act” means the Gas Act 1986(a);

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- (a) Section 83 was amended by the Localism Act 2011 (c.20) section 128(2) and 237, Schedule 13 paragraphs 1, 35(1) to (4) and Schedule 25, Part 20.
(b) S.I. 2017/572.
(c) Section 132 was amended by section 24(3) of the Growth and Infrastructure Act 2013 (c.27).
(d) Sections 114, 115 and 120 were amended by sections 128(2) and 140 and Schedule 13, paragraphs 1, 55(1), (2) and 60(1) and (3) of the Localism Act 2011. Relevant amendments were made to section 115 by section 160(1) to (6) of the Housing and Planning Act 2016 (c.22).
(e) 1961 c.33.
(f) 1965 c.56.
(g) 1966 c.xxv.
(h) S.I. 1975/693.
(i) 1980 c.66.
(j) 1981 c.66.
(k) 1984 c.27.

“the 1989 Act” means the Electricity Act 1989**(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 1994 Order” means the Tees and Hartlepool Harbour Revision Order 1994**(e)**;

“the 2000 Act” means the Countryside and Rights of Way Act 2000**(f)**;

“the 2004 Act” means the Traffic Management Act 2004**(g)**;

“the 2008 Act” means the Planning Act 2008**(h)**;

“the 2009 Act” means the Marine and Coastal Access Act 2009**(i)**;

“access and rights of way plans” means the plans which are certified as the access and rights of way plans by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

“access land” has the same meaning as in section 1(1) (principal definitions for Part I) of the 2000 Act;

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

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act and further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity and fibre- optic cables, pipe and cable protection telecommunications equipment and electricity cabinets;

“application guide” means the document of that description which is certified by the Secretary of State as the application guide under article 45 for the purposes of this Order;

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

“book of reference” means the document of that description which is certified by the Secretary of State as the book of reference under article 45 for the purposes of this Order;

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

“carbon dioxide storage licence” means a licence for the activities under section 17 of the Energy Act 2008 for the carbon dioxide storage site;

“carbon dioxide storage site” means the site for the storage of carbon dioxide captured or collected by the authorised development;

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

“CCGT” means combined cycle gas turbine;

“CCP” means carbon capture plant;

“commence” means—

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- (a) 1986 c.44.
 - (b) 1989 c.29.
 - (c) 1990 c.8.
 - (d) 1991 c.22.
 - (e) S.I. 1994/2064.
 - (f) 2000 c.37.
 - (g) 2004 c.18.
 - (h) 2008 c.29.
 - (i) 2009 c.23.

- (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for operations consisting of pre-construction monitoring surveys approved under the deemed marine licences;
- (b) in respect of any other works comprised in or carried out for the purposes of the authorised development, the first carrying out of any material operation, as defined in section 155 (when development begins) of the 2008 Act,

and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of testing all systems and components of the authorised development (which are installed or in relation to which installation is nearly complete) in order to ensure that they, and the authorised development as a whole, function in accordance with the plant design specifications and the undertaker’s operational and safety requirements;

“consenting authority” means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 12 (protective provisions);

“date of final commissioning” means the date on which commissioning of the authorised development is completed and it commences operation on a commercial basis or where specified in this Order, the date on which a specified Work No. commences operation on a commercial basis;

“deemed marine licences” means the marine licences set out in Schedules 10 (deemed marine licence under the 2009 Act – Project A) and 11 (deemed marine licence under the 2009 Act – Project B) and including any variations to them;

“design and access statement” means the statement which is certified as the design and access statement by the Secretary of State under article 45 for the purposes of this Order;

“electronic communication” has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means provided it is in electronic form;

“emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that, in the reasonable opinion of the undertaker, would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action;

“the environmental statement” means the statement certified as the environmental statement by the Secretary of State under article 45 for the purposes of this Order;

“ES addendum” means the documents certified as part of the environmental statement as the Environmental Statement Addendum – Volume I, Environmental Statement Addendum – Volume II and Non-Technical Summary of the Environmental Statement Addendum by the Secretary of State under article 45 for the purposes of this Order;

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

“framework construction environmental management plan” means the document of that description which is certified as the framework construction environmental management plan by the Secretary of State under article 45 for the purposes of this Order;

“framework construction traffic management plan” means the document of that description at appendix 16C of the environmental statement;

“framework construction workers travel plan” means the document of that description at appendix 16B of the environmental statement;

“framework site waste management plan” means the document appended at appendix A of the framework construction environmental management plan;

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

“indicative landscape and biodiversity strategy” means the document of that description which is certified as the indicative landscape and biodiversity strategy by the Secretary of State under article 45 for the purposes of this Order and the updated landscape and biodiversity plan;

“indicative lighting strategy” means the document of that description which is certified as the indicative lighting strategy by the Secretary of State under article 45 for the purposes of this Order;

“land plans” means the plans which are certified as the land plans by the Secretary of State under article 45 for the purposes of this Order;

“legible in all material respects” means the information contained in an electronic communication is available to the recipient to no lesser extent than it would be if transmitted by means of a document in printed form;

“maintain” includes, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development provided that such activities are not likely to give rise to any significant adverse effects that have not been assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“MMO” means the Marine Management Organisation;

“NGET” means National Grid Electricity Transmission plc (company number 2366977) whose registered office is at 1-3 Strand, London WC2N 5EH;

“NZT Power” means Net Zero Teesside Power Limited (company number 12473751) whose registered office is at Chertsey Road, Sunbury On Thames, Middlesex, United Kingdom, TW16 7BP;

“NZNS Storage” means Net Zero North Sea Storage Limited (company number 12473084) whose registered office is at Chertsey Road, Sunbury On Thames, Middlesex, United Kingdom, TW16 7BP;

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

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

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

“permitted preliminary works” means works consisting of environmental surveys, geotechnical surveys, surveys of existing infrastructure, and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors (excluding earthworks and excavations), the provision of temporary means of enclosure and site security for construction, the temporary display of site notices or advertisements and any

(a) 1981 c.67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 7 which are not relevant to the Order.

other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;

“project A” means the development described in Schedule 1 (authorised development) except Work Nos. 6, 7 and 8;

“project B” means the development described in Schedule 1 (authorised development) except Work Nos. 1, 2 and 4;

“relevant highway authority” means the highway authority responsible for highways within the vicinity of the authorised development pursuant to section 1(1A)(2) of the 1980 Act;

“relevant planning authority” means the local planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

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

“Royal Mail” means Royal Mail Group Limited (company number 04138203) whose registered office is at 185 Farringdon Road, London, EC1A 1AA;

“shared areas plan” means the plan defined as the Shared Areas Plan in Part 18 of Schedule 12 of the Order (for the protection of Anglo American);

“special category land” means the land shown hatched blue on the land plans;

“STDC” means South Tees Development Corporation, whose headquarters are at Teesside Airport Business Suite Teesside International Airport Darlington DL2 1NJ;

“STDC area” means the administrative area of STDC;

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

“street” means a street within the meaning of section 48 (streets, street works and undertakers)(a) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act(b);

“Teesworks Limited” means Teesworks Limited (company number 12351851) whose registered office is at Venture House, Aykley Heads, Durham, England, DH1 5TS;

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act;

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

“undertaker” means subject to articles 7 (benefit of the Order) and 8 (consent to transfer benefit of this Order)—

(a) for the purposes of constructing, maintaining and operating Project A, NZT Power;

(b) for the purposes of constructing, maintaining and operating Project B, NZNS Storage;

“updated landscape and biodiversity plan” means the document of that description which is certified as the updated landscape and biodiversity plan by the Secretary of State under article 45 for the purposes of this Order;

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

“working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a);

(a) Section 48 was amended by section 124 (1) and (2) of the Local Transport Act 2008 (c.26).

(b) “Street authority” is defined in section 49, which was amended by section 1(6) and paragraphs 113 and 117 of Schedule 1 to the Infrastructure Act 2015.

“works plans” means the plans which are certified as the works plans by the Secretary of State under article 45 for the purposes of this Order.

(2) The definitions in paragraph (1) do not apply to the deemed marine licences except where expressly provided for in the deemed marine licences.

(3) All distances, directions and lengths referred to in this Order, except for the parameters referred to in Table 9 and Table 10 in Part 1 of Schedule 10, Table 11 and Table 12 in Part 1 of Schedule 11 and Table 14 in Schedule 15, are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access and rights of way plans are to be taken to be measured along that work.

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

(5) References in this Order to “numbered work” and “Work No.” are references to the works comprising the authorised development as set out in Schedule 1 (authorised development) and shown on the works plans.

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

(7) References in this Order to plots are references to the plots shown on the land plans and described in the book of reference.

Electronic communications

3.—(1) In this Order—

- (a) references to documents, maps, plans, drawings, certificates or other documents, or to copies, include references to them in electronic form;
- (b) references to a form of communication being “in writing” include references to an electronic communication that satisfies the conditions in paragraph (2) and “written” and other cognate expressions are to be construed accordingly.

(2) The conditions are that—

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

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

(4) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (5).

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

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

4.—(1) Subject to the provisions of this Order and to the requirements, NZT Power is granted development consent for Project A to be carried out within the Order limits.

(2) Subject to the provisions of this Order and to the requirements, NZNS Storage is granted development consent for Project B to be carried out within the Order limits.

(3) Each numbered work must be situated within the corresponding numbered area shown on the works plans.

Maintenance of authorised development

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

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

Operation of authorised development

6.—(1) The undertaker is hereby authorised to use and to operate the authorised development.

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

Benefit of this Order

7. Subject to article 8 (consent to transfer benefit of this Order), the provisions of this Order have effect—

- (a) solely for the benefit of NZT Power in respect of Project A; and
- (b) solely for the benefit of NZNS Storage in respect of Project B.

Consent to transfer benefit of this Order

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

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works but excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works but excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be so agreed.

(2) The undertaker may with the written consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole of a deemed marine licence and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) where an agreement has been made in accordance with paragraph (1)(b), grant to the lessee the whole of a deemed marine licence and such related statutory rights as may be so agreed.

(3) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole of the benefit of the provisions of a deemed marine licence.

(4) Where paragraph (8) applies no consent of the Secretary of State is required for a transfer or lease pursuant to this article.

(5) Where a transfer or grant has been made in accordance with paragraph (1) or (2) references in this Order to the undertaker, except in paragraph (8), include references to the transferee or the lessee.

(6) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(7) Where an agreement has been made in accordance with paragraph (1) or (2)—

- (a) the benefit transferred or granted (“the transferred benefit”) includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates; and
- (b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker.

(8) This paragraph applies where—

- (a) the transferee or lessee is—
 - (i) a person who holds a licence under section 6 (licences authorising supply, etc.) of the 1989 Act^(a) or section 7 (licensing of public gas transporters)^(b) of the 1986 Act; or
 - (ii) in relation to a transfer or a lease of any works within a highway, a highway authority responsible for the highways within the Order land; or
 - (iii) in relation only to a transfer or lease of all or part of Work No. 3, NGET; or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(9) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1) or (2).

(10) The notification referred to in paragraph (9) must state—

- (a) the name and contact details of the person to whom the benefit of the powers are to be transferred or granted;
- (b) subject to paragraph (9), the date on which the transfer is expected to take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (6), the restrictions, liabilities and obligations that are to apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(11) The date specified under paragraph (10)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

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

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

(12) The notice given under paragraph (9) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(13) The undertaker must, within 10 working days after entering into an agreement under paragraph (1) or (2) in relation to which any of the benefit of the deemed marine licence is to be transferred to another party, notify the Environment Agency and the MMO in writing, and the notice must include particulars of the other party to the agreement under paragraph (1) or (2) and details of the extent, nature and scope of the functions to be transferred or otherwise dealt with which relate to the functions of any of those bodies.

(14) Where a transfer or grant has been made in accordance with paragraph (1) or (2) and relates to the STDC area, the undertaker must notify STDC, prior to the earlier of—

- (a) 10 working days of the date the transfer or grant took effect; or
- (b) the exercise of any power in this Order relating to the STDC area by the transferee or grantee.

(15) The notification referred to in paragraph (14) must state—

- (a) the name and contact details of the person to whom the benefit of the powers have been transferred or granted;
- (b) the date on which the transfer took effect;
- (c) the powers that have been transferred or granted;
- (d) pursuant to paragraph (6), the restrictions, liabilities and obligations that are to apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

Amendment and modification of statutory provisions

9.—(1) The York Potash Harbour Facilities Order 2016 is amended for the purposes of this Order only as set out in Schedule 3 (modifications to and amendments of the York Potash Harbour Facilities Order 2016).

(2) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of any part of numbered works 2A, 6 or 10 and any works that may be carried out in association with those numbered works—

- (a) byelaws and directions made under the 1966 Act, the 1974 Order or the 1994 Order which prevent, restrict, condition or require the consent of the Tees Port Authority or the harbour master to any such works; and
- (b) requirements of section 22 (licensing of works) of the 1966 Act.

PART 3

STREETS

Power to alter layout etc. of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of, or carry out any works in, a street specified in column (2) of Table 1 in Schedule 4 (streets subject to street works) in the manner specified in relation to that street in column (3) of that Table 1.

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

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and

(b) make and maintain passing places.

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

(4) Paragraph (3) does not apply where the undertaker is the street authority for a street in which the works are being carried out.

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and may—

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

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

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Construction and maintenance of new or altered means of access

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

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

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

(4) For the purposes of a defence under paragraph (3), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

Temporary stopping up of streets, public rights of way and access land

13.—(1) The undertaker, during and for the purposes of carrying out and maintaining the authorised development, may temporarily stop up, prohibit the use of, restrict the use of, alter or divert any street or public right of way and may for any reasonable time—

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

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, prohibition, restriction, alteration or diversion of a street or public right of way 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, prohibit the use of, restrict the use of or, for the purposes of sub-paragraphs (a) or (b) of this paragraph (3), alter or divert—

- (a) the streets specified in column (2) of Table 4 in Part 1 of Schedule 6 (those parts of the street to be temporarily stopped up) to the extent specified in column (3) of that Table 4;
- (b) the public rights of way specified in column (2) of Table 5 in Part 2 of Schedule 6 (those public rights of way to be temporarily stopped up) to the extent specified in column (3) of that Table 5; and
- (c) the access land specified in column (2) of Table 6 in Part 3 of Schedule 6 (those parts of the access land where public access may be temporarily suspended) to the extent specified in column (3) of that Table 6.

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

- (a) any street or public right of way specified in paragraph (3) without first consulting the street authority;
- (b) any other street or public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent; or
- (c) any access land without first consulting Natural England.

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

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way or access land which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(7) Without prejudice to the requirements of paragraph (4), the undertaker must not exercise the powers in paragraphs (1) and (3) in relation to a road unless it has—

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

(8) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (3) of this article in relation to a road has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act, and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.

(9) The rights of access conferred by section 2 of the 2000 Act (rights of the public in relation to access land) are suspended in relation to the access land specified in column (2) of Table 6 in Part 3 of Schedule 6] (those parts of the access land where public access may be temporarily suspended) to the extent specified in column (3) of that Table 6.

(10) The period of suspension under paragraph (9) lasts for the period of the temporary stopping up.

(11) In this article—

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

Access to works

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

- (a) form and lay out the means of access, or improve existing means of access, in the locations specified in Schedule 4 (streets subject to street 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 the existing means of access as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with streets authorities

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

- (a) construction of any new street including any structure carrying the street;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
- (e) the execution in the street of any of the authorised development;
- (f) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing publicly maintainable highway; and/or
 - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway; and
- (g) any such works as the parties may agree.

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

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

Traffic regulation

16.—(1) Subject to paragraphs (3) and (4) and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction of the authorised development, at any time prior to the date that is 12 months after the date of final commissioning—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
- (b) make provision as to the direction or priority of vehicular traffic on any road, either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

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

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary stopping up of streets, public rights of way and access land) or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places)(a) of the 1984 Act, and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.

(4) In this article—

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

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

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

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs and such consent may be given subject

(a) Relevant amendments to section 32 were made by the 1991 Act section 168(1) and Schedule 8, paragraph 39.

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

to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

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

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

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

(6) This article does not authorise any water discharge activities or groundwater activities for which an environmental permit would be required pursuant to regulation 12(1) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016^(a).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964^(b), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other terms and expressions, with the exception of the term “watercourse”, used both in this article and in the Water Resources Act 1991^(c) have the same meaning as in that Act.

Felling or lopping of trees and removal of hedgerows

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

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

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

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

Protective works to buildings

19.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(a) S.I. 2016/1154.

(b) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by paragraph 9 of Schedule 3 of the Transport and Works Act 1992 (c.42).

(c) 1991 c.57.

- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date that those works are completed.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice in writing of its intention to exercise that right and, in a case falling within sub-paragraph (a), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice in writing within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 47 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the date of final commissioning it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance)(a) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

(a) As amended by S.I. 2009/1307.

Authority to survey and investigate the land

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

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

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

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

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

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

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

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

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

Removal of human remains

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

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

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

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

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

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10) and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

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

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the Order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (9),

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

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

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

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

(13) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857^(a) is not to apply to a removal carried out in accordance with this article.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) This article is subject to article 25 (compulsory acquisition of rights etc.), article 31 (temporary use of land for carrying out the authorised development) and article 43 (Crown rights).

Power to override easements and other rights

23.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

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

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

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

caused by the carrying out or use of the authorised development and the operation of section 158 (benefit of Order granting development consent) of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the use of land arising by virtue of a contract.

(4) Section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

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

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under acquisition of Land Act of 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act (as applied by article 27 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)).

(2) The authority conferred by article 31 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this

(a) 1857 c.81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 section 2 (1 January 2015: substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077 Schedule1 paragraphs 1 and 2).

paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights etc.

25.—(1) Subject to the following paragraphs of this article, the undertaker may acquire such rights over the Order land as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) The powers of paragraph (1) may be exercised by a statutory undertaker in any case where the undertaker, with the consent of the Secretary of State, transfers the power to a statutory undertaker.

(3) Where in consequence of paragraph (2), a statutory undertaker exercises the powers in paragraph (1) in place of the undertaker, except in relation to the payment of compensation the liability for which must remain with the undertaker, the statutory undertaker is to be treated for the purposes of this Order, and by any person with an interest in the land affected, as being the undertaker in relation to the acquisition of the rights in question.

(4) In the case of—

- (a) the Order land specified in column (1) of Table 7 in Schedule 7 (land in which new rights etc. may be acquired) and coloured blue on the land plans the undertaker's powers of compulsory acquisition under paragraph (1) are limited to the acquisition of such wayleaves, easements, new rights over the land or the imposition of such restrictive covenants as the undertaker may require for or in connection with the authorised development for the purposes specified in column (2) of that Table 7 in relation to that land; and
- (b) the Order land specified in column (1) in Table 7 in Schedule 7 and coloured pink on the land plans the undertaker may, as an alternative to acquiring land pursuant to article 22 (compulsory acquisition of land), acquire such wayleaves, easements, new rights over the land or the imposition of such restrictive covenants as the undertaker may require for or in connection with the authorised development for the purposes specified in column (2) of that Table 7 in relation to that land.

(5) The power under paragraphs (1) and (2) to acquire the rights and to impose the restrictive covenants for the benefit of statutory undertakers—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land as may be required for the benefit of any other statutory undertaker; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land as are required for the benefit of any other statutory undertaker.

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

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

(8) For the purposes of this article and Schedule 7 “statutory undertaker” includes any person who has apparatus within the Order limits.

(9) References in this article to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject.

(10) Nothing in this article permits the undertaker to acquire or create rights or impose restrictive covenants in land specified in Schedule 9 (land of which temporary possession may be taken).

(11) This article is subject to article 43 (Crown rights).

(12) So much of the special category land as is required for the purposes of the exercising of rights acquired by the undertaker pursuant to this article is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those rights.

Private rights

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

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

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

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over any part of the Order land that is owned by, vested in or acquired by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights and where the undertaker gives notice of such extinguishment.

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

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

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 33 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,

- that any or all of those paragraphs are not to apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested, belongs or benefits.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, restrictions right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

- 27.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act) for subsection (2) there is substituted—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.
- (4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A (time limit for general vesting declaration).
- (6) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily)”.
- (7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 28 (acquisition of subsoil or airspace only), which excludes the acquisition of subsoil or airspace only from this Schedule.”.
- (10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 29 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order).

Acquisition of subsoil and airspace only

28.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of and the airspace over the land referred to in paragraph (1) of article 22 (compulsory acquisition of land) and paragraph (1) of article 25 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.

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

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

Modification of Part 1 of the 1965 Act

29.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily)”.

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

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

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 24 (time limit for exercise of authority to acquire land compulsorily) of the Net Zero Teesside Order 202*”.

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

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

“(2) But see article 28(3) (acquisition of subsoil or airspace only) of the Net Zero Teesside Order 202*, which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

- (b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the Net Zero Teesside Order 202*.”.

Rights under or over streets

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

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

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

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

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

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

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take possession of—
 - (i) so much of the land specified in column (1) of Table 8 in Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Table 8;
 - (ii) any other part of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, structures, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land;
- (d) construct any works specified in relation to that land in column (2) of Table 8 in Schedule 9 (land of which temporary possession may be taken); and
- (e) carry out or construct any mitigation works.

(2) Before taking temporary possession of land for a period of time by virtue of paragraph (1) the undertaker must give a notice of intended entry to each of the owners and occupiers of the land, so far as known to the undertaker after making diligent inquiry.

(3) The notice in paragraph (2) must specify—

- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of 28 days beginning with the day on which the notice is given;
- (b) subject to paragraph (4) the period for which the undertaker is to take temporary possession of the land, provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the earlier of—
 - (i) where Schedule 9 (land of which temporary possession may be taken) specifies a purpose for which possession may be taken relating to particular Work Nos., the end of the period of one year beginning with the date of final commissioning of those Work Nos.; or

- (ii) the end of the period of one year beginning with the date of final commissioning of the authorised development; or
 - (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act, made a declaration under section 4 of the 1981 Act or has otherwise acquired or leased the land.
- (5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or any debris removed under this article.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).
- (9) The undertaker must not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).
- (10) Nothing in this article precludes the undertaker from—
- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 7 (land in which new rights etc. may be acquired); or
 - (b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 28 (acquisition of subsoil or airspace only) or article 30 (rights under or over streets).
- (11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- (13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 9 (land of which temporary possession may be taken).
- (14) The provisions of the Neighbourhood Planning Act 2017(a) do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development.
- (15) So much of the special category land as is required for the purposes of exercising the powers pursuant to this article is temporarily 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 those powers, and only for such time as any special category land is being used under this article.

(a) 2017 c.20.

Temporary use of land for maintaining the authorised development

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

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

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

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

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

(4) The notice in paragraph (3) must specify—

- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of 28 days beginning with the day on which the notice is given; and
- (b) subject to paragraph (5) the period for which the undertaker is to take temporary possession of the land, provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

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

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

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

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

(9) Nothing in this article affects any liability to pay compensation under section 152 (further provisions as to compensation for injurious affection) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

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

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

(12) In this article “the maintenance period” means the period of one year beginning with the date of final commissioning.

(13) The provisions of the Neighbourhood Planning Act 2017 do not apply insofar as they relate to temporary possession of land under this article in connection with the maintenance of the

authorised development and other development necessary for the authorised development within the Order land.

(14) So much of the special category land as is required for the purposes of exercising the powers pursuant to this article is temporarily 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 those powers, and only for such time as any special category land is being used under this article.

Statutory undertakers

33. Subject to the provisions of Schedule 12 (protective provisions), the undertaker may—
- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
 - (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land; and
 - (c) create and acquire compulsorily rights or impose restrictions over any Order land belonging to statutory undertakers.

Apparatus and rights of statutory undertakers in streets

34. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 10 (power to alter layout etc. of streets), article 11 (street works) or article 13 (temporary stopping up of streets, public rights of way and access land) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 12 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

35.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33 (statutory undertakers) any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 34 (apparatus and rights of statutory undertakers in streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

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

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

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

Compulsory acquisition of land – incorporation of the mineral code

36. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated in this Order subject to the following modifications—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for the “undertaking” substitute “authorised development”; and
- (c) paragraph 8(3) is not incorporated.

PART 6

MISCELLANEOUS AND GENERAL

Deemed marine licence

37. The marine licences set out in Schedules 10 and 11 are deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensed activities set out in Part 1, and subject to the conditions set out in Part 2, of each licence.

Application of landlord and tenant law

38.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

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

(3) No enactment or rule of law to which paragraph (2) applies is to 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

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

(a) 1981 c.67.

Defence to proceedings in respect of statutory nuisance

40.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990^(a) in relation to a nuisance falling within section 79(1) (statutory nuisances and inspections therefor.) of that Act no order is to be made, and no fine may be imposed, under section 82(2) (summary proceedings by persons aggrieved by statutory nuisances) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974^(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

41. Schedule 12 (protective provisions) has effect.

Saving for Trinity House

42. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown Rights

43.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(a) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

(b) 1974 c.40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3), paragraphs 33 and 35(1) of Schedule 17, and paragraph 1(1)(xxvii) of Schedule 16 to the Electricity Act 1989 (c.29); Section 61 was amended by section 133(2) and Schedule 7 to the Building Act 1984 (c.55), paragraph 1 of Schedule 24 to the Environment Act 1995 (c.25), and section 162(1) of and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c.43).

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

Procedure in relation to certain approvals

44. —(1) Where an application is made to, or a request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Schedule 13 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 13 (procedure for discharge of requirements) and where stated to the contrary if, within six weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

Certification of plans etc.

45. —(1) The undertaker, as soon as practicable after the making of this Order, must submit to the Secretary of State copies of all documents and plans listed in Table 13 in Schedule 14 (documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

(2) Where the amendment of any plan or document referred to in paragraph (1) is required to reflect the terms of the Secretary of State's decision to make this Order, that plan or document, in the form amended to the Secretary of State's satisfaction, is the version of the plan or document to be certified under paragraph (1).

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

Service of Notices

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

- (a) by post; and
- (b) subject to article 3 by electronic transmission.

(2) If an electronic communication is received outside the recipient's business hours, it is to be taken to have been received on the next working day.

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

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

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

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

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

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

Arbitration

47. —(1) Subject to article 42 (saving for Trinity House) any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

(2) Any matter for which the consent or approval of the Secretary of State or the MMO is required under any provision of this Order is not subject to arbitration.

Funding for compulsory acquisition compensation

48. —(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place, following approval by the Secretary of State, either—

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

(2) The provisions are—

- (a) article 22 (compulsory acquisition of land);
- (b) article 25 (compulsory acquisition of rights etc.);
- (c) article 26 (private rights);
- (d) article 28 (acquisition of subsoil or airspace only);
- (e) article 30 (rights under or over streets);
- (f) article 31 (temporary use of land for carrying out the authorised development);
- (g) article 32 (temporary use of land for maintaining the authorised development); and
- (h) article 33 (statutory undertakers).

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

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

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

[Signed by authority of

Address
Date

Name
Title
Department]

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the Borough of Redcar and Cleveland and the Borough of Stockton and Tees a nationally significant infrastructure project as defined in sections 14(1)(a) and 15, and development which is to be treated as development for which development consent is required by direction under sections 35(1) and 35ZA of the 2008 Act, and associated development under section 115(1)(b) of that Act, comprising—

Work No. 1 – an electricity generating station fuelled by natural gas and with a gross output capacity of up to 860 megawatts (MWe) comprising—

- (a) Work No. 1A – a combined cycle gas turbine plant, comprising—
 - (i) a gas turbine;
 - (ii) a steam turbine;
 - (iii) a heat recovery steam generator (HRSG);
 - (iv) gas and steam turbine buildings;
 - (v) gas turbine air intake filters;
 - (vi) selective catalytic reduction equipment;
 - (vii) HRSG stack;
 - (viii) a transformer;
 - (ix) deaerator and feed water pump buildings;
 - (x) chemical sampling / dosing plant;
 - (xi) demineralised water treatment plant, including storage tanks;
 - (xii) electrical substation, including electrical equipment, buildings and enclosures;
 - (xiii) gas reception facility, including gas supply pipeline connection works, gas receiving area, gas pipeline internal gauge receiver for pipe inspection, emergency shutdown valves, gas vents and gas metering, and pressure reduction equipment;
 - (xiv) auxiliary boiler and emissions stack; and
 - (xv) continuous emissions monitoring system;
- (b) Work No. 1B – CCGT and CCP cooling and utilities infrastructure, comprising—
 - (i) mechanical draft cooling towers;
 - (ii) cooling water pumps, plant and buildings;
 - (iii) cooling water dosing and sampling plant and buildings;
 - (iv) standby diesel generator and emissions stack;
 - (v) diesel fuel storage tanks and unloading area;
 - (vi) fire and raw water storage tanks;
 - (vii) chemical storage facilities;
 - (viii) wastewater treatment plant and building; and
 - (ix) effluent, stormwater and firewater retention ponds;
- (c) Work No. 1C – CCP, comprising—
 - (i) flue gas pre-treatment plant and blower;
 - (ii) carbon dioxide absorption column and associated stack;

- (iii) carbon dioxide stripper and solvent regenerator;
- (iv) carbon dioxide conditioning and compression equipment; and
- (v) ancillary equipment, including pumps, chemical storage, water washing equipment, acid washing equipment and pipework;
- (d) Work No. 1D – administration, control room and stores, comprising—
 - (i) administration and control buildings; and
 - (ii) workshop and stores buildings; and
- (e) Work No. 1E – ancillary works in connection with Work Nos. 1A, 1B, 1C and 1D—
 - (i) ancillary plant, buildings, enclosures and structures;
 - (ii) pipework, pipe runs and pipe racks;
 - (iii) firefighting equipment, buildings and distribution pipework;
 - (iv) lubrication oils storage facilities;
 - (v) permanent plant laydown area for operation and maintenance activities; and
 - (vi) mechanical, electrical, gas, telecommunications and water networks, pipework, cables, racks, infrastructure, instrumentation and utilities, including connections between Work Nos. 1A, 1B, 1C and 1D and parts of Work Nos. 2A, 3, 4, 5, 6, 7 and 8.

Work No. 2 – a gas connection, being works for the transport of natural gas to Work No. 1A, comprising—

- (a) Work No. 2A – underground high pressure gas pipeline, comprising—
 - (i) an underground high-pressure gas supply pipeline of up to 600 millimetres nominal bore diameter;
 - (ii) cathodic protection posts;
 - (iii) marker posts; and
 - (iv) underground electrical supply cables, transformers and control systems cables; and
- (b) Work No. 2B – above ground installations connecting Work No. 2A to the National Transmission System, comprising—
 - (i) a compound for National Grid Gas plc’s apparatus, comprising—
 - (aa) an offtake connection from the National Transmission System;
 - (bb) above and below ground valves, flanges and pipework;
 - (cc) remotely operated valve and valve bypass;
 - (dd) an above or below ground pressurisation bridle;
 - (ee) instrumentation and electrical kiosks; and
 - (ff) telemetry and communications equipment;
 - (ii) compounds for the undertaker’s apparatus, comprising—
 - (aa) above and below ground valves, flanges and pipework;
 - (bb) isolation valves;
 - (cc) pipeline inline gauge launching facility;
 - (dd) instrumentation and electrical kiosks; and
 - (ee) telemetry and communications equipment; and
 - (iii) in connection with Work No. 2B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, closed circuit television cameras and columns.

Work No. 3 – works for the export of electricity from Work No. 1A to the National Grid Electricity Transmission system, comprising—

- (a) Work No. 3A – an electrical connection from Work No. 1A to Work No. 3B, comprising 275 kilovolt underground and overground electrical cables and control systems cables, and the connection between Work No. 3B and the National Grid Tod Point substation; and
- (b) Work No. 3B – a new electrical substation at Tod Point, including electrical equipment, buildings, enclosures and extension works at the National Grid substation.

Work No. 4 – water supply connection works to provide cooling and make-up water to Work No. 1, comprising up to two water pipelines of up to 1100 millimetres nominal bore diameter from the existing raw water main.

Work No. 5 – wastewater disposal works in connection with Work No. 1, comprising—

- (a) Work No. 5B – a new water discharge pipeline to the Tees Bay; and
- (b) Work No. 5C – up to two new wastewater pipelines between Bran Sands Wastewater Treatment Plant and Work No. 1.

Work No. 6 – a carbon dioxide gathering network, comprising underground and overground pipelines of up to 550 millimetres nominal bore diameter for the transport of carbon dioxide to Work No. 7.

Work No. 7 – a high pressure carbon dioxide compression station, comprising—

- (a) inlet metering;
- (b) compression facilities;
- (c) electrical connection and substation;
- (d) hydrogen storage; and
- (e) mechanical, electrical, gas, telecommunications, pipework, cables, racks, infrastructure, instrumentation and utilities, including connections between Work No. 7 and Work Nos. 1A, 1B, 1C, 1D, 6 and 8.

Work No. 8 – high pressure carbon dioxide export pipeline corridor, comprising an overground and underground pipeline of up to 800 millimetres nominal bore diameter and associated power and fibre-optic cables.

Work No. 9 – temporary construction and laydown areas, comprising hardstanding, laydown and open storage areas, contractor compounds and construction staff welfare facilities, gatehouse and weighbridge, vehicle parking and cycle storage facilities, internal roads and pedestrian and cycle routes, security fencing and gates, external lighting including lighting columns, and, closed circuit television cameras and columns, comprising—

- (a) Work No. 9A – Teesworks laydown;
- (b) Work No. 9B – Navigator Terminal and Seal Sands laydown;
- (c) Work No. 9C – INEOS laydown;
- (d) Work No. 9D – Saltholme laydown;
- (e) Work No. 9E – Saltholme laydown; and
- (f) Work No. 9F – Haverton Hill laydown.

Work No. 10 – access and highway improvements, comprising works to create, improve, repair or maintain access roads, haul roads and access points.

In connection with and in addition to Work Nos. 1 to 10, further development including—

- (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including works to existing drainage systems;
- (b) electrical, gas, potable water supply, carbon dioxide, foul water drainage and telecommunications infrastructure connections and works, and works to alter the position of services and utilities connections;

- (c) hardstanding and hard landscaping;
- (d) soft landscaping, including embankments and planting;
- (e) biodiversity enhancement measures;
- (f) security fencing, gates, boundary treatment and other means of enclosure;
- (g) external lighting, including lighting columns;
- (h) gatehouses;
- (i) closed circuit television cameras and columns and other security measures;
- (j) site establishment and preparation works, including—
 - (i) site clearance (including vegetation removal, demolition of existing buildings and structures);
 - (ii) earthworks (including soil stripping and storage and site levelling) and excavations;
 - (iii) remediation works;
 - (iv) the creation of temporary construction access points;
 - (v) the alteration of the position of services and utilities; and
 - (vi) works for the protection of buildings and land;
- (k) temporary construction laydown areas and contractor facilities, including—
 - (i) materials and plant storage and laydown areas;
 - (ii) generators;
 - (iii) concrete batching facilities;
 - (iv) vehicle and cycle parking facilities;
 - (v) pedestrian and cycle routes and facilities;
 - (vi) offices and staff welfare facilities;
 - (vii) security fencing and gates;
 - (viii) external lighting;
 - (ix) roadways and haul routes;
 - (x) wheel wash facilities; and
 - (xi) signage;
- (l) vehicle parking and cycle storage facilities;
- (m) accesses, roads and pedestrian and cycle routes; and
- (n) tunnelling, boring, piling and drilling works and management of arisings,

and to the extent that it does not form part of such works, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

REQUIREMENTS

Article 4

Commencement of the authorised development

1.—(1) The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority fourteen days' notice of its intention to commence the authorised development.

Notice of start and completion of commissioning

2.—(1) Notice of the intended start of commissioning of the authorised development must be given to the relevant planning authority no later than fourteen days prior to the date that commissioning is started.

(2) Notice of the intended date of final commissioning of each of Work Nos.1 and 6 must be given to the relevant planning authority no later than fourteen days prior to the date of final commissioning.

Detailed design

3.—(1) No part of the authorised development comprised in Work No. 1 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with STDC)—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) the height of the stacks which must be at a level at which the environmental effects will be no worse than those identified in chapter 8 of the environmental statement;
- (d) hard standings; and
- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian routes.

(2) No part of the authorised development comprised in Work No. 2A may commence, save for the permitted preliminary works, until details of the following, to the extent that they are above mean low water springs, for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp, STDC and the TG entities)—

- (a) the route and method of installation of the high-pressure gas supply pipeline and any electrical supply, telemetry and other apparatus;
- (b) the number and location of cathodic protection posts and marker posts;
- (c) surface water drainage; and
- (d) works involving trenchless technologies including their location.

(3) No part of the authorised development comprised in Work No. 2B may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp, STDC and the TG entities)—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;

- (b) hard standings;
- (c) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities; and
- (d) works involving trenchless technologies including their location.

(4) No part of the authorised development comprised in Work No. 3 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC)—

- (a) the route and method of installation of the 275 kilovolt electrical cables and control system cables running from Work No. 1 to the existing substation at Tod Point;
- (b) the connections within the existing Tod Point substation, including electrical cables, connections to the existing busbars and new, upgraded or replacement equipment; and
- (c) works involving trenchless technologies including their location.

(5) No part of the authorised development comprised in Work No. 4 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with STDC)—

- (a) route and method of construction of the water supply pipelines; and
- (b) works involving trenchless technologies including their location.

(6) No part of the authorised development comprised in Work No. 5 may commence, save for permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC)—

- (a) the route and method of construction of any new wastewater water pipelines above mean low water springs; and
- (b) works involving trenchless technologies including their location.

(7) No part of the authorised development comprised in Work No. 6 may commence, save for the permitted preliminary works, until details of the following, to the extent that they are above mean low water springs, for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC)—

- (a) the route and method of installation of the carbon dioxide gathering network pipelines and any electrical supply, telemetry and other apparatus;
- (b) the number and location of cathodic protection posts and marker posts; and
- (c) works involving trenchless technologies including their location.

(8) No part of the authorised development comprised in Work No. 7 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with STDC)—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings; and
- (d) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, and pedestrian routes.

(9) No part of the authorised development comprised in Work No. 8 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with STDC)—

- (a) the route and method of installation of the carbon dioxide export pipeline and any electrical supply, telemetry and other apparatus;
- (b) the number and location of cathodic protection posts and marker posts; and
- (c) works involving trenchless technologies including their location.

(10) No part of the authorised development comprised in Work No. 9 may commence until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC)—

- (a) layout and heights of contractor compounds and construction staff welfare facilities; and
- (b) vehicle access, parking and cycle storage facilities.

(11) Work Nos. 1, 3 and 7 must be carried out in accordance with the design parameters in Schedule 15.

(12) Work Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(13) The details to be submitted to and approved by the relevant planning authority under sub-paragraphs (1) and (8) must be in accordance with the principles in section 7 and 8 of the design and access statement.

Landscape and biodiversity protection management and enhancement

4.—(1) No part of the authorised development may commence until a landscape and biodiversity protection plan for that part has been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC).

(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of—

- (a) measures to protect existing shrub and tree planting that is to be retained;
- (b) details of any trees and hedgerows to be removed; and
- (c) biodiversity and habitat mitigation and impact avoidance.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) No part of Work Nos. 1 or 7 may be commissioned until a landscape and biodiversity management and enhancement plan for that part has been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC).

(5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—

- (a) implementation and management of all new shrub and tree planting;
- (b) measures to enhance and maintain existing shrub and tree planting that is to be retained;
- (c) measures to enhance biodiversity and habitats;
- (d) an implementation timetable;
- (e) annual landscape and biodiversity management and maintenance; and
- (f) monitoring measures in accordance with the measures and timeframes set out in sections 6 and 7 of the indicative landscape and biodiversity strategy and including a process for submission to and approval by the relevant planning authority of an annual monitoring report and provision of the annual monitoring report to STDC.

(6) Any shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.

(7) The plans submitted and approved pursuant to sub-paragraphs (1) and (4) must be—

- (a) in accordance with the principles of the indicative landscape and biodiversity strategy; and
- (b) implemented and maintained as approved during the operation of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

Public rights of way and access land management

5.—(1) No public rights of way may be temporarily diverted or stopped up and access to any access land must not be temporarily prevented until a management plan for the relevant section of public rights of way or access land has been submitted to and approved by the relevant planning authority.

(2) The plan must include details of—

- (a) measures to minimise the length of any sections of public rights of way and the area of any access land to be temporarily closed; and
- (b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed or diverted and access land to be temporarily closed.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

External lighting

6.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of requirement 28) has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed (with the exception of the aviation warning lighting required by virtue of requirement 28) in that part has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this requirement must be in accordance with the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions.

(4) The schemes must be implemented as approved unless otherwise agreed with the relevant planning authority.

Highway accesses

7.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified temporary means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of and a programme for reinstating any such means of access after construction has, for that part, been submitted to and, after consultation with the highway authority, Sembcorp and STDC, approved by the relevant planning authority.

(2) The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details and, unless approved pursuant to sub-paragraph (3) to be retained permanently, reinstated in accordance with the approved programme, unless otherwise agreed with the relevant planning authority.

(3) Prior to the date of final commissioning of each relevant Work No. details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent means of access to a highway to be used by vehicular traffic, must, for each part of the authorised development, be submitted to and, after consultation with the highway authority, Sembcorp and STDC, approved by the relevant planning authority.

(4) The highway accesses approved pursuant to sub-paragraph (3) must be constructed in accordance with the details approved unless otherwise agreed with the relevant planning authority.

Means of enclosure

8.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development have, for that part, been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC).

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development and the temporary means of enclosure must then be removed in accordance with the programme approved pursuant to sub-paragraph (1).

(3) Prior to the date of final commissioning of each relevant Work No., details of any proposed permanent means of enclosure, must, for each part of the authorised development, be submitted to and approved by the relevant planning authority.

(4) Prior to the date of final commissioning of each relevant Work No., any approved permanent means of enclosure must be completed.

(5) The authorised development must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(6) In this requirement, “means of enclosure” means fencing, walls or other means of boundary treatment and enclosure.

Site security

9.—(1) No part of Work Nos. 1 or 7 may be brought into use until a written scheme detailing security measures to minimise the risk of crime has, for that part, been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be maintained and operated throughout the operation of the relevant part of the authorised development.

Fire prevention

10.—(1) No part of Work Nos. 1 or 7 may commence, save for the permitted preliminary works, until a fire prevention method statement providing details of fire detection measures, fire suppression measures and the location of accesses to all fire appliances in all of the major building structures and storage areas within the relevant part of the authorised development, including measures to contain and treat water used to suppress any fire has, for that part, been submitted to and, after consultation with the Health and Safety Executive and the Cleveland Fire Authority, approved by the relevant planning authority.

(2) The authorised development must be implemented in accordance with the approved details and all relevant fire suppression measures and fire appliances must be maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the relevant part of the authorised development.

Surface and foul water drainage

11.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface and foul water drainage systems, including means of pollution control in accordance with the construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and after consultation with the Environment Agency, the lead local flood authority, the relevant internal drainage board, Sembcorp and STDC, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface and foul water drainage systems, including a programme for their implementation, must be submitted to and, after consultation with the Environment Agency, relevant internal drainage board and Sembcorp, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in chapter 9 of the environmental statement.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

(6) When submitting schemes pursuant to sub-paragraphs (1) and (3) the undertaker may submit separate schemes for the foul and surface water drainage systems.

Flood risk mitigation

12.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction, has, for that part, been submitted to, and after consultation with the Environment Agency and STDC, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency and STDC, approved by the relevant planning authority.

(4) The schemes submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in chapter 9 and appendix 9A of the environmental statement.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

(6) The authorised development must not be commissioned until the flood risk mitigation has been implemented and a flood emergency response and contingency plan has been submitted to, and after consultation with the Environment Agency and STDC, approved by the relevant planning authority.

(7) The plan approved pursuant to sub-paragraph (6) must be implemented throughout the commissioning and operation of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

Contaminated land and groundwater

13.—(1) Subject to sub-paragraph (8), no part of the authorised development may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency and STDC, approved by the relevant planning authority.

(2) The scheme submitted and approved under sub-paragraph (1) must be consistent with the principles set out in chapter 10 of the environmental statement and any construction environmental management plan submitted under requirement 16(1) and include—

- (a) a preliminary risk assessment (desk top study) and risk assessment that—
 - (i) is supported by a site investigation scheme; and
 - (ii) identifies the extent of any contamination;
 - (b) an appraisal of remediation options and a proposal of the preferred option where the risk assessment indicates that remediation is required in order for the relevant area of land not to meet the definition of “contaminated land” under Part 2A (contaminated land) of the Environmental Protection Act 1990^(a);
 - (c) where the risk assessment carried out under sub-paragraph (a) identifies the need for remediation, a remediation strategy which must include—
 - (i) the preferred option for remediation to ensure that the site will not meet the definition of “contaminated land” under Part 2A (contaminated land) of the Environmental Protection Act 1990; and
 - (ii) a verification plan, providing details of the data to be collected in order to demonstrate that the works set out in the remediation scheme submitted for approval under this sub-paragraph are complete;
 - (d) a materials management plan that is in accordance with the prevailing code of practice relevant to such plans, which sets out long-term measures with respect to any contaminants remaining on the site during and after the authorised development is carried out;
 - (e) details of how any unexpected contamination will be dealt with;
 - (f) an update to the hydrogeological impact assessment including hydrogeological conceptual model that is informed by any further ground investigation reports and groundwater monitoring in addition to the information in Chapter 10 of the environmental statement;
 - (g) a long term monitoring and maintenance plan in respect of contamination, including details of (but not limited to) monitoring of groundwater and surface water, appropriate screening criteria, and a time-table of monitoring and submission of monitoring reports, and which must include any necessary contingency action or mitigation measures arising from the matters reported; and
 - (h) a plan for managing or otherwise decommissioning any boreholes installed for the investigation of soils, groundwater or geotechnical purposes, including details of how redundant boreholes are to be decommissioned in order to prevent risk of groundwater pollution, how any boreholes that need to be retained for monitoring purposes will be secured, protected and inspected, and including a requirement for appropriate validation records within a report to be submitted to demonstrate that all boreholes which are no longer required have been decommissioned in accordance with best practice.
- (3) The authorised development, including any remediation and monitoring, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority following consultation with the Environment Agency.
- (4) Following the implementation of the remediation strategy approved under sub-paragraph (3), a verification report, based on the data collected as part of the remediation strategy and demonstrating the completion of the remediation measures must be produced and supplied to the relevant planning authority and the Environment Agency.
- (5) Where the verification report produced under sub-paragraph (4) does not demonstrate the completion of the remediation measures, a statement as to how any outstanding remediation measures will be addressed must be supplied to the relevant planning authority and the Environment Agency at the same time as the verification report.

(a) 1990 c.43.

(6) The outstanding remediation measures must be completed to the reasonable satisfaction of the relevant planning authority, after consultation with the Environment Agency and STDC, by the date agreed with that authority.

(7) As an alternative to seeking an approval under sub-paragraph (1), the undertaker may instead submit for approval by the relevant planning authority, following consultation with the Environment Agency and STDC, a notification that the undertaker instead intends to rely on any scheme to deal with the contamination of land (including groundwater) which relates to any part of Work Nos. 1, 7, 9A or 10 that has been previously approved by the relevant planning authority pursuant to an application for planning permission or an application to approve details under a condition attached to a planning permission.

(8) If a notification under sub-paragraph (7) is—

- (a) approved by the relevant planning authority following consultation with the Environment Agency then the undertaker must implement the previously approved scheme and an approval under sub-paragraph (1) is not required; or
- (b) not approved by the relevant planning authority following consultation with the Environment Agency then an approval under sub-paragraph (1) is required.

(9) Sub-paragraphs (1) to (8) do not apply to any part of the Order land where the undertaker demonstrates to the relevant planning authority following consultation with the Environment Agency that the relevant part of the Order land is fit for the authorised development through the provision of a remedial validation report (which must include a risk assessment, details of any planning permission under which remediation works were carried out and any ongoing monitoring requirements) and the relevant planning authority notifies the undertaker that it is satisfied that the relevant part of the Order land is fit for the authorised development on the basis of that report.

(10) The undertaker must comply with any ongoing monitoring requirements and any activities identified as necessary by the monitoring contained within the documents submitted to and approved by the relevant planning authority pursuant to sub-paragraph (9).

Archaeology

14.—(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and, after consultation with the relevant archaeological body, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with chapter 18 of the environmental statement.

(3) The scheme must identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) The scheme must provide details of the measures to be taken to protect record or preserve any significant archaeological features that may be found and must set out a process for how unexpected finds will be dealt with.

(5) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation approved by the relevant planning authority in consultation with relevant archaeological body unless otherwise agreed with the relevant planning authority.

Protected species

15.—(1) No part of the authorised development may commence until further survey work for that part has been carried out to establish whether any protected species are present on any of the land affected, or likely to be affected, by that part of the authorised development.

(2) Where a protected species is shown to be present, no authorised development of that part must commence until a scheme of protection and mitigation measures has been submitted to and, following consultation with Natural England, approved by the relevant planning authority.

(3) The authorised development must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

(4) In this requirement, “protected species” has the same meaning as in regulations 42 and 46 of the Conservation of Habitats and Species Regulations(a).

Construction environmental management plan

16.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan for that part has been submitted to and, after consultation with the Environment Agency, Sembcorp and STDC, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the framework construction environmental management plan and the indicative landscape and biodiversity strategy and incorporate—

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;
- (b) a scheme for the control of any emissions to air;
- (c) a soil management plan;
- (d) a sediment control plan;
- (e) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions;
- (f) a scheme for the notification of any significant construction impacts on local residents and businesses for handling any complaints received relating to such impacts during the construction of the authorised development;
- (g) surface and foul water drainage measures that are in accordance with the surface and foul water drainage scheme submitted under requirement 11(1);
- (h) the measures outlined in paragraphs 15.7.4, 15.8.12 to 15.8.16, 15.8.19 and 15.9.1 in Appendix B: Ornithology in the Environmental Statement Addendum – Volume I of the ES addendum or such other measures to achieve the same maximum noise levels as are set out in paragraphs 15.8.13 to 15.8.16 of Appendix B: Ornithology in the Environmental Statement Addendum – Volume I of the ES addendum;
- (i) a groundwater monitoring plan that comprises monitoring of groundwater levels and chemical contaminants of concern to inform the construction design process and which must take into account the updated hydrogeological impact assessment and any further ground investigation reports and groundwater monitoring required by requirement 13(2)(f);
- (j) a materials management plan in accordance with paragraph 5.3.76 of chapter 5 of the environmental statement;
- (k) a hazardous materials management plan in accordance with paragraph 10.5.3 in Chapter 10 of the environmental statement; and
- (l) any other management or mitigation plans set out in the framework construction environmental management plan.

(3) All construction works associated with the authorised development must be carried out in accordance with the relevant approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

(a) S.I. 2017/1012.

Protection of highway surfaces

17.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant highways which are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

Construction traffic management plan

18.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan for that part has been submitted to and, after consultation with National Highways and the relevant highway authority, STDC, Sembcorp, Royal Mail and the TG entities, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with chapter 16 of the environmental statement and the framework construction traffic management plan.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;
- (c) details of the activities to be undertaken to inform major users of highways in the area of the local highways authority about the impact of works to be undertaken to highways as part of the authorised development;
- (d) the construction programme, including the profile of activity across the day;
- (e) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture; and
- (f) details of the monitoring to be undertaken in accordance with paragraph 16.5 of the framework construction traffic management plan.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Construction workers travel plan

19.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction workers travel plan for that part has been submitted to and, after consultation with National Highways and the relevant highway authority and STDC, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with chapter 16 of the environmental statement and the framework construction workers travel plan.

(3) The plan submitted and approved must include—

- (a) measures to promote the use of sustainable transport modes to and from the authorised development by construction staff;
- (b) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (c) details of parking for construction personnel within the construction sites;
- (d) a monitoring and review regime; and
- (e) the profile of activity across the day.

(4) The approved plan must be implemented within three months of commencement of the relevant part of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

Construction hours

20.—(1) Construction work and the delivery or removal of materials, plant and machinery relating to the authorised development must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0700 to 1300 hours on a Saturday.

(2) The restrictions in sub-paragraph (1) does not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) do not exceed a noise limit measured at the Order limits and which must be first agreed with the relevant planning authority in accordance with requirement 21;
- (b) are carried out with the prior approval of the relevant planning authority; or
- (c) are associated with an emergency.

(3) The restrictions in sub-paragraph (1) do not apply to the delivery of abnormal indivisible loads, where this is—

- (a) associated with an emergency; or
- (b) carried out with the prior approval of the relevant planning authority.

(4) Sub-paragraph (1) does not preclude—

- (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0630 to 0700 and a shut-down period from 1300 to 1330 on a Saturday; or
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

Control of noise - construction

21.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the monitoring and control of noise during the construction of that part of the authorised development has been submitted to and approved by the relevant planning authority, following consultation with Sembcorp.

(2) The scheme submitted and approved must be in accordance with the principles set out in chapter 11 of the environmental statement and specify—

- (a) each location from which noise is to be monitored;
- (b) the method of noise measurement;
- (c) the maximum permitted levels of noise at each monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the relevant planning authority for specific construction activities;

- (d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and
- (e) the noise control measures to be employed.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

Control of noise - operation

22.—(1) No part of Work Nos. 1 or 7 may be brought into commercial use following commissioning until, a scheme for the management and monitoring of noise during operation of those parts of the authorised development and which is consistent with the principles set out in chapter 11 of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) Noise (in terms of the BS4142:2014 rating level) from the operation of the authorised development must be no greater than +5dB difference to the defined representative background sound level during the daytime and no greater than +5dB difference to the defined representative background sound level during the night time adjacent to the nearest residential properties at such locations as agreed with the relevant planning authority.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

(4) In this requirement “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700.

Piling and penetrative foundation design

23.—(1) No part of the authorised development comprised within Work Nos. 1 or 7 may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment and which is consistent with the piling mitigation measures in paragraph 10.8 of Chapter 10 of the environmental statement and the principles set out in chapter 11 of the environmental statement and any construction environmental management plan (including the details of any approved groundwater monitoring plan) submitted under requirement 16(1) for that part, has been submitted to and, after consultation with the Environment Agency, Natural England, Sembcorp and STDC, approved by the relevant planning authority.

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

Waste management on site - construction wastes

24.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction site waste management plan for that part has been submitted to and, after consultation with STDC, approved by the relevant planning authority.

(2) The plan submitted under sub-paragraph (1) must be in accordance with the framework site waste management plan.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Restoration of land used temporarily for construction

25.—(1) Prior to the date of final commissioning of each relevant Work No., a scheme for the restoration (including remediation of contamination caused by the undertaker’s activities) of any land within the Order limits which has been used temporarily for construction must, for each part of the authorised development, be submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC).

(2) The land must be restored within one year of the date of final commissioning of each relevant Work No. (or such longer period as the relevant planning authority may approve) in accordance with the restoration scheme approved pursuant to sub-paragraph (1).

(3) The scheme submitted pursuant to sub-paragraph (1) must take into account the updated hydrogeological impact assessment and any further ground investigation reports and groundwater monitoring required by requirement 13(2)(f).

Combined heat and power

26. —(1) Work No. 1A must not be brought into commercial use following commissioning until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems, should they be identified and commercially viable.

(2) The undertaker must maintain such space during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after Work No. 1A is first brought into commercial use following commissioning, the undertaker must submit to the planning authority for its approval a report ('the CHP review') updating the CHP assessment.

(4) The CHP review submitted and approved must—

- (a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission and which are commercially viable; and
- (b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review unless otherwise agreed with the relevant planning authority.

(6) On each date during the operation of Work No. 1A that is four years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (3).

Aviation warning lighting

27. —(1) No part of the authorised development comprised within Work No. 1 may commence, save for the permitted preliminary works, until details of the aviation warning lighting to be installed for that part during construction and operation have been submitted to, and after consultation with the Civil Aviation Authority, approved by the relevant planning authority.

(2) The aviation warning lighting approved pursuant to sub-paragraph (1) must be installed and operated in accordance with the approved details.

Air safety

28. No part of Work Nos. 1 or 7 may commence, save for the permitted preliminary works, until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

Local liaison group

29.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until the undertaker has established a group to liaise with local residents and organisations about matters relating to the authorised development (a ‘local liaison group’).

(2) The undertaker must invite the relevant planning authority, Sembcorp, STDC, the TG entities and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison group.

(3) The undertaker must provide a secretariat service and provide either an appropriate venue for the local liaison group meetings to take place or means by which the local liaison group meetings can take place electronically.

(4) The local liaison group must—

- (a) include representatives of the undertaker or its contactor; and
- (b) meet every other month, starting in the month prior to commencement of the authorised development, until the completion of commissioning unless otherwise agreed by the majority of the members of the local liaison group.

Employment, skills and training plan

30.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The plan approved pursuant to sub-paragraph (1) must be implemented and maintained during the construction of the authorised development unless otherwise agreed by the relevant planning authority.

(3) No part of Work No. 1 may be commissioned until a plan detailing arrangements to promote employment opportunities during operation of the authorised development has been submitted to and approved by the relevant planning.

(4) The plan approved pursuant to sub-paragraph (3) must be implemented and maintained during the operation of the authorised development unless otherwise agreed by the relevant planning authority.

Carbon dioxide capture transfer and storage

31.—(1) No part of the authorised development other than the permitted preliminary works may commence until evidence of the following (or such licence or consent as may replace those listed) has been submitted to and approved by the relevant planning authority—

- (a) that the carbon dioxide storage licence has been granted;
- (b) that the environmental permits have been granted for Work No. 1 and Work No. 7; and
- (c) that any pipeline works authorisation required by section 14 of the Petroleum Act 1998^(a) for offshore pipeline works from Work No. 8 to the carbon dioxide storage site has been granted.

(2) Prior to the start of commissioning of the authorised development, the undertaker must not without the consent of the Secretary of State—

- (a) dispose of any interest held by the undertaker in the land required for Work No. 1C and Work No. 7; or
- (b) do anything, or allow anything to be done or to occur, which may reasonably be expected to diminish the undertaker’s ability, within two years of such action or occurrence, to prepare Work No. 1C and 7 for construction.

(a) 1998 c.17.

(3) Work No. 1A may not be brought into commercial use without Work Nos. 1C, 7 and 8 also being brought into commercial use.

Decommissioning

32.—(1) Within 12 months of the date that any part of the authorised development permanently ceases operation (or such longer period as may be agreed in writing with the relevant planning authority), the undertaker must submit to the relevant planning authority for its approval (following consultation with Sembcorp and the Environment Agency)—

- (a) a decommissioning environmental management plan for that part; and
- (b) evidence that any necessary planning consents have been granted for decommissioning in relation to that part.

(2) No decommissioning works must be undertaken until the relevant planning authority has—

- (a) approved the plan submitted for that part submitted pursuant to sub-paragraph (1)(a); and
- (b) confirmed in writing that it is satisfied as to the evidence submitted for that part pursuant to sub-paragraph (1)(b).

(3) Where the relevant planning authority notifies the undertaker that the information submitted pursuant to sub-paragraph (1) is not approved, the undertaker must within a period of 2 months from the notice (or such other period as may be agreed with the relevant planning authority) make a further submission pursuant to sub-paragraph 1 to the relevant planning authority, unless it has submitted an appeal to the Secretary of State against the decision of the relevant planning authority pursuant to sub-paragraph 5(1) of Schedule 13.

(4) Where the undertaker has submitted an appeal pursuant to sub-paragraph 5(1) of Schedule 13 against the decision of the relevant planning authority to not approve the information submitted pursuant to sub-paragraph (1), and the Secretary of State notifies the undertaker that the appeal has been dismissed, the undertaker must within a period of 2 months from the notice from the Secretary of State (or such other period as may be agreed with the relevant planning authority) make a further submission pursuant to sub-paragraph (1) to the relevant planning authority.

(5) The plan submitted pursuant to sub-paragraph (1)(a) must include details of—

- (a) the buildings to be demolished and the apparatus to be removed;
- (b) where apparatus is proposed to be left in-situ and not removed, the steps to be taken to decommission such apparatus and ensure it remains safe;
- (c) the means of removal of the materials resulting from the decommissioning works;
- (d) the phasing of the demolition and removal works;
- (e) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (f) the phasing of any restoration works;
- (g) a timetable for the implementation of the scheme;
- (h) traffic management arrangements during any demolition, removal and remediation works; and
- (i) the monitoring and control of noise.

(6) The plan submitted pursuant to sub-paragraph (1)(a) must be implemented as approved unless otherwise agreed with the relevant planning authority.

Requirement for written approval

33. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

Approved details and amendments to them

34. —(1) All details submitted for the approval of the relevant planning authority under these requirements must reflect the principles set out in the documents certified under article 45 (certification of plans etc.).

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

Amendments agreed by the relevant planning authority

35. —(1) Where the words “unless otherwise agreed by the relevant planning authority” appear in the above requirements, any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the requirement or the relevant sub-paragraph requires consultation with specified persons, any such approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

Consultation with South Tees Development Corporation

36. Where a requirement specifies that the relevant planning authority must consult STDC that only applies to the extent that the matters submitted for approval relate to any part of the authorised development which is within the STDC area or in the relevant planning authority’s opinion could affect the STDC area.

Effluent nutrient nitrogen safeguarding scheme

37. —(1) No part of the authorised development other than the permitted preliminary works may commence until an effluent nutrient nitrogen safeguarding scheme has been submitted to and, after consultation with Natural England and the Environment Agency, approved by the relevant planning authority.

(2) The effluent nutrient nitrogen safeguarding scheme submitted pursuant to paragraph (1) must include the following—

- (a) details of the selected design and discharge location of the infrastructure that will treat and discharge effluent containing nitrogen produced by the operation of the authorised development;
- (b) discharge modelling of the design selected pursuant to sub-paragraph (a) and which (unless otherwise agreed with the relevant planning authority after consultation with Natural England and the Environment Agency) is based on the modelling methodology in Appendix B of the nutrient nitrogen briefing paper; and
- (c) information on the wastewater discharge monitoring methods, frequency and locations that will be undertaken pursuant to any environmental permits required for the authorised development.

(3) The effluent nutrient nitrogen safeguarding scheme submitted pursuant to paragraph (1) must demonstrate that nitrogen in effluent from the operation of the authorised development is controlled and discharged in order that the nitrogen in effluent will—

- (a) not cause a net increase in total nitrogen loads in water within the Tees Estuary at the Seal Sands mud flats; and
- (b) not impact on the Water Framework Directive status of the Tees Coastal Water, Tees Transitional Waterbody or Tees Estuary.

(4) The undertaker must implement the effluent nutrient nitrogen safeguarding scheme as approved, unless otherwise agreed with the relevant planning authority following consultation with Natural England and the Environment Agency.

Consultation with Sembcorp and TG entities

38.—(1) In this Schedule any reference to—

(2) “Sembcorp” means the same as the definition of “Sembcorp” in Part 17 of Schedule 12 of the Order;

(3) “TG entities” means the same as the definition of “NSMP entity” in Part 28 Schedule 12 of the Order.

SCHEDULE 3

Article 9

MODIFICATIONS TO AND AMENDMENTS OF THE YORK POTASH HARBOUR FACILITIES ORDER 2016

1. Article 34 is deleted and replaced with “Schedules 7 to 12 have effect”.
2. After Schedule 11 insert new Schedule 12—

“SCHEDULE 12

FOR THE PROTECTION OF NET ZERO TEESSIDE POWER LIMITED AND NET ZERO NORTH SEA STORAGE LIMITED

Interpretation

1. For the protection of the NZT Undertaker, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Part of this Schedule—

“Anglo American Apparatus” means the pipeline, cables, structures which are or are to be owned, occupied or maintained by the undertaker within the Shared Area;

“Land Plans” means the land plans as defined by the NZT Order;

“NZT Apparatus” means the pipeline, cables, structures to be owned, occupied or maintained by the NZT Undertaker within the Shared Area;

“NZT Order” means the Net Zero Teesside Order 202*;

“NZT Project” means the construction, operation or maintenance of the authorised development as is defined by the NZT Order;

“NZT Specified Works” means so much of the NZT Project as is within the Shared Area;

“NZT Undertaker” means the undertaker as defined by the NZT Order;

“Parties” means the NZT Undertaker and the undertaker;

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

“Property Documents” means any leases, licences or other documents by virtue of which Anglo American has an interest in, on or over land;

“Respective Projects” means the NZT Project and the authorised development;

“Secretary of State” means the Secretary of State for Business, Energy and Industrial Strategy or any successor in function;

“Shared Area” means the land coloured blue on the Shared Area Plan;

“Shared Area 1” means the land comprising plots 222 and 223 on the Land Plans;

“Shared Area 2” means the land comprising plots 252, 252a, 253, 253a, 255, 263, 278, 280, 281, 284, 285, 286, 294, 301, 302, 303, 314, 315, 316, 317, 318, 319, 320, 321, 322, 324, 325, 328, 329, 330, 331, 332, 333, 343 and 541 on the Land Plans;

“Shared Area 3” means the land comprising plots 332, 343, 345 and 347 on the Land Plans;

“Shared Area 4” means the land comprising plots 384, 397, 395, 401 and 405 on the Land Plans;

“Shared Area 5” means the land comprising plots 417, 418, 427, 432, 436 and 439 on the Land Plans;

“Shared Area 6” means the land comprising plots 540a and 540d on the Land Plans;

“Shared Area Plan” means the plan which is certified as the Net Zero Teesside Anglo American Shared Area Plan by the Secretary of State under article 45 (Certification of plans etc.) of the NZT Order; and

“Specified Works” means so much of the authorised development as is within the Shared Area.

Consent to works in the shared area

3.—(1) Where the consent or agreement of the NZT Undertaker is required under the provisions of this Part of this Schedule the undertaker must give at least 21 days written notice to the NZT Undertaker of the request for such consent or agreement and in such notice must specify the works or matter for which consent or agreement is to be requested and the Plans that will be provided with the request which must identify—

- (a) the land that will or may be affected;
- (b) which Works Nos. from the Order any powers sought to be used or works to be carried out relate to;
- (c) the identity of the contractors carrying out the work;
- (d) the proposed programme for the power to be used or works to be carried out; and
- (e) the named point of contact for the undertaker for discussions in relation to the information supplied and the consenting process.

(2) The NZT Undertaker must notify the undertaker within 14 days of the receipt of the written notice under sub-paragraph (1) of—

- (a) any information it reasonably requires to be provided in addition to that proposed to be supplied by the undertaker under sub-paragraph (1);
- (b) any particular circumstances with regard to the construction or operation of the NZT Project it requires to be taken into account;
- (c) the named point of contact for the NZT Undertaker for discussions in relation to the information supplied and the consenting process; and
- (d) the specific person who will be responsible for confirming or refusing the consent or agreement.

(3) Any request for consent under paragraphs 5(1), 6(1) and 6(2) must be accompanied by the information referred to in sub-paragraph (1) as amended or expanded in response to sub-paragraph (2).

(4) Subject to sub-paragraph (5), where conditions are included in any consent granted by the NZT Undertaker pursuant to this Part of this Schedule, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by the NZT Undertaker.

(5) Wherever in this Part of this Schedule provision is made with respect to the agreement approval or consent of the NZT Undertaker, that approval or consent must be in writing and subject to such reasonable terms and conditions as the NZT Undertaker may require including conditions requiring protective works to be carried out, but must not be unreasonably refused or delayed and for the purposes of these provisions it will be deemed to be reasonable for any consent to be refused if it would—

- (a) compromise the safety and operational viability of the NZT Project;
- (b) make regulatory compliance more difficult or expensive; and/or

- (c) prevent the ability of the NZT Undertaker to have uninterrupted access to the NZT Project,

provided that before the NZT Undertaker can validly refuse consent for any of the reasons set out in sub-paragraphs (a) and (b) it must first give the undertaker seven days' notice of such intention and consider any representations made in respect of such refusal by the undertaker to the NZT Undertaker within that seven day period.

(6) The seven day period referred to in the proviso to sub-paragraph (5) must be added to the period of time within which any request for agreement, approval or consent is required to be responded to pursuant to the provisions of this Part of this Schedule.

(7) In the event that—

- (a) the undertaker considers that the NZT Undertaker has unreasonably withheld its authorisation or agreement under paragraphs 5(1), 6(1) and/or 6(2); or
- (b) the undertaker considers that the NZT Undertaker has given its authorisation under paragraphs 5(1), 6(1) and/or 6(2) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 11.

(8) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Part of this Schedule must be sent to the NZT Undertaker by recorded delivery and addressed to Andy Lane, VP Hydrogen – UK, bp, Chertsey Road, Sunbury on Thames, Middlesex TW16 7LN, and copied to Clare Haley, Senior Counsel, bp, Chertsey Road, Sunbury on Thames, Middlesex TW16 7LN (or the equivalent named individual holding those positions at the time of the notice) and by email to andy.lane@uk.bp.com and clare.haley@uk.bp.com.

(9) In the event that the NZT Undertaker does not respond in writing to a request for approval or consent or agreement within 28 days of its receipt of the postal request then the undertaker may serve upon the NZT Undertaker written notice requiring the NZT Undertaker to give their decision within a further 28 days beginning with the date upon which the NZT Undertaker received written notice from the undertaker and, subject to compliance with sub-paragraph (10), if by the expiry of the further 28 day period the NZT Undertaker has failed to notify the undertaker of its decision the NZT Undertaker is deemed to have given its consent, approval or agreement without any terms or conditions.

(10) Any further notice given by the undertaker under sub-paragraph (9) must include a written statement that the provisions of sub-paragraph (9) apply to the relevant approval or consent or agreement.

Co-operation

4. Insofar as the NZT Specified Works are or may be undertaken concurrently with the Specified Works within the Shared Area, the undertaker must—

- (a) co-operate with the NZT Undertaker with a view to ensuring—
 - (i) the co-ordination of programming of all activities and the carrying out of works within the Shared Area; and
 - (ii) that access for the purposes of the construction and operation of the NZT Project is maintained for the NZT Undertaker and its contractors, employees, contractors and sub-contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects.

Regulation of works within the shared area

5.—(1) The undertaker must not carry out the Specified Works without the prior written consent of the NZT Undertaker obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Where under paragraph 3(5) the NZT Undertaker requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the reasonable satisfaction of the NZT Undertaker.

(3) Nothing in paragraph 3 or this paragraph 5 precludes the undertaker from submitting at any time or from time to time, but in no case less than 48 days before commencing the execution of any the undertaker Specified Work, new Plans in respect of that Specified Work in substitution of the Plans previously submitted, and the provisions of this paragraph and paragraph 3 shall apply to the new Plans.

(4) Where there has been a reference to an expert in accordance with paragraph 8 and the expert gives approval for the works concerned, the Specified Works must be carried out in accordance with that approval and any conditions applied by the decision of the expert under paragraph 11.

(5) The undertaker must give to the NZT Undertaker not less than 28 days' written notice of its intention to commence the construction of any of the Specified Works and, not more than 14 days after completion of their construction, must give the NZT Undertaker written notice of the completion.

(6) The undertaker is not required to comply with sub-paragraphs (1) to (5) above in a case of emergency, (being actions required directly to prevent possible death or injury) but in that case it must give to the NZT Undertaker notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraphs 3 and 5 in so far as is reasonably practicable in the circumstances.

(7) The undertaker must at all reasonable times during construction of the Specified Works allow the NZT Undertaker and its officers, employees, servants, contractors, and agents access to the Specified Works and all reasonable facilities for inspection of the Specified Works.

(8) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from the NZT Undertaker requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(9) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (8), the NZT Undertaker may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(10) The undertaker must not exercise the powers conferred by the Order or undertake the Specified Works to prevent or interfere with the access by the NZT Undertaker to the NZT Specified Works unless first agreed in writing by the NZT Undertaker.

(11) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Specified Works the access to any of the NZT Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the NZT Specified Works as will enable the NZT Undertaker to construct, maintain or use its NZT Project no less effectively than was possible before the obstruction.

(12) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Specified Works request up-to-date written confirmation from the NZT Undertaker of the location of any part of its then existing or proposed NZT Specified Works.

Regulation of powers over the shared area

6.—(1) The undertaker must not exercise the powers granted under the Order so as to hinder or prevent the construction, operation or maintenance of the NZT Specified Works without the prior written consent of the NZT Undertaker.

(2) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (3) below, over or in respect of the Shared Area otherwise than with the prior written consent of the NZT Undertaker.

(3) The articles referred to in sub-paragraph (2) above are—

- (a) article 10 (street works);
- (b) article 11 (temporary stopping up of streets);
- (c) article 12 (access to works);
- (d) article 14 (discharge of water);
- (e) article 15 (protective works to buildings);
- (f) article 16 (authority to survey and investigate land);
- (g) article 24 (compulsory and other acquisition of rights);
- (h) article 25 (power to override easements and other rights); and
- (i) article 30 (temporary use of land).

(4) In the event that the NZT Undertaker withholds its consent pursuant to sub-paragraph (2) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

(5) Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not appropriate or acquire or take permanent or temporary possession of any land interest held by the NZT Undertaker in any plots shown on the land plans, or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right in such land.

Constructability Principles

7.—(1) The undertaker must (unless otherwise agreed, in an emergency relating to potential death or serious injury, or where it would render the Anglo American Apparatus, the Specified Works, the NZT Specified Works or NZT Apparatus unsafe, or put the undertaker in breach of its statutory duties or in breach of an obligation or requirement of the Order)—

- (a) carry out the Specified Works in such a way that will not prevent or interfere with the continued construction of the NZT Specified Works, or the maintenance or operation of the NZT Apparatus unless the action leading to such prevention or interference has the prior written consent of the NZT Undertaker;
- (b) ensure that works carried out to, or placing of Anglo American Apparatus beneath, roads along which construction or maintenance access is required by the Net Zero Undertaker in respect of any NZT Apparatus will be of adequate specification to bear the loads;
- (c) prior to the carrying out of any of the Specified Works in any part of any Shared Area—
 - (i) submit a construction programme and a construction traffic and access management plan in respect of that area to the NZT Undertaker for approval (noting that a single construction traffic and access management plan may be completed for one or more parts of each Shared Area or more than one Shared Area and may be subject to review if agreed between the Parties); and
 - (ii) where applicable, confirm to the NZT Undertaker in writing the identity of the client for the purposes of the relevant Construction Design and Management Regulations applicable from time to time;
- (d) at all times construct the Specified Works in compliance with the relevant approved construction traffic and access management plan;

- (e) update the monthly construction programme approved under sub-paragraph (c)(i) monthly and supply a copy of the updated programme to the NZT Undertaker every month;
- (f) notify the NZT Undertaker of any incidences which occur as a result of, or in connection with, the Specified Works which are required to be reported under the relevant Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;
- (g) provide comprehensive, as built, drawings of the Specified Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Specified Works;
- (h) other than in respect of land in which the undertaker has a freehold interest, following the completion of each of the Specified Works, unless otherwise agreed in writing by the NZT Undertaker, fully reinstate the affected area (with the exception only of the retention of permanent aspects of the Specified Works) and remove all waste/surplus materials;
- (i) in respect of land in which Anglo American has a freehold interest, following the completion of each of the Specified Works, the area affected must not be left in such a state as to adversely affect the construction, maintenance and operation of the NZT Specified Works; and
- (j) obtain the prior written consent of the NZT Undertaker for the use of any re-cycled aggregate material within the Shared Area.

(2) Any spoil from the NZT Specified Works or the Specified Works (including contaminated material) must be dealt with in accordance with a spoil management plan to be agreed between the Parties in advance of the work by either Party generating such spoil beginning.

(3) In considering a request for any consent under the provisions of this Part of this Schedule, the NZT Undertaker must not—

- (a) request an additional construction traffic and access management plan or a spoil management plan if such a plan has already been approved pursuant to sub-paragraph (1)(c) (as relevant in respect of a traffic and access management plan) or agreed pursuant to sub-paragraph (2) (in respect of a spoil management plan); and
- (b) refuse consent for reasons which conflict with the contents of documents approved by the NZT Undertaker pursuant to the provisions of this paragraph and paragraph 8.

Interface Design Process

8.—(1) Prior to the seeking of any consent under this Part of this Schedule, the undertaker must, unless the NZT Undertaker has brought forward works in that part of the Shared Area before the undertaker, participate in a design and constructability review for that part of the Shared Area which shall, at a minimum (unless otherwise agreed), include the following matters—

- (a) a Front End Engineering Design (FEED) level indicative construction work-pack;
- (b) a hazard and operability study; and
- (c) a construction hazard study.

(2) Unless otherwise agreed, the undertaker must submit the outcome of the design and constructability review referred to in sub-paragraph (1) to the NZT Undertaker for approval prior to the seeking of any consent under this Part of this Schedule.

(3) The undertaker must at all times design and construct the Specified Works in compliance with the relevant approved design and constructability review pursuant to sub-paragraph (2).

(4) The undertaker may undertake a single design and constructability review process for one or more parts of the Shared Area and any approved design and constructability review may be amended if agreed by the NZT Undertaker.

(5) In considering any request for consent or approval under this Part of this Schedule, the NZT Undertaker must not refuse consent for details that are consistent with those approved under sub-paragraph (2) unless the NZT Undertaker reasonably believes that the relevant agreed design and constructability review is materially out of date or is inapplicable due to a change in either the NZT Project or the Woodsmith Project.

Miscellaneous provisions

9.—(1) The NZT Undertaker and the undertaker must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule.

(2) The undertaker must pay to the NZT Undertaker the reasonable expenses incurred by the NZT Undertaker in connection with the consenting processes under this Part of this Schedule, including the approval of plans, inspection of any Specified Works or the alteration or protection of the NZT Specified Works.

Indemnity

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason, or in consequence, of the construction, maintenance or operation of any Specified Works, or failure thereof, any damage is caused to any NZT Apparatus used in connection with the NZT Specified Works or damage is caused to any part of the NZT Specified Works or there is any interruption in any service provided, or the operations of the NZT Undertaker, or in the supply of any goods, by the NZT Undertaker, or the NZT Undertaker becomes liable to pay any amount to any third party as a consequence of the Specified Works, the undertaker must—

- (a) bear and pay the costs reasonably incurred by Anglo American in making good such damage or restoring the service, operations or supply; and
- (b) compensate the NZT Undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the NZT Undertaker, by reason or in consequence of any such damage or interruption or the NZT Undertaker becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of the undertaker, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by the NZT Undertaker.

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

(4) The NZT Undertaker must use its reasonable endeavours to mitigate any claim or losses in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, the NZT Undertaker must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(5) The undertaker shall not be liable under this paragraph in respect of any claim capable of being mitigated or minimised to the extent that the NZT Undertaker has not used its reasonable endeavours to mitigate and/or minimise that claim accordance with sub-paragraph (4).

(6) The fact that any work or thing has been executed or done with the consent of the NZT Undertaker and in accordance with any conditions or restrictions prescribed by the

NZT Undertaker or in accordance with any plans approved by the NZT Undertaker or to its satisfaction or in accordance with any directions or award of any expert appointed pursuant to paragraph 11 does not relieve the undertaker from any liability under this paragraph.

(7) The total liability of Anglo American whether for breach of, or under any indemnity contained in, this Deed and whether under contract, tort, equity or otherwise shall be limited to the sum of ten million pounds (£10m).

Dispute resolution

11.—(1) Article 40 does not apply to provisions of this Part of this Schedule.

(2) Any difference in relation to the provisions in this Part of this Schedule must be referred to—

- (a) a meeting of the Managing Director of Net Zero Teesside Power Limited and/or the Managing Director of Net Zero North Sea Storage Limited, whichever is the relevant party and the Chief Executive Officer of Anglo American Crop Nutrients Limited to seek agreement on the matter in dispute within 21 days from the date of a dispute first being notified in writing by one Party to the other; and
- (b) in the absence of the difference being settled within that period, to be settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the NZT Undertaker and the undertaker or, in the absence of agreement identified by the President of the Institute of Civil Engineers, who must be sought to be appointed within 28 days of the notification of the dispute.

(3) The fees of the expert are payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.

(4) The expert must—

- (a) invite the Parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) allow each Party an opportunity to comment on the submissions made by the other provided they are received within 21 days of the receipt of the submissions referred to in sub-paragraph (a) above;
- (c) issue a decision within 42 days of receipt of the submissions submitted pursuant to sub-paragraph (a) above; and
- (d) give reasons for the decision.

(5) The expert must consider where relevant—

- (a) the development outcomes sought by the NZT Undertaker and the undertaker;
- (b) the ability of the NZT Undertaker and the undertaker to achieve the outcomes referred to in sub-paragraph (a) above in a timely and cost-effective manner;
- (c) any increased costs on any Party as a result of the matter in dispute;
- (d) whether under the NZT Order or the Order, the NZT Undertaker's or the undertaker's outcomes could be achieved in any alternative manner without the NZT Specified Works being materially compromised in terms of increased cost or increased length of programme; and
- (e) any other important and relevant considerations.

(6) Any determination by the expert is final and binding which the Parties must comply with and is enforceable by the Parties by injunction except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either Party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.”.

SCHEDULE 4

Articles 10, 11 and 14

STREETS SUBJECT TO STREET WORKS

Table 1

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the District of Stockton-on-Tees	A1185	Works for the improvement of the access at the point marked P on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked R on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked S on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked U on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked V on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked Y on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked L on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked M on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked N on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked H on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked I on sheet 7 of the access and rights of way plans

In the District of Stockton-on-Tees	B1275	Works for the improvement of the access at the point marked
		E on sheet 7 of the access and rights of way plans

SCHEDULE 5

ACCESS

Article 12

PART 1

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE HIGHWAY AUTHORITY

Table 2

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked R on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked U on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked V on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked S on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access in the area cross hatched in blue at the point marked Y on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked L on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked M on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked N on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access in the area cross hatched in blue at the point marked H on sheet 7 of the access and rights of way plans
In the District of Stockton-on-	Nelson Avenue / unnamed	That part of the access in the

Tees	private track	area cross hatched in blue at the point marked I on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	B1275 / unnamed private track	That part of the access cross-hatched in blue at the point marked E on sheet 7 of the access and rights of way plans

PART 2

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

Table 3

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of relevant part of access</i>
In the District of Redcar and Cleveland	Tees Dock Road / unnamed private road	That part of the access in the area cross hatched in red at the point marked BO on sheet 4 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked R on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked U on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked V on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked S on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A1185 / unnamed private track	That part of the access in the area cross hatched in red at the point marked P on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access in the area cross hatched in red at the point marked Y on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access in the area cross hatched in red at the

		point marked L on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access in the area cross hatched in red at the point marked M on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access in the area cross hatched in red at the point marked N on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access in the area cross hatched in red at the point marked H on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access in the area cross hatched in red at the point marked I on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	B1275 / unnamed private track	That part of the access in the area cross hatched in red at the point marked E on sheet 7 of the access and rights of way plans

SCHEDULE 6

Article 13

TEMPORARY STOPPING UP OF STREETS, PUBLIC RIGHTS OF WAY AND ACCESS LAND

PART 1

THOSE PARTS OF THE STREET TO BE TEMPORARILY STOPPED UP

Table 4

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to temporary stopping up of use</i>	<i>(3)</i> <i>Extent of temporary stopping up of use of street</i>
In the District of Stockton-on-Tees	A178	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked Q and T on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked K and O on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	B1275	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked D and F on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked J and G on sheet 7 of the access and rights of way plans

PART 2

THOSE PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

Table 5

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of public right of way</i>
In the District of Redcar and Cleveland	Public footpath - Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked DH and CZ on Sheet 3 of the access and rights of way plans
In the District of Redcar and Cleveland	Public footpath - England Coast Path / Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked BH and BG on Sheet 4 of the access and rights of way plans
In the District of Redcar and Cleveland	Public footpath - England Coast Path / Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked CK and CM on Sheet 3 of the access and rights of way plans
In the District of Redcar and Cleveland	Public bridleway - England Coast Path / Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the bridleway between the points marked BX and BY on Sheet 4 of the access and rights of way plans
In the District of Stockton-on-Tees	Public footpath - England Coast Path	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked V and W1 on Sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Public footpath - England Coast Path	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked W and X on sheet 6 of the access and rights of way plans

PART 3

THOSE PARTS OF THE ACCESS LAND WHERE PUBLIC ACCESS MAY BE TEMPORARILY SUSPENDED

Table 6

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>

<i>Area</i>	<i>Access land subject to temporary prohibition or restriction of use</i>	<i>Extent of temporary prohibition or restriction of use of access land</i>
In the District of Redcar and Cleveland	Access land at South Gare Road and Coatham beach and sand dunes	Temporarily suspend access to the area shaded beige on sheets 1, 2 and 3 of the access and rights of way plans

LAND IN WHICH NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation**1. In this Schedule—**

“Work No. 2A infrastructure” means any works or development comprised within Work No. 2A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2A on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 2B infrastructure” means any works or development comprised within Work No. 2B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2B on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 3 infrastructure” means any works or development comprised within Work No. 3A or Work No. 3B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3A or Work No. 3B on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 4A infrastructure” means any works or development comprised within Work No. 4A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 4A on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 5B infrastructure” means any works or development comprised within Work No. 5B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 5B on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 5C infrastructure” means any works or development comprised within Work No. 5C, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 5C on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 6 infrastructure” means any works or development comprised within Work No. 6, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 8 infrastructure” means any works or development comprised within Work No. 8, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 8 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus; and

“Work No. 10 access and highway improvements” means any works or development comprised within Work No. 10 including any other necessary works or development permitted within the area delineated as Work No. 10 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus.

Table 7

(1) <i>Plot numbers shown on Land Plans</i>	(2) <i>Purposes for which rights over land may be acquired or restrictive covenants may be imposed</i>
The following plots shown coloured blue on the land plans— 105, 110, 113, 114, 316, 319, 320, 324, 332, 343, 344, 345, 347, 349, 350, 351, 352, 354, 355, 356, 357, 358, 359, 360, 365, 366, 382, 384, 395, 397, 401, 408, 409, 409a, 409b, 425, 425a, 462, 464	For and in connection with the Work No. 2A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2A infrastructure and Work No. 2B infrastructure, together with the right to install, retain, use and maintain the Work No. 2A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2A infrastructure, or interfere with or obstruct access from and to the Work No. 2A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 112, 325, 328, 329, 330, 333, 450, 455, 456, 457	
The following plots shown coloured pink on the land plans— 112, 325, 328, 329, 330, 333	For and in connection with the Work No. 2B infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2B infrastructure, together with the right to install, retain, use and maintain the Work No. 2B infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2B infrastructure, or interfere with or obstruct access from and to the Work No. 2B infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

The following plots shown coloured blue on the land plans— 386, 387, 388, 393, 393c, 393f, 395, 401, 405, 408, 409, 409a, 409b, 412, 413, 416, 417, 418, 419, 420, 421, 423, 425, 425a, 427, 431, 432, 436, 439, 462, 464, 540a, 540d	For and in connection with the Work No. 3 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3 infrastructure, together with the right to install, retain, use and maintain the Work No. 3 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 3 infrastructure, or interfere with or obstruct access from and to the Work No. 3 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 391, 393b, 396, 398, 399, 400, 403, 404, 406, 411, 414, 422, 424, 429, 449, 450, 451, 452, 454, 455, 456, 457, 540b, 540c	For and in connection with the Work No. 3 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3 infrastructure, together with the right to install, retain, use and maintain the Work No. 3 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 3 infrastructure, or interfere with or obstruct access from and to the Work No. 3 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 409a, 425a, 458, 461, 463, 467, 470, 472, 473, 498, 509, 512, 515, 516, 518, 519, 521, 522, 524, 525, 531, 535, 536, 537, 538	For and in connection with the Work No. 4 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 320, 332, 343, 345, 347, 366, 382, 384, 395, 397, 401, 408, 409, 409a, 409b, 425, 425a, 462, 464	For and in connection with the Work No. 5C infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5C infrastructure, together with the right to install, retain, use and maintain the Work No. 5C infrastructure, and a

The following plots shown coloured pink on the land plans— 450, 455, 456, 457	right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 5C infrastructure, or interfere with or obstruct access from and to the Work No. 5C infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 20a, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 93, 94, 95, 96, 99, 100, 101, 102, 115, 119, 120, 121, 124, 124d, 128, 138, 139, 141, 142, 142b, 156, 157, 157b, 158, 165, 165a, 166, 166b, 169, 171, 171b, 172, 174, 174d, 174e, 176, 176b, 181, 183, 184, 191d, 194, 196, 278, 280, 281, 284, 285, 286, 294, 301, 302, 303, 314, 315, 316, 317, 318, 319, 320, 321, 322, 324, 331, 332, 343, 344, 345, 347, 349, 350, 351, 352, 354, 355, 356, 357, 358, 359, 360, 365, 366, 382, 384, 395, 397, 401, 405, 408, 409, 409a, 409b, 421, 423, 425, 425a, 462, 464	For and in connection with the Work No. 6 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, together with the right to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 325, 328, 329, 330, 333, 385, 394, 400, 404, 411 422, 424, 429, 450, 455, 456, 457	right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 392, 415, 429, 447	For and in connection with the Work No. 8 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure, together with the right to install, retain, use and maintain the Work No. 8 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 infrastructure, or interfere with or obstruct access from and to the Work No. 8 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

The following plots shown coloured blue on the land plans— 89, 91, 92, 98, 103, 106, 108, 110, 111, 126, 136, 137, 143, 144, 145, 146, 147, 148, 150, 151, 152, 153, 157b, 165a, 167, 168, 170, 174e, 181, 186, 187, 316, 319, 320, 324, 332, 343, 344, 345, 347, 349, 350, 351, 352, 354, 355, 356, 357, 358, 359, 360, 365, 366, 377, 378, 382, 384, 386, 387, 388, 393, 393c, 393f, 395, 397, 401, 405, 408, 409, 409a, 409b, 412, 413, 416, 417, 418, 419, 420, 421, 423, 425, 425a, 426, 427, 431, 432, 434, 435, 436, 438, 439, 445, 458, 458a, 459, 461, 462, 463, 464, 467, 470, 472, 473, 474, 475, 477, 478, 483, 485, 486, 487, 488, 489, 493, 495, 496, 498, 500, 502, 504, 505, 508, 509, 510, 511, 512, 514, 515, 516, 517, 518, 519, 521, 522, 523, 524, 532, 533, 534, 540d	For and in connection with the Work No. 10 access and highway improvements, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the authorised development, along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to the authorised development, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 325, 327, 328, 329, 330, 333, 339, 391, 393b, 403, 450, 455, 456, 457, 479, 482, 540b, 540c	
The following plots shown coloured blue on the land plans— 377, 378, 379, 448, 494, 499, 501, 526, 527, 528, 529, 530, 539	For and in connection with the Work No. 5B infrastructure (except where the right to install, retain, use and maintain the Work No. 5B infrastructure is within the subsoil only), the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5B infrastructure, together with the right, including within the subsoil, for the undertaker and all persons authorised on its behalf to install, retain, use and maintain the Work No. 5B infrastructure, and a right of support for it, and the right to the free flow of water (as relevant), along with the right to prevent any works on or uses of the land or, in the case of a right within the subsoil any works or uses above, under and adjoining such subsoil, which may interfere with or damage the Work No. 5B infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land or subsoil (as relevant).
The following plot shown coloured pink on the land plans— 402	
The following plots shown coloured blue on the land plans— 185, 190, 190b, 191, 191a, 191b, 202c, 218, 232a, 252, 252a, 253, 253a, 255, 263	For and in connection with the Work No. 6 infrastructure (except where the right to install, retain, use and maintain the Work No. 6 infrastructure is within the subsoil only), the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery,

	for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, together with the right, including within the subsoil, for the undertaker and all persons authorised on its behalf to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, and the right to the free flow of water (as relevant), along with the right to prevent any works on or uses of the land or, in the case of a right within the subsoil any works or uses above, under and adjoining such subsoil, which may interfere with or damage the Work No. 6 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land or subsoil (as relevant).
The following plots shown coloured blue on the land plans— 377, 378, 379, 448, 494, 499, 501, 526, 527, 528, 529, 539	For and in connection with the Work No. 8 infrastructure (except where the right to install, retain, use and maintain the Work No. 8 infrastructure is within the subsoil only), the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure, together with the right, including within the subsoil, for the undertaker and all persons authorised on its behalf to install, retain, use and maintain the Work No. 8 infrastructure, and a right of support for it, and the right to the free flow of water (as relevant), along with the right to prevent any works on or uses of the land or, in the case of a right within the subsoil any works or uses above, under and adjoining such subsoil, which may interfere with or damage the Work No. 8 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land or subsoil (as relevant).
The following plot shown coloured pink on the land plans— 402	

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

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

2.—(1) Without limitation to the scope of paragraph 1, the Land Compensation Act 1973^(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Net Zero Teesside Order 202*; and
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the Net Zero Teesside Order 202* to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the acquisition of land under article 22 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 25 (compulsory acquisition of rights etc.)—

- (a) with the modification specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(a) 1973 c.26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 of the 1965 Act there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

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

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (persons without powers to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11 (powers of entry) of the 1965 Act is modified as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 22 (compulsory acquisition of land), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry)(a), 11B (counter-notice requiring possession to be taken on a specified date)(b), 12 (unauthorised entry)(c) and 13 (entry on warrant in the event of obstruction)(d) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 29(3) (modification of Part 1 of the Compulsory Purchase Act 1965) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

-
- (a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).
 - (b) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c.22).
 - (c) Section 12 was amended by section 56(2) of and part 1 of Schedule 9 to, the Courts Act 1971 (c.23).
 - (d) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).
 - (e) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and S.I. 2009/1307.

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act (execution of declaration) as applied by article 27 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Net Zero Teesside Order 202* in respect of the land to which the notice to treat relates.

(2) But see article 28(3) (acquisition of subsoil or airspace only) of the Net Zero Teesside Order 202* which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 9

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 8

(1) <i>Plot numbers shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>
289, 292, 293, 298, 300, 336, 337, 338, 342	Temporary use as laydown, construction compound, construction use and accesses (Work No. 9A) required to facilitate construction of the authorised development
67, 67a, 68, 122, 125	Temporary use as laydown, construction compound, construction use and accesses (Work Nos. 9C and 9D) required to facilitate construction of Work No. 2A
If WN9C— 122, 125 If WN9D— 67, 67a, 68	Temporary use as laydown, construction compound, construction use and accesses (Work Nos. 9C and 9D) required to facilitate construction of Work No. 2B
19, 48, 49, 50, 51, 52, 53, 54, 55, 64, 67, 67a, 68, 122, 125, 174c, 179, 179a, 193, 195, 197, 199, 202a	Temporary use as laydown, construction compound, construction use and accesses (Work Nos. 9B, 9C, 9D, 9E and 9F) required to facilitate construction of Work No. 6
222, 223, 274, 279, 282, 283, 287, 290, 291, 296, 299, 348, 362, 363, 367, 370, 373, 374, 376, 381, 393a, 393d, 393e	Temporary use to facilitate access to and highway improvements (Work No. 10) in relation to the authorised development
48, 49, 50, 51, 52, 53, 54, 55, 64, 123, 188, 189	Temporary use to facilitate access to and highway improvements (Work No. 10) in relation to Work Nos. 2A, 2B and 6
393a, 393d, 393e	Temporary use to facilitate carrying out of Work No. 3A
1a, 2a, 3a, 4a, 6a, 7a, 7b, 8a, 8b, 9a, 10a, 12a, 13a, 15a, 17, 20, 22a, 23a, 28a, 34a, 39a, 39b, 43a, 47a, 63a, 66a, 70a, 70b, 90a, 94a, 94b, 100a, 100b, 124a, 124b, 128a, 135, 138a, 141a, 142a, 156a, 157a, 158a, 166a, 169a, 171a, 172a, 174a, 174b, 176a, 183a, 184a, 185a, 185b, 190a, 191c, 192	Temporary use to facilitate carrying out of Work No. 6

DEEMED MARINE LICENCE UNDER THE 2009 ACT: PROJECT A

PART 1

LICENSED ACTIVITIES

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“authorised development” means the development and associated development described in Schedule 1 of the Order;

“CEMP” means a construction environmental management plan for the licensed activities or any part of those works;

“commence” means the first carrying out of any licensed activities authorised by this marine licence and “commenced” and “commencement” shall be construed accordingly;

“condition” means a condition under Part 2 of this licence;

“disposal” means the deposit of dredge arisings at a disposal site carrying reference TY160 – “Tees Bay A” or TY150 – “Tees Bay C”;

“dredge arisings” means inert material of natural origin, produced during dredging;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of Part 4 (marine licensing) of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“framework construction environmental management plan” means the document certified as the framework construction environmental management plan by the Secretary of State for the purposes of this Order;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and “maintenance” must be construed accordingly;

“MCMS” means the MMO’s online system for submission of marine licence applications and management of consented marine licences, including the submission of condition returns;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“Marine Management Organisation” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor of that function and “MMO” shall be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“office hours” means the period from 09:00 until 17:00 on any working day;

“Order” means the Net Zero Teesside Order 202*;

“Order limits” has the same meaning as in article 2(1) (interpretation) of the Order;

“relevant undertaker” means Net Zero Teesside Power Limited (company number 12473751) or the person who has the benefit of this deemed marine licence by virtue of article 7 (benefit of this Order) and article 8 (consent to transfer benefit of this Order) and any agent, contractor or sub-contractor acting on its behalf;

“sediment sampling plan” means a plan that provides an adequate characterisation of material proposed for dredging as part of the licenced activities;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UXO” means unexploded ordnance;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft and any other craft capable of travelling on, in or under water, whether or not self-propelled;

“working day” means a day other than a Saturday or a Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971; and

“Work No. 5B” means Work No. 5B as described in Schedule 1 to the Order.

(2) A reference to any statute, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT); and
- (b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

- (a) Centre for Environment, Fisheries and Aquaculture Science, Pakefield Road, Lowestoft, Suffolk, NR33 0HT; Tel. 01502 562 244;
- (b) Historic England, Cannon Bridge House, 25 Dowgate Hill, London, EC4R 2YA; Tel. 020 7973 370;
- (c) Kingfisher Information Service of Seafish, Email – kingfisher@seafish.co.uk
- (d) Marine Management Organisation, Local Enforcement Office, Neville House Bell Street, North Shields, NE30 1LJ; Tel. 0191 257 4520, Email – northshields@marinemanagement.org.uk;
- (e) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel. 0300 123 1032, Email – marine.consents@marinemanagement.org.uk;
- (f) Maritime and Coastguard Agency, Navigation Safety Branch, Bay 2/20, Spring Place, 105 Commercial Road, Southampton, SO15 1EG; Tel. 020 3817 2433;
- (g) Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX; Tel. 0300 060 3900;
- (h) The United Kingdom Hydrographic Office, Admiralty Way, Somerset, TA1 2DN; Tel. 01823 337 900;
- (i) Trinity House, Tower Hill, London, EC3N 4DH; Tel. 020 7481 6900.

(5) Unless otherwise advised in writing by the MMO, MCMS must be used for all licence returns or applications to vary this licence.

Details of licensed activities

2.—(1) Subject to the licence conditions in Part 2, this licence authorises the relevant undertaker to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

(2) The licensed activities are authorised in relation to the construction, maintenance and operation of—

- (a) Work No. 5B—
 - (i) construction of a micro-bored tunnel;
 - (ii) dredging campaign(s) facilitating the removal of material from the seabed required for the construction of works and backfill / side cast as required;
 - (iii) the combined total disposal of up to 500m³ of dredge arisings across each of the disposal sites carrying reference TY160 – “Tees Bay A” and TY150 – “Tees Bay C”;
 - (iv) the installation of a pipeline;
 - (v) the establishment of a connection point for a discharge head including but not limited to the creation of a punchhole;
 - (vi) the emplacement of a discharge head;
 - (vii) the deposit of rock armour protection;
 - (viii) construction works; and
 - (ix) UXO inspection, removal and detonation.

in connection with Work No. 5B and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence.

3. The relevant undertaker may engage in the licensed activities related to Work No. 5B in the area bounded by the coordinates set out in Table 9 in this paragraph.

Table 9

<i>Work No.</i>	<i>Description</i>	<i>Longitude</i>	<i>Latitude</i>
Work No. 5B	Replacement discharge pipeline to the Tees Bay	-1.089946	54.63327
		-1.082979	54.630381
		-1.08312	54.630343
		-1.083903	54.630131
		-1.099769	54.625843
		-1.099968	54.625789
		-1.103141	54.624931
		-1.103864	54.624736
		-1.104309	54.624862
		-1.105244	54.625169
		-1.107138	54.625736
		-1.107962	54.625997
		-1.108859	54.626305
		-1.108101	54.626585
		-1.107614	54.626764
		-1.106721	54.627093

		-1.10572	54.627462
		-1.105639	54.627492
		-1.090325	54.633131
		-1.090027	54.633241

4. The coordinates for the disposal sites notified to the MMO for use in this licence are specified in Table 10 in this paragraph.

Table 10

<i>Disposal Site Ref</i>	<i>Description</i>	<i>Easting</i>	<i>Northing</i>
TY150	Tees Bay A disposal site	-0.956699	54.698301
		-0.9783	54.690001
		-0.998299	54.705
		-0.9767	54.710001
		-0.956699	54.698301
TY160	Tees Bay B disposal site	-1.004999	54.683302
		-1.025	54.67
		-1.0583	54.680002
		-1.036699	54.691702
		-1.004999	54.683302

5. The coordinates in Table 9 and Table 10 are defined in accordance with reference system WGS84 - World Geodetic System 1984.

6. This licence remains in force until the authorised development has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108 (reviews and revisions of decommissioning programmes) of the 2004 Act, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 8 (consent to transfer benefit of this Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

PART 2

CONDITIONS

General

9. Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team as soon as reasonably practicable, but in any event within 12 hours of such oil, fuel or chemical spill being identified in accordance with the following, unless otherwise advised in writing by the MMO—

- (a) within office hours Tel. 0300 200 2024;
- (b) outside office hours Tel. 07770 977 825; or
- (c) at all times if other numbers are unavailable, Tel. 0845 051 8486 or Email – dispersants@marinemanagement.org.uk.

Notifications and Inspections

10. —(1) The relevant undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 14(2)(a); and
 - (ii) the vessel masters responsible for the vessels notified to the MMO in accordance with condition 14(2)(b); and
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must confirm receipt of this licence in writing to the MMO.

(2) Only those persons and vessels notified to the MMO in accordance with condition 14 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the relevant undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the relevant undertaker or its agents and contractors responsible for the loading, transportation or deposit of dredge arisings; and
- (c) on board each vessel or at the office of any person with responsibility for such vessel from which the removal or deposit of dredge arisings are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The relevant undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.

(6) The relevant undertaker must inform the MMO Local Enforcement Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities. A copy of the notification must be provided to the MMO Marine Licensing Team within 24 hours of issue.

(7) The relevant undertaker must inform the Kingfisher Information Service of Seafish of details regarding the vessel routes, timings and locations relating to the construction of the authorised development or relevant part—

- (a) at least 14 days prior to the commencement of Work Number 5B seaward of mean high water springs, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) as soon as reasonably practicable and no later than 24 hours after completion of construction of Work Number 5B seaward of mean high water springs,

and confirmation of notification to Kingfisher Information Service of Seafish must be provided to the MMO Licensing Team as soon as reasonably practicable and no later than 24 hours after the date of such notice.

(8) A notice to mariners must be issued by the relevant undertaker at least 14 days prior to the commencement of the licensed activities or any part of them advising of—

- (a) the start date of Work No. 5B; and
- (b) the expected vessel routes from the construction ports to the relevant location,

and copies of all notices must be provided to MMO Licensing Team, TH, MCA and the United Kingdom Hydrographic Office within five days as soon as reasonably practicable and no later than 24 hours after the date of such notice.

(9) The relevant undertaker must notify the United Kingdom Hydrographic Office of—

- (a) the commencement (within ten days of the date of commencement) of the licensed activities; and
- (b) progress and completion of construction (within ten days of the date of completion of construction) of the licensed activities,

in order that all necessary amendments to nautical charts are made. The relevant undertaker must send a copy of any notification issued to the MMO as soon as reasonably practicable and no later than 24 hours after the date of such notice.

(10) In case of material damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof, the relevant undertaker must as soon as possible and no later than 24 hours following the relevant undertaker becoming aware of any such damage, destruction or decay, notify the MMO, MCA, Trinity House, Kingfisher Information Service of Seafish and the United Kingdom Hydrographic Office.

(11) In case of exposure of pipelines on or above the seabed, the relevant undertaker must, within three working days following identification of a cable exposure, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of Seafish of the location and extent of exposure, and no later than five days after the date of issue of such notice the relevant undertaker must send a copy of that notice to the MMO, MCA, Trinity House, and the United Kingdom Hydrographic Office.

Pre-construction

11.—(1) The relevant undertaker must submit a sediment sampling plan to the MMO for approval (following consultation with the Environment Agency) at least six months prior to the commencement of dredging activities.

(2) The sediment sampling and analysis must be undertaken—

- (a) in accordance with the sediment sampling plan approved by the MMO pursuant to sub-paragraph (1); and
- (b) by a laboratory which has been validated by the MMO for sediment analysis to inform marine licence applications.

(3) Details of the sediment sampling and analysis undertaken pursuant to sub-paragraph (2) must be submitted to the MMO at least 6 weeks prior to the commencement of dredging activities.

(4) No dredging and disposal activities may be undertaken until the details of sediment sampling and analysis submitted pursuant to sub-paragraph (3) have been approved by the MMO in writing (following consultation with the Environment Agency).

12.—(1) The relevant undertaker must submit a CEMP covering the period of construction to include details of—

- (a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;
- (b) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised;
- (c) waste management and disposal arrangements; and
- (d) the appointment and responsibilities of a fisheries liaison officer.

(2) The CEMP must be submitted to the MMO for approval in writing at least three months prior to the commencement of the licensed activities or such part of the licensed activities.

(3) The CEMP submitted pursuant to sub-paragraph (2) must be in accordance with the framework construction environmental management plan.

(4) The licensed activities must be carried out in accordance with the CEMP approved pursuant to sub-paragraph (2) unless otherwise agreed in writing with the MMO.

13.—(1) A marine method statement must be submitted to the MMO at least three months prior to the proposed commencement of the licensed activities or part of the licensed activities.

(2) A marine method statement submitted pursuant to sub-paragraph (1) for licensed activities must include details of—

- (a) methods of dredging to be employed and associated disposal arrangements;
- (b) the micro-bored tunnel installation and methodology;
- (c) the discharge head installation technique and methodology;
- (d) rock armour specification, provenance and installation technique; and
- (e) an indicative programme for the delivery of the licensed activities.

(3) A marine method statement submitted pursuant to sub-paragraph (1) must—

- (a) only include details of the licensed activities in so far as they are required; and
- (b) be scaled to correspond to the final requirements of the authorised development.

(4) No part of the licensed activities may commence until the marine method statement for that part has been approved in writing by the MMO.

(5) A marine method statement approved pursuant to sub-paragraph (4) may be amended from time to time subject to approval in writing from the MMO.

(6) The licensed activities must be carried out in accordance with the marine method statement approved pursuant to sub-paragraphs (5) and (6).

Reporting of engaged agents, contractors and vessels

14.—(1) The relevant undertaker must notify the MMO in writing of any agents, contractors or subcontractors (including their name, address and company number if applicable) that will carry on any licensed activity listed in this licence on behalf of the relevant undertaker.

(2) A notification pursuant to sub-paragraph (1) must—

- (a) include the name, address and company number if applicable of any agent, contractor or sub-contractor; and
- (b) details of any vessel being used to carry on any licensed activity listed in this licence on behalf of the relevant undertaker including the master's name, vessel type, vessel IMO number and vessel owner or operating company (including company number if applicable); and
- (c) must be provided no less than 24 hours before the commencement of the licensed activity.

(3) Any changes to the name or function of the specified agent, contractor or sub-contractor, or details or functions of the specified vessel, as provided in accordance with sub-paragraph (1) must be notified to the MMO in writing no less than 24 hours before the agent, contract or sub- contractor carries out a licensed activity.

Written scheme of archaeological investigation

15.—(1) The licensed activities, or any part of the licensed activities, must not commence unless a written scheme of archaeological investigation has been submitted to and approved in writing by the MMO following consultation with Historic England.

(2) A written scheme of archaeological investigation submitted pursuant to sub-paragraph (1) must include—

- (a) details of responsibilities of the relevant undertaker, archaeological consultant and contractor where required and appropriate;
- (b) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO;
- (c) details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found and must set out a process for how unexpected finds will be dealt with which must be in accordance with the measures in the framework construction environmental management plan;

- (d) delivery of any mitigation including the use of archaeological construction exclusion zones in agreement with the MMO;
 - (e) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development; and
 - (f) a geoarchaeological assessment that determines the extent to which any deposits of paleoenvironmental features exist.
- (3) Unless otherwise agreed in writing the written scheme of archaeological investigation should be implemented as approved.

Construction, Operation and Maintenance

16. The relevant undertaker must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with the Pollution Prevention for Businesses guidelines.

17. The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.

18. The relevant undertaker must—

- (a) not discharge waste concrete slurry or wash water from concrete or cement into the marine environment; and
- (b) site concrete and cement mixing and washing areas at least 10 metres from the River Tees or surface water drain to minimise the risk of run off entering the marine environment.

19. During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

20.—(1) Vibratory or drilled ‘pin’ piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth and where the relevant undertaker has established, following the carrying out of a desk top study informed by appropriate survey information, that vibratory or drilled ‘pin’ piling would be ineffective.

(2) Where percussive piling is established to be necessary in accordance with sub-paragraph (1)—

- (a) soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved;
- (b) the soft-start duration must be a period of not less than 20 minutes; and
- (c) should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated.

21.—(1) In the event that any rock material is misplaced or lost below MHWS, the relevant undertaker must report the loss to the MMO Local Enforcement Office and MMO Marine Licensing Team using the dropped object procedure and via return of a completed Marine Licence Dropped Incident Report (MLDIR1), as soon as possible, and in any event within 48 hours of becoming aware of an incident and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the relevant undertaker must use reasonable endeavours to locate the material and recover it.

(2) On receipt of the MLDIR1, the MMO may require, acting reasonably, the relevant undertaker to carry out relevant surveys. The relevant undertaker must carry out surveys in accordance with the MMO’s reasonable requirements and must report the results of such surveys to the MMO.

(3) On receipt of such survey results, the MMO may, acting reasonably, require the relevant undertaker to remove specific obstructions from the seabed. The relevant undertaker must carry out removals of specific obstructions from the seabed in accordance with the MMO’s reasonable requirements and at its own expense.

(4) Where the relevant undertaker has been unable to locate or recover material pursuant to discharging its duties under sub-paragraphs (1) to (3) it must demonstrate to the MMO that reasonable attempts have been made to locate, remove or move any such material.

UXO Clearance

22. —(1) No removal or detonation of UXO can take place until a UXO clearance methodology and marine mammal mitigation protocol has been submitted to and approved in writing by the MMO (following consultation with the Environment Agency and Natural England).

(2) The UXO clearance methodology and marine mammal mitigation protocol must be submitted to the MMO no later than six months prior to the date on which it is intended for UXO clearance activities to begin (unless otherwise agreed in writing by the MMO).

(3) The UXO clearance methodology submitted pursuant to sub-paragraph (1) must be based on the nature, location and size of UXO or magnetic anomalies that have been identified and include—

- (a) a methodology for the clearance of magnetic anomalies or otherwise which are deemed a UXO risk;
- (b) information to demonstrate how the best available evidence and technology has been taken into account in formulating the methodology;
- (c) a debris removal plan;
- (d) a plan highlighting the area(s) within which clearance activities are proposed;
- (e) details of engagement with other local legitimate users of the sea; and
- (f) a programme of works.

(4) The marine mammal mitigation protocol submitted pursuant to sub-paragraph (1) must include details of the measures to prevent auditory or other injury to marine mammals following current best practice as advised by the relevant statutory nature conservation bodies.

(5) The removal or detonation of UXO must be undertaken in accordance with UXO clearance methodology and marine mammal mitigation protocol approved pursuant to sub-paragraph (1).

(6) Subject to sub-paragraph (7) a UXO clearance close out report must be submitted to the MMO in writing and the relevant statutory nature conservation body within three months following the end of the UXO clearance activity and must include the following for each detonation undertaken—

- (a) co-ordinates, depth, current speed, charge utilised and the date and time of each detonation; and
- (b) whether any mitigation was deployed, including feedback on practicalities of deployment of equipment and efficacy of the mitigation where reasonably practicable, or justification if this information is not available.

(7) Should there be more than one UXO clearance activity, the report required under sub-paragraph (6) will be provided at intervals agreed in writing with the MMO.

Post Construction

23. The relevant undertaker must ensure that any equipment, temporary structures, waste and debris associated with the licensed activities are removed within six weeks of completion of the licensed activity.

Disposal

24. —(1) The relevant undertaker must inform the MMO of the location and quantities of material disposed of each month under this licence.

(2) The information submitted pursuant to sub-paragraph (1) must be submitted to the MMO by 15 February each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

25. The relevant undertaker must ensure dredge arisings are disposed of within the extent of the Order limits seaward of MHWS, within the disposal site TY150, TY160 (or any other disposal site approved in writing by the MMO), and that any other materials are screened out before disposal.

26. The material to be disposed of within the disposal site must be placed within the boundaries of the disposal site(s) specified within Table 10 in Part 1 of this licence.

27. The combined total volume of material for disposal at each of the disposal sites specified within Table 10 in Part 1 of this licence must not exceed 500m³.

Provision of Information

28. —(1) Should the relevant undertaker become aware that any of the information on which the granting of this licence was based was materially false or misleading, the relevant undertaker must notify the MMO in writing as soon as is reasonably practicable.

(2) A notification submitted pursuant to sub-paragraph (1) must explain what information was materially false or misleading and include the correct information.

Amendments to plans etc.

29. With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this licence, the plans, protocols or statements so approved are taken to include amendments that may be approved in writing by the MMO subsequent to the first approval of those plans, protocols or statements provided it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments do not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.

Maximum parameters

30. Work No. 5B is not authorised to the extent that it gives rise to environmental effects that are materially new or different to those identified based on the maximum parameters set out in paragraph 9.3.28 of Chapter 9 of the environmental statement.

Safety Management

31. —(1) Subject to sub-paragraph (4), no part of the licensed activities may commence until a marine safety management system for that part has been submitted to and approved in writing by the MMO.

(2) The marine safety management system approved pursuant to sub-paragraph (1) must be in accordance with the Port Marine Safety Code and Guide to Good Practice on Port Marine Operations (or such documents as may replace them).

(3) The licensed activities must be carried out in accordance with the marine safety management system approved pursuant to sub-paragraph (1).

(4) Sub-paragraphs (1) to (3) do not apply to any part of the licensed activities where evidence has been submitted to and approved in writing by the MMO that there is an existing marine safety management system in place and which will apply to the relevant part of the licensed activities.

Provision of Information

32. —(1) Only when driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation the relevant undertaker must provide the following information to the Marine Noise Registry—

- (a) prior to the commencement of the licenced activities, information on the expected location, start and end date of impact pile driving / detonation of explosives to satisfy the Marine Noise Registry's Forward Look requirements;
 - (b) within 12 weeks of completion of impact pile driving / detonation of explosives, information on the locations and dates of impact pile driving / detonation of explosives to satisfy the Marine Noise Registry's Close Out requirements
- (2) The relevant statutory undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to sub-paragraph (1) above within 7 days of the submission.
- (3) For the purpose of this condition—
- (a) “Marine Noise Registry” means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;
 - (b) “Forward Look” and “Close Out” requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) or any updated information document.

DEEMED MARINE LICENCE UNDER THE 2009 ACT: PROJECT B

PART 1

LICENSED ACTIVITIES

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“authorised development” means the development and associated development described in Schedule 1 of the Order;

“CEMP” means a construction environmental management plan for the licensed activities or any part of those works;

“commence” means the first carrying out of any licensed activities authorised by this marine licence and “commenced” and “commencement” shall be construed accordingly;

“condition” means a condition under Part 2 of this licence;

“disposal” means the deposit of dredge arisings at a disposal site carrying reference TY160 – “Tees Bay A” or TY150 – “Tees Bay C”;

“dredge arisings” means inert material of natural origin, produced during dredging;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of Part 4 (marine licensing) of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“framework construction environmental management plan” means the document certified as the framework construction environmental management plan by the Secretary of State for the purposes of this Order;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and “maintenance” must be construed accordingly;

“MCMS” means the MMO’s online system for submission of marine licence applications and management of consented marine licences, including the submission of condition returns;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“Marine Management Organisation” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor of that function and “MMO” shall be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“office hours” means the period from 09:00 until 17:00 on any working day;

“Order” means the Net Zero Teesside Order 202*;

“Order limits” has the same meaning as in article 2(1) (interpretation) of the Order;

“relevant undertaker” means Net Zero North Sea Storage Limited (company number 12473084) or the person who has the benefit of this deemed marine licence by virtue of article 7 (benefit of this Order) and article 8 (consent to transfer benefit of this Order) and any agent, contractor or sub-contractor acting on its behalf;

“sediment sampling plan” means a plan that provides an adequate characterisation of material proposed for dredging as part of the licenced activities;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UXO” means unexploded ordnance;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft and any other craft capable of travelling on, in or under water, whether or not self-propelled;

“working day” means a day other than a Saturday or a Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

“Work No. 5B” means Work No. 5B as described in Schedule 1 to the Order; and

“Work No. 8” means Work No. 8 as described in Schedule 1 to the Order.

(2) A reference to any statute, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT); and
- (b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

- (a) Centre for Environment, Fisheries and Aquaculture Science, Pakefield Road, Lowestoft, Suffolk, NR33 0HT; Tel. 01502 562 244;
- (b) Historic England, Cannon Bridge House, 25 Dowgate Hill, London, EC4R 2YA; Tel. 020 7973 370;
- (c) Kingfisher Information Service of Seafish, Email – kingfisher@seafish.co.uk
- (d) Marine Management Organisation, Local Enforcement Office, Neville House Bell Street, North Shields, NE30 1LJ; Tel. 0191 257 4520, Email – northshields@marinemanagement.org.uk;
- (e) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel. 0300 123 1032, Email – marine.consents@marinemanagement.org.uk;
- (f) Maritime and Coastguard Agency, Navigation Safety Branch, Bay 2/20, Spring Place, 105 Commercial Road, Southampton, SO15 1EG; Tel. 020 3817 2433;
- (g) Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX; Tel. 0300 060 3900;
- (h) The United Kingdom Hydrographic Office, Admiralty Way, Somerset, TA1 2DN; Tel. 01823 337 900;
- (i) Trinity House, Tower Hill, London, EC3N 4DH; Tel. 020 7481 6900.

(5) Unless otherwise advised in writing by the MMO, MCMS must be used for all licence returns or applications to vary this licence.

Details of licensed activities

2.—(1) Subject to the licence conditions in Part 2, this licence authorises the relevant undertaker to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

(2) The licensed activities are authorised in relation to the construction, maintenance and operation of—

- (a) Work No. 5B—
 - (i) construction of a micro-bored tunnel;
 - (ii) dredging campaign(s) facilitating the removal of material from the seabed required for the construction of works and backfill / side cast as required;
 - (iii) the disposal of up to 500m³ of dredge arisings at each of the disposal sites carrying reference TY160 – “Tees Bay A” and TY150 – “Tees Bay C”;
 - (iv) the installation of a pipeline;
 - (v) the establishment of a connection point for a discharge head including but not limited to the creation of a punchhole;
 - (vi) the emplacement of a discharge head;
 - (vii) the deposit of rock armour protection;
 - (viii) construction works; and
 - (ix) UXO inspection, removal or detonation; and
- (b) Work No. 8—
 - (i) horizontal direction drilling and works to facilitate such drilling;
 - (ii) grouting, sealing and jointing activities required to install a safe and functional pipeline;
 - (iii) the construction of a pipeline end-piece in order to effectively provide temporary prevention from ingress;
 - (iv) installation of fibre-optic control cables and power cables; and
 - (v) UXO inspection, removal or detonation.

in connection with Work No. 5B or Work No. 8 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence.

3. The relevant undertaker may engage in the licensed activities related to Work No. 5B and Work No. 8 in the area bounded by the coordinates set out in Table 11 in this paragraph.

Table 11

<i>Work No.</i>	<i>Description</i>	<i>Longitude</i>	<i>Latitude</i>
Work No. 5B	Replacement discharge pipeline to the Tees Bay	-1.089946	54.63327
		-1.082979	54.630381
		-1.08312	54.630343
		-1.083903	54.630131
		-1.099769	54.625843
		-1.099968	54.625789
		-1.103141	54.624931

		-1.103864 -1.104309 -1.105244 -1.107138 -1.107962 -1.108859 -1.108101 -1.107614 -1.106721 -1.10572 -1.105639 -1.090325 -1.090027	54.624736 54.624862 54.625169 54.625736 54.625997 54.626305 54.626585 54.626764 54.627093 54.627462 54.627492 54.633131 54.633241
Work No. 8	Underground high pressure carbon dioxide export pipeline	-1.105639 -1.105445 -1.105243 -1.105031 -1.104828 -1.104626 -1.10423 -1.103942 -1.103788 -1.103773 -1.103684 -1.103594 -1.103413 -1.103263 -1.103171 -1.103121 -1.103036 -1.102839 -1.102667 -1.102396 -1.102034 -1.101672 -1.101342 -1.100985 -1.100717 -1.100333 -1.10005 -1.099769 -1.099968 -1.103141 -1.103864 -1.104309 -1.105244 -1.107138 -1.107962 -1.108859 -1.108101 -1.107614 -1.106721 -1.10572	54.627492 54.6274 54.627298 54.627203 54.627127 54.627055 54.626919 54.62684 54.626803 54.6268 54.626783 54.626769 54.626743 54.626724 54.626713 54.626707 54.626694 54.626665 54.62663 54.626569 54.626496 54.626409 54.626325 54.626223 54.626145 54.626036 54.625942 54.625843 54.625789 54.624931 54.624736 54.624862 54.625169 54.625736 54.625997 54.626305 54.626585 54.626764 54.627093 54.627462

4. The coordinates for the disposal sites notified to the MMO for use in this licence are specified in Table 12 in this paragraph.

Table 12

<i>Disposal Site Ref</i>	<i>Description</i>	<i>Easting</i>	<i>Northing</i>
TY150	Tees Bay A disposal site	-0.956699	54.698301
		-0.9783	54.690001
		-0.998299	54.705
		-0.9767	54.710001
		-0.956699	54.698301
TY160	Tees Bay B disposal site	-1.004999	54.683302
		-1.025	54.67
		-1.0583	54.680002
		-1.036699	54.691702
		-1.004999	54.683302

5. The coordinates in Table 11 and Table 12 are defined in accordance with reference system WGS84 - World Geodetic System 1984.

6. This licence remains in force until the authorised development has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108 (reviews and revisions of decommissioning programmes) of the 2004 Act, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 8 (consent to transfer the benefit of this Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

PART 2 CONDITIONS

General

9. Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team as soon as reasonably practicable, but in any event within 12 hours of such oil, fuel or chemical spill being identified in accordance with the following, unless otherwise advised in writing by the MMO—

- (a) within office hours Tel. 0300 200 2024;
- (b) outside office hours Tel. 07770 977 825; or
- (c) at all times if other numbers are unavailable, Tel. 0845 051 8486 or Email – dispersants@marinemangement.org.uk.

Notifications and Inspections

10. —(1) The relevant undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

- (i) all agents and contractors notified to the MMO in accordance with condition 14(2)(a); and
 - (ii) the vessel masters responsible for the vessels notified to the MMO in accordance with condition 14(2)(b); and
 - (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must confirm receipt of this licence in writing to the MMO.
- (2) Only those persons and vessels notified to the MMO in accordance with condition 14 are permitted to carry out the licensed activities.
- (3) Copies of this licence must also be available for inspection at the following locations—
- (a) The relevant undertaker's registered address;
 - (b) any site office located at or adjacent to the construction site and used by the relevant undertaker or its agents and contractors responsible for the loading, transportation or deposit of dredge arisings; and
 - (c) on board each vessel or at the office of any person with responsibility for such vessel from which the removal or deposit of dredge arisings are to be made.
- (4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.
- (5) The relevant undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.
- (6) The relevant undertaker must inform the MMO Local Enforcement Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities. A copy of the notification must be provided to the MMO Marine Licensing Team within 24 hours of issue.
- (7) The relevant undertaker must inform the Kingfisher Information Service of Seafish of details regarding the vessel routes, timings and locations relating to the construction of the authorised development or relevant part—
- (a) at least 14 days prior to the commencement of each of Work Number 5B and Work Number 8 seaward of MHWS springs, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
 - (b) as soon as reasonably practicable and no later than 24 hours after completion of construction of each of Work Number 5B and Work Number 8 seaward of MHWS,
- and confirmation of notification to Kingfisher Information Service of Seafish must be provided to the MMO Licensing Team as soon as reasonably practicable and no later than 24 hours after the date of such notice.
- (8) A notice to mariners must be issued by the relevant undertaker at least 14 days prior to the commencement of the licensed activities or any part of them advising of—
- (a) the start date of Work No. 5B or Work No. 8; and
 - (b) the expected vessel routes from the construction ports to the relevant location,
- and copies of all notices must be provided to MMO Licensing Team, TH, MCA and the United Kingdom Hydrographic Office within five days as soon as reasonably practicable and no later than 24 hours after the date of such notice.
- (9) The relevant undertaker must notify the United Kingdom Hydrographic Office of—
- (a) the commencement (within ten days of the date of commencement) of the licensed activities; and
 - (b) progress and completion of construction (within ten days of the date of completion of construction) of the licensed activities,

in order that all necessary amendments to nautical charts are made. The relevant undertaker must send a copy of any notification issued to the MMO as soon as reasonably practicable and no later than 24 hours after the date of such notice.

(10) In case of material damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof, the relevant undertaker must as soon as possible and no later than 24 hours following the relevant undertaker becoming aware of any such damage, destruction or decay, notify the MMO, MCA, Trinity House, Kingfisher Information Service of Seafish and the United Kingdom Hydrographic Office.

(11) In case of exposure of pipelines on or above the seabed, the relevant undertaker must, within three working days following identification of a cable exposure, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of Seafish of the location and extent of exposure, and no later than five days after the date of issue of such notice the relevant undertaker must send a copy of that notice to MMO, MCA, Trinity House, and the United Kingdom Hydrographic Office.

Pre-construction

11.—(1) The relevant undertaker must submit a sediment sampling plan to the MMO for approval following consultation with the Environment Agency) at least six months prior to the commencement of dredging activities.

(2) The sediment sampling and analysis must be undertaken—

- (a) in accordance with the sediment sampling plan approved by the MMO pursuant to sub-paragraph (1); and
- (b) by a laboratory which has been validated by the MMO for sediment analysis to inform marine licence applications.

(3) Details of the sediment sampling and analysis undertaken pursuant to sub-paragraph (2) must be submitted to the MMO at least 6 weeks prior to the commencement of dredging activities.

(4) No dredging and disposal activities may be undertaken until the details of sediment sampling and analysis submitted pursuant to sub-paragraph (3) have been approved by the MMO in writing (following consultation with the Environment Agency).

12.—(1) The relevant undertaker must submit a CEMP covering the period of construction to include details of—

- (a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;
- (b) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised;
- (c) waste management and disposal arrangements; and
- (d) the appointment and responsibilities of a fisheries liaison officer.

(2) The CEMP must be submitted to the MMO for approval in writing at least three months prior to the commencement of the licensed activities or such part of the licensed activities.

(3) The CEMP submitted pursuant to sub-paragraph (2) must be in accordance with the framework construction environmental management plan.

(4) The licensed activities must be carried out in accordance with the CEMP approved pursuant to sub-paragraph (2) unless otherwise agreed in writing with the MMO.

13.—(1) A marine method statement must be submitted to the MMO at least three months prior to the proposed commencement of the licensed activities or part of the licensed activities.

(2) A marine method statement submitted pursuant to sub-paragraph (1) for licensed activities related to Work No. 5B must include details of—

- (a) methods of dredging to be employed and associated disposal arrangements;

- (b) the micro-bored tunnel installation and methodology;
 - (c) the discharge head installation technique and methodology;
 - (d) rock armour specification, provenance and installation technique; and
 - (e) an indicative programme for the delivery of the licensed activities.
- (3) A method statement submitted pursuant to sub-paragraph (1) for licensed activities related to Work No. 8 must include details of—
- (a) the pipeline installation technique and methodology; and
 - (b) an indicative programme for the delivery of the licensable activities.
- (4) A marine method statement submitted pursuant to sub-paragraph (1) must—
- (a) only include details of the licensed activities in so far as they are required; and
 - (b) be scaled to correspond to the final requirements of the authorised development.
- (5) No part of the licensed activities may commence until the marine method statement for that part has been approved in writing by the MMO.
- (6) A marine method statement approved pursuant to sub-paragraph (6)(5) may be amended from time to time subject to approval in writing from the MMO.
- (7) The licensed activities must be carried out in accordance with the marine method statement approved pursuant to sub-paragraphs (6) and (7).

Reporting of engaged agents, contractors and vessels

14. —(1) The relevant undertaker must notify the MMO in writing of any agents, contractors or subcontractors (including their name, address and company number if applicable) that will carry on any licensed activity listed in this licence on behalf of the relevant undertaker.
- (2) A notification pursuant to sub-paragraph (1) must—
- (a) include the name, address and company number if applicable of any agent, contractor or sub-contractor; and
 - (b) details of any vessel being used to carry on any licensed activity listed in this licence on behalf of the relevant undertaker including the master's name, vessel type, vessel IMO number and vessel owner or operating company (including company number if applicable); and
 - (c) must be provided no less than 24 hours before the commencement of the licensed activity.
- (3) Any changes to the name or function of the specified agent, contractor or sub-contractor, or details or functions of the specified vessel, as provided in accordance with sub-paragraph (1) must be notified to the MMO in writing no less than 24 hours before the agent, contract or sub- contractor carries out a licensed activity.

Written scheme of archaeological investigation

15. —(1) The licensed activities, or any part of the licensed activities, must not commence unless a written scheme of archaeological investigation has been submitted to and approved in writing by the MMO following consultation with Historic England.
- (2) A written scheme of archaeological investigation submitted pursuant to sub-paragraph (1) must include—
- (a) details of responsibilities of the relevant undertaker, archaeological consultant and contractor where required and appropriate;
 - (b) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO;
 - (c) details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found and must set out a process for how unexpected

finds will be dealt with which must be in accordance with the measures in the framework construction environmental management plan;

- (d) delivery of any mitigation including the use of archaeological construction exclusion zones in agreement with the MMO;
- (e) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development; and
- (f) a geoarchaeological assessment that determines the extent to which any deposits of paleoenvironmental features exist.

(3) Unless otherwise agreed in writing the written scheme of archaeological investigation should be implemented as approved.

Construction, Operation and Maintenance

16. The relevant undertaker must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with the Pollution Prevention for Businesses guidelines.

17. The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.

18. The relevant undertaker must—

- (a) not discharge waste concrete slurry or wash water from concrete or cement into the marine environment; and
- (b) site concrete and cement mixing and washing areas at least 10 metres from the River Tees or surface water drain to minimise the risk of run off entering the marine environment.

19. During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

20.—(1) Vibratory or drilled ‘pin’ piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth and where the relevant undertaker has established, following the carrying out of a desk top study informed by appropriate survey information, that vibratory or drilled ‘pin’ piling would be ineffective.

(2) Where percussive piling is established to be necessary in accordance with sub-paragraph (1)—

- (a) soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved;
- (b) the soft-start duration must be a period of not less than 20 minutes; and
- (c) should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated.

21.—(1) In the event that any rock material is misplaced or lost below MHWS, the relevant undertaker must report the loss to the MMO Local Enforcement Office and MMO Marine Licensing Team using the dropped object procedure and via return of a completed Marine Licence Dropped Incident Report (MLDIR1), as soon as possible, and in any event within 48 hours of becoming aware of an incident and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the relevant undertaker must use reasonable endeavours to locate the material and recover it.

(2) On receipt of the MLDIR1, the MMO may require, acting reasonably, the relevant undertaker to carry out relevant surveys. The relevant undertaker must carry out surveys in accordance with the MMO’s reasonable requirements and must report the results of such surveys to the MMO;

(3) On receipt of such survey results, the MMO may, acting reasonably, require the relevant undertaker to remove specific obstructions from the seabed. The relevant undertaker must carry

out removals of specific obstructions from the seabed in accordance with the MMO's reasonable requirements and at its own expense;

(4) Where the relevant undertaker has been unable to locate or recover material pursuant to discharging its duties under sub-paragraphs (1) to (3) it must demonstrate to the MMO that reasonable attempts have been made to locate, remove or move any such material.

UXO Clearance

22.—(1) No removal or detonation of UXO can take place until a UXO clearance methodology and marine mammal mitigation protocol has been submitted to and approved in writing by the MMO (following consultation with the Environment Agency and Natural England).

(2) The UXO clearance methodology and marine mammal mitigation protocol must be submitted to the MMO no later than six months prior to the date on which it is intended for UXO clearance activities to begin (unless otherwise agreed in writing by the MMO).

(3) The UXO clearance methodology submitted pursuant to sub-paragraph (1) must be based on the nature, location and size of UXO or magnetic anomalies that have been identified and include—

- (a) a methodology for the clearance of magnetic anomalies or otherwise which are deemed a UXO risk;
- (b) information to demonstrate how the best available evidence and technology has been taken into account in formulating the methodology;
- (c) a debris removal plan;
- (d) a plan highlighting the area(s) within which clearance activities are proposed;
- (e) details of engagement with other local legitimate users of the sea; and
- (f) a programme of works.

(4) The marine mammal mitigation protocol submitted pursuant to sub-paragraph (1) must include details of the measures to prevent auditory or other injury to marine mammals following current best practice as advised by the relevant statutory nature conservation bodies.

(5) The removal or detonation of UXO must be undertaken in accordance with UXO clearance methodology and marine mammal mitigation protocol approved pursuant to sub-paragraph (1).

(6) Subject to sub-paragraph (7) a UXO clearance close out report must be submitted in writing to the MMO and the relevant statutory nature conservation body within three months following the end of the UXO clearance activity and must include the following for each detonation undertaken—

- (a) co-ordinates, depth, current speed, charge utilised and the date and time of each detonation; and
- (b) whether any mitigation was deployed, including feedback on practicalities of deployment of equipment and efficacy of the mitigation where reasonably practicable, or justification if this information is not available.

(7) Should there be more than one UXO clearance activity, the report required under sub-paragraph (6) will be provided at intervals agreed in writing with the MMO.

Post Construction

23. The relevant undertaker must ensure that any equipment, temporary structures, waste and debris associated with the licensed activities are removed within six weeks of completion of the licensed activity.

Disposal

24.—(1) The relevant undertaker must inform the MMO of the location and quantities of material disposed of each month under this licence.

(2) The information submitted pursuant to sub-paragraph (1) must be submitted to the MMO by 15 February each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

25. The relevant undertaker must ensure that only inert material of natural origin, produced during dredging is disposed of within the extent of the Order limits seaward of MHWS, within the disposal site TY150, TY160 (or any other disposal site approved in writing by the MMO), and that any other materials are screened out before disposal.

26. The material to be disposed of within the disposal site must be placed within the boundaries of the disposal site(s) specified within Table 12 in Part 1 of this licence.

27. The volume of material for disposal at each of the disposal sites specified within Table 12 in Part 1 of this licence must not exceed 500m³.

Provision of Information

28. —(1) Should the relevant undertaker become aware that any of the information on which the granting of this licence was based was materially false or misleading, the relevant undertaker must notify the MMO in writing as soon as is reasonably practicable.

(2) A notification submitted pursuant to sub-paragraph (1) must explain what information was materially false or misleading and include the correct information.

Amendments to plans etc.

29. With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this licence, the plans, protocols or statements so approved are taken to include amendments that may be approved in writing by the MMO subsequent to the first approval of those plans, protocols or statements provided it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments do not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.

Maximum parameters

30. Work No. 5B is not authorised to the extent that it gives rise to environmental effects that are materially new or different to those identified based on the maximum parameters set out in paragraph 9.3.28 of Chapter 9 of the environmental statement.

Safety Management

31. —(1) Subject to sub-paragraph (4), no part of the licensed activities may commence until a marine safety management system for that part has been submitted to and approved in writing by the MMO.

(2) The marine safety management system approved pursuant to sub-paragraph (1) must be in accordance with the Port Marine Safety Code and Guide to Good Practice on Port Marine Operations (or such documents as may replace them).

(3) The licensed activities must be carried out in accordance with the marine safety management system approved pursuant to sub-paragraph (1).

(4) Sub-paragraphs (1) to (3) do not apply to any part of the licensed activities where evidence has been submitted to and approved in writing by the MMO that there is an existing marine safety management system in place and which will apply to the relevant part of the licensed activities.

Provision of Information

32.—(1) Only when driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation the relevant undertaker must provide the following information to the Marine Noise Registry—

- (a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving / detonation of explosives to satisfy the Marine Noise Registry's Forward Look requirements;
- (b) within 12 weeks of completion of impact pile driving / detonation of explosives, information on the locations and dates of impact pile driving / detonation of explosives to satisfy the Marine Noise Registry's Close Out requirements

(2) The relevant undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to sub-paragraph (1) above within 7 days of the submission.

(3) For the purpose of this condition—

- (a) “Marine Noise Registry” means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;
- (b) “Forward Look” and “Close Out” requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) or any updated information document.

SCHEDULE 12

Article 41

PROTECTIVE PROVISIONS

PART 1

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

1. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part—

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

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreement to adopt water main or service pipe at future date) of the Water Industry Act 1991;
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991;
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act, and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; and
- (e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 28 of this Schedule;

“functions” includes powers and duties;

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986;

- (c) water undertaker within the meaning of the Water Industry Act 1991;
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991; and
- (e) an owner or operator of apparatus within paragraph (e) of the definition of that term,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained, and only where such owner or operator is not the subject of any of the protective provisions in Parts 2 to 28 of this Schedule.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

No acquisition etc. except by agreement

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

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

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new

plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 47 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker, by reason or in consequence of any such damage or interruption.
- (2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—
 - (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, employees, servants, contractors or agents; or
 - (b) any indirect or consequential loss or loss of profits by a utility undertaker.
- (3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- (4) A utility undertaker must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 10 applies. If requested to do so by the undertaker, a utility undertaker must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by a utility undertaker.

Enactments and agreements

11. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part—

“the 2003 Act” means the Communications Act 2003;

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in section 106 (application of the electronic communications code) of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

- (a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and
- (b) a network which the Secretary of State is providing or proposing to provide; and “operator” means a person in whose case the electronic communications code is applied by a direction under section 106(5) of the 2003 Act and who is an operator of a network; and

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106(5) of the 2003 Act and who is an operator of a network.

13. The exercise of the powers of article 33 (statutory undertakers) is subject to Part 10 of Schedule 3A (the electronic communications code) of the 2003 Act.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by an operator.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The operator must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 14 applies. If requested to do so by the undertaker, the operator must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 14 for claims reasonably incurred by the operator.

(5) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 47 (arbitration).

15. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

16. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION AS ELECTRICITY UNDERTAKER

Application

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

Interpretation

18. In this Part of this Schedule—

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

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“commence” and “commencement” has the same meaning as in article 2 of this Order and commencement is construed to have the same meaning save that for the purposes of this Part of this Schedule only the term commence and commencement includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary mitigation measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc (company number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

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

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 22(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 22(2) or otherwise; and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

19. Except for paragraphs 20 (apparatus of National Grid in streets subject to temporary stopping up), 24 (retained apparatus), 25 (expenses) and 26 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in streets subject to temporary stopping up

20. Notwithstanding the temporary stopping up or diversion of any street under the powers of article 13 (temporary stopping up of streets, public rights of way and access land), National Grid will be at liberty at all times to take all necessary access across any such stopped up street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

21. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Removal of apparatus

22.—(1) If the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 23(1) below) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an

endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter will be referred to arbitration in accordance with paragraph 30 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

24.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

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

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
 - (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
 - (c) details of load bearing capacities of trenches;
 - (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
 - (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
 - (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
 - (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
 - (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.
- (4) The undertaker must not commence any works to which sub-paragraph (2) or (3) apply until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required under sub-paragraph (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
 - (b) must not be unreasonably withheld.
- (6) In relation to any work to which sub-paragraph (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under sub-paragraph (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.
- (8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19, 22 and 23 apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).
- (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

25.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 22(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 30 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

Indemnity

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

- (a) bear and pay on demand the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, employees, servants, contractors or agents; and
- (b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of this Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 26.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this

paragraph 26 applies where it is within National Grid's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control. If requested to do so by the undertaker, National Grid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

Enactments and agreements

27. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

28.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 22(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 24, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

29. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

30. Save for differences or disputes arising under paragraphs 22(2), 22(4), 23(1) and 24 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 47 (arbitration).

Notices

31. Notwithstanding article 46 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 24 must be submitted as follows "Please sign up and submit your enquiry to <https://lsbud.co.uk/>. The asset protection team will then respond to your query. Any issues with your query, you can contact them directly at assetprotection@nationalgrid.com" or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF NATIONAL GRID GAS PLC AS GAS UNDERTAKER

Application

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

Interpretation

33. In this Part of this Schedule—

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

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Grid Gas for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“commence” and “commencement” has the same meaning as in article 2 of this Order and commencement is construed to have the same meaning save that for the purposes of this Part of this Schedule only the term commence and commencement includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary mitigation measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Grid Gas’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid Gas including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid Gas” means National Grid Gas plc (company number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

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

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 37(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 37(2) or otherwise; and/or
- (c) includes in relation to gas apparatus any of the activities that are referred to in paragraph 38 of T/SP/SSW/22 (National Grid Gas’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid Gas, High pressure Gas pipelines and associated installation requirements for third parties”).

On Street Apparatus

34. Except for paragraphs 35 (apparatus of National Grid Gas in streets subject to temporary stopping up), 39 (retained apparatus), 40 (expenses) and 41 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Gas are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid Gas in streets subject to temporary stopping up

35. Notwithstanding the temporary stopping up or diversion of any street under the powers of article 13 (temporary stopping up of streets, public rights of way and access land), National Grid Gas will be at liberty at all times to take all necessary access across any such stopped up street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

36. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid Gas.

Removal of apparatus

37.—(1) If the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid Gas in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Gas

reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid Gas to its satisfaction (taking into account paragraph 38(1) below) the necessary facilities and rights—

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Gas must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Grid Gas to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid Gas and the undertaker.

(5) National Grid Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to National Grid Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid Gas under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter will be referred to arbitration in accordance with paragraph 45 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to National Grid Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

39.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid Gas a plan and, if reasonably required by National Grid Gas, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid Gas under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

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

(4) Any approval of National Grid Gas required under sub-paragraph (3)—

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

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

(6) Works executed under this paragraph must be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Grid Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Grid Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid Gas's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid Gas in accordance with sub-paragraph (4) or (6) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 32 to 34, 37 and 38 apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(2).

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

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (10) at all times;

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

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 40.

Expenses

40.—(1) Save where otherwise agreed in writing between National Grid Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Gas on demand all charges, costs and expenses reasonably and properly incurred by National Grid Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Gas as a consequence of National Grid Gas—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 37(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Gas;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 45 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

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

Indemnity

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

- (a) bear and pay on demand the cost reasonably and properly incurred by National Grid Gas in making good such damage or restoring the supply; and
- (b) indemnify National Grid Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Gas, by reason or in consequence of any such damage or interruption or National Grid Gas becoming liable to any third party as aforesaid other than arising from any default of National Grid Gas.

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Gas, its officers, employees, servants, contractors or agents; and
- (b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid Gas as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of this Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 41.

(4) National Grid Gas must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) National Grid Gas must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 41 applies where it is within National Grid Gas’s reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which

is outside of National Grid Gas's control. If requested to do so by the undertaker, National Grid Gas must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) National Grid Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

Enactments and agreements

42. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Gas and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

43.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid Gas requires the removal of apparatus under paragraph 37(2) or National Grid Gas makes requirements for the protection or alteration of apparatus under paragraph 39, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid Gas's undertaking and National Grid Gas must use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

44. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

45. Save for differences or disputes arising under paragraphs 37(2), 37(4), 38(1) and 39 any difference or dispute arising between the undertaker and National Grid Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Gas, be determined by arbitration in accordance with article 47 (arbitration).

Notices

46. Notwithstanding article 46 (service of notices), any plans submitted to National Grid Gas by the undertaker pursuant to paragraph 39 must be submitted as follows "Please sign up and submit your enquiry to <https://lsbud.co.uk/>. The asset protection team will then respond to your query. Any issues with your query, you can contact them directly at assetprotection@nationalgrid.com" or such other address as National Grid Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF AIR PRODUCTS PLC

47. For the protection of Air Products the following provisions have effect, unless otherwise agreed in writing between the undertaker and Air Products.

48. In this Part—

“Air Products” means Air Products Public Limited Company (company number 00103881) whose registered address is Hersham Place Technology Park, Molesey Road, Walton On Thames, Surrey KT12 4RZ;

“alternative apparatus” means alternative apparatus adequate to enable Air Products to fulfil its contractual obligations in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Air Products for the purposes of gas supply; and

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

Precedence of the 1991 Act in respect of apparatus in streets

49. This Part does not apply to apparatus in respect of which the relations between the undertaker and Air Products are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

50. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), Air Products is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

No acquisition etc. except by agreement

51. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

52.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Air Products’ apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of Air Products to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Air Products in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Air Products written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Air Products reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Air Products the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Air Products must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Air Products and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) Air Products must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to Air Products of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Air Products that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Air Products, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Air Products.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

53.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to Air Products facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Air Products or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Air Products than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Air Products as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus

54.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 52(2), the undertaker must submit to Air Products a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Air Products for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Air Products is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Air Products under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Air Products in accordance with sub-paragraph (1) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 47 to 53 apply as if the removal of the apparatus had been required by the undertaker under paragraph 52(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Air Products notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

55.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Air Products the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 52(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 47 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Air Products by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 52(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

56.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 52(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Air Products, or there is any

interruption in any service provided, or in the supply of any goods, by Air Products, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Air Products in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Air Products for any other expenses, loss, damages, penalty or costs incurred by Air Products, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Air Products, its officers, employees, servants, contractors or agents.

(3) Air Products must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Air Products must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 56 applies. If requested to do so by the undertaker, Air Products must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 56 for claims reasonably incurred by Air Products.

Enactments and agreements

57. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and Air Products in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 6

FOR THE PROTECTION OF CATS NORTH SEA LIMITED

58. For the protection of CATS, the following provisions have effect, unless otherwise agreed in writing between the undertaker and CATS.

59. In this Part of this Schedule—

“CATS” means CATS North Sea Limited (Company number 09250798) whose registered address is Suite 1, 3rd Floor 11-12 St James’s Square, London SW1Y 4LB and any successor in title or function to the CATS pipelines;

“CATS pipeline(s)” means the following pipelines, owned by CATS and operated by Wood UK Ltd—

- (a) The 36” CATS pipeline (PL-774) transporting high pressure natural gas 411.84km (404km subsea, 7.84km onshore) from the CATS Riser Platform, located in the Central Graben Development of the North Sea, to processing facilities at the CATS Terminal in Teesside;
- (b) Onshore 6” Condensate export pipeline (PL-937) transporting natural gas condensate 2.87km from the CATS Terminal to Sabic, North Tees plant;
- (c) Onshore 6” Condensate export pipeline (PL-938) transporting natural gas condensate 2.45km from the CATS Terminal to the Navigator Terminals storage site;
- (d) Onshore 6” Propane pipeline (CAT-Pipeline-04) transporting Propane 1.09km from the CATS Terminal to ConocoPhillips storage site;
- (e) CAT-Pipeline-05 6” Butane pipeline transporting butane 1.09km from the CATS Terminal to Conoco Phillips storage site;

“CATS requirements” means the requirements applicable for works undertaken within 50 metres of the CATS pipelines as set out in the—

- (a) CATS Wayleaves Guidance for Landowners and Third Parties, Doc Number: CAT-PPI-PRC-019;
- (b) CATS Conditions and Restrictions for Work Activities in Close Proximity to CATS Pipelines, Doc Number: CAT-PPI-PRC-020; and
- (c) CATS Procedures for the Excavation and Backfill of CATS Pipelines, Doc Number: CAT-PPI-PRC-021,

or any updates or amendments thereto as notified to the undertaker in writing; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 60.

Consent under this Part

60. Before commencing any part of the authorised development within 50 metres of the CATS pipelines, the undertaker must submit to CATS the works details for the proposed works and such further particulars as CATS may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require in line with the CATS requirements.

61. No works comprising any part of the authorised development within 50 metres of the CATS pipelines are to be commenced until the works details in respect of those works submitted under paragraph 60 have been approved by CATS.

62.—(1) Any approval of CATS required under paragraph 61 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CATS may require to be made having regard to the CATS requirements.

(2) Where CATS consider that the authorised development will adversely affect the safe operation of the CATS pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of CATS that the authorised development will not adversely affect the safe operation of the CATS pipeline.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 61 and any requirements imposed on the approval under sub-paragraph (1).

(4) Where there has been a reference to an arbitrator in accordance with paragraph 70 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 70.

63. Where formal consent is required under the CATS requirements for works within the wayleave of the CATS pipelines (between 3.5 metres to 7.5 metres either side of the pipeline, depending on location), approval given by CATS under paragraph 61 constitutes formal consent for the purposes of the CATS requirements.

Compliance with the CATS requirements

64. In undertaking any works or exercising any rights within 50 metres of the CATS pipelines, the undertaker must comply with such conditions, requirements or regulations as are set out in the CATS requirements.

65. No explosives for blasting are to be used within 400 metres of any part of the CATS pipeline(s) or associated installations, until the details in respect of those works have been submitted to and approved by CATS, such approval not to be unreasonably withheld or delayed

and shall be deemed to have been given if no response is received from CATS within 60 days of a request having been made by the undertaker.

Monitoring for damage to pipelines

66.—(1) When undertaking any works or exercising any rights within 50 metres of the CATS pipelines, the undertaker must monitor the CATS pipelines to establish whether damage has occurred.

(2) Where any damage occurs to the CATS pipelines as a result of the works, the undertaker must immediately cease all work in the vicinity of the damage and must notify CATS to enable repairs to be carried out to the reasonable satisfaction of CATS.

(3) If damage has occurred to the CATS pipelines as a result of the works the undertaker will, at the request and election of CATS—

- (a) afford CATS all reasonable facilities to enable it to fully and properly repair and test the CATS pipelines and pay to CATS its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected pipeline as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the reasonable satisfaction of CATS to have effectively repaired the affected pipeline before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where CATS agrees otherwise in writing) provide CATS with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of any works within 50 metres of the CATS pipelines if damage is found to have occurred to any of the CATS pipelines as a result of the relevant work, sub- paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then CATS is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

67.—(1) If any damage occurs to a CATS pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and CATS must be notified immediately.

(2) Where there is leakage or escape, the undertaker must immediately—

- (a) evacuate all personnel from the immediate vicinity of the leak;
- (b) inform CATS;
- (c) prevent any approach by the public;
- (d) shut down any machinery and other sources of ignition within at least 350 metres from the leakage; and
- (e) assist emergency services as may be requested.

Indemnity

68.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 60, any damage is caused to the CATS Pipelines, or there is any interruption in any service provided, or in the supply of any goods, by CATS, the undertaker must—

- (a) bear and pay the cost reasonably incurred by CATS in making good such damage or restoring the supply; and
- (b) make reasonable compensation to CATS for any other expenses, loss, damages, penalty or costs incurred by CATS, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of CATS, its officers, employees, servants, contractors or agents.

(3) CATS must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) CATS must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 68 applies. If requested to do so by the undertaker, CATS must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 68 for claims reasonably incurred by CATS.

Costs

69.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CATS the reasonable expenses incurred by them in, or in connection with, the inspection, removal, alteration or protection of any CATS pipeline which may be required in consequence of the execution of any such works referred to or approved under paragraphs 57 and 58, including without limitation—

- (a) authorisation of works details in accordance with paragraphs 60 to 63;
- (b) the engagement of an engineer and their observation of the authorised works affecting the CATS pipelines and the provision of safety advice in accordance with the CATS requirements; and
- (c) any reasonable costs incurred by CATS in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary.

(2) Prior to incurring any fees, costs, charges or expenses associated with the activities outlined in sub-paragraph (1), CATS must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the fees, costs, charges or expenses to be incurred.

(3) Any fees, costs, charges and expenses reasonably incurred by the operating partner of the CATS pipeline (who for the time being is Wood Group UK Limited) shall not be notifiable costs in terms of paragraph (2).

Arbitration

70. Any difference or dispute arising between the undertaker and CATS under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and CATS, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 7

FOR THE PROTECTION OF CF FERTILISERS UK LIMITED

71. For the protection of CF Fertilisers, the following provisions have effect, unless otherwise agreed in writing between the undertaker and CF Fertilisers.

72. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable CF Fertilisers to undertake its operations on the CF Fertilisers site in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by CF Fertilisers;

“CF Fertilisers” means CF Fertilisers UK Limited (company number 03455690) whose registered address is Head Office Building, Ince, Chester, Cheshire CH2 4LB and any successor in title to the CF Fertilisers site;

“the CF Fertilisers site” means the land in between Haverton Hill Road and Belasis Avenue, adjacent to the Order limits and which is owned and operated by CF Fertilisers;

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

“the proposed CF pipeline” the proposed pipeline to service the CF Fertilisers site and which is to be owned or for the benefit of CF Fertilisers and to be used for the passage of multi- purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) of the Pipe-lines Act 1962 (meaning of “pipe-line”);

“the respective authorised developments” means the authorised development and the proposed CF pipeline respectively; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 81.

Precedence of the 1991 Act in respect of apparatus in streets

73. This Part does not apply to apparatus in respect of which the relations between the undertaker and CF Fertilisers are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

74. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), CF Fertilisers is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Removal of apparatus/access

75.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of CF Fertilisers to maintain that apparatus in that land and to gain access to it must not be extinguished (or otherwise made less advantageous), until alternative apparatus (or alternative rights as the case may be) has been constructed (or granted) and is in operation, and access to it has been provided, to the reasonable satisfaction of CF Fertilisers in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to CF Fertilisers written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order CF Fertilisers reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to CF Fertilisers the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, CF Fertilisers must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between CF Fertilisers and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) CF Fertilisers must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to CF Fertilisers of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to CF Fertilisers that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by CF Fertilisers, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of CF Fertilisers.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

76.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to CF Fertilisers facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted—

- (a) upon such terms and conditions as may be agreed between the undertaker and CF Fertilisers or in default of agreement settled by arbitration in accordance with article 47; and
- (b) in compliance with all health and safety, environmental and regulatory requirements and relevant industry standards.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to CF Fertilisers than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to CF Fertilisers as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus

77.—(1) Not less than 28 days before starting the execution of any works comprised in the authorised development that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 76(2), the undertaker must submit to CF Fertilisers the works details for the proposed works and such further particulars as CF Fertilisers may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No works referred to in sub-paragraph (1) are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by CF Fertilisers.

(3) Any approval of CF Fertilisers required under sub-paragraph (1) must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CF Fertilisers may require to be made for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and CF Fertilisers is entitled to watch and inspect the execution of those works.

(4) The works referred to in sub-paragraph (1) must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3).

(5) Where there has been a reference to an arbitrator in accordance with paragraph 87 and the arbitrator gives approval for the works details, the works referred to in sub-paragraph (1) must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 87.

(6) If CF Fertilisers in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 76(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to CF Fertilisers notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Consent under this Part

78. Paragraphs 79 to 82 of this Part only apply where prior to the undertaker commencing any part of Work Numbers 2A or 6 CF Fertilisers has begun (but not completed) construction of the proposed CF pipeline anywhere within the Order limits.

79. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the proposed CF pipeline or access to it, the undertaker must submit to CF Fertilisers the works details for the proposed works and such further particulars as CF Fertilisers may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

80. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the proposed CF pipeline or access to it are to be commenced until the works details in respect of those works submitted under paragraph 81 have been approved by CF Fertilisers.

81. Any approval of CF Fertilisers required under paragraph 80 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CF Fertilisers may require to be made for the routing, construction, safety, operational viability and maintenance of the proposed CF pipeline.

82.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 80 and any requirements imposed on the approval under paragraph 81.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 87 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 87.

(3) Nothing in paragraphs 79 to 82 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a

new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of paragraphs 81 to 84 apply to and in respect of the new plan, section and description.

Notices

83. Any notices to be served on CF Fertilisers in accordance with this Part shall be served in writing on the registered company address and on the General Counsel at CF Fertilisers, Ince, Chester, Cheshire CH2 4LB.

Co-operation

84.—(1) This paragraph applies insofar as—

- (a) the construction of the authorised development would have the potential to have an effect on the exercise by CF Fertilisers of its rights in connection with the proposed CF pipeline within the Order limits;
- (b) the construction of the respective authorised developments may be undertaken within the Order limits concurrently; or
- (c) the construction of one of the respective authorised developments would have an effect on the operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and CF Fertilisers must—

- (a) co-operate with each other with a view to ensuring—
 - (i) the compatibility of the respective authorised developments;
 - (ii) the co-ordination of construction programming and the carrying out of the respective authorised developments;
 - (iii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, CF Fertilisers and their respective employees, contractors and sub-contractors;
 - (iv) the undertaker and CF Fertilisers have the appropriate risk assessments, method statements (RAMS) and construction design management (CDM) in place and are able to comply with their obligations in this respect; and
 - (v) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and CF Fertilisers;
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Expenses and costs

85.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CF Fertilisers the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 76(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated and agreed after removal.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 47 to be necessary,

then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to CF Fertilisers by virtue of sub-paragraph (1) is to be reduced by the amount of that excess. The provisions of this sub-paragraph (3) shall only apply where the alteration is at the election of CF Fertilisers and not where such change to the existing type, capacity, dimensions or depth is as a result of industry requirements, legislation or environmental or health and safety considerations.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 76(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

86.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of CF Fertilisers, or there is any interruption in any service provided, or in the supply of any goods, by CF Fertilisers, the undertaker must—

- (a) bear and pay the cost reasonably incurred by CF Fertilisers in making good such damage or restoring the supply; and
- (b) make reasonable compensation to CF Fertilisers for any other expenses, loss, damages, penalty or costs incurred by CF Fertilisers, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of CF Fertilisers, its officers, employees, servants, contractors or agents.

(3) CF Fertilisers must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand subject to its obligations in sub-paragraph (4).

(4) If the Undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

- (a) keep CF Fertilisers fully informed of the developments and material elements of the proceedings;
- (b) take account of the views of CF Fertilisers before taking any action in relation to the claim;

- (c) not bring the name of CF Fertilisers or any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and
- (d) not pay or settle such claims without the prior written consent of CF Fertilisers, such consent not to be unreasonably withheld or delayed.

(5) CF Fertilisers must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 86 applies. If requested to do so by the undertaker, CF Fertilisers must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 86 for claims reasonably incurred by CF Fertilisers.

Arbitration

87. Any difference or dispute arising between the undertaker and CF Fertilisers under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and CF Fertilisers, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 8

FOR THE PROTECTION OF EXOLUM SEAL SANDS LTD AND EXOLUM RIVERSIDE LTD

88. For the protection of Exolum, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Exolum.

89. In this Part of this Schedule—

“Exolum” means Exolum Seal Sands Ltd (Company number 00465548) and Exolum Riverside Ltd (Company number 03422427), both of whose registered address is 1st Floor 55 King William Street, London EC4R 9AD and any successor in function to Exolum’s operations;

“the Exolum operations” means the operations and assets within the Order limits or operations and assets which have the benefit of rights (including access) over the Order limits vested in Exolum including the pipeline crossing the Order limits operated by Exolum used at all times and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962;

“restricted works” means any works forming any part of the authorised development that are near to, or will or may affect the Exolum operations or access to them including—

- (a) all works within 15 metres of the Exolum operations;
- (b) the crossing of the Exolum operations by other utilities;
- (c) the use of explosives within 400 metres of the Exolum operations; and
- (d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of the Exolum operations,

whether carried out by the undertaker or any third party in connection with the authorised development; and

“works details” means—

- (a) plans and sections;
- (b) a method statement describing—
 - (i) the exact position of the works;
 - (ii) the level at which the works are proposed to be constructed or renewed;
 - (iii) the manner of the works’ construction or renewal including details of excavation, positioning of plant etc.;

- (iv) the position of all apparatus;
- (v) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (vi) any intended maintenance regime;
- (vii) details of the proposed method of working and timing of execution of works;
- (viii) details of vehicle access routes for construction and operational traffic; and
- (ix) any other information reasonably required by Exolum to assess the works;
- (c) where the restricted works will or may be situated on, over, under or within 15 metres measured in any direction of the Exolum operations, or (wherever situated) impose any load directly upon the Exolum operations or involve embankment works within 15 metres of the Exolum operations, the method statement must also include—
 - (i) the position of the Exolum operations; and
 - (ii) by way of detailed drawings, every alteration proposed to be made to the Exolum operations; and
- (d) any further particulars provided in response to a request under paragraph 90.

Consent of restricted works under this Part

90.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and Exolum, not less than thirty five (35) days before commencing the execution of any restricted works, the undertaker must submit to Exolum the works details for the restricted works and such further particulars as Exolum may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by Exolum.

(3) Any approval of Exolum required under this paragraph 90 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Exolum may require to be made for—

- (a) the continuing safety and operational viability of the Exolum operations; and
- (b) the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Exolum operations.

(4) Any approval of Exolum required under this paragraph 90 including any reasonable requirements required by Exolum under sub-paragraph (3), must be made in writing within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and Exolum) beginning with the date on which the works details were submitted to Exolum under sub-paragraph (1) or the date on which any further particulars requested by Exolum under sub- paragraph (1) were submitted to Exolum (whichever is the later).

(5) The authorised development must be executed only in accordance with the works details approved by Exolum under this paragraph 90 including any reasonable requirements notified to the undertaker in accordance with sub-paragraph (3) and Exolum shall be entitled to watch and inspect the execution of those works.

(6) If Exolum in accordance with sub-paragraph (3) and in consequence of the restricted works proposed by the undertaker, reasonably requires the removal of any of the Exolum operations and gives written notice to the undertaker of that requirement, this Order applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph (1).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and Exolum) in no case less than 28 days before commencing the execution of any restricted works, new works details, instead of the works details previously submitted, and having done so the provisions of this paragraph 90 apply to and in respect of the new works details.

Prohibition of acquisition and interference

91.—(1) Regardless of any provision in this Order or anything shown on the land plans or if the Order applies to any interest in any land in which the Exolum operations are placed or over which access to the Exolum operations is enjoyed—

- (a) the undertaker must not, otherwise than in accordance with terms of this Order including any approval given under this Part—
 - (i) obstruct or render less convenient the access to the Exolum operations;
 - (ii) interfere with or affect the Exolum operations or Exolum’s ability to carry out its functions including operating its pipeline and its terminal by way of the creation of restrictive covenants or otherwise;
 - (iii) require that the Exolum operations are relocated or diverted; or
 - (iv) remove or require to be removed any Exolum operations; and
- (b) any right of Exolum to access the Exolum operations shall not be extinguished until any necessary alternative access has been provided to the reasonable satisfaction of Exolum.

(2) Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has an easement, right, operations, assets or other interests (together “Exolum’s rights”)—

- (a) where Exolum’s rights do not provide or require access over, in or under the Order limits, there is no restriction on the exercise of such rights;
- (b) where Exolum’s rights do provide or reasonably require access in, on or under the Order limits, Exolum may exercise those rights where reasonably necessary—
 - (i) in an emergency without notice; and
 - (ii) in non-emergency circumstances having first given the undertaker prior written notice in order to allow the parties to liaise over timing and co-ordination of their respective works during the period of temporary possession; and
- (c) subject to paragraph (b) the undertaker shall not extinguish Exolum’s rights, unless in accordance with the provisions of this Order.

Cathodic protection testing

92. Where in the reasonable opinion of Exolum or the undertaker—

- (a) the authorised development might interfere with the cathodic protection forming part of the Exolum operations; or
- (b) the Exolum operations might interfere with the proposed or existing cathodic protection forming part of the authorised development,

Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and implement measures for providing or preserving cathodic protection.

Expenses

93.—(1) Subject to the following provisions of this paragraph 93, the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with—

- (a) undertaking its obligations under this Order including—
 - (i) the execution of any works under this Order including for the protection of the Exolum operations; and
 - (ii) the review and assessment of works details in accordance with paragraph 90;
- (b) the watching of and inspecting the execution of the restricted works; and
- (c) imposing reasonable requirements in accordance with paragraph 90(3).

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), Exolum must give prior written notice to the undertaker of the activities to be undertaken and an estimate of the costs or expenses to be incurred.

Indemnity

94.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 90, any damage is caused to the Exolum operations, or there is any interruption in any service provided, or in the supply of any goods, by Exolum, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Exolum in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Exolum for any other expenses, loss, damages, penalty or costs incurred by Exolum, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Exolum, its officers, employees, servants, contractors or agents.

(3) Exolum must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Exolum must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 94 applies. If requested to do so by the undertaker, Exolum must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 94 for claims reasonably incurred by Exolum.

Arbitration

95.—(1) The undertaker and Exolum shall use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Order in accordance with the following provisions of this paragraph.

(2) Any difference or dispute arising between the undertaker and Exolum under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Exolum, be referred to and settled by arbitration in accordance with article 47 (arbitration).

(3) Where there has been a reference to an arbitrator in accordance with sub-paragraph (1) and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under sub-paragraph (1)

PART 9

FOR THE PROTECTION OF INEOS NITRILES (UK) LIMITED

96. For the protection of INEOS, the following provisions have effect, unless otherwise agreed in writing between the undertaker and INEOS.

97. In this Part of this Schedule—

“INEOS” means INEOS Nitriles (UK) Limited (Company number 06238238) whose registered address is PO Box 62 Seal Sands, Middlesbrough TS2 1TX and any successor in title or function to the INEOS operations;

“the INEOS operations” means the operations or property within Order limits vested in INEOS Nitriles (UK) Limited including the pipeline crossing the Order limits owned and operated by INEOS used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 98.

Consent under this Part

98. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the INEOS operations or access to them or which would otherwise be located on land within the INEOS operations, the undertaker must submit to INEOS the works details for the proposed works and such further particulars as INEOS may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

99. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the INEOS operations or access to them or which would otherwise be located on land within the INEOS operations are to be commenced until the works details in respect of those works submitted under paragraph 98 have been approved by INEOS.

100.—(1) Any approval of INEOS required under paragraph 99 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as INEOS may require to be made for—

- (a) the continuing safety and operational viability of the INEOS operations;
- (b) the continuing safe operation of infrastructure not belonging to INEOS but within or adjacent to the INEOS operations, including access at all times for inspection maintenance and repair etc whether that be by INEOS or by any party with rights in the land or infrastructure on or in the land; and
- (c) the requirement for INEOS to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the INEOS operations at all times; and
 - (ii) uninterrupted and unimpeded access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the INEOS operations.

(2) Where INEOS can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the INEOS operations it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of INEOS that the authorised development will not significantly adversely affect the safety of the INEOS operations.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 99 and any requirements imposed on the approval under sub-paragraph (1).

(4) Where there has been a reference to an arbitrator in accordance with paragraph 103 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 103.

Compliance with requirements, etc. applying to the INEOS operations

101. In undertaking any works in relation to the INEOS operations or exercising any rights relating to or affecting the INEOS operations, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the INEOS operations.

Indemnity

102.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 98, any damage is caused to the INEOS operations or there is any interruption in any service provided, or in the supply of any goods, by INEOS, the undertaker must—

- (a) bear and pay the cost reasonably incurred by INEOS in making good such damage or restoring the supply; and
- (b) make reasonable compensation to INEOS for any other expenses, loss, damages, penalty or costs incurred by INEOS, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of INEOS, its officers, employees, servants, contractors or agents.

(3) INEOS must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) INEOS must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 102 applies. If requested to do so by the undertaker, INEOS must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 102 for claims reasonably incurred by INEOS.

Arbitration

103. Any difference or dispute arising between the undertaker and INEOS under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and INEOS, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 10

FOR THE PROTECTION OF MARLOW FOODS LIMITED

104. For the protection of Marlow Foods, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Marlow Foods.

105. In this Part of this Schedule—

“Marlow Foods” means Marlow Foods Limited (Company number 01752242) whose registered address is Quorn Foods, Station Road, Stokesley, North Yorkshire TS9 7AB and any successor in title to the Marlow Foods operations; and

“the Marlow Foods operations” means the operations of Marlow Foods located on Nelson Avenue, Billingham TS23 4HA.

Regulation of powers

106. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent access to the Marlow Foods operations by Marlow Foods, its employees, contractors or sub-contractors, such access to be either along the existing highway route at Nelson Avenue, Billingham or such diversionary route as the undertaker may provide.

107. The undertaker must give to Marlow Foods not less than 28 days' written notice of its intention to commence the construction of any part of the authorised development that uses the existing highway route at Nelson Avenue, Billingham.

Co-operation

108. Insofar as the construction of any part of the authorised development and access to the Marlow Foods operations would have an effect on each other, the undertaker and Marlow Foods must—

- (a) co-operate with each other with a view to ensuring—
 - (i) that access for the purposes of constructing the authorised development is maintained for the undertaker, its employees, contractors and sub-contractors; and
 - (ii) that access to the Marlow Foods operations is maintained for Marlow Foods, its employees, contractors and sub-contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the access to the Marlow Foods operations and the construction of the authorised development.

Indemnity

109.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the use of the highway at Nelson Avenue by the undertaker in connection with the construction of the authorised development, there is any interruption in any service provided, or in the supply of any goods, by Marlow Foods, the undertaker must make reasonable compensation to Marlow Foods for any expenses, loss, damages, penalty or costs incurred by Marlow Foods, by reason or in consequence of any such interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Marlow Foods, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by Marlow Foods.

(3) Marlow Foods must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Marlow Foods must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 109 applies. If requested to do so by the undertaker, Marlow Foods must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 109 for claims reasonably incurred by Marlow Foods.

Arbitration

110. Any difference or dispute arising between the undertaker and Marlow Foods under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Marlow Foods, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 11

FOR THE PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

111. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 125 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

112.—(1) In this Part of this Schedule—

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

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

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

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

“protective works” means any works specified by the engineer under paragraph 114(4);

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

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

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

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development; and

“specified work” means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and for the avoidance of doubt, includes the powers conferred by article 5 (maintenance of authorised development).

“undertaker” has the same meaning as in article 2 (interpretation) of this Order.

113.—(1) Where under this Part of this Schedule Network Rail is required to give its consent, or approval in respect of any matter, that consent, or approval is subject to the condition that

(a) 1993 c.43.

Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

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

114.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 47 (arbitration).

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

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

115.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 114(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 114;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and

- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

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

116. The undertaker must—

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

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

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

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 114, pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 119(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

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

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 114(3) or in constructing any protective works under the provisions of

paragraph 114(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

120.—(1) In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 114 for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 114) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 114 has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3) the

testing of the authorised development causes EMI, then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) The undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 115.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 124(1) applies to the costs and expenses reasonably incurred or losses reasonably suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 119(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 47 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

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

(2) Regardless of anything in sub-paragraph (1), on receipt of a notice given by Network Rail pursuant to sub-paragraph (1), the undertaker may respond in writing to Network Rail requesting Network Rail to take the steps as may be reasonably necessary to put the specified work the subject of the notice in such state of maintenance as not adversely to affect railway property. If Network Rail agrees to undertake the steps it must give to the undertaker reasonable notice of its intention to carry out such steps, and the undertaker must pay to Network Rail the reasonable cost of doing so.

122. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable

requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

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

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

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others within the control of the undertaker whilst engaged upon a specified work,
- (c) in respect of costs incurred by Network Rail in complying with any railway operational procedure or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development

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

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take all reasonable steps to mitigate any liabilities relating to such claims or demands and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 124 applies. If requested to do so by the undertaker, Network Rail is to provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker is to only be liable under this paragraph 124 for claims reasonably incurred by Network Rail.

(3) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

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

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

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of

the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

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

125. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable pursuant to this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 124) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

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

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

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

128. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

129. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent under article 8 (consent to transfer of benefit or Order) of this Order) and any such notice must be given no later than 7 days before any such application is made and must describe or give (as appropriate)—

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

130. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail in a format specified by Network Rail.

PART 12

FOR THE PROTECTION OF NORTHERN POWERGRID (NORTHEAST) PLC

131. For the protection of Northern Powergrid (Northeast) Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

132. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to Northern Powergrid to such apparatus;

“functions” includes powers and duties;

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

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include any measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impact of the works on the apparatus; and

“Northern Powergrid” means Northern Powergrid (Northeast) Plc (Company number 02906593) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

133. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

134. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), Northern Powergrid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

135. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement of Northern Powergrid.

136.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement for a tenure no less than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 148.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 148, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

137.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with paragraph 148.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

138.—(1) Not less than ninety days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 136(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of twenty-eight days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 131 to 137 apply as if the removal of the apparatus had been required by the undertaker under paragraph (2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

139.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable expenses incurred by Northern Powergrid—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in

consequence of the execution of any such works as are referred to in paragraph 136(2); and

- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 136(1) having first decommissioned such apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1).

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 148 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 136(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

140.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 136(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Northern Powergrid for any other expenses, loss, damages, penalty or costs incurred by Northern Powergrid,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 140 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 140 for claims reasonably incurred by Northern Powergrid.

141. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

142. Without prejudice to the generality of the protective provisions in this Part of the Schedule, Northern Powergrid must from time to time submit to the undertaker estimates of reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated under this Part of the Schedule including without limitation—

- (a) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker under paragraph 139;
- (b) costs incurred in fulfilling its obligations in paragraph 136(3);
- (c) fees incurred in settling and completing and registering any documentation to secure rights for its diverted or relocated apparatus; and
- (d) costs and expenses of contractors required to undertake any works for which Northern Powergrid is responsible and of purchasing the necessary cabling and associated apparatus,

provided that Northern Powergrid must use reasonable endeavours to minimise to a proper and reasonable level any charges, costs, fees and expenses to the extent that they are incurred.

143. Northern Powergrid and the undertaker must use their reasonable endeavours to agree the amount of any estimates submitted by Northern Powergrid under paragraph 142 within 15 working days following receipt of such estimates by the undertaker. The undertaker must confirm its agreement to the amount of such estimates in writing and must not unreasonably withhold or delay such agreement. If the parties are unable to agree the amount of an estimate, it will be dealt with in accordance with paragraph 148.

144. Work in relation to which an estimate is submitted must not be commenced by Northern Powergrid until that estimate is agreed with the undertaker in writing and a purchase order up to the value of the approved estimate has been issued by the undertaker to Northern Powergrid and an easement for the routes of the apparatus has been granted to Northern Powergrid pursuant to paragraph 136(1) for the benefit of its statutory undertaking.

145. If Northern Powergrid at any time becomes aware that an estimate agreed is likely to be exceeded, it must forthwith notify the undertaker and must submit a revised estimate of the relevant costs and expenses to the undertaker for agreement.

146. Northern Powergrid may from time to time and at least monthly from the date of this Order issue to the undertaker invoices for costs and expenses incurred up to the date of the relevant invoice, for the amount of the relevant estimate agreed. Invoices issued to the undertaker for payment must—

- (a) specify the approved purchase order number; and

- (b) be supported by timesheets and narratives that demonstrate that the work invoiced has been completed in accordance with the agreed estimate.

147. The undertaker is not responsible for meeting costs or expenses in excess of an agreed estimate, other than where agreed under paragraph 145 above or determined in accordance with paragraph 148.

148. Any difference under the provisions of this Part of the Schedule, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by an independent electrical engineer by or on behalf of the President for the time being of the Institute of Engineering and Technology.

149. Prior to carrying out any works within the Order limits Northern Powergrid must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

PART 13

FOR THE PROTECTION OF NPL WASTE MANAGEMENT LIMITED

150. For the protection of NPL, the following provisions have effect, unless otherwise agreed in writing between the undertaker and NPL.

151. In this Part of this Schedule—

“NPL” means NPL Waste Management Limited (Company number 06112535) whose registered address is One St Peter’s Square, Manchester M2 3DE and any successor in title or function to the NPL access shafts;

“NPL access shafts” means the shafts within plots 4 and 5 in the Order limits owned and operated by NPL for the purposes of accessing the Billingham Anhydrite Mine; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 152.

Consent under this Part

152. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the NPL access shafts or access to them, the undertaker must submit to NPL the works details for the proposed works and such further particulars as NPL may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

153. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the NPL access shafts or access to them are to be commenced until the works details in respect of those works submitted under paragraph 152 have been approved by NPL.

154. Any approval of NPL required under paragraph 153 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as NPL may require to be made for NPL to have reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation of the NPL access shafts.

155.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 153 and any requirements imposed on the approval under paragraph 154.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 157 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 157.

Indemnity

156.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 152, any damage is caused to the NPL access shafts or property of NPL, or there is any interruption in any service provided, or in the supply of any goods, by NPL, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NPL in making good such damage or restoring the supply; and
- (b) make reasonable compensation to NPL for any other expenses, loss, damages, penalty or costs incurred by NPL, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NPL, its officers, employees, servants, contractors or agents.

(3) NPL must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NPL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 156 applies. If requested to do so by the undertaker, NPL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 156 for claims reasonably incurred by NPL.

Arbitration

157. Any difference or dispute arising between the undertaker and NPL under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NPL, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 14

FOR THE PROTECTION OF PD TEESPORT LIMITED

158. For the protection of PD Teesport, the following provisions have effect, unless otherwise agreed in writing between the undertaker and PD Teesport.

159. In this Part of this Schedule—

“PD Teesport” means PD Teesport Limited (company number 02636007) and any successor in title or function to the PD Teesport operations;

“the PD Teesport operations” means the port operations or property (including all freehold, leasehold, easements, wayleaves, licences and other rights) vested in PD Teesport Limited (or any related company whose assets or operations are impacted by the construction, maintenance and operation of the authorised development), including access to and from those operations or activities via Tees Dock Road and access, use and occupation of the Redcar Bulk Terminal as well as access over South Gare Road and Seal Sands Road;

“road user(s)” means any person who has a—

- (a) right to use Seal Sands Road or South Gare Road (including parties authorised by PD Teesport);
- (b) need to use Seal Sands Road or South Gare Road to access property or facilities owned, operated or occupied by them; and
- (c) need to use Seal Sands Road or South Gare Road in connection with undertaking their business operations or statutory functions;

“Seal Sands Road” means any part of Seal Sands Road within the Order limits;

“South Gare Road” means any part of South Gare Road within the Order limits; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 164.

Regulation of powers

160. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent the operation or maintenance of the PD Teesport operations or access to them without the prior written consent of PD Teesport.

161. Any approval of PD Teesport required under paragraph 160 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as PD Teesport may require to be made in relation to—

- (a) the continuing safety, or operational activity of the PD Teesport operations;
- (b) ensuring that there is no commercial loss to PD Teesport; or
- (c) the requirement for PD Teesport (including its employees, agents, servants and contractors), any, tenants, licencees and occupiers on its land to have reasonable access to, occupation and use of the PD Teesport operations at all times.

Regulation of powers in relation to Seal Sands Road

162. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent use of Seal Sands Road by PD Teesport and road users, such access to be along the existing highway route at Seal Sands Road.

Regulation of powers in relation to South Gare Road

163. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent access via South Gare Road to South Gare by PD Teesport and road users, such access to be either along the existing highway route at South Gare Road, or such diversionary route as the undertaker may provide (provided that such alternative route is equally commodious).

Consent under this Part

164. Before commencing any part of the authorised development which may have an effect on the operation or maintenance of the PD Teesport operations or access to them, the undertaker must submit to PD Teesport the works details for the proposed works and such further particulars as PD Teesport may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

165. No works comprising any part of the authorised development which may have an effect on the operation or maintenance of the PD Teesport operations or access to them are to be

commenced until the works details in respect of those works submitted under paragraph 164 have been approved by PD Teesport.

166. Any approval of PD Teesport required under paragraph 165 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as PD Teesport may require to be made for—

- (a) the continuing safety, operational activity or business interests of the PD Teesport operations; and
- (b) the requirement for PD Teesport to have uninterrupted and unimpeded access (including river access) to PD Teesport operations at all times.

167. The authorised development must be carried out in accordance with the works details approved under paragraph 165 and any requirements imposed on the approval under paragraph 166.

168. Where there has been a reference to an arbitrator in accordance with paragraph 170 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 170.

Indemnity

169.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 164, any damage is caused to the PD Teesport operations, or there is any interruption in any service provided, or in the supply of any goods, by PD Teesport, the undertaker must—

- (a) bear and pay the cost reasonably incurred by PD Teesport in making good such damage or restoring the supply; and
- (b) indemnify PD Teesport for any other expenses, loss (including loss of profits), damages, penalty, claims, investigations, demands, charges, actions, notices, proceedings, orders, awards, judgments, damages, other liabilities and expenses (including legal fees, expenses and fines) or costs incurred of any kind or nature whatsoever by them, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of PD , its officers, employees, servants, contractors or agents.

(3) PD Teesport must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) If the undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

- (a) keep PD Teesport fully informed of the developments and material elements of the proceedings;
- (b) take account of the views of PD Teesport before taking any action in relation to the claim;
- (c) not bring the name of the PD Teesport on any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and
- (d) not pay or settle such claims without the prior written consent of PD Teesport, such consent not to be unreasonably withheld or delayed.

(5) PD Teesport must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 169 applies. If requested to do so by the undertaker, PD Teesport must provide an explanation of how the claim has been minimised or details to substantiate any cost or

compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 169 for claims reasonably incurred by PD Teesport.

Arbitration

170. Any difference or dispute arising between the undertaker and PD Teesport under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and PD Teesport, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 15

FOR THE PROTECTION OF REDCAR BULK TERMINAL LIMITED

171. For the protection of RBT, the following provisions have effect, unless otherwise agreed in writing between the undertaker and RBT.

172. In this Part of this Schedule—

“apparatus” means any mains, pipes, cables or other apparatus within the Order limits which provide water, electricity or electronic communications to the RBT operations together with any replacement of that apparatus pursuant to the Order;

“alternative access” means appropriate alternative road or rail access which enables RBT to access the RBT operations and RBT site in a manner no less efficiently than previously by means of RBT’s existing road or rail accesses;

“alternative apparatus” means appropriate alternative apparatus which enables water, electricity and electronic communications supply to be provided to the RBT operations in a manner no less efficiently than previously by existing apparatus;

“offloading procedure” means the procedure whereby the undertaker, its employees, contractors or sub-contractors are offloading materials, plant or machinery required for the authorised development at the wharf within the RBT site, such procedure to commence when the undertaker, its employees, contractors or sub-contractors have commenced docking the relevant vessel at the wharf for the purposes of such offloading;

“RBT” means Redcar Bulk Terminal Limited (Company number 07402297) and any successor in title or function to the RBT operations;

“the RBT operations” means the port business and other operations of RBT carried out upon the RBT site;

“the RBT site” means land and property within the Order limits, vested in RBT; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working, management measures and locations on the RBT site;
- (c) details of the timing of execution of works and any interference this may cause to the RBT operations;
- (d) details of any management measures (including details of access routes for vehicles to undertake) that will be put in place to ensure that road and rail traffic is still able to access the RBT operations and the RBT site (unless it would be unsafe to do so in which case such details must provide details of how alternative access is to be provided);
- (e) details of lifting and scheduling activities on the RBT site, including the programming and access requirements for any offloading procedures; and
- (f) any further particulars provided in response to a request under paragraph 177.

Regulation of powers

173. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent the RBT operations, or access to the RBT site without the prior written consent of RBT.

174. Any approval of RBT required under paragraph 173 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

- (a) the continuing safety and operational viability of the RBT operations;
- (b) the avoidance of commercial losses to the RBT operations; and
- (c) the requirement for RBT to have reasonable access to the RBT operations and the RBT site at all times.

175. Without limiting paragraph 174, it is not reasonable for RBT to give approval pursuant to paragraph 174 subject to requirements which restrict or interfere with the undertaker's access to the RBT site during an offloading procedure.

Interference with Apparatus and Access

176.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is removed, interrupted, severed or disconnected, that apparatus must not be removed, interrupted, severed or disconnected until details of the alternative apparatus have been approved by RBT and the alternative apparatus has been constructed at the undertaker's cost and is in operation to the satisfaction of RBT.

(2) The undertaker must ensure that RBT shall hold the same facilities and rights that it holds for the apparatus in respect of the alternative apparatus.

(3) Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), the undertaker shall ensure that the party responsible for any apparatus is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

(4) The provisions of this paragraph do not apply to apparatus in respect of which the relations between the undertaker and the party responsible for the apparatus in question are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(5) If the undertaker uses its powers under the Order to temporarily extinguish or permanently acquire any right of road or rail access which RBT benefits from the undertaker must provide at its own cost an alternative access prior to the extinguishment or acquisition of that right of access and ensure that RBT shall hold the equivalent rights for that access in respect of an alternative access.

Consent under this Part

177. Before commencing—

- (a) any part of the authorised development which would have an effect on the RBT operations or access to them; or
- (b) any activities on or to the RBT site,

the undertaker must submit to RBT the works details for the proposed works or activities and such further particulars as RBT may, not less than 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

178. No—

- (a) works comprising any part of the authorised development which would have an effect on the RBT operations or access to them; or
- (b) activities on the RBT site,

are to be commenced until the works details in respect of those works or activities submitted under paragraph 177 have been approved by RBT.

179. Any approval of RBT required under paragraph 178 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

- (a) the continuing safety and operational viability of the RBT operations;
- (b) the avoidance of commercial losses to the RBT operations; and
- (c) the requirement for RBT to have reasonable access to the RBT site at all times.

180. Without limiting paragraph 179, it is not reasonable for RBT to give approval pursuant to paragraph 179 subject to requirements which restrict or interfere with the undertaker's access to the wharf and roadways within the RBT site during an offloading procedure.

181.—(1) The authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the works details approved under paragraph 178 and any requirements imposed on the approval under paragraph 179.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 185 and the arbitrator gives approval for the works details, the authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 185.

Co-operation

182. Insofar as the construction of any part of the authorised development or activities on the wharf and roadways within the RBT site, and the operation or maintenance of the RBT operations or access to them would have an effect on each other, the undertaker and RBT must—

- (a) co-operate with each other with a view to ensuring—
 - (i) the co-ordination of activities and programming to allow the authorised development, the undertaker's activities on the wharf and the roadways within the RBT site (including offloading procedures) and the RBT operations to continue;
 - (ii) that reasonable access for the purposes of constructing the authorised development and the undertaker's activities on the wharf and the roadways within the RBT site (including offloading procedures) is maintained for the undertaker, its employees, contractors and sub-contractors; and
 - (iii) that operation of the RBT operations and access to the RBT site is maintained for RBT at all times; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the RBT operations, the construction of the authorised development and the undertaker's activities on the wharf and roadways within the RBT site (including offloading procedures).

183. The undertaker must pay to RBT—

- (a) a cost agreed with RBT for the daily use of the RBT site and RBT services in consequence of the construction of any works referred to in paragraph 177 and use of the RBT site by the undertaker; and
- (b) the reasonable costs and expenses incurred by RBT in connection with the approval of plans, inspection and approval of any works details.

Indemnity

184.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 177 or by the use of the RBT site by the undertaker any damage is caused to the RBT site (including the wharf, roadways, any RBT buildings, plant or machinery on the RBT site) or to the RBT operations, or there is any interruption in any service provided, or in the provision by RBT or denial of any services, or in

any loss of service from apparatus that is affected by the authorised development the undertaker must—

- (a) bear and pay the cost reasonably incurred by RBT in making good such damage or restoring the provision by RBT of any services; and
- (b) make compensation to RBT for any other expenses, loss, damages, penalty or costs reasonably incurred by RBT (including, without limitation, all costs for the repair or replacement necessitated by physical damage), by reason or in consequence of any such damage or interruption or denial of any service provided by RBT..

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of RBT, its officers, employees, servants, contractors or agents.

(3) . RBT must give the undertaker reasonable notice of any claim or demand that has been made against it in respect of the matters in sub-paragraph (1)(a) and (b) and no settlement or compromise of such a claim is to be made without the consent of the undertaker such consent not to be unreasonably withheld.

(4) RBT must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 184 applies. If requested to do so by the undertaker, RBT must provide a reasonable explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 184 for claims reasonably incurred by RBT.

Arbitration

185. Any difference or dispute arising between the undertaker and RBT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and RBT, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 16

FOR THE PROTECTION OF SABIC PETROCHEMICALS UK LIMITED

Benefit of protective provisions

186. The following provisions of this Schedule have effect for the benefit of SABIC, unless otherwise agreed between the undertaker and SABIC.

Interpretation

187. In this Schedule—

“access roads” means the access roads within the Order limits giving access to pipelines or the protected crossing;

“affected assets” means—

- (a) apparatus which would be physically affected by the relevant works;
- (b) the protected crossing where relevant works are to be carried out within 25 metres of the protected crossing; and
- (c) in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power.

“apparatus” means pipelines and cables owned or operated by SABIC within the Order limits and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Part in which apparatus is or is to be lodged or which will give access to apparatus;

- (b) any coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962^(a) as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“construction access plan” means a plan identifying how access will be maintained to apparatus the protected crossing and the North Tees Facilities during the proposed construction or maintenance work including—

- (a) any restrictions on general access by SABIC, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;
- (c) details of how the needs and requirements of SABIC (including their needs and requirements in relation to any major works that they have notified to the other operators of the protected land as at the date when the plan is published) have been taken into account in preparing the plan;
- (d) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for SABIC; and
- (e) details of how reasonable access with or without vehicles will be retained or an alternative provided for SABIC to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and the protected crossing;

“construction or maintenance works” means any works to construct, maintain, or decommission the authorised development;

“damage” includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

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

“major works” means works by SABIC requiring the closure, diversion or regulation of any roads serving the North Tees Facilities;

“North Tees Facilities” means the site at North Tees Works at which SABIC operates various facilities;

“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;

“owner” means—

- (a) in relation to the pipeline corridor, any person—
 - (i) with an interest in a pipeline in the pipeline corridor;
 - (ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline; or
 - (iii) with a pipeline or proposed pipeline in, on, under or over the pipeline corridor;
- (b) in relation to the access roads, any person—
 - (i) with an interest in the access roads; or
 - (ii) with private rights of way on or over the access roads;
- (c) in relation to the protected crossing, any person—
 - (i) with an interest in the protected crossing;
 - (ii) with rights in relation to the protected crossing; or
 - (iii) with pipelines in or comprising the protected crossing; and
- (d) in relation to protected land means any person falling within paragraphs (a) to (c) above.

“pipeline corridor” means the land identified as the pipeline corridor on the Sembcorp Pipeline Corridor protective provisions supporting plans;

(a) 1968 c. 58. Section 65 was amended by section 89(1) of and paragraphs 1 and 2 of Schedule 2 to the Energy Act 2011 (c. 16.) S.I. 2000/1937 and S.I. 2011/2305.

“pipelines” means any apparatus owned or operated by SABIC located in the pipeline corridor or in or comprising the protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the authorised development, providing that any such additions are notified to the undertaker as soon as reasonably practicable;

“pipeline survey” means a survey of the pipeline corridor and the protected crossing to establish (if not known)—

- (a) the precise location of the pipelines and the protected crossing;
- (b) the specification of the pipelines and protected crossing including, where relevant, their composition, diameter, pressure and the products they are used to convey;
- (c) any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type;

“protected crossing” means the tunnel which carries pipelines under the River Tees known as Tunnel 2;

“protected land” means such parts of the Order land as fall within—

- (a) the access roads;
- (b) the pipeline corridor; or
- (c) the protected crossing;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline or the protected crossing;

“SABIC” means SABIC Petrochemicals UK Limited whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF;

“specified persons” means the Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC UK Petrochemicals Limited, or such other person as they may notify to the undertaker in writing;

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of methods and locations of any piling proposed to be undertaken under paragraph 195;
- (c) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 196;
- (d) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 197;
- (e) details of the location of any pipelines affected by the oversailing provisions in paragraph 198, including details of the proposed clearance;
- (f) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;
- (g) details of the undertaker and their principal contractors’ management of change procedures;
- (h) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (i) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;

- (j) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (k) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and
- (l) any further particulars provided in accordance with paragraph 189(2).

Pipeline survey

188.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect a protected crossing the undertaker must—

- (a) carry out and complete the pipeline survey; and
- (b) comply with sub-paragraph 188(3) below.

(2) The pipeline survey must be undertaken by an appropriately qualified person with at least 10 years' experience of such surveys.

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on SABIC and invite SABIC to advise the undertaker within 28 days of receipt of the survey if SABIC considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

Authorisation of works details affecting pipelines or protected crossing

189.—(1) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within 30 days (or such longer period as is agreed between the parties) from the receipt of the works details under sub-paragraph (1), reasonably require.

190. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 189 have been authorised by SABIC; or
- (b) the works details supplied in respect of that relevant work under paragraph 189 have been authorised by an arbitrator under paragraph 192(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 192(1).

191.—(1) Any authorisation by SABIC required under paragraph 190(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as SABIC may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for SABIC to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) The authorised development must be carried out in accordance with the works details authorised under paragraph 190 and any conditions imposed on the authorisation under paragraph 191(1).

(3) Where there has been a reference to arbitration in accordance with paragraph 192(1)(a) and the arbitrator gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the arbitrator under paragraph 192(3).

192.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 189 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 189(1) and no further particulars have been requested under paragraph 189(2); or
- (b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 189(2).

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that SABIC has unreasonably withheld its authorisation under paragraph 191(1); or
- (b) the undertaker considers that SABIC has given its authorisation under paragraph 191(1) subject to unreasonable conditions.

the undertaker may refer the matter to an arbitrator for determination under paragraph 211.

(3) Where the matter is referred to arbitration under paragraph 192(2) the arbitrator is to determine whether or not authorisation should be given and, if so the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 191(1).

Notice of works

193. The undertaker must provide to SABIC a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

Further provisions about works

194. No explosives are to be used within the protected land.

195.—(1) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to SABIC for approval in accordance with paragraph 189.

196.—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by SABIC.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to SABIC under paragraph 189.

197.—(1) Where a trench is excavated across or parallel to the line of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

(2) Proposed methods and locations of compacting must be notified to SABIC in accordance with paragraph 189.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in sub-paragraph (1) and what further works may be necessary, and the results of such testing must be supplied to SABIC.

(4) Where it is shown by the testing under sub-paragraph (3) to be necessary, the undertaker must carry out further compaction testing under sub-paragraph (1) and sub-paragraphs (1), (2) and (3) continue to apply until such time as the backfill has been adequately compacted.

(5) In the event that it is necessary to provide permanent support to a pipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker must pay to SABIC a capitalised sum representing the increase of the costs (if any which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewing any such alterations or additions.

(6) In the event of a dispute as to—

- (a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or
- (b) the amount of any payment under sub-paragraph (5),

the undertaker or SABIC may refer the matter for arbitration under paragraph 211.

198.—(1) A minimum clearance of 1500 millimetres must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with SABIC.

(2) No manholes or chambers are to be built over or round the pipelines.

Monitoring for damage to pipelines

199.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets within the Order limits to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify SABIC to enable repairs to be carried out to the reasonable satisfaction of SABIC.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of SABIC—

- (a) afford SABIC all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to SABIC its costs incurred in doing so including the costs of testing the effectiveness of the repairs and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of SABIC to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where SABIC agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then SABIC is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

200.—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and SABIC must be notified immediately.

(2) Where there is leakage or escape of gas or any other substance, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform SABIC;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

201.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given under paragraph 193; or
- (b) determined by arbitration following a determination under paragraph 211 to unreasonably—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

Access for construction and maintenance

202.—(1) Before carrying out any construction or maintenance works affecting SABIC's access rights over the access roads, the undertaker must prepare a draft construction access plan and consult on the draft construction access plan with SABIC.

(2) The undertaker must take account of the responses to any consultation referred to in sub-paragraph (1) before approving the construction access plan.

203.—(1) In preparing a construction access plan under paragraph 202 the undertaker must—

- (a) establish the programme for SABIC's major works in the pipeline corridor and the North Tees Facilities and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
- (b) establish where SABIC's access to the protected land, or any pipeline or the North Tees Facilities has a reasonable expectation to exercise access rights over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to arbitration under paragraph 211 in relation to any disagreement about a construction access plan the arbitrator must have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;
- (d) the undertaker's programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;
- (e) the availability (or non-availability) of other times during which the authorised development could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for SABIC to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on SABIC.

(3) In this paragraph, "programmed", in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are programmed to be carried out provided that the period covered by such dates must be length of

time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

204.—(1) No works affecting access rights over the access roads are to commence until 30 days after a copy of the approved construction access plan is served on SABIC.

(2) Where SABIC or the undertaker refers the construction access plan to arbitration for determination under paragraph 211, no works affecting access rights over the access roads may commence until that determination has been provided.

(3) In carrying out construction or maintenance works the undertaker must at all times comply with the construction access plan.

Insurance

205.—(1) Before carrying out any part of the authorised development affecting SABIC, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer with the terms, cover and level of cover as may be agreed in writing between the undertaker and SABIC, and evidence of that insurance must be provided on request to SABIC.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify SABIC of details of the terms or cover of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to the authorised development affecting SABIC during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover as may be agreed in writing between the undertaker and SABIC.

206.—(1) If SABIC has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 205—

- (a) SABIC may refer the matter to arbitration under paragraph 211; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 211 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

207.—(1) The undertaker must repay to SABIC all reasonable fees, costs, charges and expenses reasonably incurred by SABIC in relation to these protective provisions in respect of—

- (a) authorisation of survey details submitted by the undertaker under paragraph 188(3), authorisation of works details submitted by the undertaker under paragraph 189 and the imposition of conditions under paragraph 191;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 193;
- (c) responding to the consultation on piling under paragraph 195;
- (d) considering the effectiveness of any compacting which has taken place under paragraph 197, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) the repair and testing of a pipeline or protected crossing under paragraph 199;
- (f) considering and responding to consultation in relation to the construction access plan under paragraph 202 and providing details of their programme for major works to the undertaker under paragraph 203; and

- (g) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 205,

including the reasonable costs incurred by SABIC in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow SABIC to carry out its functions under these protective provisions.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any of the works referred to in paragraph 189, any damage is caused to the affected assets or property of SABIC, or there is any interruption in any service provided, or in the supply of any goods, by SABIC, the undertaker must—

- (a) bear and pay the cost reasonably incurred by SABIC in making good such damage or restoring the supply; and
- (b) make reasonable compensation to SABIC for any other expenses, loss, damages, penalty or costs incurred by SABIC, by reason or in consequence of any such damage or interruption.

(3) Nothing in sub-paragraphs (1) or (2) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of SABIC, its officers, employees, servants, contractors or agents.

(4) SABIC must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) SABIC must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

(6) In the assessment of any sums payable to SABIC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, SABIC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

(7) SABIC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, SABIC must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (2). The undertaker shall only be liable under this paragraph for claims reasonably incurred by SABIC.

Further protection in relation to the exercise of powers under the Order

208. The undertaker must give written notice to SABIC of the terms and level of cover of any guarantee or alternative form of security put in place under article 48 (funding for compulsory acquisition compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

209. The undertaker, must when requested to do so by SABIC, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans etc.) in electronic form.

210. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to SABIC.

Arbitration

211. Any difference or dispute arising between the undertaker and SABIC under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SABIC, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 17

FOR THE PROTECTION OF THE SEMBCORP PIPELINE CORRIDOR

Extent of this Part

212.—(1) The provisions of this Part have effect for the benefit of owners and operators in the Sembcorp Pipeline Corridor, owners and operators in the Wilton Complex and Sembcorp unless otherwise agreed in writing between the undertaker and Sembcorp.

(2) Except to the extent as may be otherwise agreed in writing between the undertaker and Sembcorp, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between Sembcorp and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to Sembcorp on or before the date of that transfer or grant.

(3) Sub-paragraph (2) applies to any agreement—

- (a) which states that it is “entered into for the purposes of the Sembcorp Protective Provisions”; and
- (b) whether entered into before or after the making of this Order.

Interpretation of this Part

213. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to serve the owner of the apparatus in question in a manner no less efficient than previously;

“apparatus” means mains, pipes, cables, sewers, drains, ditches, watercourses or other apparatus and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

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

“operator” means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any apparatus or alternative apparatus in the Sembcorp Pipeline Corridor or has rights to the use of such apparatus or alternative apparatus, but who is not an owner in relation to the Sembcorp Pipeline Corridor or the Wilton Complex and is not a third party owner or operator;

“owner” means—

- (a) in relation to the Sembcorp Pipeline Corridor, any person—
 - (i) with an interest in the Sembcorp Pipeline Corridor;
 - (ii) with rights in, on, under or over the Sembcorp Pipeline Corridor; or
 - (iii) with apparatus in, on or under the Sembcorp Pipeline Corridor; or
 - (b) in relation to the Wilton Complex, any owner (as defined in article 2(1) of the Order) or occupier in the Wilton Complex;
- but who is not a third party owner or operator;

“the Sembcorp operations” means—

- (a) the activities and functions carried on by Sembcorp in the Sembcorp Pipeline Corridor (including in relation to any access routes and laydown spaces associated with them or it);
- (b) the number 2 river tunnel between Bran Sands and North Tees crossing the Order limits under the River Tees (together with associated headhouses) operated by Sembcorp; and
- (c) other pipes and apparatus (including access routes and laydown spaces associated with such pipes and apparatus) operated—
 - (i) by Sembcorp; or
 - (ii) by any owner or operator within the Sembcorp Pipeline Corridor; or
 - (iii) for the benefit or on behalf of any owner or operator in the Wilton Complex;

“Sembcorp” means Sembcorp Utilities (UK) Limited, with Company Registration Number 04636301, whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS and any successor in title or function to the Sembcorp operations in, under or over the Sembcorp Pipeline Corridor;

“Sembcorp Pipeline Corridor” means the infrastructure corridor managed and operated by Sembcorp shown shaded yellow and edged black on the Sembcorp Pipeline Corridor protective provisions supporting plans;

“Sembcorp Pipeline Corridor protective provisions supporting plans” means the plans which are certified as the Sembcorp Pipeline Corridor protective provisions supporting plans by the Secretary of State under article 45 (certification of plans etc) for the purposes of this Order;

“third party owner or operator” means an owner or operator of apparatus the subject of the third party protective provisions;

“third party protective provisions” means the protective provisions in Parts 1 to 16 or 18 to 28 of this Schedule;

“Wilton Complex” means the industrial and manufacturing plant shown edged blue on the Sembcorp Pipeline Corridor protective provisions supporting plans; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 214.

Separate approvals by third party owners or operators

214.—(1) Nothing in this Part of this Schedule removes any obligation on the undertaker to seek consent from Sembcorp for works details pursuant to this Part where such approval is also sought or obtained from a third party owner or operator pursuant to the third party protective provisions.

(2) Where the undertaker seeks consent for works details from a third party owner or operator pursuant to the third party protective provisions that also require consent from Sembcorp under this Part, the undertaker must provide Sembcorp with—

- (a) the same information provided to the third party owner or operator at the same time; and
- (b) a copy of any approval from the third party owner or operator given pursuant to the third party protective provisions.

Removal of apparatus

215.—(1) If, in exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, the apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent rights for the alternative apparatus have been granted to Sembcorp and, where relevant, the owner or operator of the apparatus.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in the land, it must give to the owner or operator in question and Sembcorp written notice of the requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed; and in that case the undertaker must afford to the owner or operator and Sembcorp the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of the apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between Sembcorp and the undertaker or in default of agreement settled by an arbitrator appointed under paragraph 226.

(4) The owner or operator in question must, after the alternative apparatus to be provided or constructed has been agreed or determined by an arbitrator under paragraph 226, and after the grant to the owner or operator of any such facilities and rights as are referred to in sub-paragraph (2) and after the expiration of any applicable notice period in respect of the works under the Pipelines Safety Regulations 1996, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part subject to any reasonable directions given to or requirements imposed on that owner or operator by Sembcorp.

(5) Notwithstanding sub-paragraph (4), if the undertaker gives notice in writing to the owner or operator in question and Sembcorp that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the owner or operator, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(6) If works are executed by the undertaker in accordance with sub-paragraph (5), the owner or operator of the apparatus and Sembcorp must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(7) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3,000 millimetres of the apparatus, without the written agreement of Sembcorp, such agreement not to be unreasonably withheld.

Alternative apparatus

216.—(1) Where, in accordance with this Part, the undertaker affords to an owner or operator and Sembcorp facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the undertaker and Sembcorp or in default of agreement determined by arbitration under paragraph 226, such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(2) In settling the terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised development for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be

granted, are in the opinion of the arbitrator materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to the owner or operator and Sembcorp as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

Consent under this Part in connection with Sembcorp operations

217. Before commencing any part of the authorised development which would or may have an effect on the operation or maintenance of the Sembcorp operations or access to them, and in all cases where such works are within 3,000 millimetres of the Sembcorp Pipeline Corridor, the undertaker must submit to Sembcorp the works details for the proposed works and such further particulars as Sembcorp may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.

218. The works referred to in paragraph 217 must not be commenced until the works details in respect of those works submitted under that paragraph have been approved by Sembcorp.

219. Any approval of Sembcorp required under paragraph 218 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Sembcorp may require to be made for—

- (a) the continuing safety and operational viability of the Sembcorp operations; and
- (b) the requirement for Sembcorp to have reasonable access to the Sembcorp operations at all times.

220.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 218 and any requirements imposed on the approval under paragraph 219.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 226 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 226.

Insurance

221.—(1) Before carrying out any works forming part of the authorised development on any part of the Sembcorp Pipeline Corridor, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place public liability insurance with a reputable insurer for the sum not less than such level as may be agreed in writing between the undertaker and Sembcorp in respect of contamination liability, and evidence of that insurance must be provided to Sembcorp on request.

(2) Not less than 90 days before carrying out any works forming part of the authorised development on any part of the Sembcorp Pipeline Corridor or before proposing to change the terms of the insurance policy, the undertaker must notify Sembcorp of details of the terms or cover of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to works or the use of the authorised development affecting the Sembcorp Pipeline Corridor during the operation of the authorised development at such level as may be agreed in writing between the undertaker and Sembcorp.

Expenses

222.—(1) Subject to the provisions of this paragraph, the undertaker must pay to the owner or operator in question and Sembcorp (as the case may be) the reasonable expenses incurred by them under this Part in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part;
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;
- (d) the design, project management, supervision and implementation of works;
- (e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;
- (f) monitoring the effectiveness of any requirements referred to in paragraph 221 and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those requirements; and
- (g) any other work or thing reasonably required in consequence of the exercise by the undertaker of any power under this Order or by the service by the undertaker of any notice, plan, section or description,

within a reasonable time of being notified by the person in question that it has incurred such expenses, such notification to be provided by the owner or operator or Sembcorp (as the case may be).

(2) Where reasonable and practicable, the person to whom the payment is to be made under this paragraph must notify the undertaker of any anticipated expense as outlined in sub-paragraph (1) and provide an estimate of such costs prior to incurring such expense.

(3) In advance of any payment under sub-paragraph (1) above being made and where reasonably requested by the undertaker, the person to whom the payment is to be made under this paragraph must provide to the undertaker such reasonable evidence of the costs incurred as the undertaker may reasonably request.

(4) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Part, that value being calculated after removal.

(5) If in accordance with this Part—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by an arbitrator under paragraph 226 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the owner or operator in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(6) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (5), regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

(7) For the purposes of sub-paragraph (5)—

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

(8) An amount which apart from this sub-paragraph would be payable to a person in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on that person by deferment of the time for renewal of the apparatus in the ordinary course of that person's business practice, be reduced by the amount that represents that benefit.

Indemnity

223.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised development, including without limitation any of the works referred to in paragraph 215 (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or any subsidence resulting from any of these works, any damage is caused to the Sembcorp operations or property of an owner or operator or Sembcorp, or there is any interruption in any service provided, or in the supply of any goods, to or by an owner or operator or Sembcorp, or Sembcorp becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the owner or operator in question or Sembcorp (as the case may be) in making good such damage or restoring the service, supply and/or operations; and
- (b) make reasonable compensation to the owner or operator in question or Sembcorp or to any other person whose supply or operations are affected by the damage or interruption (as the case may be, and in all cases excluding third party owners or operators) for any other expenses, loss, damages, penalty or costs incurred by that person, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the person (or its officers, employees, servants, contractors or agents) who would but for this sub-paragraph be the beneficiary of the indemnification provisions in the said sub-paragraph (1).

(3) The person to whom the liability is owed under sub-paragraph (1) must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The person to whom the liability is owed under sub-paragraph (1) must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 223 applies where it is within its reasonable ability and control so to do. If requested to do so by the undertaker, the person must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 223 for claims reasonably incurred by the owner or operator in question or by Sembcorp (as the case may be).

Participation in community groups

224.—(1) Before undertaking any works or exercising any powers in this Order relating to or affecting the Sembcorp operations or the Sembcorp Pipeline Corridor, the undertaker must participate in any relevant consultation groups established or co-ordinated by Sembcorp.

(2) Before undertaking any construction works affecting the Sembcorp operations or the Sembcorp Pipeline Corridor, where any of these might reasonably be expected to give rise to significantly perceptible effects beyond the Order limits in terms of—

- (a) construction noise and vibration management;
- (b) air quality, including dust emissions;
- (c) waste management;
- (d) traffic management and materials storage on site;
- (e) surface water and groundwater management; or
- (f) artificial light emissions,

the undertaker must participate in any relevant community environmental liaison group that may be established or co-ordinated by Sembcorp with local residents.

(3) The undertaker must co-operate with Sembcorp to respond promptly to any complaints raised in relation to the construction or operation of the authorised development or the traffic associated with the authorised development.

(4) The undertaker's obligations in sub-paragraphs (1) and (2) are subject to Sembcorp providing reasonable notice to them of the existence of a relevant consultation group or a relevant community environmental liaison group and reasonable notice of the arrangements for meetings of those groups.

Notice of start and completion of commissioning

225.—(1) Notice of the intended start of commissioning of the authorised development must be given to Sembcorp no later than fourteen days prior to the date that commissioning is started.

(2) Notice of the intended date of final commissioning of each of Work Nos. 1 and 6 must be given to Sembcorp no later than fourteen days prior to the date of final commissioning.

Arbitration

226. Any difference or dispute arising between the undertaker and an owner or operator or Sembcorp (as the case may be) under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and that person, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 18

FOR THE PROTECTION OF ANGLO AMERICAN

Interpretation

227. For the protection of Anglo American the following provisions have effect, unless otherwise agreed in writing between the Parties.

228. The following definitions apply in this Part of this Schedule—

“AA Easements” means the Deed of Grant entered into by Redcar Bulk Terminal Limited and York Potash Processing & Ports Limited dated 6 July 2018 and the Deed of Grant entered into by Redcar Bulk Terminal Limited, York Potash Limited and York Potash Processing & Ports Limited dated 26 June 2019;

“Anglo American Specified Works” means so much of the Woodsmith Project as is within the Shared Area;

“Anglo American ” means the parties with the benefit of the York Potash Order (being Anglo American Woodsmith Limited and Anglo American Crop Nutrients Limited) and Anglo American Woodsmith (Teesside) Limited;

“Anglo American Apparatus” means the pipeline, cables, structures which are or are to be owned, occupied or maintained by Anglo American within the Shared Area;

“EA Permit” means the environmental permit for the landfill site at Bran Sands given permit number EPR/FB3601GS (formerly Waste Management Licence EAWML60092);

“expert” means a person appointed pursuant to paragraph 240(b);

“NWL Facility” means the Northumbrian Water Limited Bran Sands Wastewater Treatment Plant;

“NZT Apparatus” means the pipeline, cables, structures to be owned, occupied or maintained by the undertaker within the Shared Area;

“Parties” means the undertaker and Anglo American;

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

“Property Documents” means any leases, licences or other documents by virtue of which Anglo American has an interest in, on or over land;

“Respective Projects” means the authorised development and the Woodsmith Project;

“Secretary of State” means the Secretary of State for Business, Energy and Industrial Strategy or any successor in function;

“Shared Area” means the land coloured blue on the Shared Area Plan;

“Shared Area 1” means the land comprising plots 222 and 223 on the land plans;

“Shared Area 2” means the land comprising plots 252, 252a, 253, 253a, 255, 263, 278, 280, 281, 284, 285, 286, 294, 301, 302, 303, 314, 315, 316, 317, 318, 319, 320, 321, 322, 324, 325, 328, 329, 330, 331, 332, 333, 343 and 541 on the land plans;

“Shared Area 3” means the land comprising plots 332, 343, 345 and 347 on the land plans;

“Shared Area 4” means the land comprising plots 384, 397, 395, 401 and 405 on the land plans;

“Shared Area 5” means the land comprising plots 417, 418, 427, 432, 436 and 439 on the land plans;

“Shared Area 6” means the land comprising plots 540a and 540d on the land plans;

“Shared Area Plan” means the plan which is certified as the Net Zero Teesside Anglo American Shared Area Plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

“Specified Works” means so much of the authorised development as is within the Shared Area;

“STDC Agreement” means a Deed of Licence and Option entered into between South Tees Development Corporation, York Potash Processing and Ports Limited and Sirius Minerals PLC dated 9 January 2019;

“Woodsmith Project” means the construction, operation, or maintenance of development authorised by the York Potash Order or by any planning permission or development consent order issued whether before or after the date of this Agreement as part of the Woodsmith Project such development comprising—

- (a) an underground mine at Sneatonthorpe for the mining of polyhalite;
- (b) a Mineral Transport System being a tunnel from the mine to Teesside;
- (c) a Material Handling Facility at Wilton International, Teesside; and
- (d) Harbour Facilities at Teesside including an overland conveyor between the Material Handling Facility and the RBT and the harbour authorised by the York Potash Order and planning permissions; and

“York Potash Order” means the York Potash Harbour Facilities Order 2016.

Consent to works in the shared area

229.—(1) Where the consent or agreement of Anglo American is required under the provisions of this Part of this Schedule the undertaker must give at least 21 days written notice to Anglo American of the request for such consent or agreement and in such notice must specify the works or matter for which consent or agreement is to be requested and the Plans that will be provided with the request which must identify—

- (a) the land that will or may be affected;
- (b) which Works Nos. from the Order any powers sought to be used or works to be carried out relate to;
- (c) which of the entities which make up the undertaker is to carry out the works and the identity of the contractors carrying out the work on behalf of that entity;
- (d) the proposed programme for the power to be used or works to be carried out; and
- (e) the named point of contact for the undertaker for discussions in relation to the information supplied and the consenting process.

(2) Anglo American must notify the undertaker within 14 days of the receipt of the written notice under sub-paragraph (1) of—

- (a) any information it reasonably requires to be provided in addition to that proposed to be supplied by the undertaker under sub-paragraph (1);
- (b) any particular circumstances with regard to the construction or operation of the Woodsmith Project it requires to be taken into account;
- (c) the named point of contact for Anglo American for discussions in relation to the information supplied and the consenting process; and
- (d) the specific person who will be responsible for confirming or refusing the consent or agreement.

(3) Any request for consent under paragraphs 231(1), 232(1) and 232(2) must be accompanied by the information referred to in sub-paragraph (1) as amended or expanded in response to sub-paragraph (2).

(4) Subject to sub-paragraph (5), where conditions are included in any consent granted by Anglo American pursuant to this Part of this Schedule, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Anglo American.

(5) Wherever in this Part of this Schedule provision is made with respect to the agreement approval or consent of Anglo American, that approval or consent must be in writing and subject to such reasonable terms and conditions as Anglo American may require including conditions requiring protective works to be carried out, but must not be unreasonably refused or delayed and for the purposes of these provisions it will be deemed to be reasonable for any consent to be refused if it would—

- (a) compromise the safety and operational viability of the Woodsmith Project;
- (b) prevent the ability of Anglo American to have uninterrupted access to the Woodsmith Project;
- (c) cause a breach of the obligations under, or conditions attached to, the EA Permit or render compliance with the obligations under, or conditions attached to, the EA Permit—
 - (i) more difficult; and/or
 - (ii) more expensive;
- (d) make regulatory compliance more difficult or expensive; and/or
- (e) cause a breach of, or prevent compliance with, any obligations to other parties contained in any Property Documents,

provided that before Anglo American can validly refuse consent for any of the reasons set out in sub-paragraphs (a) to (e) it must first give the undertaker seven days' notice of such intention and

consider any representations made in respect of such refusal by the undertaker to Anglo American within that seven day period.

(6) The seven day period referred to in the proviso to sub-paragraph (5) must be added to the period of time within which any request for agreement, approval or consent is required to be responded to pursuant to the provisions of this Part of this Schedule.

(7) In the event that—

- (a) the undertaker considers that Anglo American has unreasonably withheld its authorisation or agreement under paragraph 231(1), 232(1), and/or 232(2); or
- (b) the undertaker considers that Anglo American has given its authorisation under paragraph 231(1), 232(1), and/or 232(2) subject to unreasonable conditions,

the undertaker may refer the matter to dispute resolution under paragraph 240.

(8) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Part of this Schedule must be sent to Anglo American by recorded delivery and addressed to—

- (a) the Head of Legal and the Head of Environment Permitting and Sustainable Development at Anglo American Crop Nutrients Limited at Resolution House, Lake View, Scarborough YO11 3ZB; and
- (b) the Company Secretary, Anglo American Crop Nutrients Limited at the registered office for the time being of that company.

(9) In the event that Anglo American does not respond in writing to a request for approval or consent or agreement within 28 days of its receipt of the postal request then the undertaker may serve upon Anglo American written notice requiring Anglo American to give their decision within a further 28 days beginning with the date upon which Anglo American received written notice from the undertaker and, subject to compliance with sub-paragraph (10), if by the expiry of the further 28 day period Anglo American has failed to notify the undertaker of its decision Anglo American is deemed to have given its consent, approval or agreement without any terms or conditions.

(10) Any further notice given by the undertaker under sub-paragraph (9) must include a written statement that the provisions of sub-paragraph (9) apply to the relevant approval or consent or agreement.

Co-operation

230. Insofar as the Anglo American Specified Works are or may be undertaken concurrently with the Specified Works within the Shared Area, the undertaker must—

- (a) co-operate with Anglo American with a view to ensuring—
 - (i) the co-ordination of programming of all activities and the carrying out of works within the Shared Area; and
 - (ii) that access for the purposes of the construction and operation of the Woodsmith Project is maintained for Anglo American and its contractors, employees, contractors and sub-contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects.

Regulation of works within the shared area

231.—(1) The undertaker must not carry out the Specified Works without the prior written consent of Anglo American obtained pursuant to, and in accordance with, the provisions of paragraph 229.

(2) Where under paragraph 229(5) Anglo American requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the reasonable satisfaction of Anglo American.

(3) Nothing in paragraph 229 or this paragraph 231 precludes the undertaker from submitting at any time or from time to time, but in no case less than 48 days before commencing the execution of any Specified Work, new Plans in respect of that Specified Work in substitution of the Plans previously submitted, and the provisions of this paragraph and paragraph 229 shall apply to the new Plans.

(4) Where there has been a reference to an expert in accordance with paragraph 241 and the expert in determining the dispute gives approval for the works concerned, the Specified Works must be carried out in accordance with that approval and any conditions applied by the decision of the expert under paragraph 240.

(5) The undertaker must give to Anglo American not less than 28 days' written notice of its intention to commence the construction of any of the Specified Works and, not more than 14 days after completion of their construction, must give Anglo American written notice of the completion.

(6) The undertaker is not required to comply with sub-paragraphs (1) to (5) above in a case of emergency, (being actions required directly to prevent possible death or injury) but in that case it must give to Anglo American notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraphs 229 and this paragraph 231 in so far as is reasonably practicable in the circumstances.

(7) The undertaker must at all reasonable times during construction of the Specified Works allow Anglo American and its officers, employees, servants, contractors, and agents access to the Specified Works and all reasonable facilities for inspection of the Specified Works.

(8) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Anglo American requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(9) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (8) above, Anglo American may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(10) The undertaker must not exercise the powers conferred by the Order or undertake the Specified Works to prevent or interfere with the access by Anglo American to the Anglo American Specified Works unless first agreed in writing by Anglo American.

(11) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Specified Works the access to any of the Anglo American Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the Anglo American Specified Works as will enable Anglo American to construct, maintain or use the Woodsmith Project no less effectively than was possible before the obstruction.

(12) To ensure its compliance with this paragraph 231, the undertaker must before carrying out any of the Specified Works request up-to-date written confirmation from Anglo American of the location of any part of its then existing or proposed Anglo American Specified Works.

Regulation of powers over the shared area

232.—(1) The undertaker must not exercise the powers granted under the Order so as to hinder or prevent the construction, operation or maintenance of the Anglo American Specified Works without the prior written consent of Anglo American.

(2) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (3) below over or in respect of the Shared Area otherwise than with the prior written consent of Anglo American.

(3) The articles referred to in sub-paragraph (2) above are—

- (a) article 10 (power to alter layout etc. of streets);
- (b) article 11 (street works);
- (c) article 12 (construction and maintenance of new or altered means of access);

- (d) article 13 (temporary stopping up of streets, public rights of way and access land);
- (e) article 14 (access to works);
- (f) article 16 (traffic regulation);
- (g) article 17 (discharge of water);
- (h) article 18 (felling or lopping of trees and removal of hedgerows);
- (i) article 19 (protective work to buildings);
- (j) article 20 (authority to survey and investigate the land);
- (k) article 22 (compulsory acquisition of land);
- (l) article 23 (power to override easements and other rights);
- (m) article 25 (compulsory acquisition of rights etc.);
- (n) article 26 (private rights);
- (o) article 28 (acquisition of subsoil and airspace only);
- (p) article 30 (rights under or over streets);
- (q) article 31 (temporary use of land for carrying out the authorised development);
- (r) article 32 (temporary use of land for maintaining the authorised development); and
- (s) article 33 (statutory undertakers).

(4) In the event that Anglo American withholds its consent pursuant to sub-paragraph (2) above it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

(5) Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not appropriate or acquire or take permanent or temporary possession of any land interest held by Anglo American in any plots shown on the land plans, or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right in such land.

Constructability Principles

233.—(1) The undertaker (unless otherwise agreed, or in an emergency relating to potential death or serious injury, or where it would render the Specified Works, NZT Apparatus, Anglo American Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties) must—

- (a) in respect of all Shared Areas—
 - (i) carry out the works in such a way that will not prevent or interfere with the continued construction of the Anglo American Specified Works, or the maintenance or operation of the Anglo American Apparatus unless the action leading to such prevention or interference has the prior written consent of Anglo American;
 - (ii) ensure that works carried out to, or placing of NZT Apparatus beneath, roads along which construction or maintenance access is required by Anglo American in respect of any Anglo American Apparatus (including the overland conveyor) will be of adequate specification to bear the loads;
 - (iii) prior to the undertaker carrying out any of the Specified Works in any part of any Shared Area, the undertaker must in respect of the Specified Work concerned—
 - (aa) submit a construction programme and a construction traffic and access management plan in respect of that area to Anglo American and obtain agreement thereof from Anglo American (noting that a single construction traffic and access management plan may be completed for one or more parts of each Shared Area or more than one Shared Area and may be subject to review if agreed between the Parties) and without prejudice to the generality of sub-paragraph (i) the plans must include such measures and construction practices or processes as are necessary to satisfactorily address the relevant

- issues in relation to construction traffic and access management during construction that are set out in this paragraph 233;
- (bb) where applicable, confirm to Anglo American in writing the identity of the client for the purposes of the relevant Construction Design and Management Regulations applicable from time to time; and
 - (cc) obtain the agreement of Anglo American to the location of any temporary laydown areas where such areas are not those referred to in Table 5-2 of the environmental statement;
 - (iv) update the monthly construction programme monthly approved under sub-paragraph (iii)(aa) and supply a copy of the updated programme to Anglo American every month;
 - (v) at all times construct the Specified Works in compliance with the relevant approved construction programme and construction traffic and access management plan;
 - (vi) notify Anglo American of any incidences which occur as a result of, or in connection with, the Specified Works which are required to be reported under the relevant Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;
 - (vii) provide comprehensive, as built, drawings of the Specified Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Specified Works;
 - (viii) following the completion of each of the Specified Works unless otherwise agreed in writing by Anglo American fully reinstate the affected area (with the exception only of the retention of the permanent elements of the Specified Works) and remove all waste/surplus materials; and
 - (ix) obtain the prior written consent of Anglo American for the use of any re-cycled aggregate material within the Shared Area;
- (b) in respect of Shared Area 1, construct the Specified Works in such a way that—
- (i) construction activities do not interfere with the ability of Anglo American to construct and operate the shiploader within Shared Area 1;
 - (ii) construction access is maintained for Anglo American to undertake the construction of its ship loader, associated equipment and quay and is safeguarded;
 - (iii) the use by Anglo American of a laydown facility within Shared Area 1 in connection with its construction activities is appropriately protected; and
 - (iv) no works are carried out in that part of Shared Area 1 which is the subject of the AA Easements;
- (c) in respect of Shared Area 2, construct the Specified Works in such a way that—
- (i) the construction access required by Anglo American along Shared Area 2 for the construction of the quay authorised by the York Potash Order is safeguarded at all times;
 - (ii) access for Anglo American and third parties to, and along, the pipeline corridor within Shared Area 2 is safeguarded at all times;
 - (iii) Anglo American has unhindered access to manage the discharge facility within the NWL Facility and to empty their leachate chambers at all times so as to be able to comply with its obligations under the EA Permit;
 - (iv) access via the area colloquially known as the Eston Triangle is safeguarded; and
 - (v) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 2 is not impaired;
- (d) in respect of Shared Area 3, construct the Specified Works in such a way that—

- (i) Anglo American is able to access the gas monitoring facility within the NWL Facility at all times so as to be able to comply with its obligations under the EA Permit;
- (ii) the operation and maintenance of boreholes BH0627 and BH0628 is not interfered with; and
- (iii) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 3 is not impaired;
- (e) in respect of Shared Area 4, construct the Specified Works in such a way that—
 - (i) use by Anglo American of laydown areas within Shared Area 4 in connection with construction activities for the Woodsmith Project is appropriately protected;
 - (ii) access to the rail crossing point within or adjacent to Shared Area 4 for Anglo American is safeguarded;
 - (iii) the operation and maintenance of borehole BH622 is not interfered with; and
 - (iv) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 4 is not impaired; and
- (f) in respect of Shared Area 5, construct the Specified Works in such a way that the construction, operation and maintenance of any overland conveyor to be located within Shared Area 5 is not impaired.

(2) The undertaker must not do anything within Shared Areas 2,3, 4 and 5 which will constrain the ability of Anglo American to construct and operate an overland conveyor along the route which is the subject of the STDC Agreement or do anything which will compromise the construction, operational efficiency or maintenance of that conveyor or make the construction, operation or maintenance of it materially more expensive (unless such difference in cost (including any difference attributable to delay) is agreed to be provided by the undertaker).

(3) Any spoil from the Anglo American Specified Works or the Specified Works (including contaminated material) must be dealt with in accordance with a spoil management plan to be agreed between the Parties in advance of the work by either Party generating such spoil beginning.

(4) In considering a request for any consent under the provisions of this Part of this Schedule, Anglo American must not—

- (a) request an additional construction traffic and access management plan or a spoil management plan if such a plan has already been approved pursuant to sub-paragraph (1)(a)(iii)(aa) (as relevant in respect of a traffic and access management plan) or agreed pursuant to sub-paragraph (3) (in respect of a spoil management plan); and
- (b) refuse consent for reasons which conflict with the contents of documents approved by Anglo American pursuant to the provisions of this paragraph and paragraph 234.

Interface Design Process

234.—(1) Prior to the seeking of any consent under this Part of this Schedule, the undertaker must, unless Anglo American has brought forward works in that part of the Shared Area before the undertaker, participate in a design and constructability review for that part of the Shared Area which shall, at a minimum (unless otherwise agreed), include the following matters—

- (a) a Front End Engineering Design (FEED) level indicative construction work-pack;
- (b) a hazard and operability study;
- (c) a construction hazard study; and
- (d) in respect of any part of the Shared Area which is to accommodate the overland conveyor, information to demonstrate that the relevant Specified Works account for the interface with any overland conveyor located in that part of the Shared Area.

(2) Unless otherwise agreed, the undertaker must submit the outcome of the design and constructability review referred to in sub-paragraph (1) to Anglo American for approval prior to the seeking of any consent under this Part of this Schedule.

(3) The undertaker must at all times design and construct the Specified Works in compliance with the relevant approved design and constructability review pursuant to sub-paragraph (2).

(4) The undertaker may undertake a single design and constructability review process for one or more parts of the Shared Area and any approved design and constructability review may be amended if agreed by Anglo American.

(5) In considering any request for consent or approval under this Part of this Schedule, Anglo American must not refuse consent for details that are consistent with those approved under sub-paragraph (2) unless Anglo American reasonably believes that the relevant agreed design and constructability review is materially out of date or is inapplicable due to a change in either the NZT Project or the Woodsmith Project.

Design Principles

235. The Specified Works must be designed in such a way (unless otherwise agreed by Anglo American)—

- (a) that the location and design of the Specified Works do not interfere with the operation and maintenance of boreholes BH0622, BH0627, BH0628; and
- (b) so as not to conflict with the ability of Anglo American to construct the southern tower for the overland conveyor in the location authorised by the York Potash Order or the conveyor towers in the alternative locations within Shared Area 4.

Maintenance and Operational Principles

236. The Specified Works must be maintained and operated in such a way that (unless otherwise agreed, in an emergency, or where it would render the Specified Works, Anglo American Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties)—

- (a) in Shared Area 2: Anglo American has unhindered access to manage the discharge facility within the NWL Facility and to empty their leachate chambers so as to be able to comply with its obligations under the EA Permit;
- (b) in Shared Area 3: Anglo American (along with NWL) has unhindered access to monitor the gas monitoring facility located within the NWL Facility so as to be able to comply with its obligations under the EA Permit; and
- (c) in Shared Areas 2, 3, 4 and 5: the operation of any overland conveyor located within those Shared Areas is not impaired.

Miscellaneous provisions

237.—(1) The undertaker and Anglo American must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule.

(2) The undertaker must pay to Anglo American the reasonable expenses incurred by Anglo American in connection with the consenting processes under this Part of this Schedule, including the approval of plans, inspection of any Specified Works or the alteration or protection of the Anglo American Specified Works.

Indemnity

238.—(1) Subject to sub-paragraphs (2) and (3), if by reason, or in consequence, of the construction, maintenance or operation of any Specified Works, or failure thereof, any damage is caused to any Anglo American Apparatus used in connection with the Anglo American Specified Works or damage is caused to any part of the Anglo American Specified Works or there is any interruption in any service provided, or the operations of Anglo American, or in the supply of any goods, by Anglo American, or Anglo American becomes liable to pay any amount to any third party as a consequence of the Specified Works, the undertaker must—

- (a) bear and pay the costs reasonably incurred by Anglo American in making good such damage or restoring the service, operations or supply; and
- (b) compensate Anglo American for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Anglo American, by reason or in consequence of any such damage or interruption or Anglo American becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Anglo American, its officers, employees, servants, contractors or agents.

(3) Anglo American must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) If the undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

- (a) keep Anglo American fully informed of the developments and material elements of the proceedings;
- (b) take account of the views of Anglo American before taking any action in relation to the claim;
- (c) not bring the name of the Anglo American on any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and
- (d) not pay or settle such claims without the prior written consent of Anglo American such consent not to be unreasonably withheld or delayed.

(5) Anglo American must use its reasonable endeavours to mitigate any claim or losses in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, Anglo American must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall not be liable under this paragraph in respect of any claim capable of being mitigated or minimised to the extent that Anglo American has not used its reasonable endeavours to mitigate and/or minimise that claim in accordance with sub-paragraph (5).

(7) The fact that any work or thing has been executed or done with the consent of Anglo American and in accordance with any conditions or restrictions prescribed by Anglo American or in accordance with any plans approved by Anglo American or to its satisfaction or in accordance with any directions or award of any expert appointed pursuant to paragraph 240 does not relieve the undertaker from any liability under this paragraph.

Dispute Resolution

239. Article 47 (arbitration) does not apply to the provisions of this Part of this Schedule.

240. Any difference in relation to the provisions in this Part of this Schedule must be referred to—

- (a) a meeting of the Managing Director of Net Zero Teesside Power Limited and/or the Managing Director of Net Zero North Sea Storage Limited, whichever is the relevant party and the Chief Executive Officer of Anglo American Crop Nutrients Limited to seek agreement on the matter in dispute within 21 days from the date of a dispute first being notified in writing by one Party to the other; and
- (b) in the absence of the difference being settled within that period, to be settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the undertaker and Anglo American or, in the absence of

agreement identified by the President of the Institute of Civil Engineers, who must be sought to be appointed within 28 days of the notification of the dispute.

241. The fees of the expert appointed pursuant to paragraph 240(b) are to be payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.

242. Where appointed pursuant to paragraph 240(b), the expert must—

- (a) invite the Parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) allow each Party an opportunity to comment on the submissions made by the other provided they are received within 21 days of the receipt of the submissions referred to in subparagraph (a);
- (c) issue a decision within 42 days of receipt of the submissions submitted pursuant to subparagraph (a); and
- (d) give reasons for the decision.

243. The expert must consider where relevant—

- (a) the development outcomes sought by the undertaker and Anglo American;
- (b) the ability of the undertaker and Anglo American to achieve the outcomes referred to subparagraph (a) in a timely and cost-effective manner;
- (c) any increased costs on any Party as a result of the matter in dispute;
- (d) whether under this Order or the York Potash Order, the undertaker's or Anglo American's outcomes could be achieved in any alternative manner without the Specified Works being materially compromised in terms of increased cost or increased length of programme; and
- (e) any other important and relevant considerations.

244. Any determination by the expert is final and binding which the Parties must comply with and is enforceable by the Parties by injunction except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either Party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

PART 19

FOR THE PROTECTION OF SUEZ RECYCLING AND RECOVERY UK LIMITED

245. For the protection of Suez, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Suez.

246. In this Part of this Schedule—

“the respective authorised developments” means the authorised development and the Suez energy from waste facility respectively;

“Suez” means Suez Recycling and Recovery UK Limited (company number 02291198) whose registered address is Suez House, Grenfell Road, Maidenhead, Berkshire SL6 1ES and any successor in title;

“the Suez energy from waste facility” the proposed energy from waste facility authorised by planning permission [ref 14/1454/EIA] granted by Stockton-on-Tee Borough Council to be situated on the Suez site;

“Suez site” means the land within the Order limits owned by Suez; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 248.

Consent under this Part

247. Paragraphs 248 to 251 of this Part only apply where prior to the undertaker commencing any part of Work Number 6 Suez has either begun or completed construction of the Suez energy from waste facility anywhere within the Order limits.

248. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Suez energy from waste facility or access to it, the undertaker must submit to Suez the works details for the proposed works and such further particulars as Suez may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

249. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Suez energy from waste facility or access to it are to be commenced until the works details in respect of those works submitted under paragraph 248 have been approved by Suez.

250. Any approval of Suez required under paragraph 249 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Suez may require to be made to ensure that the respective authorised developments can co-exist within the Suez site.

251.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 249 and any requirements imposed on the approval under paragraph 250.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 254 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 254.

Co-operation

252.—(1) This paragraph applies insofar as—

- (a) the construction of the Suez energy from waste facility and the authorised development may be undertaken within the Order limits concurrently; or
- (b) the construction of one of the respective authorised developments would have an effect on the operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and Suez must—

- (a) co-operate with each other with a view to ensuring—
 - (i) the co-ordination of construction programming and the carrying out of the respective authorised developments;
 - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, Suez and their respective employees, contractors and sub-contractors; and
 - (iii) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and Suez; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Indemnity

253.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 248, any damage is caused to the Suez site, or there is any interruption in any service provided, or in the supply of any goods, by Suez, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Suez in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Suez for any other expenses, loss, damages, penalty or costs incurred by Suez, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Suez, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by Suez.

(3) Suez must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Suez must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 253 applies. If requested to do so by the undertaker, Suez must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 253 for claims reasonably incurred by Suez.

Arbitration

254. Any difference or dispute arising between the undertaker and Suez under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Suez, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 20

FOR THE PROTECTION OF SOUTH TEES DEVELOPMENT CORPORATION

255. For the protection of South Tees Development Corporation, Teesworks Limited and South Tees Developments Limited, the following provisions have effect, unless otherwise agreed in writing between the undertaker and South Tees Development Corporation, South Tees Developments Limited and Teesworks Limited.

256.—(1) In this Part of this Schedule—

“adequacy criteria” means the criteria at sub-paragraph (2);

“AIL access route land” means plots 290, 291 and 299, so far as required in relation to Work No. 10;

“AIL access route works” means Work No. 10 within the AIL access route land;

“diversion condition” means that in relation to the relevant diversion work—

- (a) in relation to a proposed work which is required for the construction of the authorised development, that it in the reasonable opinion of the undertaker complies with the adequacy criteria and enables the authorised development to be constructed and commissioned;
- (b) in relation to a proposed work which is required for the maintenance or operation of the authorised development, that it in the reasonable opinion of the undertaker complies with

the adequacy criteria and enables the authorised development to be constructed (where relevant), maintained, operated and (where relevant) decommissioned;

- (c) its cost is reasonable having regard to the nature and scale of the relevant proposed work;
- (d) planning permission is not required, or has been granted, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;
- (e) such other consents, licences or authorisations as are required for the diversion work have been obtained, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;
- (f) the Teesworks entity can grant adequate interest in land or a licence to the undertaker to use, maintain and operate the diversion work for its intended purpose as part of the authorised development and if relevant to carry out the diversion work;
- (g) the diversion work—
 - (i) is already constructed and available for use by the undertaker; or
 - (ii) where a diversion work is to be carried out, whether by the Teesworks entity or the undertaker, it can be carried out and completed in accordance with the undertakers' programme for the construction of the authorised development;
- (h) in relation only to the AIL access route work that the diversion work complies with the red main criteria;
- (i) in relation only to the southern access route work that heavy goods vehicles can access from the public highway through the Lackenby Gate and to the areas of Work Nos.1, 3, 7 and 9A; and
- (j) in relation only to the parking diversion works that—
 - (i) from 1 July 2023 to 30 September 2023, 60 parking spaces within the STDC area (but no more than 1.5km from Work No. 1) would be available to the undertaker for the parking of private cars;
 - (ii) from 1 October to 31 December 2023, 150 parking spaces within the STDC area (but no more than 1.5km from Work No. 1) would be available to the undertaker for the parking of private cars;
 - (iii) by 1 January 2024, at least 300 car parking spaces within the STDC area would be available for use by the undertaker for the parking of private cars;
 - (iv) by 31 March 2024, 1200 car parking spaces within the STDC area would be available for use by the undertaker for the parking of private cars,

and that in the reasonable opinion of the undertaker the car parking spaces would be available for use by the undertaker at all times during the periods specified, and that the land demonstrated for use as car parking spaces is suitable for such use, and that the undertaker will be able to operate a bus service that provides for the transport of personnel from the car parking spaces to construction areas during the construction of the authorised development;

“diversion notice” means a notice from the Teesworks entity to the undertaker under paragraph 268;

“diversion work” means works, development or use of land;

“diversion works agreement” means an agreement between the Teesworks entity and the undertaker in relation to a diversion work which provides—

- (a) adequate interest in land to allow the undertaker to use and where relevant maintain and operate the diversion work for its intended purpose as part of or in connection with the authorised development; and
- (b) where relevant, that the undertaker can carry out the diversion work or that the Teesworks entity must carry out the diversion work, in either case in accordance with the undertakers' programme for the construction of the authorised development;

“identified power” means a power conferred by the following in relation to a proposed work—

- (a) article 22 (compulsory acquisition of land);
- (b) article 23 (power to override easements and other rights);
- (c) article 25 (compulsory acquisition of rights etc.);
- (d) article 26 (private rights);
- (e) article 28 (acquisition of subsoil and airspace only);
- (f) article 31 (temporary use of land for carrying out the authorised development);
- (g) article 32 (temporary use of land for maintaining the authorised development); and
- (h) article 33 (statutory undertakers),

or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied by this Order;

“information notice” means a notice issued by the undertaker under paragraph 270(c) that additional information is reasonably required before it can decide whether to agree to a diversion work;

“Lackenby Gate” means the entrance to the Teesworks site located on the A1085 Trunk Road and known as Lackenby Gate;

“parking land” means part of each of plots 289, 292, 293, 298 and 300 being the area shown hatched green on the parking plan, so far as required in relation to Work No. 9A;

“parking plan” means the plan which is certified as the parking plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

“parking works” means use of the parking land within part of Work No. 9A for parking;

“the PCC site access plan” means the plan which is certified as the PCC site access plan by the Secretary of State under article 45 for the purposes of this Order;

“the PCC site access route land” means parts of plots 425, 459, 485 and 488, and plots 425a, 458, 458a, 467, 470, 473, 493, 496, 500, 502, 504, 505 and 508, being the area shown hatched green on the PCC site access plan so far as required in relation to Work No. 10;

“the PCC site access route works” means Work No. 10 within the PCC site access route land;

“proposed land” means one of the AIL access route land, the parking land, the PCC site access route land, the southern access route land or the water connection land;

“proposed work” means one of the AIL access route works, the parking works, the PCC site access route works, the southern access route works or the water connection works;

“proposed work programme” means a programme for the construction and use of a proposed work;

“the respective authorised developments” means the authorised development and the Teesworks development respectively;

“red main criteria” means that—

- (a) the diversion work must be along a route must connect to plot 223 at the same location as the existing road;
- (b) the diversion work must connect into the construction areas required for the construction of the authorised development at a location required by the undertaker acting reasonably;
- (c) the diversion work must accommodate cargo of 20 metre width by 20 metre height by 80 metre length, with an axle width of 10 metres, and with 5 metres of overhang each side;
- (d) the diversion work must allow a minimum internal turning radius of 24 metres from the centre of the diversion work and a maximum outer turning radius of 53 metres from the centre of the diversion work;
- (e) the longitudinal slope of the diversion work must not exceed 5%;
- (f) the transverse slope of the diversion work must not exceed 1.5%; and

(g) the diversion work must have a minimum ground bearing capacity of 100 kN/m² and sufficient protection provided if it crosses underground facilities;

“southern access route land” means plots 274, 279, 282, 283, 287, 296, 348, 362, 363, 367, 370, 373, 374, 376 and 381 so far as required in relation to Work No. 10;

“southern access route works” means Work No. 10 within the southern access route land;

“South Tees Developments Limited” means South Tees Developments Limited (Company number 11747311) whose registered office is at Teesside Airport Business Suite, Teesside International Airport, Darlington, United Kingdom, DL2 1NJ;

“STDC area” means the administrative area of STDC;

“the Teesworks development” means development authorised by any planning permission or development consent order granted in relation to the Teesworks site (or generally by permitted development rights), or prospective development planned in relation to the Teesworks site;

“Teesworks Limited” means Teesworks Limited (Company number 12351851) whose registered office is at Venture House, Aykley Heads, Durham, England, DH1 5TS;

“Teesworks entity” means subject to paragraph 284 Teesworks Limited, STDC and South Tees Developments Limited and any successor in title to the freehold interest in the Teesworks site;

“the Teesworks site” means the land within the limits shown on the works plans for numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 owned by STDC and South Tees Developments Limited;

“water connection land” means part of plots 473, and plots 409a, 425a, 458, 461, 463, 467, 470, 472, 498, 509, 512, 515, 516, 518, 519, 521, 522, 524, 525, 531, 532, 533, 534, 535, 536, 537, 538, being the area shown hatched green on the water connection plan, and so far as required in relation to Work No. 4;

“water connection plan” means the plan which is certified as the water connection plan by the Secretary of State under article 45 for the purposes of this Order;

“water connection works” means Work No. 4 within the water connection land;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed design;
- (c) details of the proposed method of working;
- (d) details of the programme and timing of execution of the works;
- (e) details of vehicle access routes for construction and operational traffic;
- (f) details of the location within the Teesworks site of a corridor situated within the limits shown on the works plans for numbered works 2A, 3, 4A, 5, 6, 8 and 10 within which the corresponding works are proposed to be carried out;
- (g) details of the location within the Teesworks site of a corridor situated within the limits shown on the works plans for numbered works 2A, 3, 4A, 5, 6, 8 and 10 within which the permanent corresponding works will be placed; and
- (h) any further particulars provided in response to a request under paragraph 257; and

“works notice” means a notice setting out details of a proposed work (sufficient to allow consideration of a potential diversion work and including a programme) and the exercise of an identified power in respect of any part of the proposed land.

(2) For the purposes of the diversion condition, a diversion work or associated interest in land must not be considered to be inadequate by the undertaker solely where—

- (a) it is longer in distance than the relevant proposed work it is replacing; or
- (b) in the case of vehicular or staff access, it increases the time taken to travel to the authorised development compared to the relevant proposed work it is replacing,

provided that a diversion work or associated interest in land may not be considered to be adequate where in the reasonable opinion of the undertaker an increase in distance or time (whichever is relevant) would—

- (c) incur unreasonable cost, having regard to both the nature and scale of the relevant proposed work, and the nature and scale of the impact on the Teesworks Development; or
- (d) have a material adverse impact on the timetable for the delivery of the authorised development in accordance with the undertaker's construction programme.

Consent for works

257. Before commencing the construction of any part of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 or any permitted preliminary works within the areas of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 within the Teesworks site, the undertaker must first submit to the Teesworks entity for its approval the works details for the work and such further particulars as the Teesworks entity may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.

258. No works comprising any part of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 or any permitted preliminary works within the areas of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 within the Teesworks site are to be commenced until the works details in respect of those works submitted under paragraph 257 have been approved by the Teesworks entity.

259. Any approval of the Teesworks entity required under paragraph 257 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Teesworks entity may require to be made to ensure that the respective authorised developments can co-exist within the Teesworks site.

260. The authorised development must be carried out in accordance with the works details approved under paragraph 257 and any requirements imposed on the approval under paragraph 259 or where there has been a reference to an arbitrator in accordance with paragraph 283 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator.

Co-operation

261. The Teesworks entity must provide the undertaker with information the undertaker reasonably requests in relation to the Teesworks development and which the undertaker reasonably needs (and which is reasonably available for disclosure by the Teesworks entity) in order to understand the interactions between the respective authorised developments or to design, build and operate the authorised development.

262. The undertaker must provide the Teesworks entity with information the Teesworks entity reasonably requests in relation to the authorised development and which the Teesworks entity reasonably needs (and which is reasonably available for disclosure by the undertaker) in order to understand the interactions between the respective authorised developments or to design, build and operate the Teesworks development.

263.—(1) This paragraph applies insofar as—

- (a) the construction of the authorised development may be undertaken on the Teesworks site concurrently with demolition or site preparation works undertaken by the Teesworks entity;
- (b) the construction of the respective authorised developments may be undertaken on the Teesworks site concurrently; or
- (c) the construction of one of the respective authorised developments would have an effect on the operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and the Teesworks entity must—

- (a) co-operate with each other with a view to ensuring—
 - (i) the co-ordination of construction programming and the carrying out of the respective authorised developments;
 - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, the Teesworks entity and their respective employees, contractors and sub-contractors; and
 - (iii) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and the Teesworks entity; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Expenses

264.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the Teesworks entity the reasonable costs and expenses incurred by them in, or in connection with—

- (a) the authorisation of works details in accordance with paragraphs 257 to 260;
- (b) the process in relation to proposed works and diversion works set out in paragraphs 266 to 278(2);
- (c) where the relevant diversion work is provided by the Teesworks entity and solely for the use of the undertaker in connection with the authorised development, the construction of a diversion work provided instead of the relevant proposed work; and
- (d) where the relevant diversion work is provided for the use of the undertaker in connection with the authorised development and for use in connection with or as part of the wider Teesworks site, a proportion of the cost of construction of a diversion work provided instead of the southern access route works, the PCC site access route works or the water connection works, such proportion to be agreed between the undertaker and the Teesworks entity acting reasonably or to be determined by arbitration pursuant to paragraph 283.

(2) Prior to incurring any expenses associated with the activities outlined in paragraph 264, the Teesworks entity must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the costs to be incurred.

(3) The expenses associated with the activities outlined in paragraph 264 so far as they relate to the procurement of diversion work instead of the AIL access route works or the parking works will be incurred by the entity that serves the relevant diversion notice.

Indemnity

265.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 257 and approved under paragraph 258, or any diversion works, any damage is caused to the Teesworks site, or there is any interruption in any service provided, or in the supply of any goods, by the Teesworks entity, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the Teesworks entity in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the Teesworks entity for any other expenses, loss, damages, penalty or costs incurred by the Teesworks entity, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the Teesworks entity, its officers, employees, servants, contractors or agents.

(3) The Teesworks entity must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker

which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The Teesworks entity must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 265 applies. If requested to do so by the undertaker, the Teesworks entity must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 265 for claims reasonably incurred by the Teesworks entity.

Provision for diversion works

266. The undertaker must—

- (a) as soon as reasonably practicable following the grant of the DCO consent, and prior to commencement of the authorised development—
 - (i) provide to the Teesworks entity details of its proposed works programme; and
 - (ii) provide such further particulars relating to the proposed works as the Teesworks entity may on occasion reasonably request, and must provide the details reasonably available to the undertaker that have been requested by the Teesworks entity within a period of 30 days of a request by the Teesworks entity or such longer period as the Teesworks entity and the undertaker may agree; and
- (b) prior to exercising an identified power in respect of any part of the proposed land issue a works notice to the Teesworks entity for that part.

267. If the undertaker intends to change the timing of the proposed work as set out in a proposed works programme issued to the Teesworks entity or the timing of the proposed works set out in a work notice the undertaker must notify the Teesworks entity as soon as reasonably practicable and where the undertaker decides to change timing which was specified in a work notice it must issue a revised work notice to the Teesworks entity.

268. The Teesworks entity may issue a notice (a “diversion notice”) to the undertaker at any time prior to 30 days after the later of—

- (a) the date of issue of the work notice under paragraph 266(b); or
- (b) the date of issue of the most recent work notice under paragraph 267,

unless the Teesworks entity and the undertaker, acting reasonably, agree such longer period prior to the expiry of the relevant 30 day period.

269. A diversion notice must set out—

- (a) the diversion work proposed; and
- (b) how the diversion work proposed satisfies so far as relevant each part of the diversion condition.

270. If a diversion notice is issued to the undertaker before the expiry of the period under paragraph 268, the undertaker must notify the Teesworks entity no later than 30 days after the date of receipt of the diversion notice confirming whether the undertaker—

- (a) agrees to diversion work;
- (b) does not agree to the diversion work; or
- (c) requires additional information to consider whether it agrees to the diversion work (an “information notice”).

271. In making the decision under paragraph 270 the undertaker must act reasonably and may only issue a notice stating that it does not agree to the diversion work where it considers that the diversion condition is not satisfied.

272. Where the undertaker gives an information notice to the Teesworks entity, that notice must set out what additional information is required by the undertaker to decide whether or not it agrees to the diversion notice.

273. Where the undertaker notifies the Teesworks entity under paragraph 270(b) that it does not agree to a diversion work, that notice must set out the reasons why the undertaker does not agree that the diversion work satisfies the diversion condition along with an indication of what would be required to make it satisfy the diversion condition.

274. If the undertaker issues an information notice to the Teesworks entity, the Teesworks entity may submit further information to the undertaker within 30 days of receipt of the information notice.

275. If the Teesworks entity submits further information to the undertaker within 30 days of receipt of the information notice, the undertaker must consider the further information and paragraph 270 applies again provided that the undertaker is not obliged to consider any further information that is received by the undertaker—

- (a) more than 30 days after the date of the information notice issued by the undertaker under paragraph 270(c); or
- (b) in any case 150 days from the date of the undertaker's works notice under paragraph 266(b) or if relevant 150 days from the date of any revised works notice issued by the undertaker under paragraph 267.

276. If the undertaker issues notice to the Teesworks entity under paragraph 270(b) confirming that it does not agree to the diversion notice, the Teesworks entity may submit a further diversion notice to the undertaker to address the undertaker's reasons for refusal under paragraph 273, provided that the undertaker is not obliged to consider any further diversion notice that is received by the undertaker—

- (a) more than 30 days after the date of the notice issued by the undertaker under paragraph 270(b); or
- (b) in any case 150 days from the date of the undertaker's works notice under paragraph 266(b) or if relevant 150 days from the date of any further works notice issued by the undertaker under paragraph 267.

277. If the undertaker issues a notice under paragraph 270(a) the Teesworks entity and the undertaker must use reasonable endeavours to enter into a diversion works agreement within 30 days of the notice on such terms as may be agreed between them, and where a planning permission is still to be obtained for the diversion work, the Teesworks entity must use reasonable endeavours to obtain the planning permission in order that the diversion work can be carried out without delay to the undertakers' programme for the construction of the authorised development.

278.—(1) Subject to sub-paragraphs (2) and (3), if a diversion works agreement is not entered into within the 30 day period set out in paragraph 277 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) the Teesworks entity or the undertaker may within 5 days of the end of that period refer the matter to arbitration under paragraph 283.

(2) If a diversion works agreement is not entered into within the 30 day period set out in paragraph 277 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) because any planning permission required for the diversion work has still not been obtained, and in the reasonable opinion of the undertaker the planning permission is not likely to be obtained in order to allow the diversion work to be carried out without material delay to the undertaker's programme, the undertaker may issue a notice to the Teesworks entity confirming that it is not entering into the diversion works agreement.

(3) A notice issued by the undertaker under sub-paragraph (2) shall have the same effect as a notice issued by the undertaker under paragraph 276.

279. If a reference is made to arbitration under paragraph 283 the arbitrator must determine whether the terms of the diversion works agreement can reasonably be in accordance with the

diversion condition and if it can then the arbitrator must determine the terms of the diversion works agreement and which must be in accordance with the diversion condition.

280. Where the arbitrator determines that the terms of the diversion works agreement can be in accordance with the diversion condition the Teesworks entity and the undertaker must use best endeavours to enter into the diversion works agreement on the terms determined by the arbitrator within 10 days of the arbitrator's decision.

281. If—

- (a) a diversion works agreement is entered into within the 30 day period set out in paragraph 277; or
- (b) a reference to arbitration is made in accordance with paragraph 283 and a diversion works agreement is entered into within the 10 day period in paragraph 280,

the undertaker must not exercise the identified powers in respect of the relevant proposed land.

282.—(1) If—

- (a) no diversion notice is issued by the Teesworks entity to the undertaker before the expiry of the period under paragraph 268;
- (b) a diversion notice is issued by the Teesworks entity to the undertaker, the undertaker issues a notice not agreeing to the diversion work under paragraph 270(b), and no further diversion notice is issued by the Teesworks entity to the undertaker prior to the dates set out in paragraph 276;
- (c) a diversion notice is issued by the Teesworks entity to the undertaker, the undertaker issues an information notice, and no further information is provided by the Teesworks entity to the undertaker prior to the dates set out in paragraph 275;
- (d) paragraph 277 applies and the Teesworks entity and the undertaker do not enter into a diversion works agreement within the 30 day period set out in that paragraph and no reference to arbitration is made prior to the expiry of the period in paragraph 278;
- (e) the arbitrator determines under paragraph 283 that the terms of the diversion works agreement cannot reasonably be in accordance with the diversion condition; or
- (f) paragraph 280 applies and the Teesworks entity has not executed and unconditionally released for completion a diversion works agreement within the 10 day period set out in that paragraph,

the undertaker may exercise the identified powers in respect of the relevant proposed land in order to (as relevant) carry out, use, maintain, operate or decommission the relevant proposed work.

(2) For the avoidance of doubt, in circumstances where paragraph 282 applies, this does not obviate the need for the undertaker to comply with paragraphs 257 to 260 in respect of the relevant proposed work.

Arbitration

283. Any difference or dispute arising between the undertaker and the Teesworks entity under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the Teesworks entity, be referred to and settled by arbitration in accordance with article 47 (arbitration).

Interpretation

284. Any reference to the Teesworks entity in this Part means the freehold owner of the relevant part of the Teesworks site.

285. Where a notice or information is provided by the undertaker to any of STDC, South Tees Developments Limited or Teesworks Limited under this Part, a copy of that notice or information must also be sent to the other parties.

PART 21

FOR THE PROTECTION OF THE BREAGH PIPELINE OWNERS

286. For the protection of the Breagh Pipeline Owners, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the Breagh Pipeline Owners.

287. In this Part of this Schedule—

“Breagh Pipeline” means the twenty inch (20”) diameter pipeline and associated three inch (3”) monoethylene glycol pipeline and fibre-optic cable extending from the field known as the Breagh field located in UKCS blocks 42/12a and 42/13a to the onshore gas reception and processing terminal known as the Teesside Gas Processing Plant (located in Seal Sands, Teesside) owned by the Breagh Pipeline Owners and operated by the Breagh Pipeline Operator used at various times for the passage of natural gas and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962;

“Breagh Pipeline Operations” means the operations or property, including the leasehold interests, rights of access and easements relating to the construction and operation of the Breagh Pipeline, within the Order limits vested in the Breagh Pipeline Owners and/or the Breagh Pipeline Operator;

“Breagh Pipeline Operator” means the person, firm or company designated by the Breagh Pipeline Owners to operate the Breagh Pipeline on their behalf, being, at the date of this Order, INEOS UK SNS Limited (Company number 01021338) and including any successor or assign in such capacity;

“Breagh Pipeline Owners” means any company that owns the Breagh Pipeline being, at the date of this Order, INEOS UK SNS Limited (Company number 01021338) and ONE-DYAS UK LIMITED (Company number 03531783) whose registered address is Anchor House, 15- 19 Britten Street, London SW3 3TY in respect of INEOS UK SNS Limited and 8th Floor 100 Bishopsgate, London EC2N 4AG in respect of ONE-DYAS UK LIMITED, and including any successors and assignees in such capacity; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 288.

Consent under this Part

288. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of or access to the Breagh Pipeline or the Breagh Pipeline Operations, the undertaker must submit to the Breagh Pipeline Owners the works details for the proposed works and such further particulars as the Breagh Pipeline Owners may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

289. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of or access to the Breagh Pipeline or the Breagh Pipeline Operations are to be commenced until the works details in respect of those works submitted under paragraph 288 have been approved by the Breagh Pipeline Owners.

290.—(1) Any approval of the Breagh Pipeline Owners required under paragraph 289 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Breagh Pipeline Owners may require to be made for—

- (a) the continuing safety and operational viability of the Breagh Pipeline; and
- (b) the requirement for the Breagh Pipeline Owners to have—

- (i) uninterrupted and unimpeded emergency access with or without vehicles to the Breagh Pipeline and the Breagh Pipeline Operations at all times; and
- (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Breagh Pipeline and the Breagh Pipeline Operations.

(2) Where the Breagh Pipeline Owners can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the Breagh Pipeline and the Breagh Pipeline Operations they are entitled to withhold their authorisation until the undertaker can demonstrate to the reasonable satisfaction of the Breagh Pipeline Owners that the authorised development will not significantly adversely affect the safety of the Breagh Pipeline and the Breagh Pipeline Operations.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 289 and any requirements imposed on the approval under sub- paragraph (1).

(4) Where there has been a reference to an arbitrator in accordance with paragraph 293 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 293.

Compliance with requirements, etc. applying to the Breagh Pipeline and the Breagh Pipeline Operations

291. In undertaking any works in relation to the Breagh Pipeline and the Breagh Pipeline Operations or exercising any rights relating to or affecting the Breagh Pipeline and the Breagh Pipeline Operations, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the Breagh Pipeline and the Breagh Pipeline Operations.

Indemnity

292.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 288, any damage is caused to the Breagh Pipeline and the Breagh Pipeline Operations or there is any interruption in any service provided, or in the supply of any goods, by the Breagh Pipeline Owners, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the Breagh Pipeline Owners in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the Breagh Pipeline Owners for any other expenses, loss, damages, penalty or costs incurred by the Breagh Pipeline Owners, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of the Breagh Pipeline Owners, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by the Breagh Pipeline Owners.

(3) The Breagh Pipeline Owners must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The Breagh Pipeline Owners must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 292 applies. If requested to do so by the undertaker, the Breagh Pipeline Owners must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 292 for claims reasonably incurred by the Breagh Pipeline Owners.

Arbitration

293. Any difference or dispute arising between the undertaker and the Breagh Pipeline Owners under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the Breagh Pipeline Owners, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 22

FOR THE PROTECTION OF TEESSIDE WINDFARM LIMITED

294. For the protection of Teesside Windfarm, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Teesside Windfarm.

295. In this Part of this Schedule—

“restricted works” means works below mean high water springs forming part of the authorised development comprising Work No. 5A (repair and upgrade of the existing water discharge infrastructure in the Tees Bay in connection with Work No. 1), Work No. 5B (a new water discharge pipeline to the Tees Bay in connection with Work No. 1) and Work No. 8 (high pressure carbon dioxide export pipeline corridor);

“restricted works considerations” means the following potential risks to the Teesside Windfarm operations associated with the restricted works—

- (a) risks associated with vessels in close proximity to the Teesside Windfarm turbines;
- (b) the risk of any explorations, geoscience activities or construction works including the drilling of bore holes damaging the Teesside Windfarm cable connection;
- (c) impacts associated with changes to the seabed that may impact upon the foundation of the Teesside Windfarm turbines; and
- (d) seismic effects that may impact upon the stability of the Teesside Windfarm turbines;

“Teesside Windfarm” means Teesside Windfarm Limited (Company number 06708759) of Alexander House, 1 Mandarin Road, Rainton Bridge Business Park, Houghton Le Spring, DH4 5RA and any successor in title or function to the Teesside Windfarm operations;

“the Teesside Windfarm operations” means the operations or property within the Order limits vested in Teesside Windfarm including the electric line (as defined in the Electricity Act 1989) crossing the Order limits owned and operated by Teesside Windfarm used at various times for carrying electricity and all ancillary apparatus including such works and apparatus properly appurtenant to the electricity line; and

“works details” means—

- (e) plans and sections;
- (f) details of the proposed method of working and timing of execution of works;
- (g) details of vehicle access routes for construction and operational traffic; and
- (h) any further particulars provided in response to a request under paragraph 296.

Consent under this Part

296. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Teesside Windfarm operations or access to them, or cross any infrastructure owned or operated by Teesside Windfarm, and before commencing the restricted works, the undertaker must submit to Teesside Windfarm the works details for the proposed works and such further particulars as Teesside Windfarm may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

297. Particularly in respect of the restricted works, the undertaker must have regard to the restricted works considerations entered into between the parties when preparing the works details in accordance with paragraph 296.

298. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Teesside Windfarm operations or access to them, or cross any infrastructure owned or operated by Teesside Windfarm, or comprising the restricted works, are to be commenced until the works details in respect of those works submitted under paragraph 296 have been approved by Teesside Windfarm.

299. Any approval of Teesside Windfarm required under paragraph 298 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Teesside Windfarm may require to be made for—

- (a) the continuing safety, uninterrupted use and operational viability of the Teesside Windfarm operations; and
- (b) the requirement for Teesside Windfarm to have reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety uninterrupted use and operation or viability of the Teesside Windfarm operations.

300.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 296 and any requirements imposed on the approval under paragraph 299.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 302 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 302.

Indemnity

301.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 296, any damage is caused to the Teesside Windfarm operations, or there is any interruption in any service provided, or in the supply of any goods, by Teesside Windfarm, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Teesside Windfarm in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Teesside Windfarm for any other expenses, loss, damages, penalty or costs incurred by Teesside Windfarm, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Teesside Windfarm, its officers, employees, servants, contractors or agents.

(3) Teesside Windfarm must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) If the Undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

- (a) keep Teesside Windfarm fully informed of the developments and material elements of the proceedings;
- (b) take account of the views of Teesside Windfarm before taking any action in relation to the claim;
- (c) not bring the name of the Teesside Windfarm on any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and

- (d) not pay or settle such claims without the prior written consent of Teesside Windfarm, such consent not to be unreasonably withheld or delayed.

(5) Teesside Windfarm must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 301 applies. If requested to do so by the undertaker, Teesside Windfarm must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 301 for claims reasonably incurred by Teesside Windfarm.

Arbitration

302. Any difference or dispute arising between the undertaker and Teesside Windfarm under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Teesside Windfarm, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 23

FOR THE PROTECTION OF HUNTSMAN POLYURETHANES (UK) LIMITED

Benefit of protective provisions

303. The following provisions of this Schedule have effect for the benefit of HPU, unless otherwise agreed between the undertaker and HPU.

Interpretation

304. In this Schedule—

“access roads” means the access roads within the Order limits giving access to pipelines or the protected crossing;

“affected assets” means—

- (a) apparatus which would be physically affected by the relevant works;
- (b) the protected crossing where relevant works are to be carried out within 25 metres of the protected crossing; and
- (c) in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power;

“apparatus” means pipelines and cables owned or operated by HPU within the Order limits and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Part in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962^(a) as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“construction access plan” means a plan identifying how access will be maintained to apparatus the protected crossing and the North Tees Facilities during the proposed construction or maintenance work including—

- (a) any restrictions on general access by HPU, including the timing of restrictions;

(a) 1962 c. 58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 of Schedule 2 to, the Energy Act 2011 (c. 16), S.I. 2000/1937 and S.I. 2011/2305.

- (b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;
- (c) details of how the needs and requirements of HPU (including their needs and requirements in relation to any major works that they have notified to the other operators of the protected land as at the date when the plan is published) have been taken into account in preparing the plan;
- (d) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for HPU; and
- (e) details of how reasonable access with or without vehicles will be retained or an alternative provided for HPU to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and the protected crossing;

“construction or maintenance works” means any works to construct, maintain, or decommission the authorised development;

“damage” includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

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

“HPU” means Huntsman Polyurethanes (UK) Limited (company number 03767067) whose registered office is Concordia House Glenarm Road, Wynyard Business Park, Billingham, United Kingdom, TS22 5FB;

“major works” means works by HPU requiring the closure, diversion or regulation of any roads serving the North Tees Facilities;

“North Tees Facilities” means the site of facilities at North Tees connected to or supplying HPU’s apparatus;

“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;

“owner” means—

- (a) in relation to the pipeline corridor, any person—
 - (i) with an interest in a pipeline in the pipeline corridor;
 - (ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline; or
 - (iii) with a pipeline or proposed pipeline in, on, under or over the pipeline corridor;
- (b) in relation to the access roads, any person—
 - (i) with an interest in the access roads; or
 - (ii) with private rights of way on or over the access roads;
- (c) in relation to the protected crossing, any person—
 - (i) with an interest in the protected crossing;
 - (ii) with rights in relation to the protected crossing; or
 - (iii) with pipelines in or comprising the protected crossing; and
- (d) in relation to protected land means any person falling within paragraphs (a) to (c) above;

“pipeline corridor” means the land identified as the pipeline corridor on the Sembcorp Pipeline Corridor protective provisions supporting plans;

“pipelines” means any apparatus owned or operated by HPU located in the pipeline corridor or in or comprising the protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the authorised development, providing that any such additions are notified to the undertaker as soon as reasonably practicable;

“pipeline survey” means a survey of the pipeline corridor and the protected crossing to establish (if not known)—

- (a) the precise location of the pipelines and the protected crossing;

- (b) the specification of the pipelines and protected crossing including, where relevant, their composition, diameter, pressure and the products they are used to convey; and
- (c) any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type;

“protected crossing” means the tunnel which carries pipelines under the River Tees known as Tunnel 2;

“protected land” means such parts of the Order land as fall within—

- (a) the access roads;
- (b) the pipeline corridor; or
- (c) the protected crossing;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline or the protected crossing;

“specified persons” means the Operations Manager, Huntsman Polyurethanes, PO Box 99, Wilton, Redcar, TS10 4YA in relation to Huntsman Polyurethanes (UK) Limited, or such other person as they may notify to the undertaker in writing; and

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of methods and locations of any piling proposed to be undertaken under paragraph 312;
- (c) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 313;
- (d) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 314;
- (e) details of the location of any pipelines affected by the oversailing provisions in paragraph 315, including details of the proposed clearance;
- (f) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;
- (g) details of the undertaker and their principal contractors’ management of change procedures;
- (h) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (i) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (j) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (k) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and
- (l) any further particulars provided in accordance with paragraph 306(2).

Pipeline survey

305.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect a protected crossing the undertaker must—

- (a) carry out and complete the pipeline survey; and

(b) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by an appropriately qualified person with at least 10 years' experience of such surveys.

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on HPU and invite HPU to advise the undertaker within 28 days of receipt of the survey if HPU considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

Authorisation of works details affecting pipelines or protected crossing

306.—(1) Before commencing any part of a relevant work the undertaker must submit to HPU the works details in respect of any affected asset and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as HPU may, within 30 days (or such longer period as is agreed between the parties) from the receipt of the works details under sub-paragraph (1), reasonably require.

307. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 306 have been authorised by HPU; or
- (b) the works details supplied in respect of that relevant work under paragraph 306 have been authorised by an arbitrator under paragraph 309(2); or
- (c) authorisation is deemed to have been given in accordance with paragraph 309(1).

308.—(1) Any authorisation by HPU required under paragraph 307(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as HPU may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for HPU to have—
 - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
 - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) The authorised development must be carried out in accordance with the works details authorised under paragraph 307 and any conditions imposed on the authorisation under paragraph (1).

(3) Where there has been a reference to arbitration in accordance with paragraph 309(2) and the arbitrator gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the arbitrator under paragraph 309(3).

309.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 306 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 306(1) and no further particulars have been requested under paragraph 306(2); or
- (b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 306(2),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that HPU has unreasonably withheld its authorisation under paragraph 308(1); or

- (b) the undertaker considers that HPU has given its authorisation under paragraph 308(1) subject to unreasonable conditions,

the undertaker may refer the matter to an arbitrator for determination under paragraph 328.

(3) Where the matter is referred to arbitration under paragraph (2) the arbitrator is to determine whether or not authorisation should be given and, if so the conditions which should reasonably be attached to the authorisation under sub-paragraph (a) and (b) of paragraph 308(1).

Notice of works

310. The undertaker must provide to HPU a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

Further provisions about works

311. No explosives are to be used within the protected land.

312.—(1) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to HPU for approval in accordance with paragraph 306.

313.—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by HPU.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to HPU under paragraph 306.

314.—(1) Where a trench is excavated across or parallel to the line of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

(2) Proposed methods and locations of compacting must be notified to HPU in accordance with paragraph 306.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in sub-paragraph (1) and what further works may be necessary, and the results of such testing must be supplied to HPU.

(4) Where it is shown by the testing under sub-paragraph (3) to be necessary, the undertaker must carry out further compaction testing under sub-paragraph (1) and sub-paragraphs (1), (2) and (3) continue to apply until such time as the backfill has been adequately compacted.

(5) In the event that it is necessary to provide permanent support to a pipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker must pay to HPU a capitalised sum representing the increase of the costs (if any which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewing any such alterations or additions.

(6) In the event of a dispute as to—

- (a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or
- (b) the amount of any payment under sub-paragraph (5),

the undertaker or HPU may refer the matter for arbitration under paragraph 328.

315.—(1) A minimum clearance of 1500 millimetres must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with HPU.

- (2) No manholes or chambers are to be built over or round the pipelines.

Monitoring for damage to pipelines

316.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets within the Order limits to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify HPU to enable repairs to be carried out to the reasonable satisfaction of HPU.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of HPU—

- (a) afford HPU all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to HPU its costs incurred in doing so including the costs of testing the effectiveness of the repairs and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of HPU to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where HPU agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then HPU is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

317.—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and HPU must be notified immediately.

(2) Where there is leakage or escape of gas or any other substance, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform HPU;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

318.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given under paragraph 310; or
- (b) determined by arbitration following a determination under paragraph 328 to unreasonably—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

Access for construction and maintenance

319.—(1) Before carrying out any construction or maintenance works affecting HPU's access rights over the access roads, the undertaker must prepare a draft construction access plan and consult on the draft construction access plan with HPU.

(2) The undertaker must take account of the responses to any consultation referred to in sub-paragraph (1) before approving the construction access plan.

320.—(1) In preparing a construction access plan under paragraph 319 the undertaker must—

- (a) establish the programme for HPU's major works in the pipeline corridor and the North Tees Facilities and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
- (b) establish where HPU's access to the protected land, or any pipeline or the North Tees Facilities has a reasonable expectation to exercise access rights over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to arbitration under paragraph 328 in relation to any disagreement about a construction access plan the arbitrator must have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;
- (d) the undertaker's programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;
- (e) the availability (or non-availability) of other times during which the authorised development could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for HPU to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on HPU.

(3) In this paragraph, "programmed", in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are programmed to be carried out provided that the period covered by such dates must be length of time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

321.—(1) No works affecting access rights over the access roads are to commence until 30 days after a copy of the approved construction access plan is served on HPU.

(2) Where HPU or the undertaker refers the construction access plan to arbitration for determination under paragraph 328, no works affecting access rights over the access roads may commence until that determination has been provided.

(3) In carrying out construction or maintenance works the undertaker must at all times comply with the construction access plan.

Insurance

322.—(1) Before carrying out any part of the authorised development affecting HPU, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer with the terms, cover and level of cover as may be agreed in writing between the undertaker and HPU, and evidence of that insurance must be provided on request to HPU.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify HPU of details of the terms or cover of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to the authorised development affecting HPU during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover as may be agreed in writing between the undertaker and HPU.

323.—(1) If HPU has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 322—

- (a) HPU may refer the matter to arbitration under paragraph 328; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 328 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

324.—(1) The undertaker must repay to HPU all reasonable fees, costs, charges and expenses reasonably incurred by HPU in relation to these protective provisions in respect of—

- (a) authorisation of survey details submitted by the undertaker under paragraph 305(3), authorisation of works details submitted by the undertaker under paragraph 306 and the imposition of conditions under paragraph 308;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 310;
- (c) responding to the consultation on piling under paragraph 312;
- (d) considering the effectiveness of any compacting which has taken place under paragraph 314, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) the repair and testing of a pipeline or protected crossing under paragraph 316;
- (f) considering and responding to consultation in relation to the construction access plan under paragraph 319 and providing details of their programme for major works to the undertaker under paragraph 320; and
- (g) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 322,

including the reasonable costs incurred by HPU in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow HPU to carry out its functions under these protective provisions.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any of the works referred to in paragraph 305(2), any damage is caused to the affected assets of HPU, or there is any interruption in any service provided, or in the supply of any goods, by HPU, the undertaker must—

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

(b) make reasonable compensation to HPU for any other expenses, loss, damages, penalty or costs incurred by HPU, by reason or in consequence of any such damage or interruption.

(3) Nothing in sub-paragraphs (1) or (2) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of HPU, its officers, employees, servants, contractors or agents.

(4) HPU must give the undertaker reasonable notice of any claim or demand under sub- paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) HPU must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

(6) In the assessment of any sums payable to HPU under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, HPU if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

(7) HPU must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, HPU must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub- paragraph (2). The undertaker shall only be liable under this paragraph for claims reasonably incurred by HPU.

Further protection in relation to the exercise of powers under the Order

325. The undertaker must give written notice to HPU of the terms and level of cover of any guarantee or alternative form of security put in place under article 48 (funding for compulsory acquisition compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

326. The undertaker, must when requested to do so by HPU, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans etc.) in electronic form.

327. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to HPU.

Arbitration

328. Any difference or dispute arising between the undertaker and HPU under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and HPU, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 24

FOR THE PROTECTION OF NAVIGATOR TERMINALS SEAL SANDS LIMITED

329. For the protection of Navigator Terminals, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Navigator Terminals.

330. In this Part of this Schedule—

“Navigator Terminals” means Navigator Terminals Seal Sands Limited (company number 00829104) whose registered address is Oliver Road, Grays, RM20 3ED and any successor in title or function to the Navigator Terminals operations;

“the Navigator Terminals operations” means the operations within the Order limits vested in Navigator Terminals including the pipeline crossing the Order limits operated by Navigator Terminals used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 331.

Consent under this Part

331. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Navigator Terminals operations or all necessary and existing access to them, the undertaker must submit to Navigator Terminals the works details for the proposed works and such further particulars as Navigator Terminals may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require for approval by Navigator Terminals.

332. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Navigator Terminals operations or access to them are to be commenced until the works details in respect of those works submitted under paragraph 331 have been approved by Navigator Terminals.

333. Any approval of Navigator Terminals required under paragraph 332 must not be unreasonably withheld or delayed unless the works details are not consistent with and in accordance with terms of this Part but may be given subject to such reasonable requirements as Navigator Terminals may require to be made for—

- (a) the continuing safety and operational viability of the Navigator Terminals operations; and
- (b) the requirement for Navigator Terminals to have reasonable access with or without vehicles at all times to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Navigator Terminals operations.

334.—(1) The authorised development must be carried out with good and suitable materials in a good and workmanlike manner in accordance with the works details approved under paragraph 332 and any requirements imposed on the approval under paragraph 333 and all other statutory and other requirements or regulations.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 335 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 335.

Indemnity

335.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 331, any damage or loss is caused to the Navigator Terminals operations or property of Navigator Terminals, or there is any interruption in any service provided, or in the supply of any goods, by Navigator Terminals, the undertaker must—

- (a) bear and pay the cost incurred by Navigator Terminals in making good such damage or restoring the supply; and
 - (b) make compensation to Navigator Terminals for any other expenses, loss, damages, penalty or costs incurred by Navigator Terminals, by reason or in consequence of any such damage or interruption.
- (2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—
- (a) any damage or interruption to the extent that it is attributable solely to the act, neglect or default of Navigator Terminals, its officers, employees, servants, contractors or agents; or
 - (b) any indirect or consequential loss or loss of profits by Navigator Terminals.
- (3) Navigator Terminals must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- (4) Navigator Terminals must use its reasonable endeavours to mitigate in whole or in part and to minimise so far as it is able and using the steps of a reasonably prudent operator of such a facility any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 335 applies. If requested to do so by the undertaker, Navigator Terminals must provide reasonable details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 335 for claims reasonably incurred by Navigator Terminals.

Arbitration

336. Any difference or dispute arising between the undertaker and Navigator Terminals under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Navigator Terminals, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 25

FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

337. For the protection of NW, the following provisions, unless otherwise agreed in writing between the undertaker and NW, have effect.

338. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NW to fulfil its statutory functions in no less efficient a manner than previously;

“apparatus” means the following items belonging to or maintained by NW within the Order limits—

- (a) in the case of NW’s water undertaking—
 - (i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or accessories (as defined in section 219(1) of the Water Industry Act 1991) belonging to or maintained or used by NW for the purposes of water supply; and
 - (ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A of the Water Industry Act 1991; and
- (b) in the case of NW’s sewerage undertaking—
 - (i) any sewer, drain or disposal works vested in NW under the Water Industry Act 1991; and

- (ii) any sewer, drain or disposal works which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“NW” means Northumbrian Water Limited, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

“plan” includes sections, drawings, specifications and method statements; and

“the standard protection strips” means strips of land falling within the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres;
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres; and
- (e) 6.5 metres where it is a sewer.

339. The undertaker must not within the standard protection strips interfere with or build over any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with NW, such agreement not to be unreasonably withheld or delayed, and this provision must be brought to the attention of any contractor responsible for carrying out any part of the authorised development on behalf of the undertaker.

340. The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting Regulations 2016 or other replacement legislation and any other associated consents are obtained; and
- (b) if applicable, the undertaker has made the appropriate application under sections 106 (right to communicate with public sewers), 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) or 185 (duty to move pipes, etc.) of the Water Industry Act 1991 as may be required by those provisions and has provided a plan of the works proposed to NW and NW has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed,

and in the event that such works are to be executed by the undertaker, they are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NW for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

341. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until NW has established to its reasonable satisfaction, without unnecessary delay, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

342. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for NW to use, keep, inspect, renew and maintain its apparatus in the Order land,

the undertaker must, with the agreement of NW, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for NW, such agreement not to be unreasonably withheld or delayed.

343. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable NW to maintain or use the apparatus no less effectively than was possible before such obstruction.

344. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to NW and afforded the same protection as other NW assets.

345.—(1) Subject to sub-paragraphs (2) and (3), if for any reason or in consequence of the construction of any of the works referred to in paragraphs 339 to 341 any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NW, or there is any interruption in any service provided, or in the supply of any goods, by NW, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NW in making good any damage or restoring the supply; and
- (b) make reasonable compensation to NW for any other expenses, loss, damages, penalty or costs incurred by NW, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NW, its officers, employees, servants, contractors or agents.

(3) NW must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NW must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 345 applies. If requested to do so by the undertaker, NW must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 345 for claims reasonably incurred by NW.

346. Any dispute arising between the undertaker and NW under this Part of this Schedule must be referred to and settled by arbitration under article 47 (arbitration).

347.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or NW requires the removal of apparatus or NW makes requirements for the protection or alteration of apparatus, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of NW's undertaking and NW must use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Where the undertaker identifies any apparatus which may belong to or be maintainable by NW but which does not appear on any statutory map kept for the purpose by NW, it shall inform NW of the existence and location of the apparatus as soon as reasonably practicable.

(3) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NW in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

348. Prior to carrying out any works within the Order Limits (as defined in the Order) NW must give written notice of the proposed works to the undertaker, such notice to include full details of

the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

PART 26

FOR THE PROTECTION OF NORTHERN GAS NETWORKS LIMITED

Application

349. For the protection of the Northern Gas Networks Limited the following provisions shall, unless otherwise agreed in writing between the undertaker and Northern Gas Networks Limited, have effect.

Interpretation

350. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Northern Gas Networks to enable Northern Gas Networks to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to Northern Gas Networks which it uses for the purposes of its undertaking;

“functions” includes powers and duties;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following: construct, use, repair, alter, inspect, renew or remove;

“Northern Gas Networks” means Northern Gas Networks Limited (Company Number 05167070) whose registered office is at 1100 Century Way, Colton, Leeds, LS15 8TU;

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

“works” means all works carried out by the undertaker to construct, lay, render operational, maintain, repair, renew, inspect and replace the authorised development or any part thereof including without limitation ancillary works of excavation, resurfacing, protecting, testing and drainage works, as affect the apparatus.

351. Except for paragraphs 352 (apparatus of statutory undertaker in stopped up streets), 356 (retained apparatus: protection), 357 (expenses) and 358 (indemnity), this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Gas Networks are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of statutory undertaker in stopped up streets

352. Notwithstanding the temporary stopping up or diversion of any street under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), Northern Gas Networks is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street, subject always to the undertaker’s unimpeded ability to carry out the works.

Acquisition of land

353. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus or override any easement or other interest of Northern Gas Networks otherwise than by agreement.

Removal or diversion of apparatus

354.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in land in which the apparatus is placed, that apparatus must not be removed under this Part or otherwise, and any right of Northern Gas Networks to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Northern Gas Networks in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal or diversion of any apparatus placed in that land, it must give to Northern Gas Networks written notice of that requirement, together with a plan of the works and the removal or diversion works proposed, the proposed position of the alternative apparatus, and the proposed timeline for the works. Northern Gas Networks must reasonably approve these details. The undertaker must afford to Northern Gas Networks, to their reasonable satisfaction, the necessary facilities and rights for—

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

and after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration) and after the grant to Northern Gas Networks of any such facilities and rights, Northern Gas Networks must complete the works and bring the alternative apparatus into operation and subsequently remove any apparatus required to be removed by the undertaker and must use its reasonable endeavours to meet the undertaker's proposed timeline, and in any event must do so without undue delay, in accordance with the details provided by the undertaker under this sub-paragraph or as otherwise reasonably agreed by the undertaker.

(3) If, in consequence of the works carried out by the undertaker, Northern Gas Networks reasonably needs to remove or divert any of its apparatus, it must without undue delay give the undertaker written notice of that requirement, together with a plan of the work proposed, the proposed position of the alternative apparatus and the proposed timeline for the works. The undertaker must reasonably approve these details and must afford to Northern Gas Networks, to their reasonable satisfaction, the necessary facilities and rights for—

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

and after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 and after the grant to Northern Gas Networks of any such facilities and rights, Northern Gas Networks must complete the works and bring the alternative apparatus into operation and subsequently remove any apparatus required to be removed by the undertaker without undue delay and in accordance with the approved details and timeline.

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraphs (2) and (3) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Gas Networks must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible take such steps as are reasonable in the circumstances (at the Undertaker's expense) to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(5) Paragraphs 357 (expenses) and 358 (indemnity) of this Part of this Schedule apply to removal or diversions works under this paragraph 354, subject to Northern Gas Networks providing to the undertaker in advance and in writing (to the extent practicable) a reasonable cost estimate for works that it proposes to carry out.

Facilities and rights for alternative apparatus

355.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to Northern Gas Networks facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Gas Networks or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus in the land of the undertaker, and the terms and conditions to which those facilities and rights are to be granted, are less favourable on the whole to Northern Gas Networks than the facilities and rights enjoyed by it in respect of the apparatus to be removed (as agreed between the undertaker and Northern Gas Networks, or failing agreement, in the opinion of the arbitrator), then the undertaker and Northern Gas Networks must agree appropriate compensation for the extent to which the new facilities and rights render Northern Gas Networks less able to effectively carry out its undertaking or require it to do so at greater cost. If the amount of compensation cannot be agreed, the matter must be settled by arbitration in accordance with article 47 and the arbitrator must make provision for the payment of appropriate compensation by the undertaker to Northern Gas Networks as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

356.—(1) Not less than 28 days before commencing the execution of any works that will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the removal or diversion of which apparatus has not been required by the undertaker under paragraph 354(2) or otherwise or by Northern Gas Networks under paragraph 354(3), the undertaker must submit to Northern Gas Networks a plan showing the works and the apparatus.

(2) The plan to be submitted to Northern Gas Networks under sub-paragraph (1) shall be detailed including a method statement and describing—

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

(3) Subject to sub-paragraph (4) the undertaker must not commence the construction or renewal of any works to which sub-paragraphs (1) or (2) apply until Northern Gas Networks has given written approval of the plan so submitted.

(4) Any approval of Northern Gas Networks undertaker required under sub-paragraph (3)—

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

(5) In relation to works to which sub-paragraph (1) applies, Northern Gas Networks may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order to which this paragraph 356 applies must be executed only in accordance with the relevant plan, notified under sub-paragraph (1) and approved (with conditions, if applicable) under sub-paragraph (4), as amended from time to time by agreement

between the undertaker and Northern Gas Networks. Northern Gas Networks is entitled to watch and inspect the execution of those works.

(7) Where Northern Gas Networks requires any protective works or subsidence monitoring to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature), Northern Gas Networks must give the undertaker notice of such requirement in its approval under sub-paragraph (3), and—

- (a) such protective works must be carried out to Northern Gas Networks' reasonable satisfaction prior to the carrying out of the relevant part of the works;
- (b) ground subsidence monitoring must be carried out in accordance with a scheme approved by Northern Gas Networks (such approval not to be unreasonably withheld or delayed), which shall set out—
 - (i) the apparatus which is to be subject to such monitoring;
 - (ii) the extent of land to be monitored;
 - (iii) the manner in which ground levels are to be monitored;
 - (iv) the timescales of any monitoring activities; and
 - (v) the extent of ground subsidence which, if exceeded, must require the undertaker to submit for Northern Gas Networks' approval a ground subsidence mitigation scheme in respect of such subsidence; and
- (c) if a subsidence mitigation scheme is required, it must be carried out as approved (such approval not to be unreasonably withheld or delayed).

(8) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of the relevant works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(9) The Undertaker must not be required to comply with sub-paragraphs (1) or (2) in the case of emergency but in that case it must give to Northern Gas Networks notice as soon as is reasonably practicable and a plan of those works shall comply with the other requirements in this paragraph insofar as is reasonably practicable in the circumstances, provided that it always complies with sub-paragraph (10).

(10) At all times when carrying out any works authorised under the Order that may or will affect the apparatus, the Undertaker must comply with the Statutory undertaker's policies for safe working in proximity to gas apparatus including the "Specification for safe working in the vicinity of Northern Gas Networks, Gas pipelines and associated installation requirements for third parties "NGN/SPSSW22" and the Health and Safety Executive guidance document "HS(G)47 Avoiding Danger from underground services".

Expenses

357.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Gas Networks the charges, costs and expenses reasonably incurred by Northern Gas Networks in, or in connection with, the inspection, removal or diversion, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be reasonably required and necessary in consequence of the execution of any such works as are required and approved under this Part, including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation in the event that the Statutory Undertaker elects to use compulsory purchase powers to acquire any necessary rights under 354(4);
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

- (d) the approval of plans;
- (e) the carrying out of protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any works carried out pursuant to this Schedule; and
- (g) any statutory loss of supply payments under the ‘Guaranteed Standards of Service’ regime that the Statutory Undertaker may incur in consequence of the works, but in the event that such payments are likely to become payable, the Statutory Undertaker must give the Undertaker notice as soon as reasonably practicable of the payments and the likely amount.

(2) Northern Gas Networks must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any costs, expenses, loss, demands and penalties capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, Northern Gas Networks must provide an explanation of how the claimed expenses have been minimised or details to substantiate the cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable to pay expenses that have been reasonably incurred by Northern Gas Networks.

(3) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part and which is not re-used as part of the alternative apparatus, that value being calculated after removal and not including the costs (if any) of disposing that apparatus.

(4) If in accordance with the provisions of this Part of this Schedule—

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

then, if this incurs greater expense than would have been incurred by a like-for-like (or as close as practicable to like-for like) replacement at the same depth, the undertaker shall not be liable for this additional expense.

(5) For the purposes of sub-paragraph (4) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to and approved under this Part.

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

Indemnity

358.—(1) Subject to sub-paragraphs (2), (3) and (4), and without detracting from paragraph 357 above, if by reason or in consequence of the construction of any works referred to and approved under this Part, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Gas Networks, or there is any interruption in any service provided, or in the supply of any goods, by Northern Gas Networks, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Gas Networks in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Northern Gas Networks for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Northern Gas Networks on behalf of the undertaker or in accordance with a plan approved by Northern Gas Networks or in accordance with any requirement of Northern Gas Networks as a consequence of the authorised development or under its supervision shall not (subject to sub-paragraph (4)), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless Northern Gas Networks fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Northern Gas Networks must use its reasonable endeavours to mitigate in whole or in part, and to minimise any costs, expenses, loss, demands, penalties etc. capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, Northern Gas Networks must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 358 for claims reasonably incurred by Northern Gas Networks.

(4) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Northern Gas Networks, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by the Statutory Undertaker

(5) Northern Gas Networks must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker (not to be unreasonably withheld or delayed) which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

359. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Gas Networks in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

360. Where in consequence of the proposed construction of any of the works under this Part, the undertaker or Northern Gas Networks requires the removal of apparatus in accordance with the provisions of this Part, each party must use reasonable endeavours to co-ordinate the execution of such works in the interests of safety and the efficient and economic execution of such works, taking into account the absolute need to ensure the safe and efficient operation of Northern Gas Networks' undertaking and its apparatus.

Access

361. If in consequence of the powers granted under this Order, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Northern Gas Networks to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

362. Any difference or dispute arising between the undertaker and Northern Gas Networks under this Part must, unless otherwise agreed in writing between the undertaker and Northern Gas Networks, be determined by arbitration in accordance with the article 47 (arbitration).

Works falling outside of development authorised by the Order

363. Nothing in this Schedule shall require the undertaker to carry out works, or requires the undertaker to enable Northern Gas Networks to carry out works, that are not authorised by the Order. Northern Gas Networks must not request any alteration, diversion, protective work or any other work which is not authorised to be carried out under this Order (but for the avoidance of

doubt, it may elect to carry out such works itself under any other planning permission, permitted development rights or statutory powers (including those of compulsory acquisition) available to it).

Cathodic protection testing

364. Where in the reasonable opinion of either party—

- (a) the authorised development might interfere with the existing cathodic protection forming part of the apparatus; or
- (b) the apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development,

the parties shall co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

PART 27

FOR THE PROTECTION OF NORTH TEES LIMITED, NORTH TEES RAIL LIMITED AND NORTH TEES LAND LIMITED

365. For the protection of the NT Group (as defined below), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the NT Group.

366. In this Part of this Schedule—

“NTL” means North Tees Limited (company number 05378625) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NTR” means North Tees Rail Limited (company number 10664592) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NTLL” means North Tees Land Limited (company number 08301212) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NT Group” means NTL, NTR and NTLL;

“operations” means, for each of NTL, NTR and NTLL, their respective freehold land within the Order limits; and

“works details” means including for land of which the undertaker intends to take only temporary possession under the Order —

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 367.

Consent under this Part

367.—(1) Before commencing any part of the authorised development which would have an effect on the operations or access to any land owned by NTL, NTR or NTLL which is adjacent to the Order limits, the undertaker must submit to the NT Group the works details for the proposed works and such further particulars as the NT Group may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No works comprising any part of the authorised development which would have an effect on the operations or access to any land owned by NTL, NTR or NTLL which is adjacent to the Order

limits are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by the NT Group.

(3) Any approval of the NT Group under sub-paragraph (2) must be given in respect of NTL, NTR and NTLL together, must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the NT Group may require to be made for them to have reasonable access with or without vehicles to the operations and any land owned by NTL, NTR or NTLL which is adjacent to the Order limits.

(4) The authorised development must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3).

(5) Where there has been a reference to an arbitrator in accordance with article 47 (arbitration) and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under article 47.

Indemnity

368.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 367, any damage is caused to the operations or access to any land owned by NTL, NTR or NTLL which is adjacent to the Order limits is obstructed, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NTL, NTR or NTLL in making good any such damage; and
- (b) make reasonable compensation to NTL, NTR or NTLL for any other expenses, loss, damages, penalty or costs incurred by each of them, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or obstruction to the extent that it is attributable to the act, neglect or default of the NT Group, its officers, employees, servants, contractors or agents.

(3) Each of NTL, NTR and NTLL must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Each of NTL, NTR and NTLL must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 368 applies. If requested to do so by the undertaker, NTL, NTR and NTLL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 368 for claims reasonably incurred by NTL, NTR and NTLL.

Arbitration

369. Any difference or dispute arising between the undertaker and the NT Group under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the NT Group (acting together), be referred to and settled by arbitration in accordance with article 47 (arbitration).

Apparatus

370. Where, in exercise of powers conferred by the Order, the undertaker acquires any interest in land in which any apparatus owned by NTL, NTR or NTLL is placed and such apparatus is to be relocated, extended, removed or altered in any way, no relocation, extension, removal or alteration shall take place until NTL, NTR or NTLL (as the case may be) has approved contingency arrangements in order to conduct its operations, such approval not to be unreasonably withheld or delayed..

PART 28

FOR THE PROTECTION OF TEESSIDE GAS & LIQUIDS PROCESSING, TEESSIDE GAS PROCESSING PLANT LIMITED & NORTHERN GAS PROCESSING LIMITED

371. For the protection of TGLP, TGPP and NGPL, the following provisions have effect, unless otherwise agreed in writing between the undertaker and TGLP, TGPP and NGPL.

372. In this Part of this Schedule—

“alternate access agreement” means a contractually binding agreement providing the undertaker with an alternative access to plots 110, 112, 113 or 114, utilising land outside of plots 103 and 108;

“design package” means the package of documents to be provided to the NSMP entity for consultation and agreement in accordance with the design approval process in paragraphs 375 to 380 comprising of—

- (a) the design documents, being all plans, levels and setting out information, drawings, specifications, details, reports, calculations, records and other construction and design and related documents and information (including any software necessary to view them) prepared or to be prepared by or on behalf of the undertaker in relation to the relevant works and/or the site of the relevant works;
- (b) a detailed methodology of the proposed method of working including timing of execution of the relevant works; and
- (c) for relevant works package A the traffic management plan or detail demonstrating how the relevant works would be delivered in accordance with an already approved traffic management plan,

which package shall be updated from time to time with the approval of the NSMP Entity in accordance with the provisions of this Part;

“includes” or “including” shall means includes without limitation or including without limitation, as applicable;

“NGPL” means Northern Gas Processing Limited (Company number 2866642) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL;

“NGPL freehold” means the freehold property registered under Land Registry title number CE160127;

“NSMP entity” means together TGLP, TGPP and NGPL and any successor in title or function to the NSMP operations in whole or in part from time to time. Reference to an NSMP entity shall be to one or more of these entities and reference to NSMP entities will be to all of the foregoing, as the context admits;

“NSMP operations” means all or any part of operations of the NSMP entities within Teesside from time to time including the ownership and enjoyment of all NSMP rights and NSMP property and the operation of all energy and other infrastructure at or relating to NSMP property, which currently comprises a plant to process gas from the UK North Sea and includes the NSMP pipelines;

“NSMP pipelines” means the low and high pressure pipelines owned and/or operated and/or used by the NSMP entities and/or over which the NSMP entities have rights from time to time within Teesside which are used (or have been used or are intended to be used) at various times for the passage of natural gas and/or liquid natural gas and/or other products (including butane, propane and condensate output) and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962;

“NSMP property” means all property owned and/or enjoyed by an NSMP entity within Teesside from time to time, including the TGLP freehold and NGPL freehold itself together with the NSMP rights;

“NSMP requirements” means, with respect to relevant works package A—

- (a) the continuing safety and uninterrupted and unimpeded operation and perpetuation of the NSMP operations;
- (b) uninterrupted and unimpeded emergency access with or without vehicles to the NSMP operations; and
- (c) the requirement for the NSMP entity and its employees, contractors, sub-contractors, agents and assigns to have at all times during the construction of the authorised development 24 hour unhindered access, utilities and servicing to all parts of the NSMP operations including in relation to access on foot, and with cars, light commercial vehicles and heavy goods vehicles with abnormal loads;

“NSMP rights” means without limitation all rights, benefits and privileges owned or enjoyed by an NSMP entity or in relation to which an NSMP entity has a benefit, whether legal, equitable, contractual or otherwise in existence from time to time relating to the NSMP entities, their business, operations and property including access, utilities, services (including surface water drainage) and all rights relating to the NSMP pipelines;

“parties” means the relevant NSMP entity and the undertaker;

“relevant works” mean any part of relevant works package A and relevant works package B;

“relevant works package A” means works included in Work Number 2 or 10 of the authorised development or access in connection with those works numbers, on plots 103, 105, 106 or 108, and access in connection with works on plots 110, 112, 113, 114;

“relevant works package B” means those parts of the authorised development within the Order limits which would have a potential effect on the operation, safety, or maintenance of or access to the NSMP operations, excluding relevant works package A;

“TGLP” means Teesside Gas & Liquids Processing (Company number 02767808) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL and any successor in title or function and any successor in title to the TGLP freehold;

“TGLP freehold” means the freehold properties registered under Land Registry title numbers CE160125 and CE168304, within which plots 105, 106 and 103 are situated;

“TGPP” means Teesside Gas Processing Plant Limited (Company number 05740797) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL; and

“traffic management plan” means the undertaker’s detailed traffic management plans for the relevant works package A and which will set out access arrangements for the relevant works package A in relation to plot 103, plot 105, plot 106, plot 108, and access in connection with works on plot 110, plot 112, plot 113, and plot 114, and Seal Sands Road (including but not limited to plans for ensuring 24 hour unhindered access for the period of construction of the relevant works package A for the NSMP entity, its employees, contractors, sub-contractors, agents and assigns whether by cars, light commercial vehicles, heavy vehicles carrying abnormal loads and emergency services vehicles) for each stage or phase of the relevant works package A.

373. No relevant works are to be commenced until the design package has been developed and submitted by the undertaker and approved or deemed approved by the NSMP entity in accordance with the design approval process at paragraphs 374 to 379 below.

374. Following approval or deemed approval of the design package, the undertaker will submit any proposed changes (other than those which will have no adverse impact on the NSMP operations) to any of the documentation or drawings comprising the approved design package in accordance with the change approval process at paragraphs 380 to 384 below and prior to the changes being implemented. The undertaker shall only implement such changes to the documentation or drawings (as applicable) as are agreed in writing in advance with the NSMP entity under the change approval process. Following any such changes to the design package having been approved or deemed approved the undertaker shall provide the NSMP entity with an updated electronic copy of the design package as changed.

375. The undertaker will design and carry out or will procure that the relevant works are designed and carried out in all respects in accordance with the approved design package (subject to any changes agreed as part of the change approval process).

Approval Process

Part A – Design Approval Process

376. This Part A sets out the approval process to be followed in respect of the consultation and agreement of the design package.

377. The undertaker shall submit the design package to the NSMP entity for consultation, review and approval.

378. Following submission of the design package to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity within twenty business days of receipt by the NSMP entity of the design package. As part of that consultation the parties agree to adhere to the following—

- (a) the NSMP entity must, within twenty business days of the date of receipt of the design package, notify in writing the undertaker;
 - (i) of its approval of all or any part of the design package; or
 - (ii) of its disapproval of all or any part of the design package and the reasons for disapproval of any part of the design package; or
 - (iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings,
- (b) Within twenty business days of the undertaker providing any further information pursuant to sub-paragraph (a)(iii) above or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to sub-paragraph (a)(ii) or (iii)) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the design package.
- (c) If agreement on the design package and approval by the NSMP entity cannot be reached before the relevant period pursuant to sub-paragraph (a) or (b) above (or such alternate timescales as are agreed between the parties), the matter will be treated as a dispute to be resolved in accordance with paragraph 398 of this Part unless otherwise agreed by the parties.

379. In the event the NSMP entity does not provide any response to the undertaker in accordance with the timescale set out in paragraph 377(a) or (b) the NSMP entity shall be deemed to have given their approval to the design package.

380. Once approved, the undertaker shall issue one paper copy and one electronic copy of the documents comprised within the approved design package and shall compile and maintain a register of the date and contents of the submission of the design package.

381. With respect to the relevant works package A, the undertaker may either submit the traffic management plan for agreement as part of the design package, or it may submit the traffic management plan in advance of a design package in which case the design approval process set out in Part A and the change approval process set out in Part B of this Part of this Schedule shall apply as though references to “design package” were to “traffic management plan”.

Part B – Change Approval Process

382. This Part B sets out the approval process to be followed in respect of the consultation and agreement of any changes (other than those which will have no adverse impact on the NSMP operations) required to the design package after its approval under the design approval process above.

383. The undertaker shall submit any such change required to the design package (other than those which will have no adverse impact on the NSMP operations) (a “change request”) to the NSMP entity for consultation, review and approval.

384. Following submission of the change request to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity of the change request within ten business days of receipt by the NSMP entity of the change request. As part of that consultation the parties agree to adhere to the following—

- (a) the NSMP entity must, within ten business days of the date of receipt of the change request, notify in writing the undertaker—
 - (i) of its approval of all or any part of the change request;
 - (ii) of its disapproval of all or any part of the change request including the reasons for disapproval of any part of the change request; or
 - (iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings;
- (b) within five business days of the undertaker providing any further information pursuant to sub-paragraph (a)(iii) above, or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to sub-paragraph (a)(ii) or (iii)) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the change request; and
- (c) if agreement between the parties cannot be reached before the end of the relevant period pursuant to sub-paragraph (a) or (b) above (or such alternate timescales as are agreed between the parties) the matter will be treated as a dispute to be resolved in accordance with paragraph 398 of this Part.

385. In the event the NSMP entity does not provide a response to the undertaker in accordance with the timescales set out in paragraph 383(a) or (b) above, the NSMP entity shall be deemed to have given their approval to the change request.

386. Once approved, the undertaker shall issue one (1) paper copy and one (1) electronic copy of the documents comprising any approved change request and compile and maintain a register of the date and contents of any such change request.

Part C – Approval Principles

387. Any approval of the NSMP entity required under Part A or Part B of this Part of this Schedule must not (subject to paragraphs 387 and 388 below) be unreasonably withheld or delayed but may be given subject to the NSMP requirements (with respect to relevant works package A) and in considering any request to agree or approve details under Part A or B the NSMP Entity must make its decision in accordance with—

- (a) with respect to relevant works package A, the approval principles set out at paragraphs 387 to 391 of this Part; and
- (b) with respect to relevant works package B, with the approval principles set out at paragraphs 392 and 393 of this Part.

Approval Principles: Relevant Works Package A

388. Where the NSMP entity can reasonably demonstrate that any part of the relevant works package A will materially adversely affect the uninterrupted and unimpeded operation, safety and maintenance of, or access to, the NSMP operations it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of the NSMP entity that such part of relevant works package A will not materially adversely affect the uninterrupted and unimpeded operation, safety and maintenance of, or access to, the NSMP operations, having regard to the measures of any approved or proposed traffic management plan. A material adverse effect

includes any impediment, diminution, restriction or interruption on the NSMP entity's access to the access road which runs across plots 108, 103 and 106.

389. Subject to paragraphs 389 and 390 below, it shall be reasonable for the NSMP entity to withhold approval to any works comprised in relevant works package A—

- (a) which shall include physical works on, depositing of materials on or stopping up of plots 108, 103 and 106 but not the passage of reasonable construction traffic over these plots (which shall be subject to any approved traffic management plan or any traffic management plan submitted as part of the design package);
- (b) which involve any resurfacing or redevelopment of the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold unless a working method has been submitted and approved by the NSMP entity which amongst any other requirements of the NSMP entity demonstrates access will be continuously maintained and will be no less convenient for the NSMP entity;
- (c) which require access for construction traffic over the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold, other than—
 - (i) over plots 98, 108, 103, 105 and 106 as strictly required for construction of Work Number 2A within plot 105; or
 - (ii) over plots 98, 108 and 103 as strictly required for the implementation of Work Numbers 2 and 10 on plots 110, 112, 113 and 114,in each case subject to the approved traffic management plan or any proposed traffic management plan submitted as part of the relevant design package;
- (d) which include any construction or laydown area on the TGLP freehold, other than a temporary laydown area within plot 105 for materials required for the construction of Work Number 2A within plot 105; or
- (e) which requires the stopping up of Seal Sands Road or the private road (parts of which runs through plots 103, 106 and 108) either temporarily or permanently.

390. It will be unreasonable for the NSMP entity to withhold approval under sub-paragraphs 389(a) and (c), on grounds relating to access to the NSMP operations (as required under the NSMP requirements) if the design package submitted demonstrates that relevant works package A will be undertaken in accordance with any approved traffic management plan.

391. The undertaker and the NSMP entity must, in carrying out their obligations in relation to the traffic management plan and approval of the design package for relevant works package A—

- (a) co-operate with each other with a view to ensuring—
 - (i) the compatibility of the authorised development and the NSMP operations;
 - (ii) the co-ordination of the construction programming of the authorised development and the NSMP operations; and
 - (iii) the achievement of the NSMP requirements; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the authorised development and the NSMP operations, having regard always to the NSMP requirements.

Approval Principles: Relevant Works Package B

392. It shall be reasonable for the NSMP entity to withhold approval to any works comprised in relevant works package B, or to impose conditions on any approval having regard to the requirement for—

- (a) uninterrupted and unimpeded emergency access with or without vehicles to the NSMP operations at all times; and
- (b) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the NSMP operations.

393. The undertaker and the NSMP entity must, in carrying out their obligations in relation to the approval of the design package for relevant works package B—

- (a) co-operate with each other with a view to ensuring—
 - (i) the compatibility of the authorised development and the NSMP operations; and
 - (ii) the co-ordination of the construction programming of the authorised development and the NSMP operations; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the authorised development and the NSMP operations, having regard always to the approval principles in paragraph 392.

Compliance with requirements, etc. applying to the NSMP operations

394. If any circumstance arises resulting from relevant works package A which causes any interruption to the operation or maintenance of or access to the NSMP operations or damage to the NSMP property the undertaker shall procure its immediate remediation.

395. In undertaking any works in relation to the NSMP operations or exercising any rights relating to or affecting the NSMP operations, the undertaker must comply with such conditions, requirements or regulations relating to uninterrupted operation and access, health, safety, security and welfare as are operated in relation to access to or activities in the NSMP operations, provided the same are provided to the undertaker prior to approval of the design package.

396. For the benefit of NSMP, the undertaker must not exercise the powers granted under this Order so as to hinder or prevent access via the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold other than as expressly provided for in an approved traffic management plan or approved design package.

Indemnity

397.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 372 any damage is caused to NSMP operations or there is any interruption in any service provided, or in the supply of any goods, by the NSMP entity, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the NSMP entity in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the NSMP entity for any other expenses, loss, damage, penalty or costs incurred by the NSMP entity, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the NSMP entity or its agents.

(3) The NSMP entity must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The NSMP entity must use its reasonable endeavours to mitigate in whole or in part any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 397 applies.

Arbitration

398. Any difference or dispute arising between the undertaker and the NSMP entity under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the NSMP entity, be referred to and settled by arbitration in accordance with article 47 (arbitration).

Access to plots 110, 112, 113 or 114

399. The undertaker must not use plots 105 or 106 to access plots 110, 112, 113 or 114.

400. The undertaker must not use plots 103 or 108 to access plots 110, 112, 113 or 114 if an alternate access agreement has been concluded.

401. Where an alternate access agreement has been concluded, reference to plots 110, 112, 113 and 114 in the definitions of “relevant works package A” and “traffic management plan” is taken to be deleted.

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

1. In this Schedule—

“requirement consultee” means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

“start date” means the date of the notification given by the Secretary of State under paragraph 5(2)(b).

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

then the application is deemed to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within

10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five working days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five working days of receipt of such a request and in any event within 15 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in subparagraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Fees

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within eight weeks from the relevant date in paragraph 1 unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2 of this Schedule.

Appeals

5.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(3);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;

(a) S.I. 2012/2920.

- (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;
- (c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (c);
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and
- (f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appeal to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals

and award costs published on 3 March 2014 by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

Article 45

Table 13

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parking plan	4.16.2	3	October 2022
PCC site access plan	4.16.3	2	August 2022
Sembcorp Pipeline Corridor protective provisions supporting plan	4.19	1	October 2022
updated landscape and biodiversity plan	4.15	4	October 2022
water connection plan	4.16.4	2	August 2022
works plans	4.4	5	October 2022

SCHEDULE 15 DESIGN PARAMETERS

Requirement 3

Table 14

<i>Component</i>	<i>Maximum Length (m)</i>	<i>Maximum Width (m)</i>	<i>Maximum Height (m AOD)</i>
Gas turbine hall	76	76	43
Heat recovery steam generator building	63	28	63
Heat recovery steam generator stack		6.5 m (inner diameter)	98
Steam turbine hall	64	54	43
Absorber tower	35	25	93
Absorber stack		6.6 m (inner diameter)	128
Low carbon electricity generating station electrical substation	130	120	42
New electrical substation at Tod Point			22
National Grid Tod Point substation extension (northern bay)			22
National Grid Tod Point substation extension (southern bay)			22

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (together referred to in this Order as the undertaker) to construct, operate and maintain a gas-fired power station with an electrical output of up to 860 megawatts together with equipment required for the capture and compression of carbon dioxide emissions from both the generating station and a wider industrial carbon capture network in Teesside. The Order also authorises the undertaker to construct, operate and maintain infrastructure for the high-pressure compression of carbon dioxide and the landward part of an offshore carbon dioxide export pipeline. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 45 (certification of plans etc.) of this Order may be inspected free of charge during working hours at bp ICBT Chertsey Road Sunbury on Thames Middlesex TW16 7BP.



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Our Ref: EN010103

16 February 2024

Dear Sir/Madam

**PLANNING ACT 2008: APPLICATION FOR DEVELOPMENT CONSENT FOR NET
ZERO TEESSIDE PROJECT**

1. Introduction

- 1.1. I am directed by the Secretary of State for Energy Security & Net Zero ("the Secretary of State") to advise you that consideration has been given to the report dated 10 February 2023 of the Examining Authority ("the ExA"), comprising of Kevin Gleeson BA MCD MRTPI (Panel Lead), Susan Hunt BA (Hons) MA MRTPI and Beth Davies BSc (Hons) MSc FGS CGeol who conducted an examination into the application ("the Application") submitted on 19 July 2021, by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited ("the Applicants") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("PA2008") for the full chain Carbon Capture, Usage and Storage project comprising a number of elements including a new gas-fired electricity generating station (with an electrical output of up to 860 megawatts) with post combustion carbon capture plant; gas, electricity and water connections (for the electricity generating station); a carbon dioxide (CO₂) pipeline network (a 'gathering network') for gathering CO₂ from a cluster of local industries on Teesside; a high pressure CO₂ compressor station and an offshore CO₂ export pipeline. The above elements are referred to in this letter as "the Proposed Development". The offshore section of the export pipeline and the offshore storage facility are subject to separate consenting processes and are, therefore, not part of the Proposed Development that is the subject of this DCO application. The offshore elements which do not form part of the Proposed Development are referred to as the "Offshore Elements". The "Wider NZT Project" is the term which has been used by the ExA, and is therefore used in this letter, to refer to both the onshore and offshore elements, including those beyond the limits of this DCO ("the Order Limits").
- 1.2. The Application was accepted for examination on 16 August 2021. The examination began on 10 May 2022 and concluded on 10 November 2022. The Secretary of State received the report containing the ExA's conclusions and recommendation on 10 February 2023. A total of 42 Relevant Representations (as defined in PA2008) were received by the Planning Inspectorate.

1.3. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*"]. The principal matters considered by the ExA, as set out in its Report are:

- Air Quality and Emissions
- Biodiversity and Ecology
- Climate Change
- Compulsory Acquisition and Temporary Possession
- Design, Landscape and Visual Effects
- The draft Development Consent Order
- Geology, Hydrogeology and Land Contamination.
- Historic Environment
- Major Accidents and Natural Disasters
- Noise and Vibration.
- The Proposed Development, Site Selection, Infrastructure and Cumulative and Combined Effects
- Socio-Economics and Tourism
- Traffic, Transport and Public Rights of Way
- The Water Environment

Matters arising following the close of the Examination

1.4. Following receipt of the ExA's Report, the Secretary of State requested further information from the Applicants, the Environment Agency (EA), The Crown Estate (TCE) and parties listed in Tables 10 & 11 at ER 10.2.15, on 10 March 2023¹ in respect of the Applicants' approach to nutrient nitrogen and compulsory acquisition and related matters. Responses were received on 24 March 2023. The Secretary of State invited parties to respond again on 3 April 2023² and requested that the Applicants' comment on the responses received. On 9 May 2023 the statutory deadline was extended until 14 September 2023. On 16 May 2023 the Secretary of State requested further information from the Applicants³ on the impacts of the Wider NZT Project and an updated Environmental Impact Assessment and Habitats Regulations Assessment Report which include assessment, alone and cumulatively, of the Offshore Elements of the Wider NZT Project, including the use of the Endurance Store, which is the Applicants' intended storage facility for the captured CO₂. The Applicants responded on 30 May 2023. The Secretary of State asked for confirmation of when further

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002724-NZT%20-%20SoS%20Consultation%201%20-%20Information%20Request%201%20090323%20-%20signed.pdf>

² <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002745-NZT%20-%20SoS%20DESNZ%20Information%20Request%202.pdf>

³ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002783-Offsen%20-%20NZT%20-Information%20Request%20160523.pdf>

information would be provided by the Applicants⁴ on 14 June 2023 and again⁵ on 14 July 2023. The Applicants responded on 4 August 2023. The Secretary of State invited parties to comment on the Applicants' responses on 7 August 2023⁶ and requested final updates on outstanding protective provisions on 23 August 2023⁷. On 11 September 2023 the statutory deadline was extended until 16 November 2023. The Secretary of State issued a letter on 22 September 2023 asking the Applicants to comment on the responses received⁸.

- 1.5. By letters dated 20 October 2023 addressed to the Secretary of State and the EA, Natural England (NE) confirmed that it had had cause to revise the advice it previously provided regarding the effects of nutrient nitrogen deposition on the Teesmouth and Cleveland SSSI (the SSSI). The Secretary of State issued a letter on 9 November 2023 asking the Applicant to provide a timetable of progress on environmental permitting⁹. On 15 November 2023 the statutory deadline was extended until 16 February 2024. In letters dated 28 November 2023 addressed to the Secretary of State, the Applicants and NE confirmed their view that the matters raised by NE had been resolved.
- 1.6. The Secretary of State issued a letter to the Applicants on 30 November 2023, asking that they respond to concerns raised by Climate Emergency Policy and Planning (CEPP) regarding double counting of carbon emissions¹⁰. By letter dated 6 October 2023 and in response to representations CEPP sent to the Secretary of State on 6 and 12 September 2023, the Applicants revised their figures in Table 3 of Appendix 6 to the addendum submitted to the Secretary of State on 4 August concerning the Environmental Statement for the Wider Net Zero Teesside Project and responded to concerns raised by CEPP regarding a double counting error in [REP6-123].

⁴ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002797-230614%20Offsen%20-%20NZT%20-%20Information%20Request%20-%20Date%20Clarification%20140623.pdf>

⁵ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002800-230714%20SoS%20-%20Information%20Request%20-%20140723.pdf>

⁶ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002802-NZT%20-%20Consultation%20-%20Information%20Request%20-%20070823.pdf>

⁷ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002842-Net%20Zero%20Teesside%20-%20Offsen%20-%20Final%20Request%20for%20Updates%20on%20Protected%20Provisions.pdf>

⁸ https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002865-NZT%20-%20Final%20Consultation%20-%20140922_Redacted.pdf

⁹ https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002881-NZT%20-%20Request%20for%20Timetable%20-%20091123_.pdf

¹⁰ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002884-NZT%20-%20Consultation%20-%20CEPP%20Information%20Request%20-%200301123.pdf>

- 1.7. By letter dated 20 December 2023¹¹ the Secretary of State invited all parties to comment on the issues raised by NE and CEPP and the Applicants' responses. By letter dated 19 January 2024 EA confirmed their view that the matters raised by NE had been resolved. CEPP also provided a further response dated 19 January 2024 and the Applicants issued a letter commenting on this response on 5 February 2024. The Secretary of State's consideration of all of these issues is set out in the relevant sections below.
- 1.8. The Energy White Paper, *Powering Our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements (NPSs) but confirmed that the current 2011 NPSs ("the 2011 NPSs") were not being suspended in the meantime. The ExA has referred to the 2011 NPSs as EN-1, EN-2, EN-4 and EN-5. This letter refers to the 2011 NPSs in the same way. Draft NPSs were published on 6 September 2021 and subject to a consultation which closed on 29 November 2021. The ExA refers to the November 2021 NPSs ("draft 2021 NPSs") throughout the examination and report.
- 1.9. Updated versions of these draft NPSs were published on 30 March 2023 ("draft 2023 NPSs") and subject to a further consultation which closed on 23 June 2023. Revised draft NPSs were released on 22 November 2023 and designated in Parliament on 17 January 2024 ("the 2024 NPSs"). The Secretary of State has had regard to the draft and now designated 2024 NPSs in deciding the Application, and addresses these where relevant within this letter, but does not consider that there is anything contained within them that would lead her to reach a different decision on the Application than has been reached by relying on the 2011 NPSs.

Procedural matters and other considerations

- 1.10. As applied for, the Proposed Development would comprise Works set out at [ER 2.3.1 et seq.]. The Order requires that the authorised development must not be commenced after the expiry of five years from the date of the Order [Schedule 2, 1 (1)].
- 1.11. Powers of compulsory acquisition and temporary possession and the creation of new rights over land are also sought by the Applicants to support the delivery of the Proposed Development.
- 1.12. The Applicants submitted three change requests during the Examination comprising 18 changes. The first involved 13 individual changes [ER 2.4.3]. A second comprised four further changes [ER 2.4.5]. The ExA considered that none of the proposed changes were so material that, individually or cumulatively, they would lead to a materially different project being proposed [ER 2.4.6]. A third change request was also made towards the end of the Examination. The ExA

¹¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002894-NZT%20-%20Consultation%20-%20All%20IPs%20-%20201223.pdf>

agreed that the change was non-material and could be accepted into the Examination [ER 2.4.8].

- 1.13. Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website is a copy of the ExA's Report of Findings, Conclusions and Recommendation to the Secretary of State ("the ExA Report"). The main features of the development proposals as applied for and the policy and legal context are set out in sections 2 and 3 of the ExA's Report. The planning issues are set out in section 4 and the ExA's findings in section 5 of the ExA Report. The case for development consent and the ExA's conclusions on the terms of the Order are set out at sections 6 to 8, and 9 respectively.

2. Summary of the ExA Report and Recommendation

- 2.1. The ExA assessed a range of issues during the Examination, set out in the ExA's Report under the following broad headings:

- The Proposal and the Site (Chapter 2);
- Legal and Policy Context (Chapter 3);
- The Planning Issues (Chapter 4);
- Findings and Conclusions in relation to the Planning Issues (Chapter 5);
- Findings and Conclusions in relation to Habitats Regulations Assessment (HRA) (Chapter 6);
- Conclusion on the case for Development Consent (Chapter 7);
- Compulsory Acquisition and related matters (Chapter 8);
- Draft Development Consent Order and related matters (Chapter 9);
- Summary of findings and conclusions (Chapter 10).

- 2.2. For the reasons set out in the Summary of Findings and Conclusions (Chapter 10) of the ExA's Report, the ExA recommends that the Order be made in the form attached at Appendix C to their report subject to the Secretary of State satisfying herself on the following matters [ER 10.1.1. et seq.]:

- *consent being obtained from The Crown Estate in relation to Crown land; and*
- *the Environment Agency confirming that it is content with the Applicants' approach to the modelling of nutrient nitrogen.*

- 2.3. Subject to these points the ExA considered that the Proposed Development meets the tests in s104 of PA2008 and recommended that the Secretary of State make the Net Zero Teesside Order in the form attached at Appendix C to its report [ER 7.3.1 et seq.].

3. Summary of the Secretary of State's decision

- 3.1. The Secretary of State has considered the ExA's Report and all other material considerations, including further representations received after the close of the ExA's examination ("the post-examination representations") mentioned in paragraphs 1.4 to 1.7 above. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of PA2008 and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure

Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”).

- 3.2. The Secretary of State has considered the overall planning balance and, for the reasons set out in this decision letter, has concluded that the public benefits for the proposal outweigh the harm identified, and that development consent should therefore be granted for the Proposed Development.
- 3.3. This letter is intended to be read alongside the ExA’s Report and unless specifically stated that the Secretary of State disagrees with the ExA’s conclusions or recommendations any perceived difference in emphasis between the summaries in this letter and the ExA’s Report should not be inferred as conveying disagreement with the ExA’s Report. Unless otherwise stated, the Secretary of State can be taken to agree with the ExA’s findings, conclusions and recommendations as set out in the ExA’s Report and the reasons given for the Secretary of State’s decision are those given by the ExA in support of the conclusions and recommendations.

4. Matters considered by the ExA during the Examination

Legal and Policy Context

- 4.1. The Planning Statement sets out that elements of the Proposed Development fall within the definition and thresholds of an NSIP under s14(1)(a) and ss15(1) and (2) of the PA2008, notably Work No.1 comprising of the electricity generating station. Other elements are the subject of a direction that was made under s35(1) and s35ZA by the Secretary of State dated 17 January 2020 (“the s35 Direction”), which confirmed that the Specified Elements, together with any matters/development associated with them, are to be treated as development for which development consent is required (in so far as they form part of the NZT Project which includes a generating station which is an NSIP). The three Specified Elements correspond to Work Nos. 6-8 respectively [ER 3.2.3].
- 4.2. S115(1)(b) of the PA2008 states that a DCO can include consent for ‘associated development’. Work No.2 (Gas Connection), Work No.3 (Electrical Connection), Work No.4 (Water Supply Connection Corridor), Work No.5 (Water Discharge Connection Corridor), Work No.9 (Laydown Areas), and Work No.10 (Access and Highway Works) would support the construction and operation of the NSIP, the Specified Elements would therefore be considered as associated development for the purposes of s115(1)(b) of the PA2008 [ER 3.2.4]. The Secretary of State further considers that Work No.1C, the Carbon Capture Plant (CCP), should be treated as associated development for the purposes of section 115 of the PA2008, noting that it is development undertaken for the purpose of addressing the impacts of the Proposed Development.
- 4.3. The ExA agrees with the Applicants that the 2011 NPSs EN-1 and EN-2 have effect in relation to the low carbon electricity generating station, which falls within the definition and thresholds set out in s14 and s15 of the PA2008, together with its associated development, and is within the scope of the NPSs. Consequently, the application for consent for those elements should be assessed and determined pursuant to s104 [ER 3.2.11]. The Secretary of State agrees.

- 4.4. When considering whether consent for the Specified Elements should be determined under s104 or s105 of the PA2008, the ExA concluded that the Proposed Development as a whole can be determined under s104. They stated that the Application can be distinguished from the circumstances addressed in the judgment in *EFW Group Limited v Secretary of State for Business, Energy and Industrial Strategy* [2021] because the s35 direction in that case did not specify which NPS applied, whereas in the case of NZT the s35 Direction specifies that EN-1 has effect in respect of the application for development consent, including the Specified Elements [ER 3.2.15]. The Secretary of State, noting that the s35 Direction did specify that EN-1 should apply, concludes that it can be given its intended effect, and that the Application can therefore be determined under s104. The ExA notes that the Secretary of State may decide that the Specified Elements should be determined pursuant to s105, and it also presents its findings and recommendation on that basis [ER 3.2.15]. The Secretary of State has also set out her findings in the alternative and has considered the Specified Elements applying both s104 and s105.
- 4.5. The ExA notes [ER 3.3.1 et seq.] the relevant legal and policy considerations, including NPS EN-1 which sets out the Government's overarching policy for the delivery of major energy infrastructure [ER 3.3.2]. EN-2 provides the primary basis for decisions for nationally significant fossil fuel infrastructure, including gas-fired generating stations and has relevance to Work No.1 (the Low Carbon Electricity Generating Station) [ER 3.3.3]. EN-4 provides the primary basis for decisions on applications for gas supply infrastructure and gas and oil pipelines relevant to Work No.2 (the Gas Connection Corridor). It is relevant as natural gas will be used for fuel for the operation of the electricity generating station and the Proposed Development includes a gas supply pipeline [ER 3.3.4]. EN-5 provides the basis for electricity networks infrastructure relevant to Work No.3 (the Electrical Connection) as it includes a new electrical connection [ER 3.3.5].
- 4.6. The ExA further notes the legislative and policy framework applicable to the assessment of this application (which includes the Marine and Coastal Access Act 2009, UK Marine Policy Statements and local Marine Plan, European law and related UK regulations, and energy and climate change legislation and policy), as referred to in Chapter 3 of the ExA report [ER 3.4.1 et seq.]. It concludes that the relevant energy and climate change legislation and policy demonstrates how progress is being made and builds upon the suite of energy NPSs reflecting emerging technologies, legislation and wider Government policies in relation to energy and climate change. Section 104 of the PA2008 requires an application for development consent to be decided in accordance with relevant NPSs and that the Secretary of State must have regard to any other matters considered important and relevant to the decision. The same requirement applies in respect of applications determined under s105 of the PA2008. The ExA consider that policy and legislation and draft NPSs are clearly important and relevant matters and should be accorded significant weight [ER 3.6.37]. The Secretary of State has had regard to the draft 2021 NPSs, draft 2023 NPSs and designated 2024 NPSs in deciding the Application, and addresses these where relevant within this letter, but does not consider that there is anything contained within them that would lead her to reach a different decision on the

Application. Relevant publications post-dating the publication of the ExA's report are addressed at paragraph 8.9.

- 4.7. Other relevant legal and policy provisions are also considered at [ER 3.7.1 et seq.] including the National Planning Policy Framework (NPPF) and the local development plans including the adopted South Tees Area Supplementary Planning Document (SPD), the South Tees Regeneration Master Plan (unadopted) and the Teesworks Design Guide for Development 2020 (unadopted) [ER 3.9.3 et seq.]. EN-1 confirms that policies in development plans and other documents may be considered important and relevant for the purpose of decision-making by the Secretary of State [ER 3.9.2]. Neither Redcar and Cleveland Borough Council (RCBC) nor Stockton-on-Tees Borough Council (STBC) identified conflict with their respective development plan policies in their Local Impact Reports (LIR) nor their Statement of Common Ground (SoCG) [ER 4.6.2 et seq.]. Conformity with National Policy Statements, Marine Policy Statement and Plans, and Environmental Impact assessment are covered in each respective section and are considered in section 4.4 of the ExA's report [ER 4.4.1 et seq.].
- 4.8. A transboundary screening under Regulation 32 of the 2017 EIA Regulations was undertaken on behalf of the Secretary of State on 11 June 2019 and again on 30 November 2021 following changes made to the Proposed Development. The ExA has considered whether any facts emerged to change these screening conclusions up to the point of closure of the Examination. The ExA concluded that no mechanisms whereby any conceivable transboundary effects could occur emerged [ER 3.10.3].
- 4.9. The ExA remained aware of the need to consider whether revisions to the application documents have changed the proposal to a point where it becomes a different application and therefore, whether the Secretary of State would have the power under s114 of the PA2008 to make a DCO having regard to the development consent applied for [ER 3.11.1]. The ExA consider that the changes sought have not resulted in any significant changes to the proposals for which the application was originally made [ER 3.11.3]. The Secretary of State has considered the subsequent change request from the Applicants (dated 27 April 2023 and updated on 4 May 2023), which is considered in paragraph 6.75 below. The Secretary of State consulted on the change request in her letter dated 16 May 2023. She is satisfied that there will be no significant changes to the proposals for which the Application was originally made as a result of the subsequent change request.

The Planning Issues

- 4.10. At ER 4.1 - 4.10 the ExA addresses the Initial Assessment of the Principal Issues (IAP I) and confirms that all of the matters identified are addressed in detail in Chapters 5, 6, 8 and 9. The Secretary of State agrees and sets out her findings on these issues below.

The Need, Scope and Alternatives

The Need for the Proposed Development

- 4.11. The ExA considered that the Proposed Development would address the urgent need for new electricity capacity as set out in EN-1, the use of natural gas for energy generation (EN-1 and EN-4) and the urgent need for gas-fired electricity generation with CCS (Carbon Capture Storage) infrastructure as set out in the draft 2021 EN-1 [ER 5.2.125]. The Secretary of State notes that this urgent need is also set out in the draft 2023 and 2024 EN-1 and that the Proposed Development would help deliver the Government's net zero commitment by 2050. The ExA consider that by providing CCS the Proposed Development would be in line with Government's wider policy statements on energy and climate change, including those listed in section 3.6 of the ExA report, which constitute important and relevant matters. The UK Marine Policy Statement and the North East Marine Plan are supportive of the deployment of CCS/CCS in the UK Marine Area and local RCBC and STDC policies support the move to a low carbon economy and a CCUS network in the area [ER 5.2.125]. The Secretary of State notes that designated 2024 EN-1 further strengthens the support for the Proposed Development by making nationally significant low carbon infrastructure, including natural gas fired electricity generation which is CCR, a critical national priority. The Secretary of State also acknowledges that the full chain CCUS nature of the Proposed Development elevates it considerably above other CCR projects as it will be required to capture a minimum of 90% of carbon when operating at full load throughout its operation, and will seek to achieve a capture rate of at least 95% (see 4.22 et seq. below). This further contributes to the strong positive weight accorded to the need for the Proposed Development.

The Scope of the Proposed Development

- 4.12. During the examination the Applicants clarified the scope of the Proposed Development in relation to the Wider NZT project. Whilst the NZT Project and Zero Carbon Humber are separate projects, together, they are part of the Northern Endurance Partnership (NEP). In October 2021, NEP's East Coast Cluster (ECC) plan was selected as a priority cluster in Phase-1 of the UK Government's Carbon Capture, Utilisation and Storage (CCUS) cluster sequencing process. On 30 March 2023 it was announced that the NZT Project had been selected to enter Phase 2 along with the H2Teesside and Teesside Hydrogen CO₂ Capture projects. The ECC aims to deliver 20MTPA of CCUS capacity by 2030 across multiple emitters in both Teesside and the Humber, with further expansion to 27MTPA by 2035 [ER 5.2.38]. According to the Applicants' Need Statement [AS-015], together with Zero Carbon Humber, the NZT Project would be able to maximise economies of scale to allow decarbonisation of nearly 50% of the UK's total industrial cluster emissions, enabling clean hydrogen production and creating a pathway for growth [ER 5.2.40].
- 4.13. The ExA questioned why the Offshore Elements of the wider project were not included within the DCO application and in response, the Applicants outlined the four main consents that are required to construct and operate the Offshore Elements [ER 5.2.43]. One of these has been consented under s18 of the Energy Act 2008 and the remaining three require a decision from the North Sea Transition Authority (NSTA) [ER 5.2.44]. The Applicants explained that two of the three remaining consents cannot be brought within the scope of the Planning Act

2008, as they are not included in the list of prescribed consent regimes under Schedule 2 to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 and they argue that there would be obvious benefit in one decision-maker (NSTA) dealing with all the Offshore Elements together [ER 5.2.45 and ER 5.2.46]. The ExA concludes that the Applicants' approach to the offshore consenting process is reasonable in the context of the PA2008 regime [ER 5.2.126] and the Secretary of State agrees. Nevertheless, the Secretary of State has taken additional steps to ensure that the environmental impact of both the onshore and Offshore Elements of the Wider NZT Project have been fully assessed (please see para. 4.26 and 4.27).

- 4.14. The ExA conclude that the Applicants have demonstrated to their satisfaction that the project is carbon capture ready (CCR) in line with the requirements in EN-1 [ER 5.2.109].
- 4.15. The Secretary of State agrees that the Proposed Development is CCR. The development includes a CCP and it is intended that it will connect to the Endurance store which has been designated for use by the Proposed Development and regarding which no planning objections are outstanding. Work towards securing the necessary consents for the Endurance store is in progress and the DCO stipulates that the Proposed Development can only be operational when it is connected to an offshore storage facility. The Secretary of State is satisfied that there are no known barriers to storage. She also notes that there are other geological storage sites capable of accepting the carbon output from the Proposed Development (APP-074) and that an east coast site has been sought due to proximity to a number of potential offshore CO₂ storage sites in the North Sea, including the Endurance store (APP-088).

Alternatives

- 4.16. The Applicants' consideration of alternatives is set out at ES Chapter 6 Alternatives and Design Evolution [APP-088] and in the Applicants' Planning Statement (section 6.2 [APP-070]). The key criteria for selection of the site are summarised at ER 5.2.23 and includes proximity to the coast to minimise the onshore section of the high pressure CO₂ export pipeline; avoidance of residential areas; and proximity to industrial emitters that could connect into the CO₂ gathering network, amongst other factors. Teesside performed well against the criteria and the former Redcar Steelworks Site (now Teesworks) was selected from various sites assessed [ER 5.2.24].
- 4.17. The ES (paragraph 6.3.8 [APP-088]) noted that as a final decision had not yet been made on a range of technology matters it had been necessary to incorporate flexibility within the application and consequently, the Applicants adopted the principles of the Rochdale Envelope [ER 5.2.22].
- 4.18. The HRA Report [APP-080] concluded that there would be no Adverse Effects on the Integrity (AEoI) on any protected site either alone or in combination with other plans and projects, therefore, there is no requirement to consider alternatives to the Proposed Development under the Habitats Regulations [ER 5.2.26]. Chapter 9 and the accompanying site-wide Flood Risk Assessment (FRA), provided at Appendix 9A of the ES [APP-250 to APP-252] demonstrate

that the Proposed Development satisfies the Sequential Test [ER 5.2.27]. ES Chapter 17 Landscape and Visual Amenity [APP-099] confirms that the Order land is not subject to any nationally designated landscapes, nor are there any within the immediate vicinity. As such, there is no requirement to consider alternatives from a landscape perspective [ER 5.2.28].

- 4.19. At examination, CEPP [RR-023 and REP2-061] suggested that there were preferable technologies to CCS to maximise the balance of solar, wind and energy storage [ER. 5.2.53]. The Applicants advised that the Proposed Development does not intend to displace solar, wind or energy storage technologies which will also be required as part of the overall energy mix, alongside widescale energy efficiency improvements [ER 5.2.54]. The ExA considers that CEPP's position does not acknowledge that NPSs and wider Government energy policies recognise that CCS along with other technologies, including energy storage ones, are intended to be part of an overall energy mix.
- 4.20. The ExA noted that the Applicants have considered alternative technologies and that proper reasons have been provided for the choice of the Proposed Development. It considers that alternatives to the Proposed Development have been appropriately addressed by the Applicants in accordance with paragraph 4.4.2 of EN-1 [ER 5.2.113] and in line with NPS policies and EIA regulations [ER 5.2.127]. The ExA also notes that there is nothing to indicate that alternatives have not been addressed in respect of the Specified Elements, and this position holds whether the s35 Direction means that the energy NPSs have effect in relation to the Specified Elements or whether the NPSs and draft NPSs are important and relevant considerations [ER 5.2.116].
- 4.21. In CEPP's letter of 19 January 2024 they contend that the wider CCUS network for third party emitters in Teesside should be designed so that the pumping of CO₂ is provided by renewable energy, not by the proposed (or any) Combined Cycle Gas Turbine (CCGT), and that alternatives to constructing a methane burning gas fired power plant at the centre of the wider CCUS network in Teesside have never been properly considered. The Applicants' response dated 5 February 2024 states that the primary purpose of the Proposed Development is to maintain the UK's energy security through the generation and supply of dispatchable low-carbon electricity to the national grid at times of low renewable electricity generation capacity and CEPP's assertion that the CCS network could equally be powered by an alternative, renewable, source of power is to fundamentally misunderstand this primary function. The Applicants state that there is no obligation on them in law or policy to consider an alternative that does not fulfil the role and purpose of the NZT Proposed Development. They also flag that the NZT Power Station could also provide the power required to operate the high pressure compressor station required for offshore transport and storage that is a core part of the T&S system, but it is important to note that the compressors may also be powered from the national grid. The T&S system, therefore, can operate without the involvement of the NZT Power Station.
- 4.22. EN-1 does not contain any general requirement to consider alternatives or to establish whether a proposed project represents the best option. EN-1 states that decision-makers should, when considering alternatives, be guided by whether there is a realistic prospect of the alternative delivering the same infrastructure

capacity (including energy security and climate change benefits) in the same timescale as the proposed development. The Secretary of State notes that this is supported by the designated 2024 EN-1. The Secretary of State considers that the alternative proposed by CEPP is a fundamentally different project to the proposed development and that CEPP have not taken in to account the clear policy support in both the designated and draft NPSs for gas fired generating stations which are CCR (see para 4.11 above). The Secretary of State also notes that alternatives which would mean that the necessary development could not proceed, for example because the alternatives are not commercially viable, or alternatives which are vague or inchoate, can be excluded from consideration on the grounds that they are not important and relevant to the decision. The Secretary of State, therefore, considers that the Applicants' assessment of alternatives remains acceptable.

The Operation of the CCGT and the CCP

- 4.23. The ExA considered how a carbon capture rate of 90% or greater would be achieved and secured, and when the CCGT would operate in unabated mode and how this would be minimised. The Applicants explained the circumstances under which the environmental permit (EP) would allow the CCGT to run in unabated mode and confirmed that these would be closely defined [ER 5.2.65].
- 4.24. In respect of the carbon capture rate, the Applicants confirmed that the design basis being progressed for the CCP is to achieve a capture rate of at least 95% in accordance with the current Best Available Technique (BAT) position in EA guidance, and that the Dispatchable Power Agreement (DPA) would also incentivise high capture rates. The EA confirmed that it is likely that the EP would require that the capture plant achieves the current BAT position of a capture rate of CO₂ of at least 95% [ER 5.2.62]. ClientEarth proposed the inclusion of a provision in the DCO requiring that at least 90% of the total carbon emissions generated by the power plant must be captured at all times during its commercial operation. They suggested drafting to mirror that in the definitions section of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, to provide for the applicable minimum capture requirements on the operation of the generating station applying when it is operating "at full load". The Applicants considered that the EP and DPA would sufficiently address this issue and the ExA concluded that the EP would provide appropriate controls to secure the capture rate. The Secretary of State has considered this issue and the representations of the Applicants, the EA and ClientEarth. Whilst the EA has stated that it is likely that a 95% capture rate would be provided for in the EP, an amendment to the definitions section of the DCO as proposed by ClientEarth will secure a minimum capture rate in the DCO itself and is consistent with the approach in Keadby 3. The DCO has been amended accordingly.
- 4.25. ClientEarth also stated that "there is no suggestion that the [EP] will require the export of captured [CO₂] to the gathering network for onward geological storage" and maintains that additional provisions in the DCO should secure this aspect of the development and assumption in the ES [REP11-027]. The ExA concluded that draft Requirement 31 (R31) and the EP would require the CCGT and CCP to achieve a specified capture rate and provide appropriate controls to ensure that the normal commercial operation of the CCGT would involve the capture of

CO₂ to the standard of BAT and its transportation for offshore storage [ER 5.2.118]. For the avoidance of any doubt in respect of offshore storage, the Secretary of State has amended R31 to include provision that Work No. 8 must be connected to an operational storage site when Work No. 1A is brought into commercial use.

- 4.26. The ExA notes that a mechanism would be in place through Work Nos. 6-8 to create a pipeline system for the collection of CO₂ from local emitters. The potentially substantial benefits of capturing CO₂ from local businesses are not accounted for in the planning balance because they do not form part of the Proposed Development, however the ExA gives weight to the benefit of the creation of a CO₂ gathering network [ER 5.2.119].

The relationship of NZT to the Hornsea Project Four Offshore Windfarm Project (HP4)

- 4.27. The Endurance Store is the saline aquifer identified for the offshore storage of CO₂ from the Proposed Development and the Zero Humber Project as part of the ECC. There is an area of overlap between part of the Endurance store and with the area proposed for the siting of wind turbines as part of the HP4 Project, referred to as the “Overlap Zone”. Ørsted (the applicant for the HP4 Project) noted the clear link between the onshore and Offshore Elements of the Wider NZT Project [ER 5.2.76] and throughout the Examination, sought to protect its interests in the Overlap Zone and to ensure the successful co-existence of the Wider NZT Project, the Endurance store and the HP4 Project, [ER 5.2.77]. Throughout the Examination, the Applicants maintained their position that they did not consider there to be any connection between the Proposed Development and the HP4 Project, therefore, they did not consider there to be justification for any provision for the HP4 Project in the NZT DCO [ER 5.2.102]. The ExA concluded that these matters did not need to be addressed in the NZT DCO.
- 4.28. On 19 June 2023, the Applicants sent a letter to the Secretary of State. The letter confirmed that the Applicants and Ørsted had reached a commercial agreement and both parties agreed that there are no requirements for protective provisions under the NZT Project DCO for the benefit of Ørsted. Ørsted has no remaining objection to the proposed NZT Project DCO application and agreed to withdraw any and all prior representations made in relation to the NZT Project DCO application. The Secretary of State therefore concludes that protective provisions for the benefit of Ørsted are not required.

The Secretary of State’s Conclusions on Need, Scope, and Alternatives

- 4.29. The ExA concluded that the need for the Proposed Development is clearly justified through EN-1, EN-2, EN-4 and the draft 2021 EN-1, as well as a range of other recent Government energy policies. On this basis the ExA gives substantial weight to the need for the Proposed Development [ER 5.2.130].
- 4.30. The Secretary of State agrees with the ExA’s assessment of need for this type of energy infrastructure and has taken into account that the Proposed Development, as CCGT with CCS, attracts strong policy support and would support the UK’s transition towards the net zero target. The Secretary of State agrees with the ExA that weight should be given to the benefit of the creation of

a CO2 gathering network and ascribes this moderate positive weight. The Secretary of State agrees that the Proposed Development is CCR, that an appropriate approach has been taken in respect of the Offshore Elements and that the issue of alternatives has been appropriately addressed. She agrees with the ExA's position that appropriate controls would be in place through Requirement 31 and the necessary Environment Permits for the CCGT and carbon capture plant. In accordance with paragraph 3.2.3 of EN-1 and paragraphs 3.1.1-3.1.2 of the draft 2021, draft 2023 and designated 2024 NPSs the Secretary of State attributes substantial positive weight to the contribution that the Proposed Development would make towards meeting the national need.

Climate Change

- 4.31. The relevant policy considerations include section 4.8 of EN-1, which states that when developing and consenting infrastructure, climate change that is already happening should be taken into account and that the decision maker should be satisfied that proposals have considered the potential impacts of climate change using the latest projections [ER 5.3.3]. EN-2 notes that fossil fuel generating stations are likely to be located at coastal sites and therefore at risk from rising sea levels [ER 5.3.5 et seq.]. Other relevant policies include EN-4, EN-5 and the revised NPPF which includes the challenge of moving to a low carbon economy, climate change, flooding and coastal change [ER 5.3.6 et seq.]. Adopted local policy documents include RCBC's Tees Valley Climate Change Strategy including its Strategic Flood Risk Assessment and STBC's Tees Valley Climate Change strategy with Climate Change Strategy and Action Plan [ER 5.3.9]. Draft 2023 EN-1 states that the Secretary of State should be content that the applicant has as far as possible assessed the greenhouse gas (GHG) emissions of all stages of the development and taken all reasonable steps to reduce the GHG emissions of the construction and decommissioning stage of the development.
- 4.32. The Applicants' case is set out in ES Chapter 21 [AP-103] which assesses the resilience of the Proposed Development in the context of future climate change and the potential impacts [ER 5.3.1, ER 5.3.16]. The ExA noted that details demonstrating how the Proposed Development would be resilient to climate change over the lifetime of the Proposed Development had been provided as required by EN-1, EN-2, EN-4 and EN-5. The Applicants had referenced the Institute of Environmental Management and Assessment (IEMA) guidance in concluding that there would be no likely significant effects from climate change related risks such as flooding, rainfall and rising sea levels, and the ExA saw no reason to come to a different conclusion [ER 5.3.43].
- 4.33. The Applicants concluded that the operation of the Proposed Development would not significantly affect the ability of the UK to meet its Carbon Budgets and that the significance of effects is 'minor adverse' [ER 5.3.20]. Having initially omitted upstream and downstream methane emissions, at Deadline 6 the Applicants submitted a revised assessment [REP6-123], including well-to-tank emissions, and a cumulative revised assessment of GHG emissions for construction, operation and decommissioning of the offshore pipeline that would be part of the Wider NZT project ("GHG Assessment"). This increased GHG emissions but did not change the conclusion on the significance of effects [ER 5.3.27]. The ExA was satisfied that this assessment was appropriate [ER 5.3.44].

- 4.34. The GHG Assessment used published emissions factors from BEIS/Defra for both direct emissions from the combustion of fuels and indirect emissions associated with extraction, refining and transportation of the raw fuel sources prior to combustion, including leakage of methane in the supply chain [ER 5.3.28]. Addressing queries relating to changes to the UK gas supply, the Applicants considered that the GHG Assessment was based on the most reliable data available in 2021 [ER 5.3.30]. The emissions factor relating to carbon intensity of natural gas consumed as a fuel was replaced in 2022 but would not change the outcome of the assessment or the significance of effects. The Applicants considered that whilst minor regional variations in the direct emissions from the combustion of natural gas would occur, this would be very unlikely to make a material difference to the GHG assessment [ER 5.3.30]. There could be a change in the source of natural gas over the lifetime of the Proposed Development but emissions from the Proposed Development would need to be monitored, reported and controlled to ensure they are within appropriate limits [ER 5.3.31]. The Applicants noted that the calculated carbon intensities were based on the best available information and that, considering the commitments made to reduce methane emissions, including leakage, from the oil and gas industry, applying the 2021 emissions factor over the lifetime of the site is conservative and appropriate [ER 5.3.32]. In respect of GHG emissions, the Applicants again referenced the IEMA guidance. The ExA noted that it is not disputed by IPs that this is a suitable approach and was content that the guidance is appropriate for addressing the requirements of the ES [ER 5.3.44]. The ExA regarded use of the 2021 BEIS/Defra emissions factor as a reasonable approach and were satisfied that this represents the best data and understanding available at the current time [ER 5.3.47]. The ExA acknowledged the considerable uncertainty over the future source of natural gas and that well-to-tank emissions could be higher for imported fuel. The ExA however recognised the international effort to reduce methane emissions, including leakage, which could lead to reduction in carbon intensities. Based on this, the ExA did not consider it necessary or reasonable to require annual projections for the lifetime of the Proposed Development to meet the requirements of the EIA regulations [ER 5.3.47]. The Secretary of State agrees with the ExA.
- 4.35. The Applicants' revised GHG Assessment [REP6-123] considered the effects of GHG emissions from the Proposed Development as being both significant and beneficial. This is based on comparing the Proposed Development to a baseline of a similar CCGT operating without CCS. The ExA noted that EN-1 requires that all commercial scale combustion power stations must be constructed Carbon Capture Ready (CCR). On this basis, the ExA did not consider it viable to use unmitigated emissions as a baseline any longer [ER 5.3.45]. The Secretary of State agrees, noting that the Proposed Development would emit approximately +20 MtCO₂e during its operational life (see paragraph 4.55), and concludes that an unmitigated emissions estimate would not be an appropriate comparator. The Secretary of State notes in this regard that designated EN-1, both 2021 and 2023 drafts and designated 2024 NPSs state that operational GHG emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology).

- 4.36. IEMA consider that all GHG emissions are classed as having the potential to be significant as all emissions contribute to climate change. The ExA concluded that the GHG emissions would have a significant adverse effect. In coming to this conclusion, it had regard to the Applicants' use of the UK's Carbon Budget in section 21.3 of the ES Chapter 21 to put these emissions in context and accepted that they would be a very small part of this [ER 5.3.46].
- 4.37. In response to representations by CEPP during the Examination, the ExA did not consider it necessary to insert a requirement into the Order requiring the CCGT to operate only when the carbon intensity is below the International Energy Agency projections. The ExA considered that EN-1 is clear that the Energy Trading Scheme forms the cornerstone of UK action to reduce emissions. The draft 2021 EN-1 includes the key mechanism of Contracts for Difference, and business models to incentivise CCUS, Carbon Price Support and the Emissions Performance Standard. This is also reflected in paragraph 2.4.4 of the draft 2023 EN-1. The ExA considered that these regulatory and financial controls encourage the reduction of GHG emissions, and it is not considered appropriate to control this further in the Order [ER 5.3.48]. Based on information in chapter 21 of the ES, the ExA was satisfied that the Applicants had taken all reasonable steps to reduce GHG emissions during construction, operation and decommissioning, as required in the draft 2021 EN-1 [ER 5.3.49].
- 4.38. The ExA has considered the need for the assessment of cumulative effects from GHG emissions over different timescales in a local, regional and sector context to meet the requirements of the EIA regulations. The ExA considered that given this is a nationally significant power station that would input to the national grid, contextualisation of emissions on a local or even regional scale would not be appropriate, and it was content that the updated GHG Assessment provided an estimate of GHG emissions over time through lifecycle analysis [ER 5.3.50]. The ExA did however consider there is merit in an assessment of the cumulative effects on a sectoral basis. It accepted the Applicants' statement that insufficient data are available to quantify this and that cumulative effects of sectoral GHG emissions could be potentially significant and considers it inevitable that there would be GHG emissions from across the wider sector which, in line with draft 2021 EN-1 (and draft 2023 EN-1), would be a significant adverse effect. The data to undertake cumulative assessment of the sector in the context of the UK Carbon Budgets are not available [ER 5.3.51]. The ExA noted that the Applicants' assessment follows the IEMA guidance in this regard [ER 5.3.52].
- 4.39. Further the ExA noted that the draft 2021 EN-1 suggests because operational emissions would be managed in an economy-wide manner to ensure consistency with carbon budgets, net zero and international climate commitments, individual applications would not need to be assessed against these measures [ER 5.3.53]. This is also reflected in paragraph 5.3.12 of 2024 EN-1 which states that the Secretary of State does not need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments.
- 4.40. The ExA concluded that the Proposed Development would be resilient to climate change over its lifetime and would not increase risks to the surrounding

environment either on its own or in-combination with other development as required by section 4.8 of EN-1, and EN2, EN-4 and EN-5 [ER 5.3.55]. GHG emissions have been assessed from all stages of the Proposed Development, including upstream and downstream emissions, the ExA was satisfied that the assessment of likely significant effects over the lifetime of the Proposed Development meets the requirements of the EIA regulations, having regard to the draft 2021 NPSs and other government policy [ER 5.3.56].

- 4.41. The ExA concluded that, conservatively, allowing for 90% capture during operation, the total onshore GHG emissions would be over +16 MtCO₂e over the lifetime of the Proposed Development. Based on draft 2021 EN-1 the ExA concluded that these emissions would have a significant, adverse effect on carbon emissions, even with deployment of CCS technology. The ExA concluded, although quantitative data are not available, that there would be a significant adverse effect from cumulative emissions across the sector. This finding was given moderate weight in the planning balance because the ExA found that it was based on draft policy. The ExA accepted that in isolation the emissions would not measurably harm the Government's ability to meet its national targets or have a significant effect on the UK Carbon Budgets [ER 5.3.57]. The Secretary of State's conclusion in relation to GHG emissions is set out at 4.56, below.
- 4.42. The ExA noted that carbon capture of emissions from third parties is estimated by the Applicants to be over 42 MtCO₂e. The ExA noted that when viewed in its broader context the Wider NZT Project could facilitate a significant positive contribution to the reduction of CO₂ emissions. However, the Proposed Development does not secure carbon capture of third party GHG emissions so this potential reduction in overall emissions was not taken into account in the planning balance [ER 5.3.58]. The ExA considered that notwithstanding the benefits which the Wider NZT Project could bring in reducing CO₂ emissions, the emissions of GHG over the lifetime of the Proposed Development would have a significant adverse effect, to which it accorded moderate weight in the planning balance [ER 5.3.59].
- 4.43. In relation to impacts on offshore wind, at D2 CEPP [REP2-061] sought clarification from the Applicants on what it considered to be the impact, if the Wider NZT Project proceeds, to the national target for offshore wind and trajectories for offshore wind development, including the HP4 Project. At ER 5.3.42 the ExA states, 'In response, the Applicants stated [REP5-028] that the worst-case reduction in wind generation capacity would be 0.67GW, assuming coexistence of the NZT and HP4 Projects is possible'. In response to a query raised by the Secretary of State the ExA confirmed that this sentence should be corrected as follows, 'In response, the Applicants stated [REP5-028] that the worst-case reduction in wind generation capacity would be 0.67GW, assuming coexistence of the NZT and HP4 Projects is **not** possible' (Secretary of State's emphasis). The report goes on to state that the potential reduction of 0.67GW represents 0.005% of the Government and CCC trajectories for offshore wind development post 2030 to 2050. The ExA concludes that these percentages are, therefore, not expected to significantly affect the UK's ability to deliver their targets for wind. The Secretary of State notes the agreement reached between

the Applicants and the operators of HP4 and that no exclusion zone was imposed in the Order for HP4, and therefore considers this matter to be resolved.

- 4.44. After the examination, CEPP submitted two letters to the Secretary of State dated 30 May 2023 (referred to here as CEPP's first letter) and 6 September 2023 (referred to here as CEPP's second letter). Their first letter focused on a scientific paper published in the Royal Society of Chemistry journal ("RSC Paper"), provided as an appendix to CEPP's submission.¹²
- 4.45. CEPP submitted that, according to the RSC Paper, upstream methane emissions are being underreported from UK oil and gas activities. CEPP asserted that the Applicants had not provided any assessments of upstream methane emissions from the natural gas supply chain. CEPP further submitted that over 6% of power sector emissions for the 6th carbon budget from Carbon Budget Delivery Plan (CBDP) would result from methane supply chain emissions from the Proposed Development, providing a risk to the overall delivery of the 6th carbon budget. Further comments by CEPP related to the lack of consideration of supply chain methane emissions in the draft 2023 NPSs and lack of detail in Powering Up Britain (PUB).
- 4.46. The Applicants responded to these comments by letter dated 23 August 2023, and accompanying document Appendix 6, confirming that upstream Well to Tank (WTT) emissions, akin to upstream methane emissions as termed by CEPP, were provided to the Examination at Deadline 6 in the Applicants' Cumulative Onshore and Offshore GHG Assessment ("GHG Assessment") [REP6-123]. These were based on the Government conversion factors from 2021 for company reporting of greenhouse gas emissions. The Applicants considered that this official dataset is the standard to be applied for all projects with ongoing operational emissions and, therefore, they did not consider it necessary or appropriate to revisit the upstream emissions factor for natural gas in light of the RSC Paper. The Secretary of State agrees with this position, noting that this issue was discussed during the Examination and the ExA also concluded that these factors were appropriate [ER 5.3.47]. The Applicants also drew a distinction between an estimated methane emissions rate from the wider oil and gas sector and applying it to just the natural gas supply chain. The Applicants refuted CEPP's contention that over 6% of power sector emissions for the 6th carbon budget would result from methane leakage from the Proposed Development, submitting it would be 2.83% instead. The Applicants considered that CEPP's commentary on the draft NPSs and PUB was not specific to the Proposed Development, but a generalised commentary on recent Government policy papers, and they therefore did not provide a substantive response to this commentary. The Secretary of State agrees with this position regarding the draft NPSs and PUB.
- 4.47. The Secretary of State agrees with the Applicants' response in respect of the points raised in CEPP's first letter and notes that appropriate weight will be attributed to GHG emissions in the planning balance, and also notes that leakage of methane in the supply chain was considered in the Examination [ER 5.3.28].

¹² <https://pubs.rsc.org/en/content/articlelanding/2023/ee/d2ee03072a>

- 4.48. CEPP's second letter submitted that the Applicants' GHG Assessment used an inappropriate alternative baseline of a CCGT power station not fitted with CCUS, contrary to other documents submitted earlier in the Examination by the Applicants. CEPP also submitted that the Applicants have not considered the probability of WTT emission factors varying over the 25-year lifecycle of the Proposed Development, and have not considered the loss of emissions capture through Transport and Storage (T&S) unavailability in their evaluation of the CBDP. CEPP stated that the Proposed Development would contribute 4.53% of power sector emissions for the 6th carbon budget, not 2.82% as submitted by the Applicants. CEPP further submitted there is a large double counting error in the calculation of carbon removals. CEPP laid out that, in the Applicants' GHG Assessment, the Applicants subtracted the carbon captured twice in the calculations of cumulative GHG emissions from the Proposed Development and Offshore Elements over its 25-year lifetime. The Applicants [REP6-123] submitted a figure of -32,556,291 tCO₂e as the whole life GHG emissions from the Proposed Development and Offshore Elements while CEPP countered with a figure of +20,808,127 tCO₂e. CEPP laid out in detail in its second letter how the figures were calculated and where it considered the Applicants had subtracted the carbon captured twice. The Applicants accounted for 90% carbon capture in the calculation of operational GHG emissions, resulting in total onshore operational emissions of +16,858,196 tCO₂e and, later, deducted the carbon already accounted for in this calculation again, resulting in a double count of 53,364,418 tCO₂e, and presenting the cumulative GHG emissions as -32,556,291 tCO₂e. The Secretary of State agrees with CEPP's analysis of the figures (reproduced below) and notes that the presentation of GHG emissions in the GHG Assessment [REP6-123] is incorrect.

Development	Phase	GHG Emissions (tCO ₂ e)	Note
Onshore Construction and Operation	Construction (4 years)	76,012	
	Operation (25 years)	16,782,184	90% carbon capture at NZT project accounted in this figure
	Total Onshore	16,858,196	
Offshore Construction and Operation	Construction (3 years)	324,699	
	Operation (25 years)	30,988	
	Decommissioning	1,721	
	Total Offshore	357,408	
Carbon capture (NZT only)	Carbon captured	<u>Already accounted above</u>	
	T&S unavailability adjustment	3,592,523	
	Adjusted for T&S unavailability	3,592,523	
Whole life GHG emissions		20,808,127	

Table 1: Corrected version of REP6-121/Table 3-4, from CEPP's second letter of 6 September 2023

- 4.49. The Applicants responded to these comments in a further letter dated 6th October 2023. The Applicants submitted that they had chosen an appropriate alternative baseline. However, as discussed at 4.34, above, the ExA considers that it is not appropriate to use unmitigated emissions as a baseline comparator and the Secretary of State agrees. The Applicants submitted that they have considered the variability of WTT emissions factors and used the most recent data available at the time. The Secretary of State acknowledges the variability of these factors and that they could increase or decrease over the 25-year lifetime of the

Proposed Development and agrees with the approach taken by the Applicants in this regard, noting that this issue was discussed during the Examination and the ExA also concluded that these factors were appropriate [ER 5.3.47].

- 4.50. The Applicants acknowledged that T&S unavailability should have been taken into account in the GHG Assessment, thereby increasing the estimated GHG emissions from the Proposed Development and acknowledged a consequent increase in the contribution to power sector emissions for the 6th carbon budget from 2.82% to 4.54%, as per CEPP's second letter. The Secretary of State notes this revised increased GHG emissions figure and its effect on the contribution to the 6th carbon budget and this is taken into account in the Secretary of State's conclusion on the planning balance.
- 4.51. The Applicants refuted the claim that it had double counted carbon removals. However, the Secretary of State considered that the Applicants' response did not adequately address the purported double counting error and in a letter dated 30 November 2023 requested that the Applicants clarify the double counting calculation error, and correct and update their assessment of GHG emissions and evaluation of significance in the GHG Assessment.
- 4.52. The Applicants responded on 13 December 2023, acknowledging that the earlier omission of T&S unavailability figures resulted in their submission of 4 October 2023 being incorrect and confirmed the increase from 2.82% to 4.54% power section emissions for the 6th carbon budget. However, the Applicants noted that the UK Government stated in the CBDP that sectoral figures are "only projections and should not be interpreted as hard sectoral policy targets". The Applicants restated that this increase did not affect the significance and that the net GHG impact of the Proposed Development was minor adverse, and, at a cumulative level, beneficial and significant. The Secretary of State notes the increase due to T&S unavailability.
- 4.53. The Applicants stated that there had been no double counting but acknowledged that the presentation of cumulative data in the GHG Assessment was insufficiently clear and provided the data in an alternative format. The Applicants presented a figure of +23,440,627 tCO₂e as the whole life GHG emissions for the Proposed Development and Offshore Elements, noting this slight difference from CEPP's calculation was due to the inclusion of T&S unavailability from third party emitters. The Applicants further presented a figure of 92,139,395 tCO₂e as an estimation of carbon storage from the Proposed Development and Offshore Elements. The Applicants confirmed their evaluation of significance was unchanged from their original GHG Assessment and in their view remained, at a cumulative level, beneficial and significant. The Secretary of State notes this revised presentation of data. She notes that the Applicants present, in Table 1, a whole life emissions figure which has already had 90% of sequestered GHG operational emissions accounted for. She further notes the inclusion of T&S unavailability from third party emitters in Table 1 but notes that as the Proposed Development does not secure carbon capture of third party GHG emissions, these emissions should be excluded from the calculation. Table 2 shows the captured carbon which is accounted for when reaching the net figure in Table 1 and, again, shows potential captured carbon from third party emitters. The Secretary of State notes that Table 2 does not take matters any further in respect

of the calculation of emissions as the carbon stored from the Proposed Development has been noted and is accounted for in Table 1 and the carbon stored from potential third-party emitters does not form part of the Secretary of State's analysis of GHG emissions from the Proposed Development.

- 4.54. CEPP responded to the all-party consultation of 20 December 2023 on 19 January 2024. CEPP reiterated its concerns with the emissions factors used by the Applicants, questioning whether the emissions factors provided by BEIS/DESNZ are the correct ones to use and further questioned the use of the natural gas factor as the fuel supply for the Proposed Development will also include a proportion of liquefied natural gas. The Secretary of State, taking into account information gathered through the Examination and previous consultation responses, remains satisfied with the approach taken by the Applicant, notwithstanding the likelihood of variation in future emission factors.
- 4.55. CEPP purported that the re-presentation of whole life GHG emissions for the Proposed Development and Offshore Elements was a departure from what had been previously used as part of the EIA assessment as the Applicants were now including emissions from third party emitters. The Secretary of State agrees with CEPP that this is inconsistent to the approach used by the Applicants elsewhere.
- 4.56. CEPP further addressed the double counting error. As outlined above, the Secretary of State agrees that the data has been presented incorrectly, but is satisfied that she has the relevant information to conclude that the whole life GHG emissions for the Proposed Development are +20,450,719 tCO₂e and for the Proposed Development and Offshore Elements cumulatively are +20,808,127 tCO₂e, as laid out by CEPP. The ExA states that 'because the Proposed Development does not secure capture of third party GHG emissions, this likely overall reduction in the emissions is not a matter that we can include in the planning balance' [ER 5.3.58]. While the Secretary of State appreciates that the Proposed Development, in conjunction with the Offshore Elements and Wider NZT Project, has capacity to store a large amount of carbon, she agrees with the ExA that the GHG emissions from the Proposed Development itself must result in negative weight in the planning balance.
- 4.57. On 5 February 2024 the Applicants sent a letter to the Secretary of State responding to CEPP's letter of 19 January 2024. They explained that their inclusion of emissions from third party emitters in their 13 December 2023 submission was "for completeness" and not to be taken to suggest that the scope of the Proposed Development had expanded to include third party emissions. The Secretary of State, as outlined above, has decided to exclude these emissions from the calculation. The Applicants continued to refute any claim of double counting. As outlined above, the Secretary of State agrees with the points raised by CEPP regarding the presentation of that data, but she remains satisfied that she has all the relevant information to conclude on the GHG emissions for the Proposed Development. The Applicants addressed the issue of emissions factors, further acknowledging the likely future variation in upstream emissions factors but concluding that the annually published DESNZ emission factor dataset is logical and appropriate. The Secretary of State, as outlined above, remains satisfied that the Applicants have taken a suitable approach on this issue.

The Secretary of State's Conclusion on Climate Change

- 4.58. The Secretary of State has considered the ExA's report and consultation responses received. She considers that the Proposed Development would support the UK's transition towards a low carbon economy. The Secretary of State has considered the potential benefits which the Wider NZT Project would bring in reducing emissions but accepts the ExA's conclusions that over the lifetime of the Proposed Development, emissions would have a significant adverse effect. She does not, however, agree that this matter carries only moderate negative weight in the planning balance as GHG emissions are stated as having a significant adverse impact in both the 2011 and 2024 designated NPSs and draft 2021 and 2023 NPSs. Taking into account the post-examination inclusion of T&S unavailability emissions and the consequent increase in GHG emissions, the Secretary of State concludes that the cumulative whole life GHG emissions will be in the region of +20,808,127 tCO₂e. Also, the Secretary of State notes the resultant increase in the contribution of the Proposed Development to the power sector carbon budgets. She agrees with the ExA in giving more weight to the 2024 NPS's than a comparison with the UK carbon budgets for the assessment of significance but has taken this increase into account. Overall, she considers that cumulative whole-life GHG emissions are a significant adverse effect, carrying significant negative weight in the planning balance.

Air Quality and Emissions

- 4.59. The main sources of emissions during construction would be from additional traffic and dust. During operation several stacks, including the CO₂ absorber stack, would emit, amongst other things, oxides of nitrogen (NO_x), carbon monoxide (CO) and ammonia (NH₃) and amines and their degradation products [ER 5.4.1]. The Applicants' air quality assessment is set out in chapter 8 of the ES, accompanied by two appendices assessing in detail the potential impacts from construction and operational phases. A third appendix includes the approach to assessment of amine degradation products. The latest version of the accompanying figures illustrating the study areas was received at Deadline 12 [ER 5.4.6].
- 4.60. The ExA considered that the Applicants have satisfactorily described the significant air emissions and mitigation as required by section 5.2 of EN-1 and the draft 2021 EN-1 [ER 5.4.49]. The ExA was satisfied that no significant adverse effects would arise during construction and notes that the final Construction Environment Management Plan (CEMP) secured at Requirement 16 would ensure best practice, mitigation and monitoring of emissions, including those from dust and non-road mobile machinery (NRMM) during construction and decommissioning [ER 5.4.50]. The effects of emissions from construction traffic have been demonstrated to be negligible [ER 5.4.45]. The ExA was also satisfied that the decommissioning phase would give rise to a similar level of effects once mitigated, secured via the Decommissioning Environmental Management Plan (DEMP) as required by Requirement 32 of the Order [ER 5.4.45].
- 4.61. The ExA considered that the Applicants' air dispersion modelling is indicative because a detailed design has not yet been completed and the technology is still emerging in respect of amines. The ExA was satisfied however that the

assessment is conservative and accepts that there are unlikely to be significant effects from emissions on human health or the environment during the operation of the Proposed Development [ER 5.4.46]. The ExA has considered in detail the potential effects of NO_x on protected sites, the potential variation in emissions during the year, and the uncertainty around stack heights and modelling of novel amine technology. The ExA noted that no queries from IPs remained outstanding [ER 5.4.46].

- 4.62. The EA confirmed that air quality dispersion modelling, mitigation and monitoring would all be reviewed as part of the EP process for the plant and that this would ensure statutory air quality limits and Best Available Technique-Associated Emission Levels (BAT-AELS) are met. The ExA was satisfied that the operation of the PCC Site would be adequately controlled via pollution control regimes [ER 5.4.48].
- 4.63. The ExA concluded that the Proposed Development can in principle achieve statutory limits during operation, which would be controlled through an EP to ensure all appropriate limits are met [ER 5.4.51]. Requirement 3 of the Order also requires the control of the height of all stacks to ensure that environmental effects will be no worse than those identified in ES Chapter 8 [ER 5.4.47]. The ExA considered matters relating to air quality and emissions therefore have no effect on the planning balance [ER 5.4.52].
- 4.64. By letters dated 20 October 2023 and addressed to the Secretary of State and the EA, NE confirmed that it had had to revise the advice it had provided regarding the effects of nutrient nitrogen deposition on the Teesmouth and Cleveland SSSI ("the SSSI") during the statutory consultation for this DCO application. NE provided this updated interim advice in response to further air quality modelling undertaken by the EA in relation to the Applicants' application for their Environmental Permit. By letter dated 28 November 2023 and addressed to the Secretary of State, the Applicants confirmed they have provided updated modelling to the EA and NE that demonstrates the Project is capable of achieving a nutrient nitrogen deposition rate that is less than 1% of the relevant lower critical load on the protected area of the SSSI at Coatham Sands, as recommended by NE, and that the Environmental Permitting process will ensure the Project does not exceed this figure when operational. By letter of the same date addressed to the Secretary of State, NE confirmed that the matters raised in their previous letter had been resolved and they have no further comments on the application. On 20 December 2023 the Secretary of State requested comments from all parties regarding NE's representations and received one response dated 19 January 2024 from the EA confirming that it agreed with the conclusions of the Applicants' updated modelling and if it subsequently decides to grant a permit for the proposed installation, it will include conditions that will require the Applicant to operate the installation in accordance with operating conditions described in the updated air dispersion modelling assessment. The Secretary of State, therefore, considers that the issues raised have been adequately addressed by the Applicants and will continue to be addressed in the Environmental Permitting process.
- 4.65. In CEPP's second letter, CEPP requested that the Secretary of State ask the Applicants for a revised ES on air quality grounds to reflect new regulations made

pursuant to the Environment Act 2021, the Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 (“2023 Regulations”), and interim targets for 2028 via the Environmental Improvement Plan (“the interim targets”) for particulate matter 2.5 (PM2.5). The 2023 Regulations and the interim targets both set targets for annual mean concentrations of PM2.5 and targets to reduce population exposure to PM2.5. CEPP stated that the ES had not been updated for the new legislation and that no estimation or assessment is given for the PM2.5 effects from construction or operation of the Proposed Development ([APP-090] section 8.6) including the human health impacts of PM2.5 ([APP-090] Table 8-10).

- 4.66. The Applicants responded on 6 October 2023. They considered that the 2023 Regulations were introduced to drive improvements in air quality nationally, with the targets applying at relevant monitoring stations, rather than being targets for use in the evaluation of PM2.5 effects within the planning process. However, if an assessment by reference to the 2023 regulations was undertaken for the Proposed Development, the Applicants contended that it would not require any update to the ES for either the construction or operational phase. For the construction phase, changes in PM2.5 were assessed due to emissions associated with construction traffic (Table 8A-19 Results of Construction Traffic Impact Assessment at Human Receptors ES Vol III Appendix 8A Air Quality - Construction Phase [APP-247]). The predicted concentration of PM2.5 from construction traffic ranged between 7.2 µg/m³ and 8.6 µg/m³, with changes of less than 0.1 µg/m³. The predicted change in PM2.5 concentration is the lowest level that would typically be reported for changes in pollutant concentrations and total PM2.5 concentrations are already below both the interim annual mean target of 12 µg/m³ in 2028 or the final 2041 annual mean target of 10 µg/m³. This means that even if the 2023 Regulations were used to evaluate PM2.5 for the construction phase there would be no predicted exceedances nor a significant effect.
- 4.67. The Applicants stated that particulates of any diameter, including fine particulates, are not a pollutant of concern for the operational phase of the proposed combustion plant and carbon capture plant (paragraph 8.2.6 ES Vol III Appendix 8B Air Quality - Operational Phase [APP-248]). The Best Available Techniques (BAT) Reference Document for Large Combustion Plants (2017) (Section 1.3.2.3) notes that “The combustion of natural gas is not a significant source of dust emissions.”. This is because solid fuels which would require consideration for particulate emissions to air, including PM2.5, would not be burnt. The Applicants state that, additionally, no operational traffic assessment was required for PM2.5 as the level of traffic change was too low to require an air quality assessment (paragraph 8.2.1 ES Vol III Appendix 8B Air Quality – Operational Phase [APP-248]). Therefore, a change in PM2.5 assessment threshold to the 2023 Regulations would not have any impact on the assessment relating to the operational phase in the ES as submitted.
- 4.68. The Applicants concluded that the air quality assessment for the Proposed Development within the ES remains valid and no further work is required in relation to assessing the impact of the Proposed Development on air quality in the context of the 2023 Regulations.

- 4.69. In response to the consultation letter of 20 December 2023 inviting comments from all IPs on the Applicants' response regarding PM2.5, neither CEPP nor any other IP commented on this matter.

The Secretary of State's Conclusion on Air Quality and Emissions

- 4.70. Regarding PM2.5, the Secretary of State agrees with the response of the Applicants to CEPP and she is satisfied that the ES adequately assesses PM2.5 emissions as relevant to the Proposed Development. The Secretary of State does not consider that any further updates to the ES are required in light of the 2023 Regulations and interim targets and she does not consider that granting development consent for the Proposed Development would lead to her being in breach of any duty imposed by the 2023 Regulations and interim targets. Regarding the assessment of impacts of changes in air quality on human health, the Secretary of State also notes that the UK Health Security Agency stated agreement with the methodology used to undertake the EIA and that it was satisfied that the Proposed Development should not result in any significant adverse impact on public health [RR-036].
- 4.71. The Secretary of State has considered the ExA's Report and the representations received since the close of the examination. The Secretary of State agrees with the ExA and considers that, with the mitigation measures secured in the Order, there will be no significant effects on air quality. Consequently, this matter does not weigh for or against granting consent for the Development.

Design and Landscape and Visual Effects

- 4.72. NPS EN-1 section 4.5 refers to design and section 5.9 to landscape and visual effects. EN-2 specifically refers to fossil fuel generating stations and recognises the impact that the scale of the main structures including the plant and stack(s) will have on the surrounding landscape and visual amenity. Paragraph 2.6.10 of EN-2 specifies that if, having regard to the considerations in respect of other impacts set out in both EN-1 and EN-2, the Secretary of State is satisfied that the location is appropriate for the project and that it has been designed sensitively to minimise harm to landscape and visual amenity, the visibility of a fossil fuel generating station should be given limited weight [ER 5.5.7].
- 4.73. ES Chapter 17 assesses the landscape and visual effects and includes the assessment methodology. In terms of the Rochdale Envelope the assessment is based on the largest possible dimensions for the Proposed Development as representing the worst-case scenario; the widest building footprint and the tallest potential height. This includes a range of the most visible structures in Work Nos. 1 and 7 including an absorber stack at 128m AOD, and heat recovery steam generator at 110m AOD [ER 5.5.13]. The existing landscape baseline is informed by a range of landscape character assessments (LCA). There are three of NE's National Character Area profiles within 10km of the study area. The Tyne, Tees and West Estuaries and Coastal Waters profile lies within the 10km Marine environment study area [ER 5.5.18]. At a local level the Proposed Development crosses a number of LCA study areas, with the PCC being situated wholly within the Tees Lowlands and on the edge of the landscape character tract 'Redcar Flats' [ER 5.5.19]. LVIA and design matters were not raised within any

representations nor within STBC's LIR. NE representations confirm that the project would not affect any protected landscapes [ER 5.5.35].

- 4.74. The Marine Management Organisation (MMO) confirmed in their SoCG that the assessment of landscape and seascape effects was appropriate [ER 5.5.51].
- 4.75. The Applicants' baseline characteristics of the local study area describe it as having sparse vegetation cover which reflects the site's coastal location. Topography is relatively flat until it rises up to the Eston Moor to the south-west. The River Tees flows through the centre into the Tees Mouth estuary and the North Sea. Settlements within the study area include the city of Middlesbrough, the towns of Redcar and Hartlepool and a number of seaside resorts. Main roads and Public Rights of Way (PRoWs) run through the area including long distance routes. The England Coast Path and the Teesdale Way are coastal routes near the site [ER 5.5.20]. There are no designated landscapes in the study area. The assessment of local landscape areas finds the overall landscape value of the study area to be 'medium', the site to be 'low' and the PCC site to be 'very low' [ER 5.5.21].
- 4.76. The Applicants' ES considers likely impacts and effects with the Eston Hills and the Coastal Fringe LCA's being assessed as having the highest sensitivity [ER 5.5.23]. Cumulative developments were considered in the assessment and a total of 13 other developments are scoped into the cumulative visual assessment. The cumulative viewpoint assessment identifies the cumulative effect as being the same overall classification of effects on each viewpoint as for the Proposed Development alone [ER 5.5.26]. The ExA considers that overall the methodology and establishment of the baseline is reasonable and adequate in relation to EIA requirements and in accordance with national policy objectives [ER 5.5.73].
- 4.77. The focus in design terms is on the PCC site, which is characterised in the Design and Access Statement (DAS) as sitting within an industrialised context dominated by industrial and port related uses and relatively remote from residential areas. The DAS sets out the design approach and notes that the appearance of the buildings and structures is representative of their function and purpose and would be simple and functional in form and detailing, predominantly comprising steel framed enclosures clad in appropriate materials [ER 5.5.30 et seq.]. It confirmed that a decision on final external finishes would be made at detailed design as secured by Requirement 3 of the Order [ER 5.3.32]. Landscaping around the perimeter of the PCC site would include wildflower grassland and native scrub creation. Areas between and around the main structures are likely to comprise hardstanding and crushed stone [ER 5.5.33].
- 4.78. RCBC commented in their LIR that the Landscape and Visual Impact Assessment (LVIA) methodology was appropriate and included representative viewpoints. It acknowledged the potential for significant adverse effects from viewpoints 5,7 and 8. It accepts that an appropriate mechanism for minimising adverse impacts is through the appropriate siting of infrastructure and the use of suitable materials, secured through Requirement 3 of the Order [ER 5.5.36]. Overall, the ExA was satisfied that the methodology and establishment of the baseline is reasonable and adequate in relation to EIA requirements and in accordance with national policy. Guidelines for LVIA have been followed and the

range of visualisations are fit for purpose [ER 5.5.73]. The ExA considers the selection of locations for viewpoint assessment are broadly appropriate [EDR 5.5.74]. Whilst selecting an additional coastal viewpoint (such as Saltburn-by-the-Sea) would have been desirable the ExA accepted the effects would be no worse than from other coastal locations to the south of the Tees where effects were assessed to be not significant [ER 5.5.74]. The ExA requested an amendment to viewpoint 2 from Seaton Carew but agreed with the Applicants' assessment of sensitivity and the overall value of the view as medium, with a high susceptibility to change. The Applicants' assessment of the significance of effect on this view is 'negligible adverse'.

- 4.79. The ExA considered that the Applicants have underplayed the significance of the view from this location on the north side of the Tees. The ExA noted that views from this location are distinct in that the PCC site and former steelworks structures have the appearance of standing largely alone alongside the coastal scenery and the Cleveland Hills behind. The majority of other structures associated with the industrial areas and ports around the Tees do not appear in the backdrop of this view; rather they are detached and lie partially obscured behind the dunes at North Gare. The ExA considered that the amended viewpoints are not indicative of a completed development which the Applicants describe as barely noticeable, and not altering the context of the view. The ExA found the site structures would be noticeably prominent in the view and the effect on this viewpoint, during all phases of development, to be 'moderate adverse', which is significant [ER 5.5.79].
- 4.80. The ExA considered other viewpoints have also been underplayed in the LVIA including at Albion Terrace and North Gare Sands. However, the ExA agreed that in each case the overall effect would be minor adverse (not significant) [ER 5.5.80 et seq.]. The ExA agreed with the Applicants' assessment that the landscape impact would be neutral overall, but that visual impacts from certain viewpoints, would be significant adverse [ER 5.5.82]. The ExA also agreed with the Applicants' assessment of cumulative impacts, in that the effects would be no worse than assessed for the Proposed Development alone [ER 5.5.83].
- 4.81. The ExA accepted there had been very little engagement from the public or statutory authorities in relation to design matters during pre-application consultation and the Examination. However, the ExA was disappointed that further consideration had not been given to use of a design champion and/or design panel [ER 5.5.84]. The ExA accepted that reference to the Design and Access Statement had been added to Requirement 3, which refers to the Teesworks Design Guide and references design typologies and encourages good design. STDC would be a consultee on Requirement 3 and would have input into the final design details of the PCC site [ER 5.5.87]. Overall, the ExA was satisfied that the detailed design would be adequately dealt with by RCBC in consultation with STDC [ER 5.5.89].
- 4.82. The ExA agreed with the Applicants that it would not be possible to mitigate the significant adverse visual effects of the Proposed Development by screen planting, whether that be on or off site [ER 5.5.90]. The design of the Proposed Development will be key in reducing its adverse effects and it would be for RCBC and STDC, having regard to the SPD and design guide, to satisfy themselves

that good design principles would be adopted in the final design when considering Requirement 3 of the Order [ER 5.5.92].

- 4.83. The ExA concluded that Works Nos. 1 and 7 at the PCC site would fail to meet the requirements of EN-1 and EN-2 in terms of significant adverse effects on the visual amenity of a number of viewpoints predominantly along the coast, with long term effects in the case of viewpoints 2 and 7 and during construction for viewpoints 5 and 8. The draft 2021 EN-1 and EN-2 also recognise that power CCS facilities will have an impact on surrounding landscape and visual amenity but that good design should be applied from an early stage. However, the ExA was not satisfied this had been adequately carried out [ER 5.5.94]. The PCC site proposals partly conflicted with Policy NE-SCP-1 of the North East Marine Plan as the design had not adequately taken account of the character, quality and distinctiveness of the seascape and landscape [ER 5.5.95].
- 4.84. The ExA considered the approach to assessment of other components, including the electricity substations and the AGIs was proportionate given the lack of visibility and their industrial context [ER 5.5.97].

The Secretary of State's Conclusion on Design and Landscape and Visual Effects

- 4.85. The Secretary of State has considered the ExA's Report and notes its conclusions. She also notes the position of RCBC and STDC that detailed design would be considered as part of Requirement 3 of the Order. The Secretary of State agrees with the ExA's position on design and its conclusion that, in respect of design, landscape and visual impacts, the effects are negative. She attributes moderate weight against the making of the Order in the planning balance.

Water Environment

- 4.86. Relevant policy considerations include NPS EN-1, which details the requirement for an ES to consider effects on the water environment. This includes groundwater, inland surface water, transitional waters and coastal waters [ER 5.6.3]. NPS EN-2 is also relevant which states that some fossil fuel generating stations have very high water demands and that water supply should be investigated at an early stage. NPS EN-4 refers to risks associated with the construction of pipelines, and includes, amongst other things, changes to drainage. The North East Marine Plan policy NE-WQ-1 states that proposals that protect, enhance and restore water quality will be supported. Proposals that cause deterioration must demonstrate that they will, avoid, minimise and mitigate impacts.
- 4.87. Chapter 9 of the ES refers to the water environment specifically in relation to pollution, the Water Framework Directive (WFD), flood risk and the outfall to Tees Bay and is supported by the FRA) and the WFD Assessment. The entirety of the PCC site is located within Flood Zone 1, with areas of land within the Order limits in Flood Zones 2 or 3a including Work No.2, Work No.4, Work No.8; Work No.6 and Work Nos. 9D and 9E [ER 5.6.37].

Water quality

- 4.88. The Applicants responded to the ExA's questions on the mobilisation of fine sediment during construction on the new discharge outfall. All construction works would be undertaken in accordance with best practice mitigation measures, as set out in the ES and secured in the Framework CEMP [ER 5.6.48]. Monitoring requirements in respect of temporary effects on Redcar Coatham Bathing Water from turbidity would be secured via the Final CEMP. At Deadline 6 the EA stated it was satisfied with the proposed actions in the Framework CEMP in this respect [ER 5.6.49]. The ExA were satisfied the effects caused by the construction of the new outfall would be localised, temporary, and not significant [ER 5.6.67]. The ExA noted there could be a temporary, localised effect on turbidity in the Bay during construction, with the EA content with the mitigation and monitoring measures, and the ExA was satisfied there would be no significant adverse effects [ER 5.6.68].
- 4.89. Conditions in Article 17 and Requirement 11 require obtaining the consent of owners or relevant authorities and water discharges meeting a satisfactory standard [ER 5.6.50]. Requirement 16 of the Order secures a Hazardous Substances Management Plan, which must be approved by the RPA, following consultation with the EA [ER 5.6.51]. Further consideration was given to effects on water quality, including thermal effects from the outfall, during the Examination. The Applicants noted that the discharge would need to meet the standards required by a permit, and that further modelling of nutrients would be undertaken. This is considered in paragraphs 4.77-4.79 of this letter. Condition 30 of the Deemed Marine Licences specifies that Work No. 5B must be consistent with the maximum design parameters for the new outfall as set out in Chapter 9 of the ES [ER 5.6.53]. The ExA asked questions about the baseline dataset, including meteorological data, the conceptual model for Pond 14 and the search area for pollution incidents, indirect effects to distant receptors from increased demand on potable water supplies and foul water treatment. They also sought clarification on the criteria used in the assessment of hydromorphology. The ExA consider these were all satisfactorily addressed by the Applicants [ER 5.6.54]. Based on the final position Northumbrian Water Limited (NWL) in the SoCG the ExA was content that water supply and the discharge of foul water would not give rise to significant effects [ER 5.6.65]. Requirement 11 of the Order requires that details of surface water and foul water drainage systems must be approved by the RPA prior to commencement. Water quality would be protected by the Final CEMP provided for by Requirement 16 of the Order. Requirement 32 would ensure protection of the water environment during the decommissioning phase [ER 5.6.66].

Water Framework Directive

- 4.90. The EA identified that the Application did not include measures to enhance or restore any water bodies, in particular with regards to the Tees Estuary Transitional Waterbody for Dissolved Inorganic Nitrogen (DIN). The Applicants' WFD Assessment identified no significant residual effects from the Proposed Development but they were engaging with the EA to future-proof enhancement initiatives and options [ER 5.6.55]. The signed SoCG with the EA records that both parties are confident that a design solution could be developed to achieve

WFD compliance on the Tees Coastal, Tees Transitional and Tees Estuary waterbodies both for current and future status and that this is adequately secured through Requirement 37 of the Order [ER 5.6.56]. The EA also confirmed modelling impacts from atmospheric deposition of nutrients on water bodies was acceptable and that it was content that other pollutants had been adequately considered [ER 5.6.57 et seq.].

- 4.91. The updated modelling identified that a small plume could exceed the Annual Exceedance Probability, but this would not be significant at a waterbody scale. Release of DIN has the potential to increase levels at the Teesmouth and Cleveland Coast SSSI, Special Protection Area (SPA) and Ramsar site. The Applicants produced a nutrient neutrality safeguarding scheme in discussions with the EA and NE which is secured through Requirement 37 of the Order. The EA confirmed¹³ it is confident that a potential design solution for the treatment and discharge of wastewater to Tees Bay can be developed and implemented for the Proposed Development to achieve WFD compliance in the Tees Coastal, Tees Transitional and Tees Estuary waterbodies both for current and future status, and that the detail of the solution is adequately secured through Requirement 37 of the DCO. The ExA was satisfied that Requirement 37 provides appropriate mitigation and monitoring of the water bodies and the protected site to ensure that there would be no adverse effects. It was satisfied technical solutions to reduce the concentrations of DIN would be available if necessary [ER 5.6.70].
- 4.92. The EA was content with the approach to modelling impacts from atmospheric deposition of nutrients on WFD waterbodies and the ExA saw no reason to come to a different conclusion, noting there would be no adverse effects in this regard [ER 5.6.71]. The ExA concluded that the WFD Assessment had been satisfactorily completed and there would be no deterioration to any waterbody, nor would the Proposed Development prevent future attainment of good status or potential, providing the mitigation measures secured by the Order and all relevant permits and licenses are secured [ER 5.6.72]. The ExA was mindful that the details of the discharge are also subject to the Environmental Permitting regime along with the nutrient nitrogen safeguarding scheme. Taking these together, the ExA was content that no adverse effects would arise [ER 5.6.79].
- 4.93. The ExA concluded that the Proposed Development would not have an adverse effect on the achievement of the environmental objectives established under the WFD as required by NPS EN-1 [ER 5.6.80].

Flood Risk

- 4.94. The Applicants provided a Strategic Flood Risk Assessment during the Examination which confirmed that the entire PCC site would be on a 7.3m AOD platform and no land would be raised within the Flood Zone 2 or 3 displacing flood plain storage [ER 5.6.59]. The Applicants re-assessed the FRA based on

¹³ EN010103 - The 'Net Zero Teesside Project'. Post-examination Submissions. Submission 002 Environment Agency, received 11 November 2022. EA ref. NA/2022/115883/09-LO1.

the most up to date climate change allowances, and concluded that there were no implications for the assessment of risk and significance of effects [ER 5.6.60].

- 4.95. The ExA sought clarification regarding the Applicants' application of the Sequential Test, given that some of the alternative sites were entirely within Flood Zone 1 (at very low risk of flooding), which the Applicants' site is not. The Applicants responded that whichever site was chosen, the scale of the development meant that some crossing of Flood Zones 2 and 3 was inevitable, they were therefore all equally viable [ER 5.6.61]. Work No.2B, the AGI connecting Work No.2A to the National Transmission System via the Sembcorp South Pipeline, is partly in Flood Zone 3. In response to the ExA's queries regarding consideration of siting in less vulnerable areas, the Applicants consider they are constrained by the existing access road and that operability restricted them from splitting the works [ER 5.6.62]. The ExA were content that this is reasonable and that mitigation measures secured in Requirement 12 (a flood emergency response and contingency plan) and Requirement 16 (CEMP) are appropriate to negate the risk [ER 5.6.75].
- 4.96. Access to and from the PCC site would be flooded during higher return period events where it is proposed that staff either remain within the PCC Site area or are evacuated via the northern gate onto South Gare Road. The Applicants confirmed that access would be secured and that the escape route would remain above worst-case cumulative flood levels [ER 5.6.64]. Further evidence of a sequential assessment was also requested on a site scale for Works Nos 9D and 9E (laydown areas near Saltholme) given that these are in Flood Zone 3a and 2 respectively. The ExA considers that the Applicants have not clearly explained how a sequential approach was applied to placement of the laydown areas at Saltholme and that areas at lower risk of flooding could not be found [5.6.63]. However, no other IP has raised concern in this regard and the ExA concluded that it is satisfied that the schemes required by Requirement 12 of the Order should ensure that the residual risks at these locations are managed to the extent that the potential risks are not significant [ER 5.6.76]. The final CEMP, secured at Requirement 16 of the Order, would also ensure that best practise is adhered to and risks minimised during construction [ER 5.6.83].
- 4.97. The ExA were persuaded, given the extensive area of the flood zones and length of the connection corridors that some pipework in Flood Zones 2 or 3 cannot be avoided. Pipelines would be underground or in existing pipe racks and would not increase flood risks elsewhere. Risks to personnel during construction and operation can be satisfactorily managed through a scheme for the mitigation of flood risk, and a flood emergency response and contingency plan (Requirement 12). The CEMP (Requirement 16) should ensure best practise and that risks are minimised during construction [ER 5.6.73]. The ExA were satisfied with the outcome of the sequential and exception tests at a site scale and concur with the clear wider sustainability benefit, that the land is previously developed and that the FRA has demonstrated that the Proposed Development would be safe from flooding and would not increase the risk of flooding off-site [ER 5.6.74].
- 4.98. The ExA concluded that matters relating to the water environment would have no effect on the planning balance [ER 5.6.84].

The Secretary of State's Conclusion on Water Environment

- 4.99. The Secretary of State has considered the ExA's Report on impacts on water quality, water resources and the water environment and the Applicants' Flood Risk Assessment. The Secretary of State accepts that the site is an appropriate location for the Development and considers that the risk and potential impacts of flooding have been considered appropriately. The Secretary of State considers that the mitigation and monitoring measures are appropriate. The Secretary of State considers that this matter does not weigh for or against granting consent for the Development.

Biodiversity and Ecology

- 4.100. EN-1 states that the ES should clearly set out any effects on designated sites of ecological importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. ER 5.7.3 et seq. sets out the relevant policy considerations. The Applicants' case is set out in ES chapters 12-15 which are supported with appendices including Appendix 12A which sets out the legislation and planning policy relevant to ecology; Appendix 12B the Ecological Impact Assessment Methodology; and Appendix 12C the Preliminary Ecological Appraisal [ER 5.7.12]. The Secretary of State has had sight of the unredacted ES Volume III Appendix 15B: Ornithology Baseline Report. The ExA was satisfied that the ES has appropriately set out the potential effects from all phases of the Proposed Development on designated sites, protected species and on habitats and species of principal importance as required by EN-1 and the draft 2021 EN-1 [ER 5.7.137]. Modelling of the thermal plume from the outfall has also been provided in accordance with EN-4 which demonstrates no adverse effects [ER 5.7.137].

Terrestrial ecology

- 4.101. The assessment of impacts on terrestrial ecology was undertaken in accordance with best practice guidance. Impact assessments have been prepared in accordance with precautionary principles [ER 5.7.102]. Other relevant appendices to the ES are listed at [ER 5.7.13 et seq.] and include a number of ecological survey reports. Water vole and otter surveys were updated at Deadline 5. The EA agreed with the Applicants' approach to surveys [ER 5.7.101]. Supplementary habitat information and a terrestrial invertebrate survey report were also provided for Coatham Sands. Teesmouth and Cleveland Coast SSSI, Teesmouth National Nature Reserve and Lovell Hills Pools SSSI were scoped in for assessment of potential impacts from changes in air quality [ER 5.7.14]. Bats, common lizard, terrestrial invertebrates and controlled weed species were scoped in for assessment from habitat loss and disturbance [ER 5.7.15].
- 4.102. Construction activities would result in permanent losses of semi-improved grassland habitat of borough nature conservation value on the PCC site. The loss of 17.3ha of grassland on the PCC site would be compensated for within the PCC site with the aim of achieving an overall net gain for biodiversity, as described in the Applicants' Indicative Landscape and Biodiversity Strategy [ER 5.7.16]. Areas of secondary grassland and dense local scrub of local value could also be temporarily lost for the Teeswork construction and laydown area on the PCC site.

This would be reinstated in accordance with the requirements of the landowner [ER 5.7.19]. The ExA noted that the loss of habitat on the PCC site would result in the loss of one breeding site for a single pair of ringed plover, up to two breeding sites for one pair of barn owls and loss of a breeding bird assemblage that includes small numbers of lapwing, herring gull, skylark and meadow pipit [ER 5.7.130]. The Landscaping and Biodiversity Plan will be appended to the Landscape and Biodiversity Strategy, and this is secured through Requirement 4 of the Order [ER 5.7.106]. Compliance with the Landscaping and Biodiversity Protection Plan is secured in Requirement 4 and includes monitoring of the plan in accordance with set timescales, approved by the RPA and provided to STDC. It also secures arboricultural measures [ER 5.7.108]. Reinstatement of lost or damaged habitats would be secured through the Landscaping and Biodiversity Protection Plan and the final CEMP, as required by Requirement 16 of the Order.

- 4.103. Construction noise from the PCC site would increase levels at Coatham Dunes, but the ExA noted that this is a small proportion of the SSSI as a whole and the impact is temporary and reversible. For these reasons the ExA was satisfied that the effects would not be significant. Noise thresholds might be exceeded in the immediate vicinity of pipeline works, but the overall effects would be to a small area of habitat and would be short term. The overall effects would also be insignificant [ER 5.7.131].

Aquatic ecology

- 4.104. Chapter 13 and the accompanying aquatic ecology supplementary desk study and field survey report [Appendix 13A, APP-314] consider the potential effects of the Proposed Development on fish, macroinvertebrates, macrophytes and their habitats. No direct impacts were identified on aquatic habitats and fish during construction, operation or decommissioning; such as from disturbance to watercourse banks, channels or beds. There is a risk of potential indirect effects on water quality from accidental pollution or site run off, however, these would be adequately addressed through adherence to regulatory requirements, the pollution control measures identified in the Framework CEMP (R16) [REP9-007] and the DEMP (R32 of the DCO) [ER 5.7.36 – ER 5.7.41].

Marine ecology/Ornithology

- 4.105. The ExA queried the Applicants' conclusion that it is unlikely that dredging operations associated with cumulative developments would occur concurrently, and that piling activities associated with the construction of cumulative developments are also unlikely to occur simultaneously. The Applicants consider that dredging in Tees Bay could be timed to avoid other dredging activities. If piling activities were to overlap with other developments, an acoustic barrier would not be formed and impact zones would not overlap due to the likely distance between them [ER 5.7.111]. The MMO and Cefas were satisfied that the locations of additional benthic sampling at Coatham Sands were representative of the area in which the replacement outfall would be constructed [ER 5.7.112]. The Applicants confirmed there would be no routine maintenance works in the intertidal or subtidal zone but may be visual inspections of the outfall. The ExA considered that the effects of maintenance works on the marine environment would be negligible [ER 5.7.113]. The Applicants consider that

vessel movements for the construction of the outfall and delivery of materials to Redcar Bulk Terminal would be low relative to the vessel activity in the area. For this reason, the Applicants did not consider that monitoring would be necessary during offshore works [ER 5.7.114].

- 4.106. The Applicants also clarified that continuous Horizontal Directional Drilling (HDD) had been assumed in the ES. HDD would be drilled 10m below the seabed, and sound effects would be expected at the start and end of tunnelling, which would be short-term and in soft sediment. For these reasons, the effects are predicted by the Applicants to be negligible [ER 5.7.115]. The EA requested that if dredging takes place that it should avoid peak migration times. The Applicants considered this was not necessary because the extent of dredging is small and would not result in a barrier to diadromous fish. The location and timings of dredging would be included in a Marine Method Statement, secured in the Deemed Marine License (DML), and the EA would be consulted on the sample plan and analysis in the DML and Framework CEMP [ER 5.7.118].
- 4.107. The potential effects from noise on migratory fish such as salmon has been based on a precautionary approach, with emphasis that dredging in the Tees Estuary is no longer required and that works away from the River Tees would be of very short duration [ER 5.7.116]. The MMO identified detonation of Unexploded Ordnance (UXO) as a high-risk activity that should be managed in a separate Marine Licence, to ensure that the most up to date evidence and technology could be applied. During the Examination the MMO confirmed it was satisfied with the assessment of the impacts of UXO presented in the ES and wording was agreed and added to the DML [ER 5.7.117].
- 4.108. The ExA asked IPs if other development, including the Tees Bank Quarry, should be included in the assessment of cumulative and combined effects on marine ecology, NE confirmed it was not aware of any other developments that should be included and the ExA noted that no other sites were brought to their attention [ER 5.7.119]. The Marine Pollution contingency plan would be by required by condition 11 of the DML as secured in the Order [ER 5.7.120]. NE confirmed it was satisfied with the approach and scope of the ornithological impact assessment and that it would be consulted on discharge of Requirement 16 of the Order [ER 5.7.123].
- 4.109. The ExA noted that management and mitigation plans include the final CEMP, which contains provision for a Site Waste Management Plan (SWMP), an Invasive Non-Native species plan, ornithological monitoring and the external lighting scheme. It found that the DEMP secured at Requirement 32 would also provide appropriate protection to biodiversity during decommissioning [ER 5.7.125].
- 4.110. The ExA noted that not all ponds were surveyed but are satisfied that the approach taken is precautionary and that mitigation of potential effects would provide protection [ER 5.7.126]. It was demonstrated that the Proposed Development would take advantage of opportunities to conserve and enhance biodiversity in line with EN-1 and was secured in Requirement 4 of the Order, which contains provision for an annual monitoring report to be submitted to the RPA [ER 5.7.127 et seq.].

- 4.111. The ExA considered the permanent loss of subtidal sandflats noting that the affected area would be small and the effects, including the loss of habitats for fish and shellfish, is not significant [ER 5.7.132].
- 4.112. The ExA was satisfied that significant harm to biodiversity conservation interests would be avoided through integrated mitigation and monitoring secured via requirements in the Order and that the Proposed Development would take advantage of opportunities to conserve and enhance biodiversity in line with EN-1. The ExA was content that the Applicants had identified opportunities for Biodiversity Net Gain on the site and are satisfied that the extent of information provided is consistent with draft 2021 policy [ER 5.7.139].
- 4.113. The ExA concluded that biodiversity and ecology matters would not give rise to any likely significant adverse effects and acknowledge the benefit that enhancement to biodiversity on the PCC site would bring and applies moderate positive weight to these in the planning balance [ER 5.7.140].

The Secretary of State's Conclusion on Biodiversity and Ecology

- 4.114. The Secretary of State has considered the submissions made during the Examination, the Applicants' ES, the ExA's report and all responses to the consultation letters. The Secretary of State agrees with the ExA's conclusion that the Development would not give rise to any likely significant adverse effects. The Secretary of State notes that the ExA does not provide justification for applying moderate positive weight, and it does not report or comment on the Biodiversity Metric calculations as presented and secured in the Indicative Landscape and Biodiversity Strategy [REP5-011] in coming to its recommendation of moderate positive weight in the planning balance for biodiversity and ecology matters. In this instance, the Secretary of State does not consider that proposed enhancements to biodiversity to achieve Biodiversity Net Gain of 9.95% habitat units [REP5-011] are sufficient to justify moderate positive weighting, and in this instance accords it minor positive weight in the planning balance.

Geology, Hydrogeology and Land Contamination

- 4.115. The ExA report identifies that EN-1 states that for developments on previously developed land, applicants should ensure that they have considered the risk posed by land contamination. The legislation is set out in the Environmental Protection Act 1990 which endorses the principle of a 'suitable for use' approach [ER 5.8.2]. The relevant policy considerations are set out at ER 5.8.2 et seq.
- 4.116. The Applicants' case is set out in ES Chapter 10, with appendices including a contaminated land environmental risk assessment. A hydrogeological impact assessment was also provided [ER 5.8.7]. The Order land has been subject to extensive industrial development including iron and steel works and a number of other contaminative uses. Ground investigations on part of the site have identified that the subsurface is contaminated [ER 5.8.10]. Remediation and long-term monitoring are anticipated by the Applicants [ER 5.8.8]. Prior to detailed design and construction of the project it is proposed that ground investigations, assessment and remediation would be undertaken. The findings would feed into the Final CEMP [ER 5.8.9].

- 4.117. Requirement 13 of the Order requires that a scheme to deal with land contamination and groundwater must be approved by the RPA in consultation with EA and STDC. The scheme must include a preliminary risk assessment (a desk-top study) and risk assessment, supported by a site investigation scheme, and an updated hydrogeological impact assessment, along with various other elements [ER 5.8.11]. Requirement 23 requires all piling and penetrative works to be carried out in accordance with a piling and penetrative foundation design method statement, to be agreed with the RPA following consultation with relevant specified parties, to ensure protection of groundwater quality. Measures proposed in the Framework CEMP, which will be included in the final CEMP pursuant to Requirement 16, include provision for a groundwater monitoring plan, amongst other measures, to identify changes to groundwater quality during the construction period [ER 5.8.12].
- 4.118. The geotechnical risk register identifies likely challenges on the Order land and a Foundations Optioneering Appraisal has assessed suitable foundation options for structures [ER 5.8.13]. During the Examination the ExA sought clarification on aspects of future ground investigation, conceptual modelling, environmental and hydrogeological risk assessments. The ExA consider that the Applicants responded satisfactorily to their requests [ER 5.8.18]. The EA are content to rely on Requirement 13 of the Order to ensure that risks would be appropriately understood and managed post consent [ER 5.8.19]. The Final CEMP is secured by Requirement 16, and provides for a groundwater monitoring plan which must take into account the updated hydrogeological impact assessment. The EA confirmed they are content with the wording of Requirements 16 and 23 of the Order [ER 5.8.20]. A requirement to consult with the EA has also been added to Requirement 32 of the Order (decommissioning) following the EA's request [ER 5.8.21]. RCBC also requested that Requirement 13 should include the standard wording for contaminated land conditions and requested that sampling of the boundary of the site is undertaken to assess any migration of contamination. At Deadline 11 RCBC confirmed it was satisfied that the revised wording would achieve these objectives [ER 5.8.22].
- 4.119. The ExA considered that the Applicants had appropriately considered the risk posed by land contamination as required by EN-1 and the draft 2021 EN-1. The ExA was satisfied that an appropriately robust investigation, risk assessment, remediation and monitoring strategy would be secured by Requirement 13 of the Order and that Requirement 23 would protect groundwater quality during construction of penetrative foundations. The ExA was satisfied that contamination beneath the Order land would not give rise to likely significant effects. It also found that geotechnical conditions have been appropriately assessed, as required by EN-4 and draft 2021 EN-4 [ER 5.8.32].
- 4.120. The ExA found that it has been demonstrated that the Proposed Development would not have an impact on the Mineral Safeguarding Area nor preclude access to mineral resources in line with EN-1 and draft policy EN-1. There would be no significant effects on soil quality and there would be no protected geological formations in the vicinity. The ExA concluded there would be no conflict with the requirements of EN-1 and the draft 2021 EN-1 in relation to these issues [ER 5.8.33].

4.121. Ground investigations undertaken by the Applicants in respect of their proposals for drilling beneath the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site have confirmed that the conditions are suitable for HDD [ER 5.8.34]. The ExA considered that there would be no likely significant effects and matters relating to geology, hydrogeology and land contamination that are neutral in the planning balance [ER 5.8.35].

The Secretary of State's Conclusion on Geology, Hydrogeology and Land Contamination

4.122. The Secretary of State has considered the ExA's Report and agrees with its conclusions. The Secretary of State is satisfied that the Development will not lead to any likely significant effects on geology, hydrogeology and land contamination and agrees it is neutral in the planning balance.

Material Resources and Waste Management

4.123. The relevant policy considerations include EN-1 which is intended to protect human health and the environment [ER 5.9.1 et seq.]. EN-1 sets out that the Applicants should set out arrangements for managing waste produced in a SWMP. The Applicants' case is set out in Chapter 5 of the ES [ER 5.9.3].

4.124. Spoil from construction and enabling works would be stockpiled within the Order limits. It would then either be reused on site for construction (in an area at low risk of flooding) or would be taken off-site by HGV either for treatment at Teeswork's proposed soil treatment hub or for off-site treatment at another local permitted facility [ER 5.9.4]. The Applicants anticipate that the bulk of spoil would be beneficially used within the Order land. Stockpile heights would be low and there are sufficient areas within the Order limits to accommodate the volume of spoil expected to be generated [ER 5.9.5]. The removal of up to 10,000 m³ of spoil per month from site for re-use, treatment or disposal has been allowed for in the HGV movements for construction identified in Appendix 16A: Transportation Assessment (ES Volume III, Document Ref.6.4). Spoil would arise from construction associated with Work Nos. 2, 5, 6 and 8. Management of spoil would be via the final CEMP, secured at Requirement 16 of the Order following approval from RCBC and STBC. This would be accompanied by a number of management plans, including a SWMP which would require that waste streams are estimated and monitored with goals set for waste produced [ER 5.9.8]. A Materials Management Plan would also be appended to the final CEMP and would require that contaminated material is managed in accordance with best practice [ER 5.9.9]. The Applicants have undertaken an assessment of the suitability of potentially contaminated soils for re-use [ER 5.9.10].

4.125. RPAs have not expressed any concerns regarding the Framework CEMP and their role in approving this, and there are no outstanding matters raised by RCBC in its final statement of common ground [ER 5.9.13].

4.126. The ExA was content that the Applicants have answered all queries in relation to material resources and waste management. Waste would be managed in accordance with the waste hierarchy in line with EN-1 and draft 2021 EN-1 and

this would be implemented and managed via the final CEMP in Requirement 16. A SWMP is secured in Requirement 24 of the Order [ER 5.9.16 et seq.].

- 4.127. The ExA concluded it was satisfied that the issues relating to material resources and waste management would not give rise to likely significant effects and do not affect the planning balance [ER 5.9.18].

The Secretary of State's Conclusion on Material Resources and Waste Management

- 4.128. The Secretary of State has considered the ExA's Report and agrees with its conclusions. The Secretary of State is satisfied that the Development will not lead to any likely significant effects from the management of material resources and waste management. The Secretary of State considers this issue is neutral in the planning balance.

Major Accidents and Disasters

- 4.129. The relevant law and policy in this regard is set out at ER 5.10.2 onwards. ES Chapter 22 considers the Applicants' case and includes a figure showing the Health & Safety Executive's (HSE) consultation zones, with the latest version received in the Examination at Deadline 12. All operators on the HSE's list of consultation zones were consulted and no specific concerns were raised [ER 5.10.12]. The ES refers to HSE guidance notes, including those on pipeline and carbon capture technology, UK guidelines and established best practice. The ES identifies the reasonably foreseeable worst-case environmental consequences and the likelihood of these occurring [ER 5.10.8]. The Framework CEMP contains details for protection against accidents involving hazardous materials with the final CEMP based on this secured by Requirement 16 of the Order. A Major Accident Prevention Plan would also be required to inform an application for a COMAH licence. The DEMP would ensure no adverse effects during the cessation of operations and is controlled by Requirement 32 [ER 5.10.10]. The ES notes that the Proposed Development has been sited to maximise the distance from sensitive receptors and other industrial operations, including siting the high-pressure CO₂ compressor on the shoreline to minimise risk given the prevailing wind direction [ER 5.10.11].
- 4.130. Operations at neighbouring facilities have been considered and it was concluded that existing safety precautions at neighbouring industrial sites, in addition to implementation of the CEMP, would mitigate the risk of domino effects occurring [ER 5.10.12]. The HSE confirmed that a Hazardous Substances Consent may be needed. The Applicants consider that this can be applied for once the design has been progressed [ER 5.10.13]. The ExA agreed this would be appropriate in the circumstances [ER 5.10.25].
- 4.131. The ExA considered that the Order land would be subject to stringent safety standards under appropriate legislation and HSE, RCBC and EA have not raised any specific concerns, nor indicated that the required permissions are not achievable in principle. The Applicants provided detailed information on how risks would be managed to be As Low as is Reasonably Practicable (ALARP) during construction through the final CEMP, secured by Requirement 16 of the Order. The ExA was satisfied that risks during decommissioning would be highly likely

to be manageable and adequately controlled through a DEMP and EP [ER 5.10.26]. The ExA has noted the concerns raised by IPs and APs regarding the safety risk of losing access to their pipelines and found that such matters must either be negotiated between the parties and/or addressed by way of protective provisions. This issue is considered in Section 6 of this decision letter.

- 4.132. The ExA was satisfied that an assessment of whether the inherent features of the design are sufficient to prevent, control and mitigate major accidents has been undertaken to a standard sufficient for the purposes of the Examination as required by section 4.11 of EN-1 [ER 5.10.28]. Effects on aviation sites have been addressed and the impacts minimised through the requirements in the Order as required by section 5.4 of EN-1. The HSE was consulted about safety issues in relation to pipelines and its comments incorporated in the assessment in line with advice in EN-4 [ER 5.10.30].
- 4.133. Overall, the ExA concludes that the Order land would be subject to stringent safety standards under the appropriate legislation, with additional controls during construction and decommissioning secured via the final CEMP and the DEMP. The Applicants have demonstrated that the features of the design would be sufficient to prevent, control and mitigate major accidents, including the risks to aviation, as required by EN-1 and draft 2021 EN-1 [ER 5.10.31]. The ExA was satisfied that the issues relating to major accidents and natural disasters would not give rise to likely significant effects and conclude that such matters would not have an effect on the planning balance [ER 5.10.32].

The Secretary of State's Conclusions on Major Accidents and Disasters

- 4.134. The Secretary of State has considered the ExA's conclusions and is satisfied that issues relating to major accidents and natural disasters would not give rise to likely significant effects. The Secretary of State concludes that the issue should be considered to be neutral in the planning balance.

Noise and Vibration

- 4.135. ES Chapter 11 sets out the Applicants' case and is accompanied by figures showing noise sensitive receptors and places of predicted noise generated during construction and operation of the PCC site. At Deadline 12 the figures were revised to reflect the change requests [ER 5.11.10]. Noise sensitive receptors were identified within a specified study area. Until a contractor is appointed specific details of construction activity are not known. Indicative noise predictions have therefore been calculated using the ABC method and thresholds set out in the 'Code of practice for noise and vibration control on construction and open sites' (BS 5228) [ER 5.11.12]. The Applicants assumed that the noise generated during decommissioning would be similar to that from construction [ER 5.11.12].
- 4.136. There would be potentially minor adverse effects from noise at Marsh Farm during both construction and operation, and two offices at Bran Sands and Seal Sands during construction. Minor annoyance from vibration at the two offices would occur during construction. The ExA considered the effects of noise and vibration from the Proposed Development would be insignificant during all

phases, including at these locations [ER 5.11.30]. Mitigation and monitoring for noise have been embedded in the Framework CEMP and would be refined in the final CEMP [ER 5.11.31].

- 4.137. Requirements 21 and 22 would ensure that any impacts from noise are monitored and minimised during construction and operational phases respectively [ER 5.11.31]. The ExA was content that Requirement 21 satisfies RCBC's request that validation of noise outputs is carried out during construction. Noise levels would be controlled to BAT standards through the EP for the installation [ER 5.11.32]. Requirement 22 would restrict noise during operation to certain measurable limits for certain times of the day, in line with EN-1. The potential effects of noise during decommissioning are controlled via the DEMP (Requirement 32). For these reasons the ExA was satisfied that the Application meets the requirements of paragraph 5.11.9 of EN-1 [ER 5.11.32].
- 4.138. The ExA considered that the Applicants have undertaken appropriate indicative and conservative modelling of the likely effects on nearby residential and commercial receptors based on current guidance and best practice and it is satisfied that the approach is consistent with the requirements of EN-1, EN-2 and EN-4 [ER 5.11.29] and their draft 2021 versions [ER 5.11.33]. Mitigation and monitoring would be secured for all phases through the CEMP (Requirement 16); control of noise (Requirements 21 and 22) and the DEMP (Requirement 32) of the Order [ER 5.11.34].
- 4.139. The ExA was satisfied that the issues relating to noise and vibration would not give rise to likely significant effects. These issues therefore have a neutral effect on the planning balance [ER 5.11.35].

The Secretary of State's Conclusions on Noise and Vibration

- 4.140. The Secretary of State has considered the ExA's report and agrees with the ExA's conclusions. The Secretary of State agrees that, with the inclusion of the measures set out in the Requirements, significant noise and vibration impacts should be avoided and the proposal would therefore meet the requirements of EN-1, EN-2 and EN-4 with regard to noise and vibration.

Traffic and Transport and Public Rights of Way

- 4.141. Chapter 16 of the ES sets out the Applicants' case and is accompanied by a Transport Assessment, a Framework Construction Worker Travel Plan (CWTP) and a Framework Construction Traffic Management Plan (CTMP). The CWTP includes measures to promote the use of sustainable transport by construction staff and details of construction parking and monitoring, and the provision of an approved final CWTP is secured by Requirement 19. The CTMP includes details of construction routes, carriageway protection, monitoring and more, and the provision of a final approved CWTP is secured through Requirement 18. During the Examination two technical notes on traffic sensitivity modelling were submitted in response to questions raised by the ExA [ER 5.12.6]. The transport assessment also includes cumulative effects with other developments [ER 5.12.14]. The ExA considered that a satisfactory transport assessment using appropriate methodologies was provided with the application, in consultation with

statutory consultees as required by EN-1 [ER 5.12.29]. The Proposed Development is in an accessible location close to existing transport routes for delivery of construction materials, fuel, waste, equipment and for employees and is considered to meet the requirements of paragraph 2.2.5 of EN-2 [ER 5.12.30].

- 4.142. The ES anticipates that the construction workforce would peak at approximately 1,870 workers per day, comprising of approximately 750 one-way trips to the main car park associated with the PCC site. The ES predicts approximately 120 pipeline workers would be transferred to the working area at Dabholm Gut by minibus [ER 5.12.7]. The number of HGV movements during construction is estimated to be 80 two-way daily vehicle movements at the peak of construction associated with the PCC site and 10 movements associated with the pipeline construction. No HGV deliveries would normally be undertaken outside of core working hours and arrivals would be spread evenly over the day as far as reasonably practicable [ER 5.12.8].
- 4.143. The Applicants' assessment proposes to import most of the large modular plant and Abnormal Indivisible Loads (AIL) components for Work No.1 using the existing ship offloading facilities at the Redcar Bulk Terminal wharf to the PCC site. Imports of AILs would result in approximately 40 ship movements over a period of two years. Smaller loads and smaller AILs could use facilities at Teesport and be transported by HGV to the site [ER 5.12.9]. The Applicants consider that the additional traffic cause during construction of the Proposed Development would result in small, temporary increases of traffic flows, including HGVs on the roads leading to the site. No significant effects in relation to severance, pedestrian amenity, fear and intimidation highway safety or driver delay are predicted [ER 5.12.10].
- 4.144. During operation there could be a maximum of approximately 60 full time staff working across three shifts and around 40 corporate staff based at the site during normal working hours. This equates to 71 cars per day, in addition to a maximum of four HGVs per day generated by deliveries of plant and equipment. Maintenance would be undertaken annually with major overhauls occurring approximately once every five years with maintenance requiring around 200 additional contractors to work on site. Due to the very low traffic flows the overall effects during operation are considered in the Assessment to be negligible [ER 5.12.12]. Traffic during decommissioning is expected to be no greater than during construction and is therefore insignificant. The DEMP must include traffic management arrangements during any demolition, removal and remediation works and is secured by Requirement 32 of the Order, with details to be approved by the relevant planning authority [ER 5.12.13].
- 4.145. PRoWs within 2km of the site are considered in the ES. PRoWs within the connection corridors may be temporarily affected if any temporary diversion or closures are put in place including the England Coastal Path, Teesdale Way and PRoWs 116/31. Article 13 of the Order sets out powers in respect of PRoWs and access land [ER 5.12.16]. The ExA were satisfied that no permanent severance of PRoWs would occur, and potential temporary diversions would be temporary and spatially limited [ER 5.12.40].

- 4.146. The ExA noted that STDC did not support the Applicants' proposed HGV and construction traffic access via the A1053 Tees Dock Road. This was not resolved by the end of the Examination, but the ExA considered this largely related to the temporary possession of land for construction rather than traffic/highway safety issues. As it would only comprise seven HGV movements during peak times, RCBC were content that this did not require specific assessment, and consequently the ExA were satisfied that this access point would not lead to significant adverse effects [ER 5.12.35]. Additional modelling demonstrating that there would be no additional adverse effects from use of the Lackenby Gate roundabout as an alternative HGV access has also been provided [ER 5.12.36]. The Secretary of State notes that the Applicants' change request submitted to the Secretary of State on 27 April 2023 (updated 5 May 2023), which included a formal change request to remove the Tees Dock Road access from the scope of the Proposed Development has now removed STDC's objections in so far as they relate to the Tees Dock Road access.
- 4.147. The ExA were satisfied that the CTMP secured by Requirement 18 would be approved by the RPAs following consultation with a number of statutory authorities and IPs. The ExA were satisfied that the control of HGV traffic would be in accordance with paragraph 5.13.11 of EN-1. Further, the use of water borne transport from RBT would be appropriate means of delivering AILs to the PCC site in accordance with EN-1 [ER 5.12.31].
- 4.148. The ExA considered that Requirement 19 would be adequate in requiring the final submission of CWTP in accordance with the framework plan including measures to promote sustainable transport modes, details of construction parking and monitoring, and would require agreement with the RPAs. The ExA was satisfied that the provisions of the CWTP would meet the requirements of paragraph 5.13.4 of EN-1 [ER 5.12.32]. The ExA were satisfied that the CTMP and CWTP could cover the issues raised by RCBC during the Examination and would minimise any residual effects during the construction phase. The ExA concluded that the relatively low levels of operational traffic did not justify any mitigation, given the capacity of the local highway network [ER5.12.34].
- 4.149. The ExA concluded overall that the Applicants have provided an appropriate transport assessment that demonstrates there would be no significant adverse effects on the surrounding transport network at any phase in accordance with EN-1 and draft 2021 EN-1. The ExA was satisfied the issues relating to traffic and transport would not give rise to likely significant effects and therefore have a neutral effect on the planning balance [ER 5.12.43].

The Secretary of State's Conclusions on Traffic and Transport and Public Rights of Way

- 4.150. The Secretary of State has considered the ExA's Report and notes its conclusions. She has considered the views of the RPAs at each phase of the development. The Secretary of State is satisfied that it has been demonstrated that the capacity of the local highway network along with the Requirements within the Order, mean that there will not be any significant traffic and transport impacts arising from the Development. The Secretary of State agrees with the ExA that issues related to traffic and transport would be neutral in the planning balance.

Socio Economics and Tourism

- 4.151. ES Chapter 20 considers socio-economic matters. Cumulative and combined effects are set out in ES Chapter 24. The Applicants have assessed the potential effects on jobs and tourism, including the availability of accommodation, and the potential effects on the regional labour market. Social effects have also been assessed with regard to direct effects on economic activity, community infrastructure and the local population [ER 5.13.5].
- 4.152. Construction is anticipated to take up to four years to complete, creating employment opportunities of varying types and levels throughout this time period. The Applicants estimated an average of 1,760 gross construction workers over the peak years of construction of the Proposed Development [ER 5.13.9].
- 4.153. An additional 1,120 net indirect jobs in the Travel to Work Area (TTWA) are estimated during the construction period. A total of 2,440 net construction jobs are therefore estimated, 1,220 of which are expected to be from the Middlesbrough and Stockton TTWA. The Applicants consider this would be approximately 240 Full Time Equivalent (FTE) permanent jobs during the construction period and concludes it is likely to have a major beneficial short-term effect on the TTWA's economy [ER 5.13.10]. During operation employment is expected to total up to 100 FTE gross direct jobs per annum, arising from operative, management and maintenance roles. Leakage to jobs outside of the TTWA is assumed to be low for operational employment (13%) and displacement is also predicted to be low (25%). Together, all types of employment created by the operation of the Proposed Development are predicted to have a moderate beneficial long-term effect (non-significant) [ER 5.13.15].
- 4.154. Other impacts identified during the construction phase include benefits associated with an increased demand for short term accommodation with existing business expected to operate as usual during the construction phase. The effect is assessed to be not significant [ER 5.13.11]. Tourism is considered in the ES with local designations assessed as having a negligible adverse impact (non-significant) due to limited restrictions to such amenities. Recreation would be affected due to multiple PRoW close to the site and along the coastline, some of which may require temporary diversions during the construction phase [ER 5.13.12]. An employment support programme would help local residents and unemployed workers into roles, which would have a minor beneficial (non-significant) effect on the skills and employability of local people during the construction phase [ER 5.13.13]. The effects during decommissioning are expected to be similar to during the construction phase, having an overall minor beneficial effect on employment in the area [ER 5.13.14].
- 4.155. RCBC's LIR states that the Proposed Development would assist in safeguarding thousands of skilled, well-paid jobs, bring brownfield land back into use, bring business rates income to deliver much need local services and offer opportunities to highly skilled personnel who wish to return to Tees Valley [ER 5.13.20]. STBC in their LIR concluded that the social, environmental and economic benefits would make a significant contribution to meeting national targets and policies and would support local businesses, creating jobs for local people in the Borough [ER 5.13.21].

- 4.156. The ExA notes that given that no significant adverse effects are predicted during any phase of the Proposed Development, the Applicants do not propose any specific mitigation. The Applicants have nonetheless committed to a plan detailing arrangements to promote employment, skills, training and development opportunities for local residents, secured at Requirement 30, and the establishment of a local liaison group, secured at Requirement 29 [ER 5.13.17]. There is considered to be a short-term risk of temporary labour shortage and a deficit in local accommodation, but overall, the ES states that the cumulative socio-economic effects are expected to be significantly beneficial [ER 5.13.18]. Both SoCGs with RCBC and STBC agree that socio-economic effects would be beneficial [ER 5.13.27].
- 4.157. The ExA considers that the Proposed Development would generate a significant number of net jobs, particularly during construction, resulting in benefits for the local area. The ExA agrees that the overall socio-economic effects would be beneficial [ER 5.13.28]. The ExA consider that whilst the assessment lacked detail on some issues, particularly in relation to recreation and tourism, overall the information in the ES, supplemented by responses to written questions, was sufficient for the ExA to conclude on this topic. It notes that effects during construction on holiday makers to the parks and users of nearby recreational facilities are likely to be minor adverse and overall, effects would not be significant [ER 5.13.29].
- 4.158. The ExA is satisfied that specific mitigation is not required and Requirements 29 and 30 would secure appropriate enhancement measures [ER 5.13.30]. Overall, socio-economic effects are considered beneficial and attract moderate positive weight in the planning balance [ER 5.13.32].

The Secretary of State's Conclusions on Socio Economics and Tourism

- 4.159. The Secretary of State has considered the ExA's Report and agrees with its conclusions. She notes the positive benefits of the Proposed Development and the views expressed by local Councils that it has the potential to make a positive contribution towards growth and regeneration, support for local businesses and creation of jobs in the local area. The Secretary of State agrees with the ExA's conclusion that there is a moderate positive socio-economic benefit from the Proposed Development.

Historic Environment

- 4.160. NPS EN-1 sets out the presumption in favour of the conservation of designated heritage assets in proportion with their significance (paragraph 5.8.14). EN-1 also refers to non-designated heritage assets at 5.8.4, which can be of equivalent significance. Paragraph 5.8.8 et seq. requires that the Applicants describe the significance of the affected heritage assets and the contribution of their setting to that significance. Regulation 3 of the Infrastructure Planning (Decision) Regulations 2010 and section 16 of the NPPF are also relevant [ER 5.14.2 et seq.]. Relevant development plan policies regarding the historic environment are summarised in ES Chapter 18 [see ER 5.14.7]. Relevant local policies are also referenced [ER 5.14.8]. Local policy recognises the industrial heritage of the former Redcar Steelworks [ER 5.14.58 et seq.].

- 4.161. The Applicants' consideration of onshore historic environment in ES Chapter 18 includes appendices covering a Cultural Heritage Baseline Report and Gazetteer [ES 5.14.9 et seq.]. There are no designated heritage assets within the Order limits. Assets within 5km are assessed in the ES. Three listed buildings, four conservation areas and a Scheduled Ancient Monument (SAM) are considered further in the final assessment. RCBC, STBC, HBC, the MMO and Historic England (HE) agreed with or had no comments to make on the methodology or study area for the designated heritage asset assessment [ER 5.14.21].
- 4.162. Marine heritage is considered in Chapter 19 of the ES, which has been revised to include change requests made in the Examination. The ES concludes that no significant effects are predicted to occur in relation to both onshore and marine heritage matters in operation or decommissioning. In the construction phase, Chapter 18 of the ES refers to the adoption of a protocol for managing unknown archaeological discoveries, with appropriate measures to record or stabilise the asset in order to avoid significant effects. Requirement 14 of the Order requires a Written Statement of Investigation (WSI) to be submitted and approved by the RPA, in accordance with Chapter 18 [ER 5.14.11]. A WSI would also be secured for marine archaeology in Condition 15 of the DMLs in Schedules 10 and 11 of the Order [ER 5.14.12].

Listed buildings

- 4.163. The ExA requested more detail from the Applicants on the assessment of significance of the nearest designated heritage assets situated at Marsh Farm, including the Grade II listed Marsh Farmhouse and cottage, its garden wall, stable and barn [ER 5.14.24]. In terms of setting, the isolated coastal landscape setting of the group has substantially altered over time. An appreciation of the buildings' former relationship with the former community at Warrenby and the sea has been significantly eroded over time. The community at Warrenby has been replaced with a range of industrial buildings and uses [ER 5.14.28]. The listed buildings' significance lies in their age and rarity in this 20th century industrial setting. As a group they have a small and discrete setting of their own derived from the buildings within the group and associative relationship with one another [ER 5.14.32]. The ExA agrees with the Applicants' overall assessment in the ES that the group of listed buildings, and their setting, is of medium value [ER 5.14.32].
- 4.164. The ExA considers that construction activity at the PCC site has the potential to temporarily affect the setting of the buildings as a result of noise during peak construction activity. It is considered that such noise would have a temporary minor adverse effect [ER 5.14.33]. The effect is considered to be similar as a result of decommissioning activities [ER 5.14.33]. When completed, it is possible that the higher structures would be partially visible from certain locations in the area around Marsh Farm. The existing setting is dominated by cranes, warehousing and outdoor storage associated with commercial uses. The ExA concludes that the significance of Marsh Farm and the associative relation between the buildings would continue to be appreciable in this setting. Whilst the Proposed Development would result in change to the wider setting, the significance of the more discrete setting of the group would not be harmed and such effects would be neutral [ER 5.14.35].

Conservation Areas (CA)

4.165. Four Conservation Areas were selected for further assessment of potential effects, all south of the River Tees in close proximity to the PCC site [ER 5.14.36]. The ExA sought further information on the assessment of the setting of each from the Applicants. No comments were received from RCBC or HBC regarding the assessment of setting [ER 5.14.37]. Coatham Conservation Area is situated approximately 1.7km to the east of the PCC site. The nearest views of the PCC site would be from its northern and western edges over the golf course and Coatham Green. The ExA consider that the change in view would not affect the ability to appreciate the historic and architectural character of the Conservation Area. The ExA agrees that the impact is assessed to be very low resulting in a minor adverse effect which is not significant [ER 5.14.39]. With regard to Kirkleatham, Yearby and Wilton Conservation Areas the ExA agrees with the assessment of impact in each as being neutral and not significant [ER 5.14.42 et seq.]. In respect of Seaton Carew Conservation Area the ExA assess impact as having a minor adverse effect. In ES terms it is not considered to be significant [ER 5.14.50].

Scheduled Monuments: Eston Nab Iron Age Hillfort

4.166. Eston Nab is located 6.7km from the Order Limits within Eston Hills and is assessed to be of high value. From Eston Nab the majority of the area of the Order limits are visible, from distance and height. The Proposed Development would represent a new component into the existing industrial landscape which extends across the Tees Valley. Given its coastal location and scale the development at the PCC site would be easier to locate from Eston Nab than other proposed works. The ExA considers it would not dominate the visual setting nor interrupt longer range views to the coast and across the Tees Estuary. The ExA concludes that no direct impacts to setting or the heritage values of the Scheduled Monument would arise at any stage, and it agrees that the effects are neutral and not significant [ER 5.14.52].

Non-designated heritage assets (NDHA)

4.167. Within the Order limits at the time of the application, 23 NDHAs were located within the boundary. These are primarily 20th century industrial structures associated with the steelworks and iron works, including former tramways [ER 5.14.55]. Within the CO₂ gathering network (Work No.6) and gas connection corridor (Work No.2) there are a number of NDHAs. However, the infrastructure would be above-ground and therefore there would be little to no impact on buried deposits [ER 5.14.56]. There is low potential for buried features of archaeological interest. The ExA agrees with the Applicants' assessment that collectively, the redundant structures relating to the former Redcar Steelworks complex provide a very visible and well-preserved feature of the industrial heritage of the region, contributing to local identity [ER 5.14.58 et seq.].

4.168. There are no designated assets within the marine assets Study Area. A number of undesignated maritime assets were identified [ER 5.14.65]. However, the likelihood of encountering any unknown maritime assets within the survey areas is stated in the ES to be very low. The impact on NDHAs is assessed in the ES

to be low, resulting in a minor adverse effect on marine heritage assets [ER 5.14.67]. The ExA agreed with this assessment. The Applicants propose to undertake a geoarchaeological assessment prior to construction to determine the extent of any deposits and paleoenvironmental features that may extend to the offshore Order limits. Condition 15 of the DML secures the provision of a WSI together with measures in the Framework CEMP [ER 5.14.70]. The outline WSI for marine archaeology sets out broad principles and methodology of mitigation for the future site specific WSI. HE agree that the proposed measures are acceptable in the SoCG [ER 5.14.71].

4.169. The ExA concludes that the description of heritage assets has been provided in a level of detail proportionate to their importance and that the significance of impacts on both onshore and offshore archaeological and cultural heritage has now been adequately assessed for all phases of the Proposed Development [ER 5.14.73].

4.170. The ExA consider that the Proposed Development would not lead to any adverse effects on the historic environment and that there would therefore be no conflict with the objectives of EN-1, section 16 of the NPPF and the draft EN-1 policy. The ExA agrees with the overall findings of ES Chapters 18 and 19 which indicate that effects would not be significant. Given the effects on listed buildings and conservation areas overall would be neutral, as would the effects on the setting on Eston Nab SAM, the ExA are satisfied that no mitigation would be necessary [ER 5.14.74]. Requirement 14 and Condition 15 of the DML would ensure that any unexpected finds and effects on archaeological potential would be adequately mitigated, together with measures in the Framework CEMP [ER 5.14.75].

4.171. Taken altogether the ExA concludes that the Proposed Development would have no likely significant effects on the historic environment and that the effect on the planning balance would be neutral [ER 5.14.76].

The Secretary of State's Conclusions on Historic Environment

4.172. The Secretary of State has carefully considered the Applicants' assessment of impacts and the ExA's Report and the ExA's conclusion that no likely significant effect on the historic environment would arise. The Secretary of State agrees with the conclusions of the ExA in relation to heritage and non-designated heritage assets and considers effect on the historic environment is neutral in the planning balance. She does not consider that the adoption of the new NPSs changes the position.

Cumulative and Combined Effects

4.173. The assessment of cumulative and combined effects is presented in Chapter 24 of the ES [ER 5.15.1].

4.174. Combined effects are defined by the Applicants as those resulting from different effects from the Proposed Development on a single receptor [ER 5.15.4]. The Applicants' ES sets out that there would be no combined visual and noise effects on residential or commercial receptors during construction. There are predicted

to be minor adverse effects of a temporary nature on Viewpoint 5 and users of South Gare Breakwater [ER 5.15.7]. During operation, the Applicants concluded that there would be no significant combined effects [APP-106].

- 4.175. Cumulative assessment of effects is required under the EIA regulations [ER 5.15.2]. EN-1 states that the ES should provide information on how the effects of the proposal would combine and interact with the effects of other development. It must then consider how the accumulation of, and interrelationship between cumulative effects might affect the environment, economy, or community [ER 5.15.3]. The ExA consider that the Applicants' assessment complies with EN-1 and that the Applicants satisfactorily answered all its queries in relation to the extent and timing of the assessment of combined and cumulative effects [ER 5.15.49].
- 4.176. During the examination, representations were made by Ørsted in respect of the potential for the wider NEP Project to impact on the HP4 development. The ExA accepted that if HP4 were prevented from constructing turbines in the Overlap Zone, the effect on that project without mitigation would be of major adverse significance. Following the commercial agreement between the Applicants and Ørsted, all prior representations and outstanding objections put forward by Ørsted in relation to the NZT Project DCO application were withdrawn. Following agreement being reached, it is noted that there are no protective provisions in the HP4 DCO for the protection of the operators of the Proposed Development, nor are there protective provisions which prevent development in the Overlap Zone. The Secretary of State considers that cumulative effects with HP4 have not been demonstrated.
- 4.177. The ExA note that there would be CO₂ emissions from the Proposed Development, even with significant abatement. The ExA conclude that the effects from the Proposed Development alone would be significant adverse in accordance with draft 2021 EN-1 [ER 5.15.44]. The Secretary of State notes that this is also reflected in designated EN-1, draft 2023 EN-1 and designated 2024 EN1.
- 4.178. The ExA consider that there is scope for an assessment of the cumulative effects on a sectoral basis and accept the Applicants' statement that insufficient data are available to quantify this. The ExA consider it inevitable that there would be emissions across the wider sector and conclude that cumulatively the effects from GHG across the wider sector would be adverse and significant [ER 5.15.45].
- 4.179. The ExA note that there would be minor adverse effects from accumulated construction noise at residential properties in the vicinity of Broadway West, and significant visual effects on a range of coastal viewpoints at South Gare Breakwater, Redcar seafront, and the England Coast path at Warrenby. The ExA consider the effects would not increase to any significant degree when considered with other projects [ER 5.15.52].
- 4.180. The ExA note there would potentially be a significant benefit from cumulative development to the local economy, including employment opportunities from other projects in the area [ER 5.15.53]. The ExA acknowledge there are current and forthcoming development activities in the immediate area of the Order land

and the wider Teesside area, both onshore and offshore. The ExA consider that numerous cumulative and combined effects are possible, but overall, no significant effects with other projects have been identified that would result in adverse effects over and above those associated with the Proposed Development alone. On balance the ExA consider such matters to be neutral in the planning balance [ER 5.15.54].

4.181. On 16 May the Secretary of State requested further information from the Applicants on the impacts of the Wider NZT Project and an updated Environmental Impact Assessment and Habitats Regulations Assessment Report which include assessment, alone and cumulatively, of the Offshore Elements of the Wider NZT Project, including the use of the Endurance Store. The Applicants response included Document 6.6 – Wider Project Environmental Statement – Habitat Regulations Assessment Addendum (“the Addendum”) to fully assess the potential cumulative and in-combination effects of the Wider NZT Project. The Addendum drew upon other documents provided by the Applicants, including the ES for the Offshore Elements and an updated Cumulative Impact Assessment long list of projects.

4.182. The Addendum concludes that:

- there are no new or materially different effects both “alone” and “cumulatively” that have not been identified in the Onshore ES and HRA Report, and the Offshore ES (including the Onshore HRA) to the extent that its findings relate to the Wider NZT Project;
- there are no changes to the environmental information that was relied upon in the production of the ES that would change the conclusions of the Onshore ES, HRA and supporting documentation; and
- the assumptions applied to the EIAs undertaken as part of the Offshore ES that relate to the construction and operation of the Offshore Elements of the Wider NZT Project (including the offshore HRA) remain valid and correct.

The Secretary of State’s Conclusions on Cumulative and Combined Effects

4.183. The Secretary of State has considered the ExA’s recommendation and all representations received since Examination. Whilst the Secretary of State considers that the Proposed Development and the Offshore Elements of the Wider NZT Project are separate, they are related projects and their cumulative effects on the environment should be assessed. She is satisfied that the potential environmental effects of the Wider NZT Project have been adequately assessed, and she agrees with the ExA’s conclusion that matters relating to cumulative and combined effects are neutral in the planning balance.

Other considerations

Combined Heat and Power (CHP)

4.184. The ExA was content that the Proposed Development has been designed to be CHP ready in line with the requirements of EN-1, EN-2 and EA guidance, should any future opportunities to introduce CHP arise in the future. The ExA considers that such matters do not affect the planning balance. The Secretary of State

agrees and does not consider that the adoption of the new NPSs changes the position.

Grid Connection

4.185. The ExA was satisfied that the Electricity Grid Connection Statement, together with the submissions from NGET, demonstrate it is feasible to connect to the National Electricity Transmission System and there do not appear to be any impediments to grid connection. Therefore, it considers the provisions of EN-1 and EN-2 would be met and this matter does not affect the planning balance [ER 5.16.12]. The Secretary of State agrees and does not consider that the adoption of the new NPSs changes the position.

Land Use

4.186. The vast majority of the Order land would be previously developed and there would be no above ground development on greenfield or agricultural land, including the sand dunes and foreshore at Coatham Sands [ER 5.16.14]. Effects on users of The England Coast Path and PRoWs are considered in relevant sections above. The routes would be maintained during construction and operation due to the use of HDD construction methods for Work Nos. 5 and 8, except for short periods of testing and maintaining the CO₂ export pipeline. No IPs raised objections during the Examination.

4.187. The ExA considers that potential effects on land use do not create conflict with section 5.10 of NPS EN-1. The effective re-use of previously contaminated brownfield land is a benefit of the Proposed Development and therefore carries moderate positive weight. The Secretary of State agrees and does not consider that the adoption of the new NPSs changes the position.

Health

4.188. ES chapter 23 sets out the Applicants' population and human health case, with all impacts and effects predicted to be not significant. ES chapter 20 considers economy and tourism which set out that there would be beneficial effects arising from employment during operation. Overall, no significant effects on population and human health were identified and as such, no mitigation measures are proposed [ER 5.16.21]. The ExA considered potential effects in accordance with EN-1 and concurred with the Applicants' assessment that effects would not be significant, and did not find any conflict with the policy. As such these matters were neutral in the planning balance [ER 5.16.23]. The Secretary of State agrees and does not consider that the adoption of the new NPSs changes the position.

Security

4.189. The ExA considered security in accordance with section 4.15 of EN-1, with the inclusion of Requirement 9 to secure security measures, found no conflict with the policy and considered that this matter should be neutral in the planning balance [ER 5.16.29]. The Secretary of State agrees and does not consider that the adoption of the new NPSs changes the position.

Shipping, Navigation and Other Marine Users

- 4.190. The Proposed Development has the potential to effect shipping and navigation as well as activities of other marine users. Recreational activities could be temporarily affected during construction but effects would be limited [ER 5.16.40].
- 4.191. EN-3 requires the Secretary of State to be satisfied that site selection has been made with a view to avoiding or minimising disruption or economic loss to shipping and navigation industries with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade, and recreational users of the sea [ER 5.16.30]. Recreational activities, including fishing at South Gare, could be temporarily affected during construction by temporary diversions or realignment of South Gare Road for the CO₂ export pipeline [ER 5.16.31].
- 4.192. The High Voltage export cable for the Teesside Wind Farm directly overlaps the route of the proposed CO₂ export pipeline (Work No. 8). Works associated with this Order would be beyond the wind farm boundary, short in duration, and outside of the main vessel access route [ER 5.16.39].
- 4.193. Chapter 20 of the Navigational Risk Assessment sets out a number of Marine Licences that exist in the vicinity of the site. The Proposed Development is subject to Deemed Marine Licences (“DMLs”) from the Marine Management Organisation as set out in the Order [ER 5.16.33].
- 4.194. Navigational risks at the outfall tunnel and head location were considered in the Navigational Risk Assessment and are considered to be low in all instances, and able to be suitably managed by conditions in the DMLs to ensure PD Teesport Ltd (PDT) and other stakeholders are informed of the final CEMP by the MMO [ER 5.16.34], and to ensure mariners are made fully aware of works. The MMO raised no concerns regarding shipping and navigational risk in their written representations and agreed to defer such matters to navigational stakeholders (including the Maritime and Coastguard Agency (MCA), PDT and Trinity House) [ER 5.16.35]. PDT (the statutory harbour authority) confirmed that the scope of the navigational risk assessment was adequate and appropriate [ER 5.16.37].
- 4.195. ES Chapter 24 and appendix 20B considers the potential for vessel displacement from the Proposed Development in combination with the construction of the offshore works. It concluded there could be temporary displacement of mariners. The Applicants concluded it highly unlikely their navigation would be impeded by simultaneous works and marine exclusion zones. There would therefore be a very low risk of a significant potential cumulative effect on shipping and navigation [ER 5.16.38].
- 4.196. The ExA concluded that commercial shipping and fishing activities within the Tees Bay and surrounding area could be temporarily disrupted by construction works and supporting vessels but works would be in short duration and spatially limited. The DMLs would include a range of conditions to minimise disruption [ER 5.16.39].

- 4.197. Overall, the ExA agreed with the Applicants' conclusions of a minor adverse (non-significant) effect on marine users, both alone and cumulatively with other projects, and that any risk to marine users can be minimised through the conditions of the DMLs. The ExA considered the effect in the planning balance to be neutral [ER 5.16.41]. The Secretary of State agrees and does not consider that the adoption of the new NPSs changes the position.

5. Findings and Conclusions in Relation to Habitats Regulations Assessment

- 5.1. The Secretary of State's HRA is published alongside this letter. The following paragraphs summarise and provide conclusions of the HRA and must be read alongside the HRA which is the full record of the Secretary of State's consideration of these matters.
- 5.2. The Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations") aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation (SACs). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas (SPAs). SACs and SPAs together form part of the UK's National Site Network (NSN). The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as "protected sites").
- 5.3. Regulation 63 of the Habitats Regulations provides that: *"....before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site's conservation objectives."*
- 5.4. And that: *"In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)."*
- 5.5. The Proposed Development is not directly connected with, or necessary to the management of, a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required (as Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects (LSE) cannot be ruled out, the Secretary

of State must undertake an Appropriate Assessment (AA) addressing the implications for the protected site in view of its Conservation Objectives.

- 5.6. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity of protected sites, unless she chooses to continue to consider the derogation tests (regulations 64 and 68). The complete process of assessment is commonly referred to as an HRA.
- 5.7. The Secretary of State has carefully considered the information presented during the Examination, including the Report on the Implications for European Sites (RIES), the ES, representations made by IPs, the ExA's Report and all representations received in response to the consultation letters.
- 5.8. Whilst the Proposed Development as applied for and authorised by the DCO (Onshore Elements), and Offshore Elements of the Wider NZT Project are related Developments, consent for each element is being sought through differing consenting regimes. On 16 May 2023, the Secretary of State requested that the Applicants provided an updated HRA report which included an assessment, both alone and in combination with the Onshore Elements (the Proposed Development as applied for and authorised by the DCO), of the Offshore Elements of the Wider NZT Project, including the Endurance Store. The Secretary of State considered this important and relevant, so that she had sufficient information to consider all direct, indirect and in-combination environmental effects of both the Proposed Development as applied for and the Offshore Elements, which will inevitably exist and operate at the same time.
- 5.9. She considers that the Proposed Development has the potential to have a LSE on five protected sites when considered alone and in-combination with other plans or projects:
- Teesmouth and Cleveland Coast SPA;
 - Teesmouth and Cleveland Coast Ramsar;
 - North York Moors SAC;
 - North York Moors SPA; and
 - Southern North Sea SAC
- due to noise and visual disturbance, water quality and air quality effects, impacts on bird flightlines and direct habitat loss due to pipeline installation.

Appropriate Assessment conclusion

- 5.10. The Secretary of State has undertaken an AA in respect of the Conservation Objectives of the protected sites to determine whether the Proposed Development, either alone or in-combination with other plans or projects including the Wider NZT Project, will result in an AEoI of the identified sites. The Secretary of State has considered all information available to her including the recommendations of the ExA, the advice of NE as the SNCB the views of all other IPs, the Applicants' case including the ES-HRA Addendum and Offshore ES and responses to her consultation letters.

- 5.11. Taking account of the mitigation measures as secured in the DCO and DML, the Secretary of State is satisfied that an AEoI of North York Moors SAC and SPA and Southern North Sea SAC both alone and in-combination can be excluded beyond all reasonable scientific doubt. Having sought confirmation that the EA is content with the Applicants approach to nutrient nitrogen modelling and amending Requirement 37(3)(a) of the DCO to refer to nitrogen loads rather than concentrations as suggested by the ExA and NE, the Secretary of State is satisfied that an AEoI of Teesmouth and Cleveland Coast SPA and Ramsar can be excluded beyond all reasonable scientific doubt.
- 5.12. Overall, the Secretary of State agrees with the Applicants, in accordance with the recommendations of the ExA and advice of NE, that subject to mitigation measures as secured in the DCO / DML an AEoI of any protected site can be excluded beyond reasonable scientific doubt.

6. Consideration of Compulsory Acquisition and Related Matters

- 6.1. The Secretary of State notes that the Applicants are seeking powers for the compulsory acquisition (CA) and temporary possession (TP) of land.
- 6.2. The Planning Act 2008, together with related case-law and guidance, provides that compulsory acquisition can only be granted if certain conditions are met. Under section 122 of the Planning Act 2008 CA may only be authorised if:
- the land is required for the development to which the consent relates, or
 - it is required to facilitate or is incidental to that development; or
 - it is replacement land which is to be given in exchange for the Order land under sections 131 or 132 of the Planning Act 2008; and
 - there is a compelling case in the public interest.
- 6.3. In connection with this, the “Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land” sets out factors to be taken into account, including:
- the land required to be taken must be no more than is reasonably required and be proportionate;
 - there must be a need for the project to be carried out;
 - all reasonable alternatives to CA have been explored;
 - the applicant has a clear idea of how it intends to use the land and can demonstrate that funds are available to pay for the acquisition; and
 - they are satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the interference with the human rights of those with an interest in the land.

The Applicants’ case

- 6.4. The Applicants’ compelling case for seeking CA and TP powers is set out in the Statement of Reasons (SoR) and refers to the Planning Statement and Project Need Statement [ER 8.4.3]. The Applicants consider that there is a clear and compelling need for the development in light of its contribution to new electricity

generating capacity and decarbonisation of industrial sectors, and state that the site has been selected for technical, environmental and commercial reasons [ER 8.4.3]. The Book of Reference (BoR) identifies all the plots of land required [ER 8.4.4. et seq.]. The status of negotiations with the relevant Affected Parties (APs) was updated at regular intervals throughout the Examination in the CA schedule submitted at Deadline 12, and at Deadline 13 an 'End of Examination Negotiation Status' table was submitted including APs who had participated in the Examination [ER 8.4.11]. The Applicants engaged with landowners, tenants, lessees, and occupiers with the aim of completing voluntary agreements.

Temporary Possession

- 6.5. The Applicants' case for the use of TP powers is set out in the SoR [Section 6.19, REP12-010], and given effect in the draft Order through Articles 31 and 32 [REP12-003]. The Order limits TP to land which is listed in Schedule 9, and Article 31 permits the Applicants to take TP of any other Order land where powers of CA to facilitate construction have not been exercised [ER 8.5.1]. The land identified in Schedule 9 is coloured yellow on the Land Plans [REP12-015] and the Applicants do not require any interest in this land on a permanent basis as it is required for temporary use as construction and laydown areas (Work No. 9), and for access and highway improvements (Work No. 10). Article 31 allows a phased approach to occupation and acquisition where the Applicants can initially take TP of the whole width of corridors required for connections for natural gas, electricity, water supply, wastewater disposal, the CO₂ gathering network and the CO₂ export pipeline corridor. They can then acquire new, permanent rights over a narrower strip of the corridors but only for the maintenance, operation and protection of the relevant apparatus [ER 8.5.4].

Reasonable Alternatives to CA

- 6.6. The Applicants considered alternatives in the SoR. They stated that the 'do nothing' scenario is inappropriate given the established national need for new energy generation and the urgent need for transition to a low carbon economy to meet Net Zero 2050 commitments. The PCC site location was selected for a number of reasons as set out in the SoR. A number of options for routing of connections required for the Proposed Development were considered [ER 8.7.3]. The Applicants conclude that none of the alternatives would provide the compelling benefits that the Proposed Development would. They would involve additional impacts or disadvantages in terms of land take, environmental, technical, or other considerations. The Applicants have continued to seek to acquire the land and rights by voluntary agreement. They require CA powers to provide certainty that they will have all the land required to construct and operate the Proposed Development, in order to realise its very significant public benefits [ER 8.7.4].

Statutory Undertakers' Land

- 6.7. Section 138 of the PA2008 is engaged because the Applicants seek powers to interfere with the apparatus of Statutory Undertakers as described in the SoR [ER 8.8.5]. The relevant undertakers: NGET, NGT (formerly NGG), NR, Northern

Gas, NPG, NWL, PDT and BT/Openreach are considered further below in paragraph 6.14 et seq.

Special Category Land

- 6.8. Section 132 of the PA2008 is engaged, regarding land forming open space. No freehold CA of land is proposed under s131, only new rights (and TP). Special category land is listed at Part 5 of the BoR and CA affects plots 379, 448, 494, 499, 501, 526 to 529 and 539, this wholly relates to foreshore and beach at Coatham Sands and Coatham Sand Dunes, which is used for public recreation purposes. The freehold owners of the plots are STDC, RCBC or the Crown. Plot 501 is unregistered [ER 8.9.2]. Works on the open space land would comprise the installation of part of the water discharge pipeline (Work No. 5B) and part of the CO₂ export pipeline (Work No.8). No works are proposed on the surface of the open space land, and access to it is expected to remain open throughout the construction period. The physical appearance of the open space land would be unaffected [ER 8.9.3]. Testing, start-up and pressurisation of the CO₂ export pipeline may necessitate temporary restrictions on access. The Applicants expect this to be over a limited area and a very short duration (a maximum of 24 hours). Testing is expected to take place at night so that it has negligible impact on users of the open space [ER 8.9.4].
- 6.9. The TP of the land would allow the use of the relevant land to remain with or revert to the relevant landowners. New rights would permit the Applicants' infrequent use of the open space by easements for maintenance [ER 8.9.5]. No other type of special category land is affected, and no objections were received in relation to special category land [ER 8.9.6].

Crown Land

- 6.10. At the end of the Examination three Crown-owned plots remain within the BoR, plots 218, 528 and 530 [ER 8.10.1]. At Deadline 13 Heads of Terms had been agreed and draft legal documents were being clarified. No update was provided at the end of the Examination [ER 8.10.8]. The Secretary of State issued a letter on 10 March 2023 with regards to the outstanding matters in relation to Crown Land and/or Crown rights. This issue remained unresolved, and a second letter dated 3 April 2023 was issued requesting an update from the Applicants. On 21 April 2023 the TCE responded confirming that, subject to the inclusion of Article 43 in the Order and its continuing application, and the Commissioners being consulted further if any variation to the draft DCO is proposed which could affect any other provisions of the Order which are subject to section 135(1) and 135(2) of the Act, it consents to Articles 4, 5, 6, 17, 20, 31, 32 and 37 of the Order, to the extent that they are included in the Order, applying in relation to Plots 218, 528 and 530 for the purpose of section 135(2) of the Act. The Secretary of State has considered this and does not consider that any further consultation is necessary.

Availability and adequacy of funds

- 6.11. The Applicants submitted an updated Funding Statement and Appendices for each of the project partners at Deadline 13, confirming there was no change to

the estimated costs of £1,800 million for the Proposed Development [ER 8.11.3]. The ExA sought clarification on matters in the Funding Statement concerning CCUS business models, which relate to separate entities who would be responsible for electricity generation with post-combustion carbon capture, CO₂ gathering, CO₂ compression and CO₂ export and storage; and industrial carbon capture and connections to the CO₂ gathering network. The Applicants explained there are multiple business models being developed by the former BEIS department which would provide the commercial framework for each distinctive element of a CCUS system [ER 8.11.4]. Given the 'split chain' nature of the business models and range of potential projects, each element of the CCUS value chain will attract potentially different investors [ER 8.11.5]. UK Research and Innovate support the development of low-carbon technologies and provide grant funding for FEED and associated studies leading up to a final investment decision which was, at the time of the examination scheduled for mid-2023 [ER 8.11.6]. No changes were proposed to the Proposed Development costs as a result of changes to the Order limits. The Applicants consider there would be a minor impact on the associated land costs which would be insignificant in the context of the overall development cost [ER 8.11.7].

- 6.12. The Applicants provided clarification regarding the required mechanism for decommissioning funds during the Examination [ER 8.11.8]. STDC referred to the lack of a separate estimate for land acquisition costs in the Funding Statement. The Applicants state this was not possible due to commercial sensitivity, and that there are good public interest reasons why disclosure of specific values would not be appropriate but provided assurances that the overall figure is correct, is based on professional advice and includes CA costs [ER 8.11.9].

Compulsory Acquisition Schedule

- 6.13. The Applicants submitted an updated CA schedule dated March 2023 following the Secretary of State's letter dated 10 March 2023. Subsequent updates regarding CA, TP and protective provisions have been provided via consultation responses from the Applicants and APs.

Consideration of individual objections and issues

- 6.14. The ExA note that 23 objections were submitted during the Examination from APs regarding the request for the grant of CA and TP powers [ER 8.15.1 et seq.]. After considering the ExA's Report, the Secretary of State consulted those affected parties listed at [ER 10.2.15] for updates on the progress of discussions on 10 March, 3 April and 23 August 2023. The responses to these consultations are detailed in the relevant sections below from para 6.17 onwards.
- 6.15. The Secretary of State notes that 13 objections remain outstanding and considers this to be unsatisfactory considering the amount of time that has passed since the close of the examination. The Secretary of State expects that parties should engage early and often to seek to reach agreement wherever possible.

- 6.16. The Secretary of State has carefully considered the ExA's views on outstanding issues and has taken account of the additional information provided to him by the parties since the close of the Examination. The final position in respect of each AP is set out in the relevant sections below.

Air Products

- 6.17. Air Products are tenants of plots 143, 145, 146 and 150 and/or occupiers of a number of plots of land which contain their pipeline infrastructure affected by Work Nos. 6 and 10. CA rights are proposed for the majority of the plots, with TP of plots 138a, 141a, 142a and 191c which are located on the edges of those proposed for CA of rights [ER 8.16.1]. Air Products raised a number of objections during the Examination: the Applicants responded to their concerns, including PPs in Schedule 12 of the Order and stated negotiations were taking place concerning an asset protection agreement [ER 8.16.3]. The End of Examination Negotiation Status document reported that the Applicants had received no further response from Air Products and were continuing to seek agreement [ER 8.16.4].
- 6.18. The ExA considered that agreement was likely to be reached in the post-Examination period and that the Applicants had provided sufficient justification for the CA of rights and TP. The ExA are satisfied that the proposed powers of CA would be necessary for the delivery of the Proposed Development and is justified in the public interest [ER 8.16.5 et seq.]. Following the Secretary of State's letters of 10 March and 3 April, Air Products (letter dated 13 April 2023) confirmed they are still concluding negotiations with the Applicants with the view to resolve outstanding matters, but maintain their objection in the absence of agreement. The Applicants confirmed (in a letter dated 30 August) that no agreement had been reached. The Secretary of State has considered the ExA's position on these outstanding issues and agrees with the ExA's conclusion that CA of rights and TP would be necessary and justified. The Secretary of State has considered the protective provisions included in the draft DCO for the benefit of Air Products and notes that Air Products have not provided their own preferred version. The Secretary of State agrees with the ExA that the Applicants' proposed protective provisions can be accepted for inclusion in the DCO.

Anglo American

- 6.19. Anglo American are the developers of the Woodsmith Project (formerly York Potash) which is developing an underground mine for winning and working of polyhalite together with its handling and transportation. The area of the York Potash Harbour Facilities Order 2016 intersects with the Proposed Development in a number of locations [ER 8.17.1]. Anglo American are freehold owners of a significant number of plots as set out in the BoR and CA is proposed for plots 325, 328, 329, 330 and 333, with numerous others proposed for CA rights [ER 8.17.1]. Anglo American participated in the CA hearings confirming that they were in active discussions with the Applicants regarding the property agreements and protective provisions [ER 8.17.4]. Agreement was reached in respect of reducing the width of the permanent easement relating to Work No. 2A (buried gas pipeline) and would be reflected in the property agreements [ER 8.17.5]. At Deadline 13 the Applicants confirmed that property agreements were in near final

form and that they were aiming to complete them prior to the end of the Examination, if not shortly after [ER 8.17.9].

- 6.20. The ExA was satisfied that the Applicants have provided reasoned justification for the extent of the proposed CA of land and rights and the proposed CA would be necessary in order to implement the Proposed Development. The ExA consider it would be reasonable and proportionate in this instance [ER 8.17.11].
- 6.21. Following the Secretary of State's letters of 10 March and 3 April 2023 representatives on behalf of Anglo American issued a statement (dated 4 April 2023) which confirmed that parties had reached agreement that the protective provisions included in the Order should be those in the draft DCO submitted to the Examining Authority on 1 November 2022 [REP12-003]. That applies to both the protective provisions in Schedule 3 and the protective provisions in Part 17 of Schedule 12. The Secretary of State agrees that the CA of land and rights in respect of Anglo American's land is justified and would be reasonable and proportionate.

CATS North Sea Limited (CNSL)

- 6.22. CNSL operate CATS gas terminal at Seal Sands Road which processes North Sea gas and distributes to local industrial users as well as the National Transmission System. CNSL also operates a 404km pipeline that transports gas from the North Sea to a terminal at Seal Sands and are leaseholders of plots 110, 112, 113 and 114 from PD Teesport Limited (PDT) who are the freeholder. PDT confirmed that the Applicants would deal with CNSL directly with a view to reaching a voluntary agreement. CA of land is proposed for plot 112 for the gas compound Above Ground Installation (AGI) associated with Work No.2 (the gas connection). CA of rights is proposed for other plots. CNSL submitted a number of objections to the CA of land into the Examination. At Deadline 13 a final signed SoCG was issued which confirmed a number of additional discussions had taken place between the parties. The End of Examination Negotiation Status document indicated that the parties had agreed the form of side agreement and annexed protective provisions were going through final internal sign-off processes [ER 8.18.12].
- 6.23. Following the Secretary of State's letters of 10 March, 3 April and 23 August, representatives on behalf of CNSL (dated 30 August 2023) confirm that, "CNSL has now agreed terms with the Applicants that address CNSL's outstanding concerns in relation to the draft DCO [REP12-003]. On this basis, CNSL have no remaining objection to the DCO application and withdraws any and all representations made to the application".

CF Fertilisers UK Limited (CFL)

- 6.24. CFL have freehold land ownership of several plots (plot numbers 10/10a, 12/12a, 15 to 17, 19 to 26, 28/28a, 30 to 33, and 36) within the Order land, which are proposed as Work No. 6, the CO₂ gathering network corridor. The SoCG states that CFL are supportive of the Proposed Development, which would assist in the achievement of their environmental goals [ER 8.19.2]. Concerns were raised regarding the potential effects on its pipeline, cabling infrastructure including

proposed new pipelines and decommissioning [ER 8.19.3]. The End of Examination Negotiation Status document stated that the side agreement and annexed protective provisions were going through final internal sign-off ahead of completion. Heads of Terms for an option agreement for a Deed of Grant of Easement are agreed, and the documents were with CFL and progress was hoped to be made shortly after the Examination [ER 8.19.4].

- 6.25. The ExA note that CFL did not make specific objections relating to CA of land or rights, and saw no reason why a voluntary agreement would not proceed [ER 8.19.5]. In the absence of such an agreement however they consider that the Applicants had provided sufficient justification for the CA of rights and are satisfied that the proposed powers of CA would be necessary for the delivery of the Proposed Development and is justified in the public interest [ER 8.19.6]. No further updates were provided by CFL in response to the Secretary of State's letters of 10 March, 3 April and 23 August. In the absence of an agreement between the parties the Secretary of State agrees with the Examining Authority's conclusions that the proposed CA would be necessary and justified, and agrees that the protective provisions which are recommended in the draft Order should be included in the final DCO.

Exolum (including Exolum Riverside Limited and Exolum Seal Sands Limited)

- 6.26. Exolum are the occupiers of a large number of plots listed in the BoR which are proposed for CA of rights and TP. Their apparatus is affected by the CO₂ gathering network corridor (Work No.6), and the gas connection (Work No.2). At the end of the Examination a form of side agreement and annexed protective provisions had been agreed and were awaiting sign off. The ExA was satisfied that the need for CA of rights to secure the delivery of the proposed CO₂ gathering network and gas connection, and that matters raised by Exolum would be appropriately dealt with through protective provisions. The ExA considered that the public benefits of the Proposed Development would outweigh any loss of private interests in respect of Exolum's rights [ER 8.20.7]. The Secretary of State agrees.
- 6.27. Following the Secretary of State's letter of 10 March 2023 Exolum confirmed that they have reached agreement with the Applicants in relation to protective provisions and have withdrawn their objection.

Huntsman Polyurethanes (UK) Limited (HPU)

- 6.28. HPU's concerns were raised in relation to CA powers and their interest in the Link Line corridor which consist of rights to maintain their apparatus. The ExA note that the final CA schedule and the end of Examination Negotiation Status table indicates that a side agreement is being negotiated between the parties, alongside the protective provisions. The ExA notes that the Applicants were in contact with HPU throughout the examination and accepted provisions proposed by HPU for inclusion in the draft DCO [ER 9.4.211 - 212]. HPU submitted its own protective provisions on the last day of the examination and the ExA made one amendment accordingly but noted that HPU had not explained in detail the reasons for departing from the Applicants' proposed provisions [ER 9.4.215]. The Secretary of State wrote to parties on 10 March and 3 April 2023 to seek an

update on the completion of any voluntary agreement. On 21 April 2023 preferred protective provisions were again provided by representatives acting on behalf of HPU which, as noted by the ExA, differed from the Applicants' proposed protective provisions in multiple respects. The Secretary of State has considered HPU's proposed amendments to the Protective Provisions. She does not consider that HPU have provided sufficient justification for the amendments. The Secretary of State agrees with the ExA's conclusion that the Applicants' version provides appropriate protection for HPU [ER 9.4.215]. In the absence of an agreement between the parties, the Secretary of State considers that the protective provisions should remain as drafted at the end of the examination.

Ineos Nitriles (UK) Limited

- 6.29. Ineos Nitriles are landowners and occupiers of numerous plots around Seal Sands Road to the north of the River Tees. The land is proposed for TP for a construction compound and laydown area and access at plots 122 and 123 (Work Nos. 9C and 10), as well as CA rights relating to the CO₂ gathering network. Ineos Nitriles supported the project in principle but had concerns the access to critical infrastructure, adversely affecting their offices, give rise to safety hazards, and that decommissioning had not been adequately addressed [ER 8.22.2].
- 6.30. At the End of the Examination Heads of Terms had been agreed subject to board approval. Ineos Nitriles confirmed, in response to the Secretary of State's letter of 10 March (dated 3 April 2023) that they have reached agreement with the Applicants in relation to protective provisions and have withdrawn their objection.

The Breagh Pipeline Owners' - Ineos UK SNS Limited and One-Dyas UK Limited

- 6.31. The Breagh Pipeline is a southern North Sea gas field with pipeline connected to Teesside Gas Processing Plant at Seal Sands Road. The owners state that the pipeline is a nationally significant asset that is integral to the UK's current and future energy security [RR-010]. It is co-owned by Ineos UK SNS Ltd and One-Dyas UK. Both owners hold a number of land rights and interests within the Order limits as set out in the BoR. The majority are proposed for CA of rights. One-Dyas are listed as freehold owners of a small area of land at plot 356 and lessee/tenants of numerous plots. The Breagh apparatus is affected by the CO₂ gathering network corridor (Work No.6), and the gas connection corridor (Work No.2) [ER 8.23.2].
- 6.32. The ExA noted that the final version of the CA schedule and End of Examination Status table indicate that agreement has been reached, subject to final sign off [ER 8.23.4]. The ExA considered the lack of engagement from both parties in the Examination but acknowledged agreement had been reached subject to sign-off, and was satisfied that CA is needed in order to secure the delivery of the proposed CO₂ gathering network and gas connection, that matters raised would be appropriately dealt with via protective provisions at Schedule 12, Part 21 of the Order [ER 8.23.5]. Breagh Pipeline Owners confirmed (dated 15 March 2023), in response to the Secretary of State's letter of 10 March, that they have reached agreement with the Applicants in relation to protective provisions and have withdrawn their objection.

National Grid Electricity Transmission PLC (NGET)

- 6.33. NGET are not landowners but are Statutory Undertakers and occupiers of numerous plots that are proposed for CA of rights or TP. A number of substations and overhead transmission lines are within or in close proximity to the Order land, including at the site of the proposed connection at Tod Point substation (Work No.3) to upload electricity from the CCGT [ER 8.24.1]. NGET object to any CA powers for land or rights or TP where it would affect its land interests, rights, apparatus or right of access and maintain its apparatus, unless suitable protections have been secured [ER 8.24.2]. The End of Examination Negotiation Status documents state that the parties continue to engage. The ExA concluded that the extinguishment of rights and interference with apparatus sought by the Applicants would be necessary for the purpose of carrying out the proposed development and the Secretary of State agrees.
- 6.34. The ExA concluded that the Applicants' protective provisions should be accepted in the absence of alternatives being put forward by NGET. NGET confirmed, in response to the Secretary of State's letters of 10 March and 23 August, that they were close to reaching agreement with the Applicants and provided revised protective provisions that they want included in the final DCO and which they anticipated would shortly be agreed upon. The Applicants stated in their letter of 30 August that final protective provisions had been agreed subject to final signatures but have not commented on NGET's revisions or provided a copy of any agreed protective provisions. The Secretary of State has carefully considered NGET's revised protective provisions and concludes that many of the changes are minor and can be accepted. The Secretary of State has not included the provision entitled "Acquisition of Land", subject to which the Applicants would not be able to acquire NGET's apparatus, land, land interests and rights otherwise than by agreement, such agreement not to be unreasonably withheld. The Secretary of State's understanding is that the inclusion of this provision has not been agreed with the Applicants. In light of the conclusion that the case for CA and TP has been made out, the Secretary of State does not consider the provision to be necessary and notes that such provisions risk impeding the Applicants' ability to deliver the Proposed Development. The Secretary of State has also not included the proposed replacement of "street" with "highway", the amendment to trench-bearing capacity or the amendment to the indemnity clause, as it is not considered that these changes are necessary or justified.

National Gas Transmission PLC (Formerly National Grid Gas PLC (NGT))

- 6.35. NGT are Statutory Undertakers and occupiers of numerous plots that are proposed for CA of rights or TP. NGT has a high-pressure gas transmission pipeline and above ground installation within and in close proximity to the Order land including the proposed gas connection for Work No.2. The final CA schedule confirms that the parties continue to seek agreement. The Applicants consider that if agreement is not reached the CA powers should be granted for the reasons given in the SoR and notes that NGT would benefit from the protective provisions provided at Part 4 of Schedule 12 of the Order [ER 8.25.9].
- 6.36. The ExA considered that the need for the proposed AGIs and gas connections have been satisfactorily demonstrated by the Applicants and direct the Secretary

of State to their conclusions on CNSL and NSMP relating to the CATS and TGPP terminals which overlap with the land occupied by NGT [ER 8.25.10]. For the purposes of s138 of the PA2008 the ExA was satisfied that the extinguishment of rights and interference with apparatus sought would be necessary for the purpose of carrying out the Proposed Development, and the Secretary of State agrees. The ExA also concluded that the Order would contain appropriate protective provisions for NGT [ER 8.25.11].

- 6.37. NGT confirmed, in response to the Secretary of State's letter of 23 August, that they were close to reaching agreement with the Applicants and provided revised protective provisions that they want included in the final DCO. The Applicants stated in their letter of 30 August that final protective provisions had been agreed subject to final signatures but have not commented on NGT's revisions or provided a copy of any agreed protective provisions. In the absence of comments from the Applicants, the Secretary of State has carefully considered NGT's revised protective provisions and concludes that the majority of these are minor and can be accepted. For the reasons set out above in respect of NGET, the Secretary of State has not included all of the proposed changes, including the proposed provision entitled "Acquisition of Land".

Navigator Terminals North Tees Limited and Navigator Terminals Seal Sands Limited ("Navigator")

- 6.38. Navigator are freehold owners, tenants and occupiers of a number of plots located at Seal Sands Road, proposed for CA of rights and TP for Work Nos. 6, 9 and 10. Bespoke protective provisions are provided for the benefits of Navigator at Part 24, Schedule 12 of the Order. At the end of the Examination Heads of Terms for an Option Agreement and Deed of Grant of Easement had been agreed between the parties, and draft legal documents issues but that negotiations were continuing [ER 8.26.3].
- 6.39. The ExA concluded that in the absence of agreement it was satisfied that the CA is needed in order to secure the delivery of the Proposed Development and that protective provisions would be secured in the Order [ER 8.26.4]. In the absence of an agreement between the parties the Secretary of State agrees with the Examining Authority's conclusion that the Applicants' draft protective provisions provide appropriate protections for Navigator [ER 9.4.218] and should be accepted for inclusion in the final DCO.

Network Rail Infrastructure Limited (NR)

- 6.40. NR is a statutory undertaker with a range of interests within the Order Limits including railway corridors listed in ER 8.27.1. The land is required for a range of works including CO₂ gathering network corridor, gas, electricity and water connections [ER 8.27.1]. NR raised a number of concerns that information supplied was not sufficiently detailed to assess railway safety and operation and they sought protection from the exercise of CA powers over their operational land and that their standard protective provisions would need to be included in the Order. Additionally, a number of legal and commercial agreements would need to be entered into [ER 8.27.2]. The final CA schedule and End of Examination Negotiation Status document state that Heads of Terms have been reviewed by

NR and a proposal provided by the Applicants for a commercial agreement and that parties continue to seek to reach agreement [ER 8.27.5].

- 6.41. The ExA noted that NR did not engage any further with the Examination beyond submission of their relevant representations. The ExA was satisfied that the extinguishment of rights and interference with apparatus sought by the Applicants in relation to NR land interests would be necessary for the purpose of carrying out the Proposed Development and the Secretary of State agrees.
- 6.42. The ExA notes that the draft Order includes bespoke protective provisions for the benefit of NR in order to safeguard its interests and assets [ER 8.27.6] and that NR did not provide their preferred protective provisions to the examination [ER 9.4.150]. NR provided their preferred protective provisions for the first time in October 2023, in response to the Secretary of State's letter of 22 September. The Applicants confirmed on 6 October that agreement has not been reached but the parties are engaged in negotiating a side agreement. The Applicants wrote again to the Secretary of State on 24 October 2023 confirming that NR's proposed amendments were not agreed. In the absence of an agreement between the parties the Secretary of State has considered NR's proposed protective provisions, notwithstanding the lateness of the submission and the absence of an explanation or justification from NR as to why these changes are required. The Secretary of State agrees with the Examining Authority's conclusions that the Applicants' proposed provisions can be included in the Order but has made some of NR's suggested changes where these are relatively minor or uncontentious and appear reasonable.

Northern Gas Networks Ltd (NGN)

- 6.43. NGN are a statutory undertaker and occupiers of a number of plots as the BoR which are proposed for CA of rights and TP. Protective Provisions were entered into the DCO at Deadline 4 of the examination and are set out in Schedule 12 Part 26 of the Order. It was noted that an asset protection agreement was being negotiated with parties but there is limited information regarding timescales. The Secretary of State's letters of 10 March 2023 and 23 August 2023 requested updates on negotiations. NGN responded on 8 September setting out concerns but without reference to the ongoing negotiations. The Applicants confirmed in their letter of 6 October 2023 that they will continue to engage with NGN in relation to their concerns.
- 6.44. The ExA concluded for the purposes of s138 of PA2008 it was satisfied that the extinguishment of rights and interference with apparatus sought would be necessary for the purpose of carrying out the Proposed Development [ER 8.28.3]. It further noted that the Order, including the Applicant's final version of protective provisions for the protection of NGN, would provide appropriate protections for NGN [ER 9.4.223]. In the absence of an agreement between the parties the Secretary of State agrees with the ExA's conclusions on CA and TP and in relation to the protective provisions which are recommended in the draft Order.

Northern Powergrid (Northeast) PLC (NPG)

- 6.45. NPG are Statutory Undertakers that are occupiers of a number of plots which are proposed for CA of rights or TP [ER 8.29.1]. Their concerns relate to the impacts on their existing assets and their ability to serve clients in the future. NPG were not satisfied that the Order included adequate land rights for works required to relocate their apparatus or to access and maintain their apparatus [ER 8.29.2]. The final CA schedule and End of Examination Negotiation Status document set out that parties are making progress on the draft side agreement and protective provisions and would continue to seek agreement. The Applicants' position is that CA powers should be granted for the reasons set out in the SoR and that NPG would benefit from the protective provisions set out in Part 12 of Schedule 12 of the Order.
- 6.46. The ExA was satisfied that the extinguishment of rights and interference with apparatus sought would be necessary for the purpose of carrying out the Proposed Development. The Secretary of State agrees. The Order includes bespoke protective provisions for the benefit of the company to safeguard its interests and assets and the ExA considered them to be sufficient [ER 8.29.6]. Following the Secretary of State's letter of 3 April 2023, representations on behalf of NPG were received (dated 30 April 2023) to confirm that parties had reached agreement and to formally withdraw their objection to the Order.

North Sea Midstream Partners (NSMP)

- 6.47. NSMP manage the interests of Teesside Gas Processing Plant ("TGPP") and Teesside Gas and Liquids ("TGL") and they own the TGPP plant at Seal Sands Road, a national energy infrastructure installation delivering gas into the national transmission system. The plant supports the operation of approximately 30 natural gas fields in the North Sea and is classified as an upper tier COMAH site. They are freehold owners of plots 103, 105 and 106, which are adjacent to the proposed site of the AGI and gas connection at plot 112. They also have rights of access and easements on nearby land including plots 98, 108 and 111 which contain sections of the sole access road into the TGPP [sheet 3, REP12-015]. The plots are required in relation to Works No. 2 (the gas connection) and Works No.10 (access).
- 6.48. NSMP's objections mainly centre around use of the access into the TGPP site and its relationship with the adjoining plots which are on land leased by CNSL within the CATS terminal. The Applicants are pursuing an alternative access via the CATS terminal, which should resolve many of NSMP's concerns, however, no agreement has been reached for this alternative access. The ExA considers that the protective provisions would adequately cover NSMP's safety concerns should agreement not be reached on an alternative access [ER 8.30.14]. The ExA concludes that the proposed powers of CA would be necessary for the delivery of the Proposed Development for Work No. 2 and are justified in the public interest [ER 8.30.16]. The Secretary of State agrees, but has given careful consideration to the points raised by NSMP in respect of the protective provisions.

- 6.49. Following the Secretary of State's letters of 10 March, 3 April and 23 August, both parties confirmed that no agreement has been reached. The Secretary of State notes the ExA's various recommendations and has also considered the representations of the parties.
- 6.50. In the absence of an agreement between the parties the Secretary of State agrees with the ExA's conclusions on CA and in relation to the protective provisions which are recommended in the draft Order. The Secretary of State has adopted the changes proposed by the ExA, for the reasons given in the ER. In addition, the Secretary of State accepts NSMP's reasonable proposed amendments to the defined term "relevant works" and their proposed expanded definition of "NSMP Group" to include "affiliates".

North Tees Group (NTG)

- 6.51. NTG are freehold landowners of land which lies within the Link Line pipeline corridor (plots 119 to 121, 124 (a, b and d), and 128/128a) and they lessee/tenant plots 81 and 83 to 88. The land is required for Work No. 6 [ER 8.31.1]. NTG engaged throughout the examination with concerns following the extent and duration of rights; sterilisation of land; TP of plots 124a and 128a; crossing points and management responsibilities [ER 8.31.5]. At the end of the Examination the final CA schedule and End of Examination Negotiation Status document confirmed that Heads of Terms for a voluntary Option Agreement for a Deed of Grant of Easement were being negotiated by parties, and the parties continued to engage in relation to a voluntary agreement [ER 8.31.29]. The ExA acknowledged that NTG is a significant landowner in the area and have responsibility for a number of users of the Link Line pipeline corridor and that safety is paramount and is a common theme with many of the APs who engaged in the examination [ER 8.31.30]. The ExA noted NTG's concerns regarding the widths of the pipeline corridor, this varies for a variety of reasons, largely because of the flexibility required before full engineering design is carried out. The majority of the 90m width quoted is proposed for TP.
- 6.52. The ExA considered that the PPs in the Order would ensure that NTG would be given reasonable notice and details of works prior to commencing any part of the Proposed Development which would have an effect on operations or access. Suitable provisions for access for construction and maintenance are also set out in separate PPs for other AP's who occupy the pipeline corridor. The ExA did not consider it necessary to reduce rights for crossing points within plot 124b [ER 8.31.32].
- 6.53. The ExA noted NTG's concerns regarding negotiations and their desire to reach an agreement as an alternative to CA. The Applicants provided regular updates throughout the examination via the CA Schedule and have indicated their willingness to continue discussions regarding voluntary agreements and protective provisions. Whilst no agreement had been reached by the close of the examination, the ExA considered that the Applicants' actions have been appropriate and reflect the CA guidance [ER 8.31.33].
- 6.54. The ExA considered that the interests of NTG and the various occupiers of the pipeline corridor would be adequately protected through the provisions of

Schedule 12 of the Order. The ExA considered the Applicants had provided a satisfactory explanation for the extent of the land and duration of powers and that they would not use the proposed CA powers if they were not needed or if a narrower easement could be agreed between parties. The ExA consider this to be reasonable [ER 8.31.34]. The ExA found there is a compelling case in the public interest for the CA powers sought and are satisfied that the powers of CA in relation to plots which NTG own and have an interest in would be necessary and are justified in the public interest [ER 8.31.35]. The Secretary of State agrees. In relation to the form of the protective provisions, the Secretary of State notes that NGT submitted alternative protective provisions which were considered by the ExA and amendments were made to the draft DCO where considered appropriate. The Secretary of State received no response from NTG to their letters dated 10 March, 3 April and 23 August. In the absence of an agreement between the parties the Secretary of State agrees with the Examining Authority's conclusions and has included the protective provisions which were recommended in the draft Order.

Northumbrian Water (NWL)

- 6.55. NWL are a statutory undertaker and operators of Bran Sands Wastewater Treatment Plant ("WwTP") and have interests in numerous plots of land north and south of the Tees, which contain their apparatus for water and wastewater supply. The Applicants seek to obtain CA rights and TP over NWL land at numerous locations but concentrated at Bran Sands, adjacent to the proposed CO₂ gathering network corridor [ER 8.32.1].
- 6.56. The final SoCG set out that the side agreement annexing bespoke protective provisions had been agreed and was awaiting sign off. On 9 November 2022 NWL confirmed a voluntary agreement had been entered into and they therefore wished to withdraw their objections [ER 8.32.4]. Following the Secretary of State's letter of 10 March NWL reconfirmed that they have reached agreement with the Applicants in relation to protective provisions and withdrawn their objection.

NPL Waste Management Ltd (NPL)

- 6.57. NPL are freehold owners of a number of plots located at Billingham which relate to a disused anhydrite mine. The Applicants seek CA of rights and TP over the mine for the construction and maintenance of the CO₂ gathering network corridor [ER 8.33.1].
- 6.58. In response to the Secretary of State's letter dated 10 March 2023 NPL confirmed that they had not reached agreement with the Applicants. The Secretary of State received no responses from NPL to the letters dated 3 April and 23 August 2023. In the absence of an agreement between the parties the Secretary of State agrees with the ExA's conclusions on CA and TP and in relation to the protective provisions which are recommended in the draft Order.

PD Teesport Limited (PDT)

- 6.59. PDT is the statutory harbour authority for Teesport and is a statutory undertaker for the purposes of s127 of the PA2008 [ER 8.34.1]. PDT are freehold owners and or/occupiers of numerous plots to both sides of the River Tees. Their interests would be affected by Work No.6, Works Nos 2A and 2B, Works 9b and 10 at plots 222 and Teesworks (plots 474,475, 477), Work No.5 and Work No.8 at plot 378 [ER 8.34.2]. They have also granted leases to a range of affected parties (“APs”) involved in the examination. Separate conclusions have been reached on the proposed CA of plots leased by other parties, including matters related to alternatives [ER 8.34.13].
- 6.60. The ExA noted that access on South Gare Road is unlikely to be affected due to the methods of construction of Work Nos. 5 and 8. If closure is required, the protective provisions require the Applicants to provide an alternative route. The ExA noted that the provisions in Part 14 of Schedule 2 of the Order were largely agreed between parties [ER8.34.14].
- 6.61. Following the close of the examination (by letter dated 11 November 2022) and again in response to the Secretary of State’s letter of 10 March 2023, PDT confirmed that they have reached agreement with the Applicants in relation to protective provisions and have withdrawn their objection.

Redcar Bulk Terminal Ltd (RBT)

- 6.62. RBT are freehold owners of plots 223 and lessee/tenant of plot 222 (owned by PDT) and also occupy a number of plots within Teesworks [ER 8.35.1]. RBT operate a deep marine terminal on the south bank of the River Tees [ER 8.35.2]. The Applicants seek to use RBT land and facilities for unloading of outsized loads during the construction phase with powers sought over plots 222 and 223 [ER 8.35.3]. RBT’s concerns related to the impacts on its ongoing operations at the terminal and that of its customers [ER 8.35.4]. Other concerns related to CA rights for an underground gas pipeline through plot 288 which was subsequently removed at the first change request [ER 8.35.5]. At Deadline 13 it was confirmed that protective provisions had been agreed but negotiations were continuing on the side agreement and associated legal agreements [ER 8.35.14].
- 6.63. Following the close of the Examination (by letter dated 26 January 2023) RBT confirmed that they have reached agreement with the Applicants in relation to protective provisions and withdrawn their objection.

Redcar and Cleveland Borough Council (RCBC)

- 6.64. RCBC owns plots 499, 526, 527, 529 and 539 located at Coatham Sands, including the foreshore. The plots are proposed for CA of rights for Work Nos 5 and 8 and are classed as Open Space, considered in paragraph 6.7 of this Letter [ER 8.36.1]. The final CA Schedule and the End of Examination Negotiation Status document noted that Heads of Terms had been agreed and a Deed of Grant of Easement is agreed in principle [ER 8.36.3].

- 6.65. The ExA noted that RCBC made no submissions in respect of CA matters and that completion of an agreement was imminent. The ExA were satisfied that the Applicants had provided reasoned justification for the extent of the proposed CA rights. There is a need for the land to be utilised in connection with the water discharge connection CO₂ export pipeline corridors, which are fundamental elements of the Proposed Development connecting to the Offshore Elements of the NZT project [ER 8.36.5]. In the absence of any update following the Secretary of State's letters of 10 March and 3 April 2023 the Secretary of State agrees with the ExA's conclusions in relation to the CA rights sought by the Applicants.

SABIC Petrochemicals UK Ltd ("SABIC")

- 6.66. SABIC operates facilities that connect to its North Tees terminals and storage facilities via the Link Line corridor. It also operates a cross country network, and substantial logistical facilities to the north and south of the Tees. SABIC owns plots 65, 67, 67a and 68 (proposed for TP for Work No.9) and are lessees/tenants or occupiers of numerous other plots primarily along the Link Line corridor [ER 8.37.1]. SABIC raised concerns regarding the potential effects upon its numerous locations, and the proposed CA of rights which are not compatible with its existing rights. SABIC is also concerned that the Proposed Development would compromise the safety and operation of the Link Line corridors, and its uninterrupted access to, and navigation of, the River Tees [ER 8.37.2].
- 6.67. The CA Schedule and End of Examination Negotiation Status document state that Heads of Terms regarding an option agreement were agreed in December 2021 and draft legal documents were in negotiation. Following the Secretary of State's letter of 3 April 2023 SABIC wrote (dated 21 April 2023) to confirm their preferred protective provisions which include minor amendments to those provided to the examination previously. The Secretary of State has carefully considered SABIC's proposed amendments to the protective provisions. She does not consider that SABIC have provided sufficient justification for the amendments. The Secretary of State agrees with the ExA's conclusion that the Applicants' version provides appropriate protection for SABIC [ER 9.4.171]. In the absence of an agreement between the parties, the Secretary of State considers that the protective provisions should remain as drafted at the end of the examination.

Sembcorp Utilities (UK) Ltd ("Sembcorp")

- 6.68. Sembcorp's industrial power and utility assets are based at Wilton International, supplying major industrial businesses as well as securing inward investment and is described as an industrial and manufacturing hub of national importance. Its pipeline corridor contains critical infrastructure used for import and export of various chemicals and gases linking with other major industrial clusters on Teesside. The entire pipeline corridor stretches from Wilton International, via a tunnel under the River Tees through to Seal Sands and onto Billingham and totals around 12 km [ER 8.38.1].
- 6.69. Sembcorp has significant land interests within and around the Order land, both as owner and lessee/tenant, as well as numerous rights held under deeds of grant and easements. It highlighted the potential disruption to its complex legal

arrangements through which it manages its pipeline corridors and sought for any new rights to safeguard the rights of existing businesses [ER 8.38.4]. The ExA concluded that there was a compelling case in the public interest for the CA powers sought, and that these were necessary and justified in the public interest [ER 8.38.34].

- 6.70. Following the examination and in response to the Secretary of State's letter 10 March 2023, Sembcorp confirmed that they have reached agreement with the Applicants in relation to protective provisions and withdrawn their objections. The agreed provisions have been included in the final Order.

South Tees Development Corporation (STDC)

- 6.71. STDC is a Mayoral Corporation and encompasses the entities of Teesworks Limited and South Tees Development Limited as defined in the Order. STDC are responsible for 1,820 hectares of land to the south of the River Tees, secured by compulsory purchase order of land relating to the former steelworks. The wider development site 'Teesworks' forms a large part of the area granted Freeport status in 2021. STDC are freehold owners of a significant number of plots and the largest areas of land proposed for CA and TP of land and rights required for Works Nos 1 and 7, together with other elements of the Proposed Development [ER 8.39.2].

- 6.72. STDC objected throughout the examination on the following issues:

- Excessively wide land requirements in the utilities/easement corridor;
- An alternative access to Tees Dock Road should be considered;
- Alternative construction worker parking would be available at a park and ride, so a number of plots would be unnecessary;
- Potential sterilisation of development land from CA and TP of various plots (including access to RBT); and
- The preference for entering into voluntary legal agreements for a lease as opposed to permanent acquisition of land and rights.

- 6.73. The final version of the SoCG set out the parties' position that STDC's concerns could largely be addressed via protective provisions [ER 8.39.37] and it was noted that the parties would continue to work together to finalise option agreements and an interface agreement alongside protective provisions [ER 8.39.40]. The ExA concluded that STDC's concerns would not preclude the finding that there is a compelling case in the public interest for the CA powers sought. The ExA were satisfied that the use of CA would be necessary and is justified in the public interest [ER 8.39.50].

- 6.74. Following the Secretary of State's letters of 10 March and 3 April 2023 STDC confirmed that no agreement had been reached in respect of the powers sought. On 27 April 2023 the Secretary of State received an update from the Applicants confirming that a legally binding agreement has now been reached with STDC in respect of the main site which secures arrangements for access and removes the Tees Dock Road Access from the Application (subject to the agreement of the Secretary of State and to which the Secretary of State has agreed), reducing

the extent of the Order Limits and Order Land. STDC also confirmed their support for the change request (by letter dated 5 May 2023) and that it withdraws its objections to the Proposed Development insofar as they relate to electrical connections.

- 6.75. Nevertheless, STDC's other outstanding objections remain. In the absence of a final agreement between the parties the Secretary of State has carefully considered STDC's proposed protective provisions and the ExA's comments. The changes proposed by the ExA and set out at ER 9.4.210 have been accepted. In light of the accepted change request, the Secretary of State has added a clause clarifying that a means of access from the Tees Dock Road shall not be created, as requested by STDC. The Secretary of State has also deleted the words "complies with the adequacy criteria" from the definition of "diversion criteria" as requested by STDC. Overall, the Secretary of State agrees with the Examining Authority's conclusions in relation to the protective provisions which were recommended in the draft Order and has included provisions in the final Order accordingly.

Stockton-on-Tees Borough Council (STBC)

- 6.76. STBC is a freehold landowner of a number of plots in the Billingham area, which comprises of public highway land. The highway land would be crossed by the CO₂ gathering network corridor (Work No.6).
- 6.77. The ExA noted that STBC participated in the Examination as one of the RPAs but did not make any submissions in relation to land matters relating to highways, nor in its SoCG. The final CA schedule specifies that a voluntary agreement is not required in respect of highway land [ER 8.40.2].

Suez Recycling and Recovery UK Ltd ("Suez")

- 6.78. Suez are freehold owners of plots 7 and 8. The Applicants seek CA rights and TP to enable the CO₂ gathering network (Work No. 6). Part 19 of Schedule 12 of the Order included protective provisions for the benefit of Suez. In response to the Secretary of State's letter of 10 March 2023 the Applicants noted that it was unlikely that agreement of the Option Agreement for a Deed of Grant of Easement would be reached prior to the Secretary of State's decision. The ExA noted at the close of the examination that negotiations were continuing. In the absence of a voluntary agreement the ExA were satisfied that the proposed CA is needed in order to secure the delivery of the Proposed Development, and that satisfactory protective provisions for Suez would be secured in the Order [ER 8.41.4]. The Secretary of State agrees.

Teesside Wind Farm Ltd (EDF Renewables Ltd) (TWF)

- 6.79. TWF comprises 27 turbines located off the coast of Coatham Sands. Its operator, EDF, raised concerns that the Proposed Development had the potential to adversely affect their electricity export cable, which runs from the turbines to the National Grid substation at Warrenby. EDF/TWF are not landowners but occupy a number of plots in the area of Coatham dunes proposed for CA of rights for the CO₂ export pipeline (Work No.8) and the water discharge connection corridor

(Work No.5) [ER 8.42.1]. At Deadline 11 TWF provided an update to the negotiations, explaining that a draft side agreement and protective provisions were agreed and would be completed imminently [ER 8.42.3].

- 6.80. Following the close of the examination, EDF and the Applicants have confirmed in their letter dated 30 January 2023 that they have negotiated to reach agreement regarding protective provisions and EDF subsequently confirmed the removal of their objection to the DCO application.

Other Affected Persons

- 6.81. The ExA noted that there are numerous occupiers and users who current have rights of access from South Gare Road [ER 8.43.1]. The Applicants confirm that CA of rights is sought over a section of South Gare Road to lay and maintain pipes for the CO₂ export pipeline (Work No.8) and water discharge outfall (Work No. 5B). Such powers would only be exercised if agreement cannot be reached with PDT to facilitate access and ensure the Proposed Development is deliverable. PPs for PDT under Part 14 of Schedule 12 of the Order are also relevant to its occupiers. Article 159 specifically refers to the right for parties authorised by PDT to use South Gare Road, and article 163 requires the undertaker not to hinder or prevent access to South Gare (and provide an alternative diversionary route if necessary). No separate agreement is therefore required with the occupiers of South Gare Road including Teesside 43 BSAC diving club [ER 8.43.1].
- 6.82. Marlow Foods utilise part of Nelson Avenue as their primary access to their operational site at Billingham. The Applicants' proposed protective provisions prevent the undertaker from exercising powers to prevent Marlow Foods being able to access their adjacent site and require advanced notice to be given to Marlow Foods before doing works that utilise the highway route at Nelson Avenue. The Applicants therefore consider that the protective provisions appropriately address and manage the potential impact of the proposed scheme on Marlow Foods' operations [REP12-005]. Despite initial contact with the Applicants prior to and during the examination, Marlow Foods neither commented on the Applicants' protective provisions nor submitted their own preferred protective provisions to the examination, therefore, the ExA considers that the Applicants' protective provisions should be accepted. No further comments were received from Marlow Foods in response to the Secretary of State's letters of 10 March and 3 April 2023. In the absence of an agreement between the parties the Secretary of State agrees with the Examining Authority's conclusions in relation to the protective provisions recommended in the draft Order.
- 6.83. The Church Commissioners for England are freehold owners of multiple plots around Seal Sands Road in relation to below ground mineral rights. The Applicants do not propose the need to acquire an interest in such rights [ER 8.43.3]. The EA are owners and occupiers of plots 218 and 232a and as a regulator in respect of main rivers, where TCE is owner [ER 8.43.4]. The CA schedule also lists the rights of a range of other parties who are not freehold landowners nor did they participate in the examination but may be affected by the Proposed Development or have an interest. Part 1, Schedule 12 of the Order

includes protections for these parties, including privately owned and operated mains, pipelines and cables which are not covered by the protective provisions in Schedule 12 [ER 8.43.5].

Statutory Undertakers

- 6.84. Section 127 and s138 of PA2008 are engaged in relation to the proposals to acquire land and /or rights, seeking powers to interfere with the apparatus of the Statutory Undertakers in paragraphs 9.1.24 to 9.1.32 of the SoR [ER 8.44.1]. Agreement has been reached with NWL and is considered in the preceding sections. Protective provisions in Part 2 of Schedule 12 of the Order would protect BT/Openreach together with any other telecommunications operators [ER 8.44.4].
- 6.85. The ExA concluded that all Statutory Undertakers whose rights and apparatus would be interfered with have been dealt with, with the exception of BT plc/Openreach who are now listed in the BoR. Whilst s127 could apply to this undertaker, its provisions are not triggered in their case [ER 8.44.7]. Schedule 12 of the Order includes protective provisions for the Statutory Undertakers and the ExA was satisfied that the interference with apparatus and rights is necessary for the purposes of carrying out the proposed development [ER 8.44.8]. Accordingly, having regard to s138(4) of the Act the ExA recommended to the Secretary of State that the Order includes provision for the extinguishment of the relevant rights or the removal of the relevant apparatus [ER 8.44.9].

Special Category Land

- 6.86. CA rights are required over open space to enable delivery of Work Nos. 5 and 8. The ExA agrees with the Applicants that the exemption in s.131 (5) of the Act would apply. The ExA concluded that the test under s.132 (3) of the Act is satisfied, as the open space would be no less advantageous than it was before [ER 8.45.2].

Overall conclusions on CA and related matters

- 6.87. The ExA has concluded that compulsory acquisition powers were required for the purposes of carrying out the Proposed Development. It concluded that private losses to the APs would be outweighed by the public benefits from the Proposed Development and that there was a compelling case in the public interest to grant the compulsory acquisition powers and that the tests set out in sections 122(2) and 122(3) of the Planning Act 2008 were satisfied.
- 6.88. NGET, NGG, NR, Northern Gas, NPG, PDT and BT/Openreach are statutory undertakers. In each case the ExA concluded that the tests in sections 127 and 138 of the Planning Act 2008 were satisfied. The Secretary of State agrees and has concluded that with the inclusion of the protective provisions contained in the Order the compulsory purchase powers will not cause serious detriment to the carrying on of the relevant undertaking.

- 6.89. The Secretary of State is satisfied that there are no outstanding issues or reasons to refuse the Compulsory Acquisition and Temporary Possession powers as recommended by the ExA.

7. The Secretary of State's Consideration of the Planning Balance

- 7.1. Where National Policy Statements have effect, section 104 of the Planning Act 2008 requires the Secretary of State to have regard to a range of policy considerations including the relevant National Policy Statements and marine policy documents, local impact reports, prescribed matters and any other matters that the Secretary of State thinks are important and relevant to the decision. Where section 104 does not apply, section 105 requires the Secretary of State to have regard to local impact reports, prescribed matters and any other matters that the Secretary of State considers are important and relevant to the decision.
- 7.2. As set out above, the Secretary of State concludes, as the ExA did, that NPS EN-1 can be applied to the whole of the Proposed Development and the application for consent can therefore be determined under section 104. As the ExA did, the Secretary of State also presents her findings in the alternative i.e. by considering the Specified Elements under section 105.
- 7.3. The Secretary of State notes that the Proposed Development should be decided in accordance with the relevant NPSs EN-1, EN-2, EN4 and EN5. The ExA had regard to the draft 2021 NPSs and the Secretary of State has given regard to the 2023 draft NPSs and agrees with the ExA that the draft NPSs can be considered to be important and relevant matters in respect of s104 and s105 of the PA2008. The North East Marine Plan provides support for the Proposed Development. The host local authorities also support the Proposed Development as confirmed by the LIRs and there is no conflict with the relevant development plans. No prescribed matters have been identified. Both the ExA and the Secretary of State have identified a range of important and relevant matters, namely energy and climate change legislation, and policy which postdate the publication of the energy NPSs in 2011, including the publication of the designated 2024 NPSs. The Secretary of State agrees that significant weight should be ascribed to these matters and that they represent important and relevant matters in the context of s105 of the PA2008.
- 7.4. All nationally significant energy infrastructure developments will have some potential adverse impacts. In the case of the proposed development, most of the potential impacts have been assessed by the ExA as having not breached NPS policy or those contained in the 2021 draft NPSs, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy.
- 7.5. The ExA considered that the urgent need for new electricity generating capacity (as set out in EN-1) and the urgent need for gas-fired electricity generation with CCS and CCS infrastructure (set out in 2021 draft EN-1) provide a strong case for the Proposed Development and gives substantial weight to the need for the Proposed Development. The Secretary of State notes that 2023 draft EN-1 provides the same support for the Proposed Development and the designated 2024 EN1 further strengthens this support by making all low carbon

infrastructure, including natural gas fired electricity generation which is CCR, a critical national priority (see para 4.11). This is in addition to the moderate beneficial weight accorded to the socio-economic effects arising from employment provision and training and skills opportunities available for the local population and the enhancements to biodiversity [ER 7.3.9].

- 7.6. Despite the future benefits the wider NZT Project could bring in terms of reducing CO₂ emissions, the ExA identified significant adverse effects in relation to the significant volume of GHG over its lifetime both when considered individually and cumulatively with the sector and ascribed this moderate weight in the planning balance. The Secretary of State, however, considers that the volume of GHG emissions carries significant adverse effects, in accordance with both the designated 2011 and 2024 and draft 2021 and 2023 NPSs (see para 4.56 above) and, therefore, ascribes this significant negative weight in the planning balance. Additionally, the development of the PCC Site would result in significant visual effects to recreational and PRoW users in a number of locations including Seaton Carew seafront, the England Coastal Path at Warrenby and Redcar seafront both during construction and when operational. The ExA, however, considers agreement of a high-quality final design and use of materials in accordance with the SPD and the principles of the Masterplan and Design Guide may assist in mitigation of such effects [ER 7.3.10].
- 7.7. Overall, the ExA considers that the Proposed Development would be in accordance with relevant NPSs and the benefits significantly outweigh the limited harms such that there is no conflict with s104(7) of the PA2008 [ER 7.3.12]. The ExA also notes that recent energy and climate change policy, including draft policy, constitute important and relevant matters which would justify the approval of the Specified Elements under section 105. The ExA concluded that the case for Development Consent is made [ER 7.3.13]. The Secretary of State agrees with the ExA that the benefits of the Proposed Development attract significant positive weight. She differs from the ExA in her conclusion that the adverse impact of GHG emissions attracts significant, rather than moderate, negative weight. She has considered and weighed the benefits and harms that have been identified and concludes overall that the benefits of the Proposed Development outweigh the harms. She notes that the Proposed Development would be in accordance with policy, including the NPSs. She agrees with the ExA that the case for Development Consent has been made.

Secretary of State's Conclusion and Decision

- 7.8. The Secretary of State has considered the matters discussed in the ExA's Report together with the representations received in response to the consultation letters of 10 March, 3 April, 16 May, 7 August, 23 August, 14 September 2023, 30 November and 20 December 2023.
- 7.9. For the reasons given in this letter the Secretary of State considers that there is a strong case for granting development consent for the Proposed Development. Given the national need for the development, as set out in the relevant National Policy Statements, the Secretary of State does not believe that this is outweighed by the adverse impacts set out above. The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting

development consent, including the modifications set out in section 9. In reaching her decision, the Secretary of State confirms regard has been given to the ExA's Report, the LIRs submitted by RCBC and STBC, the National Policy Statements, including the 2021 and 2023 draft NPSs and the designated 2024 NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 and section 105 of the PA2008. The Secretary of State confirms for the purposes of regulation 4(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

8. Other Matters

Human Rights Act 1998

- 8.1. The ExA notes that the draft Order would engage Article 1 of the First Protocol, Article 6 and Article 8 of the European Convention on Human Rights as given effect in the Human Rights Act 1998. The ExA was satisfied that in relation to the inclusion of Compulsory Acquisition and Temporary Possession powers in the recommended Order, any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest [ER 8.48.6]. The Secretary of State has considered the potential infringement of human rights in relation to the proposed Development, along with the significant public benefits arising from the making of the Order. She has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

Equality Act 2010

- 8.2. The Equality Act 2010 includes a Public Sector Equality Duty (PSED). This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender reassignment; disability; pregnancy and maternity; religion or belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.3. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 8.4. The ExA considered potential equality impacts during the examination and within the report [ER 8.49.1-3.]. The ExA acknowledges the infringement of rights through Compulsory Acquisition and Temporary Possession powers however accepts that there is no evidence that the proposed development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not, or that there has been any lack of regard to the aims of the Equality Act 2010. The ExA was satisfied therefore that, in relation

to the inclusion of Compulsory Acquisition and Temporary Possession powers in the Recommended Order, that there is no evidence that the proposed Development would not accord with Section 149 of the Equality Act 2010.

- 8.5. The Secretary of State is confident that, in taking the recommended decision, she has paid due regard to the above aims when considering the potential impacts of granting or refusing the Application and can conclude that the Net Zero Teesside project will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that neither the grant nor refusal of the Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

Natural Environment and Rural Communities Act 2006

- 8.6. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.
- 8.7. The Secretary of State is of the view that the ExA’s Report, together with the Environmental Impact Assessment considers biodiversity sufficiently to inform her decision to grant consent to the Proposed Development.

Climate Change Act and the Net Zero Target

- 8.8. The Secretary of State has considered that the UK’s sixth Carbon Budget requires a 78% reduction of emissions by 2035 compared to 1990 levels. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 22 June 2021, following advice from the Climate Change Committee, the UK Government announced a new carbon reduction target for 2035 which resulted in a requirement for the UK to reduce net carbon emissions by 2035 from 78% below the 1990 baseline. The Secretary of State notes the Energy White Paper states that National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State does not consider that the amendment to the Climate Change Act 2008 has lessened the need for development of the sort represented by the Proposed Development which is, therefore, still in accordance with the designated 2011 and 2024 NPSs. Operational emissions will be addressed in a managed, economy-wide manner, to ensure consistency with carbon budgets, net zero and our international climate commitments. The Secretary of State does not, therefore need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments.

The British Energy Security Strategy

- 8.9. The Secretary of State notes the support for new CCUS technology in the British Energy Security Strategy, which states:

We will ensure a new lease of life for the North Sea in low-carbon technologies:

- *delivering on our £1 billion commitment to 4 CCUS clusters by 2030, with the first 2 sites selected in the North East and North West currently proceeding through Track 1, with the Scottish Cluster in reserve*
- *the industrial clusters will be the starting point for a new carbon capture industry with a sizeable export potential, helping to create industrial ‘SuperPlaces’ in the UK*

- 8.10. The Proposed project will contribute to the East Coast Cluster.

9. Modifications to the draft Order

- 9.1. Following consideration of the draft Order provided by the ExA the Secretary of State has made the following modifications to the draft Order:

- a. Amendments to the definitions in Article 2(1) (Interpretation):
 - i. the definition of “emergency” has been moved from Article 2(1) to Schedule 2 (Requirements) as this definition should apply specifically in relation to construction hours, in line with other DCOs;
 - ii. inclusion of definitions for “mean high water springs” and “Trinity House”; and
 - iii. amendments to the definitions of “CCP” to include a minimum capture rate, and to “maintain” and “statutory undertaker” for clarity.
- b. Amendments to Article 8 (Consent to transfer benefit of this Order) to correct the previous drafting which included a default power of the undertaker to transfer the benefit of the Order to a transferee or lessee without requiring the Secretary of State’s consent. Article 8(8) has been amended to require the Applicants to notify STDC prior to transfer or grant taking effect where the transfer or grant relates to the STDC are, and subparagraphs 14 and 15 deleted accordingly. The Secretary of State accepts STDC’s submission that it is reasonable for them to be informed prior to a transfer and considers that the requirement on the Applicants is not onerous.
- c. Amendment to Article 22 (Compulsory acquisition of land) to include Article 24 (time limit for exercise of authority to acquire land compulsorily), Article 28 (acquisition of subsoil and airspace only) and Article 30 (rights over or under streets) as further articles that Article 22 is subject to.
- d. Amendment to Article 31 (Temporary use of land for carrying out the authorised development) with Article 31(15) amended to state this article is subject to Article 43 (Crown Rights).

- e. Amendments to Article 32 (Temporary use of land for maintaining the authorised development) with Article 32(6) amended to remove the words “but the undertaker is not to be required to replace a building or any debris removed under this article” as this Article is about maintenance and does not give permission to remove either of these from the land; this permission is provided for by Article 31. Also, Article 32(14) amended to state that it is subject to Article 43 (Crown Rights).
- f. Amendment to Article 46 (Service of notices) to add a sub paragraph at paragraph 1 including another form of notice to be “by delivering it to the person on whom it is to be served or to whom it is to be given or supplied”.
- g. The following amendments made to Schedule 5, 9, 12 and 14 to reflect the change request made by the Applicants in April 2023 which has been accepted by the Secretary of State:
 - i. Deletion from Table 3, Schedule 5 (Access) of the entire first row containing the words “In the District of Redcar and Cleveland” in column 1, the words “Tees Dock Road / unnamed private road” in column 2, and the words “That part of the access in the area cross hatched in red at the point marked BO on sheet 4 of the access and rights of way plans” in column 3;
 - ii. Removal of plots 274 and 279 from Table 8 in Schedule 9 (Land of Which Temporary Possession May Be Taken) in the column entry entitled “Temporary use to facilitate access to and highway improvements (Work No. 10) in relation to the authorised development”;
 - iii. Deletion from paragraph 256 of Schedule 12 (Protective Provisions) of paragraph (i) from the definition of “diversion condition”; the definition of “Lackenby Gate”; “southern access land” from the definition of “proposed land”; “southern access route works” from the definition of “proposed work”; the definition of “southern access route land” and the definition of “southern access route works”;
 - iv. Deletion from paragraph 264(d) of Schedule 12 (Protective Provisions) of “the southern access route works”; and
 - v. Insertion of a new Table 13 in Schedule 14

Schedule 1

- h. The final provision in Schedule 1 is amended to limit the scope of the further associated development that might be permitted. This is in line with the approach taken in other DCOs.

Schedule 2

- i. Amendment to Requirement 3(12) to clarify the limits of the amendments that can be agreed between the Applicants and the relevant planning authority.

- j. Amendment to Requirement 10, taking into account the importance of this Requirement, to require the fire prevention method statement to be in place before work commences on the authorised development as a whole, rather than just with Work Nos. 1 and 7, given that other Works may also carry fire risks. Paragraph 1 also amended to require that fire prevention measures, detection measures and fire accesses are also maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the relevant part of the authorised development.
- k. Inclusion of paragraph 5 in Requirement 20 of the definition of “emergency”.
- l. Amendment to Requirement 31(3) to include the words “and Work No. 8 being connected to an operational storage site” in order to make it clear that the captured carbon will be exported to the storage site.

Schedule 11

- m. Amendment to paragraph 30 of Schedule 11 (Deemed Marine Licence Under the 2009 Act: Project B) to include Work No. 8.

Schedule 12

- n. Various amendments have been made to the Protective Provisions in Schedule 12. These are discussed in Chapter 6.

Other changes

- 9.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interests of clarity and consistency. The Order, including the modifications referred to above is being published with this letter.

10. Challenge to decision

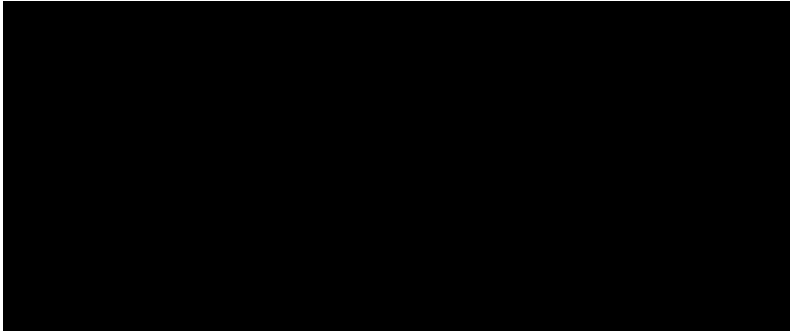
- 10.1. The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

11. Publicity for decision

- 11.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 11.2. Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure

Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely



David Wagstaff

Deputy Director, Energy Infrastructure Planning

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting or refusing development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/north-east/the-net-zero-teesside-project/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

Glossary of Terms

Abbreviation	Reference
AA	Appropriate Assessment
AEoI	Adverse Effect on Integrity
AGI	Above Ground Installation
AIL	Abnormal Indivisible Loads
ALARP	As Low as is Reasonably Practicable
AP	Affected Party
BAT	Best Available Technique
BAT-AELS	Best Available Technique – Associated Emissions Levels
BoR	Book of Reference
CA	Compulsory Acquisition
CBDP	Carbon Budget Delivery Plan
CCGT	Combined Cycle Gas Turbine
CCP	Carbon Capture Plant
CCR	Carbon Capture Ready
CCS	Carbon Capture Storage
CCUS	Carbon Capture Usage and Storage
CEPP	Climate Emergency Policy & Planning
CEMP	Construction Environmental Management Plan
CFL	CF Fertilisers UK Limited
CHP	Combined Heat and Power
CNSL	CATS North Sea Limited
CO	Carbon Monoxide
CO ₂	Carbon Dioxide
CTMP	Construction Traffic Management Plan
CWTP	Construction Worker Travel Plan
DAS	Design and Access Statement
DCO	Development Consent Order
DEMP	Decommissioning Environmental Management Plan
DIN	Dissolved Inorganic Nitrogen
DML	Deemed Marine Licence

DPA	Dispatchable Power Agreement
EA	The Environment Agency
ECC	East Coast Cluster
EP	Environmental Permit
FRA	Flood Risk Assessment
FTE	Full Time Equivalent
GHG	Greenhouse Gas
HDD	Horizontal Directional Drilling
HE	Historic England
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IAP1	Initial Assessment of the Principal Issues
IEMA	Institute for Environmental Management and Assessment
IP	Interested Party
LCA	Landscape Character Assessment
LSE	Likely Significant Effect
LIR	Local Impact Report
LVIA	Landscape and Visual Impact Assessment
MCA	Maritime and Coastguard Agency
MMO	Marine Management Organisation
NDHA	Non-Designated Heritage Asset
NE	Natural England
NEP	Northern Endurance Partnership
NGET	National Grid Electricity Transmission PLC
NGN	Northern Gas Networks Limited
NGT	National Gas Transmission PLC
NH3	Ammonia
NDHA	Non-Designated Heritage Asset
NOx	Nitrogen
NPG	Northern Powergrid (Northeast) PLC
NPL	NPL Waste Management Limited
NR	Network Rail Infrastructure Limited
NRMM	Non-road mobile machinery

NSIP	Nationally Significant Infrastructure Project
NSN	National Site Network
NSMP	North Sea Midstream Partners
NSTA	North Sea Transition Authority
North Tees Group	North Tees Group
NWL	Northumbrian Water Limited
NZT	Net-Zero Teesside
PA2008	Planning Act 2008
PDT	PD Teesport Ltd
PP	Protective Provisions
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
PUB	Powering Up Britain
R	Requirement
Ramsar Convention	Ramsar Convention on Wetlands of International Importance
RBT	Redcar Bulk Terminal Limited
RCBC	Redcar and Cleveland Borough Council
RIES	Report on the Implications for European Sites
R31	Requirement 31
SAC	Special Area of Conservation
SAM	Scheduled Ancient Monument
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SWMP	Site Waste Management Plan
STBC	Stockton-on-Tees Borough Council
STDC	South Tees Development Corporation
T&S	Transport & Storage
TCE	The Crown Estate
TP	Temporary Possession
TTWA	Travel to Work Area
TWF	Teesside Wind Farm Limited

UXO	Unexploded Ordnance
WFD	Water Framework Directive
WSI	Written Statement of Investigation
WTT	Well to Tank