



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Knottingley Power Plant

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Energy and Climate Change**

Elizabeth Hill

Examining Authority

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ExA's findings and conclusions and recommendation in respect of Knottingley Power Plant

File Ref EN010050

The application, dated 10 September 2013, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 4 October 2013.

The applicant is Knottingley Power Ltd.

The application was accepted for examination on 31 October 2013.

The examination of the application began on 13 March 2014 and was completed on 13 September 2014.

The development proposed comprises a Combined Cycle Gas Turbine (CCGT) power plant, generating up to 1500MW electricity, and associated development, including an electricity grid connection, an 8 km underground gas pipeline and underground water cooling pipes.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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ERRATA SHEET – Knottingley Power Plant - Ref. EN010050

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 12 December 2014.

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

Page No.	Paragraph	Error	Correction
7	3.5	The need for carbon capture is further explained in the Secretary of State's Guidance on Carbon Capture Readiness (CCR) published in 2009 and the SoS is prevented from granting a DCO under the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 unless specified conditions are met and a requirement imposed ensuring that sufficient space is set aside for the capture and compression.	The need for carbon capture is further explained in the Secretary of State's Guidance on Carbon Capture Readiness (CCR) published in 2009 and the SoS is prevented from granting a DCO under the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 unless he has determined whether specified conditions are met and, if the conditions are met, a requirement imposed ensuring that sufficient space is set aside for the capture and compression.
11	3.23	The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 require the same conditions to be met in electricity generating stations. The Secretary of State may not issue a DCO for a station over 300MW output unless the above conditions are met.	The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 require the same conditions to be met in electricity generating stations. The Secretary of State may not issue a DCO for a station over 300MW output unless he has determined whether the above conditions are met.
26	4.37	In my view, the loss of vegetation on this site would <u>give</u> have a significant impact on views of the site itself.	In my view, the loss of vegetation on this site would have a significant impact on views of the site itself.
36	4.80	As such, under Regulation 61 of the Conservation of	As such, under Regulation 61 of the Conservation of Habitats and

Page No.	Paragraph	Error	Correction
		Habitats and Species Regulations <u>2009</u> , there is no requirement for an Appropriate Assessment (AA) to be carried out.	Species Regulations 2010, there is no requirement for an Appropriate Assessment (AA) to be carried out.
81	6.70	However, I am satisfied that the required <u>the</u> operational land and interests required by the applicant can be taken without serious detriment to the carrying on of the undertaking, provided that protective provisions safeguarding the EA's assets can be agreed.	However, I am satisfied that the required operational land and interests required by the applicant can be taken without serious detriment to the carrying on of the undertaking, provided that protective provisions safeguarding the EA's assets can be agreed.

1 INTRODUCTION

- 1.1 The application for a Development Consent Order (DCO) for Knottingley Power Plant was submitted by the applicant, Knottingley Power Ltd, on 4 October 2013. The application was formally accepted by the Planning Inspectorate on 31 October 2013 under the provisions of the Planning Act 2008 (as amended) (PA2008).
- 1.2 The application is for a natural gas burning CCGT power plant, generating up to 1500MW electricity, and associated development including an electricity grid connection, an 8km underground gas pipeline and underground water cooling pipes. The capacity of the power plant would make it a Nationally Significant Infrastructure Project (NSIP) under ss 14 and 15(2)(c) of the PA2008, since it would be over the capacity threshold of 50MW set in the latter section. The plant would be capable of providing Combined Heat and Power (CHP), should a customer for the heat be found, and would be Carbon Capture Ready (CCR) so that Carbon Capture and Storage (CCS) could be retrofitted in the space reserved on the site for such equipment.
- 1.3 The application is for Environmental Impact Assessment (EIA) development as defined by Regulation 2(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended). It was accompanied by an Environmental Statement (ES) which, in my view, complies with the Regulations. The ES [APD033-054] was compiled following consultation on an earlier scoping report and takes into account the views of the Secretary of State's Scoping Opinion [APD056].
- 1.4 The application was examined under the provisions of the PA2008 and the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended). The accepted application was advertised and 20 representations were received from interested parties (IP).
- 1.5 Following acceptance of the application I, an Examining Inspector with the Planning Inspectorate, was appointed as Examining Authority (ExA) on 3 February 2014 for the Examination of the application.
- 1.6 On 18 February 2014 I gave notice of the Preliminary Meeting to be held in Knottingley on 13 March 2014 and issued an initial assessment of principal issues that I expected to consider during the examination and a draft timetable for the Examination. On 20 March 2014 I issued a timetable for the examination, accepted a number of documents, requested a number of Statements of Common Ground and issued my first set of written questions. A second round of questions

was issued later on in the Examination, a number of requests for further information were made and additional documents were accepted during the Examination.

- 1.7 Local Impact Reports (LIR) were received from Wakefield Metropolitan District Council (MDC) and jointly from Selby District Council (DC) and North Yorkshire County Council (CC).
- 1.8 On 14 May 2014 I held an Issue Specific Hearing (ISH) on environmental impacts and in the evening of the same day I held an Open Floor Hearing, which was opened, adjourned and then closed due to lack of attendance. A further ISH was held on 16 July 2014 to cover remaining environmental impact matters and to consider the draft DCO.
- 1.9 I carried out an accompanied site visit on 13 May 2014 during which I visited the application site, its surroundings, locations from which it would be visible, the proposed water abstraction and discharge points on the River Aire, the gas connection site and the road system in the vicinity of the power plant and construction areas for the gas pipeline. I also carried out unaccompanied site visits at other times to other local view points and the local road network.
- 1.10 In addition to the DCO, the power plant would require an environmental permit from the Environment Agency (EA) to control emissions to air and water. This has not yet been applied for. A water abstraction licence for cooling water from the River Aire was granted by the EA on 12 July 2013.
- 1.11 A Unilateral Undertaking was made by the applicant to Wakefield MDC, dated 23 July 2014, which covers such matters as off-site landscaping. A S106 agreement, dated 13 August 2014, was made by the applicant with Selby DC and North Yorkshire CC in respect of landscaping, green infrastructure and highways matters in their area. A further S106 agreement, dated 12 September 2014, was made between the applicant, St Paul's Developments Plc and Wakefield MDC covering temporary and permanent bridleways.
- 1.12 In accordance with sections 83(1)(b)(i) and 83(1)(b)(ii) of PA2008, this report sets out my findings and conclusions in respect of the application and my recommendation to the Secretary of State as to the decision to be made on the application.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

The present application

- 2.1 The applicant, Knottingley Power Ltd, is the development company which proposes to build and operate the plant. The applicant's parent company is the Electricity Supply Board, which is a state-owned electricity supply company based in Ireland. The applicant has applied to the Secretary of State (SoS) for a DCO under s37 of the PA2008 for the proposed Knottingley Power Plant.
- 2.2 The application site is about 3km east of Knottingley town centre, about 7km north east of Pontefract town centre and about 450m south west of the settlement of Kellingley and its associated colliery. The main site and proposed grid connection lies within Wakefield MDC's administrative area, with most of the gas pipeline and water cooling pipelines being within Selby DC/ North Yorkshire CC's administrative areas.
- 2.3 The principal works would be the CCGT power plant which would have a maximum output of up to 1500 MW fuelled by natural gas and comprising up to three separate generating units. Scenarios have been presented in which there would be 2x600MW units or 3x500MW generating units. The power plant would also comprise hybrid cooling towers, water treatment infrastructure, administration buildings, auxiliary boiler, emergency diesel generator, fire fighting system and other plant. Space would also be reserved on the main site for carbon capture and storage (CCS) equipment, should this become required and economically viable.
- 2.4 The operation of the power plant would meet the expected energy demand profile, operating in one of 3 scenarios: at base load (full load on a continuous basis, most likely in winter); in two shift mode (a few hours in the morning and evening); or, at reduced load (most likely at night).
- 2.5 In terms of associated development, the CCGT power plant would be fuelled by a supply of natural gas, taken from a new Gas Pipeline about 8km long, which would be constructed between the power plant and the National Grid National Gas Transmission System and the Above Ground Installation (AGI) at Gateforth. The electricity generated by the power plant would be exported to the National Grid Electricity Transmission System from a connection to the existing National Grid 400 kV Electricity Transmission System immediately to the east of the power plant. The power plant would also require cooling water which would be supplied from and returned to either the River Aire via a pumping

station or the Aire and Calder Navigation Canal for use in the hybrid cooling tower system.

2.6 The main maps and plans for the application include:

- APD004 - 2.1: Location Plan;
- PSC035 - 2.2B: Revised Land Plan;
- PSC024 - 2.3B: Revised Works Plan;
- APD007 - 2.4: Indicative Generating Station Layout Drawings;
- APD008 - 2.5: Indicative Overhead Lines and Pylons Layout Drawings;
- APD009 - 2.6: Indicative Pump House Layout Drawings;
- APD010 - 2.7: Indicative AGI Layout Drawing;
- PSC025 - 2.8B: Revised Access To Works Plan;
- PSC026 - 2.9B: Revised PROW Temporary Closure and Permanent Stopping Up Plan;
- APD013 - 2.10: Landscaping Plan;
- APD014 - 2.11: Plan Showing Statutory Nature Conservation Sites or features; and,
- APD015 - 2.12: Plan Showing Statutory or Non-Statutory Historic or Schedules Monument and features of the Historic Environment.

2.7 Amended plans, to correct minor inconsistencies, were submitted on 31 October 2013 and a further set of amended plans to allow for minor changes to the gas pipeline route near the AGI, which is the connection point to the gas main supply, was submitted on 20 June 2014. In addition, the ES was amended in April 2014 to correct minor errors and update it. These sets of amendments were accepted by me, since they had been made available for comment and it was my view that the changes were not material, in that they would not prejudice the interests of any party, if accepted.

Planning history

2.8 The western area of site for the power plant was formerly occupied by a chemical works which operated from about 1949 until its demolition in 2009. A number of minor planning applications were submitted in connection with this use, plus one for a concrete production plant in 2001. An application for the remediation of the site and other works at the chemical plant was granted planning permission in March 2013. It is intended that this permission would be implemented prior to construction of the development, the subject of this application, taking place.

3 LEGAL AND POLICY CONTEXT

- 3.1 The application includes a planning statement which sets out the main policy context for the application [APD058].

Planning Act 2008, as amended by the Localism Act 2011, and National Policy Statements

- 3.2 The proposed development is a generating station with a maximum capacity of 1500 MW, which is a Nationally Significant Infrastructure Project (NSIP), as defined in s14(1)a and S15 of the PA2008. National Policy Statements (NPS) in respect of this type of development, together with the associated development in terms of the gas supply pipeline and the grid connection have been published. The Secretary of State (SoS) must, therefore, subject to certain exceptions, determine the application in accordance with the relevant NPS as specified in s104(3) of PA2008.
- 3.3 The Overarching NPS for Energy (EN-1) was published in July 2011 and sets out the Government's policy for the delivery of major energy infrastructure. It was accompanied by five technology specific NPS for the energy sector. These include the NPS for Fossil Fuel Generating Infrastructure (EN-2), Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) and Electrical Networks Infrastructure (EN-5), all of which are relevant to this case.
- 3.4 EN-1 recognises the importance of secure and affordable energy to achieve energy security as well as dramatically reducing greenhouse gas emissions, including from fossil fuel power plants. It also states that applications for development consent should be assessed on the basis for the need for that type of infrastructure has already been demonstrated. EN-1 also requires development to demonstrate principles of good design, be Combined Heat and Power (CHP)-ready and be ready to capture and store carbon, if the plant is over 300MW. It also covers grid connection, other applications and consents, nuisance and security. The importance of development plans is discussed although the NPS states that the NPS has more weight where there is conflict.
- 3.5 The need for carbon capture is further explained in the SoS's Guidance on Carbon Capture Readiness (CCR) published in 2009 and the SoS is prevented from granting a DCO under the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 unless specified conditions are met and a requirement imposed ensuring that sufficient space is set aside for the capture and compression.

- 3.6 EN-2 sets out the factors which should influence the development of sites for fossil fuel power stations and the criteria which Government requires to be met including CHP, CCR, climate change adaptation and consideration of good design. In terms of the impacts of such stations, EN-2 reiterates the policy in EN-1 and adds the need to consider impacts of air emissions, landscape and visual, noise and vibration and water quality and resources.
- 3.7 EN-4 sets out other specific impacts to gas and oil pipelines in addition to those in EN-1. The assessment principles for projects relate to climate change adaptation, consideration of good design, hazardous substances regimes, pipeline safety and criteria for site selection. In addition to the generic criteria in EN-1, the assessment criteria for EN-5 are climate change adaptation, consideration of good design in mitigating the potential impacts of overhead lines and the mitigation of potential impacts of electricity networks in terms of biodiversity and geological conservation, landscape and visual and noise and vibration.

European Requirements and related UK Regulations

Habitats Directive (Council Directive 92/43/EEC)

- 3.8 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive 2009/147/EC) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The Directive protects over 1000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc.), which are of European importance. The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. The Directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species.

Conservation and Species Regulations 2010 (as amended) the Habitats Regulations

Conservation of Habitats and Species (Amendment) Regulations 2012

- 3.9 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of Habitats and Species Regulations 2010

(which are the principal means by which the Habitats Directive is transposed in England and Wales) update the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994. The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles. The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012.

- 3.10 The nature conservation aspects of the proposal are discussed in Section 4, below.

Water Framework Directive

- 3.11 On 23 October 2000, the "Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy" or, in short, the EU Water Framework Directive (the WFD) was adopted.
- 3.12 The Directive was published in the Official Journal (OJ L 327) on 22 December 2000 and entered into force the same day. Some amendments have been introduced into the Directive since 2000¹.
- 3.13 Twelve "Water notes" which intend to give an introduction and overview of key aspects of the implementation of the Water Framework Directive are available to download.²
- 3.14 The WFD is relevant to this application in that the EA has prepared Waterbody Action Plans, with the River Aire being identified as having Good Environmental Potential.
- 3.15 Water issues, including flood risk and water resources, are discussed in Section 4, below.

Directive 2010/75/EU of 24 November 2010 on industrial emissions (Integrated Pollution Prevention and Control (IPPC)) and (the "Industrial Emissions Directive" ("IED"))

- 3.16 Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) (IED) recast seven directives related to industrial emissions, in particular Directive 2008/1/EC of 15 January 2008 concerning integrated pollution prevention and control (the Integrated Pollution Prevention and Control (IPPC) Directive) and Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (the Large Combustion Plant Directive

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:02000L0060-20090625:EN:NOT>

² http://ec.europa.eu/environment/water/participation/notes_en.htm

(LCPD)), into a single legislative instrument to improve the permitting, compliance and enforcement regimes adopted by Member States.

- 3.17 The LCPD and IPPC Directive are implemented in the UK by the Environmental Permitting (England and Wales) Regulations 2010 (the EP Regulations). These Regulations seek to provide a single streamlined environmental permitting and compliance regime to apply in England and Wales. They do this by integrating the previous regimes covering waste management licensing and Pollution Prevention and Control.
- 3.18 The EA would control and regulate the Project with respect to the emissions to air through an Environmental Permit that will be required for the Project, under the EP Regulations. The Environmental Permit would include specific emissions limits values to apply to the Project for the relevant pollutants considered within the IED. These Regulations are discussed in Section 4, below.

Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe (the "Ambient Air Quality Directive")

- 3.19 Council Directive 96/62/EC on ambient air quality assessment and management (the Air Quality Framework Directive) described the basic principles as to how air quality should be assessed and managed in the Member States. Subsequent daughter Directives introduced numerical limits, thresholds and monitoring requirements for a variety of pollutants including oxides of nitrogen and sulphur dioxide to guarantee that there are no adverse effects with regard to human health.
- 3.20 The Air Quality Standards Regulations 2010 (the AQS Regulations) give effect, in England, to the Ambient Air Quality Directive. The relevance of these standards to this application are discussed in Section 4, below.

Directive 2009/31/EC of 23 April 2009 on the geological storage of carbon dioxide (as amended)

- 3.21 The CCS Directive amended Directive 2001/80/EC on the limitation of emissions of certain pollutants from large combustion plants (commonly known as the Large Combustion Plant Directive). Consequently, Member States are required to ensure that operators of all combustion plants with an electrical power generating capacity of 300MWe or more (and for which the construction/ operating licence was granted after the date of the CCS Directive) have assessed

whether the following conditions are met in respect of each combustion plant:

- Suitable storage sites for CO₂ are available;
 - Transport facilities are technically and economically feasible; and,
 - It is technically and economically feasible to retrofit the combustion plant for CO₂ capture.
- 3.22 The assessment of whether these conditions are met is to be submitted to the relevant competent authority, who will use the assessment (and other available information) in their decision-making process in respect of consent for each combustion plant. If the conditions are met, the competent authority is to ensure that suitable space is set aside for the CO₂ capture technology necessary to capture and compress CO₂ from the combustion plant.
- 3.23 The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 require the same conditions to be met in electricity generating stations. The Secretary of State may not issue a DCO for a station over 300MW output unless the above conditions are met.
- 3.24 The CCS Directive and the above Regulations apply to this Project and is addressed further in Section 4, below.

Other Legal and Policy Provisions

Other National policy and legislation

- 3.25 There have been a number of Government policy statements on energy including: the Energy White Paper: Meeting the Challenge (May 2007); UK Low Carbon Transition Plan, National Strategy for Climate and Energy (July 2009); and, Planning our electric future: a White Paper for secure, affordable and low carbon electricity (July 2011). The latter paper sets out the features of gas-fired power stations in Box 2, in terms of cost and operational flexibility. This is dealt with in section 4, below, in terms of the need for new generating capacity.

The Wildlife and Countryside Act 1981 (as amended)

- 3.26 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England, Natural England). The Act also contains measures for the protection and management of SSSIs.

- 3.27 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV on miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species license will be required from Natural England.
- 3.28 This has relevance to consideration of impacts of the proposal on SSSIs and on protected species and habitats and is discussed in Section 4, below.

Natural Environment and Rural Communities Act 2006

- 3.29 The Natural Environment and Rural Communities Act (NERC) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.
- 3.30 This is of general relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development, as discussed in section 4, below.

Transboundary Effects

- 3.31 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations) and on the basis of the information available from the applicant, the screening carried out by the Planning Inspectorate on behalf of 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.
- 3.32 In reaching this view the SoS has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation). Transboundary issue consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary. I agree with this conclusion.

Local Impact Reports

- 3.33 Local Impact Reports (LIRs) have been submitted by Wakefield MDC and jointly by Selby DC and North Yorkshire CC [LIR001 and LIR002]. The principal matters raised in the LIRs are: -

- the regeneration of the area
- the location of parts of the development in the Green Belt
- air quality
- landscape and visual impact
- water resources, flood risk and drainage
- traffic, transport and access, including public rights of way
- ecology, terrestrial and aquatic
- noise and vibration.

3.34 These are considered in Section 4 of this Report.

The Development Plan

3.35 The development plans which cover the area have been produced by Wakefield MDC and Selby DC. Wakefield's Core Strategy (WCS), adopted in 2009, sets out the strategy for development in the District, including the general location of development (Policy CS1) to locations where it would achieve sustainable development, where there is a presumption in its favour. Policies CS4 aims to improve accessibility and Policy CS8 aims to sustain and enhance the local economy. Policy CS10 requires a high standard of design, safety and environmental quality. Policy CS12 seeks to maintain the extent of the Green Belt and makes reference to former Planning Policy Guidance Note 2 which defined inappropriate development and stated that it could only be permitted in very special circumstances. Policy CS13 requires mitigation and adaptation to climate change and the efficient use of natural resources. Policy CS14 aims to influence the demand for travel. Policy CS15 seeks sustainable waste management.

3.36 The Wakefield Development Policies Development Plan Document (WDPDPD), adopted 2009, sets out more detailed policies for development management. Policies D4, D5, D6 and D7 require the ecological evaluation of development affecting sites designated for biological and geological conservation, the ecological protection of watercourses and the wildlife habitat network and the protection of trees and woodland. Policy D8 requires an evaluation of the impacts of development on the landscape. Policies D9, D11 and D12 require new development to be of a high quality, to enhance the character of waterways and to integrate into the existing landscape.

3.37 Policy D14 requires convenient and safe access, including sustainable means of transport and policy D15 requires safety and security by design. Policies D17 and D18 require development affecting archaeological sites to be evaluated and also aim to protect historic locations. Policies D20, D21 and D22 seek to ensure that any effects of pollution are mitigated, protection is given to from hazardous operations

and that contaminated land is assessed and remediated as necessary. Policy D23 covers existing uses in the Green Belt. Policies D24 and D25 require development to be located away from a risk of flooding and the use of sustainable drainage techniques. Policy D26 seeks to preserve the best quality agricultural land. Policies D27 and D28 require renewable energy to be incorporated into development, together with sustainable construction techniques.

- 3.38 The Wakefield Site Specific Policies Local Plan (WSSPLP), adopted in 2012, includes policy SSP1, which confirms the Council's positive approach to sustainable development. The plan also includes the site of the proposed generating station as part of a Special Policy Area (SPA8) which aims to reclaim and regenerate the former chemical works site and also includes allocations for energy generation and mixed uses, including housing, on adjacent greenfield land. The Wakefield Waste Development Plan Document, adopted in 2009, sets out the overall approach to waste management in the District.
- 3.39 There are also a number of relevant saved policies from the adopted Wakefield Unitary Development Plan First Alteration (WUDPFA). These include Policies L1 and L6 which protect leisure facilities and countryside recreation, with the network of public footpaths, cycleways and bridleways being protected, improved and extended. Policy L7 seeks to promote the leisure potential of the District's waterways.
- 3.40 Wakefield MDC also has a Delivery Plan for the Ferrybridge and Knottingley Areas 2013-2015 (WDPFK). Although this is not an adopted plan, it is being used as a guide to inform development proposals, in combination with longer term ambitions for the area. The West Yorkshire Authorities have produced a draft West Yorkshire Air Quality and Emissions Good Practice Technical Guide (WYAQEGPTG), which has a local policy base in policy D20 of the Wakefield Development Policies DPD.
- 3.41 Selby Core Strategy (SCS) was adopted in 2013. Policy SP1 sets out the presumption in favour of sustainable development, in accordance with the Framework. Policies SP2 and SP3 set out the spatial development strategy and the policy on Green Belt, including that planning permission for inappropriate development will only be granted where very special circumstances exist. SP15 relates to sustainable development and climate change, including energy efficiency and consumption in development, sustainable design and construction, biodiversity resilience and landscaping, sustainable transport and travel.

- 3.42 Policy SP16 covers improving resource efficiency and policy SP17 covers low carbon and renewable energy. Policy SP18 aims to protect and enhance the environment, including safeguarding and, where possible, enhancing the historic and natural environment; the stewardship of wildlife; increasing Green Infrastructure; protecting and enhancing locally distinctive landscapes, public rights of way and access; increasing biodiversity; the prevention of pollution; sustainable development in terms of resource use; and, steering development to areas of least agricultural and environmental value. Policy SP19 requires a high quality of design.
- 3.43 A number of policies have been saved from Selby District Local Plan, adopted in 2005. Policy ENV1 sets criteria for good quality development. Policy ENV2 aims to prevent development that would cause noise, nuisance, contamination or pollution. Policy ENV4 covers protection from hazardous substances. Policy ENV12 aims to protect river and stream corridors and access to them. Policy T1 requires development to be well located in respect of the existing highway network and Policy T8 aims to protect existing public rights of way.
- 3.44 NPS EN-1 states in paragraph 4.1.5 that, whilst the ExA might find development plans relevant and important, the main policies for NSIPs are set out in the NPSs and where there is any conflict between these sets of documents, policies in the NPSs override those in the development plan.

National Planning Policy Framework

- 3.45 The National Planning Policy Framework (the Framework), published in 2012, sets out the Government's planning policies for England. However, paragraph 3 of that document states that it does not contain specific policies for NSIPs. This type of development is determined in accordance with the PA2008 and the policies set out in the relevant NPSs. As such, the Framework has only limited weight in assessing NSIP proposals but is important and relevant in relation to matters such as Green Belt.
- 3.46 On 6 March 2014 new national planning policy guidance (PPG) was published. The guidance supports the Framework and is designed to provide information on the practical application of policy.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

MAIN ISSUES IN THE EXAMINATION

4.1 At the start of the examination and following the Preliminary Meeting, I set out my assessment of the principal issues arising from the application based on the application documents and the relevant representations received at that time [RRP001-017]. These are set out below in alphabetical order: -

Air quality, including issues relating to:

- the impact on air quality from both the construction and operational phases.

Biodiversity and habitats, including issues related to:

- the impact on habitats and biodiversity, including fisheries;
- mitigation measures.

Compulsory acquisition, including issues related to:

- the requirement for the powers sought and the need to establish a compelling case in the public interest; and
- financial arrangements.

Design, landscape and visual impact, including issues related to:

- the design concept and process;
- landscape and visual impact; and
- landscaping and screening.

Economic and social impacts, including issues related to:

- the impact on the local economy;
- the impact on local regeneration; and
- the impact on gas and energy prices.

Environmental Impact Assessment (EIA) including issues related to:

- the adequacy of the Environmental Statement (ES); and
- cumulative effects.

Flood risk, including issues related to:

- the impact of the proposed development on flood risk; and
- the flood resilience of the proposed buildings and infrastructure.

Gas and water pipelines, including issues related to:

- the effect of construction on flood risk and the integrity of flood defences;
- water quality;
- habitats and biodiversity;
- agriculture;
- land use and safety; and
- highways and rights of way.

Green Belt, including issues related to:

- the proposed pumping station; and
- engineering operations.

Health, including issues relating to:

- compliance with the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines.

Noise, dust and vibration, including issues relating to:

- the impact during construction and operation.

Operational matters, including issues related to:

- implications of differing operational scenarios;
- carbon capture storage (CCS) and carbon capture readiness (CCR); and
- potential use of combined heat and power (CHP).

Soils and geology, including issues related to:

- contaminated land; and
- risk from mining.

Traffic and transport issues, including issues related to:

- traffic movement and routing;
- potential use of the canal; and
- stopping up of Common Lane.

Water quality and resources, including issues relating to:

- the impact of construction of buildings and pipelines on water quality; and
- the impact of operation on water resources and water quality.

Issues arising from written and oral submissions

- 4.2 Many of the issues in the written submissions reflect those in the Local Impact Reports (LIRs), discussed above. A total of 20 Relevant Representations were received in the pre-

examination period, which informed the initial identification of principal issues and the first round of ExA questions. The ExA's findings and conclusions on all the issues raised in the written and oral submissions are summarised in Sections 4 and 5 below.

Issues arising in the Local Impact Reports

- 4.3 The issues arising in the LIRs [LIR001 and LIR002] are listed above and discussed in the relevant sections below. The local planning authorities (LPAs) concurred on those issues in which they had a common interest.
- 4.4 The applicant was the only commentator on the LIRs. The applicant and the LPAs reached agreement on the mitigation required and accepted the unilateral obligations and DCO requirements which would deliver it. However, there are some remaining issues especially concerning the landscape assessment methodology and cumulative effects on the landscape which are discussed in the relevant section below.

Conformity with local plan policies

- 4.5 The conclusions from the Selby District Council (Selby DC) and North Yorkshire County Council (North Yorkshire CC) LIR [LIR001] and their Statement of Common Ground with the applicant [SoCG022] are that adequate mitigation would secure conformity with Selby's Local Plan. These Councils have some residual concerns, as set out in the previous paragraph, which is discussed below. The conclusions from the Wakefield Metropolitan District Council (Wakefield MDC) LIR [LIR002] and SoCG with the applicant [SoCG003] similarly agree that, generally, with adequate mitigation, there would be conformity with their Local Plan. However, there remain residual concerns about landscape, air quality, noise and the impact on the Green Belt. These are discussed in the relevant sections below.

The principle of the development

- 4.6 The proposed development is an NSIP, as set out in s14 and s15 of the PA 2008 (as amended). The need for the development is covered in NPS EN-1, paragraph 3.1, which states that such applications should be assessed on the basis that the Government has demonstrated that there is a need for this type of infrastructure and that substantial weight should be given to its contribution to satisfying this need. Paragraphs 3.6.1 and 3.6.2 of the same NPS state that there is a need for a mix of energy sources including fossil fuels to meet demand in a flexible manner, which will help in the transition to a low-carbon economy.

- 4.7 The need for a gas-fired power facility and a claimed consequent impact on gas and fuel prices more generally was questioned in the relevant representation from Cllr McCartney [RRP016]. Similar points were made by Dr Glynn Powell in a written representation [WRR010]. However, the need for fossil-fuelled power plants, including gas-fired plants, has been set out in paragraphs 3.6.1 and 3.6.2 of NPS, EN-1. The applicant's comments [CoRR001] in response to this written representation state that there is sufficient flexibility in the sources of supply to ensure that prices for domestic customers would not be significantly influenced by the proposed development.

Conformity with NPSs and other key policy statements

- 4.8 As an NSIP for fossil-fuelled electricity generating infrastructure, NPS EN-2 also applies to this application. The NSIP also includes a gas pipeline of over 8km and therefore the relevant NPS is EN-4. The impacts of the project and general conformity with these NPSs are discussed in the sections below. Since the proposal would provide a grid connection, NPS EN-5 is also relevant.
- 4.9 The financial viability of the scheme, taking into account paragraph 4.1.9 of EN-1 is considered in Section 6 of this report. The appropriateness of the s106 agreements, as required by paragraph 4.1.8 of EN-1 are considered in the relevant sections on mitigation set out in the section below and in Section 7.

Environmental Impact Assessment (EIA) and Environmental Statement (ES)

- 4.10 During the course of the examination the ES was amended. The amended sections are in documents PSC006-014. I am of the view that the overall environmental information submitted is sufficient for the SoS to take into consideration before making a decision in compliance with EIA Regulations.
- 4.11 Paragraph 4.4.2 of NPS EN-1 requires alternatives to be considered as part of the ES. Section 5.2 of the ES covers the alternatives examined for the generating station and section 5.3 for the pipeline route. I consider that the examination of alternatives has been addressed adequately and the requirements of NPS EN-1 and the EIA Regulations are met. A series of mitigation measures have been proposed at the end of each section of the ES and an updated Schedule of Mitigation has been produced [PSC019]. In addition the ES contained a Framework CEMP at section 27, which would mitigate the adverse effects of construction and would be secured by Requirement 17.

DESIGN

- 4.12 The design process is described in the Planning Statement [APD058], the Design and Access Statement (DAS) [APD063] and the ES [APD033 - APD0057]. The DAS sets out the size of the buildings in terms of the maximum building envelope and the maximum size of each of the buildings. Two design options are considered with either 2 or 3 units, although these would be accommodated on the same site area. The DCO application is accompanied by indicative layouts for the 2 and 3 unit options, and indicative elevations for the 2 and 3 unit options, together with indicative aerial views of both options. Photomontages showing the scale of the building envelopes have been submitted in Figures 13.4.1 to 13.4.21 of the ES. In all cases the area reserved for CCS has been shown as undeveloped as this would be the subject of a separate planning application and needs to remain open.
- 4.13 The selection of the main site has had regard to a number of criteria such as interconnection with gas and power infrastructure, water supply, established industrial uses, an available site, transport infrastructure, sufficient space for CCS and potential clients for CHP. The applicant considered greenfield sites which were closer to gas and electricity connection points, but the availability of a partly brownfield site option was a determining factor in site selection. NPS, EN-1, paragraphs 4.4.1 and 4.4.2 notes that there is no general requirement to consider alternatives. However, the ES has considered that the brownfield site available would be preferable to the greenfield sites considered.
- 4.14 The proposed generating station would be located within the river valley area, on the edge of Knottingley, in area where there are other large industrial developments. The illustrative designs for the buildings, the maximum heights for which would be fixed under Requirement 3, demonstrate that the proposal would be sensitive to place, in terms of its siting. The design of the power plant itself largely reflects its function and the internal layout is specific and largely dictated by the process. Elements such as stack height are determined through the air quality modelling. However, there would be separation and intervening CCS structures and light industrial uses, should these be built, between the generating station and the built-up area of Knottingley.
- 4.15 The detailed design of the proposal, including details such as building design, materials, colour and landscaping would be determined at a later stage and would be subject to control under Requirements 3 and 7. The Design Council has been consulted on the application, as recommended in NPS EN-1, paragraph 4.5.5, but had no comments on the design of the proposal. The context of the development has been appraised

through the Landscape and Visual Impact Assessment (LVIA) and a landscaping strategy has been provided in Appendix M.1 of the ES, illustrated by Figures M1.1 and M1.2. Landscaping and visual impact is discussed in further detail, below.

Conclusions on design

- 4.16 Paragraph 4.5.1 of NPS EN-1 requires new energy development to be 'sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible.' The siting of the proposal would be sensitive to place, as recognised in the allocation of the site for electricity generating uses in the WSSPLP. The illustrative plans and elevations indicate that, as far as possible with these types of functional buildings, good aesthetics would be shown. Details of the design of the proposal are yet to be determined. However, the detailed design, appearance, materials, colours and landscaping of the proposed buildings would be secured through Requirements 3 and 7. Therefore I consider that the applicant has followed the principles for design guidance set out in section 4.5 of NPS EN-1.

AIR QUALITY

Air quality assessment

- 4.17 This section considers the potential impact of emissions on air quality during construction, operation and decommissioning of the power plant and its associated development.
- 4.18 The power plant would require an Environmental Permit from the Environment Agency (EA) under the Environmental Permitting (England and Wales) Regulations 2010 (as amended) as it would be a combustion activity. If a permit were issued by the EA this would set emission limits, to ensure that the power plant would comply with the limits in force at the time of issue. In their written representation, the EA has stated that, although an application for a permit has not yet been received and therefore a full technical appraisal has not taken place, the power plant would be capable of being adequately regulated under a permit [WRR005]. At this stage, the EA have not identified any specific matters which would preclude a permit being issued.
- 4.19 In terms of modelling, the applicant has used Atmospheric Dispersion Modelling System (ADMS) (v5) to assess dispersion, a model accepted by the EA. Both the 2-unit and 3-unit layouts have been assessed for emissions of nitrogen dioxide (NO₂) and carbon monoxide (CO). Whilst the adopted

approach does not comply with the draft WYAOEGPTG, Wakefield MDC accepts that the applicant has used nationally accepted methodology. The meteorological data is from a representative source and agreed by the EA and local planning authorities. There are some concerns about the detail of the assessment, which the EA states can be resolved through the submission of further material as part of the permitting process.

- 4.20 Some concerns were also raised about the assessment of cumulative impacts since the local planning authorities and others [LIR001, LIR002, Cllr McCartney WRR002, Eggborough Parish Council WRR003] note that not all facilities (especially those proposed or with unimplemented planning permission) have been incorporated into the assessment and one receptor, Calder Grange Farm, has not been identified in the ES as a residential receptor. However, that has now been reported on by the applicant [CoLIR002] and the impact found to be negligible. Data for the proposed Ferrybridge C Multifuel Power Station was not available at the time the ES was being produced. Nevertheless, the modelling is considered by the applicant to have been carried out taking into account conservative assumptions and worst case scenarios, so that no Air Quality Objectives for NO₂, nitrogen oxides (NO_x) and CO, which protect human health, would be exceeded.
- 4.21 The applicant has already modelled the stack height necessary to achieve adequate dispersal of the air emissions. However, the exact stack height would be determined through the permitting process. The EA state that there is a risk that the heights set out in the deviation limits in Requirement 3(2) would not be sufficient to cover the stack height required by the permit. At this stage, informed by the applicant's modelling, there is nothing to suggest that stack heights would need to be outside these limits and, in any event, NPS EN-1 paragraph 5.2.4 says that the ExA need not be concerned with stack height optimisation in respect of air emissions, although the impact on landscape and amenity will be a consideration.

Emissions to air

- 4.22 In terms of the construction period, the main source of air emissions would be dust resulting from construction activities, the movement of plant and vehicles and from the excavation and refilling of the trenches for the pipelines. The proposed mitigation would use best practice techniques for dust management which would be set out in a Construction Environment Management Plan (CEMP) and enforced through Requirement 17. The ES states that an adverse residual

effect would remain but that this would be short-term and of minor significance in terms of ambient air quality.

- 4.23 In terms of additional NO₂ at construction phase, the proposed construction travel plan, which is required by Requirement 17, would ensure that there is mitigation for any additional vehicle journeys. The in-combination effects of the increased traffic due to the construction of the power plant with operational transport effects of the proposed Southmoor Energy Centre, as raised by Eggborough Parish Council in its representations [RRP004, WRR03] and Cllr McCartney [RRP016] would not exceed the Environmental Protection UK thresholds which would trigger the requirement for an Air Quality Assessment.
- 4.24 During the operational period, the main plant would have to operate within the conditions of the environmental permit. This would include the use of Best Available Techniques, in terms of the impact on people and the environment. Monitoring of emissions would be required by conditions attached to any permit issued. The applicant's assessment shows a slight adverse increase for NO₂ in terms of the proposed power plant, with maximum increases in the M62 Air Quality Management Area (AQMA). However, the effect on Knottingley AQMA, the readings which are variable depending on location, shows a minor beneficial effect over the study period, due to reducing NO₂ emissions more generally over time through national and international environmental controls over such emissions.
- 4.25 Wakefield MDC agree [R2Q008] that, with an operational travel plan in place, the adverse impacts on air quality could be mitigated and the proposal would comply with policy D20 of the WDPDPD. This would apply both to the AQMAs and air quality more generally, including the industrial area around Kellingley Colliery and the proposed Southmoor Energy Plant, which was a concern of Selby DC. In addition, Requirement 26 requires NO_x monitoring during the operation of the proposal, in accordance with a scheme to be submitted and approved by the relevant planning authorities.
- 4.26 The study also examined the effect of emissions on ecology, specifically at Sites of Special Scientific Interest (SSSIs) and Local Wildlife Sites (LWSs). The EA criticise this approach of not taking into account Ancient Woodland and Local and National Nature Reserves but this matter would in any event be covered as part of their environmental permit work. The results show that none of the SSSIs would be adversely affected by NO_x from the proposal. There would be short-term impacts at Gale Common and Willow Garths LWSs but longer term impacts are forecast to be acceptable.

- 4.27 In terms of acid and nitrogen deposition, Shirley Pool and Brockdale SSSIs are already above the critical load for tall vegetation. Yorkshire Wildlife Trust (YWT) originally suggested that these sites should be monitored for air quality under Requirement 26 but have withdrawn that request following Natural England's agreement with the applicant [SoCG009] that monitoring would not be necessary, since emissions would be unlikely to harm SSSI interest features. Any process contribution would be below 1% of the critical load and therefore its impact would be insignificant, in accordance with the EA's H1 Environmental Risk Assessment for permits. However, YWT have outstanding concerns about the levels of NO_x at the nearest wildlife sites, Beal Carrs and Willow Garth SINC's. These matters are the subject of continuing discussion and, if agreed, could be included in the air quality monitoring scheme in Requirement 26.
- 4.28 No significant impacts on air quality were recorded for the decommissioning of the plant, where traffic levels were expected to be significantly less than for the construction period and in a period when emissions from road traffic would be reducing as a result of improving vehicle technology and through increasing control over emissions.

Conclusions on air quality

- 4.29 I have considered the analysis of the impact of the proposal on air quality and the measures identified to mitigate the impact of emissions to air, including the CEMP, which would be the subject of Requirement 17 of the DCO.
- 4.30 The proposed power plant would be regulated through an environmental permit which has not yet been applied for from the EA. The EA have not supplied a letter of no impediment in respect of any future permit but have stated that, from the material submitted with this application, the power plant would be capable of being adequately regulated under a permit [WRR005]. NPS EN-1 in paragraph 4.10.3 states that the ExA should work on the assumption that the relevant pollution control regime would be properly applied and enforced by the relevant regulator. At this stage, without prejudice to the EA's consideration of the permit, I do not see any reason to believe that a permit would not be granted for the plant. Monitoring would take place both under the permitting regime and under Requirement 26. Dust control regimes would mitigate impact both during the construction, decommissioning and operational stages in accordance with paragraph 5.6.11 of NPS EN-1.

LANDSCAPE AND VISUAL IMPACT

Landscape character/methodology

- 4.31 Separate landscape and visual impact assessments have been prepared as part of the ES for the main power plant, with both the two and three unit options for the power plant assessed, together with the proposals for the pipelines. The assessments have used the Guidelines for Landscape and Visual Impact Assessment V2 (GLVIA), which is an accepted method of landscape assessment. The study area for the landscape assessment for the power plant extends to an area of 10km around the main site and the gas pipeline to within 50m around the working width, as defined by the limits of deviation.
- 4.32 The main National Character Areas (NCAs) within the study areas include: NCA30: Southern Magnesian Limestone, NCA39: Humberhead Levels and NCA38: Nottinghamshire, Derbyshire and Yorkshire Coalfield, with the pipeline area mostly lying within NCA30 and NCA39. These areas have been subdivided into local landscape character areas in studies by relevant local planning authorities, with Locally Important Landscape Areas designated in North Yorkshire.
- 4.33 The ES assigns the main power plant site to NCA30, although the landscape characteristics locally correspond to the River Aire valley and canal, with the limestone ridge overlooking the site. Although the applicant has chosen not to examine the River Aire corridor specifically within the landscape assessment, as commented on by Wakefield MDC, Selby DC and North Yorkshire CC, the elements relating to this area have been taken into account in the landscape assessment.
- 4.34 One viewpoint has been included beyond the study area but the extent of the 10km area itself has not, in itself, been fully justified by the applicant, and I agree that the cumulative impacts of the large power station development along the River Aire are visible for a longer distance than 10km. Nevertheless, the Councils have not suggested that there would be any other outcome requiring mitigation from examination of the river corridor other than that discussed below.
- 4.35 The landscape study includes photomontages, showing the predicted views of the power plant, with views of the 3-unit configuration as the worst case. Photomontages have also been produced for night-time views and the effect of planting by Year 15. Generally, these have been prepared in accordance with the GLVIA, including the latest version. However, both the wide field of view and the use of grey as

the illustrative colour of the buildings tend to diminish the impact of the proposed development.

Landscape impact

- 4.36 The application site is set on relatively flat land at about 8-9m Above Ordnance Datum (AOD), with the Magnesian Limestone ridge running on the western side of the area at about 90m AOD. The site lies on the edge of the urban area of Knottingley, close to the suburbs of Broomhill and Springfields. Further residential development is likely to take place on site SPA8, allocated in the WSSPLP, although the majority of the surrounding land uses currently are industrial, close to Knottingley, and open farmland. Large industrial structures are prominent in the wider landscape including Kellingley Colliery, and Ferrybridge, Eggborough and Drax power stations.
- 4.37 Within Wakefield District, the proposed development of the site would improve the area of the former chemical works but there would be a significant impact on the landscape locally due to the scale and nature of the proposed power plant, which would be difficult to mitigate with planting. There is some vegetation on the site at present and the former chemical works was screened, at least in part, by woodland and trees. In my view, the loss of vegetation on this site would give have a significant impact on views of the site itself. However, not all of the vegetation on the site would be removed and the landscaping strategy put forward in the ES would lessen the impact in close views of the site.
- 4.38 Local development plan policies, including D8, D9, D11 and D12 of WDPDPD and policy SP19 of the SCS, cover the need for landscape improvement, green infrastructure and the leisure use of canal and river areas. The proposed landscaping strategy would address these policies in the terms of the site itself. However, the proposal would also represent a pinchpoint in views along the canalside. The proposed mitigation of structural landscaping and a replacement public footpath along the canalside proposed in App C, R2Q009 and secured through the S106 agreement between the applicant, Wakefield MDC and St Paul's Developments [S106004], which has full weight, would help in addressing these concerns.
- 4.39 In terms of wider impacts, in views along the Aire valley, the proposal would be seen in combination with existing and proposed large scale power stations and other development. These industrial elements affect views across a wide area in this part of Wakefield and North Yorkshire. Various comments have been made in the LIRs and elsewhere [LIR001, LIR002, WRR002] about the elements of proposed

development which were not initially included in the landscape assessment in the ES. These matters have been dealt with by the applicant in subsequent comments, including the cumulative impact of the proposal considered with the proposed Southmoor Energy Centre and Kellingley Colliery. Wakefield MDC, Selby DC and North Yorkshire CC consider that there would be an adverse residual cumulative impact in the wider landscape, which would need to be mitigated by the planting of intervening elements in the landscape.

- 4.40 Mitigation has been proposed through a S106 agreement between the applicant and Selby DC and North Yorkshire CC [S106002], which would provide funds to be spent on enhancing the Aire and Calder Navigation corridor and the River Aire corridor project and on feasibility studies and the implementation of landscape and green infrastructure improvement projects. If implemented, such an agreement would be capable of providing additional mitigation in terms of the landscape.
- 4.41 However, there are a number of shortcomings with this agreement, which are discussed further in Section 7 below, and for these reasons that agreement can have little weight. Nevertheless, the agreement is similar to that which was accepted in the case of Anglia ONE which was accepted by the SoS where land ownership had yet to be finalised and the Councils concerned would have taken their own advice on its implementation and enforcement.
- 4.42 In addition, a unilateral undertaking [S106001] was made by the applicant to Wakefield MDC and would provide funding for the enhancement of landscape features and the encouragement of access to the Aire and Calder Navigation corridor in their administrative area, which are identified in the Council's Knottingley and Ferrybridge Delivery Plan 2012-2015. This is also discussed in Section 7 below. The undertaking, which has full weight, would ensure that mitigation in the form of landscape and access enhancement to the canal corridor would take place in Wakefield District.
- 4.43 On the area of the site reserved for carbon capture and compression equipment, North Yorkshire CC proposed that it could be used temporarily for landscaping purposes, including uses such as tree crops, rather than remaining vacant [LIR001]. This has been resisted by the applicant as there are concerns that they would not be able to comply with the DECC Guidance on Carbon Capture Readiness, dated 2009, that requires the land to be readily available for carbon capture. If any habitat were to become established within the area, then this could prevent the land from remaining

readily available. Therefore, I agree that part of the main site could not be used at present.

- 4.44 The Canal and River Trust (CRT) and Selby DC have stated that there would be a potential adverse impact on the landscape from the water pumping station, should the option to use water from the River Aire be chosen. The indicative drawing [APD009] shows that the pumping station, which would be a small fenced building, would be sited above the level of the existing flood defences on the bank of the River Aire. Although it would be in a prominent position and widely seen in views across the agricultural landscape of the open river valley, the building would be one of a number of utilitarian structures associated with the management of the river, like the nearby screen on a tributary, none of which have been landscaped. As such, it would not appear out of place with these other structures in the landscape. There has been debate in the examination about whether landscaping of the structure would be beneficial. Given the open nature of the river banks, planting would draw attention to the structure and I consider that landscaping would not be necessary in this context.
- 4.45 Any impacts from the pipelines would be temporary ones during construction and therefore there would be a negligible impact on the existing landscape. An Above Ground Installation (AGI) would be constructed on the edge of Tom's Wood, near Gateforth, to link the new pipeline to the existing gas infrastructure, but this would comprise small, utilitarian structures set against the woodland and would have little impact on the landscape.

Visual impact

- 4.46 The LVIA [ES Chapter 13] analysed the impact of the generating station on sensitive receptors including local residents. The scale and the mass of the proposed buildings on the generating station site would mean significant changes in views from the closest properties, like those on Common Lane, where there would also be highway improvements, although some of the hedgerow vegetation would remain to intervene in close views. There would also be significant changes in views from local footpaths, including those which would need to be diverted around the power plant site [App C&D, R2Q009]. The LVIA states that there would be a significant adverse effect as a result of the development, which the proposed landscaping could do little to mitigate. Other views, particularly those from viewpoints 1-6, are generally more open and the industrial nature of the eastern area of Knottingley and Kellingley Colliery is only apparent in certain of these views, where there would be more limited impact.

- 4.47 Wakefield MDC has expressed its concerns about the visual impact of the proposal on future occupiers of the residential element of site SPA8. At present no planning application has been made for the site and the layout, which includes mixed uses, for which a draft masterplan exists, could be subject to further changes. Therefore impacts on these occupiers and those of other developments nearby whose views would also be altered by the mixed use development on SPA8 cannot be accurately assessed at this stage. However, the intention is to screen the residential development by having intervening light industrial uses.
- 4.48 The proposed power plant would be smaller in scale than other power plants in the locality [App E, R2Q009], although it would still have a considerable local impact. Nevertheless, sensitive design of any future development on site SPA8, in terms of the orientation of buildings and screening, and for the detailed design of the generating station buildings, controlled through Requirement 3, would help to lessen the visual impact on sensitive receptors. In any event, as discussed above, the need for the generating station is such that it would outweigh any residual harm, as set out in paragraph 5.9.18 of NPS EN-1.
- 4.49 The visual impact of the proposed grid connection would also be temporary, resulting in some loss of vegetation and adding to some new elements to local views, as set out in Table 13.9 of the ES. However, the LVIA concludes in section 13.7.35 that any long term changes would be minimal as the two existing pylons would be replaced by two similar ones in adjacent locations. As such, no mitigation would be required.
- 4.50 There would be a plume from the stacks but this would be unlikely to be visible for more than a small percentage of hours each year due to ambient air temperatures. The hybrid cooling units have been designed to be plume-free down to weather conditions of 5°C and 95% humidity. As such, there would be much less impact from this type of plant than the existing power stations locally which have taller stacks (up to 180m at Ferrybridge) and cooling towers with plumes visible in a variety of weather conditions.
- 4.51 Wakefield MDC has stated that the night-time visualisation of View 3 underestimates the impact of the lighting of the site and the urbanising effect that it would have on the local area. The details of the operational lighting scheme would be the subject of Requirement 3 and I consider that it would be possible to control this element of the development to make it acceptable.

Conclusions on landscape and visual impact

- 4.52 I have considered the analysis of the impact of the proposal on landscape and visual amenity and the measures identified to mitigate the potential impacts. The LVIA has used appropriate methodology to analyse the potential impact of the proposal. Although criticism was raised by the relevant local planning authorities of the methodology and output of the landscape studies during the examination, further information was provided by the applicant on these matters. I consider that the information provided in the ES on landscape issues and the further explanation of it by the applicant during the examination has been sufficient to determine the landscape and visual impact of the proposed development.
- 4.53 In terms of landscape impact, there would be mitigation through the layout and detailed design of the proposed development on the main site, as set out in the section on design above. In addition, agreement has been reached between the applicant and the relevant planning authorities on the necessary mitigation, in terms of the landscaping of the site and its immediate surroundings including the canalside, together with the opportunity for further landscaping in the wider surroundings. I consider that this would be sufficient to mitigate the significant impact on the landscape identified in the ES. This would be secured through Requirements 3 and 7 and the planning obligations. As such it would comply with paragraph 5.9.15 of NPS EN-1, which requires such development to minimise harm to the landscape, including by reasonable mitigation, and paragraph 5.9.23, which covers off-site mitigation.
- 4.54 Paragraphs 2.6.5 and 2.6.6 of NPS EN-2 state that it is not possible to eliminate the visual impact of fossil fuel generating stations and that mitigation should reduce visual intrusion in the landscape and minimise the impact on visual amenity as far as reasonably practical. Much of the necessary landscape mitigation would also reduce the visual impact of the proposed development on sensitive receptors. Some mitigation could also be achieved in the detailed design for the land uses, layout and orientation of dwellings on the adjacent site for mixed uses. As such, I consider that the proposal would minimise visual impact as far as practicable in this case and would comply with paragraphs 2.6.5 and 2.6.6 of NPS EN-2. In any event, the need for the project would outweigh any residual adverse impact, as set out in paragraph 5.9.18 of NPS EN-1.

TRAFFIC AND TRANSPORT

- 4.55 The impact of the proposal on traffic and transport has been considered in the ES [Chs 15 and 23], in a separate Transport Assessment (TA) [ES App O.1] and also in the Design and Access Statement (DAS) [APD063]. These studies, drawn up using accepted methodologies and in consultation with the relevant highway authorities, mainly highlight the impacts arising from the construction of the generating station and the pipeline. Although they examined the worst case scenario, with all traffic going by road, the canal adjacent to the main site has also been identified as being suitable for goods movement.

Traffic impact - main site

- 4.56 The peak number of workers would be around 1,100 during the construction period, with a peak of about 144 HGV trips per day being generated. The split of worker trips has been allocated 80% to private vehicles with an average occupancy rate of 2 and 20% to minibus with an average occupancy rate of 7. The occupancy rates have been criticised in the Selby DC and North Yorkshire CC LIR [LIR001] but it has been based on the use of workers travelling in working groups. In addition, there would be a construction travel plan in place, which would be likely to increase car occupancy, secured as part of Requirement 17, on roads which already have spare capacity. On a worst case assessment as agreed by the relevant local planning authorities, without any mitigation such as sustainable travel measures to be adopted as part of the travel plan, construction worker trips would be 471 arrivals between 0600 and 0700 and 471 departures between 1900 and 2000 for the 9 month construction period.
- 4.57 There would be about 12 Abnormal Indivisible Loads (AIL), and possibly another 10 such loads depending on the boiler assemblies. On a worst case scenario for 3 generating units this would generate about 42 AILs. Routes have been agreed for the delivery of the AILs, which would be updated if the project were to proceed. The TA confirms that it would be possible to use the canal and existing highway network for AILs and other construction materials.
- 4.58 The environmental impact of the traffic has been assessed with reference to the Guidelines for Environmental Assessment of Road Traffic (EART), with the ES setting out the criteria for the significance of the impacts. Only those rated High or Medium are stated to be significant effects which would require temporary or permanent mitigation. Surveys were carried out on the agreed highway network of interest, setting a baseline with some allowance for growth local growth, and the impact also examined on identified

junctions, including J33 and J34 of the M62. Wakefield MDC states that these are the most likely junctions to be used to access the main site [RQ1002].

- 4.59 The study takes into account cumulative impacts of other committed developments known about at the time, including the proposed Southmoor Energy Centre. Cllr McCartney made a relevant representation on the cumulative impact of construction traffic [RRP016] and on the omission from the TA of the proposal for a waste incinerator by DRENL near Eggborough and an anaerobic digester (AD) plant near Kellington [WRR002]. Both Eggborough [RRP004, WRR003] and Kellington Parish Councils [RRP010] made representations on the grounds of the increased traffic on the A465 and the need for consideration of cumulative impacts.
- 4.60 The study did not include the proposed DRENL project, the construction of which might coincide with the construction of the Knottingley Power Project. However, the applicant provided further details of these proposed developments in response to Cllr McCartney's representations and the matter was discussed at the first ISH. The DRENL project would use the A19/M62 and traffic would not pass through the settlements of Eggborough and Kellingley. The proposed AD plant at Kellington would be a relatively small development, which would result in a small increase in construction traffic but, once operational, the proposal would result in a decrease in annual vehicle movements overall. The proposed DRENL project would also be likely to be EIA development and would be likely to be subject to an analysis of any cumulative impact with other projects.
- 4.61 The study also examined the split of construction traffic on the A465. Consultation with the relevant highway authorities apportioned a 75% split of construction staff traffic arriving via Knottingley and only 25% through Eggborough and Kellingley, with a split of 60% and 40% respectively for HGVs. The ES indicates that the traffic increases in these settlements would be such that they would mainly fall below the severance threshold of 30%, and would be identified as having a low impact. Some increases would be above the 30% threshold but the applicant's view, as stated in the ES, is that such increases would not be at times when there was much pedestrian desire to cross and therefore the impact on severance would be limited.
- 4.62 Whilst the ES does not accept the need for mitigation for severance, the applicant has offered to provide a new pedestrian crossing in Eggborough. I made an unaccompanied site visit to the area, including the proposed site of the pedestrian crossing. The crossing would be provided through a S106 agreement between the applicant,

North Yorkshire CC and Selby DC [S106002], which is discussed in Section 7, below. The Selby DC and North Yorkshire CC LIR [LIR001] specifically requested further pedestrian measures to help overcome the severance of the settlement by the A465. The proposed pedestrian crossing would help to overcome this issue, despite the projected traffic having a low impact in terms of the severance threshold. Although I have given this S106 little weight for the reasons set out in Section 7, as set out above, in another case a similar S106 agreement was accepted by the SoS. The SoCG between the applicant and the relevant local planning authorities [SoCG022] records agreement that the proposed pedestrian crossing should be provided and I consider that it would be deliverable.

- 4.63 The modelling shows that there would be significant increases of traffic on the A465 links during construction works at peak hours, with a medium to high impact on the links and junctions studied. However, the ES states that this is mainly due to the low existing background levels of traffic. The only junction for which there would be an overall increase over predicted 2017 commuter flows would be the junction of A465, Common Lane and Low Green, where there would be a high impact. The ES states that only the AILs would have any significant impact on accidents and road safety, which is said to be medium, due to driver frustration and risk taking. Temporary localised delays would also result from AIL movement.
- 4.64 The construction of the power plant on the main site would necessitate the stopping up of Common Lane which Wakefield MDC considers is an unrecorded bridleway [R1Q002]. A temporary alternative would be provided until a permanent replacement along the side of the canal was constructed [App C, R2Q009]. This has overcome the relevant representations of Caddick [RRP007] who required access for agricultural vehicles to their land via Common Lane.
- 4.65 In its operational phase, the development would function 24 hours a day, 365 days of the year, with a workforce of about 50 staff working shift patterns. The peak number of trips would be for the day shift with about 50 people generating about 100 trips in total, with 25 of those being at evening peak. It is estimated that there would be up to 2 HGV and 5 Light Goods Vehicle deliveries per week.
- 4.66 During decommissioning, it is likely that the impacts would be felt over 9 months, although the applicant considers that they would be likely to be more limited than construction impacts due to the removal of assembled units rather than individual parts from the plant.

- 4.67 In terms of mitigation, Requirement 17 requires the submission and approval of a Construction Environment Management Plan (CEMP) in accordance with the principles set out in Chapter 26 of the ES. This would include restrictions on construction hours and a traffic management plan. The junction of the A465, Common Lane and Low Green would be improved, as the geometry would not meet the necessary standards, and Common Lane widened. This would also help to accommodate AILs, if they travel by road. The provision of a highway access would be enforced through Requirement 10, which requires a scheme for such the access to be submitted and approved. Draft Travel Plans, dated December 2013, [PSC001 and PSC002] for both the construction and operational stages of development would be developed to ensure sustainable means of transport and the reduction of single car occupancy would be adopted where possible. In terms of decommissioning, Requirement 30 requires a site closure and restoration plan, including similar measures to those contained in Requirement 17 for a CEMP.

Traffic impacts - pipeline

- 4.68 Two options have been proposed for the construction compound for the pipeline, one at the proposed power plant and one at Eggborough off the A19, although the Planning Statement says that the CCS area at the generating station site would be the main laydown area. Trip distribution for the gas pipeline construction workers has been based on that for the main power plant. From the compound workers would be transported by minibus to work areas. It is expected that there would be about 90 trips to and from the compound by workers (180 trips total) and about 40 minibus trips to and from the compound to working areas (80 trips total). HGV trips for delivery and distribution would amount to about 50 trips in total per week, some of which would require the use of low loaders to transport pipe sections and other large materials during the initial mobilisation and subsequent demobilisation period.
- 4.69 Chapel Haddlesey Parish Council made representations on the use of Millfield Road, West Haddlesey and its bridge for construction traffic in their submissions [ADS001, ADS005 and CoWSH001]. This matter was discussed at the first ISH and subsequently resolved as a result of an agreement [SoCG026] between the applicant and the Parish Council on the use of Millfield Road, which would be for minibus traffic only and not HGVs, as set out in the Draft Construction Traffic Management Plan for Water and Gas Pipelines [ADS004].
- 4.70 The pipeline construction would involve the crossing of 6 roads and 8 footpaths and tracks. The highway authority

(NYCC) has said that the arrangements for road crossings in those cases where trenchless methods would not be used should still be straightforward. This would be the subject of more detailed work with the highway authority where road closures and traffic-light controls were needed [LIR001]. However, the ES does not anticipate that road closures or diversions would be necessary.

- 4.71 The highway authority has also requested that alternative routes should be provided where there are temporary closures of Public Rights of Way (PRoW). Although the sensitivity of such routes is high, any diversion would be temporary and for one of the footpaths, PRoW 35.7/8/1, a trenchless technique would be used. In all cases the impact has been assessed to be negligible in the ES and therefore not significant.
- 4.72 Requirements would provide further control over the impacts of the proposed pipeline development on the local area. A management scheme for the closure of any PRoW would also be need to be submitted and approved as part of Requirement 9. The CEMP, which would be submitted for approval under Requirement 17, would cover other impacts in the rural area, such as dust and the prevention of mud on roads.

Conclusions on traffic and transport

- 4.73 I have considered the analysis of the impact of the proposal on traffic and transport and the measures identified to mitigate any impact, including the CEMP, which would be incorporated into the DCO.
- 4.74 The TA had been carried out using methodologies agreed in principle with the highway authorities and the Highways Agency and the results of the TA and subsequent evaluation in the ES have been accepted by them, although Selby DC and North Yorkshire CC have expressed concerns about the impacts of traffic on local communities in Eggborough and Kellingley. These have been amplified in the representations from local Parish Councils and others, including the impacts of pipeline construction in the rural area.
- 4.75 The acceptability of the traffic and transport proposals, particularly for the construction phases, is heavily dependent on Requirement 17 and the Construction Environmental Management Plan, the Draft Construction Traffic Management Plan for Water and Gas Pipelines [ADS004], and the Travel Plans. However, this is not unusual in such development. The signed S106 planning obligation with Selby DC and North Yorkshire CC [S106002] would also deliver mitigation in terms of the impact of traffic and effects on pedestrians,

especially during construction. These measures would be capable of delivering sufficient mitigation for the impact of the proposal in terms of traffic and transport. In addition, provision would be made for the temporary and permanent diversions to PRow to compensate for the stopping up of Common Lane.

- 4.76 In conclusion, there would be no significant impacts in terms of traffic and transport and the proposal would comply with paragraphs 5.13 of EN-1 on traffic and transport.

TERRESTRIAL ECOLOGY

European sites

- 4.77 Reports on terrestrial ecology for the main site are set out in Appendix I of the ES, including a Habitats Regulations Assessment (HRA) - No Significant Effects Report at Appendix I.12. For the pipeline the surveys are set out in Appendix S of the ES.
- 4.78 There are no designated European sites within the Works or Order limits. The nearest designated European site is the Humber Estuary, which is in hydrological continuity with the River Aire and the Canal, although it is about 21km away, in a straight line, from the main site. The Humber Estuary has a number of designations including: the Humber Flats, Marshes and Coast SPA, Humber Estuary SAC and Ramsar and Humber Estuary SSSI. In addition, it is a European Marine Site. It qualifies by supporting populations of European importance for a number of breeding, overwintering and passage birds, notably waders.
- 4.79 The SPA was included as a precautionary measure in the ES following consultation with Natural England (NE). The main site does not support habitat for the bird species for which the Humber estuary is designated, nor were any significant numbers of these birds noted in the surveys. In addition, although not on the main site but adjacent to it, the River Aire and the Canal do not support the birds for which the SPA was designated. Furthermore, the distance between the main site and the pipeline route and the SPA would be sufficient to prevent any adverse impact on the SPA.
- 4.80 As part of the ES, Appendix I.12 contains a Habitat Regulations Assessment - No Significant Effects Report. This concludes that the project is unlikely to have a significant effect on the qualifying features of the SAC, SPA and Ramsar site, either alone or in combination with any other proposals. As such, under Regulation 61 of the Conservation of Habitats and Species Regulations 2009, there is no requirement for an Appropriate Assessment (AA) to be carried out. There was

no disagreement by IPs with the conclusions of the No Significant Effects Report.

- 4.81 The No Significant Effects Report included screening matrices, in accordance with the Planning Inspectorate's Advice Note 10 on Habitats Regulations Assessment relevant to Nationally Significant Infrastructure Projects, which supported its conclusions. Natural England (NE) had no objections to the proposal following consultation either before or during the examination. In its SoCG [SoCG001 & SoCG009] with the applicant, it was agreed that there would be no significant effect on any European sites and that no further action or assessment was necessary in terms of European sites.
- 4.82 Given these findings, the views of NE and the amount of spatial separation between the proposal and the European sites and having regard to paragraph 4.3.1 of NPS EN-1, I am satisfied that there is sufficient evidence to allow the Secretary of State (SoS) to conclude that significant effects can be excluded for all European sites and for any site to which the same protection is applied as a matter of policy, either alone or in combination with other projects. Furthermore, in accordance with the same paragraph of NPS EN-1, sufficient information has been provided for the SoS to determine that an Appropriate Assessment is not required.

Other sites and habitats

- 4.83 Within the 5km study area, other nationally designated sites include Fairburn and Newton Ings Site of Special Scientific Interest (SSSI), managed by the Royal Society for the Protection of Birds (RSPB), and just beyond the study area is Brockadale SSSI, a Yorkshire Wildlife Trust (YWT) site. The applicant's SoCG with NE [SoCG009] agreed that the project is unlikely to have a significant impact on any SSSIs.
- 4.84 There are also a number of non-statutory designated sites within the study area of local value. Of these, Beal Carrs Site of Importance for Nature Conservation (SINC) would be directly impacted by the construction of the pipeline which would cross it. Willow Garth Site of Ecological/ Geological Importance (SEGI) is about 50m from the pipeline route and Staker Wood SINC about 100m from it. Willow Scrub, which has been de-notified, lies about 500m from the pipeline route.
- 4.85 The direct impacts of pipeline construction on Beal Carrs SINC would be temporary and the habitats on the site would be restored after pipeline construction, in accordance with Requirement 25. Potential pollution to water within Beal Carrs and Willow Garth SEGI would be prevented through the further measures described in the ES and the CEMP, covered

by Requirement 17. Both Staker Wood and Willow Scrub SINCs would be sufficiently distant from the working area of the pipeline route not to be adversely affected by the construction works and are only in limited hydrological continuity with them.

- 4.86 On the main site, there would be a loss of planted woodland but this represents only a small area of the site and there would be no significant impact on hedgerows. Along the pipeline route, trees would be avoided and only minimal gaps would be created in hedgerows, which should not directly impact protected species or habitats. Much of the main site is improved grassland, although there is a small area of species-rich semi-ruderal grassland, which would also be lost. However, the mitigation provided as part of the remediation works, detailed in the next paragraph, would also mitigate for the loss of the grassland.
- 4.87 There would be a loss of 310m of dry ditch on the main site and a further 170m of wet ditch on the main site which represents a significant loss of habitat at site level. The loss of the wet ditch was a concern to the EA in their relevant representation [RRP015]. However, these changes would be mitigated by the habitat creation which is being provided as part of the application to remediate the main site. In the SoCG between the applicant and EA [SoCG008], the EA agree that the provision of two ponds and associated terrestrial habitat, wildflower and shrub planting associated with the remediation of the site would be sufficient mitigation for the loss of the wet ditch.
- 4.88 Dust emissions from the construction of the main power plant and the pipeline might adversely affect habitats, including grassland around the main site. These would be managed through dust control schemes, which would be included in the CEMP and covered by Requirement 17. In addition, an Ecological Management Plan is required by Requirement 16, which would seek to minimise impact on habitats and protected species, and has been agreed by NE to adequately protect existing habitat. This Requirement would also allow for any biodiversity offsetting to be addressed, possibly through the planning obligations, which was the subject of comments on responses to the ExA's second round of questions submitted by YWT [CoR2Q002].
- 4.89 During operation, the main impacts on terrestrial ecology would be from emissions to air and water. These have been dealt with above. The air quality impacts and the discharges to water would both be the subject of further detailed examination and regulation through the environmental permit for the facility.

Protected species

- 4.90 About 117 protected or notable species were identified in the ES search area from existing data.
- 4.91 In terms of bats, there is habitat suitable for bat foraging on both the main site and pipeline route but little potential for roosting. There would be some loss of linear features used by bats for foraging but this would be limited and, in the case of the pipeline, temporary. Badgers are known to use areas around the main site but there was no evidence of badger during the surveys. Badger activity was recorded within 50m of the pipeline route but the only setts to be recorded (5 in total) were outside this distance. Any impacts would be confined to habitat loss/fragmentation, disturbance and injury/mortality.
- 4.92 On the main site there is evidence of Little Plover breeding on the former chemical works site. It is a scarce breeding bird in Yorkshire and the record is of County importance. Other notable species recorded around the main site include Yellow Wagtail and Tree Sparrow. In total, there are a further 10 probable breeding species and five possible breeding species of conservation concern in and around the main site. The birds would be disturbed or displaced by noise and activity to their habitats and the breeding area for the Little Plover would be lost. However, nest sites for the Little Plover tend to be used for only about 2-3 years before they become too vegetated for use and therefore their displacement would be likely to have occurred in any event.
- 4.93 It is unlikely that the introduction of new features, such as the proposed grid connection, would have an adverse effect on the bird population, since there are already pylons and electricity lines in the locality. There would also be disturbance and fragmentation of habitats from the construction of the pipeline. However, this would be small-scale, temporary and reversible, which would therefore have negligible impact, following the implementation of the CEMP, under Requirement 17. In terms of birds of passage and overwintering birds, these are largely associated with the canal and river environment, although farmland passerines were also of importance on the greenfield area of the main site. It is likely that there would be some displacement of these species as a result of disturbance on the site. Surveys of overwintering birds on the pipeline route are secured through Requirement 24. However, such habitats are readily available elsewhere in the vicinity of the site and it is unlikely that there would be any damage to the local population in any event.

- 4.94 The ES states that otters are likely to use both the River Aire and the canal for passing through the area and only one record of an otter path and spraint was detected on the main site, with no resident otters recorded. During the construction works there would be habitat loss, through the loss of marginal vegetation along the canal and disturbance by noise. However, this would be temporary and be likely to displace otters to their wider territory. Similar impacts would apply to water voles. In terms of reptiles, grass snakes were found on the main site and there would be a permanent loss of habitat as a result of the new buildings. As part of the remediation scheme for the former chemical works other suitable habitat would be created and other suitable habitat would remain in the local area.
- 4.95 In the case of all protected species, a further survey would be carried out prior to development and steps taken through Requirement 24 to ensure the correct procedures, including licensing relocations, were used in relation to European protected species. In addition, the Framework CEMP in the ES sets out the need for specific method statements to be prepared for bats, breeding birds, great crested newts, otters, reptiles and water voles. Requirement 17 secures the need for such statements since it requires the CEMP to be prepared in accordance with the principles of the Framework CEMP (Ch27 of the ES). Natural England has confirmed [SoCG009] that protected species would be adequately protected through the mitigation measures set out by the applicants in the ES and the Requirements.

Conclusions on terrestrial ecology

- 4.96 In terms of other protected sites, species and habitats, either it has been shown that there would be no significant effect or that mitigation would be applied to ensure adequate protection. This would comply with section 5.3.18 of NPS EN-1.
- 4.97 I have already concluded, in paragraph 4.82, that significant effects can be excluded for all European sites or to any site to which the same protection is applied as a matter of policy, either alone or in combination with other projects and that an Appropriate Assessment is not required.

NOISE AND VIBRATION

- 4.98 As part of the ES (Chapter 8) a noise assessment was undertaken for the construction, operational and decommissioning phases of the power plant. A separate noise assessment was carried out for the construction, operation and decommissioning of the pipeline in Chapter 18 of the ES.

Both studies included the impact of noise from traffic on local and strategic roads.

- 4.99 During the construction period for the generating station, there would be noise from such activities as ground works, piling, concrete crushing, construction traffic and general site activity. The construction period would be about 40 months and it is essential that noise is properly controlled during this period. The CEMP (Requirement 17) would control construction hours, except for Work No 5 (National Grid connection) and hours for piling would be shorter than the construction hours. Similar controls would apply during decommissioning under Requirement 30. Both the relevant local planning authorities would have an opportunity to ensure that adequate noise control measures were imposed through the CEMP.
- 4.100 For the main power plant, baseline assessment positions were identified and, although the residential development on St Paul's site was identified in the list, it was not included as a receptor for the construction phase of the development, since it would be unlikely to be built at that time. Following concerns raised by Wakefield MDC, the applicant issued a further explanation of the exclusion of the site at the construction stage. At the operational stage, the worst case scenario had been considered at this receptor, with the site being predominantly developed with housing, unscreened by other development. However, the applicant's explanation of the results in Table 8.13 of the ES found levels at this receptor were 1dB lower than the background noise level (LA90), even without any of the proposed intervening light industrial development in place, which might screen it. In any event, Requirement 23 would meet the recommendation in Wakefield MDC's LIR [LIR002, paragraph 7.4.10] in providing for noise monitoring at locations to be agreed with the Council.
- 4.101 Selby DC point out that paragraph 8.6.3 of the ES indicates that the noise assessment took into account mitigation measures, such as insulation, equipment selection and attenuation in the design of the plant. Although these are details that might be subject to change, noise and mitigation measures would be taken into account in assessing the environmental permit application and it is likely that conditions to limit noise would also be applied in the permit. The EA has made a number of observations on the noise assessment and show no significant concerns with the methodology or conclusions reached. In any event, Requirement 23 would control operational noise from the generating station to being below background noise levels and Requirements 17 and 30 would control noise during the

construction and decommissioning phases respectively, in consultation with the relevant local planning authorities.

- 4.102 The ES shows the residual impact for the development on the power plant site with the CEMP and noise monitoring in place to be minor adverse during the construction period. However, activities would not take place at night, except for Work No 5, and would be temporary in nature. Similarly, the impact from construction traffic would be minor adverse. General mitigation for traffic levels, and hence traffic noise, would be secured through the construction traffic management plan which would also apply to Work No 5. Furthermore, traffic levels would be reduced if the canal were to be used for the transport of construction materials. During the operation of the power plant, the noise levels are predicted to be minor adverse at the closest residential properties from future fixed installations and mechanical plant. The highest levels would be for residential properties on site SPA8 which would slightly exceed the existing background noise levels during night time but the likelihood of complaints would be 'less than marginal' (Table 8.12 of the ES). Limits would be set on operational noise through Requirement 23, which would provide enforceable controls for the relevant local planning authorities.
- 4.103 In terms of noise and vibration from the construction of the pipeline, most of the noise generated would be from heavy plant and machinery. Even when measured at selected locations on the pipeline route the predictions are likely to be overestimates as they do not include any screening and assume that all the construction activities would take place simultaneously. The predicted significance is minor adverse or negligible. Mitigation measures such as noise monitoring and further measures in the CEMP would reduce noise or its effects, for example, through control over working hours.
- 4.104 There would be vibration from construction activities but, from the activities and type of plant to be used, this would not have a significant effect. Noise would be generated by construction traffic but traffic routes, mainly on strategic roads, would be provided through the draft Construction Traffic Management Plan for Water and Gas Pipelines. The mitigated effects from construction traffic would be minor adverse to negligible and temporary in nature. There would be noise from the pre-commissioning tests on the pipeline required by the Health and Safety Executive, when air would be vented. The noise would be about 86dBA which would have a moderate adverse effect. However, the necessary machinery could have a silencer fitted and there would be only short bursts of sound over a temporary period, which would be considered negligible in the long-term.

- 4.105 During operation, there would be annual controlled releases of gas but such inspection and maintenance activities would be carried out during the daytime and infrequently. During decommissioning the gas pipeline would be disconnected but remain buried underground. There might some dismantling of the AGI but this would be unlikely to generate much noise or traffic since it is only a group of small structures. This has been assessed as part of the ES and mitigation would be secured through Requirement 30, Decommissioning.

Conclusions on noise and vibration

- 4.106 I have considered the concerns of the IPs and the analysis of noise and vibration in the ES, together with the proposed mitigation including Requirements.
- 4.107 Control of noise during the construction periods for both the power plant and the pipelines would be highly dependent on the CEMP set out in Requirement 17. A Framework CEMP has been included as part of the ES to mitigate the residual impacts of construction which includes the main measures that would be included in the detailed CEMP secured through Requirement 17. Through this, the relevant local planning authorities would have control over its contents since the Requirement requires its submission to and approval in writing by them. Noise during the commissioning and operation of the plant would also be controlled by Requirement 23 and the environmental permit. With the mitigation proposed, none of the impacts would be greater than minor adverse and therefore I conclude that the proposal would be in accordance with Section 5.11 of NPS EN-1.

FLOOD RISK AND WATER QUALITY

Flood risk - main site

- 4.108 A separate flood risk assessment (FRA) has been prepared for the main site [ES App K.1.], assessed in Chapter 11 of the ES, and flood risk in respect of the gas pipeline has been assessed in Section 20.8 of the ES and the addendum dated 4 April 2014.
- 4.109 The main site lies in Flood Zone 2, as agreed by the EA in their SoCG [SoCG008], although it lies in Flood Zone 3a in the Strategic Flood Risk Assessment 2008 (SFRA) contained in Wakefield Council's Policies Map 2012 in their Local Development Plan Framework. The applicant states that the gas pipelines would be in Zones 2 and 3. The National Planning Policy Framework sets out general policies for development and flood risk and the 'Flood Risk and Coastal

Change' section of the Government's National Planning Practice Guidance (PPG) gives further detail on this matter.

- 4.110 The proposed development on the main site would be classified as 'essential infrastructure' according to Table 2, 'Flood Risk Vulnerability Classification', of the PPG, as would the gas pipelines. The water pipelines and pumping station would be classified in Table 2 as 'water-compatible uses' under 'water transmission infrastructure and pumping stations'. Although Wakefield MDC have agreed that the site should be treated as being in Zone 2 [LIR002], given the worst case scenario of it being in Zone 3a, the power plant and the gas pipelines would need to pass the sequential test and the exception test. In the case of the exception test, the note to Table 3 of the PPG states that this should show that the development should be designed and constructed to remain operational and safe in times of flood.
- 4.111 The main site is within site SPA8 of the adopted WSSPLP. Paragraph 100 of the LDPF requires Local Plans to apply a sequential risk-based approach to the location of development and apply the sequential test and an exception test, where necessary. In the WSSPLP, Wakefield MDC states that they have applied both the sequential and exception tests to the development of the site for the proposed use. However, it notes that flood risk is a significant issue in this area and an FRA is required to address such issues.
- 4.112 The applicant's FRA covers flood risk, the nature of flood defences and residual flood risk, flood risk from other sources, mitigation measures and the need to manage the volume and water quality of run-off from the site. Comments on the FRA from the EA, Yorkshire Water (YW) and the Council's drainage department have been taken into account in the document. There are flood defences along the River Aire in the form of earth embankments. The FRA notes that debris lines show that the defences had approached capacity recently. The EA notes that account should be taken of the likelihood of their withdrawal from the maintenance of these defences. However, if they were to be overtopped, the Canal would take some of the flood flows. In addition, there are smaller drains in the area of the site controlled by Danvm IDB. These drain into Rampart Drain which is subsequently pumped into the River Aire.
- 4.113 Flood breach modelling was undertaken in 2009 showing the 1% annual probability breach flood level to be 9.17m AOD. The proposed levels of operational areas would be at 300mm above this level; floors to all buildings at 450mm above this level; and, electrical controls and equipment, oil separators and storage areas for oils and potential pollutants (where not banded) at 600mm above the level. Waterproof materials

would be used for construction works below 9.77m AOD. The site access would also be raised to 9.17m AOD. The raised floor levels and levels for development would also protect against flooding from IDB drains. There would be a theoretical loss of flood storage from the raised levels on site but this would be only likely to occur if defences were breached and, in any event, the floodplain and washlands are large at this point and it would be likely that any impact would be small. In addition, there would be little risk from groundwater and other sources of flooding. Neither the EA nor the IDBs has objected to the proposal on grounds of flood risk and the EA have agreed in their SoCG [SoCG008] that Requirement 20 would control flood risk.

Flood risk - pipeline and AGI

- 4.114 An assessment of the flood risk and impact on water quality from pipeline construction was carried out separately in Chapter 20 of the ES. The pipeline and its associated infrastructure would be classified as essential infrastructure in 'Table 2: Flood Risk Vulnerability Classification' of the PPG. Works would take place in Flood Zones 2, 3a and 3b, as defined on the EA Flood Maps. In this case both a sequential test and an exception test would be required. The sequential test is set out in paragraph 100 of the National Planning Policy Framework and states that development should not be permitted if there are reasonably available sites appropriate for the proposed development at lower flood risk. The exception test is set out in paragraph 102 of the Framework. It requires that the development provides wider sustainability benefits to the community that outweigh flood risk and for a site-specific FRA to be prepared. The exception test for Zone 3b (worst case scenario) additionally requires development to remain operational and safe for users in times of flood; result in no net loss of floodplain storage; and, not impede water flows and not increase flood risk elsewhere.
- 4.115 A sequential test was carried out which included alternative options for gas supply and alternative gas pipeline routes with alternative connection and termination points. A quantitative evaluation of the strengths and weaknesses of the alternatives were carried out and the optimum route was chosen. The ES indicates that the route was chosen against a range of criteria and, as the optimum route available, with no other suitable sites at lower risk, it would pass the sequential test.
- 4.116 In terms of the exception test, benefits to the community would include the need for new electricity generation set out in paragraph 3.1.3 of NPS, EN-1 and the sustainability benefits from power plants which are capable of backing up renewable energy and in the longer term of using CCS

technology, as set out in paragraph 3.6.8 of NPS, EN-1. In addition, Wakefield MDC [LIR002 & R17002] has welcomed further employment in the area.

- 4.117 The EA did not require any detailed modelling for the impact of flooding as a result of pipeline construction and have said that there would be no risk once the pipeline is operational, since it would have negative buoyancy and the area is already protected by flood defences. No further mitigation was required by the EA as stated in their agreed SoCG with the applicant [SoCG008]. The main potential impacts of any flooding, as set out in in the ES Section 20.8, are from fluvial flooding and operational flooding onto adjacent sites.
- 4.118 During construction of the pipeline there would be the potential for the trenches and the site of the AGI to be flooded by fluvial flooding from the River Aire and its tributaries, to some depth in places along the trench. There would also be some temporary loss of flood storage during works. As such the assessment gives a moderate adverse value to the unmitigated effects. Requirement 17 requires a CEMP to be submitted and approved in writing, the likely measures within which would significantly reduce any risk during the construction period, which in any event would be temporary (over 9-12 months). The risk during construction would therefore be reduced down to minor adverse in the short term and negligible in the longer term and therefore would not be significant. Overland flows could be a source of flooding to the trenches and AGI site but because of the presence of flood defences the mitigated effect would be minor adverse to negligible. Groundwater sources of flooding would also need to be taken into account in the construction methods for the pipeline.
- 4.119 During operation, there would be a risk that the pipeline could become a preferential pathway for floodwater or could make the ground more impermeable leading to increased surface water flooding. Over time, the negative buoyancy of the pipeline could be disrupted causing the movement of the pipe. Without mitigation, this would be a major adverse impact which would be significant. However, the pipeline would be constructed to Pipeline Design Standard IGE-TD/1 which encourages a weight coating to the pipeline to further increase negative buoyancy and make any such occurrence unlikely, reducing any risk to minor and insignificant. The AGI is in Flood Zone 2 and could be flooded in an extreme flood event, together with access to it. Further design measures set out in Section 20.6 of the ES, which would be incorporated into the detailed design for approval through Requirement 6 would ensure that the mitigated impact would be negligible and not significant. Flooding from other sources, like overland flows and groundwater, would be

unlikely to have any significant effect on the operation of the AGI.

- 4.120 During decommissioning the pipe would be disconnected from the main transmission system and potentially the AGI would be dismantled and removed. The pipeline would remain buried and the standards to which it would be built would protect it from negative buoyancy. In any event, as this would be an unlikely occurrence it would not be a significant risk.

Water quality

- 4.121 Many of the risks to water quality from the development of the main site relate to the previous use of part of it as a chemical works. A study of the land quality of the site has been carried out and found that contaminants of concern are largely confined to shallow perched groundwater on the site. It is intended that works to remediate the site would take place prior to the construction of the power plant with planning permission already granted for the works by Wakefield MDC [Ref 12/02488/FUL].
- 4.122 The main water receptors for any contamination released during the construction phase would be groundwater, the canal and local drains and ultimately the River Aire to which they are connected. During construction, both flood risk and water quality concerns would be controlled through the CEMP, employing best practice techniques. This would reduce the risk of silt and other pollution entering the canal, river or other water system. It would also cover the construction of the pipeline system. Since the CEMP is to be submitted and approved in writing by the relevant Councils, there would be adequate control over such matters through Requirement 17 and the Construction Surface Water Management Plan prepared under it. There would be little change in the risk to flooding and water quality from decommissioning activity which would, in any event, be controlled through Requirement 30, which would have similar provisions to that in the CEMP required by Requirement 17.
- 4.123 During operation, the proposed surface water drainage system incorporated with the further measures, set out in paragraphs 11.6.10 to 11.6.13 of the ES, would be adequate to maintain water quality. Requirement 12 would also ensure that foul and surface water drainage was provided to agreed standards. Biocides and other chemicals used in the cooling water processes would be released in discharges to the River Aire but these would be subject to limits included in the environmental permit. Such measures would reduce any residual effects in the aquatic environment to having no significant impact.

- 4.124 In the operational phase, surface water runoff would be controlled at source through reducing the amount of impermeable paving and stored for use for cooling water or, if not needed, discharged at greenfield run-off rates to either the canal or the River Aire. The system capacity would take account of climate change and would be designed to 1% annual probability of the run-off exceeding greenfield rates.
- 4.125 Foul drainage would be treated by a sewage treatment plant to secondary treatment standard and discharged to the River Aire, with the cooling water discharged under a separate consent. The discharge would be controlled in terms of volume and quality through the relevant environmental permit.

Conclusions on flood risk and water quality

- 4.126 The proposal would meet the tests in the National Planning Policy Framework and PPG section on flood risk for development on the selected site and the design of the plant has taken into account the need for flood resilience measures. During the period of construction and decommissioning, the CEMP (or equivalent) would ensure that flood risk and any potential impacts to water quality were adequately managed. Therefore the proposal would be in accordance with Section 5.7 of NPS EN-1 on flood risk and would take into account climate change in accordance with section 4.8 of the same document.

WATER RESOURCES AND AQUATIC ECOLOGY

- 4.127 The proposed development would require cooling water as part of the process. With the main site close to both the River Aire and Calder and Aire Navigation canal, these represent alternative sources for the water. The ES examines both alternatives for abstraction and discharge in Section 6.8 and an analysis of the impact on the fish in the canal, should this option be pursued, is set out in an Appendix J to the ES.
- 4.128 The main contentious matter during the examination in relation to water resources proved to be the choice between sourcing cooling water from the River Aire or from the canal. As noted above, the ES considered both options. The Canal and River Trust (CRT), which operates the canal, argued throughout the examination that the canal should be used. The applicant initially expressed no preference for either option. However, in July 2014, at the Water Resources ISH, the applicant decided that it was no longer pursuing the canal option.

- 4.129 Nonetheless, this section of the report considers the advantages and disadvantages of both options in order to consider whether the River Aire option is acceptable.
- 4.130 The applicant already has an abstraction licence for the proposal for abstraction from the River Aire, granted by the EA in July 2013 [App D, R1Q001]. Any application for a discharge consent would be included in the application for an environmental permit, which has yet to be made.
- 4.131 If the canal was to be used as the source of cooling water, the abstraction licence would have to be obtained by CRT.
- 4.132 Further material on water resources has been presented by the applicant, the EA and the CRT as part of the examination [SoCG025, WSH007, WSH008, WSH010, ADS007, ADS009, ADS010, ADS011, ADS012, CoWS002, CoWS003 and CoWS004]. These documents catalogue the views of the applicant and the relevant IPs on whether the River Aire or the canal should be used to source cooling water for the development.
- 4.133 The main issues raised were firstly, the extent of the depletion of water in the River Aire as a consequence of the proposal, and secondly the effects on fish due to the discharge of the warmed water back to the watercourse after cooling the power plant.

Depletion of the River Aire

- 4.134 If cooling water were to be taken from the river it would be abstracted through a pumping station building on the bank of the river, north of Kellingley. A pipeline would join the route of the gas pipelines and after tunnelling under the canal, they would emerge on the generating station site. The discharge point for the water returned to the River Aire would be close to the abstraction point. No details of the proposed abstraction point from the canal, in terms of works, have been submitted but would be likely to be close to the generating site, obviating the need for a long pipeline. If cooling water were to be abstracted from the canal, it would also be discharged to it, but would not rejoin the River Aire until Goole, some 42km downstream.
- 4.135 In examining the effect on the river and the canal, the submitted evidence from the applicant divides the canal into 3 reaches: Reach 1, from the river to the proposed abstraction point; Reach 2, from the abstraction point to the discharge point; and, Reach 3, beyond the discharge point. The river is divided into: Reach A, the river upto the canal offtake; and, Reach B, beyond the canal offtake.

- 4.136 The applicant and the CRT agree that the demand from the power plant would require the abstraction of 50.4MI/d, of which only 15.1MI/d would be returned, resulting in a deficit of 35.5MI/d.
- 4.137 The EA said at the Water Resources ISH that from a licensing aspect they would assume that the full rate of 50.4MI/d would be diverted from the canal and the impact assessed accordingly. Since the canal water is sourced from the river, with water taken off at Ferrybridge, both options would result in a reduction in flows in the river.
- 4.138 It has been agreed in the Supplemental SoCG [SoCG025] between the applicant and CRT that the length of the river affected by the reduction in flow if the canal were to be used for abstraction would be an extra 1.8km. This is the distance between Ferrybridge Lock and the consented abstraction point on the river.
- 4.139 However, if the canal option were to be chosen the returned water would not reach the river until Goole Docks, some 42km away. Both the applicant and the EA agree that this is the length of river that should be described as depleted, rather than the 1.8km claimed by CRT.
- 4.140 The CRT claims that there would be environmental advantages to using the canal for water abstraction. There would be no pumping station in the Green Belt (discussed further below); there would be lower energy and construction costs from not needing a pumping station and having a shorter pipeline, with less interference to 3rd party interests by the pipeline; and the risk to the integrity of the canal from tunnelling under it to construct the water cooling pipelines would be reduced.
- 4.141 However, the gas pipelines would still need to pass under the canal and there would be little additional risk with the water pipelines, which are of a type regularly excavated under such structures and would be the subject of consultation with CRT. As such, I consider that, together with the protective provisions agreed between the applicant and the CRT, their interests would be protected and there would be little additional risk as a result of the water pipelines passing under the canal.

Impact on fish

- 4.142 The ES at Appendix J1 6.3-6.9 shows residual impacts of the discharge into the canal on a number of ecological receptors. Some of these are salmonid fish, for which the CRT Fisheries manager states that there is no material presence in the canal, and that in any event the predicted effect on such

species is said to be small. In addition, the residual impacts on lamprey, eel and cyprinid fish are all negligible.

- 4.143 The River Aire is classified as a salmonid river and Section 10.9 of the ES reviews the impacts of discharge of cooling water on the river. The effect on salmonid species in the river is said to be negligible and on cyprinids any negative impact would be confined to within 10-15m of the discharge point, would comply with the Freshwater Fish Directive (see below) and might be beneficial to cyprinids.
- 4.144 In mitigation, Table 10.15 of the ES states that the applicant is proposing the use of highly protective fish mesh screens to reduce the likelihood of fish becoming impinged and entrained, and using an outfall which would provide good mixing to disperse biocides and the thermal plume within the river. The applicant's view is that any screen fixed to the outfall on a canal discharge would not work so effectively [CoWS003]. This would be due to lower flow velocities in the canal, where the flow would not be fast enough to clear the screen and debris and could have implications for impinged animals, such as elvers and young fish. The applicant considers this a significant area of risk, which has been a problem in other projects.
- 4.145 The EU Freshwater Fish Directive [Ref.2006/44/EC], and the Surface Waters (Fishlife)(Classification) Regulations 1997 as amended, require water temperature not to be increased in cyprinid waters by more than 3°C for more than 2 per cent of the time.
- 4.146 CRT considers that the discharge into the canal will not breach this limit. The impact has been modelled by the CRT. The model output, using a Q95 flow rate (the flow that is exceeded 95 per cent of the time) shows a rise of 2.6°C, and this warmth was thought to be beneficial to the cyprinid fishery in the canal by the CRT Fisheries manager.
- 4.147 However, the applicant claims that using a Q95 flow rate, rather than the lower Q98 rate, might have distorted the CRT's model output, because the flow rate influences the temperature
- 4.148 In addition, the applicant claims that the CRT approach of using the Q95 to reflect variations in ambient temperatures throughout the year would not be valid since the increases in temperature would occur whatever the ambient temperatures are, if the flows are sufficiently low.
- 4.149 As such, there is disagreement on whether a temperature rise of less than 3°C can be achieved in a fully mixed

situation in the canal in order to comply with the 1997 Regulations and the EU Freshwater Fish Directive.

- 4.150 The CRT believe that the 3°C limit would be reached some 5-7m from the discharge point and due to the width of the canal in this location (20m), there would be space for fish to pass the warmed zones. The applicants say that the width of the canal and its slow flow would mean that further water would be needed to enable dispersion of the plume after Reach 2, beyond the abstraction point. There is also disagreement as to the size and significance of the thermal plume under low flow conditions, with there being only 29.8MI/d, after the abstraction point, as opposed to the Q98 of 38MI/d. CRT's view is that if the returned water is included this would total 45MI/d, i.e. more than the Q98 flow.
- 4.151 The applicant therefore argues that a larger amount of water would need to be abstracted from the river to feed the canal if this option were to be chosen. Otherwise the temperature would rise by around 3.6°C for more than 2 per cent of the time, contrary to the Freshwater Fish Directive. It is not disputed that the river has larger base flows and velocities than the canal and this would help to disperse any plume.
- 4.152 In response to my questions [R1Q003] the EA point out that low flows could impede the passage of fish over weirs in the depleted stretch and this would be a further concern over the use of water from the canal.

The applicant's position

- 4.153 At the ISH on 16 July 2014, the applicant announced that they had made a decision about the source of the cooling water and that they would be using the existing licence for water abstraction from the river. It considered that taking a different decision at this stage to use water from the canal as suggested by the CRT would involve some commercial risk and uncertainty. The EA have said that before a new abstraction licence for the project could be considered the existing one would have to be surrendered and there would be no certainty that a new licence would be issued.
- 4.154 In addition, although CRT has said that they see no difficulty in CRT obtaining a licence, the EA have said that the canal water could only be used for the purposes of navigation and not resold for any other purpose. The applicant has already agreed terms for the land for the pumping house and pipelines, whereas no terms have been agreed with the CRT.

The CRT's position

- 4.155 The CRT have put forward additional protective provisions which would make the canal option the primary option with

the river as a fallback position (discussed further under CA and DCO section, below) which they say would overcome a perceived 'ransom position' for the project by the CRT if this option were to be accepted.

- 4.156 However, there are a number of uncertainties associated with this. Firstly, a new licence would be required and the application for it would need to be made by the CRT, which would not be acceptable to the applicant who would not have control over it or the operations to ensure that water would be available when required. Any charges associated with the water use would be the subject of a contract rather than the methodology used by the EA. This could be the subject of dispute and delay to the project, especially as some of the parameters require further definition, like 'the lifespan of the power plant' and the 'annual cost of maintenance and renewal of pumps and pipelines'. Furthermore, no Works Plan or details have been submitted with the DCO application showing abstraction and discharge works for the canal option to enable this to take place.

Conclusions on water resources

- 4.157 From the information in the ES and the further information submitted as part of the examination, the characteristics of the River Aire would appear to offer a better alternative to the canal in terms of abstraction and discharge, notwithstanding the concerns of the CRT about the higher costs related to the energy and construction costs of the pipeline. Tunnelling under the canal for the water pipelines in addition to the need for tunnelling for the gas pipelines should not add further risk to the canal. There would also be less potential risk to aquatic ecology if the River Aire were used for abstraction. In addition, weight should be given to the need for such projects, as expressed in NPS EN-1, and the applicant has stated that the commercial risks on this issue might threaten the project. The Green Belt issue raised by CRT is dealt with below.
- 4.158 I therefore conclude that the application as submitted with the abstraction and discharge to the River Aire would comply with Section 5.15 of NPS EN-1.

WASTE MANAGEMENT

- 4.159 At the construction stage, the main impacts on waste management for the main site would be site clearance and works to enable construction. Very little demolition would be required and so little demolition waste would be generated and 83% of that would be recycled on-site [ES App N.2]. Consultations with the relevant waste authorities have shown

that the amount of waste to be generated would be of negligible significance to local waste management.

- 4.160 Waste management during operations would be controlled through a site waste management plan [ES App N.2] and would be controlled through the environmental permit. Given the nature of the fuel, other waste arisings would be small and be categorised as commercial and industrial waste. It is intended that about 50% would be recycled.
- 4.161 During decommissioning, similar amounts of waste would be generated to that during construction. Plant that was obsolete would be dismantled and recycled where possible.
- 4.162 During pipeline construction, it is intended to backfill trenches with existing material, unless contamination is found. This would be dealt with under Requirement 13. The CEMP would include a soil management plan for the general movement and storage of soils.
- 4.163 I conclude that the overall environmental impact in respect of waste management from both the power plant and pipeline would be negligible and would be in accordance with Section 5.14 of NPS EN-1.

HISTORIC ENVIRONMENT

- 4.164 The main site has been the subject of a geophysical survey and trial trenching and an evaluation has taken place of aerial photographs of the site, together with known archaeological and cultural assets within the 500m and 5km study area. The potential impact on any archaeological and cultural assets from the construction of the pipeline was assessed on the working width of the excavation and a 1km wide study area.
- 4.165 In the case of both the main site and the pipeline, further measures to protect the historic environment would be secured through Requirements. In the case of the main site, this would include detailed design approval, a scheme for archaeological investigation including stripping, mapping and recording, a CEMP, and a landscaping strategy. In terms of the pipeline they would include detailed design approval, a CEMP, a scheme for archaeology, and a scheme for the restoration of land used temporarily for construction. For the remainder of the historic environment, areas such as Knottingley Conservation Area, which was visited on the accompanied site visit, would not require any mitigation measures since there would be little direct impact on the setting of the Conservation Area [LIR002 and SoCG002].
- 4.166 During operation, there would be little impact from either the main plant or the pipeline and in the period of

decommissioning there would be similar impact as from construction on the main site, but little impact on the pipeline routes since it is expected that the decommissioned pipes would remain buried.

COMBINED HEAT AND POWER

- 4.167 Paragraph 4.6.6 of NPS,EN-1 requires, as previously stated in the DTI's 2006 guidance, that thermal generating stations applied for under the PA 2008 (as amended) should either include CHP or contain evidence that the opportunities for it have been fully explored. The EA also review CHP potential, including the Good Quality CHP criteria, under the environmental permit application, which has yet to be applied for in this case.
- 4.168 A separate report [APD065] has been prepared on combined heat and power, submitted with the application. This explains the process of heat extraction and the options available for supply to a District Heating (DH) system within a 2.5km radius. The report states that, although there are a number of industries in the local area that have the potential for heat use, there is little current interest from them and the likely best use might be a DH system for the residential and mixed uses proposed on the remainder of the SPA8 site. As such, the report recommends that the plant be built to allow further modifications to enable the use of CHP.
- 4.169 In response to my first round of questions [R1Q001] and the SoCG with the EA [SoCG008], the applicant has agreed to amend Requirement 3(5) of the draft DCO to include a facility to allow for steam and hot water passouts and preserve space for the pressurisation of water heating and pumping systems to enable CHP for off-site users, should it become economically viable. The wording of the requirement has been agreed with the EA to overcome their comments in their relevant representations [RRP015]. The EA and applicant also agreed that further information would be submitted with the environmental permit application. Periodic reviews of potential CHP opportunities would be the subject of conditions on the environmental permit.
- 4.170 In conclusion, although there are no current opportunities for the supply of CHP, the plant would be CHP-ready and the applicants have supplied the information required in paragraph 4.6.6 of NPS EN-1, and ensured that sufficient space has been made available for future CHP provision through Requirement 3(5), and future reviews of opportunities would be required through the environmental permit.

CARBON CAPTURE AND STORAGE

- 4.171 Paragraph 4.7.5 of NPS EN-1 states that all commercial-scale fossil fuel generating stations will need to be carbon capture ready. Paragraph 4.7.16 states that the ExA should consult the EA on technical and economic assessment and the space available for the equipment. If granted consent, paragraph 4.7.17 of NPS EN-1 sets out the requirements that need to be met by operators in respect of carbon capture and storage (CCS). These include retaining sufficient space on or near the site to install and use the carbon capture equipment and submitting update technical reports on the development's Carbon Capture Readiness (CCR) status to the SoS.
- 4.172 A separate Carbon Capture and Storage report [ADP064] was produced and submitted with the application. The study reviews available and potential future methods of carbon capture and indicates that retrofitting would be possible. 7.3ha of land would be made available for the CCS equipment and a suitable pipeline corridor to disposal sites in the North Sea identified. Any CCS development would be the subject of a separate planning application and accompanying ES. An economic feasibility study has also been included in the report.
- 4.173 In the first round of questions [PD005] further information was requested on CCS from the applicant and the EA, and given in responses [RQ1001 and RQ1003] and the SOCG [SoCG008]. The EA confirmed that sufficient land had been set aside for the CCS to be installed and used and there would be no foreseeable issues with retrofitting the equipment. They confirmed that requirements could cover such matters. Requirements 27 and 28 of the draft DCO cover both the need to retain the land and the need to send CCS monitoring reports to the SoS. Requirement 29 sets out the conditions under which Requirements 27 and 28 will apply. In this case they would cease to apply: when the carbon capture equipment has been installed; if the SoS agrees for the equipment not to be installed; and, if the holding of the land and the submission of reports cease to be included in planning law or policy.
- 4.174 The economic assessment included in the CCS Report [APD064] Table 6.7 gave a breakeven price for the installation of £82.76 per tonne of carbon dioxide (CO₂) for a fully integrated system retrofitted in 2020. This was subject to a sensitivity analysis based on the capital costs of the CCP and onshore pipeline, and natural gas price, which confirms the feasibility of the proposal. The report concludes that it would be economically feasible to retrofit CCS to the proposed CCGT plant, given an appropriate CO₂ permit price.

- 4.175 Although the EA has not been able to comment on the economic appraisal [WSH002] as advised in NPS EN-1, the appraisal has been conducted using established techniques and used sensitivity analysis to overcome uncertainties in the modelling. The breakeven point used seems to be appropriate as a guide, although there remains uncertainty as to prices beyond 2020 if the retrofit occurred after this date. No evidence was presented during the examination to challenge the economic assessment.
- 4.176 Therefore I conclude that the CCS/CCR issues have been adequately assessed by the applicant and, subject to Requirements 27, 28 and 29 of the draft DCO being imposed, the proposal would comply with the guidance in section 4.7 of NPS EN-1.

GRID CONNECTION

- 4.177 The proposal includes a grid connection (Work No 5) to existing infrastructure. Guidance on grid connections is given in NPSs, EN-1 and EN-5. Paragraph 4.9.2 of NPS EN-1 envisages that wherever possible applications for new generating stations and their associated infrastructure should be contained within a single DCO application. The application in this case would comply with that paragraph.
- 4.178 A separate grid connection report has been produced and submitted with the application [APD061]. The existing infrastructure is such that no additional pylons would be needed for the final works and it would only extend the existing transmission system by about a further 250m to a substation to be built within the main site. The final works would be similar in design and position to those already in the existing landscape and therefore would not harm the landscape or be visually intrusive. As such, they would comply with Section 2.8 of NPS EN-5. An extra, temporary pylon would be required during construction works, which would be in the Green Belt, and this is discussed in the section on Green Belt.
- 4.179 The applicant has liaised with National Grid Electricity Transmission plc (NGET) and made a Connection Agreement with them.
- 4.180 Therefore I conclude that the proposals for the grid connection have been adequately assessed by the applicant and would comply with the relevant sections of NPSs EN-1 and EN-5.

HEALTH, SAFETY AND SECURITY

Health and safety

- 4.181 The applicants have consulted with the Health and Safety Executive (HSE) at the prescribed stages. Further consents, as set out in the 'List of Consents and Licences Required under Other Legislation' [APD060] would be needed, for example, a consent for commissioning of pressurising equipment for the gas pipeline or the storage of hazardous substances were this to be necessary. These would be sought at the appropriate stage of the project, if the DCO were to be granted. In the pre-application consultations, the HSE have said that that had no objections to the proposed development but wished to be consulted at the appropriate stages of the development.

Safety and security

- 4.182 Paragraph 4.15 of NPS EN-1 identifies potential security issues relating to energy infrastructure. No representations were made on this matter. I do not consider that there would be any national security issues arising with the project.

Aviation safety

- 4.183 The proposed development would have up to 3 stacks, up to 75m high, as defined in the DCO. The Civil Aviation Authority has advised that such structures would require warning lights. Requirement 19 requires the notification of the Ministry of Defence - Defence Geographic Centre of the heights of the tallest structures and construction equipment and also requires the provision of aviation warning lights. This Requirement would meet the needs of both the military and civil aviation authorities.

Health

- 4.184 Health concerns have been taken into account under the relevant sections of the ES, for example on air quality, as required by Section 4.13 of NPS EN-1.
- 4.185 In response to the ExA's first round of questions, the applicant produced a note as Appendix H of responses to those questions [R1Q001], confirming that the proposed new grid connection would meet the International Commission on Non-Ionizing Radiation Protection guidelines. This would be in accordance with the requirements of paragraph 2.10 of NPS EN-5.

LAND STABILITY

- 4.186 The site lies in an area of past and current mining. A review of historic mining was submitted as a report accompanying the application [PST003]. In view of the history of the area, the applicant has confirmed that they have obtained an agreement with UK Coal, in consultation with the Coal Authority, for a Pillar of Support of coal, which would not be mined beneath the main site, to ensure its stability [GEN10, R1Q001].

SOCIO-ECONOMIC IMPACTS

- 4.187 Paragraph 5.12.3 of NPS EN-1 sets out the type of impacts that should be considered as part of the socio-economic assessment of an energy infrastructure project such as this application. These include: creation of jobs and training opportunities; provision of additional local services and improvements to local infrastructure; effects on tourism; the impact of a changing influx of workers; and, cumulative impact.
- 4.188 The socio-economic impact was assessed in Chapter 25 of the ES, with emphasis on job creation, growth and regeneration, and set against the priority actions in Wakefield MDC's 'Jobs and Growth Plan 2012-2017', which are set out in the applicant's response to the first round of questions [R1Q001]. The largest number of jobs would be created during the construction phase, with about 1,100 workers, with the average on site being around 400 workers. The operational workforce would be about 50 workers. It is highly likely that many of the construction workers could be recruited from the surrounding area and the applicant has arrangements in place with the local planning authorities to maximise opportunities for local people. In addition, the proposal would regenerate a derelict site and it would also provide an opportunity for liaison with schools and colleges on educational initiatives on energy, the environment and sustainable development. The mitigation proposed in terms of landscaping should help to sustain relevant local planning authorities' tourism objectives, including walks along the River Aire and the canal.
- 4.189 During the examination it became known that the closure of Kellingley Colliery was proposed, which is a major employer in the area and one of the last deep mines in the country. I requested views on the implications of the closure in a Regulation 17 request [PD007]. Those making comments on the proposed closure, including Wakefield MDC [R17002], stated that the new employment created by the proposal would be helpful in offsetting the potential loss of about 700

jobs at the colliery. Wakefield MDC's view is that this would strengthen the case for the proposal.

- 4.190 A requirement has been suggested by Wakefield MDC that seeks to ensure opportunities for employment and skills development for local people (Requirement 36 of the draft DCO). However, the applicant has experience in other projects in engaging with the local community to ensure that they and their contractors employ local people where possible. The socio-economic section of the ES also makes reference to the appointment of a Schools Liaison Officer, who would liaise with local technical colleges in order to make them aware of employment and training opportunities. However, I do not consider that it is necessary that such arrangements should be formalised through their inclusion as a requirement in the DCO.
- 4.191 In addition, a Requirement (No. 33) for the establishment of a local liaison committee, which is the same as Condition 58 imposed on the 2011 consent for the multifuel generating station at Ferrybridge C [WSH005], has been suggested by Wakefield MDC. This would promote the engagement of local people in the development and operation of the proposal.
- 4.192 The applicant has provided an adequate assessment of the socio-economic impacts of the development. The analysis shows a strong economic and social case for the proposal, especially in the light of potential job losses locally, the need for regeneration and the creation for employment opportunities for local people.

LAND USE AND GREEN BELT

Land use

- 4.193 The main power plant site is within a Special Policy Area (SPA) in the WSSPLP, SPA8, part brownfield and part greenfield land. The allocation is also recognised as being important for the regeneration of Knottingley in the Knottingley and Ferrybridge Delivery Plan 2013- 2015 (WKFDPP). Policy SPA8 supports the reclamation and re-use of the former Oxiris chemical works and the use of land for an energy centre and housing, buffered by light industrial uses. Wakefield MDC considers that the proposed power plant would be compatible with the energy uses proposed in SPA8. It would also be in accordance with their spatial development strategy for the District and contribute to the regeneration of the area both in terms of the reclamation of a previously-developed site and also in terms of employment. This latter issue is important as the area has high levels of unemployment. During the examination, it was made known that a proposal had been put forward for the closure of the

adjacent land use, Kellingley Colliery, which has been examined in the section on socio-economic impacts.

- 4.194 Policy SPA8 also requires a route to be safeguarded through the site for a possible long-term Knottingley bypass proposal. No space has been provided as part of the proposal for the safeguarded route and the applicant has not submitted any feasibility studies to show that the route might be provided elsewhere. Wakefield MDC acknowledges that there is no detailed scheme or approved plans for the route. However, the proposal would conflict with policy SPA8 and would not allow for the potential benefits of a bypass of removing through traffic from Knottingley. This has to be weighed against the use of the site for energy uses as set out in SPA8, for which NPS EN-1 has indicated there is great need both in terms of capacity and the flexibility offered by gas-fired power plants, which has substantial weight. In addition, NPS EN-1 indicates that, where there is conflict with the development plan, the NPS should override it. Therefore, I consider that the lack of a safeguarded route through the site for the proposed bypass would not outweigh the benefits of the proposal.
- 4.195 The proposed pipelines would pass through an area of land between the canal and Weeland Road which is allocated for an area of search for long-term development under policy PAS5 in the WSSPLP. However, this is a long-term use for a relatively large site which, as yet, does not have any specific land use allocated to it nor any detailed design proposals. I consider that such matters could be resolved at any detailed design stage and would not necessarily be incompatible with the development of the safeguarded site.
- 4.196 The main site is currently open, although partly previously developed, and currently forms part of the open area between the settlement of Knottingley and the industrial area around Kellingley Colliery. The River Aire and the Aire and Calder Navigation both provide a green corridor through the area and provide some routes which contribute to local recreation potential, although the canal towpath to the east is currently blocked by Kellingley Colliery. Policy SPA8 requires the provision of open space, which cannot be provided on the site due to the size and nature of the proposal.
- 4.197 There are a number of public open space improvement schemes set out in the WKFDPP, one of which is the Greenhouse Park/The Close project, where off-site provision could be made. The applicant has provided a unilateral undertaking to Wakefield MDC offering a contribution to improve the quality of this park and sporting facilities in the centre of Knottingley. This would help to meet the objectives set out in policy SPA8 and the contribution would meet the

tests in paragraph 4.1.8 of NPS EN-1 for planning obligations as discussed in Section 7, below. Therefore it would provide mitigation in respect of public open space.

- 4.198 Policy SP18 of Selby's Core Strategy aims to protect open space and green infrastructure. Within this context, the proposed new permanent access along the canal proposed in Wakefield District would not continue into Selby District. There would also be a pinch point in what is currently a gap between Knottingley and Kellingley. Nevertheless Selby DC and North Yorkshire County Council agree that whilst it might not be possible to improve the continuity of public access into their administrative areas, the planting proposed along the canalside and elsewhere by the applicant would help to improve visual connectivity.

Green Belt

- 4.199 Both Wakefield MDC and Selby DC have areas of Green Belt which cover parts of the proposed development. Paragraph 87 of the National Planning Policy Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 goes on to give substantial weight to any harm to the Green Belt and states that very special circumstances will not exist unless the potential harm to the Green Belt by inappropriateness and any other harm is clearly outweighed by other considerations. Paragraph 89 states that decision-makers should regard new buildings in the Green Belt as inappropriate development. Various exceptions are allowed, including engineering operations in paragraph 90.
- 4.200 Both paragraph 6.138 of Wakefield MDC's Development Policies Plan, adopted in 2009, and policy SP2(d) of Selby's Core Strategy, adopted in 2013, state that applications in the Green Belt will be determined on national policy.
- 4.201 In Wakefield District the Green Belt includes the area where the grid connection would take place. The works for the grid connection would involve the erection of an additional pylon whilst a diversion was constructed to allow connection to the grid. As a new structure in the Green Belt and not part of an engineering operation, the additional pylon would be inappropriate development in the Green Belt. There would also be a temporary adverse effect on the openness of the Green Belt. However, in terms of other considerations, the structure would be removed once the permanent connection was made between the power plant and the grid and any harm to the Green Belt would be of a temporary nature. In addition, it would be part of the associated development of a power plant to which NPS EN-1 states that substantial weight

should be given, due to the need for generating station development. There would be no other harm that would not be capable of mitigation in respect of the grid connection. In my view, the other considerations would clearly outweigh the temporary harm by the inappropriateness of the development in the Green Belt, any other harm and the effects on the openness of the Green Belt and would amount to very special circumstances set out in paragraph 88 of the Framework sufficient to justify this part of the development.

- 4.202 If cooling water were to be abstracted from the River Aire, a pumping station would be required on the river bank, within the Green Belt in Selby District. The applicant has referred to the pumping station as part of an engineering operation, paragraph 5.10.12 of NPS EN-1 states that a pipeline might be considered an engineering operation (and this would apply to both the gas and water pipelines associated with the development)[R1Q001]. However, the pumping station is not a pipeline. It looks like a building and to my mind should be treated as such. As a new building in the Green Belt, it would be inappropriate development. It would also have an adverse effect on the openness of the Green Belt.
- 4.203 The position of the building, which would be raised from the surrounding flood plain on the river bank to protect it from flooding, would be a feature in views across the floodplain and from public rights of way along the river bank. However, it would not be the only building/structure close to the river bank in this area as there are a number of other structures along the river bank, associated with river uses, such as a large screen structure on a tributary. As such, the proposed pumping station would not appear out of place on the river bank. Selby DC have said that they consider the harm to the openness of the Green Belt would be 'moderate' and have suggested landscaping might mitigate the impact on the openness of the Green Belt and its visual amenities [R1Q005]. However, the river bank in this location has few trees and little vegetation and planting would only serve to draw attention to the building and increase its impact on the openness of the Green Belt. Therefore, there would be harm to the Green Belt by reason of inappropriateness and due to the impact on its openness, with or without landscaping, which has substantial weight. However, there would be no other harm as a result of this part of the development.
- 4.204 The Canal and River Trust (CRT) cite the harm to the Green Belt as one of the reasons to prefer the use of water from the canal for cooling purposes, since this would not result in harm to the Green Belt as the abstraction point would be immediately adjacent to the plant. The issue of the sustainability of the alternative water sources is discussed

further in the section on water resources and aquatic ecology, above.

- 4.205 In terms of other considerations, paragraph 3.1.4 of NPS EN-1 says that substantial weight should be given to the need for such projects which would help to meet the Government's identified need for additional generating capacity. It would also assist in the transition to low carbon energy. In addition, it would be capable of providing CHP which paragraph 4.6.8 of NPS EN-1 says should also be given substantial additional positive weight. The pumping station would be a necessary part of the infrastructure for the proposed power plant. In addition, although there would be some harm to the openness of the Green Belt, that harm would be limited, due to the size and the nature of the development. Furthermore, the setting of the pumping station in the context of other buildings and structures related to the use of the river would mean that the impact on the visual amenities of the Green Belt would also be limited. The applicant has also offered a requirement (as part of Requirement 30) which would ensure that the pumping station would be removed as part of the decommissioning of the generating station. As such, any harm would be limited to the period of the pumping station remaining in place. Therefore, I conclude that the other considerations in this case would clearly outweigh the harm by inappropriateness of the proposed development and any other harm and that the very special circumstances necessary to allow the development would exist, as set out in paragraph 88 of the National Planning Policy Framework.
- 4.206 The underground pipelines for both cooling water and gas could be considered engineering operations, as set out in paragraph 5.10.12 of NPS EN-1. Paragraph 90 of the National Planning Policy Framework states that engineering operations are not inappropriate development provided they preserve the openness of the Green Belt. Whilst there might be some temporary harm to the Green Belt from the pipeline works in terms of openness, there would be no long term harm to the openness of the Green Belt and the proposal would not conflict with the purposes of including land in the Green Belt.

Conclusions on land use and Green Belt

- 4.207 I have considered the conformity of the proposed land uses with the relevant national and local policies for development, including those covering the Green Belt, and any measures put forward to mitigate the impact of the proposal in these terms. I conclude that the proposal would comply with the policies set out in paragraph 5.10 of NPS EN-1.

5 OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

- 5.1 In determining the application in accordance with s104 of the PA 2008 (as amended), the Secretary of State must have regard to any relevant NPS, Local Impact Reports, prescribed matters and other matters considered to be relevant to the decision. My overall conclusion on the case for development consent for the scheme is based on an assessment of these matters, including the strong levels of agreement between most bodies and the limited level of objection.
- 5.2 The need for proposals of this nature is set out in Government policy in NPS EN-1.
- 5.3 I have set out my reasons on each of the matters in Section 4. In summary, my conclusions on the main issues are that I am satisfied that:
- (i) there is sufficient evidence to allow the SoS to conclude that significant effects can be excluded for all European protected wildlife conservation sites or any site to which the same protection is applied as a matter of policy, either alone or in combination with other projects. Furthermore, such information has been provided, as is reasonably required, for the SoS to determine whether Appropriate Assessment is required. In my view it is not. I am also satisfied that the proposal would not result in any unacceptable adverse impacts on wildlife sites and protected species generally.
 - (ii) the design of the proposal has been set out in the application as far as possible at this stage, with the illustrative scheme showing both the 2 and 3 unit options. The detailed design would be secured in the recommended draft DCO Requirements 3, 4, 5 and 6 and by the limits set in them which would restrict the scale of the development to that already assessed in the ES. Landscaping of the development and the implementation and maintenance of the landscaping would be controlled through Requirement 7. The design approach accords with the aims of NPS EN-1 and the detailed aspects of the design for the proposal would be subject to control by the relevant local planning authorities through the above requirements.
 - (iii) the proposal would not have any unacceptable effects in terms of air quality, subject to consent being granted for an environmental permit, for which no impediment appears to exist.
 - (iv) the proposal would be of a size and scale to have an adverse impact in terms of the landscape resource and also its visual impact. However, this has to be balanced against the

bringing back into use of a derelict site. The mitigation proposed and the detailed design secured by Requirements 3, 4, 5, 6 and 7 would be sufficient to ensure that the proposed development would not result in any unacceptable adverse impacts.

- (v) the proposal would not have an unacceptable adverse impact on existing transport networks including traffic routing and management, highway safety and the environmental impact of traffic.
- (vi) the proposal would not give rise to significant adverse noise, disturbance and vibration. Requirements 17, 23 and 30 would control impacts during the construction, operational and decommissioning phases respectively.
- (vii) the proposal would comply with the tests set in the National Planning Policy Framework and National Planning Practice Guidance and NPS EN-1 on flood risk and would incorporate flood resilience measures, with mitigation ensured through Requirement 20. Water quality would be protected through measures in the CEMP (Requirement 17), the proposals for drainage (Requirement 12) and discharge consents through the environmental permit.
- (viii) whilst there would be some disadvantages with abstraction and discharge of cooling water from the River Aire, including higher energy and construction costs, tunnelling under the canal and the need for a pumping station on its bank, the environmental characteristics of the river would mean that it would be more able to absorb the impact of the cooling water discharge. No works plans have been submitted as part of the application for any abstraction from the canal and, in addition, there would be an element of commercial risk to the project if the applicants did not have control of the abstraction. The Green Belt implications of the siting of the pumping station are set out in section (xvi). The application with the river abstraction in place would comply with the guidance on water resources contained in NPS EN-1.
- (ix) the proposal would make appropriate arrangements for waste management at the construction, operational and decommissioning stages. Waste management would also be controlled by the environmental permit.
- (x) the proposal would not have an unacceptable adverse impact on the historic environment. Mitigation measures would only be required for archaeology, which would be secured through Requirement 15.

- (xi) the proposal would make provision for CHP, as required by NPS EN-1, which would also be considered and reviewed under the environmental permit.
- (xii) the proposal would protect land for CCS and provide for monitoring reports to be provided to the SoS through Requirements 27, 28 and 29. Sufficient evidence has been provided in the economic assessment to comply with the tests in NPS EN-1.
- (xiii) the proposal includes a grid connection, the detailed design for which would be the subject of Requirement 4. This would ensure that the relevant planning authorities would have control over the design of the grid connection and its impact on the local environment.
- (xiv) the proposal would comply with the guidance in NPS EN-1, in terms of health and safety, safety and security, aviation safety, health and land stability.
- (xv) the proposed development would have a positive socio-economic impact, especially in terms of regeneration, employment and skills and education.

the proposal would comply with the guidance on site selection in NPS EN-1. It would be in accordance generally with development plan policies generally for land use in the local area. However, it would include inappropriate development in the Green Belt, as defined in paragraph 89 of the National Planning Policy Framework. It is concluded that there would be some temporary harm by reason of inappropriateness in terms of the erection of a temporary pylon to facilitate the grid connection and temporary harm to the openness of the Green Belt from the erection of the additional pylon and the works to construct the pipeline. In terms of the water pumping station, this would also be inappropriate development and would harm the openness of the Green Belt. However, there would be no other harm as a result of these parts of the proposed development. The other considerations put forward, as set out in paragraph 4.207, would in my view clearly outweigh the harm by reason of inappropriateness and any other harm for these elements of the proposed development. As such, the very special circumstances necessary to give consent to the application would exist.

6 COMPULSORY ACQUISITION

The Request for Compulsory Acquisition and Other Powers

- 6.1 The purpose of the proposed compulsory acquisition is to enable the undertaker to construct and operate the Knottingley Combined Cycle Gas Turbine (CCGT) generating station and associated development, including an electrical connection to the National Grid transmission network and a gas pipeline, about 8km long from the generating station to the National Transmission System near Gateforth, as well as cooling water infrastructure. The request was made through the inclusion of Articles in the initial draft DCO [APD016].
- 6.2 Article 17 of the final draft DCO (dDCO) [PSC038] is said to be subject to Article 27 (temporary use of land for carrying out the authorised project). I consider that this reference should be to Article 26, which is the numbering of the Article for this purpose in the applicant's final dDCO.
- 6.3 The request was accompanied by the following documents:
- Book of Reference, as revised [PSC022]
 - Land plan, as revised [PSC035]
 - Statement of reasons [APD19]
 - Statement of funding [APD020]
 - Grid Connection Statement [APD061]
 - Pipelines statement [APD062]
- 6.4 The land required for the generating station is partly the site of a former chemical works and partly agricultural land. For the gas and cooling water pipelines the land use is mainly agricultural, with crossings of highways, the canal and the River Aire. For the electrical connection it is mainly agricultural, with crossings of highways, the canal and the Pontefract-Goole railway. The details of the land in relation to the interests to be acquired are set out in the Book of Reference (BoR) and shown on the Land Plan, submitted with the application and updated through the examination.
- 6.5 The dDCO includes provisions allowing the undertaker to compulsorily acquire rights in land, interfere with or extinguish existing rights in land and create new rights in land including subsoil. The dDCO seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981, with certain modifications (Article 22). The applicant is only seeking compulsory acquisition (CA) powers where it has not been possible to acquire the land/ rights by agreement.
- 6.6 The Statement of Reasons (SoR), submitted with the application, concludes that there is sufficient justification to exercise compulsory acquisition over all identified rights and

interests. The Funding Statement, also submitted with the application, concludes that appropriate funding for liability for compensation arising from the acquisition of land and rights, the creation of new rights and for statutory blight will be available where compensation is appropriately and reasonably claimed.

The Request for Related Temporary Powers

- 6.7 The dDCO seeks compulsory acquisition powers but also temporary powers over land recorded as being required temporarily in the Book of Reference or any other Order land for the purpose of carrying out the authorised project (Article 26) or to maintain it, for a period of 5 years from the date on which the authorised project is operational (Article 27). It also seeks powers to carry out intrusive and non-intrusive surveys on land within the Order limits (Article 15).
- 6.8 Although Article 26 includes temporary powers over land recorded as being required temporarily in the BoR, no plots are specifically recorded as being required temporarily, except under Classes 4 and 5 of the Electricity Table in the BoR. The Statement of Reasons in paragraph 7 says that such land would also be recorded in Schedule 7 to the DCO but this schedule is now being used for other purposes. The original need for this land was for laydown areas during the construction period. However, the Planning Statement [APD058] at paragraph 54 states that this would be provided on the area for CCS, which, in any event, would be needed on a long-term permanent basis.
- 6.9 The draft DCO also seeks additional powers in respect of:
- Street works (Articles 9 and 13 and Schedule 2)
 - Stopping up of streets (Article 10 and Schedule 3)
 - Public rights of way (Article 11 and Schedule 4)
 - Access to works (Article 12 and Schedule 5)
 - Rights under or over streets (Article 25)
 - Felling or lopping of trees or hedgerows (Article 33)

The Purposes for which the Land is Required

- 6.10 The Book of Reference identifies affected persons and the land required in five parts for each of the Districts (Wakefield and Selby) in which development would take place. It was updated [PSC022] to include additional interests identified in respect of Yorkshire Water (YW) and Network Rail Infrastructure Ltd (NRIL), following representations and negotiations with these bodies. Each table lists the affected persons in Categories 1 to 5.
- 6.11 The BoR lists plots as either having all rights and interests to be acquired or the acquisition of rights and restrictions under

the Electricity Table of Rights and Restrictions or the Pipelines Table of Rights and Restrictions subject to any exceptions. The rights acquired under the Electricity Table are split between Classes 1-3 (permanent rights) and 4-5 (temporary rights). The rights acquired under the Pipelines Table are largely permanent.

- 6.12 Part 1 of the BoR lists the plots of land over which the developer seeks compulsory acquisition powers and lists persons with Category 1 and 2 interests in that land, with some of the plots having unknown ownership. Part 2 lists all the Category 3 persons who the applicants think would or might be entitled to claim under the Compulsory Purchase Act 1965 or the Land and Compensation Act 1973. However, all of the potential claimants are listed under the 1965 Act. Part 3 lists persons enjoying easements or other private rights over land (including navigation over water) which would be extinguished, suspended or otherwise interfered with. Part 4 would list any Crown interests. However, there are no known Crown interests in any of the Order land. Part 5 lists land which is either: land subject to special parliamentary procedures; special category land; and, replacement land. In this case only statutory undertakers' land is listed under part 5.

The Requirements of the Planning Act 2008

- 6.13 Compulsory acquisition powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008, as amended, are met.
- 6.14 Section 122 (2) 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.³
- 6.15 Section 122(3) states that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right. However, this does not mean that the compulsory acquisition proposal can be considered in isolation from the wide consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.

³ [Guidance related to procedures for compulsory acquisition DCLG September 2013](#)

- 6.16 Section 123 requires that one of three conditions is met by the proposal⁴. I am satisfied that the condition in s.123 (2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.
- 6.17 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers: –
- all reasonable alternatives to compulsory acquisition must be explored
 - the applicant must have a clear idea of how they intend to use the land and demonstrate that funds are available; and
 - the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

How the case for Compulsory Acquisition was examined

- 6.18 I asked two rounds of questions, of which 14 questions were directed at compulsory acquisition in the first round, under the headings Compulsory Acquisition and Infrastructure, with 5 questions in the second round.
- 6.19 A Compulsory Acquisition Hearing (CA ISH) was held on 15 May 2014 but by the time of the hearing negotiations were well advanced with the remaining affected parties, including Yorkshire Water and NGET and NGG. Therefore these parties decided that they were not going to attend any hearings. Nevertheless, I held the hearing and took the opportunity to review progress and other matters with the applicants. I also generally inspected the land on my accompanied and unaccompanied site visits.
- 6.20 At the water resources ISH on 16 July 2104, the CRT put forward their view that the canal should be used for cooling water abstraction, rather than the River Aire, for which the applicant has a licence. Although this was not a compulsory acquisition hearing, CRT also submitted alternative protective provisions as part of their evidence. This matter is discussed in further detail below.
- 6.21 At various times during the examination, I requested updates on the outstanding negotiations, as the applicant intended to negotiate with affected persons throughout. These were

⁴ (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met.
(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.
(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.
(4) The condition is that the prescribed procedure has been followed in relation to the land.

provided as parts of the applicant's responses to my two rounds of questions [R1Q001 and RQ2009] and also by SoCG and email updates, right up to the close of the examination [SoCG019, 020, 021, 023, 024, 027, 028 & 029, R9001-4]. My report considers these matters up to the close of the examination.

Human Rights Act 1998 - the applicant's case

- 6.22 The overall case for the acquisition of the land is set out by the applicant in the Statement of Reasons. The Human Rights Act 1998 transposes the European Convention on Human Rights (ECHR) into UK law. The applicant has weighed the potential infringement of the human rights by the proposed powers of compulsory acquisition against the potential public benefits, if the Order were to be made. The most relevant sections of the ECHR are: Article 1 of the First Protocol to the Convention which entitles people to the peaceful enjoyment of their possessions; Article 6, which entitles those affected by the proposal to a fair public hearing; and Article 8 which protects private and family life.
- 6.23 The applicant considers that there would be significant public benefit arising from development consent which can only be realised if it contains powers for compulsory acquisition. In this case the applicant considers that the significant public benefits outweigh the effects upon persons who own property within the Order land.
- 6.24 Compensation has been made available, see below, for those wishing to claim and affected persons have had the opportunity to make representations under ss44 and 56 of the PA2008 and therefore the requirements of Article 6 have been met. Powers also exist under s118 of the PA2008 to challenge the Order in the High Court, if made, and affected persons also have the right to apply to the Upper Tribunal (Lands Chamber) if the compensation is disputed. Therefore the requirements of the payment of compensation for any interests are met and Article 1 of Protocol 1 is not contravened.
- 6.25 The applicant has concluded that the inclusion of power of compulsory acquisition would not constitute any unlawful interference in the rights conferred by the ECHR and that it would be appropriate and proportionate to make the Order.

ExA's conclusion on human rights

- 6.26 In this case, NPS EN-1 sets out the urgent need to provide and secure energy supply for the future of the economic and social health of the country and therefore the proposal is in the interests of the wider community. The compulsory

acquisition powers sought are part of the overall scheme and are proportionate. They are no more than required to secure the interests of the wider community and not likely to place an excessive burden on those whose human rights might be affected. Compensation would be paid in cases where negotiated agreements could not be reached. Therefore I consider that there would be no violation of Articles 1 and 8.

- 6.27 Article 6 of the ECHR relates to a fair and public hearing of any objections to the proposal. There have been no representations or claims made that this Article has been breached. In addition, the application and its examination have followed procedures in accordance with PA2008 and its associated guidance. I consider that parties have had a reasonable opportunity to put their case and have not been placed at any substantial disadvantage to any other parties. As such, there would be no violation of Article 6 of the ECHR.
- 6.28 In terms of the balance to be achieved between the proposed development and the potential impact on human rights, the proposed development would accord with national and local policy in providing energy for which there is a urgent national need on an allocated site, which would be in the legitimate interest of the wider community. The size and scale of the development, together with the associated infrastructure, would be necessary to produce the power required and distribute it, having regard to environmental considerations. As such, the compulsory powers sought are proportionate, legitimate and necessary for the project and would clearly outweigh any interference with the human rights of affected parties.
- 6.29 Therefore, I conclude that the proposal would not violate any human rights in relation to the ECHR, as enacted in the Human Rights Act 1998.

The applicant's general case

- 6.30 The applicant has set out their general case in the Statement of Reasons [APD019]. They consider that the inclusion of compulsory acquisition powers in the dDCO meets the condition in s122 of the PA2008 and that the interests being sought are no more than reasonably required. Paragraph 7 lists the nature of the land interests required. These include:
- freehold plots for the construction and operation of the generating station, water pumping station and AGI;
 - permanent rights to install and keep installed the pipelines for gas and water;
 - permanent and temporary rights for the grid connection;
 - subsoil only rights for works to the highway that fall outside the adopted highway boundary.

- 6.31 The authorised development would conform with national energy policy for the UK, with the need for it being set out in NPSs EN-1 and EN-2. All reasonable alternatives to compulsory acquisition have been explored. Any interference in rights is for a legitimate purpose and proportionate to it. All plots are stated to be required to implement the works applied for. The applicant has sought to acquire land and rights by negotiation but even where agreement has been reached compulsory powers are still being sought in parallel to ensure timely implementation.
- 6.32 The applicant claims that the purposes of the powers included in the dDCO for compulsory acquisition justifies interfering with the human rights of those persons with an interest in the land proposed to be acquired.

Alternatives to compulsory acquisition

- 6.33 The applicant has sought a negotiated solution to the interests in the BoR, minimising disruption to landowners. The selection of the site for the generating station and the pipeline route has been set out in sections 5 and 6 of the ES [ADS033]. A number of greenfield sites were assessed for the main generating station which would have been closer to existing gas pipelines but following national and local policy advice, the brownfield site at Knottingley was selected. Five pipeline routes, with two connection points, were evaluated, with the main criterion being the distance to connection points from the power plant site. However, none of the choices available would have obviated the need for compulsory acquisition of plots, especially where certain ownerships are unknown. Temporary possession has been considered and used where possible, for example, the grid connection works.

ExA's conclusion on alternatives

- 6.34 In coming to a conclusion to alternatives, I have taken into account all the evidence submitted. The applicant has undertaken a process of examining alternative sites for the generating station and the pipeline route. In addition, the applicant has been negotiating to acquire land and rights for some time, with some success on gaining agreement. Even by the start of the examination most of the compulsory acquisition was unopposed and that has further reduced over the course of the examination. Temporary possession has been used, where appropriate. Therefore the SoS can be satisfied that all reasonable alternatives to compulsory acquisition have been considered.

Proportionality

- 6.35 The applicant has sought to acquire only the land interests necessary to implement and maintain the project. The freehold acquisition areas are limited to land required for development. In terms of the gas and cooling water pipelines rights over a width of only 30m is required except in "special crossing" areas for roads and rivers, where a wider crossing might be required to enable trenchless techniques. Restrictive covenants are sought to protect the pipelines.
- 6.36 The grid connection would essentially be a reconfiguration of the existing pylon arrangement. The applicant has confirmed that, where possible, they would rely on National Grid's existing property arrangements.

ExA's conclusion on proportionality

- 6.37 There have been no representations that the land and rights sought to be acquired are excessive for the scale of development proposed.
- 6.38 The site area for the generating station, although based on a maximum size for 3 generating units is in accordance with a "Rochdale envelope" approach and is necessary at this stage. The width of the route for the pipelines would not be excessive, given the technical considerations for the installation and maintenance of the pipeline route.
- 6.39 Taking into account all of the evidence presented, I conclude that: the land to be acquired is no more than reasonably required for the purposes of the development; the land to be taken is no more than is reasonably necessary for that purpose; and, that its acquisition is proportionate.

Availability and Adequacy of Funds

- 6.40 Paragraph 17 of the latest DCLG guidance⁵ states that: 'Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded'.
- 6.41 The applicant is a subsidiary of ESBII UK Ltd, part of the ESB group of companies, which are 95% owned by the Irish State. In section 2.4 of the Funding Statement [APD020], the applicant states that with the backing of the parent company, they have the ability to procure the financial resources required, including the costs of compensation otherwise payable in accordance with the dDCO.

⁵ "Planning Act 2008: guidance related to procedures for the compulsory acquisition of land" (DCLG September 2013)

- 6.42 Specific guarantees are available to the applicant through a Deed between the applicant and the parent company which would pay the agreed or awarded funds direct to the relevant claimant up to a sum of £1m. In addition, funding for statutory blight, claims for which are not expected, is also provided for in the Deed. If such claims were to be made then they would be met by the applicant's capital reserves, or from the parent company where these cannot be met.

ExA's conclusion on funding

- 6.43 In considering the adequacy and security of the funding, I have taken into account the audited assets of the parent company, ESBII UK Ltd, the background of that company and the applicant's statement that 3rd party funding would not be required. Nothing during the examination has suggested that the financial viability of the project has not been properly assessed.
- 6.44 The Deed of Guarantee [Annex2, APD020] provides security for any necessary compensation required. Taking into account all of these factors, I conclude that the SoS can be satisfied that adequate funding is likely to be available to enable compulsory acquisition within the statutory period following the Order being made. Although the applicant has discounted the likelihood of any statutory blight notices being served, provision has been made for resources to be made available in this eventuality.

SPECIFIC GROUPS OF AFFECTED PERSONS

Introduction

- 6.45 There is no Crown Land or special category land affected by the application within the Order limits. The only special considerations affecting the Order Land are those under s127 and s138 of the PA2008, relating the statutory undertakers' land and their rights over land.
- 6.46 In order to connect the project to the National Grid Gas Transmission System, to the cooling water pipelines from the R Aire and to secure the electrical connection to the National Grid, it would be necessary to acquire statutory undertaker land owned by: NRIL, in connection with the electrical lines crossing the railway, albeit that the right to cross already exists by virtue of a wayleave; and, CRT for the crossing of gas and cooling water pipelines under the canal.
- 6.47 It would also be necessary to affect the rights of other statutory undertakers in connection with: a Northern Gas pipeline in Knottingley, subject to survey; ash and water return pipelines to Eggborough and Ferrybridge power stations (SSE/ Eggborough Power) with gas and cooling water

pipelines as well as 400KV overhead lines; and, National Gas Grid Feeder Pipe 29 close to Toms Wood, Gateforth.

- 6.48 Where the applicant has not been able to acquire land and interests by private treaty they have continued to include them in the Order. The proposed pipelines would cause minimum disruption to statutory undertakers' operations and therefore no replacement land would be required.
- 6.49 Schedule 1 to the BoR lists statutory undertakers and like bodies having or possibly having a right to keep equipment on, in or over the land within the Order limits. Many of these bodies have since confirmed that they have no interest in the land. In addition, the interests of Yorkshire Water (YW) were incorrectly shown in the original BoR. Following their representations [RRP017 and WRR007] and negotiations, the BoR has been amended to reflect YW's interests, with PSC022 being the latest version. Changes have also been made to the interests of Network Rail Infrastructure Ltd.

Statutory undertakers

- 6.50 A number of statutory undertakers are listed in the revised BoR as having interests in specific plots, but have not made representations in respect of compulsory acquisition and therefore s127 is not triggered. The overall position on all of these plots has been set out above and the SoS should be satisfied that the land and rights are required for the purposes of the development. These statutory undertakers include:
- Wakefield MDC - Plots 01/01, 01/05, 01/10, 01/35, 01/45, 01/61 02/91.
 - North Yorkshire CC - Plots 01/05, 02/40, 02/100, 02/105, 02/110, 02/135, 02/165, 03/15, 03/30, 04/25, 05/05, 06/05, 06/20, 06/40, 07/05, 07/25.
 - Coal Authority - Plots 01/01, 01/05, 01/09, 01/10, 01/15, 01/30, 01/35, 01/40, 01/45, 01/50, 01/51, 01/55, 01/60, 01/61, 01/65, 01/70, 01/80, 01/85, 01/90, 01/91, 01/92, 01/95, 01/100, 02/19, 02/20, 02/24, 02/25, 02/26, 02/27, 02/28, 02/35, 02/36, 02/40, 02/50, 02/55, 02/60, 02/65, 02/70, 02/80, 02/85, 02/90, 02/91, 02/100, 02/105, 02/110, 02/115, 02/120, 02/125, 02/130, 02/131, 02/135, 02/140, 02/145, 02/150, 02/155, 02/160, 02/161, 02/165, 02/170, 03/01, 03/05, 03/10, 03/15, 03/20, 03/25, 03/30, 03/35, 04/01, 04/05, 04/10, 04/20, 04/25, 04/30, 04/35, 04/40, 04/45, 04/50, 04/55, 04/60, 04/70, 04/75, 05/01, 05/05, 05/10, 05/15, 05/20, 05/35, 05/40, 05/45, 05/50, 05/60, 05/61, 05/6605/67, 05/70, 05/75, 05/80, 05/85, 05/90, 05/95, 05/100, 05/105, 06/01, 06/05, 06/10, 06/15, 06/20, 06/25, 06/30, 06/35, 06/40, 06/41, 06/45, 07/01, 07/02, 07/03, 07/04, 07/05, 07/25.

- Northern Power Grid Holdings - Plots 01/40, 01/51, 01/55, 01/60, 01/61, 01/65, 01/80, 02/20, 02/25, 02/28, 02/35, 02/36, 02/40, 02/50, 02/60, 02/85, 02/140, 02/150, 02/155, 02/165, 03/05, 03/10, 03/20, 04/05, 04/50, 04/55, 04/70, 04/75, 05/01, 05/100.
- Northern Power Grid Holdings (Yorkshire) - Plots 01/40, 01/51, 01/55, 01/60, 01/61, 01/65, 01/80, 02/20, 02/25, 02/28, 02/35, 02/36, 02/40, 02/50, 02/60, 02/85, 02/140, 02/150, 02/155, 02/165, 03/05, 03/10, 03/20, 04/05, 04/50, 04/55, 04/70, 04/75, 05/01, 05/100.
- Knottingley to Gadwall IDB - Plot 03/05.
- Selby IDB - Plots 03/35, 04/01, 04/05, 04/10, 04/20, 04/45, 04/75, 05/80, 05/90, 06/25, 06/30, 06/35.

6.51 The statutory undertakers with interests in specific plots are:

- SSE;
- Northern Gas Networks;
- National Grid Electricity Transmission plc and National Grid Gas plc;
- Canal and River Trust;
- Network Rail Infrastructure Ltd;
- Yorkshire Water;
- Environment Agency; and,
- Eggborough Power Ltd.

SSE/ Eggborough Power Ltd

6.52 SSE is an affected person in terms of rights on plots 01/51, 01/55, 01/65, 01/90. It is listed as it has pipelines from Ferrybridge to Eggborough Power Stations that would cross the applicant's proposed pipelines. The applicant has negotiated with them as shown in Appendix A - the Schedule of Landowner negotiations, dated 20 June 2014, attached to the responses to my 2nd round of questions [R2Q009]. Terms had not been agreed by this date, although the applicant anticipated that a private asset protection agreement would be made to protect the interests of SSE. However, that had not been completed by the close of the examination.

6.53 Eggborough Power Ltd has an interest in the SSE pipeline route since it services their generating station. However, no specific land interests are recorded in the BoR and the plots affected by the pipeline are assigned to SSE in the BoR. No representations were received from them. However, joint meetings to discuss their interests, together with those of SSE, were held and it is possible that they would also be signatories to any Asset Protection Agreement.

- 6.54 Neither SSE nor Eggborough Power Ltd has made any representations in respect of the application and s127 PA 2008 would not be triggered in this case.

Northern Gas Networks

- 6.55 Northern Gas Networks (NGN) is an affected person in terms of rights on plots 01/51, 01/55, 01/60, 01/61, 01/65, 01/80, 02/20, 02/60, 03/05, 03/20, 06/15, 06/20, 06/25.
- 6.56 In an email to Knottingley Power Ltd to the Planning Inspectorate, dated 8 May 2014, [ADS006], NGN confirmed that they completed an Asset Protection Deed with the applicant and had no further representations on the matter. Therefore s127 would not be triggered in this case.

National Grid Electricity Transmission plc and National Grid Gas plc

- 6.57 National Grid Electricity Transmission plc (NGET) and National Grid Gas (NGG) are affected persons in terms of occupation/tenancy and rights on plots 01/51, 01/55, 01/60, 01/61, 01/65, 01/80, 01/85, 02/20, 02,25, 02/28, 02/35, 02/36, 02/40, 02/50, 02/55, 02/60, 02/100, 02/105, 03/35, 04/01, 04/05, 04/20, 04/45, 04/75, 06/41, 06/45.
- 6.58 The applicant has been working with NGET and NGG since 2011. By the end of the examination a private asset protection agreement had been made between the applicant and NGET/ NGG. Protective Provisions for each body referring to this agreement have been included in Schedule 8 and NGET and NGG have withdrawn their representations on the project [SoCG029]. Therefore s127 would not be triggered in this case.

Canal and River Trust

- 6.59 The Canal and River Trust (CRT) are affected persons in respect of the freehold of plots 01/85, 01/91, 01/95, 01/100, 02/26, 02/50 and 02/55. They are the tenants/ occupiers of plots 01/90 and 01/92 and have rights over 01/51. They made relevant representations [RRP013] and written representations [WRR004] both of which stated their view that if water was to be abstracted from the canal, then there would be no need for additional cooling water pipelines under the canal. The CRT also state that it would be in the public interest for the water to be taken from the canal rather than the River Aire due to the impact on the Green Belt, the operational risk to the canal and the additional cost in terms of pipeline length and the interference to third parties. They made representations on this basis. In terms of the pipeline crossing, including the water cooling pipes, this would principally relate to plots 01/95 and 01/100 for which they own the freehold.

- 6.60 The issue of water abstraction for cooling purposes was the subject of questions in both the first and second round of questions and an ISH was held on this matter on 16 July 2014. My conclusions on this issue are given in Section 4 of this report.
- 6.61 Protective provisions for CRT have been agreed [CoWSH003] and are included in Schedule 8 of the dDCO. However, CRT sought additional protective provisions, set out as Appendix 4 to WSH007. These additional protective provisions make the consideration of the use of the canal for the abstraction of cooling water from the canal the first option and if not feasible, allowing cooling water to be abstracted from the River Aire. They had not been agreed by the applicant by the end of the examination - and, as noted in Section 4, the applicant has said that it is no longer pursuing the option of abstracting cooling water from the canal.
- 6.62 The agreed protective provisions in Schedule 8 of the dDCO would ensure that there would be no serious detriment to the carrying on of the undertaking. However, the CRT has not withdrawn their objection as they consider that the additional protective provisions would be in the public interest, for the reasons set out in Section 4.
- 6.63 I have already concluded on this matter in Section 4. Since the applicant is no longer considering abstraction from the canal and no works or details have been included in the dDCO, I consider that the additional provisions would not be necessary under 127(3)(a) of the PA2008, as amended. Given the weight given to the need for the project and its CHP potential, I consider that this would outweigh the CRT's points made on public interest and that it would comply with s122(3) of the PA2008.
- 6.64 Although s127 would be triggered in this case, I consider that the agreed protective provisions set out in Schedule 8 of the dDCO would be sufficient to ensure that CRT's undertaking could be carried on without serious detriment.

Network Rail Infrastructure Ltd

- 6.65 Network Rail Infrastructure Ltd (NRIL) is an are affected person due to their interests in land and rights. The plots originally recorded in the BoR were the freehold of 02/30 and 02/35 and rights on plots 01/70, 02/19, and 02/24. The plots/ rights required relate principally to Work No. 5 and the crossing of the railway. Following negotiation with the applicant, it was possible to remove one of the plots from the BoR (02/30) and take out their interests in plot 02/35. NRIL have withdrawn their representations [RRP003] by an email dated 14 April 2014 [SoCG012]. An agreement has been

reached on the crossing of the railway line by the grid connection. As such, s127 would not be triggered in this case.

Yorkshire Water

- 6.66 Yorkshire Water (YW) are affected persons due to their interests in land and rights. The plots recorded in the revised BoR are tenant/ occupier, 02/115, and rights on 01/01, 01/35, 01/40, 02/100, 02/115, 02/120, 02/125, 02/140, 02/150, 02/161, 02/165, 03/15, 03/30, 04/50, 04/55, 04/60, 04/70, 05/15, 05/50, 05/66, 05/67, 05/70, 05/75, 07/01, 07/02, 07/03, 07/05, 07/25.
- 6.67 Following the concerns of YW in their relevant representations [RRP017] that the BoR was not accurate in reflecting their land interests, the BoR was updated. An Asset Protection Agreement has been reached for the protection of YW's apparatus, as confirmed by email dated 13 August 2014 [SoCG027] and all representations were withdrawn. As such s127 is not triggered.

Environment Agency

- 6.68 The Environment Agency (EA) are affected persons in terms of their interests in land and rights. The plots recorded in the revised BoR under land are: 02/135, 02/140, 05/20, 05/35, 05/40, 05/45, 05/60, 05/61, 05/66, 05/67, 05/70, 05/105, 06/01, 06/05, 07/02, 07/03, 07/04, 07/05, 07/25 and rights on 02/125.
- 6.69 Heads of terms have been agreed on the gas and water pipelines and negotiations on a form of option agreement and deed of easement had commenced by June 2014, in response to the EA's representations [RRP015 and WRR005]. These representations have not been withdrawn. Therefore, s127 of the PA2008 would be triggered.
- 6.70 However, I am satisfied that the required the operational land and interests required by the applicant can be taken without serious detriment to the carrying on of the undertaking, provided that protective provisions safeguarding the EA's assets can be agreed. However, in latest update on progress [R2Q009], the necessary protected provisions had not been agreed.

Other Affected Persons making representations

St Paul's Developments Plc

- 6.71 St Paul's Developments Plc is an affected person in terms of being owners or tenants/ occupiers of the main site for the generating station. The plots recorded in the BoR are: 01/10,

01/15, 01/30, 01/35, 01/40, 01/45, 01/50, 01/51, 01/55, 01/60, 01/61, 01/65, 01/70, 01/75, 01/80, 01/90, 01/91, 01/92, 02/19, 02/20, 02/24.

- 6.72 St Paul's entered into an option agreement with the applicant on 25 November 2011 giving the applicant the option to purchase the freehold plots for the site for the generating station. During the course of the examination St Paul's has entered into a S106 agreement with the applicant and Wakefield MDC [S106004] to make available its retained land between the generating station site and the canal for a permanent access to replace the claimed bridleway once construction of the generating station has finished.
- 6.73 St Paul's has not made any representations or objections in respect of the application, although they attended hearings and submitted information, eg SoCG021.

Paul and Alexandra Caddick and Caddick Construction Ltd

- 6.74 Paul and Alexandra Caddick and Caddick Construction Ltd (Caddick) are affected persons in respect of land ownership, tenancy/occupation and rights. The plots recorded in the BoR are: 01/70, 01/75, 01/100, 02/19, 02/24, 02/25, 02/27, 02/28, 02/40, 02/60, 02/70, 02/80, 02/85, 02/90, 02/91, 02/100, 02/105.
- 6.75 Caddick made relevant representations [RRP007] on three main grounds: the closure of Common Lane and the need for an alternative route capable of providing access for large agricultural machinery to arable land in the company's ownership; the drainage of land to a drain along Common Lane; and, the impact of the temperature of returned cooling water on crop growth. The first and third representations were expanded on in written representations [WRR009] as objections.
- 6.76 In the applicant's responses to my questions [R1Q001 and R2Q009] they say that they had been in negotiation with Caddick since 2011. Heads of terms have been agreed on the pipeline route, and form of option, easements and occupier's consent had all been progressed. In response to the need for access for large agricultural equipment for arable farming, the applicant has negotiated with Caddick on the alternative temporary and permanent changes to the stopping up of Common Lane to accommodate large vehicles, reported on in the section 4, above. The S106 agreement drawn up between the applicant, the landowners (St Pauls) and Wakefield Council [S106004] has been signed, allowing these works to take place in due course.

- 6.77 The applicant has responded to the concerns of Caddick about the soil temperature over the returned cooling water pipes in their response to my question W4 [R1Q001]. This shows that the changes in soil temperature would not reach the root levels of any arable crops above them and, in any event, any change would be beneficial. Caddick have confirmed that they are content with the resolutions to their objections, but have not withdrawn them.

Other Affected Persons not making representations

- 6.78 The following affected persons have not made any representations nor objected to acquisition:

Waddingham Trustees

- 6.79 Waddingham Trustees are linked to the Caddick ownerships. The plots in which they have an interest are 02/90, 02/100 and 02/105. Heads of terms have been agreed on the pipeline route. Negotiations on a form of option, deed of easement and occupier's consent have been progressed but not concluded.

William Conway

- 6.80 William Conway is an affected person in respect of the following plots: 02/110, 02/115, 02/120, 02/125, 02/145, 02/150, 02/155, 02/160, 02/161, 02/165 (subsoil), 03/01. An option agreement has been agreed with the applicant together with a deed of easement, on which signature was said by the parties to be imminent.

Cathy Marie Taylor-Conway

- 6.81 Cathy Marie Taylor-Conway is an affected person in respect of plots 02/110, 02/115, 02/125, 02/155, 02/160, 02/161, 02/165. An option agreement has been agreed with the applicant together with a deed of easement, on which signature was said by the parties to be imminent.

William Hobman and Farnell Hills

- 6.82 William Hobman and Farnell Hills are affected persons in respect of plots 01/45, 01/60, 01/61, 01/70, 01/75, 02/19, 02/24, 02/125, 02/130, 02/131, 02/165, 02/170. Heads of terms for the water pipeline have been agreed and negotiations are taking place for an option on the land for the water pumping station and on the extinguishment of a right of way on Common Lane.

David Knowles

- 6.83 David Knowles is an affected person in respect of plots 02/125, 02/145, 02/150, 03/01. An option agreement and deed of easement has almost agreed and it is agreed by the parties that it will be signed imminently.

David Arnold Platt

- 6.84 David Arnold Platt is an affected person in respect of plots 02/120, 02/125, 02/145, 02/150, 02/155, 03/01, 03/05, 03/10, 03/15, 03/20, 05/61, 05/66, 05/70, 07/03, 07/04. An option agreement and occupier's consent have been signed.

Timothy Brears

- 6.85 Timothy Brears is an affected person in terms of plots 03/25, 03/30, 04/10, 04/30, 04/35 and subsoil on 03/30. A draft option agreement and deed of easement has been agreed and negotiations are due to be completed soon.

M Brears and Son Ltd

- 6.86 M Brears and Son Ltd is an affected person in terms of plots 03/25, 04/10 and 4/30. An occupier's consent is being negotiated and agreement is expected on this soon.

Stephen Guy Poskitt

- 6.87 Stephen Guy Poskitt is an affected person in terms of plots 03/30, 03/35, 04/01, 04/20, 04/25, 04/35, 04/40, 04/45, 04/50, 04/55, 04/60, 04/70, 05/01, 05/05, 05/15. The applicant has confirmed that an option agreement, deed of easement and occupier's consent is being negotiated, with only a few points outstanding.

Mark H Poskitt

- 6.88 Mark H Poskitt is an affected person in terms of freehold, tenancy and rights scheduled plots 01/70, 01/75, 01/80, 02/19, 02/20, 02/24, 02/25, 02/27, 02/28, 02/35, 02/36, 02/40, 02/105, 03/35, 04/01, 04/05, 04/20, 04/35, 04/40, 04/45, 04/50, 04/55, 04/60, 04/70, 04/75, 05/01, 05/05, 05/10, 05/15. As with Stephen Guy Poskitt, an option agreement, deed of easement and occupier's consent is being negotiated, with only a few points outstanding.

Sonia Romaine Poskitt

- 6.89 Sonia Romaine Poskitt is an affected person in terms of interests in the freehold of plot 04/50. As with Stephen Guy Poskitt, an option agreement, deed of easement and

occupier's consent is being negotiated, with only a few points outstanding.

D N Platt Partnership

- 6.90 D N Platt Partnership is an affected person in respect of plots 05/50, 05/60, 05/61, 05/67. An occupier's consent has been agreed with signature imminent.

Sybil Elizabeth Platt

- 6.91 Sybil Elizabeth Platt is an affected person in respect of plots 05/50, 05/60, 05/61, 05/67, 07/01. An option agreement and occupier's consent have been signed.

James Edward Hartley

- 6.92 James Edward Hartley is an affected person in respect of plots 05/60, 05/61, 05/66, 05/67, 05/70, 05/75, 05/80, 07/01, 07/03, 07/04. An option and occupier's consent have been signed.

J E Hartley Ltd

- 6.93 J E Hartley Ltd is an affected person in respect of plots 05/75, 05/80, 07/01. An occupier's consent has been agreed and exchanged.

Olga Mary Bentley Cockcroft

- 6.94 Olga Mary Bentley Cockcroft is an affected person in respect of plots 05/80, 05/85, 05/90, 05/95. An option agreement and deed of easement has been circulated for signature.

Booth Bros Ltd

- 6.95 Booth Bros Ltd is an affected person in respect of plots 05/90, 05/95, 05/100. An option agreement and deed of easement have been agreed and circulated.

David Davidson

- 6.96 David Davidson is an affected person in respect of plots 06/05, 06/10, 06/15, 06/20. An option agreement and deed of easement are under review, with agreement expected shortly. (Davidson Bros are listed as being an affected person for plots 05/105 and 06/01 but there is no record of any agreement with them.)

Executors of the estate of T C Askin (deceased)

- 6.97 The executors of the estate of T C Askin (deceased) are affected persons in respect of plots 06/20, 06/25. An option agreement has been exchanged.

Martin Falkingham

- 6.98 Martin Falkingham is an affected person in respect of plot 06/25. An occupier's agreement has been agreed and circulated for signature.

Timothy and Mark Hey

- 6.99 Timothy and Mark Hey are affected persons in respect of plots 06/30, 06/35, 06/40. Negotiations are continuing.

*Donald, Rosemary Wendy, Michael Donald and Anthony Hebden
Walter Parkin*

- 6.100 Donald, Rosemary Wendy, Michael Donald and Anthony Hebden Walter Parkin are affected persons in respect of plots 06/40, 06/41, 06/45. A form of option agreement and deed of easement have been agreed and are these are being circulated for signature.

W Cockcroft and Son

- 6.101 W Cockcroft and Son have been listed as affected persons in the amended BoR, although no plot numbers are assigned to them. However, they have signed an option agreement for land. (John and Richard Cockcroft are separately listed as having an interest in plots 05/80, 05/85, 05/90, 05/95, with no update on negotiations).

Others

- 6.102 There are a number of affected persons with interests in the land for which no update on negotiations is given by the applicant. These include: Kelly Storey, Helena Coutts, Rebecca and Janice Lister, Mr and Mrs Howson, UK Coal Mining Ltd, Juniper No 3 Ltd, and H Hey and Sons.

ExA's Overall Conclusions and Recommendations on the Granting of CA powers

- 6.103 I have considered the application documents and all of the representations submitted as part of the examination on compulsory acquisition matters in the light of s122, s123, and s120 of the PA2008, the Human Rights Act 1998, and the DCLG Guidance; and, in the light of the representations received and the evidence submitted, to consider whether a

compelling case has been made in the public interest, balancing the public interest against private loss.

- 6.104 The dDCO deals with both the development itself and compulsory acquisition powers. The case for compulsory acquisition powers cannot properly be considered unless and until I have formed a view on the case for the development overall, and the consideration of the compulsory acquisition issues must be consistent with that view.
- 6.105 I have shown in Section 5 that development consent should be granted. The question therefore for me here is the extent to which, in the light of the factors set out above, the case is made for compulsory acquisition powers necessary to enable the development to proceed.

Section 122 of PA2008

- 6.106 In terms of s 122 of the PA2008, the land for which compulsory acquisition would be authorised would be required for the development to which the dDCO relates and would be required to facilitate or be incidental to that development. No replacement land would be required in this case under s131 or s132.
- 6.107 As regards public benefit, NPS EN-1 sets out a clear and urgent need for new electricity generation. At paragraph 3.3.2, EN-1 sets out the need to ensure sufficient generating capacity to meet energy security objectives. This is expanded on in paragraph 3.3.4 with fossil-fuel stations being required to generate capacity at times of high demand and to complement renewable energy and, in paragraphs 3.3.13-15, to meet future increases in demand and the need to decarbonise energy supply. These matters give substantial weight in favour of the proposal. In addition, as the power plant would be CHP-ready, under paragraph 4.6.8, additional substantial weight is also added in favour of the proposal.
- 6.108 I consider that a compelling case in the public interest has been set out by the applicant in the application and other examination material for compulsory acquisition rights, which would comply with s122(3). A proportionate approach has been taken to the powers sought and attempts have been made to minimise the impact on private owners.

Sections 120(5)(a) and 126 of PA2008

- 6.109 Article 20 and Schedule 6 provide for the modification of compensation and compulsory purchase enactments for the creation of new rights and the imposition of restrictive covenants. These comply with s120(5)(a), and do not contravene s126 of the PA2008.

Sections 127 and 138 of PA2008

- 6.110 The dDCO makes provision for the acquisition of rights in land owned by NRIL for electrical lines crossing the railway, and by CRT, for the crossing of the canal by the pipelines. In addition, it would be necessary to affect other interests - NGN, SSE and Eggborough Power and National Gas Grid. I have concluded above that in each case the rights being sought would not cause serious detriment to the carrying out of the statutory undertaking concerned. Protective provisions and/or private asset protection agreements have been drawn up with most of the statutory undertakers affected.
- 6.111 There is no record of agreement being reached with the EA on protective provisions or any private asset protection agreement, although the applicant lists negotiations as taking place in R2Q009. The EA has not withdrawn its objection to compulsory acquisition in its relevant representation [RRP015]. I consider that protective provisions would be necessary and I recommend that the SoS consider including them in the DCO.
- 6.112 For the CRT, a set of protective provisions has been agreed and included in Schedule 8 of the applicant's dDCO [CoWSH003]. I am satisfied that these protective provisions would ensure that the rights being sought would not cause serious detriment to the carrying out of the undertaking.
- 6.113 The additional protective provisions suggested by CRT which cover the first consideration of the canal for cooling water are not necessary since the applicant has decided not to use cooling water from the canal.
- 6.114 My recommendation arises from the examination process, including consideration of the application, all submissions and the proceedings of the CA ISH.
- 6.115 In view of my foregoing conclusions, I recommend that the compulsory acquisition powers included in the dDCO in respect of the land detailed in the BoR, final version [PSC022] are approved if the SoS is minded to grant development consent for this proposal.

Conclusion - Temporary possession

- 6.116 In conclusion on temporary possession, Article 26 of the dDCO would make provision for the use of land for carrying out the project and Article 27 would make provision for the temporary use of land for maintaining it. The temporary use would relate mainly to the grid connection which would be justified, including the erection of a temporary pylon, as it would be an essential part of the development. The Articles

also make provision for compensation to be paid in the event of any loss or damage, which would be equivalent to that for compulsory acquisition. In terms of human rights, there has been the opportunity for an opportunity for a fair and just hearing, to comply with Article 6 of the ECHR. Any temporary possession would be in interests of the wider community and would not be excessive. Compensation would be payable for any loss or damage, Therefore I consider that the proposal would comply with Articles 1 and 8 of the ECHR which cover enjoyment of property and a right to family life.

7 DRAFT DEVELOPMENT CONSENT ORDER

- 7.1 The draft DCO (dDCO) constitutes the consent sought for the proposed development. It sets out the authority to be given to the undertaker, including permanent and temporary acquisition of land and interests in the land, other commitments that the applicants must accept to carry out the development, the further approvals that are required before particular works can commence, the protective provisions necessary to safeguard the interests of other parties and requirements (similar to planning conditions) to be met when implementing the consent.
- 7.2 A dDCO was submitted as part of the application [APD016], accompanied by the required Explanatory Memorandum [APD017]. Where the DCO applies, modifies or excludes a statutory provisions under s120 (5) (a) of the PA2008, s117(4) of the same Act requires the DCO to be in the form of a statutory instrument. The dDCO includes such provision and is in the form of a statutory instrument.
- 7.3 A first revised dDCO [PSC005] was submitted to Deadline 1, which mainly included minor drafting changes. Further revisions were made to the dDCO by the applicant for Deadlines 5 and 7 [PSC020, 021, 027 and 028]. A DCO hearing was held on 16 July 2014 with updates to the dDCO being reported by the applicant. For Deadline 8, the final dDCO was produced by the applicant, together with a revised Explanatory Memorandum [PSC030, 031, 032 and 033].
- 7.4 Following negotiations with National Grid, the applicant has requested further changes to be made to the dDCO in a covering letter [PSC034]. These included the definition of the land plan in Article 2 and the wording concerning protective provisions for National Grid Gas Plc.
- 7.5 The reasons for seeking the various powers have been adequately explained in the Explanatory Memorandum [latest version PSC032 and 033]. Most of the changes sought by the applicant have been minor; there have also been some changes and proposed additions to the requirements proposed during the course of the examination. The various changes and additions are explained below.
- 7.6 Where I do not mention particular provisions, requirements or schedules, then the Secretary of State (SoS) can be clear that I am satisfied that the measures proposed are appropriate. Unless otherwise stated, my comments below relate to the applicant's final dDCO as carried forward into my recommended DCO.

Articles

- 7.7 The articles set out the principal powers to be granted if consent is given. Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remained a starting point for the consideration of the dDCO and a comparison with them has been provided as part of the application [APD018]. Precedent cases have also been considered where appropriate.

Article 2 - Interpretation

- 7.8 Most of the changes made to article 2 (Interpretation) are largely minor and are either corrections, clarifications, updates or additions to the originally submitted version by the applicant, some in response to my questions on drafting. However, during the course of the examination, a number of questions were asked about some the definitions in the interpretation section.
- 7.9 The definition of what constitutes "ancillary works" in the Article is set out in the Model Provisions as being works in the authorised project, in addition to any other works authorised by the Order and not being development as defined in the PA2008. A number of consented DCOs contain similar wording e.g. the Network Rail (Ipswich Rail Chord) Order 2012. The applicant has not been able to identify any works under this definition in this application, but wishes to retain flexibility on this matter. However, I consider that accepting this wording would not allow development over which the relevant local planning authorities would wish to retain further controls, since the scope of the works is already defined elsewhere.
- 7.10 The definition of "maintain" in article 2(1) includes, in part, wording which has precedent in the Rookery South (Resource Recovery Facility) Order 2011 but does not go as far as that Order in terms of the works allowed. Over the lifetime of the generating station it would be necessary to make adjustments and alterations to not only replace outworn items but also to comply with changes to legislation and permit conditions. Any such material would also need to be removed. In my view, the definition is sufficiently limited so that it would not cover any of the decommissioning activities or demolition which is covered under Requirement 30.

Article 5 – limits of deviation

- 7.11 Article 5 does not include actual limits of deviation, as these are shown on the Works Plan, nor any development size

thresholds. These are set, especially in terms of height, in Requirements 3, 4, 5 and 6.

Article 6 - benefit of the Order

- 7.12 The Article is based on a model provision, but the wording on transfer is based on the Rookery South (Resource Recovery Facility) Order 2011. It is possible that both the electricity and gas licence holders could require the benefit of part of the Order and, as worded, the Article would remove the need for the consent of the SoS for this to take place.

Article 7 - application and modification of legislative provisions

- 7.13 This is a bespoke provision, which covers only Regulation 6(1) of the Hedgerows Regulations 1997 to provide for the removal of any hedgerow to which the Regulations would apply for the carrying out of the authorised development.

Articles 10 and 11 - stopping up of streets and public rights of way

- 7.14 During the course of the examination changes have been made to Articles 10 and 11, which are based on model provisions. Article 10 has provided for a temporary alternative route to be maintained until the completion and opening of a new replacement route and a similar provision is made under Article 11 for public rights of way. Article 11 specifically addresses the need for a temporary and permanent replacement route following the stopping up of Common Lane. This is also covered in Requirement 9, Work No. 9 in Schedule 1 and Part 1 of Schedule 4.
- 7.15 The changes made reflect the objections made to the access arrangements for farm vehicles to the agricultural land surrounding the main site, which have been overcome through the revised proposals, reflected in the drafting of the Articles.

Article 14 - Discharge of water

- 7.16 This Article is based on the model provision but paragraph 5 has been amended to reflect rights associated with the abstraction licence already granted by the Environment Agency (EA). Paragraph 7 has been amended to refer to the environmental permitting regime through which discharges would be regulated rather than the Water Resources Act 1991.

Articles 17 and 21 - compulsory acquisition of land and private rights

- 7.17 Article 17 gives the power of acquisition to the undertaker over the Order Land for the authorised project. Model

provision (2) has been revised since it is inconsistent with Article 21 and the undertaker's intentions in the extinguishment of rights only occurring upon entry of land concerned. Article 21 has been expanded to deal with rights in general and excluded from Article 17.

Article 20 - compulsory acquisition of rights

- 7.18 This Article is more detailed than the model provision and allows for the undertaker to acquire rights rather than have to acquire land under Article 17. It gives greater flexibility and has been included in other consented DCOs like Network Rail (Ipswich Rail Chord) Order 2012. It also allows the undertaker to impose new restrictive covenants, for example, to protect the pipelines. A number of paragraphs have been altered and expanded to cover such matters as the transfer of rights to statutory undertakers

Article 24 –acquisition of part of certain properties

- 7.19 Article 24 is a model provision and allows for the acquisition of parts of property where the whole is not required but allows the owner to serve a notice if they consider that the whole of the property to be purchased.

Article 26 - temporary use of land for carrying out the authorised project

- 7.20 The Article allows the use of land for carrying out temporary works for the purposes of the construction of the project. It has been amended to refer to land that is in the Book of Reference (BoR) for that purpose and other Order land where no notice of entry has been served or vesting declaration made. This provides for greater flexibility and is used in Transport and Works Act Orders and in DCOs like the Network Rail (Ipswich Rail Chord) Order 2012. Article 27 covers the temporary use of land for the maintenance of the project.

Article 28- statutory undertakers

- 7.21 This Article is based on a model provision but amended by the applicant. Paragraph (b) provides a general power for the extinguishment of rights and the removal or repositioning of any apparatus of statutory undertakers within any Order land, whether or not it is identified as statutory undertaker's land in the BoR. Unlike Article 29 (apparatus and rights of statutory undertakers in stopped-up streets), it does not provide any mechanism for the statutory undertaker to carry out the replacement or relocation of the apparatus and recover its costs; nor does it contain any provision for compensation to the statutory undertaker for any consequential loss. Protective provisions will therefore be

important, see below. However, no statutory undertakers have objected to this article.

Former Article 34 - Pipelines Act 1962

- 7.22 Former Article 34 of dDCO submitted with the application [APD016] has been deleted by the applicant since it related to the Pipelines Act 1962 and is no longer required as part of the DCO.

Article 34 - Certification of plans

- 7.23 Article 34 lists the plans that SoS would need to certify. The plans have been updated as the examination has progressed and the latest versions are those on which the recommendation is based. The Schedule of Mitigation [Doc 2 attached to R2Q009] is not included in the list but it is not comprehensive and provides a minimum requirement that might be the subject of change following the submission of further details under the requirements. As such, I consider that it should not be included in the list in Article 34.

Schedule 1, Part 1 - Description of works

- 7.24 Schedule 1, Part 1 lists the works authorised by the Order. The description of Work No 2 (area reserved for carbon capture etc.) has been changed to confirm that the area includes space for equipment for the compression of carbon dioxide, to comply with the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013.

Schedule 8 - Protective provisions

- 7.25 Protective provisions have been negotiated between applicant and other parties before and during the examination. The Protective Provisions for National Grid Electricity Transmission Plc, National Grid Gas Plc and the Canal and River Trust (CRT) are included in the DCO at Schedule 8 and brought into force by Article 37. Other protective provisions have been agreed with a number of statutory undertakers through private agreements as set out in Section 6, above. However, none appear to have been made with the EA.
- 7.26 The protective provisions for National Grid Electricity Transmission Plc (NGET) and its successors in licence makes reference to a private agreement entered into by the applicant, and in relation to the exercise, operation and use of the authorised development. A similar private agreement was entered into with National Grid Gas Plc and this is included in the protective provision for NGG. The protective provisions for both NGET and NGG bring into effect those agreements. The representations of both NGET and NGG were withdrawn following the signing of the agreements.

- 7.27 The protective provisions for the Canal and River Trust (CRT) sets out the powers in the DCO where the CRT's consent is required, restrictions over the applicant's use of vehicles, plant and machinery, the CRT are able to require surveys of the waterway and scrutiny of plans and protective works to the waterway. It also allows for consultation on the design of works and for notice to be given of works on the waterway. It requires information to be given on lighting of works, access to works, control over construction and the prevention of pollution of the waterway. The provisions allow for compensation to be payable where alterations to the waterway are required, payment of CRT's fees, the making good of any detriment and the maintenance of any works carried out by the applicant and not vested in CRT.
- 7.28 The CRT also put forward additional protective provisions which would have included the consideration of the use of the Aire and Calder Navigation for the abstraction of water, rather than the River Aire, for which the applicant already has an abstraction licence. This was rejected for the reasons set out in Section 4 (water resources) of this report.

Other schedules

Schedule 4 - Public right of way to be temporarily closed and permanently stopped up.

- 7.29 Column 4 of Part 1 of the Schedule should be more precise in its description of the bridleway. It is suggested that the following is substituted: "the temporary bridleway described as Work No. 9 in Part1 of Schedule 1 and shown coloured yellow on the plan." This description should also be changed in Schedule 3, Column 4. The changes suggested have been carried out to the recommendation DCO.

Schedule 6 - Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of restrictive covenants

- 7.30 The Schedule is brought into force by Article 20. It contains provision for the legislation for the compulsory purchase of land and interests in land to apply with necessary modifications to the compulsory acquisition under the Order of new rights or the compulsory imposition of restrictive covenants.

Schedule 7 - Procedure for discharge of requirements

- 7.31 This Schedule provides the procedure to be followed in relation to applications for the discharge of requirements. Wakefield MDC in their LIR [LIR002] made representations that insufficient time had been given for them to consider such applications. Changes have been made to the Schedule

to increase the time that the local authorities have to consider applications especially where consultations have to be held with other bodies. I consider that the revised arrangements strike a balance between efficiency and allowing sufficient time for the proper consideration of application to discharge requirements.

Requirements (Schedule 1 Part 2)

- 7.32 Requirement 2 sets a time limit of 7 years for the commencement of development. The applicant has requested this period, which is longer than might usually be expected, in order to take account of uncertainties in the market for power, both in terms of changes to market rules and fuel pricing.
- 7.33 Requirements 3, 4, 5 and 6 set thresholds for the maximum dimensions for elements of the development. Generally they accord with known and likely parameters for the buildings and other development and were assessed in the Environmental Statement (ES). The height of the main stacks in Requirement 3 is set at a maximum 75m. The EA has commented [WRR005] that the actual height will be determined in the environmental permit and there is a risk that this might be exceeded when further detailed work is carried out during this process. Nevertheless, the height stated in the Requirement 3 is based on the air quality modelling submitted as part of the ES and is the best estimate at this time. The applicant's view is that it is unlikely that the permit would specify any greater height than 75m.
- 7.34 A number of minor changes have been made to these requirements to meet the needs of the statutory undertakers referred to in them. The need to produce an operational travel plan has also been added to the details to be supplied under Requirement 3 at the request of the relevant local planning authorities in order to manage and mitigate the impacts of travel on air quality.
- 7.35 Requirement 11 is a new requirement introduced to control the development of temporary buildings, structures and roads, including fencing which was covered in the original Requirement 11. Requirement 13 has been changed during the course of the examination, following comments from the EA [WRR005] and my 2nd round of questions to include a section on unexpected contamination and the timing of the production of the verification report on the completion of the remediation works. Requirement 14 seeks to ensure that the remediation of the main site has been completed and a verification report provided and approved before development can commence on the generating station.

- 7.36 Requirement 16, which covers the ecological management plan, has been altered to reflect the comments of the relevant local planning authorities on the responsibilities for local wildlife management and also the representations of Yorkshire Wildlife Trust on the need for biodiversity offsetting. Section (3) acknowledges the potential for off-site offsetting, as discussed at the ISH on the DCO, which might be provided as part of the mitigation proposed in the S106 agreement between the applicant, Selby DC and North Yorkshire CC.
- 7.37 Requirement 17 covers the Construction Environment Management Plan, a framework for which is set out in section 26 of the ES. During the course of the examination a section on a scheme for piling has been introduced, following my 1st round of questions [R1Q001], since this is likely to have one of the most significant impacts on noise as a result of construction activities. Also added was a construction travel plan to overcome air quality concerns of relevant local authorities under subsection (2)(c) and a review of the development's impact on the River Aire in a waterbody action plan, in response to representation from the EA [WRR005].
- 7.38 Requirement 18 has been altered to make the improvement to Common Lane in Work No. 4 a condition precedent to the commencement of work on the generating station. This would ensure that an access to the main site of the necessary standard was provided prior to the construction of the generating station. Requirement 19 has been revised during the examination to take into account the comment of the Ministry of Defence (MoD) on the name of the relevant consultee on air safety.
- 7.39 Requirement 23 has been changed to reflect the comments of the relevant local authorities on noise monitoring. The need for Requirement 26 was questioned by me, since it does not require the undertaker to take any specific action other than provide the data from air quality monitoring to the relevant local planning authority. The requirement is said to be based on a condition in the Thorpe Marsh s36 decision. The relevant local planning authorities are supportive of the requirement, since they could use the data to inform their air quality management regimes and take any action necessary through liaison with the undertaker, and potentially the EA.
- 7.40 Requirement 32 allows amendments to approved details. It is a model requirement adapted to allow amendments which are within the control of the local planning authority in section (2). These details have to be within the parameters of the documents certified under Article 34 and the ES and the approval given in writing. However, more clarity could be provided by using paragraph 2 of the same requirement from

the Norton Bridge Area Improvements Order. This reads: "2. The authorised development must be carried out in accordance with the design drawings subject to such non-material amendments as are approved in writing by the relevant planning authority; provided that such approval is not given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement." I am substituting this version in my recommended DCO.

- 7.41 Requirement 33 is a new requirement, submitted during the examination, setting out the need for local liaison arrangements. The requirement is based on condition 58 of the s36 consent for Ferrybridge Multi-Fuel Generating Station. I consider that the requirement would be necessary to ensure liaison with the local community and the local interest groups set out in the requirement. Requirements 34 and 35 are both new requirements to ensure that notice is given to the relevant local planning authority of the start and completion of commissioning and the commencement of operation, in order to ensure the enforcement of the relevant requirements.
- 7.42 A requirement to promote the use of local skills and recruit local labour was requested by Wakefield MDC and has been drafted by the applicant as Requirement 36. Although Wakefield MDC claims to use this type of condition on other potential employment projects, the applicant's view is that it is neither appropriate nor necessary to include such a requirement. There is a need for further employment in the local area as set out in both LIRs [LIR001 and LIR002]. However, engagement with the local community has been provided for in Requirement 33 and the applicant has provided details of how it has provided work and skills development, in association with the local authority, at one of its other plants in the Manchester area. Therefore I consider that Requirement 36 would not be necessary.

Other legal agreements

- 7.43 Three planning obligations have been submitted during the course of the examination. Paragraph 4.1.8 of NPS EN-1 states that obligations "*must be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects.*"

- 7.44 The first planning obligation submitted is in the form of a unilateral undertaking [S106001] made by the applicant to Wakefield MDC, signed and dated on 23 July 2014. It would provide a contribution of £60,000, split between £50,000 on Greenhouse Park/ The Close and £10,000 to the enhancement of landscape features and the Aire & Calder Navigation Canal. As set out in Section 4 of this report, the undertaking is necessary in order to mitigate the impact on the landscape and the loss of the greenfield area of the main site and the lack of any open space within the development. The undertaking is relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects. As such, I have given it full weight and have taken it into account in my recommendation about the proposal.
- 7.45 The second planning obligation submitted is a S106 agreement [S106002], made by the applicant, Selby DC and North Yorkshire CC, signed and dated 13 August 2014. It would provide a contribution of £120,000 to be spent on: the River Aire and Calder Navigation Corridor and River Aire Enhancement Project; additional landscape/ multifunctional green infrastructure, with feasibility studies; and, a number of highway works, including the provision of a pedestrian crossing on Weeland Road, Eggborough.
- 7.46 In order for a person to enter into a s106 agreement, they need to have an interest in the land. This agreement is conditional on the granting of the DCO and applicant acquiring a freehold interest in the AGI site. The applicant already has an interest on the generating station site (Work No. 1) through an option agreement with the landowner but has still to acquire the freehold of the Above Ground Installation site. Clause 3.3 of the s106 agreement makes both the granting of the DCO and the acquiring of the AGI site a condition of the agreement. This approach has already been accepted by the SoS in the East Anglia ONE Offshore Windfarm Order 2014. The applicant and the two local planning authorities that are signatories agree that this satisfies the test of having an interest in the land.
- 7.47 Clause 3.2 of the s106 agreement states that the agreement would run with the land and it would transfer under Article 6(1) of the dDCO, subject to the consent of the SoS. In this case a further s106 could be required prior to the consent of the SoS being given. There is a typographical error in clause 4.7 but this is in a recital and would not affect the legal force of the agreement. Since the agreement is also an obligation under the DCO, the applicant also feels that this meets the test under s106(9)(aa) to make it an obligation under s106.

- 7.48 Nevertheless, the covenants would only bind successors in title after the applicant has exercised its option, which has not yet taken place. In addition, the S106 submitted for East Anglia ONE specifically recognised that the applicant had no interest in the land, whereas this s106 does not do so. Finally, the reference to Article 6(1) still gives the SoS the right to refuse consent until a new s106 has been entered into. This introduces a further element of risk. The risks are small but I consider that they limit the weight that can be given to the S106. However, I have taken into account that the signatory local planning authorities would have taken their own legal advice and are content that they could enforce the delivery of the necessary mitigation provided by the s106.
- 7.49 Other than my concerns about the minor risks with the s106, the agreement is relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects. As such, I have taken it into account in my recommendation about the proposal, though with reduced weight.
- 7.50 The final s106 [S106004] was made between the applicant, St Paul's Developments Plc (the landowner) and Wakefield MDC and is dated 12 September 2014. The obligations cover: the unrestricted use of Blackburn Lane between its junction with Common Lane and the temporary bridleway by members of the public until the permanent bridleway has been completed at the owner's cost to a standard agreed with the Council; submission of the details of the permanent bridleway for approval and construct it in accordance with the approved details; ensuring that the landowner enters into a Public Path Creation Agreement with the Council and dedicating their respective interests in the permanent bridleway as a public bridleway; recording the dedication of the permanent bridleway on the title to the land; and, paying the local planning authority's legal costs incurred in the review and negotiation of the Deed.
- 7.51 The agreement covers the changes to the claimed bridleway which runs along part of Common Lane. The development requires part of Common Lane to be stopped up to allow for Work No 1 and Work No 2 to be carried out. An alternative private track/ temporary bridleway would be provided as Work No 9 (listed under Schedule 4, Part 1). The obligation would ensure that the owner of the land (St Paul's Development Plc) provided the temporary and permanent bridleways to the local planning authority's standards and that there would be unrestricted public access on the

temporary bridleway, with the permanent bridleway being registered as such and the Council's costs being covered.

- 7.52 The agreement is relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects. Therefore, I have given it full weight and taken it into account in the recommendation.

Conclusion

- 7.53 In view of all of the above points, I conclude that my final draft DCO is appropriate in relation to the proposal. I recommend that, should consent be given, the Order is made in the form set out in Appendix 4.

8 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

- 8.1 In coming to my overall conclusion, I have had regard to the relevant NPSs, local impact reports submitted during the examination, all prescribed matters and all matters that I consider are important and relevant to this application. The legal and policy context that I consider applies to this application is set out in Section 3. My findings in relation to policy and factual issues are in Section 4. My overall conclusion on the case for development consent and my recommendation that development consent is granted is set out in Section 5.
- 8.2 I have also considered the request for compulsory acquisition powers in Section 6 and concluded that there is a compelling case in the public interest for the grant of the compulsory acquisition powers sought by the applicant.
- 8.3 In Section 7, I concluded and recommended that if the development consent is granted as recommended, then the order should be made in the form set out in Appendix 4. In coming to this view, I have taken into account all of the matters raised in the representations and consider that there is no other reason that would lead me to a different conclusion. However, consideration should be given to protective provisions for the EA.
- 8.4 In relation to s104 of the PA2008, I further conclude:
- a) that making the recommendation Order would be in accordance with NPSs EN-1, EN-2, EN-4 and EN-5, as set out in the conclusions to the foregoing sections, above.
 - b) that in consideration of the other exceptions referred to in s104 of the PA2008, I find no reason on the matters before me to demonstrate that deciding the application in accordance with the relevant NPSs would: lead to the United Kingdom being in breach of its international obligations; lead to the SoS being in breach of any duty imposed on the SoS by or under any enactment; or, be otherwise unlawful by virtue of any enactment.
- 8.5 Other consents would be required, notably the environmental permit, but, from the statements of common ground and other submitted evidence, there is no reason, at this stage, to suggest that they would not be granted, if required.
- 8.6 Therefore, I recommend that, for the reasons set out in the above report, the SoS makes the Knottingley Power Plant Order, as set out in Appendix 4.

APPENDICES

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APPENDIX 1 - EXAMINATION LIBRARY

Appendix 1

This library contains a list of representations/documents that were put to the Examining Authority 'ExA' during the consideration of the application. Each entry has a unique reference describing its type (see Index below) and a link to the document on the Planning Inspectorate website.

To aid navigation, the submissions have been listed under sub-headings relating to events that occurred between the submission of the application and the end of the examination.

The sequence of documents listed below begins with list of original application documents as submitted, post-submission documents received from the applicant, all procedural decisions and documents received at the pre-examination stage. The library then lists all other documents beginning with those received during examination, matching deadlines as set by the ExA in its examination timetable.

Some submissions contain information relevant to more than one event and sub-heading. Where this is the case they have only been listed once. In addition, additional sub-headings were added to inform of any 'additional' documents received but not always requested, however accepted by the ExA for the examination.

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<u>Application Documents</u>	APD
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<u>Written Representations</u>	WRR
<u>Local Impact Reports</u>	LIR

Statements of Common Ground <i>Please see Project Library for all received SoCG</i>	SoCG
<u>Planning obligations and S106 Agreements</u>	S106
Responses to Examining Authority's <u>First/Second</u> Round of Questions	RXQ
<u>Post-submission Changes</u> <i>Documents submitted by the Applicant post-submission of the original application</i>	PSC
Written summaries from Hearings held in <u>May 2014 / July 2014</u>	WSH
Any other additional submission <i>Any documents received between examination timetable deadlines that are not matching other descriptions</i>	ADS
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<u>Comments on Local Impact Reports</u>	CoLIR
Comments on Written Summaries from <u>May 2014 / July 2014</u> Hearings	CoWSH
Hearings: Audio Recordings from <u>Issue Specific Hearings and Preliminary Meeting</u>	HG

<u>Accompanied Site Visit</u>	ASV
<u>Responses to Rule 17 Letter</u>	R17
<u>Responses to Rule 9 Letter</u>	R9
<u>Other Documents</u> <i>Documents received outside and during examination not included in any the above categories</i>	OD

EN010050 Knottingley Power Project	
Doc Ref	Document Name
APPLICATION DOCUMENTS	
<i>Application submitted 4 October 2014</i>	
Application Form	
APD001	<u>1.1 Application Covering Letter</u>
APD002	<u>1.2 Application Form</u>
APD003	<u>1.3 Copies of Newspaper Notices</u>
Plans & Drawings	
APD004	<u>2.1 Location Plans</u>
APD005	<u>2.2 Land Plan</u>
APD006	<u>2.3 Works Plan</u>
APD007	<u>2.4 Indicative generating Station Layout Drawings</u>
APD008	<u>2.5 Indicative Overhead Lines and Pylons Layout Drawings</u>
APD009	<u>2.6 Indicative Pump House Layout Drawings</u>
APD010	<u>2.7 Indicative AGI Layout Drawings</u>
APD011	<u>2.8 Access to Works Plan</u>
APD012	<u>2.9 Public Rights of Way Temporary Closures and Permanent Stopping Up Plan</u>
APD013	<u>2.10 Landscaping Plan</u>

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APD014	<u>2.11 Plan Showing Statutory and Non-Statutory nature Conservation Sites of Features</u>
APD015	<u>2.12 Plan Showing Statutory or Non-Statutory Historic or Scheduled Monument Sites and Features of the Historic Environment</u>
Draft Development Consent Order & Explanatory Memorandum	
APD016	<u>3.1 Draft Proposed of Development Consent Order</u>
APD017	<u>3.2 Explanatory Memorandum</u>
APD018	<u>3.3 Comparison of Model Provisions</u>
Compulsory Acquisition Documentation	
APD019	<u>4.1 Statement of Reasons</u>
APD020	<u>4.2 Funding Statement</u>
APD021	<u>4.3 Book of Reference</u>
Consultation Report (Document 5.1)	
APD022	<u>Main Report</u>
APD023	<u>Appendix A</u>
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APD026	<u>Appendix N-Z</u>
APD027	<u>Appendix AA</u>

APD028	<u>Appendix AB-AN</u>
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APD030	<u>Appendix AS: Part 1</u>
APD031	<u>Appendix AS: Part 2</u>
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Environmental Statement (Document 6.1)	
APD033	<u>Introductory Sections</u>
APD034	<u>Impact Assessment of CCGT Power Plant</u>
APD035	<u>Impact Assessment of Gas Pipeline</u>
APD036	<u>Socio-economic Cumulative Impact and Framework CEMP</u>
APD037	<u>Volume 1, Figures</u>
APD038	<u>Volume 2, Figures</u>
APD039	<u>Volume 3, Figures</u>
APD040	<u>Volume 4, Figures</u>
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APD043	<u>Volume 3: Appendices</u>

APD044	<u>Volume 4: Appendices</u>
APD045	<u>Volume 5: Appendices</u>
APD046	<u>Volume 6: Appendices</u>
APD047	<u>Volume 7: Appendices</u>
APD048	<u>Volume 8: Appendices</u>
APD049	<u>Volume 9: Appendices</u>
APD050	<u>Volume 10: Appendices</u>
APD051	<u>Volume 11: Appendices</u>
APD052	<u>Volume 12: Appendices</u>
APD053	<u>Volume 13: Appendices</u>
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<i>Other Environmental Statement related documents</i>	
APD055	<u>6.2 Environmental Statement Non-Technical Summary</u>
APD056	<u>6.3 Scoping Opinion</u>
APD057	<u>6.4 Flood Risk Assessment</u>
Other documents	
APD058	<u>5.2 Planning Statement</u>
APD059	<u>5.3 Environmental Protection Statement of Engagement</u>

APD060	<u>5.4 List of Consents and Licences Required Under Other Legislation</u>
APD061	<u>7.1 Grid Connection Statement</u>
APD062	<u>7.2 Pipelines Statement</u>
APD063	<u>8.1 Design and Access Statement</u>
APD064	<u>8.2 Carbon Capture and Storage Report</u>
APD065	<u>8.3 Combined Heat and Power Report</u>
POST-SUBMISSION CHANGES	
<i>Submissions received during pre-examination stage</i>	
PSC001	<u>Draft Construction Travel Plan: December 2013</u>
PSC002	<u>Draft Operational Travel Plan: December 2013</u>
PSC003	<u>Historic Mining Review: October 2013</u>
<i>Submissions received for Deadline 1 (11 April 2014)</i>	
PSC004	<u>Covering Letter</u>
PSC005	<u>3.1 A First Revised Draft Development Consent Order</u>
PSC006	<u>6.1 Amended Environmental Statement: Errata Table</u>
PSC007	<u>6.1 Amended Environmental Statement: Volume 1, Appendices</u>
PSC008	<u>6.1 Amended Environmental Statement: Volume 5, Appendices</u>
PSC009	<u>6.1 Amended Environmental Statement: Volume 5, Addendum</u>

PSC010	<u>6.1 Amended Environmental Statement: Volume 1, Figures</u>
PSC011	<u>6.1 Amended Environmental Statement: Volume 3, Figures</u>
PSC012	<u>6.1 Amended Environmental Statement: Volume 4, Figures</u>
PSC013	<u>6.1 Amended Environmental Statement: Volume 2 (Power Plant - Sections 7-16)</u>
PSC014	<u>6.1 Amended Environmental Statement: Volume 3 (Gas Pipeline Sections 17-24)</u>
PSC015	<u>4.3.A Revised Book of Reference</u>
PSC016	<u>2.3.A Revised Works Plan</u>
PSC017	<u>2.8.A Revised Access to Works Plan</u>
PSC018	<u>2.9 Revised Public Rights of Way, Temporary Closure and Permanent Stopping Up Plan</u>
<i>Submissions received for Deadline 5 (20 June 2014)</i>	
PSC019	<u>Updated Schedule of Mitigation</u>
PSC020	<u>3.1 B Second Revised Draft Development Consent Order (clean)</u>
PSC021	<u>3.1 B Revised Draft Development Consent Order (track changed)</u>
PSC022	<u>4.3 B Revised Book of Reference</u>
PSC023	<u>2.2 A Revised Land Plans</u>
PSC024	<u>2.3 B Revised Works Plans</u>
PSC025	<u>2.8 B Revised Access to Works Plan</u>

PSC026	<u>2.9 B Revised Public Rights of Way, Temporary Closures and Permanent Stopping Up Plan</u>
<i>Submissions received for Deadline 7 (24 July 2014)</i>	
PSC027 Enclosure 4 of ADS007	<u>3.1 C Third Revised Draft Development Consent Order (clean)</u>
PSC028 Enclosure 4 of ADS007	<u>3.1 C Third Revised Draft Development Consent Order (track changed)</u>
<i>Submissions received for Deadline 8 (15 August 2014)</i>	
PSC029	<u>Covering Letter</u>
PSC030	<u>3.1 D Revised Draft Development Consent Order (clean)</u>
PSC031	<u>3.1 D Revised Draft Development Consent Order (track changed)</u>
PSC032	<u>3.2 A Revised Explanatory Memorandum: Comparison with original version submitted in October 2013</u>
PSC033	<u>3.2 A Revised Explanatory Memorandum (clean)</u>
<i>Submissions received following Deadline 8 (28 August 2014)</i> <i>Examining Authority used its discretion to accept these submissions for examination</i>	
PSC034	<u>Knottingley Power Limited: Covering Letter</u>
PSC035	<u>2.2 B Revised Land Plan</u>
<i>Further Submissions received following Deadline 8 (5 September 2014)</i> <i>Examining Authority used its discretion to accept these submissions for examination</i>	
PSC036	<u>Knottingley Power Limited : Covering Letter</u>
PSC037	<u>3.1E Draft Development Consent Order (tracked changes)</u>

PSC038	<u>Draft Development Consent Order Statutory Instrument Template received 5 September 2014</u>
PSC039	<u>Comparison between Draft Development Consent Order originally submitted (October 2013) vs final version received 5 September 2014</u>
PSC040	<u>Final Draft Development Consent Order (Validation Report)</u>
PROCEDURAL DECISIONS	
<i>Acceptance</i>	
PD001	<u>Acceptance Decision Letter: 31 October 2013</u>
PD002	<u>Section 55 Acceptance Checklist: 31 October 2013</u>
<i>Pre-examination</i>	
PD003	<u>Rule 6 & Rule 4 Letter: 18 February 2014</u>
<i>Examination</i>	
PD004	<u>Rule 8 Letter: 20 March 2014</u>
PD005	<u>First Round of Examining Authority's Questions: 20 March 2014</u>
PD006	<u>Rule 13 and Rule 16 Letter: 16 April 2014</u>
PD007	<u>Rule 17 and Rule 8(3) Letter: 1 May 2014</u>
PD008	<u>Letter requesting responses to Second Round of Questions: 28 May 2014</u>
PD009	<u>Second Round of Examining Authority's Questions: 28 May 2014</u>
PD010	<u>Notification letter for Issue Specific Hearing: 16 July 2014 dated 12 June 2014</u>
PD011	<u>Rule 9 Letter: 6 August 2014</u>

PD012	<u>Rule 8(3) and Rule 17 Letter: 10 September 2014</u>
PD013	<u>Section 99 Letter: 15 September 2014</u>
PRE-EXAMINATION	
<i>Relevant Representations (14 November 2013 - 6 January 2014)</i>	
RRP001	<u>Natural England</u>
RRP002	<u>Public Health England</u>
RRP003	<u>Network Rail Infrastructure Ltd</u>
RRP004	<u>Eggborough Parish Council</u>
RRP005	<u>City of Bradford Metropolitan Council</u>
RRP006	<u>Highways Agency</u>
RRP007	<u>Craddick Construction Limited</u>
RRP008	<u>Kirklees Council</u>
RRP009	<u>Wakefield Metropolitan District Council</u>
RRP010	<u>Kellington Parish Council</u>
RRP011	<u>Yorkshire Wildlife Trust</u>
RRP012	<u>Wakefield Council Regeneration Team</u>
RRP013	<u>Canal and River Trust</u>

RRP014	<u>Yorkshire Dales National Park Authority</u>
RRP015	<u>Environment Agency</u>
RRP016	<u>Cllr John McCartney</u>
RRP017	<u>Yorkshire Water</u>
<i>Additional/Late submissions and representations received after 6 January 2014</i> <i>Examining Authority used its discretion to accept these submissions for examination</i>	
ADS001	<u>Late Representation from Chapel Haddlesey Parish Council: accepted on 20 March 2014</u>
ADS002	<u>Late Representation from East Riding of Yorkshire Council: accepted 20 March 2014</u>
ADS003	<u>Knottingley Power Limited: Response to Rule 6 Letter</u>
EXAMINATION	
DEADLINE 1 - 11 April 2014	
<i>Comments on additional documents provided and listed as accepted in Annex D of the Rule 8 Letter</i>	
N/A	
<i>Comments by Interested Parties on Relevant Representations</i>	
CoRR001	<u>Knottingley Power Limited</u>
<i>Summaries of all Relevant Representations by Interested Parties whose Relevant Representations exceeded 1500 words</i>	
N/A	
<i>Written Representations</i>	
WRR001	<u>Civil Aviation Authority</u>

WRR002	<u>Cllr John McCartney</u>
WRR003	<u>Eggborough Parish Council</u>
WRR004	<u>Canal and River Trust</u>
WRR005	<u>Environment Agency</u>
WRR006	<u>National Grid Gas Plc. and National Grid Electricity Transmission Plc.</u>
WRR007	<u>Yorkshire Water - Withdrawn</u>
WRR008	<u>Yorkshire Wildlife Trust</u>
WRR009	<u>Caddick Construction Limited</u>
Written Representation received during Deadline 1 from Non-Interested Party	
<i>The Examining Authority has exercised its discretion and has agreed to accept this submission</i>	
WRR010	<u>Dr Glynn Powell</u>
Summaries of all Written Representations by Interested Parties whose RRs exceeded 1500 words	
N/A	
Responses to Examining Authority's First Round of Questions	
R1Q001	<u>Knottingley Power Limited</u>
R1Q002	<u>Wakefield Metropolitan District Council</u>
R1Q003	<u>Environment Agency</u>
R1Q004	<u>Yorkshire Wildlife</u>
R1Q005	<u>Selby District Council and North Yorkshire County Council</u>

Statement of Common Ground	
SoCG001	<u>Natural England: Email from Natural England confirming current position on SoCG with the Applicant</u>
SoCG002	<u>Knottingley Power Limited: SoCG with Wakefield Metropolitan District Council</u>
SoCG003	<u>Knottingley Power Limited: Further SoCG with Wakefield Metropolitan District Council (signed version)</u>
SoCG004	<u>Knottingley Power Limited: SoCG with Yorkshire Wildlife Trust</u>
SoCG005	<u>Knottingley Power Limited: SoCG with Network Rail Infrastructure Ltd. and National Grid Electricity Transmission Plc.</u>
SoCG006	<u>Knottingley Power Limited: SoCG with Canal and River Trust</u>
SoCG007	<u>Knottingley Power Limited: SoCG with National Grid Gas Plc and National Grid Electricity Transmission Plc.</u>
SoCG008	<u>Knottingley Power Limited: SoCG with Environment Agency</u>
SoCG009	<u>Knottingley Power Limited: SoCG with Natural England</u>
SoCG010	<u>National Grid: Email from National Grid confirming current position on SoCG and Protective Provisions with the Applicant</u>
Local Impact Reports	
LIR001	<u>Selby District Council and North Yorkshire County Council</u>
LIR002	<u>Wakefield Metropolitan District Council</u>
Any documents/amendments requested by the Examining Authority at the Preliminary Meeting	

N/A	
DEADLINE 2 - 14 April 2014	
<i>Notification by Interested Parties of their wish to be heard at the Open Floor Hearing and make oral representations at any Issue Specific Hearing in May 2014/ Notification to attend any Accompanied Site Visit and any representations regarding Site Visit</i>	
N/A	
Submissions received outside of Deadline 2 and following that deadline including updates on Statements of Common Grounds/Agreements	
<i>Examining Authority used its discretion to accept these submissions for examination</i>	
SoCG011	<u>Yorkshire Water: Email confirming position on draft Asset Protection Agreement with the Applicant</u>
SoCG012	<u>Network Rail: Email confirming position on draft Asset Protection Agreement with the Applicant. Request for withdrawal of previous representations.</u>
SoCG013	<u>St Pauls Developments: Email confirming position on Land Rights Provisions Agreement with the Applicant</u>
DEADLINE 3 - 6 May 2014	
Comments on Written Representations and Responses to Comments on Relevant Representations	
CoWR001	<u>Knottingley Power Limited</u>
Comments on Statements of Common Grounds	
N/A	
Comments on Local Impact Reports	
CoLIR001	<u>Knottingley Power Ltd: Comments on LIR prepared by Wakefield Metropolitan District Council</u>
CoLIR002	<u>Knottingley Power Ltd: Comments on LIR prepared by Selby District Council and North Yorkshire County Council</u>
Comments on Responses to Examining Authority's First Written Questions	
CoR1Q001	<u>Canal and River Trust</u>

Submissions received outside of Deadline 3 and following that deadline including updates on Statements of Common Grounds/Agreements	
<i>Examining Authority used its discretion to accept these submissions for examination</i>	
SoCG014	<u>Northern Gas Networks: Email confirming position on Asset Protection Deed with the Applicant</u>
DEADLINE for Responses to Rule 17 – 9 May 2014	
<i>Rule 17 and Rule 8(3) issued by Examining Authority requesting comments on proposed changes to the application and the closure of Kellingley Colliery</i>	
R17001	<u>Knottingley Power Limited</u>
R17002	<u>Wakefield Metropolitan District Council</u>
R17003	<u>Natural England</u>
R17004	<u>Mid Yorkshire NHS Trust</u>
R17005	<u>West Yorkshire Fire and Rescue Service</u>
R17006	<u>GTC Pipelines, Independent Power Networks, The Electricity Network Company, Utility Grid Installations, Quadrant Pipelines</u>
R17007	<u>Lancashire County Council</u>
R17008	<u>North Yorkshire County Council: Emergency Planning Unit</u>
R17009	<u>North Yorkshire County Council</u>
DEADLINE 4 - 23 May 2014	
Written summaries of the oral case put at the Hearings held on 14 and 15 May	
WSH001	<u>Knottingley Power Limited: Written summary of the oral case put at the Compulsory Acquisition Hearing</u>
WSH002	<u>Environment Agency: Written summary of the oral case put at the Environmental Impacts Hearing</u>

WSH003	<u>Knottingley Power Limited: Written summary of the oral case put at the Environmental Impacts Hearing</u>
WSH004	<u>Knottingley Power Limited: Responses to questions raised at Environmental Impacts Hearing</u>
WSH005	<u>Wakefield Metropolitan District Council: Further information requested by the Examining Authority at the Environmental Impacts Hearing</u>
Additional submission requested by the Examining Authority at Hearings held in May <i>Examining Authority used its discretion to accept these submissions for examination</i>	
ADS004	<u>Knottingley Power Limited: Draft Construction Traffic Management Plan for Water and Gas Pipelines</u>
Any documents/amendments requested by the Examining Authority including any revised Development Consent Order	
N/A	
Additional submissions received during Deadline 4 <i>Examining Authority used its discretion to accept these submissions for examination</i>	
ADS005	<u>Chapel Haddlesey Parish Council</u>
ADS006	<u>Northern Gas Networks: Email confirming position on agreed Protective Provisions with the Applicant. Request for withdrawal of previous representations</u>
Submissions received outside of Deadline 4 within or after that deadline including further updates on Statements of Common Grounds/Agreements <i>Examining Authority used its discretion to accept these submissions for examination</i>	
SoCG015	<u>National Grid Gas Plc. and Electricity Transmission Plc.: Joint Statement with the Applicant</u>
SoCG016	<u>Yorkshire Water Services Limited: Joint Statement with the Applicant on Asset Protection Agreement</u>

SoCG017	<u>Yorkshire Water Services Limited: Email confirming position on Joint Statement with the Applicant</u>
SoCG018	<u>National Grid Gas Plc. and Electricity Transmission Plc.: Email confirming position on Joint Statement with the Applicant</u>
DEADLINE 5 - 20 June 2014	
<i>Responses to Examining Authority's Second Round of Questions</i>	
R2Q001	<u>Eggborough Parish Council</u>
R2Q002	<u>Selby District Council</u>
R2Q003	<u>Natural England</u>
R2Q004	<u>Environment Agency</u>
R2Q005	<u>St Pauls Developments</u>
R2Q006	<u>Civil Aviation Authority</u>
R2Q007	<u>North Yorkshire County Council</u>
R2Q008	<u>Wakefield Metropolitan District Council</u>
R2Q009	<u>Knottingley Power Limited</u>
<i>Any further Statements of Common Ground</i>	
SoCG019	<u>National Grid Gas Plc. and Electricity Transmission Plc.: Joint statement with the Applicant</u>
SoCG020	<u>National Grid: Email confirming position on Joint Agreement the Applicant</u>
SoCG021	<u>St Paul's Developments: Email confirming current position on additional land required for the proposed application</u>

SoCG022	<u>Knottingley Power Limited: SoCG between Selby District Council, North Yorkshire County Council and the Applicant</u>
<i>Comments on written summaries of cases put at Issue Specific or Open Floor Hearings held in May</i>	
CoWSH001	<u>Chapel Haddlesey Parish Council</u>
<i>Comments on any submitted revised DCO</i>	
None	
DEADLINE 6 - 11 July 2014	
<i>Comments on responses to the Examining Authority's second round of questions</i>	
CoR2Q001	<u>Knottingley Power Limited</u>
CoR2Q002	<u>Yorkshire Wildlife Trust</u>
<i>Any further Statements of Common Ground</i>	
SoCG023	<u>National Grid Gas Plc. and Electricity Transmission Plc.: Further update on Joint Statements the Applicant submitted on 14 May and 20 June 2014</u>
SoCG024	<u>National Grid Gas Plc. and Electricity Transmission Plc.: Email confirming position on Joint Statement with the Applicant</u>
<i>Any documents/amendments requested by the Examining Authority</i>	
N/A	
DEADLINE 7 - 24 July 2014	
<i>Written summaries of cases put orally at Development Consent Order and Water Resources Issue Specific Hearing held on 16 and 17 July 2014</i>	
WSH007	<u>Canal and River Trust</u>
WSH008	<u>Environment Agency</u>

WSH009	<u>Wakefield Metropolitan District Council</u>
WSH010	<u>Knottingley Power Limited</u>
<i>Any further Statements of Common Ground</i>	
SoCG025 Enclosure 2 of ADS007	<u>Knottingley Power Limited: Supplemental SoCG with Canal and River Trust</u>
<i>Any documents/amendments requested by the Examining Authority at the Hearings in July 2014</i>	
ADS007	<u>Knottingley Power Limited: Covering Letter</u>
ADS008	<u>Selby District Council: Additional comments</u>
<i>Documents submitted at the Hearing on 16 July 2014</i>	
ADS009	<u>Canal and River Trust: Comparison Note for Thermal Discharges</u>
ADS010	<u>Canal and River Trust: Proposed Protective Provisions</u>
ADS011	<u>Canal and River Trust: Schematic Illustration of Flows for Abstraction Options</u>
<i>Final revised draft post Consent Order from the Applicant</i>	
<i>See PSC0027 and PSC0028 in Post-submission changes – Enclosure 4 of ADS007</i>	
<i>Any further updates on SOCGs/Agreements received from the parties during Deadline 7</i>	
SoCG026	<u>Chapel Haddlesey Parish Council: Update on the Agreements between the applicant and the Parish Council regarding traffic on Millfield Road</u>
<i>Comments on the written summaries of cases put orally at Development Consent Order Hearing (DCO) and any Issue Specific Hearing held on 16 and 17 July 2014</i>	
CoWSH002	<u>Environment Agency</u>

CoWSH003 Enclosure 1 of ADS007	<u>Knottingley Power Limited</u>
CoWSH004	<u>Canal and River Trust</u>
Submissions received outside of Deadline 4 within or after that deadline including further updates on Statements of Common Grounds/Agreements <i>Examining Authority used its discretion to accept these submissions for examination</i>	
SoCG027	<u>Yorkshire Water Services Limited: request for withdrawal of all previous representations</u>
SoCG028	<u>National Grid Gas Plc. and Electricity Transmission Plc.: Email confirming current position on Protection Provisions with the Applicant</u>
DEADLINE for Responses to Rule 9 Letter – 8 August 2014 <i>Rule 9 Letter issued to all IPs informing about the Examining Authority's decision on proposed changes to the application (see Rule 17 Letter dated 9 May 2014)</i>	
R9001	<u>Energetics Design and Build</u>
R9002	<u>Gas Transportation Company (GTC)</u>
R9003	<u>Email received on behalf of GTC Pipelines Ltd; Utility Grid Installations Ltd; Independent Pipelines Ltd; The Electricity Network Company Ltd; Independent Power Networks Ltd and Quadrant Pipelines Ltd.</u>
R9004	<u>Fulcrum Pipelines Limited</u>
Additional submissions received following last Deadline 8 (26 August 2014) <i>Examining Authority used its discretion to accept these submissions for examination</i>	
ADS012	<u>Knottingley Power Limited: Covering Letter</u>
ADS012	<u>Knottingley Power Limited: Comments on Canal and River Trust</u>
Planning obligations and S106 Agreement updates	

S106001 Enclosure 3 of ADS007	<u>Knottingley Power Limited - final Unilateral Undertaking to Wakefield Metropolitan District Council Plan dated 23 July 2014</u>
S106002	<u>Knottingley Power Limited: Section 106 Agreement with North Yorkshire County Council and Selby District Council dated 13 August 2014</u>
Planning obligations and S106 Agreement updates received following last Deadline 8 (5 September 2014) <i>Examining Authority used its discretion to accept these submissions for examination</i>	
S106003	<u>Wakefield Metropolitan District Council: Confirming position on s106 Agreement, received on 11 September 2014</u>
S106004	<u>Knottingley Power Limited: Completed s106 Agreement with St Paul's Development Plc and the Council of the City of Wakefield</u>
S106005	<u>Bond Dickinson LLP: the Applicant's Response to Rule 17 Letter of 10 September 2014 regarding their S106 agreement with Selby District Council and North Yorkshire County Council</u>
Further agreements/submissions received following last Deadline 8 (5 September 2014) <i>Examining Authority used its discretion to accept these submissions for examination</i>	
SoCG029	<u>National Grid Gas Plc. and Electricity Transmission Plc.: Letter confirming current position on Protective Provisions Agreement with the Applicant and withdrawing representations</u>
SoCG030	<u>Leeds City Council: Letter of consent from Leeds City Council relating to the s106 agreement with Wakefield and St Paul's Development with agreed form of s106 agreement appended</u>
CLOSE OF EXAMINATION - 13 September 2014	
HEARINGS AND SITE VISIT DOCUMENTS	
Preliminary Meeting - 13 March 2014	
HG001	<u>Preliminary Meeting: Audio Recording</u>
HG002	<u>Preliminary Meeting: Note</u>

Agendas for Hearings	
HG003	<u>Hearing Agenda: Hearings held on 14 and 15 May 2014</u>
HG004	<u>Hearing Agenda: Hearing held on 16 July 2014</u>
Issues Specific Hearing on Environmental Impacts Hearings - 14 May 2014	
HG005	<u>Issue Specific Hearing on Environmental Impacts: Audio Recording Part 1</u>
HG006	<u>Issue Specific Hearing on Environmental Impacts: Audio Recording Part 2</u>
HG007	<u>Issue Specific Hearing on Environmental Impacts: Audio Recording Part 3</u>
Open Floor Hearing - 14 May 2014	
HG008	<u>Open Floor Hearing: Audio Recording</u>
Issue Specific Hearing on Compulsory Acquisition Hearing - 15 May 2014	
HG009	<u>Compulsory Acquisition Hearing - Audio Recording</u>
Issue Specific Hearing (ISH) on Draft Development Consent Order - 16 July 2014	
HG010	<u>Issue Specific Hearing on Draft Development Consent Order (DCO): Audio Recording Part 1</u>
HG011	<u>Issue Specific Hearing on Draft Development Consent Order (DCO): Audio Recording Part 2</u>
Accompanied Site Visit - 13 May 2014	
ASV001	<u>Accompanied Site Visit: Notification and Timetable</u>
OTHER DOCUMENTS	
Acceptance – Adequacy of Consultation Representations	
AoC001	<u>Lancashire County Council</u>

AoC002	<u>Doncaster Metropolitan Borough Council</u>
AoC003	<u>Redcar & Cleveland Borough Council</u>
AoC004	<u>Cumbria County Council</u>
AoC005	<u>Wakefield Metropolitan District Council</u>
AoC006	<u>Tees Borough Council</u>
AoC007	<u>Darlington Borough Council</u>
AoC008	<u>North Yorkshire County Council</u>
AoC009	<u>Middlesbrough Council</u>
AoC010	<u>Barnsley Metropolitan Borough Council</u>
AoC011	<u>North Yorkshire Moors National Park Authority</u>
AoC012	<u>Kirklees Council</u>
AoC013	<u>Leeds City Council</u>
AoC014	<u>Bradford Metropolitan District Council</u>
AoC015	<u>East Riding of Yorkshire Council</u>
AoC016	<u>Harrogate Borough Council</u>
AoC017	<u>Selby District Council</u>

AoC018	<u>Durham County Council</u>
<i>Other documents Miscellaneous other correspondence</i>	
OD001	<u>Knottingley Power Ltd: Certificates of compliance with s56 and s59 of the Planning Act 2008 and Regulation 13 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009</u>
<i>Other Documents Applicant's Notices of Hearings under Rule 13</i>	
OD002	<u>Knottingley Power Ltd: Notice of Hearing</u>

APPENDIX 2 - EVENTS IN THE EXAMINATION

The Table below lists the main events occurring during the Examination and the main procedural decisions taken by the Examining Authority (ExA).

DATE	EXAMINATION EVENT
13 March 2014	Preliminary Meeting and start of Examination.
20 March 2014	Notification by the ExA of procedural decision under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 made at and following the Preliminary Meeting, including Issue of: <ul style="list-style-type: none"> - Confirmation of the Examination timetable, and - First round of the ExA's written questions.
27 March 2014	Receipt of written notification of: <ul style="list-style-type: none"> - Request for receipt of written notification by statutory parties of a wish to be considered as an interested party; - Request for receipt of notification (using the prescribed form) by persons with certain categories of interest in the land of a wish to become an interested party.
11 April 2014	Deadline 1 for receipt by the ExA of: <ul style="list-style-type: none"> - Comments on additional documents provided and listed as accepted in Annex D of Rule 8 letter and published on the Knottingley Power Project webpage on Thursday 20 March 2014; - Comments by interested parties on relevant representations (RRs) already received; - Summaries of all RRs by interested parties whose RRs exceeded 1500 words; - Written representations (WRs) by interested parties; - Summaries of WRs by interested parties whose WRs exceeded 1500 words; - Responses to the ExA's first written questions; - Statements of Common Ground (SoCG) requested by the ExA; - Local Impact Report(s) (LIR) from local authorities defined under s56A of the Planning Act 2008 (as

	<p>amended), and</p> <ul style="list-style-type: none"> - Any documents/amendments requested by the ExA at the Preliminary Meeting.
14 April 2014	<p>Deadline 2 for notification by interested parties of their wish:</p> <ul style="list-style-type: none"> - to be heard at an open floor hearing (OFH); - to make oral representations at any issue specific hearing (ISH), including compulsory acquisition, DCO and local environmental impact matters; and - to attend any accompanied site visit and any representations to view at or near the site or the surrounding area.
17 April 2014	<p>Notification by the ExA of date, time and place for:</p> <ul style="list-style-type: none"> - Compulsory acquisition hearing (CAH); - Local environmental impact matters hearing; - Any accompanied site visit(s) (ASV); - Any other issue specific hearing(s); and - Any open floor hearing.
1 May 2014	<p>Notification by the ExA of procedural decision under Rule 8(3) and Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 relating to changes to the application and request for comments on the closure of Kellingley Colliery.</p>
6 May 2014	<p>Deadline 3 for the receipt of:</p> <ul style="list-style-type: none"> - Comments on the written representations and responses to comments on relevant representations; - Comments on Statements of Common Grounds; - Comments on Local Impact Reports; and - Comments on responses to the ExA's first written questions.
9 May 2014	<p>Deadline for receipt of comments regarding the Examining Authority's procedural decision in relation to changes to the application and comments on the closure of Kellingley Colliery, made on 1 May 2014.</p>
13 May 2014	<p>Accompanied Site Visit</p>

14 May 2014	Issue Specific Hearing relating to Environmental Impacts
14 May 2014	Open Floor Hearing (Evening)
15 May 2014	Compulsory Acquisition Hearing
23 May 2014	Deadline 4 for the receipt of: <ul style="list-style-type: none"> - Written summary of the oral case put at the environmental impacts hearing, compulsory acquisition and open floor hearing; and - Any documents/amendments requested by the ExA including any revised DCO.
28 May 2014	Issue of second round of the ExA's written questions.
12 June 2014	Notification of Issue Specific Hearing on the draft Development Consent Order and Water Resource issues on 16 July 2014.
20 June 2014	Deadline 5 for the receipt of: <ul style="list-style-type: none"> - Responses to the ExA's second round of written questions and any further SoCG; - Comments on written summaries of cases put at any issue specific or open floor hearings; and - Comments on any submitted revised DCO.
23 June 2014	Notification by the ExA of the time, date and place for: <ul style="list-style-type: none"> - DCO hearing; and - Any other hearings deemed necessary by the ExA.
11 July 2014	Deadline 6 for the receipt of: <ul style="list-style-type: none"> - Comments on the responses to the ExA's second round of written questions and any further SoCG; and - Any documents/amendments requested by the ExA.
16 July 2014	Issue Specific Hearing on the draft Development Consent Order and Water Resource issues.
24 July 2014	Deadline 7 for the receipt of: <ul style="list-style-type: none"> - Written summaries of cases put orally at DCO/or other issue specific hearing on 16 and 17 July 2014; - Any documents/amendments requested by the ExA at the hearings; and - Final revised DCO.

6 August 2014	Notification by the ExA of procedural decision under Rule 9 of the Infrastructure Planning (Examination Procedure) Rules 2010 relating to acceptance of non-material changes to submissions by the applicant.
15 August 2014	Deadline 8 for the receipt of: <ul style="list-style-type: none"> - Comments on the written summaries of cases put orally at DCO/and any issue specific hearing on 16 and 17 July 2014; and - Comments on final revised DCO.
10 September 2014	Notification by the ExA of procedural decision under Rule 8(3) and Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 - request for submissions on aspects of S106 agreement.
13 September 2014	Notification by the ExA under Section 99 of the Planning Act 2008 of Completion of the ExA's Examination.

APPENDIX 3 - LIST OF ABBREVIATIONS

- AD - Anaerobic digestion (plant)
- ADMS - Atmospheric Dispersion Modelling System
- AGI - Above ground installation
- AIL - Abnormal indivisible loads
- AOD - Above Ordnance Datum
- AP - Affected person
- APD - Application document
- AQMA - Air Quality Management Area
- AQS - Air Quality Standards (Regulations)
- BoR - Book of Reference
- CA - Compulsory Acquisition
- CAH - Compulsory Acquisition Hearing
- CCGT- Combined Cycle Gas Turbine
- CCR - Carbon Capture Ready
- CCS - Carbon Capture and Storage
- CEMP - Construction Environment Management Plan
- CHP - Combined Heat and Power
- CO - Carbon monoxide
- CO₂ - Carbon dioxide
- CRT - Canal and River Trust
- DAS - Design and Access Statement
- DC - District Council
- DCLG - Department of Communities and Local Government
- DCO - Development Consent Order
- dDCO - draft Development Consent Order
- DECC - Department for Energy and Climate Change

EA - Environment Agency

EART - Environmental Assessment of Road Traffic

ECHR - European Commission on Human Rights

EEA - European Economic Area (State)

EIA - Environmental Impact Assessment

EP - Environmental Permit

EPUK - Environment Protection UK

EPS - European Protected Species

ES - Environmental Statement

ESB - Electricity Supply Board

EU - European Union

ExA - Examining Authority

FRA - Flood Risk Assessment

Framework - National Planning Policy Framework

GLIVIA - Guidelines for Landscape and Visual Impact Assessment

HGV - Heavy Goods Vehicle

HRA - Habitats Regulations Assessment

HSE - Health and Safety Executive

ICNIRP - international Commission on Non-Ionising Radiation Protection

IDB - Internal Drainage Board

IED - Industrial Emissions Directive

IGE-TD - Institute of Gas Engineers- Transmission and Distribution

ISH - Issue Specific Hearing

IP - Interested Person

IPCC - Integrated Pollution Prevention and Control

LPA - Local Planning Authority

LCPD - Large Combustion Plant Directive

LIR - Local Impact Report

LIVIA - Landscape and Visual Impact Assessment

LWS - Local Wildlife Site

MDC - Metropolitan District Council

MoD - Ministry of Defence

MMO - Marine Management Organisation

NCA - National Character Areas

NGET - National Grid Electricity Transmission plc

NGG - National Grid Gas plc

NGN - Northern Gas Networks

NO₂ - Nitrogen dioxide

NO_x - oxides of Nitrogen

NPS - National Policy Statement

NSIP - Nationally Significant Infrastructure Project

NYCC - North Yorkshire County Council

NRIL - Network Rail Infrastructure Ltd

OFH - Open Floor Hearing

OJL - Official Journal (of the European Parliament)

PA2008 - Planning Act 2008, as amended

PC - Parish Council

PPG - (National) Planning Practice Guidance

PRoW - Public Right of Way

RIES - Report on the Implications of European Sites

RRP - Relevant representation

RSPB - Royal Society for the Protection of Birds

SAC - Special Area of Conservation

SCS- Selby District Council Core Strategy

SEGI - Site of Ecological/Geological Importance

SFRA - Strategic Flood Risk Assessment

SINC - Sites of Importance for Nature Conservation

SoCG - Statement of Common Ground

SoR - Statement of Reasons

SoS - Secretary of State

SPA - Special Protection Area

SPA8 - Special Policy Area 8 (of WSSPLP)

SSSI - Site of Special Scientific Interest

TA - Transport Assessment

WCS - Wakefield MDC Core Strategy

WDPDPD - Wakefield MDC Development Policies Development Plan Document

WFD - Water Framework Directive

WKFDP - Wakefield MDC Knottingley and Ferrybridge Delivery Plan 2013-2015.

Wakefield MDC - Wakefield Metropolitan District Council

WSSPLP- Wakefield Council Site Specific Policies Local Plan

WUDPFA- Wakefield Council Unitary Development Plan First Alteration

WWDPD- Wakefield Council Waste Development Plan Document

WYAQEGPTG - draft West Yorkshire Authorities Air Quality and Emissions Good Practice Technical Guide

APPENDIX 4 - RECOMMENDED DEVELOPMENT CONSENT ORDER

2014 No.

INFRASTRUCTURE PLANNING

The Knottingley Power Plant Order 201X

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

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WHEREAS an application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) made under sections 37, 42, 48, 51, 56, 58, 59 and 232 of the Planning Act 2008 (“the 2008 Act”)^(b) for an Order under sections 37, 55, 115, 120, 121, 122, 140 and 149A of the 2008 Act;

AND whereas the application was examined by an examining authority appointed by the Secretary of State pursuant to Chapter 4 of the 2008 Act;

AND whereas the examining authority, having considered the national planning statements relevant to the application and concluded that the application accords with these statements as set out in section 104(3) of the 2008 Act;

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

AND whereas notice of the Secretary of State’s determination was published [●];

NOW THEREFORE, as the Secretary of State in exercise of the powers conferred by sections 114, 115, 120, 121, 122 and 149A of the 2008 Act the Secretary of State makes the following Order—

PART 1 PRELIMINARY

Citation and commencement

1. This Order may be cited as the Knottingley Power Plant Order and comes into force on [●] 201[●].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961^(c);

(a) S.I. 2009/2264 as amended by the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012
(b) 2008 c.29
(c) 1961 c.33. There are amendments to the 1961 Act which are not relevant to this Order.

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

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

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(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 Planning Act 2008(f);

“access to works plan” means the plan certified as the access to works plan by the Secretary of State for the purposes of the Order and submitted with the application (drawing number KPL-APFP_5_2_K-2.8, sheet 1 revision F, sheet 2 revision E, sheet 3 revision D, sheet 4 revision E, sheet 5 revision E);

“ancillary works” means any works authorised by the Order which are not development within the meaning of section 32 of the 2008 Act;

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

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

“the book of reference” means the book of reference certified by the 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;

“CCS” means carbon capture and storage;

-
- (a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.
- (b) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 65(5) of the Transport and Works Act 1992 and was amended by S.I.2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (c) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.
- (d) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force in relation to England) 6 April 2012: S.I. 2012/601). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (f) 2008 c.29

“the Coal Authority” means the Coal Authority established under the Coal Industry Act 1994 or any successor authority;

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

“commence” means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming the relevant part of the authorised project other than operations consisting of preliminary works, site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” is construed accordingly;

“commissioning” means the process of assuring that all systems and components of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker;

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

“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 together with any supplementary or further environmental information submitted by the undertaker in support of the application;

“flood risk assessment” means section K.1 of the environmental statement’s Appendix 1 (“Flood Risk Assessment”); section 20.8 of the environmental statement (“Assessment of Flood Risk”); and the Flood Risk Assessment Addendum (cooling water pipeline and pump house) (reference JL30840-NHY-RP-001 Rev D dated 4 April 2014);

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

“indicative generating station layout drawings” means the drawings certified as the indicative generating station layout drawings by the Secretary of State for the purposes of the Order and submitted with the application (drawing number ESBI/KPL/PL/01, revision C);

“indicative overhead lines and pylons layout drawings” means the drawings certified as the indicative overhead lines layout drawings by the Secretary of State for the purposes of the Order and submitted with the application (drawing number 90NG475/12/01, revision D, drawing number 90NG475/10/01, revision B, drawing number 90NG475/10/02, revision B) ;

“indicative pump house layout drawing” means the drawing certified as the indicative pump house layout drawing by the Secretary of State for the purposes of the Order and submitted with the application (drawing number PP-DT-00077-D505-012, revision 1);

“indicative AGI layout drawings” means the drawings certified as the indicative above ground installation layout drawings by the Secretary of State for the purposes of the Order and submitted with the application (drawing number 3511480B/KN-CDR/2012/401, revision M);

“ISO Conditions” means ambient temperature of 15° Celsius, relative humidity 60% and ambient pressure of 1 bar;

“land” includes land covered by water and any interest or right in, to or over land;

“the land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order (key plan drawing number Land/001 revision 9, sheet 1 drawing number Land/002 revision 9, sheet 2 drawing number Land/003 revision 9, sheet 3 drawing number Land /004 revision 9, sheet 4 drawing number Land/005 revision 9, sheet 5 drawing number Land/006 revision 9, sheet 6 drawing number Land/007 revision 9, sheet 7 drawing number Land/008 revision 9);

“maintain” includes inspect, maintain, repair, adjust, alter, refurbish, improve, clear, and remove; and “maintenance” is construed accordingly;

“preliminary works” means landscaping and creative conservation, providing these operations do not require the delivery to or removal from the site of bulk filling materials; surveys, including geotechnical surveys; provision of wheel cleansing facilities; erection of temporary

fencing; site security; preparation of contractor's laydown areas; and any other works agreed in writing with the relevant planning authority to constitute permitted preliminary works;

“operational phase” means the period of time that the relevant part of the authorised development is in operation after construction and commissioning is complete, which begins on the date specified in the operational phase notice and “operational” and “operation” should be construed accordingly;

“operational phase notice” means a written notice served by the undertaker on the relevant planning authority and the Environment Agency confirming that the operational phase is about to be begin or has begun, in accordance with requirement 35 in Part 2 Schedule 1 of this Order;

“this Order” means the Knottingley Power Plant Order 201[]

“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

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

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

“public rights of way temporary closures and permanent stopping up plan” means the document certified as the public rights of way temporary closures and permanent stopping up plan by the Secretary of State for the purposes of the Order and submitted with the application (drawing number KPL-APFP_5_2_k-2.9, sheet 1 revision G, sheet 2 revision D, sheet 3 revision D, sheet 4 revision D, sheet 5 revision G);

“relevant highway authority” means the highway authority for the area in which the land to which the relevant provision of this Order applies is situated;

“relevant local authority” means the local authority for the area in which the land to which the relevant provision of this Order applies is situated;

“relevant planning authority” means the planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

“requirements” means the requirements in Part 2 of Schedule 1 of this Order;

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

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

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

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

“undertaker” means **Knottingley Power Limited** (company number 05902446), which is the named undertaker, or any other person who for the time being has the benefit of this Order in accordance with article 6 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; and

“the works plan” means the plan certified as the works plan by the Secretary of State for the purposes of this Order (drawing number KPL-APFP_5_2_J-2.3, sheet 1 revision F, sheet 2 revision D, sheet 3 revision D, sheet 4 revision D, sheet 5 revision D).

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface.

(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.

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

(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 this Order, described in Part 1 of Schedule 1 and shown on the works plan.

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

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

(7) References to any statutory body include that body’s successor bodies as from time to time have jurisdiction over the authorised development.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

3. Subject to the provisions of this Order and to the requirements in Part 2 of Schedule 1 attached to this Order, the undertaker is granted—

(a) development consent for the authorised development; and

(b) consent for any ancillary works,

to be carried out within the Order limits.

Power to maintain authorised project

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

Limits of deviation

5.—(1) In carrying out the authorised development the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development shown on the works plan to the extent of the limits of deviation shown on that plan; and

(b) deviate vertically to any extent downwards as may be found necessary or convenient.

Benefit of the Order

6.—(1) The undertaker may with the 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

except where paragraph (5) applies in which case no such consent is required.

(2) Consent under paragraph (1) may not be unreasonably withheld or delayed.

(3) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or lessee.

(4) 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.

(5) This paragraph applies where—

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

(6) The provisions of articles 9 (street works), 11 (public rights of way), 17 (compulsory acquisition of land), 20 (compulsory acquisition of rights and imposition of restrictive covenants), 26 (temporary use of land for carrying out the authorised project) and 27 (temporary use of land for maintaining the authorised project) have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and also holds a licence under section 6 of the Electricity Act 1989 or section 7 of the Gas Act 1986.

(7) The provisions of article 9 (street works) in addition only have effect for the benefit of the named undertaker and a person who is a transferee or lessee and is also a street authority.

Application and modification of legislative provisions

7.—(1) Regulation 6 of the Hedgerows Regulations 1997^(a) is modified so as to read for the purposes of this Order only as if there were inserted after Regulation 6(1)(j) the following:

[^(k) or for carrying out development which has been authorised by development consent made pursuant to the Planning Act 2008.]

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990^(b) (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) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974^(c); or
 - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the

(a) S.I 1997/1160

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

(c) 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.

authorised project which is being used in compliance with a noise management scheme approved by the relevant planning authority under requirement 23 (control of noise – operational phase); or

- (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), 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 project.

PART 3 STREETS

Street works

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

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

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

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

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

Stopping up of street

10.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in column (2) of **Schedule 3** (streets to be stopped up) to the extent specified.

(2) No street specified in column (2) of **Schedule 3** (being a street to be stopped up for which a substitute is to be provided) may be wholly or partly stopped up under this article unless—

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

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

- (a) all rights of way over or along the street so stopped up are extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised project so much of the site of the street as is bounded on both sides by land owned by the undertaker.

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

(5) This article is subject to article 29 (apparatus and rights of statutory undertakers in stopped-up streets).

Public rights of way

11.—(1) Subject to paragraph (2), with effect from the date of commencement of Work No. 1 (electricity generating station), the section of the public right of way (being a claimed public bridle way) specified in Part 1 of Schedule 4 and shown by a green dashed line on the public rights of way temporary closures and permanent stopping up plan is extinguished.

(2) The public right of way (being a claimed bridleway) specified in paragraph (1) must not be extinguished under this article unless the temporary bridleway specified in column (4) of Part 1 of **Schedule 4** and shown in yellow on the works plan is first provided, to the reasonable satisfaction of the relevant planning authority.

(3) The temporary bridleway must be kept open and maintained by the undertaker until the completion and opening of a permanent replacement bridleway approved by the relevant planning authority.

(4) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, temporarily close each of the public rights of way specified in column (2) of Parts 2 and 3 of **Schedule 4** (public rights of way to be temporarily closed and permanently stopped up) to the extent shown on the public rights of way temporary closures and permanent stopping up plan.

Access to works

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

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of **Schedule 5** (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Agreements with street authorities

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

- (a) any temporary closure, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 9(1) (street works).

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

14.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

(3) The undertaker may 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 may not be unreasonably withheld.

(4) The undertaker may 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 may not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker may 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 other than in accordance with a consent granted by 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 water discharge activity or groundwater activity that is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(b).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964 (interpretation), 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 expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Authority to survey and investigate the land

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

(a) survey or investigate the land;

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and amended by section 32 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (SI 2011/2043), the Environmental Permitting (England and Wales) (Amendment No. 2) Regulations 2011 (SI 2011/2933), the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (SI 2012/630), the Controlled Waste (England and Wales) Regulations 2012 (S.I. 2012/811).

- (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 may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority, but such consent may not be unreasonably withheld; or
- (b) in a private street without the consent of the street authority, but such consent may not be unreasonably withheld.

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

Removal of human remains

16.—(1) In this article “the specified land” means the land within the Order limits.

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

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

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

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

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

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

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

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

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

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

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

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

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

(14) Section 25 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. There are amendments to this Act which are not relevant to this Order.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) This article is subject to paragraph (2) of article 20 (compulsory acquisition of rights and imposition of restrictive covenants) and article 26 (temporary use of land for carrying out the authorised project).

Compulsory acquisition of land – incorporation of the minerals code

18.—(1) Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) are incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land and rights compulsorily

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

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and imposition of restrictive covenants

20.—(1) The undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land, by creating them as well as by acquiring rights already in existence, as are described in the Book of Reference and shown on the land plan.

(2) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of **Schedule 6** (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires an existing right over land or imposes a restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) **Schedule 6** (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of 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 restrictive covenants.

(4) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker

(a) 1981 c.66. Sections 2, 6 and 11 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) Where the power in paragraph (4) is transferred to a statutory undertaker and the statutory undertaker—

- (a) is liable to pay compensation for the exercise of that power; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(7) Nothing in this article affects any agreement between the undertaker and any statutory undertaker receiving the benefit of any power transferred by the operation of paragraph (4).

(8) Any person who suffers loss as a result of the acquisition of any private right or the imposition of a restrictive covenant under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Private rights

21.—(1) Subject to the provisions of this article, all private rights 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) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as 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) of the 1965 Act (power of entry), as modified by paragraph 7 of Schedule 6 of this Order;

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights 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.

(4) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 28 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's entry onto it; or
 - (iii) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not 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 of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(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.

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

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

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

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

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

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

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

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

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

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

Acquisition of subsoil only

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

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

(3) Paragraph (2) does not prevent article 24 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

(b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

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

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

Rights under or over streets

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised project

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

- (a) enter on and take temporary possession of —
 - (i) such land as is specified as being required only temporarily in the book of reference, and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), security fencing and buildings on that land; and
- (d) construct any mitigation works required by the relevant planning authority as a condition to discharging any of the requirements in Schedule 2 Part 2 of this Order.

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to

- (a) replace a building removed under this article;
- (b) restore the land on which any works have been constructed under paragraph (1)(d), or on which landscaping works have been carried out (in accordance with requirement 7 (Provision of landscaping) if appropriate), if the owners and occupiers consent to the works remaining; or
- (c) remove any ground strengthening works to facilitate the construction of the authorised project.

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

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

(7) Nothing in this article affects any liability to pay compensation under section 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 project, other than loss or damage for which compensation is payable under paragraph (5).

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

- (a) acquiring new rights over any part of that land under article 20 (compulsory acquisition of rights and imposition of restrictive covenants); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 23 (acquisition of subsoil only).

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

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

Temporary use of land for maintaining authorised project

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

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

- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) does not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
 - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (7) Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).
- (11) In this article “the maintenance period”, in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project is first operational.

Statutory undertakers

28. The undertaker may—

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

Apparatus and rights of statutory undertakers in stopped-up streets

29.—(1) Where a street is stopped up under article 10 (stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 10, any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
 - (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).
- (3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—
- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
 - (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.
- (4) If in the course of the execution of relocation works under paragraph (2)—
- (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, 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 to be necessary, then, if it involves cost in the execution of the relocation works 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 paragraph, would be payable to the statutory utility by virtue of paragraph (3) is reduced by the amount of that excess.
- (5) For the purposes of paragraph (4)—
- (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; 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.
- (6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph [4]) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility 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.
- (7) Paragraphs (3) to (6) do not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—
- (a) the allowable costs of the relocation works are determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
 - (b) the allowable costs are borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.
- (8) In this article—
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
 - “relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003^(a).

PART 6 OPERATIONS

Operation of generating station

30.—(1) The undertaker is hereby authorised to operate the generating station and associated plant comprised in the authorised development.

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

PART 7 MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

31.—(1) This article applies to—

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

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

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

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

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

Operational land for purposes of the 1990 Act

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

(a) 2003 c.21

Felling or lopping of trees and hedgerows

33.—(1) The undertaker may fell or lop any tree or shrub within the Order limits described in the works plan, 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 project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker may 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, must be determined under Part 1 of the 1961 Act.

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

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

Certification of plans etc

34.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access to works plan;
- (b) the book of reference;
- (c) the design and access statement
- (d) the environmental statement;
- (e) the flood risk assessment;
- (f) the indicative generating station layout drawings;
- (g) the indicative overhead lines and pylons layout drawings;
- (h) the indicative pump house layout drawing;
- (i) the indicative AGI layout drawing;
- (j) the land plan;
- (k) the landscaping plan;
- (l) the public rights of way temporary closures and permanent stopping up plan;
- (m) the works plan; and
- (n) any other plans or documents referred to in this Order.

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

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

Arbitration

35. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

(a) S.I. 1997/1160

Procedure in relation to certain approvals etc

36.—(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 (“relevant planning authority”) for any agreement or approval required or contemplated by any of the provisions of the Order, such agreement or approval must, if given, be given in writing and may not be unreasonably withheld or delayed.

(2) **Schedule 7** has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements.

Protective Provisions

37. **Schedule 8** (protective provisions) has effect.

Signed by authority of the Secretary of State for Energy and Climate Change

Address	<i>Name</i>
Date	Head of Unit Department for Energy and Climate Change

SCHEDULE 1

Article 2

AUTHORISED PROJECT

PART 1

Authorised Development

1. A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act, comprising—

Work No. 1 - an **electricity generating station** located on a site off Common Lane east of Knottingley, West Yorkshire which includes the site of a former chemical works, with a nominal net electrical output capacity of up to 1,500 MWe at ISO Conditions (with a tolerance of up to 5 per cent) fuelled by natural gas, comprising:

- (1) *Work No. 1A* - up to **three separate generating units**, with each generating unit including:
- (a) gas turbine and steam turbine within a turbine building;
 - (b) one or two electricity generators within a turbine building;
 - (c) heat recovery steam generator;
 - (d) condenser;
 - (e) main stack;
 - (f) main and auxiliary transformer;
 - (g) auxiliary cooling building;
 - (h) condensate polisher;
 - (i) oil water separator;
 - (j) dosing system skid;
 - (k) boiler feed pump building;
 - (l) auxiliary electrical modules;
 - (m) emission and ambient monitoring system;

- (n) blow down tank;
- (o) fuel gas coalescing filter;
- (p) fuel gas drains tank;
- (q) fuel gas flow measurement system;
- (r) fuel gas performance heater;
- (s) hydrogen storage;
- (t) condensate storage tank and make-up pump; and
- (u) pipe racks;

(2) and in addition to the generating units, *Work No. 1A* may comprise any of the following further elements:

- (a) cooling water pump house;
- (b) hybrid cooling towers;
- (c) chemical dosing station with electrical modules;
- (d) cooling water treatment;
- (e) general and unit services main control centre container;
- (f) fire protection pump house;
- (g) fire fighting and raw storage water tank;
- (h) de-mineralised water storage tank;
- (i) water treatment plant;
- (j) workshop and store building;
- (k) administration and control building;
- (l) water pre-treatment area;
- (m) water intake structure;
- (n) auxiliary boilers and associated stacks;
- (o) grease and oil storage building;
- (p) hazardous materials storage building;
- (q) emergency diesel generators and associated stacks;
- (r) gas receiving station;
- (s) gas boiler;
- (t) gas compressor building/area;
- (u) above Ground Installation/pig trap system;
- (v) gas compressor utility rooms;
- (w) water pre-treatment building; and
- (x) waste water treatment.

(3) *Work No. 1B* – an **electricity sub-station** with gas insulated switchgear.

(4) Associated development within the meaning of Section 115 (2) of the 2008 Act within the area comprised in *Work No. 1A* and *Work No. 1B*, namely:

- (a) lay down area;
- (b) car parking;
- (c) internal roadways and footpaths; and
- (d) lighting columns and lighting.

Associated development within the meaning of section 115(2) of the 2008 Act in connection with the Nationally Significant Infrastructure Project referred to in Work No.1 comprising —

Work No. 2 – area reserved for carbon capture, compression and storage and laid out as parking and open storage, including:

- (a) lay down area;
- (b) car parking;
- (c) security gatehouse;
- (d) internal roadways and footpaths; and
- (e) lighting columns and lighting.

Work No. 3 – refurbishment of existing wharf on the Aire and Calder Navigation Canal and facilities to enable the offloading/unloading of equipment and materials from vessels moored at this wharf.

Work No. 4 – improvements to Common Lane from the junction with Weeland Road running in an easterly direction to the western boundary of Work No. 1

Work No. 5 – National Grid upgrade works and new overhead line, including modification by way of alteration and repositioning of the existing 4YR Eggborough - Ferrybridge/Rochdale 400kV overhead line route between towers 4YR001 and 4YR004 on land south and west of Kellingley Colliery Knottingley West Yorkshire, comprising:

- (a) construction and installation of a temporary pylon and temporary mast realignment through the temporary pylon and temporary mast of existing 400kV overhead line, phase and earthwire conductors between pylon 4YR001 and pylon 4YR004 for the duration of construction;
- (b) construction and installation of two new transmission pylons, 4YR002R and 4YR003R, installation of new phase conductors, insulators, fittings and earthwire from pylon 4YR001 to pylon 4YR004;
- (c) removal of existing transmission pylon 4YR002 and pylon 4YR003 and the phase and earthwire conductors between pylon 4YR001 and pylon 4YR004;
- (d) installation of new connections from the new pylon 4YR003 to the electricity substation comprised in Work No. 1B;

and in connection with such works comprised in Work No.5, further associated development within the Order limits consisting of-

- (a) ramps, means of access and trackways;
- (b) drainage, wing walls, fencing and culverts;
- (c) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (d) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (e) works for the benefit or protection of land affected by the authorised development;
- (f) works required for strengthening, improvement, maintenance, or reconstruction of any streets;
- (g) establishment of highway accesses, site construction compounds, crane pads, anchor points, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting and haulage roads;
- (h) installation of wires, cables, ducts, pipes, earthing strips and conductors;
- (i) installation of netted scaffold or any other form of third party asset protection as is deemed necessary for the duration of construction; and
- (j) such other works, including working sites storage areas, and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

Work No. 6 – cooling water pipelines and pumping station to convey water from the River Aire to the power plant for evaporative cooling and to convey purge water from the evaporative cooling system, treated wastewaters and rainwater to the River Aire comprising:

(1) *Work No. 6A* - A water abstraction pipeline and intake screen arrangement to convey water from the river to the pumping station (Work No 6C) including:

- (a) a passive wedge wire screen arrangement connected to the end of the pipeline at the intake point and installed to a depth of 1 m approximately above the river bed; and
- (b) a pipeline between the intake screen and the pumping station.

(2) *Work No. 6B* - a water discharge pipeline to convey water from the pumping station to the river to the pumping station (Work No 6C) including:

- (a) a dispersion device to distribute the discharged waters in the river; and
- (b) a pipeline between the dispersion device and the pumping station.

(3) *Work No. 6C* - a pumping station containing a wet well sump and multiple pumps, including:

- (a) pump house building;
- (b) electrical supply and control equipment;
- (c) pipework and valves;
- (d) flow metering equipment;
- (e) power and control cables;
- (f) pump lifting equipment;
- (g) access track from Stocking Lane to Pumping Station compound; and
- (h) internal vehicular access, parking areas, pedestrian areas and landscaping, gated security fencing, close circuit television and intruder detection systems, lighting and rainwater drainage.

(4) *Work No. 6D* - water abstraction and discharge pressure pipelines running in parallel from the Pumping Station to the southern boundary of Weeland Road.

(5) *Work No. 6E* - water abstraction and discharge pressure pipelines running in parallel from the southern boundary of Weeland Road to the power plant site.

The pipelines will be installed under Weeland Road and the Aire and Calder Canal using trenchless methods. The pipelines elsewhere in Work No. 6E will be laid in trench or using trenchless methods.

Work No. 7 – above ground installation comprising:

- (a) connection to National Grid Gas National Transmission System (NTS) No. 29 feeder pipeline including NTS Spur Pipeline and Minimum Offtake Connection (MOC);
- (b) above ground pipework;
- (c) emergency shutdown devices;
- (d) pipeline Internal Gauge (PIG) launcher for pipe inspection while maintaining normal gas flow;
- (e) gas vents;
- (f) instrumentation kiosks;
- (g) standby generator sockets;
- (h) access track;
- (i) hardstanding;
- (j) security fencing and gates; and
- (k) perimeter landscaping treatment.

Work No. 8 – a high pressure **steel pipeline** up to 600mm (Nominal Bore) in diameter for the transport of gas. Its proposed route is shown by an indicative pink line (subject to the limits of deviation in article 5) on the works plan and comprises:

(1) *Work No. 8A* - high pressure steel gas pipeline running from an indicative location within *Work No. 7* near Gateforth in a southerly direction to the mid-point of Birkin Road where it connects with *Work No. 8B*.

(2) *Work No. 8B* - high pressure steel gas pipeline running from *Work No. 8A* in the mid-point of Birkin Road in a predominantly southerly direction crossing the Fleet to a point on the northern bank of the River Aire where it meets *Work No. 8C*.

(3) *Work No. 8C* - A high pressure steel gas pipeline running from the northern bank of the River Aire from *Work No. 8B* to the southern bank of the River Aire where it connects with *Work No. 8D*.

(4) *Work No. 8D* - a high pressure steel gas pipeline running from the southern bank of the River Aire from *Work No. 8C* in a south and south westerly direction to the mid-point of Beal Lane where it connects with *Work No. 8E*. The pipeline will be installed under Marsh Drain using trenchless methods.

(5) *Work No. 8E* - a high pressure steel gas pipeline running from the mid-point of Beal Lane from *Work No. 8D* in a westerly direction crossing New Lane to the mid-point of Common Lane where it connects with *Work No. 8F*.

(6) *Work No. 8F* - high pressure steel gas pipeline running from the mid-point of Common Lane from *Work No. 8E* to the southern boundary of Weeland Road where it connects with *Work No. 8G*.

(7) *Work No. 8G* - a high pressure steel gas pipeline running from the southern boundary of Weeland Road from *Work No. 8F* to *Work No. 1A*. The termination point shown on the works plan is indicative only.

The gas pipeline will be laid using either trenched or trenchless methods except for:

- (a) all adopted highway crossings;
- (b) the River Aire crossing;
- (c) the Aire and Calder Canal crossing;
- (d) the Marsh Drain crossing (comprised in *Work No. 8D*); and
- (e) the Fleet crossing (comprised in *Work No. 8B*)

where the pipeline will be installed using trenchless methods as shown on the works plan.

Work No. 9 – **Alternative private track/temporary bridleway** along the southern boundary of *Work No. 1* from Blackburn Lane to Southmoor Lane, at least five metres wide and being gated at either end.

In connection with works 1 - 9 and to the extent that they do not otherwise form part of any such work, further associated development whether or not shown on the plan referred to in the requirements including—:

- (a) bunds, embankments, landscaping, fencing and boundary treatments;
- (b) connection to the electricity network for the purpose of supply to the authorised development;
- (c) connection to the telecommunications network for the purpose of supply to the authorised development;
- (d) temporary construction site offices;
- (e) haul roads and hardstandings on site for the parking of construction vehicles plant and machinery or for the vehicles of construction workers;
- (f) construction of temporary lay down storage areas and compounds and their restoration;
- (g) water supply works, foul drainage provision, surface water management systems, channelling and culverting;

- (h) habitat creation;
- (i) temporary footpaths;
- (j) marker posts;
- (k) telecommunication cables to be laid alongside pipeline;
- (l) cathodic protection posts;
- (m) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths);
- (n) earthworks (including soil stripping and storage, site levelling);
- (o) piling;

and to the extent that they do not form part of any such work, 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 project and which fall within the scope of the works assessed by the environmental statement.

PART 2

Requirements

Interpretation

1. In Part of this Schedule—

“the **AGI**” means the above ground installation comprised in Work No. 7;

“the **Canal and River Trust**” means the private company limited by guarantee of that name (company number 07807276) whose registered office is at First Floor, North Station House, 500 Elder Gate, Milton Keynes, MK9 1BB;

“the **CCS site**” means an area within the area hatched pink on the works plan and described as Work No. 2 in Part 1 of this Schedule, which satisfies relevant legal and policy requirements as in force from time to time;

“the **capture equipment**” means the plant and equipment required to capture and compress the target carbon dioxide and identified as such in the current CCS proposal;

“the **CCS proposal**” means a proposal for the capture, transport and storage of the target carbon dioxide, which identifies the proposed technology, transport route and storage location;

“current CCS proposal” means:

- (i) the CCS proposal contained in appendix F.2 of the environmental statement, set out in a feasibility study and assessed in accordance with the guidance entitled “Carbon Capture Readiness (CCR) A guidance note for Section 36 Electricity Act 1986 consent applications”; or
- (ii) if a revised CCS proposal has been identified under Requirement 29 in this Schedule, the proposal which has most recently been so identified;

“**CEMP**” means a construction and environmental management plan relating to the construction of the relevant part of the authorised development;

“the **cooling water pipelines**” means Work No. 6 in Part 1 of this Schedule;

“the **Common Lane upgrade**” means Work No. 4 in Part 1 of this Schedule;

“the **gas pipeline**” means Work No. 8 in Part 1 of this Schedule;

“the **generating station**” means Work No. 1 in Part 1 of this Schedule;

“**heavy commercial vehicles**” means any vehicles or mobile plant exceeding 3 tonnes in weight employed by the undertaker or its contractors or their subcontractors for the purpose of movement of aggregates plant and materials to and from the construction site during the construction period for the purposes of construction of the authorised development;

“the **Lead Local Flood Authority**” means the Lead Local Flood Authority as defined by Section 6(7) of the Flood and Water Management Act 2010;

“**NRIL**” means Network Rail Infrastructure Limited, company number 02904587 registered at Kings Place, 90 York Way, London N1 9AG;

“the **overhead lines and pylons**” means Work No. 5 in Part 1 of this Schedule as shown on the works plan;

“**part of the authorised development**” means any part of Works Nos. 1 – 9 as listed in Part 1 of this Schedule;

“the **relevant highway authority**” means the relevant highway authority for the area in which the land to which the relevant provision of this Order applies is situated;

“the **remediation permission**” means the planning permission granted by Wakefield Metropolitan District Council in relation to engineering and remediation works at the former Oxiris chemical works site in Knottingley, WF11 8BN and allocated the reference number 12/02488/FUL or any such variation as may be permitted by the relevant planning authority;

“**requirements**” means the requirements under this Part 2 of Schedule 1 to this Order, and

“**requirement consultee**” means any person whom the relevant planning authority is required to consult when discharging any of the requirements in this Part 2 of Schedule 1.

Time limits

2. The authorised development must not be commenced after the expiration of seven years from the date this Order comes into force.

Generating station

3.—(1) No part of the authorised development comprising the generating station may commence until details of the following have been submitted to and approved in writing by the relevant planning authority—

- (a) details of the siting, design, external appearance and dimensions of all new or modified buildings and structures, including fencing or other means of enclosure, which are to be retained following commissioning;
- (b) details of the colour, materials and surface finishes in respect of those buildings and structures referred to in (a) above;
- (c) details of all external lighting;
- (d) details of vehicular access and circulation roads, parking, hardstanding, loading and unloading facilities and turning facilities;
- (e) details of drainage, storage tanks and silos;
- (f) details of ground levels and heights of all permanent buildings and structures together with cross-sections through the site showing existing and proposed ground levels; and
- (g) details of an operational travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided during the operational phase, and must be implemented within one month of the authorised development becoming operational

(2) The details approved under paragraph (1) must be in accordance with the following thresholds:

Maximum number of main stacks	3
Maximum height of main stacks	75 metres
Maximum height of turbine buildings and heat recovery steam generator	45 metres
Maximum height of auxiliary boiler stacks	30 metres
Maximum height of cooling towers	20 metres

Maximum height of other buildings and structures	15 metres
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(3) The relevant planning authority must consult NRIL in respect of the details of fencing and external lighting approved under paragraph 3(1) above to the extent that they affect any railway belonging to NRIL.

(4) The authorised development comprising the generating station must be carried out in accordance with the approved details.

(5) A facility must be provided and maintained within Work No.1 to enable steam pass-outs and/or hot water pass-outs and reserve space for the provision of water pressurisation, heating and pumping systems for off-site users of process and space heating and its later connection to such systems should a commercial arrangement be identified for combined heat and power which is economically viable.

(6) The generating station may not be brought into operation until an operational traffic management plan has been submitted to and approved by the relevant planning authority. The operational traffic management plan must be implemented as approved.

Overhead lines and pylons

4.—(1) No part of the authorised development comprising the overhead lines and pylons may commence until details of the overhead lines and pylons have been submitted to and approved in writing by the relevant planning authority.

(2) The details approved under paragraph (1) must be in accordance with the following thresholds:

Maximum height of transmission towers	65 metres
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(3) Prior to the commencement of development comprising the part of the overhead lines and pylons affecting a railway belonging to NRIL, the undertaker must enter into an Outside Parties Basic Asset Protection Agreement (BAPA) (terms of which should be reasonable and proportionate to the routine works and technical standards required for reconductoring powerlines) with NRIL in accordance with National Grid Electricity Transmission Limited's NGET Master Wayleave Agreement dated 12th September 1961 and supplemental agreement 4YR/9 dated 3rd February 1967.

(4) The authorised development comprising the overhead lines and pylons must be implemented in accordance with the approved details and, insofar as it affects any railway belonging to NRIL, the BAPA.

Cooling water pipelines and pumping station

5.—(1) No part of the authorised development comprising the cooling water pipelines or pumping station may commence until details of the cooling water pipelines and pumping station, including fencing or other means of enclosure, have been submitted to and approved in writing by the relevant planning authority.

(2) The details approved under paragraph (1) must be in accordance with the following thresholds:

Number of cooling water pipelines	2 (one abstraction and one discharge)
Maximum diameter	700mm (nominal bore)
Maximum height of buildings, including security fence	5 metres

(3) The authorised development comprising the cooling water pipelines and pumping station must be implemented in accordance with the approved details.

Gas pipeline and AGI

6.—(1) No part of the authorised development comprising the gas pipeline and above ground installation may commence until:

- (a) details of the gas pipeline, and
- (b) details of the AGI, including in respect of fencing or other means of enclosure,

have been submitted to and approved in writing by the relevant planning authority.

(2) The details approved under paragraph (1) in relation to the gas pipeline must be implemented in accordance with the following thresholds:

Maximum diameter	600mm (nominal bore)
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(3) The details approved under paragraph (1) in relation to the AGI must be implemented in accordance with the following thresholds:

Maximum height of buildings, including security fence	3 metres
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Provision of landscaping

7.—(1) No part of the authorised development may commence until a written landscaping scheme for that part has been submitted to and approved in writing by the relevant planning authority. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (h) details of existing trees to be retained, with measures for their protection during the construction period;
- (i) retained historic landscape features and proposals for restoration, where relevant;
- (j) a tree and scrub buffer zone around the generating station and CCS areas, in accordance with the principles of the landscaping plan; and
- (k) implementation timetables for all landscaping works.

(2) The relevant planning authority must consult NRIL in respect of landscaping details around the generating station that are adjacent to any railway belonging to NRIL.

Implementation and maintenance of landscaping

8.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) The landscaping works must be implemented in accordance with implementation timetables approved under requirement 7.

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

Footpath/Public Rights of Way diversions

9.—(1) No part of the authorised development may commence until a written public rights of way management plan for any sections of public rights of way shown to be extinguished or temporarily closed on the public rights of way temporary closures and permanent stopping up plan for that part has been approved in writing by the relevant planning authority in consultation with the relevant highway authority.

(2) The public rights of way management plan for the relevant part must include details of and a specification for the provisions of the temporary bridleway to be provided as part of Work No. 9.

(3) The public rights of way management plan and the provision of the temporary bridleway must thereafter be implemented as approved.

Highway accesses

10.—(1) No part of the authorised development may commence until written details of the siting, design and layout of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has, for that part, been submitted to and approved in writing by the relevant planning authority in consultation with the relevant highway authority.

(2) The highway accesses must be constructed in accordance with the approved details prior to commencement of the relevant part of the authorised development.

(3) No part of the authorised development may commence until, for that part, a written Access Management Scheme has been submitted to and approved in writing by the relevant planning authority.

(4) The Access Management Scheme must be implemented in accordance with the approved details.

Temporary buildings, structures and roads

11.—(1) No part of the authorised development comprising the generating station, the overhead lines and pylons, the pumping station or the AGI may commence until for that part a written scheme in accordance with paragraph (2) of this requirement has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must include details of:

- (a) the siting, design and external appearance of temporary buildings and structures, artificial lighting and fencing to be erected and used during the period of construction;
- (b) temporary vehicular roads, parking hardstandings, laydown areas and turning facilities to be used during the period of construction; and
- (c) the secure fencing of construction sites.

(3) The scheme under paragraph (2) must be implemented as approved.

(4) All temporary works must be removed within a period of twelve calendar months following commencement of the operational phase of the authorised development.

Surface and foul water drainage

12.—(1) No part of the authorised development may commence until, for that part, written details of the surface and foul water drainage systems (including means of pollution control) have been submitted to and approved in writing by the relevant planning authority in consultation with the internal drainage board, the Environment Agency, the Lead Local Flood Authority, the Canal and River Trust, and NRIL, as appropriate.

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

Contaminated land and groundwater - general

13.—(1) No part of the authorised development may commence until, for that part, a written scheme produced in line with CLR11 Model Procedures (which may be included in the CEMP) to deal with the contamination of any land, including groundwater, within the Order limits has been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant and approved in writing by the relevant planning authority, to identify the extent of any contamination and a risk based remedial strategy to be produced and fully implemented, based on the findings of the investigation, to render the land fit for its intended purpose, together with a management plan which sets out long-term monitoring measures with respect to any contaminants remaining on the site.

(3) If during construction of the authorised development contaminated land or groundwater is encountered in excavations of Order land that was not identified in the initial investigation and assessment, then work in the vicinity of that contamination must be suspended, additional investigation and assessment carried out, and the scheme produced under paragraph (1) above amended to reflect the results. The amendments and any additional remediation required must be approved by the relevant planning authority in consultation with the Environment Agency prior to any works resuming.

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

(5) Prior to commencement of the authorised development (or resumption of works following additional investigation and assessment under paragraph [3]), a verification report demonstrating completion of the remediation works and the effectiveness of the remediation must be submitted to and approved, in writing, by the relevant planning authority in consultation with the Environment Agency. The report must include results of the sampling and monitoring carried out in accordance with the approved remedial strategy to demonstrate that the site remediation criteria have been met.

Contaminated land and groundwater – known contamination on the site of the generating station

14. The part of the authorised development comprising the generating station must not commence until the remediation permission has been implemented in full and a verification report under requirement 13 (5) has been submitted to and approved in writing by the relevant planning authority.

Archaeology

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

(2) The scheme must 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.

(3) Any archaeological works or watching brief implemented under the scheme must be by a suitably qualified person or body approved in writing by the relevant planning authority.

(4) Any archaeological works or watching brief must be implemented in accordance with the approved scheme.

Ecological management plan

16.—(1) No part of the authorised development may commence until a written ecological management plan (which may form part of the construction environment management plan approved under requirement 17) for that part has been submitted to and approved in writing by the

relevant planning authority in consultation with the Canal and River Trust, the Yorkshire Wildlife Trust, West Yorkshire Ecology and North Yorkshire County Council Ecologist as appropriate.

(2) No part of the gas pipeline or water pipelines may commence, or material construction works on any part of them continue, between the months of October and February in any given year unless a wintering birds survey and, if appropriate, a proposed scheme of mitigation, is first submitted to and approved in writing by the relevant planning authority in consultation with Natural England. Any approved scheme of mitigation must be incorporated into the ecological management plan.

(3) The ecological management plan must contain on-site biodiversity mitigation to address the biodiversity loss resulting from the construction of the generating station (subsequent to the implementation of the remediation permission), unless off-site compensation or “offsetting” is provided to address this biodiversity loss (in full or in part) to the satisfaction of the relevant planning authority.

(4) The ecological management plan must include an implementation timetable and be implemented as approved.

Construction environment management plan

17.—(1) No part of the authorised development may commence until a Construction Environment Management Plan (CEMP) relating to that part, which accords with the principles set out in the environmental statement (section 27 – Framework for a CEMP), has been submitted to and approved in writing by the relevant planning authority in consultation with the relevant highway authority.

(2) The CEMP must in particular include:

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works, addressing:
 - (i) external lighting
 - (ii) noise and vibration;
 - (iii) air quality including dust;
 - (iv) construction hours, subject always to paragraph (e), being, between 0700 and 1900 hours on weekdays and 0800 and 1800 hours on Saturdays and no working on Sunday or public holidays, except during such periods and in such locations as are previously agreed by the relevant planning authority; save in relation to Work No. 5 to which no restriction applies under this paragraph 17 (2) (a) (iv);
- (b) a site waste management plan;
- (c) a traffic management plan addressing construction traffic to and materials storage on the authorised development, including any road closures, site access and a construction travel plan;
- (d) a scheme for the notification of any significant construction impacts on local residents to local residents and the relevant planning authority;
- (e) a scheme for impact piling, or other means of pile driving, addressing methods and duration of piling and stating the criteria according to which pile driving is chosen, which must require impact piling to be limited to the following times:
 - (i) Monday to Friday: 0900 – 1800 hours;
 - (ii) Saturday: 0900 – 1300 hours; and
 - (iii) No impact piling on Sunday or Bank Holidays
unless such impact piling is required because of an emergency;
- (f) a water management assessment (assessment of the risks to and mitigation measures designed to protect controlled waters (surface and groundwater) including pollution control); and

- (g) a review of the impact of the authorised development on the River Aire in a water body action plan.
- (3) The relevant planning authority must consult NRIL in respect of the elements of the CEMP concerning
 - (a) temporary external lighting around the generating station and overhead lines and pylons, to the extent that it affects any railway belonging to NRIL, and
 - (b) the construction traffic management plan in respect of the generating station and overhead lines and pylons.
- (4) All construction works must be implemented in accordance with the CEMP.

Common Lane improvement

18. Prior to commencement of the part of the authorised development comprising the generating station, Work No. 4 (improvements to Common Lane) must be implemented to the satisfaction of the relevant planning authority.

Air Safety

19.—(1) No part of the authorised development comprising the generating station may commence until the undertaker has notified The Ministry of Defence – Defence Geographic Centre in relation to the generating station of:

- (a) the precise location of the authorised development with grid coordinates
- (b) the proposed date of commencement of construction
- (c) the height above ground level in metres of the tallest structure
- (d) the maximum extension height in metres of any construction equipment

(2) The undertaker must ensure that any stacks are fitted with aviation warning lighting with a minimum intensity of 25 candela omni directional red light or equivalent infra-red light fitted at the highest practicable point of the structure.

(3) Within 28 days of completion of the construction of the generating station the undertaker must notify The Ministry of Defence – Defence Geographic Centre of the date of such completion of construction.

Flooding – mitigation

20.—(1) No part of the authorised development may commence until for that part there has been submitted to and approved in writing by (and deposited with) the relevant planning authority, in consultation with the Environment Agency and the relevant internal drainage board, a scheme for mitigation of flood risk during the construction and operation of the authorised development prepared in accordance with the principles set out in the flood risk assessment.

(2) The scheme approved must thereafter be fully implemented and adhered to throughout the period of the construction and operation of the relevant part of the authorised development.

Fire prevention

21.—(1) No part of the authorised development may commence until for that part there has been submitted to and approved in writing by the relevant planning authority 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 authorised development such method statement to be prepared, including measures to contain and treat water used to suppress any fire.

(2) The authorised development must be implemented in accordance with the approved details and all the relevant fire suppression measures and fire appliances must be maintained to the

reasonable satisfaction of the relevant planning authority at all times when the authorised development is operational.

Waste management on site – operational phase

22.—(1) No part of the authorised development may be brought into operation until the relevant planning authority has received and approved in writing a waste management plan for the operational phase for that part of the authorised development incorporating the principles in the environmental statement. The site waste management plan must address and include at least the following:

- (a) the storage of waste materials on site;
- (b) removal of waste materials from the site for recovery/disposal at appropriately licensed sites;
- (c) the return/disposal of general engineering wastes (such as spent filters and used parts).

(2) The authorised development must thereafter be operated fully in accordance with the approved details.

Control of noise - operational phase

23.—(1) The part of the authorised development comprising the generating station may not be brought into operation until a written scheme for noise management including monitoring and attenuation for the use of the authorised project has been submitted to and approved in writing by the relevant planning authority in consultation with Selby District Council.

(2) Noise from the operation of the generating station must be no greater than the existing background level (expressed as LA90 dB) when monitored in accordance with BS4142: 1997 Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas, adjacent to the nearest residential properties at such locations as are agreed with the relevant planning authority. The noise levels must be monitored across 1 hour in the day-time and 5 minutes at night-time.

(3) The noise management scheme must be implemented as approved.

European protected species

24.—(1) No part of the authorised development may commence until further survey work for that part has been carried out to establish whether any European protected species is present on any of the land affected, or likely to be affected, by that part of the authorised development or in any of the trees to be lopped or felled or buildings to be demolished in connection with that part of the authorised development.

(2) Where a European protected species is shown to be present, no authorised development of that part may be begun until, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority.

(3) The authorised development must be implemented in accordance with the approved scheme.

(4) The part of the authorised development comprising the generating station may not be commenced until great crested newts have been removed in accordance with the relevant condition of the remediation permission.

(5) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010(a).

(a) S.I. 2010/490

Restoration of land used temporarily for construction

25.—(1) Any land within the Order limits which is used temporarily for construction must be reinstated to its former condition, or such condition as the relevant planning authority may approve in writing (or which may be provided for under an approved landscaping scheme).

(2) Reinstatement works must be commenced promptly following completion of the relevant part of the authorised development, and within three months of any required approval by the relevant planning authority. The reinstatement must be implemented in accordance with any timetable included in any relevant approved landscaping scheme.

Air quality monitoring

26.—(1) The authorised development comprising the generating station may not become operational until there has been submitted to and approved in writing by Wakefield Metropolitan District Council in consultation with Selby District Council a scheme for the monitoring of nitrogen oxides (NO_x) in the area.

(2) The scheme must

- (a) include the measurement locations from which air pollution is required to be monitored,
- (b) specify the equipment and methods to be used
- (c) specify the frequency of measurement,
- (d) require the first measurement to be taken not less than 24 months prior to the generating station becoming operational, and
- (e) require the final measurement to be taken not more than 12 months after the cessation of operation.

(3) The undertaker must supply to Wakefield Metropolitan District Council and Selby District Council the full details of the measurements obtained in accordance with the scheme as soon as possible after they become available.

CCS site

27.—(1) Until such time as the generating station is decommissioned, the undertaker must not, without the written consent of the Secretary of State:

- (a) dispose of any interest in the CCS site; 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 occurrence, to prepare the CCS site for the installation and operation of the capture equipment.

CCS monitoring report

28.—(1) The undertaker must make a report to the Secretary of State for Energy and Climate Change (the "CCS monitoring report"):

- (a) on or before the date on which three months have passed from commencement of operation of the authorised development; and
- (b) within one month of the second anniversary, and each subsequent even-numbered anniversary, of that date.

(2) Each CCS monitoring report must provide evidence that the undertaker has complied with requirement 27

- (a) in the case of the first report, since this Order was made; and
- (b) in the case of any subsequent report, since the making of the previous report

and explain how the undertaker expects to continue to comply with requirement 27 over the next two years.

(3) Each CCS monitoring report must state whether the undertaker considers that some or all of the technology referred to in the current CCS proposals will not work and identify any other impediment to the technical feasibility of the current CCS proposal, explaining the reasons for any such conclusion and whether such impediments could be overcome. If the undertaker considers that technical impediments could be overcome by putting forward a revised CCS proposal, this should be included in the CCS monitoring report.

(4) Each CCS monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of its current CCS proposals.

Applicability of requirements 27 and 28

29.—(1) Requirements 27 and 28 will cease to have effect as soon as any of the following events occurs:

- (a) the capture equipment is installed; or
- (b) the generating station is decommissioned; or
- (c) the Secretary of State's agreement to the undertaker not installing capture equipment and having no current CCS proposals has been obtained in writing.

(2) Requirement 27 will cease to have effect if the requirement to hold land for the installation of capture equipment ceases to be included in law or planning policy as from time to time in force.

(3) Requirement 28 will cease to have effect if the requirement to submit a CCS report ceases to be included in law or planning policy as from time to time in force.

Decommissioning

30.—(1) Within 12 months of the generating station ceasing to be used for the purposes of generating electricity, a site closure and restoration plan for the demolition and removal of the generating station and pumping station must be submitted for approval by the relevant planning authority. The scheme must include:

- (a) details of all structures and buildings to be demolished;
- (b) details of the means of removal of the materials resulting from decommissioning works;
- (c) details of the phasing of the demolition and removal works;
- (d) details of the restoration works to restore the operations area to a condition agreed with the relevant planning authority;
- (e) details of any restoration works and their phasing;
- (f) a timetable in which the scheme must be carried out; and
- (g) an environment management plan for the demolition and decommissioning works addressing the matters listed in requirement 17 (Construction environment management plan).

(2) The demolition and removal of the generating station must be implemented in accordance with the approved scheme.

Requirement for written approval

31. 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 given in writing.

Approved details

32.—(1) All details submitted for the approval of the relevant planning authority under these requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article 34.

(2) The authorised development must be carried out in accordance with the design drawings subject to such non-material amendments as are approved in writing by the relevant planning authority; provided that such approval is not given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement.

(3) The authorised development must be carried out in accordance with the details approved.

(4) Where the approval or agreement of the relevant planning authority or another person is required under any of the requirements, that approval or agreement must be given in writing.

Local liaison committee

33. The authorised development may not commence until the undertaker has established a committee to liaise with local residents and organisations about matters relating to the authorised development (a “local liaison committee”). The local liaison committee must include representatives of the undertaker. The undertaker must invite Wakefield Metropolitan District Council, Selby District Council, North Yorkshire County Council, the Environment Agency, West Yorkshire Police and other relevant interest groups, as may be agreed with Wakefield Metropolitan District Council, to nominate representatives to join the local liaison committee. The undertaker must provide a full secretariat service and supply an appropriate venue. The local liaison committee must meet every other month, starting in the month prior to commencement of the authorised development, until the completion of construction, testing and commissioning works unless otherwise agreed in writing by the majority of the members of the local liaison committee. During the operational phase of the authorised development, the local liaison committee must meet once a year unless otherwise agreed in writing by the majority of the members of the local liaison committee.”

Notice of start and completion of commissioning

34.—(1) Notice of the intended start of commissioning must be given to the relevant planning authority where practicable prior to such commencement and in any event within seven (7) days from the date that commissioning is commenced.

(2) Notice of the intended completion of commissioning must be given to the relevant planning authority where practicable prior to such completion and in any event within seven (7) days from the date that commissioning is completed.

Notice of commencement of operation

35. Notice of the intended start of operation must be given to the relevant planning authority and the Environment Agency, by means of an operational phase notice, where practicable prior to such commencement and in any event within seven (7) days from the date that operation is commenced.

SCHEDULE 2

Article 9

STREETS SUBJECT TO STREET WORKS

<i>(1)</i>	<i>(2)</i>
Area	Street subject to street works
Wakefield Metropolitan District	Common Lane
Wakefield Metropolitan District	Weeland Road (A645)
Selby District	Weeland Road (A645)
Selby District	Farmer's track near Kellingley Farm
Selby District	Common Lane
Selby District	New Lane
Selby District	Beal Lane
Selby District	Farmer's Track in Beal Carrs
Selby District	Marsh Lane
Selby District	Birkin Road
Selby District	Royd's Road
Selby District	Pale Lane

SCHEDULE 3

Article 10

STREETS TO BE STOPPED UP

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
Area	Street to be stopped up	Extent of stopping up	Temporary alternative route to be provided
Wakefield Metropolitan District	Common Lane	So much of Common Lane (private accommodation road) as is within Work Nos. 1 and 2 as shown on the works plan	The temporary bridleway described in Work No. 9 in Part 1 of Schedule 1 and shown coloured yellow on the plan

SCHEDULE 4

Article 11

PUBLIC RIGHT OF WAY TO BE TEMPORARILY CLOSED AND PERMANENTLY STOPPED UP

PART 1

Claimed public right of way to be extinguished for which a replacement will be provided

<i>(1) Area</i>	<i>(2) Public right of</i>	<i>(3) Extent of stopping</i>	<i>(4) Temporary</i>
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	<i>way to be stopped up</i>	<i>up</i>	<i>bridleway</i>
Wakefield Metropolitan	Claimed public bridleway along Common Lane	So much of Common Lane as is shown market by a green dashed line on the public rights of way temporary closures and permanent stopping up plan	The temporary bridleway described in Work No. 9 in Part 1 of Schedule 1 and shown coloured yellow on the plan

PART 2

Rights of way for which a replacement will be provided during temporary closure

<i>(1) Area</i>	<i>(2) Footpath to be temporarily closed</i>	<i>(3) Extent of temporary closure</i>
Selby District	Footpath 35.30/7/1 off Pale Lane	As shown marked by a black line on the public rights of way temporary closures and permanent stopping up plan
Selby District	Footpath 35.72/3/1 off Marsh Lane	As shown marked by a black line on the public rights of way temporary closures and permanent stopping up plan
Selby District	Footpath 35.41/5/1 south of the River Aire	As shown marked by a black line on the public rights of way temporary closures and permanent stopping up plan
Selby District	Footpath 35.7/6/1 along River Aire at pumping station	As shown marked by a black line on the public rights of way temporary closures and permanent stopping up plan
Selby District	Footpath 35.7/8/1 north of Kellingley Farm	As shown marked by a black line on the public rights of way temporary closures and permanent stopping up plan
Selby District	Footpath 35.7/9/1 west of Kellingley Farm	As shown marked by a black line on the public rights of way temporary closures and permanent stopping up plan

PART 3

Rights of way for which no replacement will be provided during temporary closure

<i>(1) Area</i>	<i>(2) Footpath to be temporarily closed</i>	<i>(3) Extent of temporary closure</i>
Wakefield District	Claimed public bridleway along Common Lane and leading onto a track connecting to Beal Lane	As shown marked by a pink dashed line on the public rights of way temporary closures and permanent stopping up plan
Wakefield District	Claimed public bridleway along Southmoor Lane	As shown marked by a pink dashed line on the public rights of way temporary closures and permanent stopping up plan

SCHEDULE 5

Article 12

ACCESS TO WORKS

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
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Area	Access number on access to works plan	Description of access
Selby District	1	Pale Lane (N) – permanent access
Selby District	2	Pale Lane (S) - indicative temporary access
Selby District	3	Birkin Road (N) - indicative temporary access
Selby District	4	Marsh Lane - indicative temporary access
Selby District	5	Low Road - indicative temporary access
Selby District	6	Beal Lane (N) - indicative temporary access
Selby District	7	Beal Lane (S) - indicative temporary access
Selby District	8	New Lane (E) - indicative temporary access
Selby District	9	New Lane (W) - indicative temporary access
Selby District	10	Common Lane (E) - indicative temporary access
Selby District	11	Common Lane (W) - indicative temporary access
Selby District	12	Stocking Lane - indicative temporary access
Selby District	13	Weeland Road (N) - indicative temporary access
Wakefield District	14	Weeland Road (S) - indicative temporary access
Wakefield District	15	Common Lane – permanent access
Wakefield District	16	Southmoor Lane (E) – indicative temporary access
Wakefield District	17	Blackburn Lane (E) – permanent Access

SCHEDULE 6

Article 20

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF 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 or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973^(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there is substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there is substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there is substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there is substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are 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
- (b) the land over which the right is or is to be exercisable; or
- (c) the land over which the restrictive covenant is enforceable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right, or the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard is 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.”

5. For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

(a) 1973 C.26

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

in relation to that person, the Order ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right 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 (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference

with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (interests omitted from purchase) is so 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, subject to compliance with that section as respects compensation.

10. In this Schedule, “acquiring authority” has the same meaning as “the undertaker” in article 2(1) (Interpretation) of this Order.

SCHEDULE 7

Article 36

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirement

1.—(1) Where an application has been made to a relevant planning authority for any agreement or approval required by any requirement included in this Order, the relevant planning authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph 2, 8 weeks from the day immediately following that on which the application is received by the authority or the day on which the fee under paragraph 3(1) of this Schedule is received, whichever is the later;
- (b) where further information is requested under paragraph 2, 8 weeks from the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in sub-paragraph (a) or (b).

(3) For the avoidance of doubt, the relevant planning authority remains seized of the application after the decision period elapses and pending an appeal by the undertaker for non-determination under paragraph 4(1)(b).

Further information

2.—(1) In relation to any application to which this Schedule applies, the relevant planning authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers such further information to be necessary and the requirement does not specify that consultation with a requirement consultee is required, it must, within 7 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 3 business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 3 business days of receipt of such a request and in any event within 35 days of receipt of the application.

(4) If the relevant planning authority does not give such notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter to request further information without the prior agreement of the undertaker.

Fees

3.—(1) Where an application is made to the relevant planning authority for agreement or approval in respect of a requirement, a fee of £97, or such greater sum as applies by regulations for the discharge of planning conditions, must be paid to that authority.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 8 weeks of the relevant planning authority failing to determine the application within the decision period as determined under paragraph 1, unless within that period the undertaker agrees, in writing, that the fee may be retained by the relevant planning authority and credited in respect of a future application.

Appeals

4.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority does not give notice of its decision to the undertaker within the decision period as determined in paragraph 1;
- (c) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant 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 appeal process is as follows:

- (a) the undertaker must submit the appeal documentation to the Secretary of State, a copy of the application submitted to the relevant planning authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
- (b) the undertaker must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee (if applicable);
- (c) as soon as is practicable after receiving the appeal documentation, but in any event within 10 business days of receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the relevant planning authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) 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;
- (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to sub-paragraph (d) above; and

(3) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters

contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant 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 the appointed person 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 time limits prescribed, or set by the appointed person, under this paragraph.

(7) The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person 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 final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of the relevant requirement in Schedule 1 Part 2 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) may not be taken to 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 Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.

Interpretation of Schedule 7

5. In this Schedule—

“the appeal parties” means the relevant planning authority, the requirement consultee and the undertaker;

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971; and

“requirement consultee” means anybody named in a requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that requirement.

SCHEDULE 8

Article 37

PROTECTIVE PROVISIONS

For the protection of National Grid Electricity Transmission Plc

For the protection of National Grid Electricity Transmission Plc and any successors as a licence holder within the meaning of Part 1 of the Electricity Act 1989 or any other associated and

successor undertaker to National Grid Electricity Transmission Plc, the Undertaker and National Grid Electricity Transmission Plc have entered into an agreement dated 5 September 2014 containing provisions for the protection and benefit of National Grid Electricity Transmission Plc and any successor to National Grid Electricity Transmission Plc in relation to the exercise, operation and use of the authorised development of the Undertaker. The provisions of that agreement shall have effect unless otherwise varied or amended in writing between the Undertaker and National Grid Electricity Transmission Plc.

For the protection of National Grid Gas Plc

For the protection of National Grid Gas Plc and any successors as a gas transporter within the meaning of Part 1 of the Gas Act 1986 or any other associated and successor undertaker to National Grid Gas Plc, the Undertaker and National Grid Gas Plc have entered into an agreement dated 5 September 2014 containing provisions for the protection and benefit of National Grid Gas Plc and any successor to National Grid Gas Plc in relation to the exercise, operation and use of the authorised development of the Undertaker. The provisions of that agreement shall have effect unless otherwise varied or amended in writing between the Undertaker and National Grid Gas Plc.

For the protection of Canal and River Trust

Interpretation

1.—(1) For the protection of CRT the following provisions of this part of this Schedule shall, unless otherwise agreed in writing between the undertaker and CRT, have effect.

(2) In this part of this Schedule—

“CRT” means the Canal & River Trust;

“CRT’s network” means CRT’s network of waterways;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and “construct” and “constructed” have corresponding meanings;

“detriment” means any damage to the waterway or any other property of CRT caused by the presence of the authorised works and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in CRT’s network);
- (g) any interference with the exercise by any person of rights over CRT’s network;

“the engineer” means an engineer appointed by CRT for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain

outstanding, and the expression “practically complete” and “practically completed” shall be construed accordingly;

“protective work” means a work constructed under paragraph 6(3)(a);

“specified work” means so much of Work Nos. 3, 6 and 8G as are situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“towing path” means the towing path forming part of the waterway;

“the waterway” means the Aire & Calder Navigation, and includes any works, lands or premises belonging to CRT, or under its management or control, and held or used by CRT in connection with that canal.

Powers requiring CRT’s consent

2.—(1) The undertaker shall not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of CRT.

(2) The undertaker shall not exercise any power conferred by this Order to discharge water into the waterway under article 14 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of CRT, save as to surface water discharge which will not require the consent of CRT.

(3) The undertaker shall not exercise the powers conferred article 15 (authority to survey and investigate land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of CRT.

(4) The undertaker shall not exercise the powers conferred by sections 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 3 to this Order (streets to be stopped up), so as to divert any right of access to the waterway but such right of access may be diverted with the consent of CRT.

(5) The consent of CRT pursuant to sub-paragraphs (1) to (4) shall not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 14 (discharge of water) may include conditions—

- (a) specifying the maximum volume of water which may be discharged in any period; and
- (b) authorising CRT on giving reasonable notice (except in an emergency, when CRT may require immediate suspension) to the undertaker to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of CRT.

To the extent that any discharge of water by the undertaker is into the waterway.

Vehicles, plant and machinery

3.—(1) The undertaker shall not use any land or property of CRT forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer whose consent shall not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to CRT, its officers and agents and all other persons lawfully on such land or property, but nothing in this paragraph shall apply in relation to anything done in accordance with any approval given by CRT under paragraph 6.

Fencing

4. Where so required by the engineer the undertaker shall to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

Survey of waterway

5.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker shall bear the reasonable cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by CRT and the undertaker, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker shall—

- (a) on being given reasonable notice (save in case of emergency, when immediate access shall be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey shall include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this part of this Schedule shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey shall be provided to both CRT and the undertaker at no cost to CRT.

Approval of plans, protective works etc.

6.—(1) The undertaker shall before commencing construction of any specified work within the boundaries of the specified works including any temporary works supply to CRT proper and sufficient plans of that work and such further particulars available to it as CRT may within 14 days of the submission of the plans reasonably require for the approval of the engineer and shall not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 35 days after such plans (including any other particulars reasonably required under sub-paragraph [1]) have been supplied to CRT the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify on land held or controlled by CRT or the undertaker and subject to such works being authorised by the order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment; and such protective works shall be constructed by the undertaker or by CRT at the undertaker’s request with all reasonable dispatch and the undertaker shall not commence the construction of a specified work until the engineer has notified the undertaker that the

protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(4) The undertaker shall pay to CRT a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving shall be set off against any sum payable by the undertaker to CRT under this paragraph.

(5) In the event that the undertaker fails to complete the construction of, or part of, the specified works CRT may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this subsection shall state the works that are to be completed by the undertaker and lay out a timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, CRT may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker shall reimburse CRT all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

7. Without prejudice to its obligations under the foregoing provisions of this part of this Schedule the undertaker shall consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by CRT on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of those works;

and shall have regard to such views as may be expressed by CRT to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on CRT by section 22 (General environmental and recreational duties) of the British Waterways Act 1995 and to the interest of CRT in preserving and enhancing the environment of its waterways.

Notice of works

8. The undertaker shall give to the engineer 30 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, CRT may where appropriate arrange for the publication of notices bringing those works to the attention of users of CRT's network.

Lighting

9. The undertaker shall provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Construction of specified works

10.—(1) Any specified or protective works shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any requirements made under paragraph 6(3) and paragraph 7;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;

- (d) in such manner as to cause as little inconvenience as is reasonably practicable to CRT, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by CRT.

(2) Nothing in this Order shall authorise the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which CRT is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker shall restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and CRT.

Prevention of pollution

11. The undertaker shall not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work: provision of information

12.—(1) The undertaker on being given reasonable notice shall—

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

(2) CRT on being given reasonable notice shall—

- (a) at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by CRT under this part of this Schedule during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker shall reimburse CRT's reasonable costs in relation to the supply of such information.

Alterations to the waterway

13.—(1) If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and CRT gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to CRT the reasonable costs 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 may be expected to be reasonably incurred by CRT in maintaining, working and, when necessary, renewing any such alterations or additions.

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

Maintenance of works

14. If at any time after the completion of a specified work or a protective work, not being a work vested in CRT, CRT gives notice to the undertaker informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of CRT's fees, etc.

15.—(1) The undertaker shall repay to CRT in accordance with CRT's Code of Practice for Works affecting the Canal & River Trust (as amended from time to time) all fees, costs, charges and expenses reasonably incurred by CRT—

- (a) in constructing any protective works under the provisions of paragraph 6(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of CRT's network.

Costs of alterations, etc.

16. Any additional expenses which CRT may reasonable incur in altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaired by the undertaker to CRT.

Making good of detriment; compensation and indemnity, etc.

17.—(1) If any detriment shall be caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by CRT) shall make good such detriment and shall pay to CRT all reasonable expenses to which CRT may be put, and compensation for any loss which CRT may sustain, in making good or otherwise by reason of the detriment.

(2) The undertaker shall be responsible for and make good to CRT all costs, charges, damages, expenses and losses not otherwise provided for in this part of this Schedule which may be occasioned to and reasonably incurred by CRT—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work; and subject to sub-paragraph (4) the undertaker shall effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b) (provided that, save as expressly set out in this paragraph, CRT shall not be entitled to recover any consequential losses from the undertaker).

(3) The fact that any act or thing may have been done by CRT 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 or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of CRT or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or wilful default of CRT, its officers, servants, contractors or agents.

(5) CRT shall give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(6) The aggregate cap of the undertaker's gross liability for consequential losses shall be limited to £10,000,000 (ten million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

Arbitration

18. Any difference arising between the undertaker and CRT under this part of this Schedule (other than a difference as to the meaning or construction of this part of this Schedule) shall be referred to and settled by arbitration in accordance with article 36 (arbitration) of this Order.

Capitalised sums

19. Any capitalised sum which is required to be paid under this schedule shall be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

EXPLANATORY NOTES

(This note is not part of the Order)

This Order grants development consent for, and authorises Knottingley Power Limited to construct, operate and maintain a combined cycle gas turbine power plant located in east Knottingley, Yorkshire, together with associated development comprising the diversion of the existing 400kV overhead line to connect the power plant to the grid gas pipeline and cooling water pipelines together with all necessary and associated development. For the purposes of the development Knottingley Power Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land to use land, as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 34 (certification of plans, etc) of this Order may be inspected free of charge at Knottingley Library at Knottingley Sports Centre, Hill Top, Pontefract Road, Knottingley, WF11 8EE, and at the offices of Wakefield Council at Wakefield One, Burton Street, Wakefield, WF1 2EB, North Yorkshire County Council at County Hall, Northallerton, North Yorkshire, DL7 8AD, and Selby District Council at Access Selby, 8-10 Market Cross, Selby, YO8 4JS.