



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

**EGGBOROUGH COMBINED CYCLE GAS TURBINE POWER
STATION**

**Examining Authority's Report of Findings and Conclusions and
Recommendation to the Secretary of State for Business, Energy
and Industrial Strategy**

Examining Authority

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27 June 2018

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ERRATA SHEET – EGGBOROUGH CCGT - Ref. EN010081

Examining authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 27 March 2018

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

| Page No. | Paragraph | Error | Correction |
|-----------------|------------------------------|--|--|
| 7 | 1.2.1 | Conservation of Habitats and Species Regulations 2010 | Conservation of Habitats and Species Regulations 2017 |
| 23 | 3.3.9 | ... has been reached and signed between with the Applicant. | ... has been reached and signed with the Applicant. |
| 26 | 3.5.11 | ... and environmental permit (EP) would... | ...an environmental permit (EP) would... |
| 29 | 3.5.28 | ... also requires new large combustion plant to be CCR. | ... also requires new large combustion plant to be assessed for suitability for CCR. |
| 47 | 4.7.6 | Predications are then subsequently made... | Predictions are then subsequently made... |
| 61 | 4.11.7 | ...that CCR is... | ...that CHP is... |
| 93 | 5.3.23 | an dose-responses | dose-responses |
| 93 | 5.3.27 | ... the effect of the Proposed Development on European sites would are likely to be significant. | ... the effect of the Proposed Development on European sites would not likely to be significant. |
| 95 | 5.3.34 | ... found on Thorne Moor SAC [REP7-007], and thus accords with the . | ... found on Thorne Moor SAC [REP7-007]. |
| 101 | 5.4.36 | I conclude that significant effects on the River Derwent SAC are not likely to be significant. | I conclude that effects on the River Derwent SAC are not likely to be significant. |
| 109 | 6.2.8 | Hall garths | Hall Garths |
| 118 | 7.4.10 | ... identified as Plot 65 on the Land Plan [REP6-006]. CA of land is not sought. | ...identified as Plot 65 on the Land Plan [REP6-006]. |
| 118 | 7.4.11 | Protected Provisions | Protective Provisions |
| 127 | 7.7.5 | The case for CA powers required | The case for CA powers is required |
| 136 | 8.5.36 | ...of the draft DCO [REP5-002] but... | ...of the draft DCO [REP5-002] but... |
| 48, 107, 110 | 4.7.11, 5.7.5, 5.7.7, 6.2.12 | Thorn Moor | Thorne Moor |

Examining Authority's findings and conclusions and recommendation in respect of the Eggborough Combined Cycle Gas Turbine Power Station

File Ref EN010081

The application was made under s37 of the Planning Act 2008 (as amended) and was received in full by the Planning Inspectorate on 30 May 2017.

The Applicant is Eggborough Power Limited.

The application was accepted for examination on 27 June 2017. The Examination of the application began on 27 September 2017 and was completed on 27 March 2018.

The proposed development comprises the construction and operation of a combined cycle gas generating station (CCGT) capable of generating up to 2500 megawatts (MW) of electricity, together with a peaking plant and a black start facility capable of generating up to 299 MW; a carbon capture storage facility; cooling water and discharge infrastructure; gas pipeline infrastructure and above-ground installation (AGI) substation; surface water drainage infrastructure; construction laydown areas; and landscaping at Eggborough Power Station, Goole, North Yorkshire DN14 0BS. Works to the existing National Grid electricity sub-station which lies adjacent to the existing coal-fired station is also proposed to allow the electrical connection from the proposed CCGT.

The proposed CCGT power station would be constructed on land to the south of the existing coal-fired power station; land which is currently used as a coal storage yard for the existing station. The existing coal-fired power station would be decommissioned and be demolished.

The proposed development requires a connection to the gas transmission system. This would be facilitated through a 4.7km gas pipeline which would connect to the National Grid Feeder line lying north east of the power station site. At the connection point, an AGI substation for both the Applicant and National Grid Gas (NGG) would need to be constructed. It is also proposed to investigate and if necessary replace the existing cooling water intake and discharge pipelines outside of the site. Because of this, the Applicant seeks compulsory acquisition powers to acquire land, new rights over land and to extinguish existing rights over land outside of the power station site to facilitate these works.

Summary of Recommendation:

The Examining Authority recommends to the Secretary of State that the Order be made in the form attached.

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1 INTRODUCTION

1.1 BACKGROUND

1.1.1 The application for development consent for the Eggborough combined cycle gas turbine (CCGT) power station (the proposed development) (Examination Library reference [APP-001 - APP-125]) was submitted by Eggborough Power Limited (the Applicant) to the Secretary of State (SoS) through the Planning Inspectorate (the Inspectorate) on 30 May 2017 under s31 of the Planning Act 2008 (PA2008), and accepted for Examination under s55 of the PA2008 on 27 June 2017 [PD-003].

1.1.2 The proposed development comprises:

- An electricity generating station located on land at the Eggborough Power Station site, fuelled by natural gas and with a gross output of up to 2500 megawatts (MW); a peaking and black start plant with a combined gross output of up to 299 MW; and cooling infrastructure;
- Temporary construction and laydown area involving the infilling of an existing on-site lagoon, and reserve space for carbon capture readiness;
- Works to the existing National Grid Electricity Transmission (NGET) sub-station including underground and overground electrical cables, replacement equipment and connections to busbars;
- Works to replace the existing cooling water intake and discharge infrastructure from the River Aire;
- Works to replace the existing groundwater and towns water supply connections;
- Installation of a high-pressure gas supply pipeline to link the proposed CCGT to the National Grid Gas (NGG) Feeder pipeline;
- Installation of an above-ground installation (AGI) for both the Applicant and National Grid Gas at the gas pipeline connection point
- Landscaping and biodiversity enhancements;
- Surface water drainage works from the site to Hensall Dyke utilising an existing connection; and
- Vehicular, pedestrian and cycle access works.

1.1.3 The location of the proposed development is shown in the accompanying Environmental Statement (ES) [APP-037 to APP-124]; the Works Plans [APP-015] and updated Land Plans [REP6-006].

1.1.4 The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the SoS for what is now the Ministry of Housing Communities and Local Government. The SoS accepted the application for Examination in accordance with s55 of the PA2008 [PD-003].

1.1.5 As the proposed development comprises an onshore generating station with a capacity in excess of 50 MW, the proposed development

falls within s15 of the PA2008, and so requires development consent in accordance with s31 of the PA2008. The proposed development meets the definition of an NSIP set out in s14(1)(a) and s15(2) of the PA2008.

- 1.1.6 On 17 August 2016, the Applicant submitted to the Inspectorate under Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the 2009 EIA Regulations) a request for an opinion as to the information to be provided in the ES (a Scoping Opinion). The Applicant also notified the SoS under Regulation 6(1)(b) of the 2009 EIA Regulations that it proposed to provide an ES in respect of the Project.
- 1.1.7 On 28 September 2016 the Inspectorate adopted a scoping opinion. In accordance with Regulation 4(2)(a) of the 2009 EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES [APP-037 - APP-124].
- 1.1.8 The 2009 EIA Regulations were revoked and replaced by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 shortly after the submission of the application. I discuss the implications and transitional arrangements within Chapter 3 of this Report.
- 1.1.9 The potential effects on the environment have been assessed and set out in the ES. The ES includes details of measures proposed to mitigate likely significant effects identified by the Applicant. Information provided by the Applicant throughout the Examination in response to my questions and matters raised by Interested Parties (IPs) are addressed in this report.
- 1.1.10 I am satisfied that the ES meets the requirements of Schedule 4 of the 2009 EIA regulations and, together with the environmental information provided during the Examination, forms an adequate basis for decision making.
- 1.1.11 The application was accepted for examination on 27 June 2017 [PD-003]. Nineteen Relevant Representations (RRs) were received by the Inspectorate [RR-001 to RR-019].
- 1.1.12 On 11 August 2017, I was appointed by the SoS as the Examining Authority (ExA) for the application under s78 and s79 of the PA2008 [PD-004].
- 1.1.13 On 14 August 2017, the Applicant provided the Inspectorate with certificates confirming that s56 and s59 of the PA2008 and Regulation 13 of the EIA Regulations had been complied with [OD-002 - OD-004].

1.2 STRUCTURE OF REPORT

- 1.2.1 The report is structured as follows:

- In this chapter, I introduce the application and summarise the Examination and procedural decisions;
- In Chapter 2, I set out the main features of the proposed development;
- In Chapter 3, I summarise the legal and policy context applicable to consideration of the application;
- In Chapter 4, I set out the principal issues at the outset of the Examination, I discuss under topic headings the relevant and important issues that were examined and records my conclusions;
- In Chapter 5, I provide my findings and conclusions in relation to the Conservation of Habitats and Species Regulations 2010 (Habitats Regulations) (HRA);
- In Chapter 6, I conclude the case for development consent;
- In Chapter 7, I examine and conclude the case for compulsory acquisition, temporary possession and related matters;
- In Chapter 8, I consider the contentious and non-contentious changes made to the draft Development Consent Order (DCO) during the Examination and explain the Recommended DCO; and
- In Chapter 9, I present a summary of conclusions and the main recommendation to the SoS.

1.2.2 The following appendices are included within this Report:

- Appendix A details the main events during the Examination and the main procedural decisions taken;
- Appendix B contains the Examination Library which lists the documents submitted by the Applicant and others, and identifies references used in this Report;
- Appendix C lists abbreviations used in this Report; and
- Appendix D contains the DCO which I recommend to the SoS should they determine that the Order be made.

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

1.3 THE EXAMINATION AND PROCEDURAL DECISIONS

1.3.1 The Examination began on 27 September 2017 and concluded on 27 March 2018.

1.3.2 On 30 August 2017, I wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) inviting them to the Preliminary Meeting (PM) [PD-005], outlining:

- The arrangements and agenda for the PM;
- Notification of the Hearings;
- My initial assessment of the principal issues;

- The draft Examination timetable;
- The availability of RRs and application documents; and
- My procedural decision to request a number of Statements of Common Ground (SoCG) from between the Applicant and other parties.

1.3.3 The PM took place on Wednesday 27 September 2017 at Knottingley Town Hall, Hilltop, Headlands Lane, Knottingley WF11 9DG (Knottingley Town Hall). An audio recording [EV-002] and a note of the meeting [EV-001] were published on the Eggborough CCGT section of the National Infrastructure pages of the Planning Inspectorate's website ('the Inspectorate website').

1.3.4 On 4 October 2017, I wrote to all IPs, Statutory Parties and Other Persons under Rule 8 of the EPR formalising the Examination timetable, and setting out further procedural decisions I had made in respect to the Examination timetable, and notifications on my forthcoming Written Questions (WQs), Hearings, SoCGs and the Local Impact Report (LIR) [PD-006 and PD-007].

1.4 HEARINGS AND SITE INSPECTIONS

1.4.1 I held a number of hearings under s91, s92 and s93 of PA2008 to ensure the thorough examination of the issues raised by the application. All were held at Knottingley Town Hall. They were as follows:

- An Issue Specific Hearing (ISH) on Environmental Matters on Wednesday 22 November 2017;
- An ISH on the draft DCO held on the morning of Thursday 23 November 2017; and
- A Compulsory Acquisition Hearing (CAH), following a request made at Deadline (DL) 1 by NGG and NGET [REP1-013] held on the afternoon of Thursday 23 November 2017.

1.4.2 My Rule 6 letter [PD-005] made provision for Open Floor Hearings (OFH) to be held in the afternoon, and if necessary the evening of Monday 20 November 2017. However, no requests were made by any party for this event to be held. I therefore made the decision not to hold any OFHs.

1.4.3 I identified the following principal matters to be discussed at the ISH on Environmental Matters:

- The robustness of the Habitats Regulations Assessment (HRA);
- Archaeology and Heritage;
- Biodiversity and Ecology;
- Noise and Vibration; and
- The future of the existing coal-fired power station.

1.4.4 I identified a number of principal matters to be discussed at the CAH in respect to the land sought for compulsory acquisition (CA) of land and new rights over land, and protected provisions on statutory and

non-statutory parties. All Affected Persons by CA or temporary possession (TP) proposals were provided with an opportunity to be heard.

1.4.5 I undertook an unaccompanied site inspection (USI) of the surrounding area on Tuesday 26 September 2017. I published a note of this visit on 4 October 2017 [EV-003].

1.4.6 In accordance with the Examination Timetable as set out in my Rule 8 of the EPR letter [PD-006], I undertook my accompanied site inspection (ASI) of the proposed development area, the remainder of the Eggborough power station site and the surrounding area on Tuesday 21 November 2017.

1.5 WRITTEN QUESTIONS

1.5.1 Two rounds of written questions were posed. My first WQs were published on 4 October 2017 [PD-007]. I posed Further Written Questions (FWQs) on 14 December 2017 [PD-011].

1.5.2 Following the Applicant's written summary of its oral case put at the ISH on Environmental Matters submitted at DL 3 [REP3-010] in to HRA matters, I made a procedural decision under Rule 8(3) of the EPR [PD-010] to amend the timetable to include provision for a need to produce a Report on the Implications for European sites (RIES). I made a further procedural decision under Rule 17 of the EPR to request additional information, and posed questions solely concerned with HRA. I felt it necessary to do so in advance of my FWQ so as to allow additional time for the Applicant to respond on HRA matters. Both the responses to my R17 and FWQ were set for DL 5, 9 January 2018.

1.6 HABITATS REGULATIONS ASSESSMENT

1.6.1 Under Regulation 5(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP), where required, an application must be accompanied with sufficient information to enable the relevant SoS to meet their statutory duties as the competent authority under the HRA. Following assessment and advice, the Applicant took the view that the Proposed Development did not give rise to any likely significant effects (LSE) on European sites, and no appropriate assessment (AA) was necessary by the decision maker.

1.6.2 As I will set out in much further detail under Chapter 5 of this Report, I questioned the Applicant's approach to HRA matters at the ISH on Environmental Matters [EV-007 - EV010] specifically on its threshold calculations and whether European sites could be deemed to have no LSE where the critical mass of those sites were already exceeded.

1.6.3 The Applicant responded at DL 3 [REP3-010] updating such matrices for one particular European site. Following this response, I published specific questions on HRA matters under R17 on 5 December 2017

[PD-010], and responses to these and the additional integrity matrices data was submitted by the Applicant at DL 5 [REP5-006].

1.6.4 I examined matters in relation to potential effects on European sites with a potential bearing on HRA. Towards the end of the Examination I produced a RIES to summarise the available environmental information [PD-015]. This compiled, documented and signposted information provided within the application and subsequent information submitted throughout the Examination by both the Applicant and IPs.

1.6.5 The RIES was issued on 25 January 2018 to all IPs. Comments on the RIES were requested for DL 7, 14 February 2018, as set out in the revised Examination Timetable [PD-010]. Reasoning and conclusions drawn from the RIES and all relevant related evidence are set out in Chapter 5.

1.7 LOCAL IMPACT REPORT

1.7.1 North Yorkshire County Council (NYCC) and Selby District Council (SDC) are the relevant local authorities for the area for the proposed development. Both authorities submitted a joint LIR at DL 2 [REP2-039].

1.7.2 S60(3) of PA2008 defines an LIR as a "report in writing giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area)". Matters raised in the LIR are discussed in this Report and have been fully taken into account.

1.8 STATEMENTS OF COMMON GROUND

1.8.1 Signed SoCGs between the Applicant and the following have been received with no areas of disagreement between the parties:

- Sport England submitted with the application [APP-125]
- Highways England submitted at DL 1 [REP1-002];
- Historic England (HE) submitted at DL 1 [REP1-004];
- Natural England (NE) submitted at DL 1 [REP1-007];
- The Civil Aviation Authority (CAA) at DL 1 [REP1-008];
- The Coal Authority submitted at DL 2 [REP2-012];
- The Environment Agency (EA) submitted at DL 3 [REP3-008];
- The Marine Management Organisation (MMO) submitted at DL 8 [REP8-007];
- Yorkshire Wildlife Trust (YWT) submitted at DL 8 [REP8-008];
- NYCC and SDC submitted at DL 9 [REP9-005]; and
- National Grid Gas (NGG) and National Grid Electricity Transmission (NGET) submitted at DL 9 [REP9-006].

1.8.2 The SoCG between the Applicant and the Canal & River Trust (CRT) [REP9-015] is unsigned. However, both the Applicant [REP9-001] and CRT [REP9-016] confirm that it is the agreed position between the parties; CRT expressing that the process of signing could not be achieved before the close of the Examination. The SoCG [REP9-015]

acknowledges that areas of disagreement exist between the parties on the matters regarding Schedule 12, Part 3 of the Development Consent Order in respect to protected provisions. I discuss this in further detail in Chapter 8 of this Report.

1.8.3 The Applicant informed me at the PM [EV-002] that the Health and Safety Executive (HSE) had declined to enter into a SoCG and as such one would not be provided.

1.8.4 The completed SoCGs have been fully taken into account throughout this Report.

1.9 OTHER CONSENTS REQUIRED

1.9.1 In addition to the consents required under PA2008, the Applicant will require other consents to construct operate and maintain the proposed development. As set out by the Applicant in section 24 of the Application Form [APP-001] and contained within the submitted document entitled the details of 'Other Consents and Licences' [APP-029] and updated at DL 2 [REP2-010], the following consents, licences and permits are expected to be required:

- Electricity Generation Licence from the Gas and Electricity Markets Authority under s6 of the Electricity Act 1989 for the generation of electricity;
- Greenhouse Gas Permit from the EA under Greenhouse Gas Emissions Trading Scheme Regulations 2012 for the emissions of carbon dioxide;
- Environmental Permit from the EA under The Environmental Permitting Regulations 2010 for the operation of the power station; for works in, under, over or within the bank of a tidal main river; for discharge of uncontaminated surface water from the construction site if required;
- Water Abstraction Licence from the EA under s24 and s25 of the Water Resources Act 1991 for retention of consent to abstract water for the River Ouse;
- Hazardous Substances Consent from SDC under s4 and s6 of the Planning (Hazardous Substances) Act 1990 and Schedule 1 of the Planning (Hazardous Substances) Regulations 2015 only if Selective Catalytic Reduction (SCR) is deemed a Best Available Techniques (BAT) for controlling emissions from the proposed CCGT;
- Licence under the Control of Major Accident Hazards Regulations 2015 from HSE may be necessary for the storage of certain hazardous substances if SCR is deemed BAT;
- Bilateral Connection Agreement from NGET to connect to the National Grid substation;
- Marine Licence from the MMO under s71 of the Marine and Coastal Access Act 2009 for cooling water connections and gas connections within the tidal section of the River Aire;

- Land Drainage Consent from the Shire Group Internal Drainage Board (IDB) under s23 and s66 of the Land Drainage Act 1991 for crossing or working within minor water courses;
- Permit from CRT for site access and surface water discharge affecting CRT operations;
- Planning and Advanced Reservation of Capacity Agreement from NGG for the reservation of gas from the National Transmission System;
- Application to Offer for Connection to National Transmission System to NGG;
- Crown Estates Consent (TCE) under s135 of the PA2008 for cooling water and gas connection works at the River Aire;
- European Protected Species Licence from NE under the Conservation of Habitats and Species Regulations 2010 required for any components of the proposed development that affect protected species if found;
- Permit to Move and Introduce Fish from the EA under the Introduction of Fish (England and River Esk Catchment Area) Regulations 2015 required for the infilling of the on-site lagoon in connection with the proposed construction laydown area;
- Pipeline Safety Notification to the HSE under the Pipeline Safety Regulations 1996 to inform of a proposed gas connection;
- Gas Safety Case to HSE under the Gas Safety (Management) Regulations 1996, for approval prior to gas being conveyed;
- Notification of Construction Works to the HSE under the Construction (Design and Management) Regulations 1994;
- Construction Noise Consent from SDC under s61 of the Control of Pollution Act 1974 may be required for certain activities during construction of the proposed development;
- Permit for Transport of Abnormal Loads from the Vehicle Certification Agency under the Road Vehicles (Authorisation of Special Types)(General) Order 2003 or the Road Traffic Act 1988;
- Fire Notice from local fire and rescue authority, enforced by the HSE, under the Regulatory Reform (Fire Safety) Order 2005 in respect of work on construction sites; and
- Building Regulations Approval from SDC under the Building Regulations 2000.

1.10 REQUESTS TO BECOME OR WITHDRAW FROM BEING AN INTERESTED PARTY (S102A, S102B AND S102ZA).

- 1.10.1 On 28 September 2017, a request was made by Mr Tams, a local resident to become an IP. I responded on 3 October 2017 [PD-008] that, having regard to the circumstances set out in s102A of the PA2008, I was unable to conclude on such matters without additional information. Mr Tams provided that additional information on 6 October 2017, but I concluded that he did not meet the tests in the PA2008 and so could not be an IP, and I informed him of my decision in a letter dated 9 October 2017 [PD-008a].
- 1.10.2 However, the following day, Mr Tams informed me that he was in fact the chairperson of Hensall Parish Council (HPC), and that any

representations he wished to make would be on its behalf. Subsequently, a further request for Mr Tams to become an IP on behalf of HPC was made on 10 October 2017 [REP1-011]. I re-evaluated the request and under the requirements of s102A of the PA2008, I afforded Mr Tams IP status as its representative. Mr Tams attended the ASI [EV-006] and attended both ISHs and the CAH, taking a particularly active part at the ISH on Environmental Matters [EV-008 - EV-010].

- 1.10.3 NGG/NGET submitted a letter shortly before the close of the Examination [AS-006] stating that they wished to withdraw their RR of 3 August 2017. However, I was not able to determine from this letter whether this constituted a withdrawal as an IP, or simply withdrawing the matters which they raised. To err on the side of caution, I shall continue to treat NGG/NGET as an IP in this Report.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.1 THE APPLICATION AS MADE

2.1.1 The Applicant submitted an application for the construction and operation of a combined cycle gas turbine (CCGT) generating station with an electrical output of up to 2500 megawatts (MW) [APP-001 - APP-125]. The Applicant is Eggborough Power Limited. The application is sited on land known as Eggborough Power Station.

2.1.2 The proposed development is described in Schedule 1 "Authorised Development" of the Recommended Development Consent Order (Recommended DCO) attached to this Report at Appendix D; Chapter 4 of the ES [APP-042] and the Works Plans [APP-015]. The works are:

The Proposed CCGT

2.1.3 The Proposed Power Plant (Work No 1) as identified in the ES [APP-042] and the Recommended DCO would comprise an electricity generating station with a gross output capacity of up to 2500 MW located on the main coal stockyard area of the existing coal-fired power station. The proposed CCGT would comprise:

- A plant of up to three CCGT units (Work No 1A), fuelled by natural gas, including turbine hall and heat recovery steam generator buildings, emissions stacks and administration/control buildings;
- A peaking plant and black start plant (Work No 1B) fuelled by natural gas with a combined gross output capacity of up to 299 MW, comprising a peaking plant of up to two open cycle gas turbine units or up to ten reciprocating engines, and a black start plant consisting of one open cycle gas turbine unit or up to three reciprocating gas engines, including turbine buildings, diesel generators and storage tanks for black start start-up prior to gas-firing and emissions stacks;
- CCGT cooling infrastructure (Work No 1C), comprising up to three banks of cooling towers, cooling water pump house buildings and cooling water dosing plant buildings; and ancillary buildings, enclosures, plant, equipment and infrastructure connections and works.

2.1.4 The ES [APP-042] states that the purpose of the proposed peaking plant is intended to be a fast response solution to be fired up at short notice, and respond to power surges to 'top-up' the generating capacity of the generating station during periods of increased need by the National Grid. It is intended to be dormant for much of its time; the ES [APP-046] stating it will operate less than 1500 hours per year.

2.1.5 The purpose of the black start facility is to start the proposed CCGT units without any assistance from the National Grid in the event of a total or partial shut-down of the UK transmission system. This is also

intended to be infrequently used; the ES [APP-046] stating that it would run as a worst-case scenario for less than 50 hours per year.

- 2.1.6 The final design of the structures would be determined at a later date. But key to the final design is whether the power station would operate as a single-shaft or multi-shaft parameter.
- 2.1.7 A single-shaft configuration consists of only one gas turbine, steam turbine, generator and heat recovery steam generator (HRSG) per CCGT unit, with the gas turbine and steam turbine coupled to the same generator.
- 2.1.8 The multi-shaft configuration includes two gas turbines and generators, but steam from both HRSGs is fed to a separate single steam turbine with its own generator. For the CCGT, up to three single shaft trains would be installed.
- 2.1.9 The ES [APP-042] states that the key environmental difference between the two configurations is their visual appearance, as a number of buildings are combined for the multi-shaft arrangement. There would be differing numbers of generators and transformers resulting in a slightly smaller footprint for the multi-shaft configuration.
- 2.1.10 Ancillary plant and equipment is also required within the Proposed Power Plant Site, including air intake filters, transformers, a deaerator and feed water pump buildings, nitrogen oxide emissions control equipment and chemical storage, chemical sampling/ dosing plant, demineralised water treatment plant and storage tanks, and continuous emissions monitoring systems equipment.
- 2.1.11 The stack height for the proposed CCGT, irrespective of the final design, would be 90m tall when measured from the ground level, and 99.9m above ordnance datum (AOD).

Construction Laydown Area and Carbon Capture Readiness

- 2.1.12 The area to the east of the existing coal-fired power station, which currently comprises a hardstanding area and existing coal-fired power station back-up cooling water lagoon, would comprise the proposed construction laydown area during the construction phase, including contractor compounds and facilities (Work No 2A). The infilling of the lagoon would be required.
- 2.1.13 This area would also be set aside for the proposed Carbon Capture Readiness (CCR) Land (Work No. 2B) should such technology become viable in the future. It is proposed that this reserve land is provided on part of the area to be used for temporary construction and laydown.

Electricity Connection

- 2.1.14 Electrical connection works would be required to the existing National Grid Electricity Transmission (NGET) infrastructure, which is positioned

immediately adjacent to the existing coal-fired power station (Work No. 3). This would comprise up to 400 kilovolt (kV) underground electrical cables to and from the existing substation, and works within the substation to include underground and overground electrical cables, connection to busbars and to upgrade or replace existing equipment.

Cooling Water Connections

- 2.1.15 The Proposed Development would require the inspection and replacement of the existing cooling water infrastructure including realignment of the route where it enters the power station site (Work No 4). The works would comprise the supply and discharge pipelines and intake and outfall cooling water connection works, structures within the River Aire, buildings, enclosures, and underground electrical supply cables, transformers and control systems cables.

Borehole and Towns Water Connections

- 2.1.16 The Proposed Development would require connections to the existing borehole and towns water supply connection works, comprising works to the existing groundwater boreholes and pipelines, existing towns water pipelines, replacement and new pipelines, plant, buildings, enclosures and structures, and underground electrical supply cables, transformers and control systems cables (Work No 5).
- 2.1.17 The Applicant confirmed [REP3-010], following my questioning at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV-010], that the need for borehole water would be for boiler-feed water use, which is of a higher purity than river water and is considerably less likely to cause malfunctioning of the equipment.

Gas Pipeline Connections

- 2.1.18 The Proposed Development would require a gas supply pipeline connection works for the transport of natural gas. This would comprise an underground high pressure steel pipeline of up to 1000 millimetres in diameter and approximately 4.6km in length, including cathodic protection posts, marker posts and underground electrical supply cables, transformers and control systems cables (Work No 6). The connections would be from the proposed CCGT site under the River Aire to the National Grid Gas (NGG) Feeder pipeline located west of Burn Village.

Above-Ground Installation

- 2.1.19 The Proposed Development would require an Above-Ground Installation (AGI) substation west of Burn Village, connecting the gas supply pipeline (Work No 7) to NGG's Feeder pipeline. The works would generate a need for NGG's apparatus and a compound for the Applicant's apparatus.

Landscaping

- 2.1.20 Landscaping works are proposed (Work No 8). These would comprise management and enhancement of the existing mature tree and shrub planting along the northern and eastern sides of Wand Lane, and to the eastern boundary of the existing coal-fired power station site, including that on the embankment around the eastern, southern and western boundaries of the main coal stockyard.

Surface Water Drainage

- 2.1.21 The Proposed Development would require the reinstatement and new works for a surface water drainage connection works to Hensall Dyke located to the south-east of the main coal stockyard, comprising works to install or upgrade drainage pipes and works to Hensall Dyke (Work No 9).

Access and Highways

- 2.1.22 The Proposed Development would require alterations to or replacement of the existing private rail line serving the existing coal-fired power station site, including new rail lines, installation of replacement crossover points and ancillary equipment and vehicular and pedestrian access and facilities associated with the construction of the proposed CCGT (Work No 10).

Associated Development

- 2.1.23 S115 of the Planning Act 2008 (PA2008) states that development consent may be granted for a) development for which development consent is required or b) associated development. The Applicant states in the Explanatory Memorandum [APP-006] that all of Works except Work No 2 (the Proposed Construction Laydown Area) and Work No 10 (the Proposed Rail Works) would fall within s115(a) of the PA2008.
- 2.1.24 The Associated Works for the purposes of s115(b) of the PA2008 comprise Work No 2 (The Proposed Construction Laydown Area) and Work No 10 (The Proposed Rail Works). The Applicant states [APP-006] that the Associated Works for Work No 2 and Work No 10 have been assessed against the document entitled "*DCLG 'Guidance on associated development applications for major infrastructure projects'*" (April 2013) and that such works are clearly capable of being granted development consent by the SoS pursuant to s115 of the PA2008. This is because such works are directly associated with, subordinate to, and proportionate in nature and scale to the NSIP; and is typically part of gas -fired stations and are analogous to types of associated development listed in the Guidance.
- 2.1.25 The application as originally submitted was accompanied by:
- Application forms [APP-001, APP-003 and APP-004];

- The DCO, Explanatory Memorandum and Model Provisions [APP-005 - APP-007];
- Book of Reference [BoR], Statement of Reasons and Funding Statement [APP-008 - APP-011];
- Location Plan [APP-012];
- Land Plans [APP-013];
- Crown Land Plan [APP-014];
- Works Plans [APP-015];
- Access, PRoWs, Electrical, Water, Drainage and Gas Connection Plans and AGI [APP-016 - APP-023];
- Deemed Marine Licence Coordinates Plan [APP-025];
- Reports and statements including consultations; connections; planning and design and access statements; combined heat and power and CCR and lighting [APP-026 - APP-034] and [APP-036];
- Indicative Landscape and Biodiversity Strategy [APP-035];
- The Environmental Statement and Appendices [APP-037 - APP-124]; and
- The Application Guide [APP-002]

2.2 THE APPLICATION AT THE CLOSE OF THE EXAMINATION

2.2.1 A number of statements and drawings were updated following the issuances of my written questions (WQs) [PD-007] and further written questions (FWQs) [PD-011], my letter under R17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) [PD-010], and from discussions between the Applicant and other parties. In examining these changes, I am satisfied that the application was not significantly altered or amended during the Examination.

2.2.2 The changes to documents and drawings were as follows:

- The DCO, updated regularly throughout the Examination; the final version submitted at Deadline (DL) 9 [REP9-003];
- The BoR, updated firstly prior to the opening of the Examination [AS-001] and then at DL 2 [REP2-006] following discussion with the Canal & River Trust (CRT);
- Crown Land Plan, updated at DL 2 [REP2-008] following discussion with CRT;
- Other Consents and Licenses report updated at DL 2 [REP2-010];
- Table 20.3 of Chapter 20 of the ES updated at DL 2 [REP2-019];
- Figure 5.4 (Rev 2.0) of the ES updated at DL 2 [REP2-027];
- Figure 8.1 of the ES updated at DL 2 [REP2-016];
- Figure 16.36 of the ES updated at DL 2 [REP2-028 and REP2-029];
- Framework Construction and Environmental Management Plan (CEMP) Appendix to the ES [APP-099] updated at DL 2 [REP2-020];
- Tables 8.20A, 8.20B, 8.22A and 8.22B (Air Quality) to Appendix 8A of the ES [APP-100] updated at DL 2 [REP2-018 and REP2-023];
- Technical Note on Air Quality submitted as a new document at DL 2 [REP2-017];

- Technical Data on Historic River Aire Temperature submitted as new at DL 2 [REP2-021];
- Drawings 2095-059R3 submitted as new documents at DL 2 [REP2-025];
- Appendix 10H to the ES (HRA Matrices) [APP-111] updated at DL 5 [REP5-006] in response to my R17 request [PD-010];
- Land Plans, firstly updated at DL 2 [REP2-007] following my WOs [PD-007], and then again at DL 6 [REP6-006] at my request following the CAH held on Thursday 23 November 2017 [EV-012];
- Deemed Marine Licence Coordinates Plan updated at DL 7 [REP7-002] as discussed with the MMO;
- Indicative Landscape and Biodiversity Strategy, updated at DL 8 [REP8-006] to include further hedgerow and planting mitigation as discussed with NYCC/SDC; and
- The Application Guide, updated regularly throughout the Examination, final version submitted at DL 9 [REP9-014].

2.3 DESCRIPTION OF THE APPLICATION SITE AND SURROUNDING AREA

- 2.3.1 The application site is land which forms Eggborough Power Station, which is a 2000 MW coal-fired power station located in Eggborough, Goole, North Yorkshire DN14 0BS. The site is approximately 102.5 hectares. The site is bounded by the A19 to the west and the Eggborough Sports and Social Club; Wand Lane to the north; Hensall Dyke and Hazel Old Lane to the East and by open land and the Saint Gobian Glassworks to the south. The surrounding area is generally rural in character surrounded by arable fields punctuated by minor roads and small settlements. It lies entirely within the administrative area of North Yorkshire County Council (NYCC) and Selby District Council (SDC).
- 2.3.2 There are no nationally designated sites within 5km of the application site, and no Special Protection Areas or Ramsar sites within 10km radius. The River Derwent Special Area of Conservation is at 9.5km distance. Four Public Rights of Way (PRoW) partly intersect with the application site, principally with the routes of Works No 4 (Cooling Water infrastructure) and No 6 (Gas Connection infrastructure). Nearby watercourses include the River Aire, and the Ings and Tetherings Drain to the north, and the Hensall Dyke to the east and south east of the application site.
- 2.3.3 The site for the proposed power plant lies within Flood Zone 1. A very small section of the area set aside for Work No 2 (construction laydown area) was identified in the ES as being within Flood Zone 3. However during the Examination, the Environment Agency (EA) [REP2-032] agreed that it should not be considered to be Flood Zone 3 as the submitted topographic survey showed that ground levels are located above the modelled flood levels in this location. The route for Work No 6 (gas pipeline) delineates through Flood Zones 1, 2 and 3. The site for Work No 7 (AGI works) is located within Flood Zone 2.

2.3.4 There are no conservation areas within a 5km range of the application site. There are a number of Grade II and Grade II* listed buildings and structures nearby, and a Scheduled Monument in the form of a Roman fort to the north west of the site. The Applicant and NYCC/SDC agree in the signed SoCG [REP9-005] that both the existing coal-fired power station and the Hall Garths Medieval Moated site, which lies to the north close to the banks of the River Aire, are to be considered as non-designated heritage assets. The application site lies entirely within the River Aire Corridor Landscape Character Area.

2.4 RELEVANT PLANNING HISTORY

2.4.1 The existing coal-fired power station was granted consent on 18 October 1961 pursuant to section 2 of the Electric Lighting Act 1909 (as amended). Further planning permissions were granted in 1993 for the erection of an air separation plant and for the storage of liquid oxygen and additional plant equipment. In 2001, planning permission was also obtained for the installation of flue gas desulphurisation.

2.4.2 The site was further granted planning permission in 2012 for the construction and operation of new biomass handling and storage facilities to enable the expanded use of co-firing with biomass. The Applicant states that this proposal is not being pursued or implemented on viability grounds.

3 LEGAL AND POLICY CONTEXT

3.1 INTRODUCTION

- 3.1.1 This chapter sets out the relevant legal and policy context for the application which was taken into account and applied by the Examining Authority (ExA) in carrying out its examination and in making its findings and recommendations to the Secretary of State (SoS).
- 3.1.2 Chapter 7 of the Environmental Statement (ES) [APP-045] and the Applicant's Planning Statement [APP-030] set out the policy position in relation to the Proposed Development. The document includes an assessment of the project against the policy requirements of National Policy Statements (NPSs) EN-1, EN-3, EN-4 and EN-5. Individual chapters of the ES provide specific background relating to particular topics particularly, and if relevant, on international obligations.
- 3.1.3 The Local Impact Report (LIR) [REP2-039] of North Yorkshire County Council (NYCC) and Selby District Council (SDC) sets out the local authorities' position on applicable development plan policies and other local strategies.

3.2 PLANNING ACT 2008

- 3.2.1 As set out in the previous chapter of this Report, the application is for a combined cycle gas turbine (CCGT) generating station with an electrical output of up to 2500 Megawatts (MW). The application is a Nationally Significant Infrastructure Project (NSIP) as defined by s14(1)(a) and s15(2) of the Planning Act 2008 (PA2008) as it includes the construction or extension of a generating station with a gross electrical output in excess of 50MW.
- 3.2.2 S104 of PA2008 applies because the proposed development is "*in relation to an application for an order granting development consent [where] a national policy statement (NPS) has effect in relation to development of the description to which the application relates*".
- 3.2.3 S104(3) requires the SoS to decide the application in accordance with any relevant national policy statements that have effect in relation to this application, subject to certain exceptions as specified in subsections 104(4) to (8). Details of the specific NPSs that apply to this project are set out below.
- 3.2.4 S104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with PA2008. In summary, these are any relevant NPS, any LIR, any matters prescribed in relation to the development, and any other matters the SoS thinks are both important and relevant to the decision.

3.2.5 This Report sets out my findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of PA2008.

3.3 NATIONAL POLICY STATEMENTS

3.3.1 NPSs set out Government policy on different types of national infrastructure development. I consider that the NPSs relevant to this case are:

- EN-1: Overarching NPS for Energy;
- EN-2: Fossil Fuel and Electricity Generating Infrastructure;
- EN-4: Gas supply infrastructure and gas and oil pipelines; and
- EN-5: Electricity networks infrastructure

3.3.2 The NPSs were designated by the SoS for Energy and Climate Change on 19 July 2011. Responsibility for energy now rests with the Department for Business, Energy and Industrial Strategy (BEIS).

3.3.3 The NPSs form the primary policy context for this Examination. This report sets out my findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of PA2008. The purpose and broad content of these NPSs is summarised here. However, particular and subject specific consideration of policy arising from them is provided where necessary in the remainder of this report below, particularly in Chapter 4.

EN-1: Overarching National Policy Statement for Energy

3.3.4 NPS EN-1 sets out the Government's policy for delivery of major energy infrastructure projects. Paragraph 3.1.1 of EN-1 states that "*the UK needs all the types of energy infrastructure covered by the NPS's in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions*". Paragraph 3.1.2 of EN1 states that "*applications for development consent should be assessed 'on the basis that the Government has demonstrated that there is a need for those types of infrastructure'*". Paragraph 3.1.4 states that "*the SoS should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the PA2008*".

3.3.5 EN-1 sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. Generic impacts of particular relevance to this application include impacts on air quality and emissions, biodiversity, historic environment, landscape and visual, traffic and transport, environmental, social and economic benefits and adverse impacts at national, regional and local levels.

3.3.6 The NPS requires account to be taken of the potential benefits of the proposed development to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and the potential adverse impacts, including any long-term and cumulative adverse

impacts, as well as measures to avoid, reduce or compensate for any adverse impacts.

- 3.3.7 Paragraph 4.1.2 of EN-1 states that the SoS should start with a presumption in favour of granting consent to applications for energy NSIPs, and that the presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.

EN-2: Fossil Fuel and Electricity Generating Infrastructure

- 3.3.8 NPS EN-2 sets out the factors which influence the development of sites for fossil fuel power stations and the criteria which Government requires to be met by them. These include explanations of the Government's approach to subject matters raised by this application, including the selection of gas combustion technology, Combined Heat and Power (CHP), Carbon Capture Readiness (CCR), climate change adaptation and consideration of good design. In terms of the impacts of gas generating stations, EN-2 re-iterates 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.

EN-4: Gas supply infrastructure and gas and oil pipelines

- 3.3.9 NPS EN-4 sets out matters that bear on the consenting of the gas connection alignment for the proposed development, rather than the proposed development itself. The proposed development will require a gas supply and a connection to gas transmission infrastructure. The Recommended DCO contains powers that relate to the compulsory acquisition (CA) and temporary possession (TP) of land required for the gas connection. As confirmed by National Grid Gas [AS-006], consent through a private agreement has been reached and signed between with the Applicant.

EN-5: Electricity networks infrastructure

- 3.3.10 NPS EN-5 sets out matters that bear on the consenting of electricity network infrastructure, which can include above ground electricity lines that form part of the distribution system, with a nominal voltage expected to be 132 Kilovolts (KV) or above. The Proposed Development would require to be connected to the grid to export electricity, and would require some modification of the existing substation. As confirmed by National Grid Electricity Transmission [AS-006], consent through a private agreement has been reached and signed with the Applicant.

3.4 MARINE AND COASTAL ACCESS ACT 2009

- 3.4.1 The Marine and Coastal Access Act 2009 introduced the production of marine plans and designation of Marine Conservation Zones (MCZ) in the United Kingdom (UK) waters as well as establishing the Marine Management Organisation (MMO).

- 3.4.2 The UK Marine Policy Statement (MPS) was prepared and adopted for the purposes of s44 of the MCA and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas. Under the MCA the SoS for Environment, Food and Rural Affairs designated, on 21 November 2013, 27 MCZs around the English coast to form part of a network of Marine Protected Areas (MPA). Further designations are proposed.
- 3.4.3 The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It contributes to the achievement of sustainable development in the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf. It includes any area submerged by seawater at mean high water spring tide, as well as the tidal extent (at mean high water spring tide) of rivers, estuaries and creeks.
- 3.4.4 The MPS is the framework for marine planning systems within the UK. It provides the high level policy context, within which national and sub-national Marine Plans will be developed, implemented, monitored, amended and will ensure appropriate consistency in marine planning across the UK marine area. The MPS also sets the direction for marine licensing and other relevant authorisation systems.
- 3.4.5 Part of the Order Limits lie within the East Inshore Marine Plans area. The East Inshore Marine Plans was published in April 2014. Paragraph 19 confirms the area of coverage, which includes the tidal section of the River Aire. The proposed development requires works within the tidal section of the River Aire to construct Work No 6 (gas pipeline) and to inspect and if required construct discharge pipelines in connection with Work No 4 (cooling water) including the temporary installation of cofferdams.
- 3.4.6 Chapter 2 of the MPS outlines the vision for the UK marine area, and Chapter 3 sets out the policy objectives. Section 3.3 is pertinent because it deals specifically with energy production and infrastructure development. Paragraph 3.3.6 of the MPS states that the construction, operation and demolition of power stations may have impacts on the local marine environment and from abstraction and discharge of cooling water.
- 3.4.7 The signed SoCG between the Applicant and the MMO [REP8-007] agrees the policy context to which the application should be assessed against in this regard, and concludes that the proposed development would have no significant impact on the marine area.

3.5 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the

EIA Directive)

- 3.5.1 The EIA Directive defines the procedure by which information about the environmental effects of a project is collected and taken into account by the relevant decision-making body before consent is granted for a development. It applies to a wide range of public and private projects, which are defined in Annexes I and II.
- 3.5.2 The proposed development falls to be considered under the UK legislation related to 2011/92/EU: the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) as discussed further below.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

- 3.5.3 The current EIA legislation for NSIP cases is the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 EIA Regulations). They revoke the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the 2009 EIA Regulations) subject to transitional provisions in Regulation 37 of the 2017 EIA Regulations. The Applicant maintained that the transitional provisions applied to the application and hence had complied with the relevant provisions of the 2009 EIA Regulations in the pre-application period [APP-039].
- 3.5.4 The 2017 EIA Regulations came into force on 16 May 2017, thus two weeks before the application was made. Nevertheless, Regulation 37(2)(a)(ii) of the 2017 EIA Regulations states that the 2009 EIA Regulations will continue to apply to any application for an order granting development consent or subsequent consent where before the commencement of the 2017 Regulations, the Applicant had requested the SoS to adopt a scoping opinion defined by the 2009 EIA Regulations.
- 3.5.5 The Applicant requested a scoping opinion from the SoS on 17 August 2016, and that opinion was adopted by the Planning Inspectorate (the Inspectorate) on behalf of the SoS on 28 September 2016. I am thus satisfied that for this Application, the provisions in Regulation 37(2)(a)(ii) of the 2017 EIA Regulations apply, and accordingly should be considered against the 2009 EIA Regulations.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended)

- 3.5.6 The 2009 EIA Regulations establish the minimum information to be supplied by the Applicant within an ES, as well as information that an ExA can request as being reasonably justified given the circumstances of the case. Part 2 of Schedule 4 represents the minimum requirements for an ES under the EIA Regulations and this is reinforced by Regulation 3(2), which sets out the core duty of the decision-maker in making a decision on EIA Development. Regulation 3(2) of the EIA Regulations states:

"...the decision-maker must not make an order granting development consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so."

- 3.5.7 The proposed development is EIA development under Schedule 2 of the 2009 EIA Regulations. The Applicant has provided an ES [APP-037 to APP-124] as part of the submitted application.
- 3.5.8 In reaching my conclusions and recommendation I have taken the environmental information as defined in Regulation 3(2) (including the ES and all other information on the environmental effects of the development) into consideration.

Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the Air Quality Directive)

- 3.5.9 The Air Quality Directive came into force on 11 June 2008. The Directive consolidates four directives and one Council decision into a single directive on air quality. Under the Air Quality Directive, Member States are required to assess ambient air quality with respect to sulphur dioxide, nitrogen dioxide and nitrogen monoxide, particulate matter (PM10 and PM2.5), lead, benzene and carbon monoxide. The Directive set limiting values for compliance and establishes control actions where these are exceeded. It is transposed into UK statute through regulations made under the Environment Act 1995 (EA1995).
- 3.5.10 Part IV of EA1995 requires all local authorities in the UK to review and assess air quality in their area. If any standards are being exceeded or are unlikely to be met by the required date, then that area should be designated an Air Quality Management Area and the local authority must draw up and implement an Air Quality Action Plan aimed at reducing levels of the pollutant.

Environmental Permitting Regulations (England and Wales) Regulations 2016 (as amended)

- 3.5.11 The Environmental Permitting (England and Wales) Regulations 2016 (as amended) (EP Regulations) apply to all new installations and transpose the requirements of the EU Industrial Emissions Directive (IED) (European Commission, 2010) into UK legislation. As the Proposed Development falls within s1 Combustion Activity under the EP Regulations, an environmental permit (EP) would be required before the Proposed Development commences operation.
- 3.5.12 Under the IED and Environmental Permitting Regulations, the operator of an installation covered by the IED is required to employ Best Available Techniques (BAT) for the prevention or minimisation of emissions to the environment, to ensure a high level of protection of the environment as a whole. Generating stations exceeding 50 MW thermal input such as the Proposed Development are covered by the IED and EPR.

Industrial Emissions Directive (IED)

- 3.5.13 The IED provides operational limits and controls to which plant must comply, including Emission Limit Values (ELVs) for pollutant releases to air. The operational generating station at the Proposed Development will fall under the Large Combustion Plant (LCP) requirements (Chapter III) of the IED, since it will be greater than 50 MW in capacity. In addition, European BAT reference documents (BRefs) are published for each industrial sector regulated under the IED, and they include BAT-Achievable Emission Values which are expected to be met through the application of BAT. These values may be the same as those published in the IED, or they may be more stringent. The current version of the LCP BRef has been in publication since July 2006.
- 3.5.14 I consider the application against the EU directive and subsequent legislation on air quality matters in the relevant sections in Chapter 4 of this Report.

Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive)

- 3.5.15 The Habitats Directive (together with Council Directive 2009/147/EC on the conservation of wild birds ('the 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 1,000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc.) which are of European importance. It requires designation of such areas as Special Areas of Conservation (SACs).
- 3.5.16 The Habitats and Birds Directives are transposed into UK law through the Conservation of Habitats and Species Regulations 2017 in respect of the terrestrial environment and territorial waters out to 12 nautical miles; and through The Conservation of Offshore Marine Habitats and Species Regulations 2017 for UK offshore waters.
- 3.5.17 The relevance of this Directive to this application is set out directly in Chapter 5 (HRA) of this report, but it is considered elsewhere as required.

Council Directive 2009/147/EC on the conservation of wild birds (the Birds Directive)

- 3.5.18 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union (EU). 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. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for

these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

- 3.5.19 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.
- 3.5.20 The relevance of this Directive to this application is set out directly in Chapter 5 (HRA) of this report, but it is considered elsewhere as required.

The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations)

- 3.5.21 The Habitats Regulations provide domestic force to the Habitats Directive and the Wild Birds Directive and provide the cornerstone on which the practice of Habitats Regulations Assessment (HRA) is undertaken in England and Wales. Their relevance to this application is set out directly in Chapter 5 (HRA) of this report, but they are considered elsewhere as required. The Habitats Regulations came in to force during the Examination and revoked the Conservation of Habitats and Species Regulations 2010.
- 3.5.22 The types of European site relevant to this process are as follows:
- Special Areas of Conservation (SACs) designated pursuant to the Habitats Directive;
 - Special Protection Areas (SPAs) designated pursuant to the Birds Directive; and
 - Ramsar Sites designated under the Ramsar Convention on Wetlands of International Importance

Council Directive 2000/60/EC (as amended) A framework for Community action in the field of water policy (the Water Framework Directive)

- 3.5.23 The Water Framework Directive (WFD) establishes a framework for water policy, managing the quality of receiving waters. The directive is concerned with water management. Amongst other objectives, it requires EU Member States to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems and improve the quality of surface and groundwater bodies by progressively reducing pollution and by restoration.
- 3.5.24 In implementing the directive, NPS EN-1 states at paragraph 5.15.3 that an ES should describe existing physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project and any impact of physical modifications to

these characteristics; and any impacts of the proposed project on water bodies or protected areas under the Water Framework Directive.

- 3.5.25 The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.
- 3.5.26 The Environment Agency (EA) in their Written Representation [REP2-032] confirms that the Application identifies no deterioration of the waterbody status through construction, and operational impacts will be determined through the environmental permit. Thus the Water Framework Directive is complied with.

Council Directive 2009/31/EC Geological Storage of Carbon Dioxide

- 3.5.27 Article 33 of the Directive requires an amendment to Directive 2001/80/EC (commonly known as the Large Combustion Plants Directive) such that developers of all combustion plants with an electrical capacity of 300 MW or more (and for which the construction / operating license was granted after the date of the Directive) are required to carry out a study, known as the CCR feasibility study, to assess:

- Whether suitable storage sites for carbon dioxide (CO₂) are available;
- Whether transport facilities to transport CO₂ are technically and economically feasible; and
- Whether it is technically and economically feasible to retrofit for the capture of CO₂ emitted from the power station.

- 3.5.28 Article 36 of the IED (which also originates from Article 33 of Directive 2009/31/EC on the Geological Storage of Carbon Dioxide) also requires new large combustion plant to be CCR.

The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013

- 3.5.29 The Carbon Capture Readiness (CCR) (Electricity Generating Stations) Regulations 2013 (the CCR Regulations) came into force on 25 November 2013. These regulations transpose Article 36 of the IED into UK law.
- 3.5.30 The CCR Regulations provide that no order for development consent (in England and Wales) may be made in relation to a combustion plant with a capacity at or over 300 MW unless the relevant authority has determined (on the basis of an assessment carried out by the applicant) whether it is technically and economically feasible to retrofit the equipment necessary to capture the carbon dioxide that would otherwise be emitted from the plant, and to transport and store such carbon dioxide from the site.

3.5.31 The EA in its WR [REP2-032] identifies no foreseeable barrier to the provision of CCR at the application site.

3.6 OTHER LEGAL AND POLICY PROVISIONS

United Nations Environment Programme Convention on Biological Diversity 1992

3.6.1 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I have had regard to this Convention in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation. In particular, I find that compliance with UK provisions on environmental impact assessment and transboundary matters with regard to impacts on biodiversity referred to in this Chapter, satisfies the requirements of the Convention.

3.6.2 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs (DEFRA) which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.

The Wildlife and Countryside Act 1981 (as amended)

3.6.3 The Wildlife and Countryside Act 1981 (as amended) 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 statutory nature conservation bodies (SNCBs) in the UK. The SNCB for England is Natural England (NE).

3.6.4 The Act provides for and protects wildlife; nature conservation, countryside protection and National Parks; and Public Rights of Way (PRoWs).

- If a species protected under the Act is likely to be affected by development, a protected species licence will be required from NE.
- Sites protected under the Act (including SSSIs) must also be considered.
- The effects of development on the PRoW network are also relevant.

National Parks and Access to the Countryside Act 1949 (as amended)

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

- 3.6.6 National Parks and AONBs have statutory protection in order to conserve and enhance their natural beauty including landform, geology, plants, animals, landscape features and the rich pattern of human settlement over the ages.

The Countryside and Rights of Way Act 2000

- 3.6.7 The Countryside and Rights of Way Act brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These included meeting the demands of recreation, without compromising the original reasons for designation and safeguarding rural industries and local communities.
- 3.6.8 The role of local authorities was clarified, to include the preparation of management plans to set out how they will manage the AONB asset. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The Act also brought in improved provisions for the protection and management of SSSIs.

Natural Environment and Rural Communities Act 2006

- 3.6.9 The Natural Environment and Rural Communities Act 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 1992.

The Planning (Listed Buildings and Conservation Areas) Act 1990

- 3.6.10 The Planning (Listed Buildings and Conservation Areas) Act (LBCA Act) sets out the principal statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas.
- 3.6.11 S66 of the LBCA Act states that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. By virtue of s1(5) of the Act a listed building includes any object or structure within its curtilage.
- 3.6.12 S72 of the LBCA Act establishes a general duty on a local planning authority or the SoS with respect to any buildings or other land in a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

- 3.6.13 As set out in Chapter 2 above, a number of heritage assets are within proximity to the application site.

Ancient Monuments and Archaeological Areas Act 1979

- 3.6.14 The Ancient Monuments and Archaeological Areas Act imposes a requirement for Scheduled Monument Consent for any works of demolition, repair, and alteration that might affect a designated Scheduled Monument. For non-designated archaeological assets, protection is afforded through the development management process as established both by the Town and Country Planning Act 1990 (TCPA1990) and the National Planning Policy Framework (the Framework).

Environmental Protection Act 1990

- 3.6.15 S79(1) of the Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. This is discussed further in the relevant section in Chapter 4 of this Report.

Control of Pollution Act 1974

- 3.6.16 Sections 60 and 61 of the Control of Pollution Act 1974 (CoPA) provide the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, a s60 notice may be issued by the local planning authority with instructions to cease work until specific conditions to reduce noise have been adopted. S61 of the CoPA provides a means for applying for prior consent to carry out noise generating activities during construction. Once prior consent has been agreed under s61, a s60 notice cannot be served provided the agreed conditions are maintained on-site. The legislation requires Best Practicable Means be adopted for construction noise on any given site.

Noise Policy Statement for England

- 3.6.17 The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise. The statement sets out the long term vision of the government's noise policy, which is to *"promote good health and a good quality of life through the effective management of noise within the context of policy on sustainable development"*.
- 3.6.18 The Explanatory Note within the NPSE provides further guidance on defining 'significant adverse effects' and 'adverse effects', one such concept identifies "Lowest Observable Adverse Effect Level (LOAEL)", which is defined as the level above which adverse effects on health and quality of life can be detected. Other concepts identified are: Significant Observed Adverse Effect Level (SOAEL), which is the level above which significant adverse effects on health and quality of life occur, and No Observed Effect Level (NOEL), which is the level below

which no effect can be detected. Below this level no detectable effect on health and quality of life due to noise can be established.

- 3.6.19 When assessing the effects of the Proposed Development on noise matters, the aims of the development should firstly avoid noise levels above the SOAEL; and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

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

- 3.6.20 The above Acts sets out the relevant regulatory controls that provide protection to waterbodies and water resources from abstraction pressures; discharge and pollution; and for drainage management related to non-main rivers. I consider the application against such matters in the relevant sections in Chapter 4 of this Report.

3.7 MADE DEVELOPMENT CONSENT ORDERS

- 3.7.1 In responses made by the Applicant to WQs [PD-007] and FWQs [PD-011]; to the ISH on the draft DCO [EV-011], and to my draft DCO [PD-013], the Applicant has made reference to the following DCOs to support their position:

- Ferrybridge Multifuel 2 Power Station Order 2015;
- Triton Knoll Electrical System Order 2016;
- Hornsea Two Offshore Wind Farm Order 2016;
- North London Heat and Power Generating Station Order 2017;
- Keuper Underground Gas Storage Facility Order 2017; and
- M20 Junction 10a Development Consent Order 2017

- 3.7.2 In my WQs [PD-007] and FWQs [PD-011]; and at the ISH on the draft development consent order (DCO) held on Thursday 23 November 2017 [EV-011], I referred to the Wrexham Gas Fired Generating Order 2017 (S.I. 2017 No.766) to support my questions for recommended changes to the DCO. I comment on these further in Chapter 8 of this report.

3.8 TRANSBOUNDARY EFFECTS

- 3.8.1 Under Regulation 24 of the 2009 EIA Regulations and on the basis of the information available from the Applicant, the SoS is not of the view that the proposed development would likely to have significant effects on the environment in another European Economic Area (EEA) State.
- 3.8.2 In reaching this view the SoS has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation). Transboundary issues consultation under Regulation 24 of the 2009 EIA Regulations was therefore not considered necessary. I agree with this conclusion.

3.9 OTHER RELEVANT POLICY STATEMENTS

3.9.1 I have taken other relevant Government policy into account, including:

- The Energy White Paper: Meeting the Challenge (May 2007);
- UK Low Carbon Transition Plan (2009);
- National Strategy for Climate and Energy (July 2009);
- UK Renewable Energy Strategy (July 2009); and
- The National Infrastructure Plan (updated 2016).

3.10 LOCAL IMPACT REPORT

3.10.1 Sections 104 and 105 of the PA2008 state that in deciding the application the Secretary of State must have regard to any LIR within the meaning of s60(3).

3.10.2 There is a requirement under s60(2) of PA2008 to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given in my Rule 8 [PD-006].

3.10.3 A joint LIR was submitted by NYCC and SDC at Deadline 2 [REP2-039]. The LIR is structured in that it gives consideration to the various chapters of the Applicant's ES in relation to the council's policies. For example issues such as transport, noise, air quality, ecology, landscape and visual impact are considered.

3.11 THE DEVELOPMENT PLAN

3.11.1 The LIR [REP2-039] identifies that, for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004, the development plan for the area of the application site comprises the Selby District Core Strategy Local Plan 2013 (the Core Strategy), and the saved policies of the Selby District Local Plan 2005 (the Local Plan). The saved policies of the North Yorkshire Minerals Local Plan 1997 (the Minerals Plan) and North Yorkshire Waste Local Plan 2006 (the Waste Plan) also apply.

3.11.2 The development plan policies cited by NYCC and SDC in their LIR [REP2-039] as being relevant to the proposed development are as follows:

- Core Strategy policy SP1: Presumption in favour of sustainable development;
- Core Strategy policy SP2C: Spatial Development Strategy;
- Core Strategy policy SP13: Scale and Distribution of Economic Growth;
- Core Strategy policy SP15B: Sustainable Development and Climate Change
- Core Strategy policy SP17C: Low Carbon and Renewable Energy;
- Core Strategy policy SP18: Protecting and Enhancing the Environment
- Core Strategy policy SP19: Design Quality;
- Local Plan policy ENV 1: Control of Development;

- Local Plan policy ENV 2: Environmental Pollution and Contaminated Land;
- Local Plan policy ENV 22: Protection of Listed Buildings;
- Local Plan policy ENV 25: Control of Development in Conservation Areas;
- Local Plan policy ENV 27: Scheduled Monuments and Important Archaeological Sites;
- Local Plan policy ENV 28: Other Archaeological Remains;
- Local Plan policy EMP 10 Additional Industrial Development at Drax and Eggborough Power Stations;
- Local Plan policy T1: Development in Relation to the Highway Network;
- Local Plan policy T2: Access to Roads;
- Local Plan policy T8: Public Rights of Way; and
- Waste Plan policy 5/1: Waste Strategy for Major Development.

3.11.3 I have considered whether the Proposed Development gives rise to important and relevant impacts arising in neighbouring local government areas. However, having taken into account the absence of LIRs from any neighbouring authorities and my own inspections of the setting of the application site, I have concluded that it is not necessary to consider policies from any neighbouring authority development plans.

3.11.4 As stated in paragraph 4.1.5 of NPS EN-1, if there is any conflict between the above documents and a NPS then the NPS takes precedence because of the national significance of the infrastructure. The Statement of Common Ground signed between the Applicant and NYCC/SDC [REP9-005] agrees that there would be no conflict with the development plan.

3.12 THE NATIONAL PLANNING POLICY FRAMEWORK

3.12.1 The Framework is an important and relevant consideration. Paragraph 215 of the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. Paragraph 6 identifies the Framework as the Government's approach to sustainable development; paragraph 7 identifies economic, social and environmental roles which make up the dimensions of sustainable development.

3.12.2 At the time of writing, the Government is currently out to consultation on a replacement Framework, which is anticipated to be published sometime in the summer 2018. I observed no significant dissimilarities in the approach taken to sustainable development, or to nationally significant infrastructure projects between the Framework and its consultation draft. However, it is a matter for the SoS to satisfy themselves if a revised Framework is in place before the decision on the DCO.

3.13 THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

- 3.13.1 I have remained aware throughout the Examination of the need to consider whether changes to the application meant that the application had changed to the point where it was a different application and whether the SoS would have power therefore under s114 of PA2008 to make a DCO having regard to the development consent applied for.
- 3.13.2 The document entitled "'Planning Act 2008: Guidance for the examination of applications for development consent'" (March 2015), provides guidance at paragraphs 109 to 115 in relation to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act was that s114(1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made.
- 3.13.3 Having considered this context throughout the Examination, I am content that the changes to the application, primarily consisting of technical revisions to the DCO as applied for, and further evidence of justification in respect to the Applicant's position in respect to the effect of the proposed development on protected sites in the event of the use of selective catalytic reduction techniques, have not resulted in any significant change to that which was applied for.
- 3.13.4 I am therefore of the view that the SoS has the power to make the DCO on the submitted Application with the updates and amendments, and subject to their satisfaction of assessment on the matters contained in the remainder of this Report.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.1 INTRODUCTION

4.1.1 In this chapter, I will set out the principal issues and other matters I have identified with this application. Under each issue, I shall summarise the effect of the proposed development on that particular issue and any mitigation measures proposed. I shall comment on matters raised in Relevant Representations (RR), Written Representations (WR), Statements of Common Ground (SoCG) and Local Impact Reports (LIR) on the matters at hand. I shall, where relevant, report the Applicant's response to those comments and draw my conclusions.

4.2 SOURCES OF INFORMATION

4.2.1 Nineteen RRs were made [RR-001 to RR-019] and have been considered. RRs were made by statutory and non-statutory authorities, utility providers, North Yorkshire County Council and Selby District Council (NYCC/SDC) and Hensall Parish Council (HPC), and local residents.

4.2.2 Participants in the Examination have been provided with the opportunity to make WRs and to comment on RRs at Deadline (DL) 2, and to make comments on WRs at DL 3. Participants were also invited to respond in writing to my Written Questions (WQs) [PD-007] at DL 2 and Further Written Questions (FWQs) [PD-011] at DL 5 regardless of whether the question was directed to them or not, and to provide a written response to matters discussed at the hearings at DL 4.

4.2.3 SoCGs have been provided throughout the Examination period. A list of those signed is set out in paragraph 1.8 of Chapter 1 of this Report, and referred to in my assessment of the principal issues below.

4.2.4 The matters raised in RRs, WRs and responses to my questions, in SoCGs and to matters arising at hearings have been responded to in my framework of issues set out in section 4.3 below and are taken into account in the remainder of this Report to the extent that they are important and relevant.

The Local Impact Report

4.2.5 NYCC/SDC produced a joint LIR [REP2-039] which was submitted at DL 2. S104 of the Planning Act 2008 (PA2008) requires the Secretary of State (SoS) to consider the contents of an LIR when making a decision on this application.

4.2.6 The LIR provided information on the following matters:

- Description of the Area;
- Relevant National and Local Policies;

- An Assessment of the following:
- The Principle of the Proposed Development;
- Air Quality and Emissions;
- Landscape, Biodiversity and Green Infrastructure;
- Cultural Heritage;
- Highways and Transportation;
- Noise and Vibration;
- Socio-Economic; Minerals and Waste;
- Hydrology and Flood Risk;
- Public Rights of Way;
- Enabling Works; and
- Adequacy of the draft development consent order (DCO).

Conformity with the Development Plan

- 4.2.7 As recorded in Chapter 3 above, the LIR identified that the development plan in force for the area comprises the SDC Core Strategy Local Plan 2013 (Core Strategy), and Selby District Local Plan (with saved policies) 2005. Also in force is the saved policies of the North Yorkshire Minerals Local Plan 1997 (the Minerals Plan) and North Yorkshire Waste Local Plan 2006 (the Waste Plan).
- 4.2.8 No important and relevant issues were raised in the LIR that gave rise to in-principle breaches of relevant National Policy Statements (NPS) policy or to objections to the proposed development. Advice was provided on the matters to be addressed in requirements and this is taken fully into account in the remainder of this Report. The LIR also did not identify harm against or conflict with the development plan. The Applicant was the only commentator on the LIR.
- 4.2.9 The Applicant and NYCC/SDC signed a SoCG which was submitted at DL 9 [REP9-005] agreeing that all matters in respect to the effects of the Proposed Development, and that adequate mitigation would secure conformity with development plan. No matters of disagreement exist between them.

Legislative and Policy Framework

- 4.2.10 The legislative and policy framework applicable within this Chapter is summarised at a high level in Chapter 3 above. Individual references to relevant policy detail are also drawn out in the individual subject matter sections of this Chapter below.
- 4.2.11 The primary sources of policy are National Policy Statements (NPS) EN-1, EN-2, EN-4 and EN-5. I have undertaken my reasoning on the Proposed Development and hence frame my recommendation on the planning merits, noting that under s104 of the Planning Act 2008 (PA2008) the Secretary of State (SoS) '*must decide the application in accordance with any relevant national policy statement*' except to the extent that a legislated exception applies. Whilst individual policy references are addressed below, in general terms I observe that none of the legislated exceptions to the application of relevant NPS policy

was found to apply. It follows therefore that the application is recommended to be decided wholly within the framework of relevant NPS policy.

- 4.2.12 The requirements of legislation other than PA2008 are identified and applied as required. S104 of the PA2008 identifies that policy other than policy arising from the NPS is capable of being important and relevant and has been identified as applicable and is analysed below as required. However, again it should be highlighted that no analysis of policy arising from outside the relevant NPSs has given rise to considerations that bear against the application of NPS policy as allowable under PA2008.
- 4.2.13 As noted in Chapter 3 of this Report, part of the Proposed Development involves works under the tidal section of the River Aire. The Proposed Development thus falls under the requirements of the Marine and Coastal Access Act 2009 and must therefore be considered against the relevant Marine Plan Area; in this case the 'East Inshore Marine Plans Area'.
- 4.2.14 The financial viability of the scheme, taking into account paragraph 4.1.9 of NPS EN-1 is considered in Chapter 7 of this Report. The appropriateness of the s106 agreements, as required by paragraph 4.1.8 of NPS EN-1 are again considered in the relevant sections on mitigation also set out below and in Chapter 7.

EIA Considerations

- 4.2.15 During the course of the Examination the environmental statement (ES) was amended. I have set out the amendments made in Chapter 2 of this Report, and those that relate to the content of the ES I consider to constitute 'other environmental information' as defined by the Environmental Impact Assessment Regulations 2009 (2009 EIA Regulations). I conclude that the amendments are relatively minor alterations, and that the overall environmental information submitted is sufficient for the SoS to take into consideration before making a decision in compliance with 2009 EIA Regulations.

HRA Considerations

- 4.2.16 The Proposed Development is one that that has been identified as giving rise to the potential for likely significant effects on European sites and hence is subject to Habitats Regulations Assessment (HRA). As is conventional in Examining Authority (ExA) recommendation reports to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Chapter 5 of this report below.
- 4.2.17 However, at this point in this chapter it is necessary to record that I have considered all documentation relevant to HRA as required by section 4.3 of NPS EN-1, and I have taken it into account in the conclusions reached here and in the Planning Balance (Chapter 6 below). Further, project design and mitigation proposals included in

the ES and secured in the Recommended DCO have been fully considered for HRA purposes.

Environmental Permitting Regime

4.2.18 As stated above in Chapter 3 of this Report, the Proposed Development falls within s1 (Combustion Activity) under the Environmental Permitting (England and Wales) Regulations 2016, elements of the Proposed Development will require an Environmental Permit (EP). This is made separately and independently to the Environment Agency (EA), who are the competent authority to issue EPs and to regulate it. For the purposes of this Report, I have identified the process of applying for the EP as the EP regime.

4.2.19 The EA in its WR [REP2-032] confirmed that that an EP is required for:

- The operation of the proposed CCGT power station, which must use Best Available Techniques (BAT). Conditions will be applied, and if they cannot be met the EP will be refused;
- The provision and operation of the combined heat and power (CHP) ready requirements, which must be reviewed every four years to determine viability;
- Work within 8m, or 16m if tidal, from the top of the bank of the River Aire or within the any toe of a flood defence;
- The discharge to surface water and groundwater arising from dewatering activities as part of the construction phase, including discharge of sewage effluent from septic tanks;
- Air quality and noise emissions;
- Waste in respect of demolition which requires treatment prior to re-use; and
- Water abstraction from the River Aire.

4.2.20 The Applicant's approach is to substantially vary the existing EP, particularly in respect to its abstraction licence. The Applicant confirms [APP-029] and updated at DL 2 [REP2-010] that an application to the EA was duly made on 27 June 2017, and this was confirmed in the SoCG signed between the Applicant and the EA [REP3-008].

4.3 PRINCIPLE ISSUES IN THE EXAMINATION

4.3.1 Following my initial assessment of the application and of the RRs received, I identified and set out my initial assessment of the Principal Issues arising from the Proposed Development, which was published as Annex B to my letter of 30 August 2017 under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (Rule 6 Letter) [PD-005].

4.3.2 The Principal Issues I identified are as follows; set out in alphabetical order:

- Agriculture and Socio-Economics;
- Air quality and Dust;
- Archaeology and Heritage

- Biodiversity, Ecology and Natural Environment;
- Compulsory Acquisition;
- Flood Risk and Water Resources;
- Human Health;
- Landscape and Visual;
- Noise and Vibration; and
- Transportation and Traffic.

4.3.3 At the PM [EV-001], no party questioned my initial assessment of the Principal Issues. They subsequently formed the final assessment.

4.3.4 Matters raised in RRs and of my initial assessment of the issues informed my WQs which I issued on 4 October 2017 [PD-007]. My findings and conclusions on all the issues raised in the written and oral submissions are summarised below.

4.3.5 During the Examination, I identified two further matters which became Principal Issues: they were:

- The future of the existing coal-fired power station; and
- The approach undertaken by the Applicant to assessing the effects of the Proposed Development on European sites in respect to the Habitats Regulations Assessment (HRA).

4.4 EIA ASSESSMENT METHODOLOGY

4.4.1 The ES [APP-040] states that the assessment presented in the ES follows a standard EIA methodology, and where possible, is based on legislation, definitive standards and accepted industry criteria. Its objective is to anticipate the changes or impacts that may occur to the receiving environment as a result of the Proposed Development, and to compare to the existing environmental conditions (the baseline) and those that would occur in absence of the Proposed Development (future baseline).

4.4.2 The EIA process involves identification of sensitive receptors that may be affected by impacts resulting from the Proposed Development, and assesses the extent to which these receptors may experience significant environmental effects as a result. Where significant effects are identified, the ES might propose mitigation measures to avoid, reduce, and offset the significance of the effect, expressed as 'residual effects' after taking account of mitigation.

4.4.3 The environmental impacts of the Proposed Development are assessed at key stages in its construction and operation, where possible and relevant, the eventual decommissioning. Existing baseline conditions have been defined based on desk-based studies and site surveys.

4.4.4 The ES [APP-040] states that the existing coal-fired power station will cease operating shortly, and that it is likely that the demolition of the existing coal-fired power station will take place at the same time as construction and/or the start of operation of the Proposed Development. There is therefore the potential for effects associated

with decommissioning and demolition activities at the existing coal-fired power station to interact with the effects of construction and operation of the Proposed Development. The cumulative effects of both have been assessed in the ES as part of the worst-case or greatest effect scenario.

4.5 THE NEED FOR THE PROPOSED DEVELOPMENT AND EXAMINATION OF ALTERNATIVES

- 4.5.1 The Proposed Development is a Nationally Significant Infrastructure Project (NSIP) as set out in s14 and s15 of the PA2008 (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 also 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.
- 4.5.2 Chapter 6 of the ES [APP-044] sets out the Applicant's case for the need for the Proposed Development, which broadly relies on NPS EN-1 to support its position. No RR or WR was received which questioned the issue of need.
- 4.5.3 The LIR [REP2-039] states that Core Strategy policies SP1; SPC2C; SP13; SP15; SP16; SP17C and SP18; and saved Local Plan policy EMP10 support development linked to economic development and low carbon energy developments. Given the site's existing use as a power station, NYCC/SDC agrees that the principle of the Proposed Development is acceptable, and that Proposed Development would represent low-carbon energy development which is fully supported by policies contained within the development plan.
- 4.5.4 Paragraph 4.4.2 of NPS EN-1 requires the Applicant to consider alternatives to the Proposed Development and explain how the application was arrived at.
- 4.5.5 In accordance with Schedule 4, Part 2 of the 2009 EIA Regulations, Chapter 6 of the ES [APP-044] presented an outline of alternatives studied by the Applicant both in terms of other locations for the Proposed Development, as well as locations within the existing coal-fired power station compound for the proposed CCGT, as well as gas connection routes, technologies, and potential designs.
- 4.5.6 I concur with the ES [APP-044], and deemed further examination of alternative locations for the Proposed Development as unnecessary, because the existing site is an obvious choice. This is because:
- It has a long history of power generation;
 - The existing coal-fired power station is facing closure and future redevelopment of the Power Station site would create similar employment opportunities;

- The site has excellent electrical grid, water and transport links and is a brownfield site which is considered more attractive to redevelop for large scale power generation than a greenfield one;
 - The majority of the Site (and particularly the Proposed Power Plant Site) is in the freehold ownership of the Applicant; and
 - The Proposed Power Plant Site is located relatively close to the National Grid gas transmission network; approximately 3.1 km to the north of the existing coal-fired power station site.
- 4.5.7 A number of locations and configurations for the new generating station within the existing coal-fired power station site were considered, with the coal stockyard site deemed appropriate for numerous reasons including environmental, technical, commercial and planning factors.
- 4.5.8 In respect to Work No 6 (gas pipeline), two potential National Grid Gas (NGG) pipelines (called Feeder 7 and Feeder 29) were considered for the Proposed Development. Through discussions with NGG and evaluation of the capacity of the Feeders, and given the distance from the Proposed Development site to them, it was determined by the Applicant [APP-044] that Feeder 29 was the most appropriate connection point, as it was the shortest distance from the existing power station site and also had greater gas supply capacity than Feeder 7.
- 4.5.9 Three potential route corridors for the gas pipeline to connect to Feeder 29 were identified; the varying routes are illustrated in Figure 6.2 of the ES [APP-074]. Other routes were discounted because, amongst other things, they were either a longer route, would require more land to be compulsorily acquired (CA); would be more technically difficult such as the crossing of a railway line; or run closer to existing residential properties. Consequently, the preferred route was chosen because it was the shortest route, required the least land take and had the least constraints. The 36m wide corridor width (with some exceptions) followed a period of evaluation of the needs of the development and survey information.
- 4.5.10 Work No 4 (cooling water) would utilise the existing route and on which the Applicant already owns the freehold of the land. As such, the Applicant states [APP-009] that an exploration of alternatives was not necessary.
- 4.5.11 No RRs and WRs from any party questioned the locations and choices advanced by the Applicant for the Proposed Development.
- 4.5.12 The SoCG signed between the Applicant and NYCC/SDC submitted at DL 9 [REP9-005] agrees the position on need, principle and alternatives. In addition, the parties agree that the final version of the DCO submitted at DL 9 [REP9-003] and which forms the Recommended DCO, adequately secures that matters concerning the final design, external lighting, highway access, means of enclosure and site security.

4.5.13 Taking these matters into consideration, I am satisfied that the need for the Proposed Development is established through the NPS. I am also satisfied that the alternative options for the siting of the proposed CCGT and route corridor for Work No 6 (gas pipeline) have been rigorously tested by the Applicant. The requirements of NPS EN-1 and the EIA Regulations in this regard have been met.

4.6 AGRICULTURE AND SOCIO-ECONOMICS

Policy and ES Findings

- 4.6.1 Chapter 15 of the ES [APP-053] considers the effects of the Proposed Development on agriculture. The assessment methodology is based on the potential impacts from the Proposed Development on land use, agriculture, employment, local businesses and the local population. The agricultural impact assessment is informed by a soil quality survey based on the Agricultural Land Classification (ALC). Baseline socio-economic conditions have been established using published statistics.
- 4.6.2 The ES [APP-053] states that there would be no construction or operational effects on agriculture from those elements of the Proposed Development within the existing compound of the coal-fired power station.
- 4.6.3 The construction of Work No 4 (cooling water) and Work No 6 (gas pipeline) would affect 7.7 hectares of land which is rated according to the ALC as 'very good' and 'good'; thus deemed 'best and most versatile'. However, these would be limited to the construction period only, which Chapter 5 of the ES [APP-043] states would take approximately 40 months to complete. At operational stage, an area of current agricultural land would be required for Work No 7 (AGI). The ES [APP-053] states that this would replace only ALC 'low' rated land, and the effects on agriculture would not be significant as a result.
- 4.6.4 Paragraph 5.12 of NPS EN-1 states that where the project is likely to have socio-economic impacts at local or regional levels, the applicant should undertake and include in their application an assessment of these impacts as part of the ES.
- 4.6.5 Chapter 15 of the ES [APP-053] considers the effects of the Proposed Development on socio-economic matters. It states that during construction, a temporary significant beneficial effect on the local and regional economy would be felt through the creation of an estimated 1,170 construction jobs of which 931 would be expected to be sourced locally.
- 4.6.6 The ES [APP-053] identifies no significant effects on agriculture during the decommissioning stage.

Examination

- 4.6.7 Given the surrounding land is predominately used for agriculture, it is perhaps not unsurprising that any potential effects caused from the construction and operation of the Proposed Development would raise some concerns and question.
- 4.6.8 Mr Pearson in his RR [RR-002] expressed concerns in respect to the effect of the Proposed Development on the drainage of farming land. While drainage matters are addressed within the ES [APP-049], I nevertheless invited the Applicant in my WQs [PD-007] to respond. The Applicant did so [REP2-014 and REP2-030], stating that drainage during construction would remain at existing greenfield runoff rates and as such the effect on farmland practices would not be significant, and that any land drains and minor watercourses potentially affected would be reinstated after construction. No further WRs were received on this matter.
- 4.6.9 A SoCG signed between the Applicant and Natural England (NE) [REP1-007] agrees that there would be no significant construction and operation effects on agriculture, agreeing that soils will be managed, maintained and where possible replaced to minimise impacts on soil structure and quality. The parties agreed that measures to protect agriculture are adequately secured by Requirement 18 (Construction and Environmental Management Plan (CEMP)); Requirement 13 (Surface and Foul Water Drainage) and Requirement 27 (Restoration of Land) of the Recommended DCO.
- 4.6.10 In respect of socio-economic matters, NYCC/SDC in their LIR [REP2-039] acknowledged that there would be 101 operation jobs lost as a result of the closure of the existing coal-fired power station, and states that the Applicant should be mindful of opportunities to redeploy existing staff or provide training of those made redundant. However, the LIR states that losses would have only a minimal and negligible overall impact on the local economy, and that a net increase of sustainable employment opportunities would arise as a result of the Proposed Development.
- 4.6.11 Mr Rhodes and Mr Laurenson in their respective RRs [RR-001 and RR-009] stated that they wished to see tangible benefits to the local community in respect to job creation. Acknowledging that Requirement 34 of the Recommended DCO secures an employment, skills and training plan to be agreed by the relevant planning authority prior to commencement of the Proposed Development, I nevertheless asked the Applicant in my WQs [PD-007] whether it wished to expand on such measures.
- 4.6.12 The Applicant responded [REP2-014] that such measures could include the appointment of a 'Jobs Co-ordinator' to implement the requirements of Requirement 34; a 'Meet the Buyer' event providing local residents and local suppliers/businesses with the opportunity to engage face-to-face; with the Applicant and the appointed contractor

and obtain information on and register for employment and supplier opportunities; through engagement with the local community as part of the requirements set out in Requirement 33 of the Recommended DCO for a local liaison committee; and engagement with local schools and colleges to identify opportunities.

- 4.6.13 Mr Rhodes [RR-001] also expressed a desire to see improved provision of social facilities. None are proposed with this application, and I did not consider any were necessarily required from the Proposed Development to make it acceptable in planning terms. Mr Rhodes made no further WR in the Examination.
- 4.6.14 The SoCG between the Applicant and NYCC/SDC [REP9-005] states that the parties agree that the assessment within Chapter 15 of the ES [APP-053] and the requirement set out in Requirement 34 of the Recommended DCO would ensure that the Proposed Development would not result in unacceptable effects in terms of socio-economics.
- 4.6.15 Having regard to the above, I am satisfied that there would be no significant effects on agriculture or socio-economic matters caused from the construction or operation of the Proposed Development, and that Requirements 18, 13, and 27 of the Recommended DCO would secure any short-term effects caused to drainage matters, land and soil disturbance would be adequately mitigated, and Requirement 34 would ensure employment and training opportunities would occur.

ExA Conclusion

- 4.6.16 While undoubtedly there will be disruption to agricultural practices during the construction phase, and some agricultural land would be lost to Work No 7 (AGI), I am satisfied that they would not be damaging, and that farmland drainage matters and soil reinstatement are adequately secured in the Recommended DCO. I am also content to recommend that the Proposed Development would not have any significant effects on socio-economic matters, with job losses caused by the closure by the existing coal-fired power station would be off-set by those created by the construction and operation of the Proposed Development.

4.7 AIR QUALITY AND EMISSIONS

Policy and ES Findings

- 4.7.1 There is some overlap between this section and the effects from emissions on European sites in terms of Habitats Regulations. I will outline the issues here, but in the interests of brevity I will reserve examination and discussion on this matter to Chapter 5 of this Report.
- 4.7.2 Paragraph 4.10.2 of NPS EN-1 sets out the separate functions between planning and pollution control systems in respect to air quality matters. It states that the planning system is concerned with the use of land and improving the natural environment and public health; whereas pollution control is concerned with preventing pollution the

use of measures to prohibit or limit the releases of substances to the environment and ensures that ambient air and water quality meet standards.

- 4.7.3 Paragraph 4.10.3 of NPS EN-1 states that the SoS should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. It also states that the SoS is entitled to assume that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced and that the SoS should seek to compliment but not duplicate them as part of the DCO process.
- 4.7.4 Paragraph 5.2.6 of NPS EN-1 requires the Applicant to assess the impacts of the Proposed Development on air quality matters within the ES. Chapter 8 of the ES [APP-046] presents such an assessment. The assessment methodology considers the potential impacts from Proposed Development in both human and ecological receptors including any Air Quality Management Areas and European sites. Baseline air quality data has been determined using data provided by the NYCC/SDC and the Department for the Environment, Food and Rural Affairs (DEFRA). Predications are then subsequently made on anticipated emissions from the proposed stacks during operation, and from vehicular traffic and other construction emissions generating activities to predict the concentrations of pollutants in ambient air which are then compared to national air quality standards.
- 4.7.5 The ES [APP-046] states that during the construction phase of the Proposed Development (including consideration of simultaneous demolition activities of the existing coal-fired station), potential impacts could arise from vehicles and mobile construction plant as well as dust and particulate matter from construction activities including site clearance works. These effects are not likely to be significant, but mitigation is proposed to control such emissions through the CEMP, which is secured by Requirement 18 of the Recommended DCO.
- 4.7.6 The ES [APP-046] states that operational effects from concentrations of pollutants, principally from nitrogen oxides and carbon monoxide are not likely to be significant. These assessments have been predicated on a worst case scenario of all units CCGT units operating at maximum potential and the black start and peaking plants operating at abnormally high levels, and on the basis of the stack height for the proposed CCGT being 90m above the ground level, also measured as 99.9m above ordnance datum, and for the peaking plant stacks being 45m. Requirement 5 of the Recommended DCO secures the detailed design of the proposed CCGT to be approved prior to construction, while Schedule 14 of the recommended DCO secures the heights of the stacks as stated.
- 4.7.7 Pollution control matters including monitoring during the operation of the proposed CCGT are subject to the EP regime, and emissions will be controlled to meet the requirements of the Industrial Emissions

Directive (IED). A separate application for an EP rests with the EA, and as I have stated above the Applicant has confirmed ([APP-029 and updated at DL 2 [REP2-010]) that it was 'duly made' on 28 June 2017, and this position is confirmed in the SoCG signed between the Applicant and the EA [REP3-008]. In its RR [RR-013] and WR [REP2-032], the EA stated that the Applicant has addressed its air quality comments made on the draft environmental statement.

Examination

- 4.7.8 As the Proposed Development would undeniably generate emissions, it was axiomatically a matter of concern with some local residents, and warranted scrutiny during the Examination.
- 4.7.9 No party questioned the levels of emissions predicted from the Proposed Development as prescribed in the ES [APP-046]. The EA in its RR [RR-013] and WR [REP2-032] raised no obvious concerns with predicted emissions from the Proposed Development identified in the ES [APP-046]. Following this and the advice in NPS EN-1, I did not consider it necessary to examine emissions levels generated from the operation of the Proposed Development because such matters are controlled through the EP regime.
- 4.7.10 The main issue of concern in the Examination was whether the Proposed Development will make use of an additional technology known as Selective Catalytic Reduction (SCR). The technology principally involves the injection of ammonia into the emissions generated by the proposed CCGT. The identified benefit [APP-046] of this process would be that it would reduce the level of nitrogen oxide emissions into the atmosphere. Whether this process is used will be determined by the EA as part of the EP regime, and its assessment of whether SCR constitutes Best Available Techniques (BAT) as defined under the IED. The EA was not able to update me during the Examination as to whether the EP would be granted or would likely be granted, and whether SCR would be deemed BAT.
- 4.7.11 If SCR is to be used, the ES [APP-046, APP-048 and APP-059] identifies that as worst case scenario; there would be increased atmospheric ammonia, nitrogen and acid depositions at Thorn Moor Special Area for Conservation (SAC); increased atmospheric ammonia and acid depositions at Skipworth Common SAC; and increased nitrogen and acid depositions at the Humber Estuary SAC. Nevertheless, the ES states that the effects would be negligible and imperceptible. However, because the European sites already exceed their critical mass in air quality levels, the ES identifies the likely significant adverse effects occurring from the Proposed Development should SCR be deemed BAT by the EA.
- 4.7.12 As it will be clear from Chapter 5 of this Report, I considered this matter of concern during the Examination, principally over the approach to assessment undertaken by the Applicant. NYCC/SDC in

their LIR [REP2-039] also raised a number of concerns in this regard. This is discussed further in Chapter 5 of this Report.

- 4.7.13 While emissions levels are controlled by the EP regime, the effects on the ground and on local populations fall outside of it. Emissions dispersions and the effects on local people was subsequently a matter of concern of local residents. Mr Laurenson in his RR [RR-009] particularly expressed concerns over the height of the stack for the proposed CCGT, noting that it would be much lower than the existing coal-fired stack, and as such could disperse emissions much closer to local people. At the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV 010], Mr Tams (HPC) echoed these concerns.
- 4.7.14 The Applicant responded [REP2-030] and [REP3-010] stating that the mass emission of nitrogen oxides per year will be 20% of those from the fully operational coal-fired power station, or around 40% of those from the coal-fired power station operating two units as it did at the time of the Examination; thus at a considerably lower level than the coal-fired power station. In addition, there will be no sulphur dioxide or particulate emissions from the gas-fired power station that are currently emitted from the coal-fired power station. The Applicant stated that the stack height had been selected following emissions modelling, and to ensure emission dispersal complied with national air quality legislation; and that emissions will disperse adequately by the time they reach ground level such that they will be imperceptible against background concentrations.
- 4.7.15 Notwithstanding the above, the draft DCO submitted at DL 2 [REP2-003] inserted a new Requirement 35 which secured a scheme for ambient air quality monitoring in the nearby village of Hensall. At the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV-010], the Applicant clarified that the additional requirement was added because of concerns expressed from members of the local community.
- 4.7.16 Mr Tams (HPC) raised further concerns at DL 3 [REP3-028] regarding odour effect to residents from ammonia depositions should SCR be used. The Applicant responded at DL 4 [REP4-007] and to my FWQs [PD-011] that any odour release from SCR would be negligible.
- 4.7.17 Considerably lower height air cooling infrastructure would replace the existing tall cooling towers. Whether this would disperse steam at a much lower level was perhaps an obvious and justified concern raised by Mr Laurenson in his RR [RR-009], echoed by Ms Laurenson [RR-015]. The Applicant responded [REP2-030 and REP2-014] stating that subject to the final design process and the result of BAT considerations, a hybrid cooling system would be used which the ES [APP-046] predicts that visible plumes exceeding 100m in length, and thus potentially capable of reaching the village of Hensall, would only occur for 0.1% of daylight hours. It would, as such, have a negligible and insignificant effect.

- 4.7.18 No further responses were received from those parties mentioned above. I asked a number of WQs [PD-007] and FWQs [PD-011] in respect to the baseline data; methodology; the black start and peaking plants; the significance of effects and cumulative impacts. The Applicants responses to those questions [REP2-014] and [REP5-005] satisfactorily addressed my questions.
- 4.7.19 SoCGs have been signed between the Applicant and NYCC/SDC [REP9-005] and the EA [REP3-008]. The parties agree that the ES has adequately assessed air quality matters; that the EP regime will control operational emissions based on BAT principles which cannot exceed air quality strategy objectives required by the Environment Act 1995; and that the SoS can be satisfied that the type and nature of this application is capable of being adequately regulated under EP regime and not aware of anything that would preclude the granting of an EP.
- 4.7.20 It is also agreed [REP9-005 and REP3-008] that a hybrid cooling system would represent BAT; and that the stack heights have been determined through dispersion modelling; and that Requirement 35 adequately secures ambient air quality monitoring at Hensall; and that there would be no significant air quality effects during construction or operation of the Proposed Development in EIA terms. Decommissioning matters are secured by Requirement 36 of the Recommended DCO, and the ES likens the predicted air quality effects of the decommissioning of the Proposed Development as being comparable to, or less than, those assessed for the construction phase.

ExA Conclusion

- 4.7.21 It is entirely understandable that the local community, particularly those persons who reside in Hensall, would be concerned about emissions and steam plume from the Proposed Development, and that they would not wish to experience deterioration in their living conditions.
- 4.7.22 I am satisfied that there would be no significant effects caused from construction and demolition activities of the Proposed Development and existing coal-fired power station. Emissions from the Proposed Development will be controlled by the EP regime, but it should be noted that they would emit lower levels of pollutants than the existing coal-fired power station. The addition of Requirement 35 of the Recommended DCO which would ensure the monitoring of the actual impacts of the Proposed Development on those residents in Hensall against the predicted effects reported in the ES provides additional reassurance on this.
- 4.7.23 The stack height despite being a matter of concern, would be appropriately sized, indeed no evidence was presented to suggest it should be taller, and I am satisfied with the Applicant's determination of and reasoning as presented in the ES [APP-100].

- 4.7.24 I am satisfied that Proposed Development would accord with all Directives, legislation and policy requirements and that air quality and emissions management matters are adequately provided for and secured in the Recommended DCO subject to the further discussion on deposition matters discussed in Chapter 5.

4.8 ARCHAEOLOGY AND HISTORIC ENVIRONMENT

Policy and ES Findings

- 4.8.1 Paragraph 5.8.2 of NPS EN-1 describes the historic environment as including all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, landscaped and planted or managed flora. Those elements of the historic environment that hold value to this and future generations because of their historic, archaeological, architectural or artistic interest may be any building, monument, site, place, area or landscape, or any combination of these. Paragraphs 5.8.8 to 5.8.10 require the Applicant to fully assess the significance of the heritage assets affected by the proposed development, and ensure that the extent of the impact can be adequately understood from the application and supporting documents.
- 4.8.2 Chapter 13 of the ES [APP-051] examines the effect of the Proposed Development on the historic environment. The assessment methodology identifies the study area and the effect on such heritage assets from the construction, operation and decommissioning of the Proposed Development.
- 4.8.3 The ES [APP-051] states that there are no designated heritage assets within the application site itself. The ES identifies four Scheduled Ancient Monuments; 82 listed buildings and three conservation areas within 5km of the application site. Because of their proximity and distance, all SAMs and conservation areas, and the vast majority of listed buildings would not experience any significant effects during construction, operation or decommissioning of the Proposed Development.
- 4.8.4 The ES [APP-051] identifies potentially significant effects caused by the construction of Work No 6 (gas pipeline) on the Hall Garths Medieval Moated site. This lies within 1km north of the existing coal-fired power station and on the north side of the River Aire. The Applicant and NYCC/SDC agree [REP9-005] that it constitutes a non-designated heritage asset.
- 4.8.5 The ES [APP-051] states that while the Hall Garths Medieval Moated site itself has been avoided by the route of Works No 6, its associated peripheral features as well as other heritage assets comprising a double-ditched enclosure, a possible field system complex and a ridge and furrow field boundary feature associated with medieval agricultural activities may not. Additionally, there is potential for

previously unrecorded archaeological features along the route of Work No 6 to be affected.

- 4.8.6 Mitigation is proposed through the submission of a Written Scheme of Investigation (WSI) to be approved by the relevant planning authority, to ensure adequate assessments and recording of any archaeological features discovered is undertaken. This is secured by Requirement 16 of the Recommended DCO.
- 4.8.7 The ES [APP-051] identifies the setting of two Grade II* listed buildings within the nearby village of Hensall as potentially experiencing significant effects during the operational life of the proposed CCGT building. As I set out later in this Report, the existing coal-fired power station is to be demolished; this being secured by way of a development consent obligation under s106 of the Town and Country Planning Act 1990 (TCPA1990). Nevertheless there is likely to be some overlap between the opening and operation of the proposed CCGT and the removal of the existing station.
- 4.8.8 In the event that the proposed CCGT becomes operational with the existing coal-fired power station in-situ albeit for a short period of time, the ES [APP-051] states that the effects on the setting of the listed buildings would not be significant as the new station would sit alongside its older counterpart. Once removed, the setting of the listed buildings would be improved as the proposed CCGT building would be considerably less visually dominant. The ES [APP-051] states that there would be no physical impacts during the decommissioning stage as any impact upon archaeological remains would have been mitigated during the construction stage.

Examination

- 4.8.9 No significant matters of concerns were raised by IPs in RRs and WRs in respect to heritage matters.
- 4.8.10 My main concern was whether the reliance on a WSI to be submitted at the Requirement stage was appropriate, and whether in fact an Outline WSI (OWSI) ought to be a matter before the Examination, particularly if unknown archaeological features could be affected. NYCC/SDC raised similar concerns in their LIR [REP2-039], noting that it would normally expect trial trenching to have been undertaken. However in response to my WQ [PD-007] on the matter, the Applicant stated that neither NYCC/SDC nor Historic England requested an OWSI be submitted with the application, but in any event, it felt that Requirement 16 of the Recommended DCO would be adequate to ensure no significant effects would occur during the construction of Work No 6 (gas pipeline).
- 4.8.11 NYCC/SDC stated in their LIR [REP2-039] and in response to my WQ [PD-007] that the approach to dealing with archaeological risk can be successfully managed by Requirement 16 of the then draft DCO [APP-005], although as currently worded at that time, nothing bound the

Applicant to carrying out mitigation identified as a result of the assessments.

- 4.8.12 At the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV-010], I asked for an updated position from the parties. I was informed that a revised DCO would be tabled at DL 3 in which Requirement 16 would be amended with the insertion of a new sub-paragraph 4 and additional wording made to sub-paragraph 5, and that this wording was the agreed position of the parties. The revised wording for Requirement 16 was submitted at DL 3 [REP3-003]; and is the same as in the Recommended DCO. NYCC/SDC responded to my FWQ [PD-011] that it was content with the revised wording, and this was confirmed in the SoCG signed between the Applicant and NYCC/SDC [REP9-005].
- 4.8.13 NYCC/SDC in its RR [RR-018] and in its LIR [REP2-039] raised concerns in respect to whether adequate consideration had been given to the heritage value of the existing power station. I raised this in my WQ [PD-007]. The Applicant responded [REP3-009] stating that the ES [APP-051] has undertaken such an assessment, accepting that it has non-designated heritage value as a post-war power-station. However, Historic England (HE) had already concluded that the existing coal-fired power station is not of an innovative example or of sufficient value to be worthy of listing. The Applicant further states that the existing coal-fired power station will be appropriately recorded prior to demolition. The SoCG signed between the Applicant and NYCC/SDC [REP9-005] agrees this position.
- 4.8.14 HE in its RR [RR-006] stated that it agreed with the conclusions of the ES [APP-051] and that any harm to the setting of heritage assets would not be substantial and should be weighed against the public benefits of the scheme. The SoCG signed between the Applicant and HE [REP1-004] and with NYCC/SDC [REP9-005] confirms this position, and agrees the scope of the assessment in the ES and the adequacy of Requirement 16 in the Recommended DCO.

ExA Conclusion

- 4.8.15 It would have been advantageous had an OWSI been submitted with the application. Greater clarity and more information would have been available to me as to the likelihood of peripheral archaeological features being present along the route of Work No 6 (gas pipeline). Nevertheless on the evidence submitted, I am satisfied that submitting a WSI as part of the agreement on archaeological matters would be sufficient, and it is adequately secured in the Recommended DCO.
- 4.8.16 While two identified listed buildings located in the village of Hensall could potentially experience significant effects in terms of setting during the operation of the Proposed Development, I am satisfied that the overall effects when compared against the existing coal-fired power station would be neutral, and sufficiently off-set by the

additional planting secured by Requirement 6 of the Recommended DCO.

- 4.8.17 I am satisfied therefore that there would be no significant effects on heritage assets caused from construction, operation and decommissioning effects of the Proposed Development. The Proposed Development would accord with all legislation and policy requirements and that such matters are adequately provided for and secured in the Recommended DCO.

4.9 BIODIVERSITY AND ECOLOGY

Policy and ES Findings

- 4.9.1 As stated above, I will discuss the effects on European sites in the context of the Habitats Regulations in Chapter 5 of this Report. This section examines other potential biodiversity effects of the Proposed Development and the effects on European sites insofar as they relate to the EIA.
- 4.9.2 Paragraph 5.3.3 of NPS EN-1 states that where the development is subject to EIA, the Applicant should ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity.
- 4.9.3 Paragraph 5.3.7 of NPS EN-1 states that development should aim to avoid significant harm to biodiversity and geological conservation interests. Paragraph 5.3.8 states that the SoS should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.
- 4.9.4 Paragraph 5.3.4 of NPS EN-1 states that the Applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests. Paragraphs 5.3.15 and 5.3.19 state that the SoS should maximise opportunities for building-in beneficial biodiversity or geological features, using requirements or planning obligations where appropriate.
- 4.9.5 Chapter 10 of the ES [APP-048] examines the effect of the proposed development on ecology. The baseline conditions identify a number of protected or notable animal species as present or potentially present within the site including bats, great crested newts, badgers, otters, fish, grass snakes and breeding birds. The ES is accompanied by an Indicative Landscape and Biodiversity Strategy (ILBS) [APP-035] updated at DL 8 [REP8-006] which surveys and mitigates effects on biodiversity, and which is secured by Requirement 6 of the Recommended DCO.

- 4.9.6 The ES [APP-048] identifies no significant effects on habitats within any statutory or non-statutory sites from construction activities owing to their proximity and distance from the site. Some loss of habitats on the application site would occur through tree and existing lagoon removal, but will be mitigated through an agreed LBS secured by Requirement 6 of the Recommended DCO.
- 4.9.7 The ES [APP-048] predicts no significant adverse effects would occur to protected or notable species during construction, while any minor disturbances would be temporary and reversible. The ES [APP-048] states that mitigation measures such as minimising light pollution, dust management, and other surveys would further minimise any harmful effects, and this is secured through Requirements 17 (Protected Species) and 18 (CEMP) of the Recommended DCO.
- 4.9.8 Within the River Aire, the ES [APP-048] states that construction activities to repair and install Work No 4 (cooling water) abstraction and discharge infrastructure would not be likely to result in significant effects, particularly through the careful installation and removal of cofferdams, which would be timed to be undertaken outside of the salmonid migratory season, which is in the period of October to December.
- 4.9.9 The ES [APP-048] identifies no likely significant effects would occur from the operation stage of the Proposed Development on any wildlife or habitat. Decommissioning effects are unknown at the current time and further survey work would need to be undertaken at that time, but are predicted to be lower than those identified for construction activities.

Examination

- 4.9.10 Setting aside the matters concerning European sites in the context of HRA, the principal matter of concern, and an initial matter of dispute between the Applicant, and NYCC/SDC and Yorkshire Wildlife Trust (YWT), was the Applicant's assessment of predicted onshore biodiversity offsetting calculations set out in the ILBS ([APP-035] and also in the updated ILBS submitted at DL 8 [REP8-006]). Specifically, whether the proposed mitigation measures as set out in the ILBS [APP-035 and REP8-006] would amount to a predicted biodiversity gain or loss.
- 4.9.11 The ILBS [APP-035 and REP8-006] sets out the background to biodiversity offsetting calculations. It states that in April 2012, DEFRA published a pilot biodiversity offsetting metric to provide a standardised method for comparing losses and gains in biodiversity through development. Within it, a defined methodology is used to calculate the number of biodiversity units that need to be provided by a developer to offset losses. The required compensation may be provided either within the development boundary, or through off-site habitat creation or restoration works. The DEFRA biodiversity offsetting metric has been used to quantify the losses and gains in

biodiversity as a result of the Proposed Development in order to demonstrate that no net loss and an overall biodiversity net gain can be achieved.

- 4.9.12 Table 5.2 of both the ILBS [APP-035] and the updated ILBS [REP8-006] set out the results of the biodiversity offsetting calculations. In summary, it identifies habitats to be permanently lost, including plantation coniferous woodland, species poor grassland, standing water (lagoon), plantation broad leaved woodland, scrub and arable land, amounts to 6.85 hectares of land and resulting in a loss of 37 biodiversity units. Habitat creation and enhancement proposals, including existing woodland management, species rich grassland, new attenuation pond and AGI planting on 12.8 hectares of land would create 40.22 biodiversity units. Thus, the Applicant states that the Proposed Development would result in a net gain of 3.22 biodiversity units.
- 4.9.13 NYCC/SDC in their RR [RR-018], LIR [REP2-039] and WR [REP2-037]; and YWT in their RR [RR-011] and WR [REP2-040] disputed the findings of the ILBS [APP-035 and REP8-006]. Specifically, NYCC/SDC/YWT raised concerns with the existing woodland management creation, which Table 5.2 identifies as being of 11 hectares and would create 25.88 biodiversity units. The belt of woodland in question lies immediately to the north of the existing coal-fired power station and on the northern side of Wand Lane.
- 4.9.14 NYCC/SDC/YWT stated both in their RRs and WRs [RR-018], [REP2-039], [REP2-037], [RR-011] and [REP2-040], and in their LIR [REP2-039] that it will not be possible to enhance the entire 11 hectares of woodland, as trees cannot be removed due to its screening function. As the primary function of the woodland is to screen the existing coal-fired power station, YWT [REP2-040] stated that it is very densely planted with a closed canopy, meaning that little understory planting can grow as minimal light penetrates the woodland floor. As the screening function of the woodland must be maintained the proposed under storey planting will not be successful except around the edges of the woodland. In this case a lower number of hectares which would actually be enhanced would also give a different result to the offsetting calculations.
- 4.9.15 Accordingly, YWT stated [REP2-040] that the 25.88 biodiversity units gain as set out in the ILBS [APP-035 and REP8-006] would not occur. Deducting this figure from the overall calculations would result in the creation of only 14.34 biodiversity units, and as a result the net change would in fact be a loss of 22.66 biodiversity units.
- 4.9.16 This matter was not resolved by DL 2 and I decided to table the issue as a main agenda item to be discussed at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV-010]. At the event, I was informed by both the Applicant and YWT that a series of discussions had taken place between them. While the Applicant stood by and continues to stand by its biodiversity offsetting

calculations set out in the ILBS [APP-035 and REP8-006], it conceded that the DEFRA model was subjective, and that differing opinions on the value of enhancements could be reached. Moreover, the Applicant stated that it recognised that its biodiversity offsetting calculations showed only a very small biodiversity gain, and on reflection it accepted that more needed to be done.

- 4.9.17 YWT stated at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV-010] that an opportunity existed for the Applicant to contribute towards an off-site project in the Lower Aire Valley. I requested evidence of this project, which was provided by YWT in their DL 3 submissions [REP3-016 - REP3-019] and included a document entitled "*Working with Natural Processes - Using the evidence base to make the case for Natural Flood Management*"; a project summary and a map.
- 4.9.18 YWT [REP3-016] stated that the project work follows a study by the EA on how natural processes could best be utilised to reduce flooding, and where there is potential for such work to be undertaken on river catchments in England. This work highlighted that the stretch of the River Aire close to Eggborough is one of two locations in the River Aire catchment (and the only place in the Lower Aire) which has high potential for habitat creation to be undertaken to reduce flood risk. This, YWT states [REP3-017] justifies that wetland habitat creation in this area will be effective at providing multiple benefits for flood alleviation and wildlife, and provides confidence that the Lower Aire Valley Contribution associated with the Proposed Development would result in ecological enhancements.
- 4.9.19 The Applicant stated at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV-010], and confirmed in their written response to DL 3 [REP3-010] that it had agreed to make a financial contribution to this project. I asked the Applicant how it felt such a financial contribution met the tests of paragraph 204 of the Framework given that it had already concluded its biodiversity offsetting calculations were correct and subsequently resulted in a net gain. The Applicant responded that DEFRA biodiversity offsetting metric was a developing tool and thus subjective; that it was not originally envisaged to be used in these types of applications; and is only a guide. On that basis, the Applicant stated that given the relatively small net gain, it was therefore appropriate to offer a financial contribution.
- 4.9.20 The signed and executed s106 Planning Agreement was submitted at DL 9 [REP9-011]. This Agreement covenants the Applicant to make a financial contribution of £151,000 towards the Lower Aire Valley project for wetland habitat creation, payable to SDC.
- 4.9.21 I asked a number of WOs [PD-007] in respect of cooling water discharge temperatures, operational lighting and whether the proposed attenuation pond is intended to support biodiversity, and I am satisfied that those questions were adequately answered by the

Applicant [REP2-014]. The Applicant also clarified that a Precautionary Working Method Statement, required by Natural England (NE) in its SoCG signed with the Applicant [REP1-007] will form part of the CEMP and is thus secured by Requirement 18 of the Recommended DCO.

- 4.9.22 The SoCGs signed between the Applicant and NYCC/SDC [REP9-005], YWT [REP8-008], the EA [REP3-008] and NE [REP1-007] agrees the scope and assessment in the ES; that biodiversity offsetting calculations set out in the updated ILBS [REP8-006] are only a guide and are subjective, and that additional measures are necessary, with a financial contribution towards the Lower Aire Valley biodiversity enhancements deemed to overcome such concerns.
- 4.9.23 The SoCG signed with YWT [REP8-008] and NE [REP1-007] also agrees that further wildlife surveys are required to ascertain protected and non-protected species, and to improve habitat creation on the power station site particularly on the land set aside for Work No 2 (carbon capture readiness). These are secured by Requirement 6 and Requirement 17 of the Recommended DCO. All parties agree that Requirement 6 of the Recommended DCO adequately secures biodiversity enhancements.
- 4.9.24 No specific concerns were raised by any IP in respect to the effect of the Proposed Development on marine wildlife. Cofferdam installation and removal is discussed in more detail below in respect to flooding matters. The ES [APP-048] states that a Fish Management Plan would be prepared, which would form part of the landscape and biodiversity strategy secured by Requirement 6 of the Recommended DCO, to ensure fish welfare both in the lagoon that is proposed to be removed and in the River Aire would be protected. The SoCG signed between the Applicant and the MMO [REP8-007] and the EA [REP3-008] agree that the Proposed Development would have no likely significant effects on marine wildlife from construction and operation activities.

ExA Conclusions

- 4.9.25 I concur with the parties that the biodiversity offsetting calculations as set out in Table 5.2 of the updated ILBS [REP8-006] are subjective. But even if they were not and I found them to be reasonable, the net gains predicted would nevertheless only amount to a negligible benefit at best. I concur with the IPs that more needed to be done.
- 4.9.26 Paragraph 204 of the NPPF states that planning obligations should only be sought where they meet all of the following tests:
- Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.
- 4.9.27 It is my judgement that the Lower Aire Valley contribution identified in the s106 Planning Agreement [REP9-011], and evidenced by YWT's

submissions at DL 3 [REP3-016 - REP3-019] is a project which meets the Framework tests. It would also comply with NPS EN-1 in which biodiversity net gain is promoted from development. YWT have advanced that such works will cost £151,000, and in the absence of evidence to the contrary I have no reason to disagree.

- 4.9.28 Taking all matters into consideration, I am satisfied that the Proposed Development would have no likely significant effects during construction and operation on biodiversity or wildlife, both onshore and offshore. The Proposed Development would accord with all Directives, legislation and policy requirements and that biodiversity and wildlife management are adequately provided for and secured in the Recommended DCO.

4.10 CARBON CAPTURE STORAGE READINESS

Policy and ES Findings

- 4.10.1 Paragraph 4.7.10 of NPS EN-1 states that all applications for new combustion plant which are of generating capacity at or over 300 MW and of a type covered by the EU's Large Combustion Plant Directive should demonstrate that the plant is Carbon Capture Ready (CCR) before consent may be given. It goes on to state that the SoS must not grant consent unless this is the case.
- 4.10.2 The application is accompanied by a Carbon Capture Storage and Carbon Capture Readiness Statement [APP-033], which undertakes a technical and economic assessment on space, retrofitting carbon capture technology, CO₂ storage and CO₂ transport. The Works Plans [APP-015] indicate that land to the east of the existing coal-fired power station as the location of CCR. As the peaking plant would generate less than 299 MW, CCR does not apply.

Examination

- 4.10.3 The EA in its RR [RR-013] stated that while there are no foreseeable barriers to carbon capture with regards to space, it required further information in respect to technical feasibility of carbon capture retrofit. The Applicant subsequently updated a drawing entitled "Carbon Capture Plan Layout Indicative Plan" which is appended to the Carbon Capture Readiness Statement [APP-033] which was submitted at DL 2 [REP2-030].
- 4.10.4 The EA confirmed in its WR [REP2-032], and in the SoCG agreed between the parties [REP3-008] that it had no concerns in respect to CCR matters, and that provision for CCR is adequately secured through Requirements 31 and 32 of the Recommended DCO. The SoCG signed between the Applicant and NYCC/SDC [REP9-005] also agrees the Proposed Development complies with the relevant regulations and guidance.
- 4.10.5 I posed no WOs during the Examination on this matter.

ExA Conclusion

- 4.10.6 I am content that the Proposed Development adequately makes provision for CCR. It accords with all legislation and policy requirements and that CCR is adequately provided for and secured in the Recommended DCO.

4.11 COMBINED HEAT AND POWER READINESS

Policy and ES Findings

- 4.11.1 Paragraph 4.6.6 of NPS EN-1 states that any application to develop a thermal generating station under s36 of the Electricity Act 1989 must either include Combined Heat and Power Readiness (CHP) or contain evidence that the possibilities for CHP have been fully explored to inform the SoS's consideration of the application. This should be through an audit trail of dialogue between the Applicant and prospective customers. The same principle applies to any thermal power station which is the subject of an application for development consent under the PA2008.
- 4.11.2 Paragraph 4.6.7 of NPS EN-1 states that developers should consider the opportunities for CHP from the very earliest point and it should be adopted as a criterion when considering locations for a project.
- 4.11.3 The Application is accompanied by a Combined Heat and Power Assessment [APP-032], which undertakes an assessment of potential heat users, a heat export feasibility study and an assessment of BAT. It concludes that while the provision of heat or steam is not viable at this stage, the CHP assessment demonstrates that the Proposed Development meets the BAT tests and will be designed and built as CHP Ready to supply any identified viable heat load up to a potential maximum of 33 MW and sufficient to meet the identified load of 21 MW.

Examination

- 4.11.4 In its WR [REP2-032], the EA stated that CHP matters are subject to the EP regime. While the EA raised no specific concerns, it noted that a site layout plan which could be made available for CHP had not been provided with the Application; and that the selection of heat loads has not been agreed which could dictate the site infrastructure and therefore affect the footprint of any development required.
- 4.11.5 However in the SoCG signed between the Applicant and the EA [REP3-008], the parties agree that the Application adequately demonstrates CHP ready status and that Requirement 28 of the Recommended DCO adequately secures space and routes for the provision of CHP over the lifetime of the Proposed Development should CHP become economically viable in the future. The SoCG signed between the Applicant and NYCC/SDC [REP9-005] also agrees the Proposed Development would be CHP ready.

4.11.6 I posed no WQs during the Examination on this matter.

ExA Conclusion

4.11.7 I am content that the Proposed Development adequately makes provision for CHP. It accords with all legislation and policy requirements and that CCR is adequately provided for and secured in the Recommended DCO.

4.12 FLOODING AND WATER

Policy and ES Findings

4.12.1 Paragraph 5.7.3 of NPS EN-1 states that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. Where new energy infrastructure is, exceptionally, necessary in such areas, policy aims to make it safe without increasing flood risk elsewhere and, where possible, by reducing flood risk overall.

4.12.2 Paragraph 5.7.4 of NPS EN-1 states that and all proposals for energy projects located in Flood Zones 2 and 3 in England should be accompanied by a flood risk assessment (FRA), which should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account. Paragraph 5.7.10 states that for construction work which has drainage implications, the SoS will expect the drainage system to comply with any National Standards published under the Flood and Water Management Act 2010.

4.12.3 Paragraph 5.7.13, 5.7.14, 5.7.15 and 5.7.16 of NPS EN-1 set out the need for development to pass a Sequential Test, then an Exception Test if development is to be considered permissible in a high-risk Flood Zone area. Paragraph 5.7.12 of NPS EN-1 states that the SoS should not consent development in Flood Zone 3 unless they are satisfied that the Sequential and Exception Test requirements have been met.

4.12.4 Chapter 11 of the ES [APP-049] examines the effects of the Proposed Development on flooding and water resources. An FRA is appended to the ES [APP-112]. The study is based on a likely acceptance that key water bodies may receive runoff or discharge from the site during the construction, operation and decommissioning of the Proposed Development, and assesses the risk to those water bodies in respect of contamination. Those water bodies examined in the ES include both surface and groundwater.

4.12.5 The ES [APP-049] identifies only one potential significant effect as a result of the Proposed Development, and this relates to flooding caused by the installation of cofferdams within the River Aire in respect to the abstraction and discharge infrastructure for Work No 4 (cooling water). This would be particularly likely if the works coincided

with high water levels in the river channel. However, the ES [APP-049] states the mitigation in the form of timing cofferdam construction during the summer months when flows in the River Aire are generally lower would minimise this risk such that significant effects are unlikely. The need for approval for the method of timing for the installation and removal of cofferdams is secured in Requirement 5 (6) of the Recommended DCO.

- 4.12.6 No significant effects from the construction and operation of the Proposed Development in respect of all other flooding matters, drainage and water quality are identified in the ES [APP-049] from the construction of the Proposed Development.
- 4.12.7 Only elements of Work No 4 (cooling water) and Work No 6 (gas pipeline) would be within Flood Zone 3 areas. The ES [APP-049] states that there would be no significant residual effects caused to flooding from the construction of Work No 6 (gas pipeline) as they would be below ground, temporary, and the land would be restored to its existing condition. Construction practices to prevent flooding and to control leakages and other spillages from entering the watercourses would be strictly controlled, and flood prevention through the storage of construction materials outside of floodplains where possible would prevent flooding in the area or avoid any adverse environmental effects if the site flooded during construction. All of the above are secured by Requirements 14 (flood risk), 15 (contaminated land and groundwater), and 18 (CEMP) of the Recommended DCO.
- 4.12.8 During the operation stage, although precise figures will not be known until the detailed design stage, the ES [APP-049] states that the water abstraction levels from the River Aire for cooling purposes would be substantially lower (less than half) than that needed for the existing coal-fired power station, while discharge temperatures would have a limit of a maximum of 10 degrees centigrade above the temperature of the water abstracted from the River Aire. Currently the existing coal-fired power station can discharge at a maximum of 30 degrees. Measures to prevent flooding and to control leakages and other spillages from entering the watercourses, as well as the discharge temperatures from the operation of the Proposed Development would be regulated through the EP regime.
- 4.12.9 The proposal to treat surface water during operation would be to utilise an existing drainage system at the south east corner of the site; currently disused; which would drain surface water into the Hensall Dyke, and which run-off rates would be controlled to prevent flooding. This is secured by Requirement 13 of the Recommended DCO. Decommissioning effects are anticipated to be similar to those for construction, such that there would be no significant effects. Decommissioning is secured by Requirement 36 of the Recommended DCO.
- 4.12.10 The ES [APP-049] states that the Proposed Development would not pose any significant risk to deterioration of surface water bodies,

groundwater bodies and their ecosystems. The Proposed Development would therefore not conflict with the Water Framework Directive (WFD) and subsequent legislation to protect waterbodies. The EA in its WR [REP2-032] endorses the ES [APP-049] on this matter.

Examination

- 4.12.11 No IPs raised any concern during the Examination in respect of the principle of the Proposed Development within higher-risk Flood Zone areas. I was satisfied at the outset that the Proposed Development constitutes essential infrastructure and thus complied with the Exceptions Test for development within Flood Zone 3 areas. The SoCG signed between the Applicant and the EA [REP3-008] concurs with this, as well as the fact that there would be no significant effects to flood risk, with flood risk prevention matters secured by Requirement 14 of the Recommended DCO.
- 4.12.12 Given that the ES [APP-049] identifies the use of cofferdams as potentially resulting in significant effects, it is not surprising that this matter was the main concern raised by IPs in the Examination particularly in relation to flooding caused by pollution, and disruption to navigation.
- 4.12.13 As set out in Chapter 2 of this Report, cofferdams would be required to inspect and then potentially replace the cooling water abstraction and discharge infrastructure. CRT [RR-008 and REP2-031] was principally concerned with the non-tidal section of the River Aire of which it has statutory responsibility, and where the abstraction point lies; the MMO [RR-019 and REP2-033] with the tidal section and the discharge point.
- 4.12.14 I asked a number of WOs [PD-007] on individual matters raised by the Canal & River Trust (CRT) and the Marine Management Organisation (MMO) in respect to cofferdams, and noted the Applicant's response [REP2-014], which included the submission of a revised Framework CEMP [REP2-020] to restrict installation of the cofferdam to during summer/lower flow periods; and measures to undertake sediment contamination testing mitigation measures.
- 4.12.15 Nevertheless, at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV-010] I asked for further clarification and an explanation from the Applicant as to the position on cofferdam construction and removal.
- 4.12.16 The Applicant responded at the event, as well as in writing for at DL 3 [REP3-010] that at the cooling water abstraction point the cofferdam would extend approximately 11 m from the riverbank into the River Aire in order to allow works to the existing abstraction structure. This would include a concrete apron extending approximately 8 m from the riverbank. At the cooling water discharge point, the cofferdam will extend approximately 22 m from the top of the riverside embankment in order to allow works to the existing discharge structure and associated concrete apron which would extend approximately 18 m

from the top of the embankment. A Deemed Marine Licence (DML) is required in respect of the latter works, which is set out in Schedule 13 of the Recommended DCO.

- 4.12.17 The Applicant further stated [EV-007 - EV-010] and [REP3-010] that it is anticipated that the cofferdam at the abstraction point will be required for two separate three month periods, with an intervening gap of approximately six months so as to reduce the duration of the cofferdam being present in the water for ecological, flood risk and hydrodynamic, erosion and scour purposes. The first three-month period will comprise inspections, measurements and cleaning of the existing structure to inform the detailed design of works required to upgrade/ reconstruct the existing infrastructure. It is anticipated that the cofferdam at the discharge point would be required for one three to six-month period. The timing of these works at the water intake between May and September, and the phasing of these works has been selected to avoid periods of higher water levels in the river and also to avoid any salmonid migration periods, the latter of which I have mentioned to above.
- 4.12.18 CRT made no further WR on the matter in respect to cofferdams. The MMO [REP3-026] continued to raise some concerns in respect to the wording and specific provisions in the draft DML [APP-005] including revisions to the co-ordinates identified in Tables 12 and 13 and a requirement for a method statement on the removal of the cofferdams. These were resolved with various iterations and updated of the DCO and the Deemed Marine Licence Coordinates Plan [APP-025] updated at DL7 [REP7-002] during the Examination.
- 4.12.19 Both the SoCG signed between the Applicant and the MMO [REP8-007] and the unsigned but agreed in all other respects with CRT [REP9-015 and REP9-016] accepts that the installation and removal of the cofferdams would not give rise to significant effects, and mitigation is adequately secured by Requirements 5 (design) and 18 (CEMP) in respect to sediment control and pollution in the River Aire in the Recommended DCO, as well as the provisions contained within the Recommended DML. It is also agreed that eel screens, initially a concern raised by CRT in its RR [RR-008] are adequately secured by Requirement 5 of the Recommended DCO.
- 4.12.20 The EA stated in its RR [RR-013] that it had concerns regarding the proposed method of construction for Work No 6 [gas pipeline] where it would cross the River Aire and the implications on flooding and flood defences. This matter was resolved by DL 2 as the parties had agreed that Horizontal Directional Drilling would be used, secured by Requirement 5(8) of the Recommended DCO. The Applicant and the EA further agreed [REP3-008] that an additional requirement was deemed necessary to ensure that Work No 6 (gas pipeline) would not affect the EA's flood defences, and this is secured by Requirement 40 of the Recommended DCO.

- 4.12.21 The SoCG signed between the Applicant and the EA [REP3-008] agrees, for the reasons given above, that there would be no significant effects on flood defences, flooding or water pollution caused from the construction and operation of the Proposed Development. The parties also agreed that Requirements 13 (foul and surface water drainage); 15 (contaminated land and groundwater); 18 (CEMP) and 25 (piling) adequately secure an assessment of no significant effects.
- 4.12.22 NYCC/SDC in their LIR [REP2-039] stated that NYCC in its capacity as the Lead Local Flood Authority had no specific concerns in respect to flood risk. However, as the site falls within the Danvm Drainage Commissioners of the Shires Group of Internal Drainage Boards (IDB) administrative boundary, their view on the acceptability of surface drainage should be sought.
- 4.12.23 However, the IDB did not participate orally or in writing during the Examination, and I asked NYCC/SDC at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV-010] whether they could provide a response on behalf of the IDB as to their views on surface water drainage matters. In their response at DL 4 [REP4-009], NYCC/SDC confirmed that the IDB had no objection or concern to the proposed method of surface water drainage.
- 4.12.24 I asked a number of other WQs [PD-007] in respect of flooding matters in respect to the cooling system (hybrid or wet) water abstraction and discharge, the River Aire crossing, and whether drainage of farmland is adequately secured in the draft DCO [APP-005]. I was satisfied with the responses given by the Applicant [REP2-014] and asked no further WQs on the matter.

ExA Conclusion

- 4.12.25 I concur with the EA that the Proposed Development would amount to essential infrastructure, and as such satisfies the Sequential and Exemption Tests required by NPS EN-1. I am satisfied that the cofferdam installation and removal would not have significant effects on flooding or cause adverse pollution to the watercourses, and that adequate securities to ensure this is the case are contained within the Recommended DCO and DML.
- 4.12.26 I am also satisfied that the Proposed Development would have no significant effects in respect to flooding, flood defences and pollution of ground and surface water, that it would accord with the WFD, legislation and policy requirements and that adequate measures are secured in the Recommended DCO and DML.

4.13 LAND CONTAMINATION AND GROUND CONDITIONS

Policy and ES Findings

- 4.13.1 Chapter 12 of the ES [APP-050] assesses the effects of the proposed development on land contamination and the existing ground conditions. The methodology is based on an assessment of the

historical ground condition information and previous surveys, and the potential risks to people, surrounding land uses, ecological receptors, buildings, soils and groundwater from the construction, operation and decommissioning of the Proposed Development.

- 4.13.2 The ES [APP-050] states that the existing coal-fired power station site is likely to be contaminated, and any significant contamination within the Proposed Development site would be identified and remediated. Best practice measures to protect construction staff; and to minimise and prevent risks from leaks or spillages will be used. These matters are secured in Requirements 15 (Contaminated Land) and 18 (CEMP) of the Recommended DCO. The ES [APP-050] states if piling is required, a piling risk assessment will be submitted, this is secured by Requirement 25 of the Recommended DCO. There would as such be no significant adverse effects on land contamination during construction.
- 4.13.3 The ES [APP-050] states that operational management is subject to the EP regime, but that effective management of the site to avoid soil and groundwater pollution will be used. There would therefore be no significant adverse effects during the operation of the Proposed Development. Decommissioning effects are predicted to be similar to construction, and Requirement 36 of the Recommended DCO would ensure decommissioning matters are properly considered.

Examination

- 4.13.4 No RRs or WRs were received during the Examination raising concerns on land contamination issues. I equally was satisfied with the assessment in the ES, and I posed no WQs on this issue. SoCGs between the Applicant and the EA [REP3-008] and NYCC/SDC [REP9-005] agree that the scope of the ES is acceptable and that Requirements 15 and 18 of the Recommended DCO adequately secure the safe construction and operation of the Proposed Development in this regard. The SoCG signed between the Applicant and the Coal Authority [REP2-012] agrees the ES adequately assesses the potential effects on land stability.

ExA Conclusion

- 4.13.5 I am content that the Proposed Development accords with all legislation and policy requirements and that land contamination and ground conditions matters are adequately provided for and secured in the Recommended DCO.

4.14 LANDSCAPE AND VISUAL

Policy and ES Findings

- 4.14.1 Paragraph 5.9.5 of NPS EN-1 states that the Applicant must carry out a landscape and visual assessment and report it in the ES, and that it should include reference to any landscape character assessment and

associated studies as a means of assessing landscape impacts relevant to the proposed project.

- 4.14.2 Paragraph 5.9.6 of NPS EN-1 states that the Applicant's assessment should include the effects during construction of the project and the effects of the completed development; and its operation on landscape components and landscape character. Paragraph 5.9.7 states that the assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity, and should include light pollution effects, including on local amenity, and nature conservation.
- 4.14.3 Paragraphs 5.9.8 and 5.9.18 of NPS EN-1 state that virtually all nationally significant energy infrastructure projects will have effects on the landscape and visual receptor points, and the SoS will need to consider that the scheme has been designed carefully, taking account of the potential impact on the landscape and that the visual effects on sensitive receptors, such as local residents, and other receptors to the local area, outweigh the benefits of the project. Paragraph 5.9.8 goes on to say that having regard to siting, operational and other relevant constraints the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.
- 4.14.4 Chapter 16 of the ES [APP-054] assesses the effect of the Proposed Development on landscape and visual receptors. The study area for both has been formed by professional judgement on where there would be potential significant direct or indirect effects on landscape character and sensitive viewpoints from the construction and operation of the Proposed Development. It states that the tallest element of the Proposed Development, which would be the stack, would be highly unlikely to result in significant effects beyond a distance of 10km, and the assessment therefore focusses on areas and receptors within this radius.
- 4.14.5 The ES [APP-054] states that its focus of its assessment of the landscape character is the intervisibility between the Proposed Development and the identified national, regional and local landscape character areas. The assessment of visual effects considers 15 representative viewpoints around the site and examines the construction, operation and decommissioning effects on those receptors. The ES [APP-054] further states that the location for the proposed CCGT was selected due to an existing embankment and vegetation which borders the proposed CCGT site and which therefore provides screening for the low-level structures.
- 4.14.6 The ES [APP-054] identifies the application site as falling within the River Aire Corridor Local Landscape Character Area (LCA). The key characteristics of this LCA are described, amongst other things, as being varied because the LCA itself comprises farmland, the River Aire and historic parkland and country mansions on the one hand, and

large scale industrial infrastructure development in particular power stations, and the M62 motorway on the other.

- 4.14.7 The ES [APP-054] states that the Proposed Development would result in changes to the landscape because of the movement of plant and heavy goods vehicles (HGVs) and the introduction of large scale structures during the construction, operation and decommissioning stages of development. However, the site already contains the existing coal-fired power station; and the immediate area contains industrial development, highways and other power stations including Drax, Ferrybridge Multifuel and Ferrybridge C power stations as well as the forthcoming Knottingley power station. While the Proposed Development would result in some removal of trees on the site itself, the ES [APP-054] states that there would be no significant adverse effects from the construction of the Proposed Development.
- 4.14.8 The ES [APP-054 and APP-092 - APP-093] identifies a number of visual receptor points where there could be significant visual effects caused by the construction of the proposed CCGT. These would be:
- Viewpoint 1 - Selby Road 1km to the west of the proposed CCGT site;
 - Viewpoint 3 - Weeland Road 0.7km to the south;
 - Viewpoint 5 - Gallows Hill 0.8km to the east;
 - Viewpoint 6 - Ings Lane 1.5km to the north east; and
 - Viewpoint 15 - Station Road 1km to the south east.
- 4.14.9 In addition, the ES [APP-054 and APP-092 - APP-093] identifies that there could be significant effects caused by the construction of Work No 7 (AGI) at Viewpoint 10, West Lane 0.1km to the north.
- 4.14.10 The ES [APP-054] proposes no specific mitigation, because it states it is not possible to do so owing to the size of the buildings and structures involved.
- 4.14.11 As I set out later in this Report, the existing coal-fired power station is to be demolished; this being secured by way of a s106 Planning Agreement. Nevertheless there a distinct probability that some overlap between the opening and operation of the proposed CCGT and the removal of the existing station.
- 4.14.12 In the event that both the proposed CCGT becomes operational with the existing coal-fired power station in-situ albeit for a short period of time, the ES [APP-054] states that there would be no significant effects on landscape character as the new station would sit alongside, and within the context of, its older counterpart. Once removed, the proposed CCGT would have a significant adverse effect on the LCA, but considerably less so than the existing coal-fired power station. Some mitigation is proposed in the form of enhancement of the existing landscape screen planting, secured by Requirement 6 of the Recommended DCO.

- 4.14.13 A number of visual receptors are identified in the ES [APP-054] as being significantly adversely affected by the operation of the proposed CCGT both with the existing coal-fired power station in-situ, as well as when it is removed. These would be the same viewpoints as identified in paragraph 4.14.8 with the following additional receptors:
- Viewpoint 7 - Chapel Haddlesey 2km to the north; and
 - Viewpoint 9 - Brayton 6.7km to the north
- 4.14.14 Again the ES [APP-054] states that no specific mitigation is proposed owing to the size of the buildings and structures involved.
- 4.14.15 The ES [APP-054] states that decommissioning effects would be similar to the construction effects and thus not significant in terms of landscape character, but would likely be significant at the visual receptors identified above. These would, however, be temporary and their effects reversible.

Examination

- 4.14.16 I did not identify any significant issues of concern during the Examination. No IPs raised any significant concerns in respect to the effect of the Proposed Development on landscape and visual receptors. CRT in its RR [RR-008] stated that it expected to see enhanced mitigation through strengthening woodland and other planting, and I am satisfied the Applicant has committed to this and that planting is secured through Requirement 6 of the Recommended DCO.
- 4.14.17 In its LIR [REP2-039], NYCC/SDC stated that it accepted the scope and assessment in the ES [APP-054], and that the overall residual effects of the development are likely to be beneficial in comparison with the effects of the existing coal-fired power station. The LIR [REP2-039] and NYCC/SDC's WR [REP2-037] stated that the loss of the historic existing station would be replaced by a less dominant and considerably smaller structure allowing some form of rural character to be restored.
- 4.14.18 Notwithstanding, the LIR [REP2-039] and WR [REP2-037] stated that the Proposed Development would require the removal of some existing woodland, and that the ILBS [APP-035] and updated at DL8 [REP8-006] was inadequate in respect to hedgerow loss and planting, and that it needed to improve the green infrastructure of the surrounding landscape. I asked both NYCC/SDC and the Applicant in my FWQs [PD-011] to expand this.
- 4.14.19 The Applicant [REP5-005] and [REP6-001] and NYCC/SDC [REP5-012] responded that the parties had agreed that the issue could be resolved with the re-wording of Requirement 6. The draft SoCG submitted at DL 7 [REP7-003] included the agreed revised wording. I considered these changes against the draft DCO to be acceptable, and I posed the changes be made in my draft DCO [PD-013]. The wording of the updated DCO submitted at DL 8 [REP8-003] reflects this agreed change and is set out in the Recommended DCO.

- 4.14.20 The SoCG signed between the Applicant and NYCC/SDC [REP9-005] and the EA [REP3-008] agree the scope and assessment of the ES [APP-054] is sufficient, and that Requirement 6 of the Recommended DCO adequately secures the management and maintenance of existing planting as well as replacement planting. NYCC/SDC's existing concerns in respect to green infrastructure and biodiversity are addressed earlier in this Report, but the SoCG [REP9-005] agrees that the financial contribution for off-site habitat works adequately addresses these concerns.
- 4.14.21 Ms Laurenson in her RR [RR-015] expressed concerns in respect to the control of artificial lighting and light pollution. I am not clear whether Ms Laurenson's concern related to human health or effects on landscape character and visual receptors. Nevertheless, I am satisfied that Requirement 8 of the Recommended DCO secures approval for a scheme of construction and operational lighting before commencement of the Proposed Development.
- 4.14.22 I asked a number of other WQs [PD-007] in respect of baseline data and methodology, the design of the proposed CCGT and AGI, and on aviation lighting. I also sought additional photomontages particularly from Viewpoint 15 which were provided [REP2-028 and REP2-029]. I was satisfied with the responses given by the Applicant [REP2-014] and asked no FWQs on these matters.

ExA Conclusion

- 4.14.23 There is no doubt that the proposed CCGT would be a considerably-sized building that would, from the viewpoints identified above, be a dominant structure and would have significant visual effects on residents, footpath users and road users alike. However, I am mindful of the advice contained within NPS EN-1 that new power stations are likely to have visual effects and that this must be weighed against the benefits and need for the scheme. I have set out above that both have been unquestionably established in my judgement.
- 4.14.24 Furthermore, the photomontages which accompany the ES [APP-093] illustrate that, both in summer and winter months, the Proposed Development would be considerably less prominent or dominant both on the landscape and on identified visual receptors than the existing coal-fired power station. I apportion considerable weight to this benefit.
- 4.14.25 I am therefore satisfied that the Proposed Development would accord with all legislation and policy requirements and that landscape and visual matters are adequately provided for and secured in the Recommended DCO.

4.15 NOISE AND VIBRATION

Policy and ES Findings

- 4.15.1 Section 5.11 of NPS EN-1 refers to the Government's policy on noise within the Noise Policy Statement for England. Paragraph 5.11.8 states that construction projects should have the quietest cost-effective plant available; contain noise within buildings wherever possible; optimise plant layout to minimise noise emissions; and, where possible, utilise landscaping, bunds or noise barriers to reduce noise transmission. This message is primarily repeated in Paragraph 2.7.5 of NPS EN-2. Paragraph 2.20.4 of NPS EN-4 in respect to AGI states that these may be located in quiet rural areas, and therefore the control of noise from these facilities is likely to be an important consideration.
- 4.15.2 The Explanatory Note which accompanies the Noise Policy Statement for England provides further guidance on defining 'significant adverse effects' and 'adverse effects'. One such concept identifies Lowest Observable Adverse Effect Level (LOAEL), which is defined as the level above which adverse effects on health and quality of life can be detected.
- 4.15.3 Chapter 9 of the ES [APP-047] assesses the effect of the Proposed Development on noise and vibration. The ES identifies potential noise sensitive receptors around the site and measures increased effects using noise models, with the results compared with recorded baseline noise levels at the identified receptors during the day and night. Predicted change has been compared with national standards to determine whether likely significant effects would occur, and the assessment considers both a single-shaft and multi-shaft design.
- 4.15.4 The criterion for the LOAEL is a predicated construction noise level equal to the existing ambient noise level at each identified noise sensitive receptor resulting in a 3 decibel (dB) increase in noise level when combined with the ambient noise level. This is rounded to the nearest 5 dB figure which derives the Threshold Value. Thus the LOAEL for noise sensitive receptors is 5dB or over.
- 4.15.5 Vibration effects have been assessed insofar as if piling works are necessary during construction, however the ES [APP-047] dismisses any significant effects occurring from construction and operation of the Proposed Development owing to the distance to neighbouring buildings.
- 4.15.6 The ES [APP-047] identifies no significant adverse effects from construction of the Proposed Development including traffic noise during the daytime period owing to the proximity and distance between the application site and neighbouring buildings. There is potential for significant adverse effects if certain construction activities were to coincide with demolition activities of the existing coal-fired power station. However, the ES [APP-047] states that mitigation is secured

through Requirement 23 of the Recommended DCO to ensure a scheme for noise control is approved prior to commencement activities.

- 4.15.7 The ES [APP-047] identifies a number of potential short-term and temporary significant adverse effects during constructions of Work No 5 (borehole and towns water connections) on the adjacent sports club; and from Work No 4 (cooling water infrastructure), Work No 6 (gas pipeline infrastructure) and Work No 7 (AGI) on local residents. In all cases, best practice measures to control construction noise would be implemented, and are secured by Requirements 18 (CEMP), 20 (CTMP) and 23 (scheme for controlling construction noise and vibration) of the Recommended DCO.
- 4.15.8 Operational noise is controlled through the EP regime in accordance with BAT, thus is regulated by the EA. The ES [APP-047] states that daytime operational noise would not cause any significant effects as they would not exceed LOAEL levels.
- 4.15.9 Night time operational noise levels would, at some identified noise receptor points, exceed the LOAEL with noise levels being between 7 and 8 dB over the night time background sound levels. Thus would potentially have a significant adverse effect. However, the ES [APP-047] states that the increases are slight because it would only amount to a 1dB increase against ambient night time noise levels. But in any event, the ES [APP-047] states that noise levels would be below 40 dB at night time and thus they would comply with World Health Organisation Guidelines which observes these levels as acceptable not to disrupt sleep or cause environmental insomnia and increased use of somnifacient drugs and sedatives.
- 4.15.10 The ES [APP-047] identifies low volumes of traffic generated during the operational stage of the Proposed Development and as such there would be no significant effects due to this source. Decommissioning effects would be similar to those for the construction, and are secured by Requirement 36 of the Recommended DCO.

Examination

- 4.15.11 NYCC/SDC in their LIR [REP2-039] and WR [REP2-037] raised concerns with the night time operational noise levels, and in particular the wording of Requirement 24 of the draft DCO as submitted with the Application [APP-005]. This stated:
- (1) *No part of the authorised development must be brought into commercial use until a scheme for management and monitoring of noise during operation of the authorised development has been submitted to and approved by the relevant planning authority.*
 - (2) *Noise (in terms of the BS4142:2014 rating level) from the operation of the authorised development must be no greater than around +5 dB different to the defined representative background*

sound level adjacent to the nearest residential properties at such location as agreed with the relevant planning authority.

(3) *The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.*

- 4.15.12 In its RR [RR-018], WR [REP2-037] and LIR [REP2-039], NYCC/SDC expressed concerns that predicted night time noise level increases as indicated within the ES [APP-047] would be perceptible at the identified sensitive noise receptors. NYCC/SDC did not agree or accept that the operational noise levels should be allowed a tolerance increase of 5dB at all times as set out in subparagraph (2) to Requirement 24, particularly as the ES [APP-047] had identified no increases in noise during daytime hours.
- 4.15.13 I had asked the parties to comment further on this point in my WOs [PD-007]. NYCC/SDC stated in its response [REP2-038], replicated to some extent by the Applicant in its response [REP2-014] that further discussions had taken place between the parties which suggested that actual increases in noise would amount to 3 dB from both the single- and multi-shaft parameters. Because of this, NYCC/SDC sought a change to Requirement 24(2) requiring that noise levels not exceed 0dB during the daytime and 3dB at night time. In its WR [REP2-037], NYCC/SDC stated that they were unable to agree revised wording with the Applicant.
- 4.15.14 I tabled the issue as a main agenda item at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 to EV-010]. At this event, I asked the parties for an outline of their respective positions. The Applicant explained that work had been undertaken to see if the rating levels of 0 dB during the daytime and 3 dB during the night time could be achieved. This, the Applicant stated, is dependent on the final design, but that discussions with the Applicant's technology providers had subsequently confirmed that 0 dB could be achieved during the daytime, but it was not in a position to commit to a 3 dB level tolerance at this early concept design stage. It could however achieve a rating level of 5 dB at night.
- 4.15.15 On that basis, I asked the Applicant why Requirement 24(2) could not include the provision to restrict daytime noise levels to 0 dB, and it agreed. I also asked whether the 5 dB night time rating could be retained within Requirement 24 of the draft DCO [APP-005] but whether an additional provision could be made in which the Applicant could commit to a restriction of a lower night time tolerance level once it had established the final design. This was also accepted by the Applicant and NYCC/SDC. Requirement 24 was subsequently updated at DL 3 [REP3-003]. NYCC/SDC confirmed in their response [REP5-012] to my FWQ [PD-011] that subject to very minor modifications, they were content with the revised wording.
- 4.15.16 The SoCG signed between the Applicant and NYCC/SDC [REP9-005] and the EA [REP3-008] agrees the scope and assessment undertaken in the ES [APP-047] and the wording of Requirement 24 of the

Recommended DCO, albeit that the wording contained in the SoCG with the EA predates that prescribed within the Recommended DCO. The SoCG between the Applicant and NYCC/SDC also states that an initial matter raised by NYCC/SDC in the WR [REP2-037] in respect to changes to Requirement 23 of the draft DCO [APP-005] were subsequently deemed to be unnecessary.

- 4.15.17 Mr Laurenson and Ms Laurenson in their RRs [RR-009 and RR-015] raised a general concern on noise matters, however I am satisfied that these have been adequately addressed in the ES [APP-047]. No further WRs were received during the Examination.

ExA Conclusion

- 4.15.18 I am satisfied that the potential significant adverse effects from construction practices that I have identified above would be short-term and temporary, and would be minimised through the implementation of the requirements contained within the Recommended DCO. The Proposed Development would accord with all legislation and policy requirements and that noise control management matters and vibration are adequately provided for and secured in the Recommended DCO.

4.16 STATUTORY NUISANCE AND HUMAN HEALTH

Policy and ES Findings

- 4.16.1 Chapter 19 of the ES [APP-057] assesses the effect of the Proposed Development on human health. The assessment approach examines the potential effects on human health in each relevant subject matter, as well as the potential for electromagnetic effects.
- 4.16.2 The ES [APP-057] states that it has examined the construction and operational phases of the Proposed Development in respect to air quality, noise and vibration, traffic and transport, water resources, flood risk and drainage, geology and land contamination and land use, agriculture and socio-economic matters. It concludes no significant effects particularly following mitigation through the secured requirements in the Recommended DCO. The ES [APP-057] identifies potential operational effects from exposure to electromagnetic effects would be limited because no new overhead lines are proposed, therefore would not result in any significant effects. Health effects to workers from hazardous or non-hazardous materials are regulated by the EA as part of the EP regime.
- 4.16.3 The Application is also accompanied by a Statutory Nuisance Statement [APP-034]. For the purposes of s79 of the Environmental Protection Act (EPA), it identifies the following as potentially being significant:
- Any premises in such a state as to be prejudicial to health or a nuisance in respect to landscape and visual;

- Noise emitted from the premises so as to be prejudicial to health or a nuisance; and
- Noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.

4.16.4 However, the Statutory Nuisance Statement [APP-034] states no significant effects from noise or visual nuisance would occur following the implementation of the identified embedded mitigation measures, and the operation of the Proposed Development will be regulated by the EA through the EP regime. Article 37 of the Recommended DCO would provide a defence, subject to certain criteria, to proceedings in respect of statutory nuisance falling within sub-paragraph of s79(1)(g) of the EPA.

Examination

4.16.5 A number of RRs particularly from local residents were understandably concerned about the effect of the Proposed Development on their health and well-being. Mr Laurenson [RR-009] cited noise and the general effects on local residents as an issue, supported by Ms Laurenson [RR-015], and I am satisfied these are adequately addressed in the ES and in the Recommended DCO.

4.16.6 Mr Turner on behalf Ms Sahay [RR-003] also raised noise concerns, but also asked about safety in respect to the proximity between local residences to Work No 6 (gas pipeline). The Applicant responded [REP2-030] stating that the design and construction of the pipeline must meet stringent safety standards and will be checked by independent engineers before any gas is passed through the pipeline. Regular monitoring and periodic inspections will be undertaken when the pipeline is operational to confirm that the pipeline remains fully integral and safe.

4.16.7 In its RR, the Health and Safety Executive (HSE) [RR-014] stated that additional information was needed on the extent and severity of hazards on local populations and adjacent major hazard installations; and the risks associated from any potential loss of fuel gas. I posed this as a WQ [PD-007] to the Applicant. Its response [REP2-030 and REP2-014] stated that it had undertaken a Concept Safety Review the results of which were submitted at DL 2 [REP2-026]. This concluded that while more detailed assessment of hazard scenarios and their prevention will be undertaken at the detailed design stage through a Hazard and Operability Study and Hazard Identification reviews, no hazard scenarios or concerns were identified that require more detailed consideration or mitigation at the consenting stage. Accident prevention also forms part of the EP regime. The HSE took no further participation in the Examination.

4.16.8 The Civil Aviation Authority expressed in its RR [RR-012] concerns on aviation lighting on tall structures and stacks. However the SoCG signed between them and the Applicant at DL 1 [REP1-008] confirms agreement that Requirements 29 and 30 of the Recommended DCO

adequately secures the aviation lighting agreement prior to commencement of the Proposed Development.

- 4.16.9 Ms Laurenson in her RR [RR-015] expressed concerns in respect to the control of artificial lighting and light pollution. I am not clear whether Ms Laurenson's concern related to human health or effects on landscape character and visual receptors. Nevertheless, I am satisfied that Requirement 8 of the Recommended DCO secures approval for a scheme of construction and operational lighting before commencement of the Proposed Development. No further WR were received during the Examination.

ExA Conclusion

- 4.16.10 I fully appreciate and understand local residents concerns in respect to ensuring quality of life, health and well-being is maintained, and this is an important consideration in the Examination. I am satisfied that the Proposed Development would have no significant effects during construction and operation of the Proposed Development on human health, nor would any of the activities amount to a statutory nuisance.
- 4.16.11 I am disappointed that the HSE took no further part in the Examination of the application, and as such did not inform me whether it was content with the Applicant's response to my WQs [PD-007] I posed based on its RR [RR-014]. Nevertheless, I am satisfied that the Applicant has provided a thorough and competent response, and that HSE's comments have been addressed.
- 4.16.12 The Proposed Development would accord with all legislation and policy requirements and that adequate measures are provided for and secured in the Recommended DCO.

4.17 SUSTAINABILITY AND CLIMATE CHANGE

Policy and ES Findings

- 4.17.1 Chapter 18 of the ES [APP-056] assesses the effects of the Proposed Development on sustainability and climate change. The assessment methodology considers the wider impacts predicted to arise as a consequence of the Proposed Development.
- 4.17.2 The ES [APP-056] states that during construction, basic principles of environmental sustainability including minimising the use of natural resources, greenfield land and water will be deployed. This will be secured through the final design and the implementation of Requirement 18 (CEMP); Requirement 26 (Site Waste Management Plan (SWMP)); and Requirement 20 (Construction Traffic Management Plan (CTMP)) which are secured in the Recommended DCO.
- 4.17.3 The ES [APP-056] also sets out the improvements in operational effects when compared to the existing coal-fired power station including the potential to incorporate CHP; its reduced air quality emissions and carbon savings; and a significant reduction in cooling

water intake from the River Aire. The existing railway would be utilised if feasible to do so. Decommissioning effects would be secured by Requirement 36 of the Recommended DCO.

Examination and ExA Conclusion

- 4.17.4 No concerns were raised by any IP. I had no matters of concern in this regard and I posed no WQs during the Examination. I am satisfied that the Proposed Development would not give rise to significant effects taken by itself, and would amount to considerable betterment on sustainability and climate change over the performance of the existing coal-fired power station. The Proposed Development would accord with all legislation and policy requirements and that sustainability and climate change management matters are adequately provided for and secured in the Recommended DCO.

4.18 TRAFFIC AND TRANSPORT

Policy and ES Findings

- 4.18.1 Paragraph 5.13.2 of NPS EN-1 states that the consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development. Paragraphs 5.13.3 and 5.13.4 states that the Applicant should undertake a transport assessment for any project likely to have a significant transport implication, and where appropriate the Applicant should prepare a travel plan.
- 4.18.2 Chapter 14 of the ES [APP-052] assesses the effects of the Proposed Development on traffic and transport. It identifies the existing access points currently serving the existing coal-fired power station two connections directly served by the A19 (Hensall Gate and Tranmore Lane); and a third is located off Wand Lane on the northern side of the site. It identifies that the Tranmore Lane access point would be utilised as the site access for the HGV vehicles, with construction workers using Hensall Gate. Construction traffic routing would be required to travel using only the A19 and M62.
- 4.18.3 The ES [APP-052] assesses the potential effects on the surrounding area, based on the predicted number of vehicle movements generated by the construction and operation of the Proposed Development, and the sensitivity and capacity of the local highway network.
- 4.18.4 The ES [APP-052] sets out a worst-case traffic generation at the peak month of construction. This is anticipated to be 515 construction worker vehicles and 40 HGV movements per day. For the gas pipeline construction, this would amount to 90 construction worker vehicles and up to 40 HGV movements per day. Even accounting for a simultaneous demolition of the existing coal-fired station, the ES [APP-052] states that the predicted traffic movements would not have any significant effects on the surrounding road network, which would have sufficient capacity to absorb the additional demand. The ES further

states that there would be no significant effects caused by the construction of the AGI.

- 4.18.5 The ES [APP-052] further acknowledges that abnormal indivisible loads will be required and that temporary removal of a portion of the A19 and the A645 Weeland Road roundabout will be required. This and other construction traffic would be subject to a CTMP to manage and where possible reduce the number of vehicles accessing the site. This is secured by Requirement 20 of the Recommended DCO. In addition, Requirement 21 of the Recommended DCO requires the submission of a Construction Workers Travel Plan (CWTP); and Requirement 22 of the Recommended DCO secures the limitation of hours on which the Proposed Development can be constructed.
- 4.18.6 The ES [APP-052] states that three Public Rights of Way (PRoW) located to the north of the existing coal-fired power station will need to be temporarily closed to allow construction of Work No 6 (gas pipeline) and Work No 4 (cooling water). As such, there would be a significant adverse effect on the users of this footpath. However, the ES [APP-052] states that these effects would be temporary and therefore not long-term, and once re-opened there would be no significant adverse effect. Requirement 7 of the Recommended DCO secures the need for a PRoW Management Plan to be approved by the relevant planning authority prior to the commencement of the Proposed Development. Schedule 7 of the Recommended DCO lists and secures the PRoWs to be temporarily stopped up.
- 4.18.7 During the operational phase of the Proposed Development, HGV movements would be limited to a maximum of four movements per day and will utilise existing routes and access points. Decommissioning traffic is not expected to be greater than construction traffic, but would fall under the details secured by Requirement 36 of the Recommended DCO.

Examination

- 4.18.8 NYCC/SDC in their LIR [REP2-039] accepted the findings in the ES that the Proposed Development would not have any significant effects on the local highway network or PRoWs from construction and operation phases, or the demolition of the existing coal-fired power station. The SoCGs signed between the Applicant and NYCC/SDC [REP9-005], and between the Applicant and Highways England [REP1-002] confirms this position with no areas of disagreement on this matter.
- 4.18.9 A notable word of caution is expressed in the LIR [REP2-039] in respect to the construction of the gas pipeline infrastructure and the AGI because of the surrounding road network, which is akin to rural lanes. NYCC/SDC stated [REP2-039] that a limitation of construction vehicles must be agreed and no use of Fox Lane can be acceptable. However, NYCC/SDC [REP2-039] accepts that these matters will be subject to the CTMP which is secured by Requirement 20 of the Recommended DCO, and I note that the updated Land Plans [REP6-

006] indicate that temporary access roads to serve the construction of Work No 6 (gas pipeline) are proposed. Schedules 3, 4, 5 and 6 of the Recommended DCO set out those roads to be affected.

- 4.18.10 I am satisfied that the concerns raised by Mr Turner on behalf of Ms Sahay [RR-003]; by Mr Laurenson [RR-009] and Ms Laurenson [RR-015] and Royal Mail [RR-017] in their RRs in respect to general concerns on the effects of the proposed development on the local highway network have been adequately addressed in the ES, and the mitigation measures are firmly secured in the Recommended DCO.
- 4.18.11 I asked a number WQs [PD-007] on matters relating to the CTMP and others which I am satisfied were satisfactorily answered by the Applicant at D2 [REP2-014]. No discussion on transport matters took place at the ISH on Environmental Matters and I did not need to pose any further questions during the Examination.
- 4.18.12 The SoCG signed between the Applicant and NYCC/SDC [REP9-005] and Highways England [REP1-002] agree that the proposed development would have no significant effects on the local highway network from construction, operational and decommissioning activities of the Proposed Development, and that the CTMP and CWTP are adequately secured in the Recommended DCO.

ExA Conclusion

- 4.18.13 Construction traffic at its peak would result in a hive of activity from the site, and a considerable level of construction and operative vehicles using the local highway network. However, I am satisfied that the ES has adequately assessed its effects and I concur that there would be no significant effects from construction, including demolition of the existing coal-fired power station, and operational activities from the Proposed Development. The Proposed Development would accord with all legislation and policy requirements and that traffic and transport management matters are adequately provided for and secured in the Recommended DCO.

4.19 WASTE MANAGEMENT

Policy and ES Findings

- 4.19.1 Paragraph 5.14.1 of NPS EN-1 states that Government policy on hazardous and non-hazardous waste is intended to protect human health and the environment by producing less waste and by using it as a resource wherever possible. Where this is not possible, waste management regulation ensures that waste is disposed of in a way that is least damaging to the environment and to human health.
- 4.19.2 Paragraph 5.14.2 of NPS EN-1 sets a waste hierarchy approach to manage waste which is prevention; preparation for reuse; recycle; other recovery; disposal. Paragraph 5.14.4 states that all large infrastructure projects are likely to generate hazardous and non-hazardous waste, and that it falls under the EP regime. Paragraph

5.14.6 states that the Applicant should set out the arrangements that are proposed for managing any waste produced and prepare a SWMP. The arrangements described should include information on the proposed waste recovery and disposal system for all waste generated by the development, and an assessment of the impact of the waste arising from development on the capacity of waste management facilities to deal with other waste arising in the area for at least five years of operation.

- 4.19.3 Chapter 17 of the ES [APP-055] examines waste management. The assessment methodology assesses the likely effects associated with the generation of waste and use of resources during the construction and operation of the Proposed Development.
- 4.19.4 The ES [APP-055] states that the construction of the Proposed Development would generate approximately 8000 tonnes of predominately inert construction waste and about 60 tonnes of hazardous construction waste. The ES [APP-055] states this represents only a small proportion of annual waste generated in North Yorkshire. A SWMP would be implemented to control waste management. This is secured by Requirement 26 of the Recommended DCO. The ES states that there would therefore be no significant effects on waste from the construction of the Proposed Development.
- 4.19.5 The ES [APP-055] states that waste generation from the operational stage of the Proposed Development would be negligible and considerably less than the existing coal-fired power station; and any disposal of waste would be treated at a suitably licenced facility as part of the EP regime. Decommissioning impacts are not known at this stage, but again Requirement 36 of the Recommended DCO would ensure this is adequately managed at the appropriate time. The ES states that there would therefore be no significant effects on waste from the operation of the proposed development.

Examination and ExA Conclusion

- 4.19.6 No IPs raised concerns from waste in RRs or WRs, and the matter was not a main issue in the Examination.
- 4.19.7 NYCC/SDC stated in their RR [RR-018], in their WR [REP2-037]; in their LIR [REP2-039] and in the SoCG signed with the Applicant [REP9-005] that they are content with the scope and assessment in the ES and that Requirement 26 of the Recommended DCO for a SWMP adequately secured waste management. I asked only one WQ [PD-007] which was satisfactorily addressed by the Applicant [REP2-014]. No matters on this issue were discussed at the ISH on Environmental Matters.
- 4.19.8 I am satisfied that the Proposed Development would have no significant effects on waste from construction, operation and decommissioning activities. The Proposed Development would accord with all legislation and policy requirements and waste management

matters are adequately provided for and secured in the Recommended DCO.

4.20 CUMULATIVE AND COMBINED EFFECTS

Policy and ES Findings

- 4.20.1 Chapter 20 of the ES [APP-058] examines the cumulative and combined effects of the proposed development. The cumulative assessment considers the environmental effects of the Proposed Development taken with other known planned developments. The combined assessment considers the different types of effects, such as air quality, traffic etc. from the Proposed Development on a single receptor.
- 4.20.2 In respect of the cumulative effects, the ES [APP-058] states that a number of known planned projects have been assessed, including the demolition of the existing power station, and a number of NSIP projects including the constructions and operations of Thorpe Marsh CCGT power station and gas pipeline; Ferrybridge Multifuel power stations; and Knottingley power station and gas pipeline. A number of other schemes including residential and commercial developments have also been identified and assessed. Table 20.2 [APP-058] and Figure 20.1 [APP-095] of the ES present all of the 'other developments' considered as part of the cumulative assessment.
- 4.20.3 The ES [APP-058] identifies two matters where cumulative effects could be significant. These could be firstly from the occurrence from construction traffic emissions should the Proposed Development take place at the same or similar time as other known and planned projects in the area. However, the ES [APP-058] states that while the Applicant is unable to directly control those other activities, it would seek to minimise its own construction traffic (and where possible co-ordinate traffic movements) through the CEMP, CTMP and CWTP which are secured in the Recommended DCO.
- 4.20.4 The second matter concerns the cumulative visual effects of the Proposed Development with the other identified developments. However, as has been discussed above, little mitigation can be undertaken to reduce visual effect of what would inevitably be a large-scale development. No other significant cumulative effects have been identified from construction, operation or demolition of the Proposed Development.
- 4.20.5 The ES [APP-058] identifies no significant effects from the combined effects of the Proposed Development; and required mitigation is adequately secured in the Recommended DCO.

Examination

- 4.20.6 No IPs raised any concerns during the Examination on this matter, and NYCC/SDC did not highlight the matter within its LIR [REP2-039].

- 4.20.7 I posed a number of WQs [PD-007] seeking Table 20.3 of the ES [APP-058] to be expanded to show detail, and to explain and clarify apparent conflicts between this chapter and explanations found in Chapters 14 and 17 of the ES [APP-052 and APP-055]. I am satisfied those matters were adequately responded to by the Applicant [REP2-014 and REP2-019]. It was not necessary to discuss this matter at the ISH on Environmental Matters.
- 4.20.8 The SoCG signed between the Applicant and NYCC/SDC [REP2-039] agrees the scope and assessment undertaken in the ES [APP-058] and that the effects would not to be significant.

ExA Conclusion

- 4.20.9 While undoubtedly the construction and demolition of the Proposed Development would cause disruption on a number of matters, I am satisfied that there are not likely to be any significant cumulative or combined effects from construction, operation and decommissioning activities. The Recommended DCO adequately provides and secures mitigation measures to minimise individual and cumulative effects.

4.21 THE EXISTING COAL-FIRED POWER STATION

Examination

- 4.21.1 The ES [APP-037 to APP-124] examines the effect of the Proposed Development taken with demolition of the existing coal-fired power station. Throughout the Examination the Applicant made it clear that it intended and was committed to demolish it. Nevertheless at the commencement of the Examination, nothing compelled the Applicant to do so. The Applicant stated [REP2-014] that it intended to use the powers under Part 11 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) to demolish the existing coal-fired power station. From the outset, I held deeply worrying concerns as to this approach.
- 4.21.2 I requested justification for the absence of any secure method for demolition of the existing coal-fired power station in my WQs [PD-007], as I did not feel the SoS could be assured that the existing coal-fired power station would be demolished and in a timely manner.
- 4.21.3 The Applicant responded [REP2-014] stating that the demolition of the existing coal-fired power station is a separate project and which is independent of the construction of the Proposed Development, and it is therefore appropriate for the two to be consented separately. The Applicant further stated that it was not appropriate or necessary to secure the removal of the existing coal-fired power station within the draft DCO [APP-005] on the basis that there is still uncertainty over the timing of its decommissioning and demolition and its removal is not required to facilitate the delivery of the Proposed Development.
- 4.21.4 I remained dissatisfied with the Applicant's responses [REP2-014] and I tabled this to be a main agenda item for further discussion at the

ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007- EV-010]. At that event and following some searching questions, the Applicant confirmed that nowhere in the Application was there a binding requirement upon it to remove the existing coal-fired station; and that the possibility that the existing coal-fired power station could remain in-situ existed. The Applicant further confirmed [EV-007- EV-010] that Requirement 4 of the Recommended DCO has the effect of sterilising the existing coal-fired station from ever being used once the Proposed Development became operational.

- 4.21.5 Given the possibility that the existing coal-fired power station could remain in-situ and in a state of disuse, the Applicant confirmed [EV-007- EV-010] as a result of my questioning that potentially serious environmental effects could occur if this were to happen, on matters such as contamination of land and watercourses and crumbling structures to name but a few. I then asked the Applicant to direct me to where in the ES it had assessed those environmental consequences in the event of the existing coal-fired station being abandoned as part of the Proposed Development.
- 4.21.6 Because it had not, I asked the Applicant whether the SoS could be satisfied that the worst-case scenario assessed in the ES [APP-037 - APP-124] associated with the existing coal-fired power station being retained in-situ had thoroughly assessed and presented the likely significant environmental effects of the Proposed Development. The question went unanswered and the Applicant instead revisited the approach, opting to update me at DL 3.
- 4.21.7 At the ISH on Environmental Matters [EV-007 - EV-010], I raised the risks to a recommendation to the SoS that the Order be made if I could not advise of the full environmental effects of the Proposed Development in the event that the existing coal-fired power station were not to be demolished.
- 4.21.8 At DL 3, the Applicant proposed to secure the demolition of the existing coal-fired power station [REP3-010 and REP3-014]. This would be way of a development consent obligation under s106 of the TCPA1990 as opposed to the insertion of a Requirement or Schedule in the DCO. A draft version of this development consent obligation was submitted at DL 3 [REP3-014] in which the Applicant proposed to apply for Prior Approval under Part 11 of the GPDO:
- Within two years of the Proposed Development entering commercial operation; and
 - To demolish the existing coal-fired power station within five years of receiving prior approval, or seven years of the first commercial operation of the Proposed Development.
- 4.21.9 I questioned these timings in my FWQ [PD-011], as I deemed these had not been adequately justified. In its response, which was submitted at D5 [REP5-005 and REP5-007] the Applicant proposed to

amend these timings and to apply for Prior Approval under Part 11 of the GPDO:

- Within 12 months of commencement of the Proposed Development; and
- To demolish the existing coal-fired power station within five years of receiving Prior Approval or if Prior Approval is not required, within five years of the first commercial use of the Proposed Development.

4.21.10 A draft version of the development consent obligation was submitted at DL 5 [REP5-007] and the final signed version, which was unchanged, was submitted at DL 9 [REP9-012]. The development consent obligation is conditional on the Order being made and the commencement of the Proposed Development, and there is no power to allow the SoS to strike out the Agreement if he deemed it unnecessary. A number of exemptions are set out in Clause; I am content that those are reasonable, many of which require the approval of the Local Planning Authority.

4.21.11 The SoCG signed between the Applicant and NYCC/SDC submitted at DL 9 [REP9-005] agrees that the demolition of the existing coal-fired power station is adequately secured following my questioning on the matter.

ExA Conclusion

4.21.12 Had the Applicant subsequently not secured the demolition of the existing coal-fired power station, I would not have been convinced that the full environmental effects of the Proposed Development had been understood or examined. I would therefore have had to consider whether I recommended to the SoS that the Order not be made. I therefore place considerable importance on the existence of the development consent obligation [REP9-009] which secures the demolition of the existing coal-fired power station.

4.21.13 Paragraph 204 of the NPPF states that planning obligations should only be sought where they meet all of the following tests:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

4.21.14 It is my very strong recommendation that the development consent obligation [REP9-012] accords with all three tests, particularly the first for the reasons I have given above. I am therefore satisfied that the demolition of the existing coal-fired power station is adequately secured by means of a legal agreement.

5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

5.1 POLICY AND LEGISLATIVE BACKGROUND

- 5.1.1 This chapter of the Report sets out the analysis, findings and conclusions relevant to Habitats Regulations Assessment (HRA) and will assist the Secretary of State (SoS) as the competent authority in performing his duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as amended) ('the Habitats Directive'), as transposed in the UK through The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). The requirements of the Habitats Regulations are set out in Chapter 3 of this Report.
- 5.1.2 The broad stages for the HRA process are outlined in the Planning Inspectorate's (the Inspectorate) Advice Note 10 (AN10), in particular the process diagram set out in Figure 1.
- 5.1.3 Consent for the proposed development may only be granted if, having assessed the potential adverse effects of the proposed development on European sites, the competent authority considers it passes the relevant tests in the Habitats Regulations.
- 5.1.4 The SoS is the competent authority for the purposes of the Habitats Directive and Habitats Regulations for energy applications submitted under the Planning Act 2008 (PA2008). I have been mindful throughout the Examination process of the need to ensure that the SoS has an adequate basis of information from which to carry out his duties as competent authority, informed by and compliant with the policy set out in paragraph 5.3.9 of National Policy Statement (NPS) EN-1.
- 5.1.5 As such, I have reviewed the evidence presented during the Examination concerning likely significant effects (LSE) and adverse effects on the integrity of European sites potentially affected by the proposed development both alone and in-combination with other plans or projects.
- 5.1.6 In accordance with the process set out in the Inspectorate's AN10, I drew together all submitted evidence in respect of HRA matters into a Report on the Implications for European sites (RIES) [PD-015]. The RIES compiles, documents and signposts information provided within the application, and the information submitted throughout the Examination by both the Applicant and interested parties (IPs), up to the date of its release as a procedural decision on 25 January 2018 between Deadlines (DL) 5 and 6 of the Examination.
- 5.1.7 This RIES was issued to ensure that IPs, including Natural England, had been consulted formally on Habitats Regulations matters. This process may be relied on by the SoS for the purposes of Regulation 61(3) of the Habitats Regulations.

5.2 THE APPLICANT'S ASSESSMENT AND HRA IMPLICATIONS OF THE PROJECT

5.2.1 The Applicant provided a HRA report entitled "Habitats Regulations Assessment (HRA) Matrices Signposting" [APP-111] as part of the Application, which included screening matrices prepared in accordance with the AN10. A revised version of the report was submitted at DL 5 [REP5-006] in response to specific questions and request for information regarding the HRA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) on 5 December 2017 [PD-010]. Paragraphs 3.3.24 - 3.3.43 of the RIES also set out the questions that were posed as part of the Rule 17 request [PD-015].

5.2.2 The request under Rule 17 was made following the responses received at Written Questions (WQs) [PD-007], matters discussed at Issue Specific Hearing (ISH) on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV 010], and representations made by IPs during the Examination. I will consider these issues in further detail later in this section of this Report. Subsequent references to "the HRA Report" in this Report are made to this version of the document submitted at DL 5 [REP5-006].

5.2.3 The Applicant's HRA Report identified the following European sites as being screened in to the assessment:

- Skipwith Common Special Area of Conservation (SAC);
- Thorne Moor SAC;
- Hatfield Moor SAC;
- Humber Estuary SAC;
- Humber Estuary Special Protection Area (SPA);
- Humber Estuary Ramsar;
- Strensall Common SAC; and
- North York Moors SAC.

5.2.4 Summary information in respect of these sites is provided in Table 10H.1 of the HRA Report [REP5-006] and Table 2.1 of the RIES [PD-015], including their approximate distances from the Proposed Development site and a summary of the primary reasons for site selection and qualifying features.

5.2.5 The Applicant provided information [REP5-006] that identifies impacts with potential pathways from the Proposed Development to the qualifying features of the European sites. The impacts and pathways fall within two categories as follows:

- Surface water quality impacts: Potential pathways for surface water pollution to the River Aire (and ultimately to the Humber Estuary SAC/ SPA/ Ramsar) during construction; and
- Air quality impacts: Potential pathways identified to European sites through emissions to air during the operational phase of the

Proposed Development (i.e. nitrogen and acid deposition to susceptible habitats within the identified European sites).

- 5.2.6 Sections 1.1 and 2.4 of the HRA report [REP5-006] explain that a 10 kilometre (km) radius from the Proposed Development was taken as being the typically accepted zone of influence in which potential pathways for impacts are considered. Therefore European sites within this radius were proposed to be considered. However, the Applicant states [REP5-006] that in response to comments from North Yorkshire County Council (NYCC) and Selby District Council (SDC) during the pre-application period, the 10km radius was extended in order to consider potential effects more conservatively, particularly in effects to habitats susceptible changes in atmospheric nitrogen deposition.
- 5.2.7 The HRA focusses on anticipated operational air quality impacts, which are identified and described in s3.1.2 of the HRA Report [REP5-006] as follows:
- Increased atmospheric concentrations of oxides of nitrogen (NOx) (hourly and annual mean concentrations);
 - Increased nutrient nitrogen deposition;
 - Increased acid deposition (sulphur and nitrogen); and
 - Increased ammonia concentrations (only if/ when SCR abatement is required).
- 5.2.8 The ES [APP-046], [APP-048] and [APP-049] also identifies the River Derwent SAC as being a European site that could be potentially affected by air quality impacts resulting from the Proposed Development. The River Derwent SAC is also identified as a receptor in the Applicant's Technical Note on Air Quality Impacts [REP2-017] and in Appendix H to the HRA Report [REP5-006], although the River Derwent SAC is not referenced anywhere else in the HRA report, for example in Table 10H.1). Despite this there is no formal assessment (or conclusion) within the main body of the HRA report [REP5-006] regarding LSE on the features of the site resulting from impacts to air quality or water quality.
- 5.2.9 In its written comments on the RIES [REP7-005], the Applicant explained they had scoped out the River Derwent SAC as part of the ES [APP-106] on the basis that there were no impact pathways by which the SAC could be affected by the Proposed Development:
- The watercourse is upstream of the proposed development site and therefore there are no surface water pathways or effect from the Proposed Development; and
 - None of the designated features of the SAC are directly susceptible to changes in air quality as a result of emissions from the Proposed Development.
- 5.2.10 Section 3.4 of the HRA Report outlines the Applicant's approach to consideration of in-combination effects. The HRA refers to the list of other projects considered as part of the cumulative impact assessment

presented as part of Table 20.2, Chapter 20 of the ES [APP-058]. A number of projects identified as part of the cumulative assessment in the ES have been scoped out from the HRA in-combination assessment on the basis that there are no impact pathways by which the schemes could adversely affect ecological receptors within the zone of influence.

- 5.2.11 The list of projects and relevant European sites considered by the Applicant as part of the HRA in-combination assessment is presented in table 10H.4 of the HRA report [REP5-006] and summarised in Table 3.1 of the RIES [PD-015].
- 5.2.12 No IPs raised any concerns in relation to the Applicant's identification of European sites or their qualifying habitats and species during the Examination. The extent of the plans and projects considered as part of the assessment of in-combination effects was also not disputed by any IPs during the Examination.
- 5.2.13 Natural England (NE) in its Relevant Representation (RR) [RR-005] stated that "*there are no European sites, Ramsar sites or nationally designated landscapes located within the vicinity of the project that could be significantly affected*". A statement of common ground (SoCG) between the Applicant and NE [REP1-007] recorded the agreement with the Applicant that "*there is unlikely to be any significant effects on designated site features, due to the distance from the sites and the absence of any pathways for potential effects*", and reference is made to NE's agreement with the Applicant's HRA screening matrices [APP-111].
- 5.2.14 The Applicant has not specifically stated whether the Proposed Development is or is not connected with or necessary to the management for nature conservation of any of the European site(s) within their assessment. However, the Applicant notes [REP5-006] that the legislative basis for determining LSE and the need for appropriate assessment (AA) by citing Article 6(3) of the Habitats Directive.
- 5.2.15 There is no reference in the application documents or any submissions made by the Applicant or IPs during the Examination to suggest that the Proposed Development is connected with or necessary to the management of any European site. These points were captured in paragraph 2.1.1 - 2.1.2 of the RIES [PD-015] and no comments were received from any IPs in this regard.

5.3 ISSUES RAISED DURING THE EXAMINATION

- 5.3.1 NYCC and SDC in their joint Local Impact Report (LIR) [REP2-039] raised concerns regarding impacts from the Proposed Development upon European sites. Their concerns focussed on the need for Selective Catalytic Reduction (SCR) and the impact this could have upon European sites. These concerns were also reflected in their SoCG signed with the Applicant [REP9-005].

- 5.3.2 Paragraph 6.9 of the LIR states that "*although the impact from this development may be described as 'imperceptible' the levels at many sites for nutrient nitrogen vastly exceed the critical load...[and there is]...a similar situation for acid deposition, ammonia, SCR impacts on nutrient nitrogen and SCR impacts on acid deposition. Concern is expressed at these levels and increases in levels*". It is explained at paragraph 6.10 of the LIR that these concerns relate in particular to the following sites:
- Thorne Moor SAC; and
 - Skipwith Common SAC.
- 5.3.3 I raised a number of written questions (WQs) [PD-007] in these respects, including points relating to the assessment of air quality presented in the ES [APP-046] and [APP-048]. The questions sought clarification regarding:
- The 'worst case' modelling assumptions in terms of maximum EU Industrial Emissions Directive emission limit values, including the black start and peaking plant specifications;
 - The position of the Applicant and the Environment Agency (EA) in respect of SCR and Best Available Techniques (BAT) determination; and
 - Mitigation measures, such as increased stack heights or additional flue gas controls that may have been considered in the scenario where SCR was required.
- 5.3.4 The Applicant and the EA responded to these questions at DL 2 [REP2-014] and [REP2-032]. As part of the DL 2 submissions, the Applicant provided a technical note on air quality impacts [REP2-017] which reaffirmed the Applicant's position that the process contributions of NO_x with SCR would not result in LSE at any of the European sites concerned.
- 5.3.5 The ES [APP-046] confirms that emissions from the Proposed Development have been assessed using guidance set out in the Department for Environment, Food and Rural Affairs (DEFRA) and EA: Air Emissions Risk Assessment for Your Environmental Permit (EA permitting guidance).
- 5.3.6 The EA permitting guidance states that emissions are "insignificant" where short-term process contributions are less than 10% and long-term less than 1% of the relevant environmental standards for protected conservation areas (SPAs, SACs, Ramsar sites and Sites of Special Scientific Interest (SSSI)).
- 5.3.7 The applicability of the EA's permitting guidance methodology in the context of HRA and the conclusions reached in respect of LSE for European sites were examined and are addressed below. For reference, the terms 'process contribution' (PC) and 'predicated environmental concentration' (PEC) are defined within the EA's permitting guidance.

- 5.3.8 The maximum process contribution of nitrogen deposition at each of the sites identified (without SCR) is reported by the Applicant as being less than 1% of the critical load for relevant site features. However, I noted that the ES [APP-046] states that the existing baseline levels are already in excess of critical loads at the following European sites:
- Skipwith Common SAC
 - Thorne Moor SAC
 - Strensall Common SAC
 - North York Moors SAC; and
 - Hatfield Moor SAC
- 5.3.9 With SCR in place, this gives rise to a slight increase in certain pollutant emissions at the sites concerned, although all impacts at sites (with the exception of Thorne Moor SAC), remain below an increase of 1% process contribution and so the conclusion reached in relation to the 'without SCR' scenario still applies. However, in the case of Thorne Moor SAC, the Applicant's assessment predicts a long-term process contribution in excess of 1% of the critical load and therefore above the EA permitting guidance imposed level of "insignificance".
- 5.3.10 Table 3.2 of the RIES summarises the process contributions from the Proposed Development in respect of critical loads and levels for NO_x, nutrient nitrogen, acid deposition and ammonia as presented by the Applicant.
- 5.3.11 The Applicant's position is also that the process contributions are insignificant and also do not result in any additional exceedance of critical load at any site that was not already occurring as a result of other sources.
- 5.3.12 In addition to their position that the Proposed Development would not significantly impact the features of the European site even where there is an existing exceedance of critical loads or levels, the Applicant argued in the ES [APP-058] that the absence of a significant effect from the Proposed Development alone supports a determination of no likely significant effect in-combination with other plans and projects.
- 5.3.13 I held concerns regarding the Applicant's approach to HRA matters, particularly whether there was suitably robust information with which to inform an AA (if required) on the identified European sites. My concerns related to:
- The Applicant choosing to conclude no LSE where the Proposed Development would result in additional process contributions to critical loads / levels which although below 1% were still contributory to the existing exceedances of the critical loads or levels i.e. the 'baseline' conditions for the site; and
 - The Applicant's decision not to provide information necessary to undertake an assessment of in-combination effects on the basis

of the project alone having 'imperceptible' increases on critical loads or levels.

- 5.3.14 I tabled HRA matters as an agenda item for the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 – EV-010]. At the event, I questioned whether the Applicant's approach in respect to Thorne Moor SAC was correct. This is because this is the only European site identified in the Applicant's technical note on air quality submitted at DL 2[REP2-017] as exceeding 1% of the critical load for nitrogen deposition, acid deposition and ammonia with SCR from the project alone.
- 5.3.15 The Applicant maintained that even though it marginally exceeds the insignificance threshold at Thorne Moor SAC, this exceedance only occurs over a small area of the site and there is an overall net reduction in process contribution from the Proposed Development compared to that associated with the operation of the existing coal-fired power station. The Applicant submitted its written summary of the ISH on Environmental Matters [REP3-010], concluding that, in its view, an AA is not required in the case of the Proposed Development.
- 5.3.16 Notwithstanding, the Applicant agreed [REP3-010] to provide integrity matrices as information to inform an AA for Thorne Moor SAC to reflect the potential for LSE with the use of SCR (i.e. the exceedance of the 1% "insignificance" criteria). The Applicant also stated [REP3-010] that an agreement had been reached between the Applicant, the EA and NE. which confirmed that that the in-combination assessment will be undertaken as part of the BAT justification process for the Environmental Permit (EP) application. The agreement also confirmed and that if that assessment identified a potential effect(s) on the Thorne Moor SAC, then that conclusion will inform the BAT justification. That is to say, SCR would not be deemed to be BAT.
- 5.3.17 Having examined the Applicant's DL 3 written submissions [REP3-010], I issued a request for further information under Rule 17 of EPR (as amended) [PD-010]. The Rule 17 request posed a total of eight questions largely directed towards the Applicant, but in parts directed at NE and the EA. They raised the following points:
- The reliance placed on the significant criteria in the EA's permitting guidance seeking confirmation from NE that it is suitable for the assessment of the effects on European sites in respect of HRA in this context;
 - The applicability of the significance thresholds where there are already exceedances above the critical loads / levels for given pollutants;
 - The adequacy of the 'qualitative' in-combination assessment (i.e. lack of quantitative assessment), particularly in light of the Judgement in *Wealden District Council v Secretary of State for Communities and Local Government [2017] EWHC 351* (the Wealden Judgement), which highlights the procedural

requirement of the Habitats Regulations in regard to the assessment of in-combination effects;

- The need for an AA for the Thorne Moor SAC (having regard to the Applicant's own methodology and conclusions reached in its response to DL 2[REP2-017])
- The extent to which with the "fully operational" and existing coal-fired power station has been taken into account in the assessment; and
- The purported agreement reached between the Applicant, the EA and NE regarding BAT and the potential use of SCR.

5.3.18 The Applicant responded, again purportedly in agreement with the EA and NE [REP5-006] providing:

- A tabulated response to the my Rule 17 questions [PD-010]; and
- A revised HRA Signposting Report and Screening and Integrity matrices (including Appendices A-H).

5.3.19 Full details of the Applicant's response are found in Table 2.1 of [REP5-006], and the responses to the eight questions posed are summarised in paragraphs 3.3.24 - 3.3.43 of the RIES [PD-015].

5.3.20 However to summarise, the Applicant maintains that the 1% threshold is accepted by the EA and NE as a relevant trigger for determining significance, and any impact below this figure would be inconsequential. The Applicant further states that 1% threshold figure is endorsed within the Institute of Air Quality Management Guidance 2016 (IAQM Guidance) as the criteria to screen out impacts that will have an insignificant effect. The Applicant also maintains that an exceedance of 1% is not in itself a determinant for the onset of damage to a habitat; rather it is a screening threshold above which potential effects may need to be assessed in greater detail (alone and in-combination).

5.3.21 Where the 1% threshold is exceeded in the case of Thorne Moor SAC (and only in the event SCR were deemed to be BAT), the Applicant provided integrity matrices as information to inform an AA [REP5-006] in relation to the operation of the Proposed Development with SCR only; and increased nutrient nitrogen deposition as a result of the increase in ammonia emissions (not ammonia concentrations). This further information was provided so as to inform an AA, if required.

5.3.22 To support its position, the Applicant references a site improvement plan prepared by NE for Thorne Moor [REP5-006]. This states that the area specifically susceptible to aerial deposits of nitrogen is lowland raised bogs. As commonplace in similar areas, its threshold limits are already exceeded whereby the quality and character of bog vegetation could potentially begin to be impacted. The critical load range for the degraded raised bog is 5-10 kilograms of nitrogen per hectare per year (N/ha/yr). The current deposition range at Thorne Moor SAC is stated at 14.6 – 18.8 kg N/ha/yr, averaging at 15.2 kg N/ha/yr.

- 5.3.23 The Applicant maintains [REP5-006] that the degree to which nitrogen deposition is influencing any adverse change in the vegetation of the bog habitat cannot be reasonably quantified. Furthermore, the Applicant refers [REP5-006] to an dose-responses in a research document published by NE in which it is stated that while critical loads are exceeded, it does not follow that adverse effects on integrity would inevitably occur. The NE research document, which is entitled "Natural England Commissioned Report 210", was appended to NE's response at DL 7 [REP7-007].
- 5.3.24 From the same research published by NE for 'bogs' with high background deposition rates, the Applicant [REP5-006] interprets that the Proposed Development, both alone and in-combination with other known and planned projects, would need to contribute a value of 3.3 kg N/ha/yr in order to adversely affect the bog habitat (i.e. a 'measurable change'). In the Applicant's view, no other large scale power generation, agricultural projects or road schemes have been identified that could potentially result in increased nitrogen or acid deposition to the Thorne Moor SAC to that level of effect.
- 5.3.25 The Applicant nevertheless states [REP5-006] that the magnitude of change is inconsequential and therefore 'de minimis'. In all cases, an in-combination effect assessment is unnecessary because there is no pathway for LSE. No other large scale power generation, agricultural projects or road schemes have been identified by the Applicant that could potentially result in increased nitrogen or acid deposition to the Thorne Moor SAC to that level of effect.
- 5.3.26 The Applicant also explained [REP5-006] that, following a 'further request for information' issued by the EA in respect of the permit variation application, the air quality modelling was updated to take into account less conservative modelling assumptions (Appendix H of the HRA Report [REP5-006]) and also the anticipated reduction in nitrogen deposition process contributions resulting from the cessation of operations at the existing Eggborough coal-fired power station.
- 5.3.27 The EA and NE did not respond to my Rule 17 questions [PD-010], despite my having posed specific questions to them. However, paragraph 2.1 of the Applicant's response [REP5-006] stated that it is a "*joint response of the Applicant, the Environment Agency and Natural England*". The agreed position between the parties as advocated by the Applicant is that the approach taken, and the conclusions reached in respect to the effect of the Proposed Development on European sites would be likely to be significant.
- 5.3.28 After having received the Applicant's response [REP5-006], I published the RIES [PD-015] and the examination timetable allowed for comments on the RIES and responses to comments on the RIES to be submitted at DL 7 and DL 8 respectively.
- 5.3.29 Alongside the publication of the RIES, I made a Rule 17 request to NE [PD-012], seeking their specific comments in relation to:

- The Applicant's 1% threshold for determining LSE on European sites in respect of the Habitats Regulations;
- Whether increases which are below 1% (alone or in-combination) can be judged to have no likely significant effects particularly, where background concentrations already exceed the critical loads/levels (and the extent critical loads/levels are therefore relevant to the finding of likely significant effects)
- The Applicant's contention that 'where process contributions are 1% (or even slightly above) then the magnitude of change is so inconsequential ("de minimis") that it does not require an in-combination effects assessment' (citing IAQM guidance in this regard). In particular, whether this conclusion is consistent with the judgement in the case of *Wealden District Council v Secretary of State for Communities and Local Government* [2017] EWHC 351, and that it potentially overlooks many small scale 'insignificant' effects combining to result in an effect that could be significant overall.
- The lack of any form of quantitative in-combination assessment being provided by the Applicant.

5.3.30 NE responded to the Rule 17 at DL 7 [REP7-007] endorsing the guidance as presented in the Air Quality and Technical Advisory Group Guidance Note 21 (AQTAG 21), which was appended to its response. This stated that the 1% of critical load screening threshold from long-term process contributions is considered to be an appropriate measure for finding an absence of LSE on relevant features of European sites, and that the Applicant had correctly applied the methodology in this regard.

5.3.31 NE [REP7-007] also set out that the concept of 'critical loads' being "internationally derived, habitat-specific benchmarks below which no significant effect on habitats are expected to occur", and applying 1% to the lower end of the critical load is considered sufficiently precautionary for screening a range of proposals and habitats regardless of background pollution levels.

5.3.32 In terms of the assessment of in-combination effects, NE are of the view [REP7-007] that given the contributions of 1% or less are based on modelled emissions at distances up to 25km away from the source (the Proposed Development), and modelled results have recognised levels of uncertainty which is often more than 1% of the critical load or level, it would be difficult to measure a change of this magnitude and then assign it with confidence to a source 25km away. As outlined in AQTAG 21, the 1% screening threshold is considered precautionary in NE's view and appropriate to rule out likelihood of in-combination effects from proposals contributing below 1% at given receptors.

5.3.33 NE also point out that, in the case of the Applicant's assessment, many of the proposals considered in-combination were ruled out by distance rather than comparison to 1% of critical level/load.

- 5.3.34 Nonetheless, NE also noted [REP7-007] that even if all plans and projects which have been identified by in the Applicant's in-combination assessment were to add a process contribution of 1% of the critical load of nitrogen at Thorne Moor SAC, this would only result in a total contribution in the order of 0.3kg N/ha/yr, compared to the figure of 3.3 kg N/ha/yr contribution which I have mentioned above that would be required to adversely affect the bog habitat (i.e. a 'measurable change'). NE therefore concludes that this well below the level expected to cause a loss of species richness for bog habitats found on Thorne Moor SAC [REP7-007], and thus accords with the .
- 5.3.35 The Applicant provided their comments on the RIES at DL 7 [REP7-005], particularly in respect of the in-combination effects assessment. In the case of the Thorne Moor SAC, the Applicant identified 5 projects in Table 10H.4 of the HRA Report [REP5-006] with a potential pathway for in-combination effects to that site, and their view is that even if contributions for all of these were at 1% of the critical load, this would result in an insignificant level of combined deposition rate, echoing the comments of NE [REP7-007].
- 5.3.36 No other IPs provided comments on the RIES or comments on responses to the RIES.

5.4 ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS RESULTING FROM THE PROJECT, ALONE AND IN COMBINATION

- 5.4.1 Section 3.1 of the HRA Report [REP5-006] identifies the potential impact pathways from the Proposed Development to the qualifying features of the European sites falling within two categories (surface water quality and air quality impacts, as described at paragraph 5 of this Chapter.
- 5.4.2 I will deal with these two themes separately in this section.

Surface Water Quality

- 5.4.3 In terms of surface water quality, only the River Humber Estuary SPA, SAC and Ramsar were considered as part of the HRA Report section 3.1.1 of the HRA Report [REP5-006]. This states that '*in the absence of appropriate mitigation, there could be surface water pollution to the [River] Aire during the construction or operational phases that could reach the designated features [of the Humber Estuary SPA, SAC and Ramsar]. However, over this distance [approximately 25km] and even in the absence of mitigation, it is reasonable to assume that any surface water pollution would have significantly diluted over this distance such that it would not pose a risk to designated features*'.
- 5.4.4 Although the conclusion in terms of the construction phase is not dependent on the implementation of mitigation measures, section 3.3 of the HRA Report summarises those mitigation measures to be put in place during construction (including best practice measures and those that are legally necessary). These measures will be delivered through

the Construction and Environmental Management Plan (CEMP) [REP2-020] and secured through Requirement 18 of the Recommended DCO.

- 5.4.5 During operation, reference is made to the potential for surface water quality impacts to European sites in table 10.6 of ES Chapter 10 [APP-048], and Chapter 11 of the ES [APP-049]. The ES [APP-049] explains that the volume of water required for abstraction and discharge for the Proposed Development will be lower than that required at the existing Eggborough coal-fired power station. It also explains that the temperature of the proposed cooling water discharge to the River Aire for the Proposed Development will be similar to that currently entering the River from the existing coal fired power station (i.e. the current baseline). This is also reflected in paragraph 10.6.44 of ES Chapter 10 [APP-048]. I also note that an Outline Drainage Strategy has been developed in draft and is applicable '*to the effective and safe drainage of surface water from the Proposed Development Site*' (Annex 5 of [APP-112]).
- 5.4.6 The details relating to the final drainage design are to be secured by Requirement 5 of the Recommended DCO. Surface and foul drainage are secured by Requirement 13 of the Recommended DCO.
- 5.4.7 LSE in terms of water quality impacts during the decommissioning phase of the Proposed Development have been scoped out for all European sites in the ES [APP-049]. This is on the basis that the gas connection pipeline, cooling water abstraction pipeline and the intake and outfall structures on the River Aire (associated with the construction of the Proposed Development) will remain in-situ (Appendix G [REP5-006]). References to decommissioning in terms of water resources are made at paragraphs 11.5.43 and 11.6.58 of [APP-049], which liken potential effects to those identified during construction and refer to a '*detailed Decommissioning Environmental Management Plan [which] will be prepared to identify required measures to prevent pollution during this phase of the development*'.
- 5.4.8 In terms of in-combination effects, the Applicant's assessment included the demolition of the existing coal-fired power station and Chapel Haddlesey Hydroelectric schemes. In both instances, the Applicant considers there is no potential for LSE on the Humber Estuary SPA, SAC and Ramsar sites in-combination with the Proposed Development. These conclusions are made on the basis that potential effects of the demolition of the existing coal-fired power station are identified as part of the assessment of the Proposed Development alone, and in the case of the hydroelectric scheme, the construction timescales are no predicted to overlap.
- 5.4.9 As identified above, the Applicant screened out consideration of the River Derwent SAC as part of the EIA process (paragraph 5.1.1 of [APP-106]) due to their view that there were no pathways by which the SAC could be affected by the Proposed Development (i.e. because the watercourse is upstream of the proposed development site).

- 5.4.10 None of the IPs to the Examination raised any matters in relation to surface water effects on European sites.
- 5.4.11 I am content that there would be no likely significant effects on European sites or their qualifying features as a result of surface water quality impacts from the Proposed Development alone or in combination with other plans and projects. Adequate mitigation is secured in the Recommended DCO.

Air Quality

- 5.4.12 I have set out above the European sites identified by the Applicant in its response to DL5 [REP5-006] and those which are relevant in terms of air quality impacts. No specific reference is made to the potential for air quality impacts upon European sites during construction of the Proposed Development. However, paragraphs 8.4.2, 8.4.5 and table 8.11 of ES Chapter 8 [APP-046] explain that during construction:
- Receptors potentially affected by dust soiling and short term concentrations of particulate matter generated during construction activities are limited to those located within 350m of the nearest construction activity; and
 - SAC's up to 15 km from the Proposed Development have been considered in the identification of receptors, but all are in excess of 9km from the Proposed Development.
- 5.4.13 The ES [APP-046] concludes that '*No sensitive ecological receptors have been identified within the screening distance and therefore effects of demolition and construction dust on ecological receptors [inclusive of European sites as listed in table 8.11 of the ES] have been screened out*'. Table 10.6 of ES Chapter 10 [APP-048] concludes that there is no reasonable likelihood of impacts on international nature conservation designations during the construction phase, cross referring to the ES Chapter 8 in terms of air quality effects [APP-046].
- 5.4.14 The framework CEMP [REP2-020] includes specific air quality mitigation measures to minimise air quality impacts from construction works, although the Applicant does not state any reliance on these mitigation measures, and instead rules of pathways of effect given the distances to European sites well beyond the 350m distance threshold of effects.
- 5.4.15 In terms of decommissioning of the Proposed Development, the ES [APP-046] states that '*the predicted air quality effects of eventual decommissioning of the Proposed Development are considered to be comparable to – or less than – those assessed for construction activities*'.
- 5.4.16 No IPs to the Examination raised any matters in relation to air quality effects on European sites during the construction or decommissioning phases.

- 5.4.17 I am therefore satisfied that, due to the activities involved, the potential pathways of effect and the relative separation distances to European sites, the Proposed Development would not result in likely significant effects on European sites or their qualifying features as a result of air quality impacts from the Proposed Development during construction or decommissioning.
- 5.4.18 The HRA Report [REP5-006], as reflected through the questions and issues that arose during the Examination, is therefore focused towards potential air quality impacts during operation, and the Applicant's methodology in determining LSE from the Proposed Development alone and in-combination with other plans and projects.
- 5.4.19 Turning initially to the assessment itself, the Applicant describes its 'conservative' approach to the assessment in paragraph 8.6.19 of ES [APP-046] as comprising:
- Use of the worst-case year of meteorological data modelled;
 - Maximum building sizes within the assessed Rochdale Envelope;
 - 'Worst case' CCGT layout configuration as allowed by the DCO;
 - Annual operation of 100% for both CCGT main plant units and peaking plant units;
 - Operation of the plant at IED emission limits (for worst-case NO_x and CO); and
 - Conservative estimates of background concentrations at the sensitive receptors.
- 5.4.20 In considering the potential impacts of the Proposed Development, the Applicant reports the increases in process contributions against the most sensitive habitat for which the statutory designation applies within a 15km study area. The Applicant then applies the conclusions of the effect to the other qualifying features without considering qualifying features on an individual basis. This is reflected in table 1 of Appendix H to the HRA Report Appendix H [REP5-006] and table 1 of the technical note on air quality impacts [REP2-017].
- 5.4.21 In my WQs [PD-007], I posed a number of questions regarding the Applicant's approach to the assessment of air quality effects. The questions addressed the conservative approach to the assessment and the potential use of SCR.
- 5.4.22 Paragraphs 3.3.42-3.3.43 of the RIES note the key changes to the modelling assessment of the SCR scenario which update those assessments presented in [APP-100] and [REP2-017] (section 2, Appendix H, [REP5-006]). I am satisfied that the Applicant has adopted a conservative approach to the assessment, but I feel it is important to note the iteration of the HRA Report [REP5-006] that has led to changes in the modelling input parameters.
- 5.4.23 As such, the with SCR scenario is dependent on:

- The lowest (i.e. best performance) end of BAT scales for ammonia emissions and the reciprocating engine component of the peaking plant; and
- Long-term process contributions being calculated on the basis of 91% operation of the CCGT plant and 17% operation of the peaking plant, whereas Chapter 8 of the ES [APP-046] and therefore the original HRA Report [APP-111] was based on 100% operation in both cases.

5.4.24 In summary, the Applicant's air quality modelling and assessment in terms of European sites ([APP-046], [APP-011]) was superseded by:

- A Technical Note on Air Quality Impacts (Appendix 3 of [REP2-017]), submitted to the EA on 10 October 2017 in relation to Eggborough Power Limited's EP variation application (with the purpose of "*bringing together the air quality impact assessment on European designated habitat sites with and without the use of Selective Catalytic Reduction (SCR) for the control of oxides of nitrogen (NO_x) from the Proposed Development*"); and
- Appendix H of the Applicant's HRA Report [REP5-006], which updates the modelling of the with SCR scenario only as presented at [REP2-017] (i.e. the without SCR scenario remains as presented at Appendix 3 of [REP2-017]).

5.4.25 The summary table 3.2 in the RIES (and the matrices presented in Annexes 1 and 2)[PD-015] are reflective of the above and the Applicant in their comments on the RIES [REP7-005] did not raise any comments or points to suggest their disagreement with my understanding in respect of the above.

5.4.26 Turning to the assessment of individual European sites, I deal with them in turn in the following sections. The following paragraphs relate to the project alone, and I will deal with in-combination effects collectively later in this section of the report.

Humber Estuary SAC, SPA and Ramsar sites

5.4.27 Paragraphs 3.2.17 - 3.2.19 of the RIES [PD-015] recorded my uncertainty regarding the conclusions reached respect of effects from air quality at the Humber Estuary SAC, SPA and Ramsar sites, and in particular the SAC. The Applicant has identified the Humber Estuary SAC as an ecological receptor in assessments in the ES [APP-046] and [APP-100]), the technical note on Air Quality Impacts (Appendix 3 of [REP2-017]), and Appendix H of the HRA Report [REP5-006].

5.4.28 In respect of the Humber Estuary SAC, I also noted at paragraph 1.2 of their technical note on air quality impacts [REP2-017] the Applicant's statement that "*Fixed coastal dunes habitat is not present within the likely impact area of the proposed development, alternative habitat types within the area have therefore been assessed (Estuaries; Atlantic salt meadows; and Mudflats and sandflats not covered by seawater at low tide)*". The information presented in Tables 8A.12,

8A.13, 8A.16 and 8A.17 [APP-100] (which pre-dates [REP2-017]) presented evidence against "Fixed coastal dunes with herbaceous vegetation".

- 5.4.29 I also noted that there was no explanation as to the potential pathways of effect from air quality impacts in the context of the primary reasons for site selection of the Humber Estuary SPA.
- 5.4.30 In their comments on the RIES, the Applicant [REP7-005] outlines their position that there are no potential pathways for LSE on the Humber Estuary SAC, SPA and Ramsar Sites from air quality impacts because the nearest terrestrial habitats (i.e. that could potentially be affected by changes in air quality) are 'significantly' more than 15km from the Site and therefore beyond the screening distance for consideration of air quality impacts (as agreed with NE and the EA and in accordance with published guidance. The Applicant also states that all other habitats associated with the designation (i.e. that may be within 15km) are aquatic and therefore not susceptible to changes in air quality.
- 5.4.31 NE did not provide specific response to these points in their comments on the RIES [REP7-007]. NE did, as part of the Applicant's response to my Rule 17 request, agree with the Applicant's conclusions of no LSE taken as a whole.
- 5.4.32 Although the Applicant did present modelled information for the Humber Estuary SAC in terms of air quality, I have no evidence to doubt the conclusion reached by the Applicant that there is no terrestrial habitat sensitive to air quality impacts within 15km of the Proposed Development. That is to say, the modelled results presented at Appendix 3 of [REP2-017] and Appendix H of the HRA Report [REP5-006] could be considered precautionary as they present concentrations at the nearest location of the SAC to the Proposed Development as opposed to the actual location of the specific habitat that is sensitive to changes in air quality (fixed coastal dunes or estuaries; Atlantic salt meadows; and mudflats and sandflats).
- 5.4.33 I have also not been given any reason to dispute the Applicant's assertion that there are no pathways of effect in terms of air quality to any of the qualifying features of the Humber Estuary SPA and Ramsar sites (i.e. that the only pathway is from surface water quality as I have already dealt with this in this Report).
- 5.4.34 I am therefore satisfied that, in terms of air quality, the project alone is not likely to result in significant effects to the Humber Estuary SAC, SPA and Ramsar sites.

River Derwent SAC

- 5.4.35 As set out above, the Applicant has effectively scoped out pathways of effect to the River Derwent SAC, and clarified their position in respect of the modelling for that site ([APP-100], [REP2-017] and [REP5-006]) in their comments on the RIES [REP7-005].

5.4.36 On the basis of the Applicant's assertion that none of the qualifying features of the SAC are directly susceptible to changes in air quality as a result of any emissions from the Proposed Development (and the Applicant therefore scoped the River Derwent out of further consideration in the HRA (section 5.1.1 of [APP-106] and paragraphs 2.2 - 2.3 of [REP7-005])), I conclude that significant effects on the River Derwent SAC are not likely to be significant. I have received no representations from NE or any other IPs to the Examination that leads me to doubt this conclusion.

Skipwith Common, Strensall Common, North York Moors and Hatfield Moor SACs

5.4.37 I have considered these European sites collectively as they are effectively subject to the same set of circumstances in relation to air quality effects. These are set out in table 3.2 of the RIES [PD-015], but in brief they are (in the case of both with and without SCR scenarios):

- NO_x process contributions from the Proposed Development alone are less than 1% of the critical load (long term) and less than 10% of the critical load (short term) and baseline conditions are below 100% of the critical level; and
- Process contributions of nutrient nitrogen, acid deposition and ammonia from the Proposed Development alone are below 1% (long term) and below 10% (short term) of the critical load or level but baseline conditions are already in excess of 100% of that critical load or level.

5.4.38 In light of the supporting evidence from the Applicant and NE in response to my further information request and questions around the appropriateness of the 1% threshold, I am generally satisfied that this criteria has been correctly applied by the Applicant, is appropriate in the context of HRA and is supported by industry accepted guidance from the IAQM and EA. I have not received any representations from any IPs that oppose this conclusion.

5.4.39 I am therefore satisfied on the basis of the evidence presented that the project alone is not likely to result in significant effects upon any of the Skipwith Common, Strensall Common, North York Moors and Hatfield Moor SACs.

Thorne Moor SAC

5.4.40 As demonstrated in table 3.2 of the RIES [PD-015], under the without SCR scenario, the Applicant's position in relation to LSE for the project alone (for NO_x (short-term and long-term), nutrient nitrogen and acid deposition process contributions from the Proposed Development) are the same as those described above in the context of the Skipwith Common, Strensall Common, North York Moors and Hatfield Moor SAC's.

- 5.4.41 On the basis of the same supporting information from the Applicant and NE as set out above, I am satisfied that the same conclusions of no LSE for the Proposed Development alone (without SCR) are applicable to Thorne Moor SACs.
- 5.4.42 Under the with SCR scenario, the conclusions are also the same for NO_x and acid deposition. However, there are differences when considering nutrient nitrogen and ammonia process contributions, discussed further below.
- 5.4.43 Following the same methodological approach using the 1% process contribution to the critical load for the consideration of LSE, the Applicant presented information as part of the ES [APP-100] and technical note on air quality effects [REP2-017] that process contributions were predicted to exceed the 1% criterion at the Thorne Moor SAC when SCR was considered.
- 5.4.44 As stated above, I questioned the Applicant on this point at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV-010]. In acknowledging my concerns in relation to the potential need for the SoS to undertake an AA based on the exceedance of the 1% threshold (alone and in-combination), the Applicant agreed to submit HRA integrity matrices, which was submitted at DL5 [REP5-006]. I will deal with this matter below.

5.5 AIR QUALITY IN-COMBINATION EFFECTS

- 5.5.1 I did not receive any representations from any IPs to the Examination raising concerns with the Applicant's approach to the identification of relevant plans and projects for consideration in terms of in-combination effects.
- 5.5.2 As described above, one of the items of further information requested as set out in my Rule 17 request [PD-010] related to the procedural requirement of the Habitats Regulations in regard to the assessment of in-combination effects, and that the Applicant's approach described in Chapter 20 of the ES [APP-046] which explains that the in-combination assessment has been undertaken on a 'qualitative' basis, particularly in light of the Wealden Judgement. On the basis that I had concerns about the sufficiency of the in-combination assessment without quantitative information in the form of air quality modelling, I therefore sought information from the Applicant necessary to undertake the assessment of LSE of the Proposed Development in combination with other relevant plans and projects.
- 5.5.3 The Applicant's response to the Rule 17 request for further information was provided at table 2.1 of [REP5-006] and summarised at paragraphs 3.3.33 - 3.3.35 and 3.3.63 - 3.3.68 of the RIES [PD-015]. Essentially, its position remained that where process contributions are 1% (or even slightly above) then the magnitude of change is so inconsequential ('de minimis') that it does not require an in combination effects assessment, and therefore it is not considered

appropriate or necessary to undertake a quantitative in-combination effects assessment because there is no pathway for LSE (as supported by IAQM guidance and EA environmental permitting guidance).

- 5.5.4 I summarised my outstanding concerns in relation to in-combination effects at paragraph 5.0.3 of the RIES, which primarily related to the conclusions (stated to be in accordance with the IAQM guidance) and the 'de minimis' argument put by the Applicant, as described above. I also expressed uncertainty in the Applicant's approach to the assessment of in-combination effects in respect of the Wealden Judgement. I note that this judgement related to issues surrounding emissions to air as a result of road traffic as opposed to point source emissions, although I understand the principle in terms of its applicability to the Habitats Regulations to be relevant in the case of the Proposed Development.
- 5.5.5 In its comments on the RIES [REP7-005], the Applicant focused on the in-combination effects assessment in relation to the Thorne Moor SAC, and their view is that even if contributions for all five identified projects were at 1% of the critical load (in terms of process contributions), this would result in an insignificant combined deposition rate contribution that would be required to adversely affect the bog habitat.
- 5.5.6 I also sought further information from NE as part of a Rule 17 request issued alongside the RIES, and they responded at DL7 [REP7-007] as described above. NE further stated 7 [REP7-007] that they are in agreement with the Applicant's position that the 1% of critical load screening threshold is considered appropriate for the ruling out of LSE on European sites in HRA terms, both alone and in-combination.
- 5.5.7 I am aware that both the Applicant's comments on the RIES and NE's response to my Rule 17 request (in terms of in-combination effects) largely relate to Thorne Moor SAC, with limited reference to the other European sites consider in the HRA Report. NE's comments at DL 7 [REP7-007] echo those expressed by the Applicant in relation to an assumed 'worst case' total contribution.
- 5.5.8 NE set out its position in respect to the Wealden Judgement [REP7-007]. It states that the relationship between the issue relevant to the Proposed Development and the Wealden case differ in a substantive way. It is NE's view that the contributions from the Proposed Development of 1% or less are based on modelled emissions at distances up to 25km away from the source (the Proposed Development), whereas the Judgement relates to the potential for overlapping emissions from road traffic from multiple plans and projects driving on the same road [REP7-007]. Therefore the circumstances are not necessarily directly and readily comparable.
- 5.5.9 NE also point out that [REP7-007], in the case of the Applicant's assessment, many of the other projects considered in the in-combination assessment were ruled out by distance rather than in

comparison to being less than 1% of critical level/load, and that any *'rejection of the standard method would be open to challenge'*.

- 5.5.10 NE concluded [REP7-007] by recognising that uncertainty exists in the modelling. They also pointed out that the AQMA Guidance considers the 1% screening threshold as being precautionary. Given these points, they state that *'It would be difficult to measure a change of this magnitude [1% of the critical load or level] and then assign it to a source 25km away'*. On this point, I note the relative distances to the relevant identified European sites as identified in section 1.1 of the HRA Report [REP5-006] and that only Strensall Common SAC and North York Moors SAC are in excess of 25km from the Proposed Development site.
- 5.5.11 I therefore understand NE's view on this issue is that recognised uncertainties in the modelling tolerances over the distances involved in the case of the Proposed Development can often result in output variances that exceed the magnitude of the process contributions at European sites being predicted by the Applicant.
- 5.5.12 The Applicant also explained that modelling methodology uncertainties or tolerances at the distances involved between the Proposed Development site and the identified European sites is far higher than 1%, and typically in the order of 10% in the long-term predicted averages at 10km distance from a buoyant elevated plume (section 2, Appendix H of [REP5-006]). The Applicant had also made a similar point about 15km being "at the edge of modelling reliability" at the ISH on environmental matters [REP3-010].
- 5.5.13 I am satisfied that the conclusion of no LSE in combination with other plans and projects for the identified European sites (with the exception of Thorne Moor SAC) is proportionate and reasonable. I consider this particularly given the separation distances between the Proposed Development, the identified plans and projects and the European sites themselves as well as the magnitudes of potential effect being presented for the project alone. I have not received any representations from any IPs that oppose this conclusion.
- 5.5.14 I am also persuaded by the view of NE that the magnitudes of process contributions being predicted by the Applicant are within the uncertainty tolerances of the model performance itself when considering receptors up to 25km from the source. That is to say the process contributions being predicted by the Applicant are themselves small in magnitude and are often exceeded by inherent levels of uncertainty in the modelling process at such distances.
- 5.5.15 I am therefore satisfied on the basis of the evidence presented (particularly in response to my requests under Rule 17) that the Proposed Development in combination with other plans and projects is not likely to result in significant effects upon any of the Skipwith Common, Strensall Common, North York Moors and Hatfield Moor SACs.

5.6 FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY OF EUROPEAN SITES

- 5.6.1 In response to my Rule 17 request for further information [PD-010], the Applicant provided (in their view) the information necessary for the competent authority to undertake an AA and consider the potential for adverse effects on Thorne Moor SAC (section 4 of the HRA Report [REP5-006]).
- 5.6.2 The consideration of adverse effects on integrity of the Proposed Development alone and in combination with other plans and projects by the Applicant is limited to:
- The operation of the Proposed Development with SCR only; and
 - Increased nutrient nitrogen deposition as a result of the increase in NH₃ emissions (not ammonia concentrations).
- 5.6.3 I summarised the Applicant's conclusions in paragraphs 4.2.1 - 4.2.3 of the RIES [PD-015].
- 5.6.4 In the joint response to my Rule 17 request [PD-010], NE stated agreement that for the Proposed Development with SCR, there will be no adverse effects on the integrity of Thorne Moor SAC based on the revised modelling assessment in Appendix H of the HRA Report [REP5-006]).
- 5.6.5 In their comments on the RIES [REP7-005] and their response to my Rule 17 request [PD-012], the Applicant and NE respectively stated their position that, even if contributions for all five projects considered as part of the in-combination assessment were at 1% of the critical load (in terms of process contributions), this would result in a combined deposition rate "well below the level expected to cause a loss of species richness for bog habitats or any of the other habitats with the level of background pollution" (see paragraph 2.8 of [REP7-005]).
- 5.6.6 The Applicant's view [REP5-006] (as supported by NE) is therefore that taking account of the various uncertainties and conservative assumptions surrounding the air quality modelling (including the inherent margins of error within the model performance itself), the Proposed Development with SCR (alone and in combination with other plans and projects) will not result in adverse effects on the integrity of Thorne Moor SAC.
- 5.6.7 I accept the logic of the closure of the existing Eggborough coal-fired power station, and the effect this will have on the 'baseline' conditions against which the Proposed Development would be considered. NE and the EA have not raised any concerns in regard to the Applicant's methodology and assumptions in this regard (i.e. that the coal-fired power station has been modelled (for the with SCR scenario) as contributing up to 3% of the critical load, which has been factored in to the modelling).

- 5.6.8 I am satisfied that the Applicant has engaged appropriately with the potential adverse effects on the integrity of the site considering the relevant sensitive qualifying features. The Applicant has also provided the conservation objectives for the Thorne Moor SAC as Appendix B to the HRA Report [REP5-006].
- 5.6.9 I am also satisfied that the Applicant has demonstrated (with reference to research based evidence from NE) that the process contributions of the Proposed Development alone and in combination (the latter based on a conservative estimate) would fall well below the point at which the NE report suggests one might observe a potentially adverse effect on bog habitat (i.e. a 'measurable change').
- 5.6.10 I also note the shared view of the Applicant and NE on the margins of error and tolerances of the model performance itself at the distances being considered in relation to the Proposed Development. Importantly the model uncertainty is recognised being often more than 1% of the critical load or level and therefore, all of the modelled results presented by the Applicant fall within this tolerance. On this basis, I conclude that the Proposed Development (alone and in combination with other plans and projects) is not likely to have an adverse effect on the integrity of Thorne Moor SAC.

5.7 CONCLUSIONS

- 5.7.1 My principal area of concern in respect of my Examination of HRA matters was whether the Applicant was correct in its conclusions that no LSE would occur at European sites in the event SCR were to be deemed to be BAT. My concerns were threefold.
- 5.7.2 Firstly, I needed to be satisfied that the Applicant's 1% threshold identified in the ES [APP-046] and used for the purpose of HRA screening was an appropriate benchmark for determining the LSE on European sites in respect of the Habitats Regulations.
- 5.7.3 Secondly assuming the 1% threshold were an acceptable measure, I needed to be satisfied that an increase which is below 1% (alone or in-combination) can be judged to have no LSE particularly, where background concentrations already exceed the critical loads or levels.
- 5.7.4 Thirdly, where process contributions would exceed 1%, I needed to be satisfied that the Applicant's assessment in the ES [APP-046] that the magnitude of change is so inconsequential ("de minimis") that it does not require an in-combination effects assessment, was consistent with the judgement in the case of *Wealden District Council v Secretary of State for Communities and Local Government* [2017].
- 5.7.5 The responses from the Applicant during the Examination, and that of NE and the EA have satisfactorily demonstrated that the 1% threshold is an appropriate benchmark to assess the absence of significance, even where the existing critical load or level is already exceeded and no alternative evidence was presented during the Examination to counter or dispute this. I therefore accept that for all identified

European sites with the exception of Thorn Moor SAC, the increases in depositions would be below 1% and thus would have a negligible impact and thus would have no LSE.

- 5.7.6 I also accept the advice from NE [REP7-007] and in the absence of evidence to the contrary, that the effects at Thorn Moor SAC, should deposition levels exceed 1%, would also be negligible and imperceptible but more importantly, any measured increases would not be capable of being specifically attributable to the Proposed Development. In any case, I also understand the tolerances and margins of error inherent in the modelling are of the same order of magnitude as the maximum process contributions being predicted by the Applicant across any of the European sites. I am equally satisfied that the circumstances of *Wealden District Council v Secretary of State for Communities and Local Government* [2017] are different to those in this application as set out by NE [REP7-007].
- 5.7.7 I am satisfied that the Proposed Development would not have any LSE on European sites. I am also satisfied that the further information and integrity matrices submitted by the Applicant at DL 5 [REP5-006], taken with the ES [APP-046] are sufficient for the SoS to undertake an AA of the effects of the Proposed Development at Thorn Moor SAC, should he feel the need to do so. My assessment in this Chapter, and the more detailed assessment contained within the RIES will assist the SoS in this task.

6 THE EXA'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

6.1 INTRODUCTION

6.1.1 This Chapter provides a balanced evaluation of the planning merits of the Proposed Development. It does so in the light of the legal and policy context set out in Chapter 3 and individual applicable legal and policy requirements identified in Chapters 4 and 5 above. It applies relevant law and policy to the application in the context of the matrix of facts and issues set out in Chapter 4. Whilst Habitats Regulation Assessment (HRA) has been documented separately in Chapter 5, relevant facts and issues set out in that chapter are taken fully into account.

6.2 CONCLUSIONS ON PLANNING ISSUES

6.2.1 In relation to the granting of development consent, I have reached a number of conclusions, as set out in the following paragraphs. I am satisfied that the ES [APP-037 - APP-124] has adequately assessed the effects of the Proposed Development on the matters below.

Principle and Need for the Proposed Development and Alternatives

6.2.2 I am satisfied that the need for the Proposed Development has been adequately justified. I am also satisfied that the alternative options have been rigorously tested and that the consideration of alternatives has been addressed adequately and the requirements of National Policy Statement (NPSs) EN-1 and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) in this regard have been met.

Agriculture and Socio Economics

6.2.3 There would be some disruption to farming practices during construction of Work No 6 (gas pipeline) and Work No 4 (cooling water), however these would be temporary and any effects reversible. I am satisfied sufficient safeguards exist to ensure no longer term effects to drainage would occur.

6.2.4 The Proposed Development will generate social and economic benefits in the form of employment and expenditure in the local, regional and national economies. Concerns were expressed in the local community about the adverse effects of the proposed development but these do not lead to a breach of NPS EN-1 or development plan policy or affect a net beneficial assessment at both the national and local levels.

6.2.5 Requirements 13 (drainage), 18 (construction environmental management plan (CEMP)), 27 (restoration of land), 33 (local liaison) and 34 (employment and skills) are adequately secured in the recommended Development Consent Order (Recommended DCO) and

would ensure mitigation would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

Air Quality and Emissions

- 6.2.6 I am satisfied that there would be no significant effects caused from construction and demolition activities of the Proposed Development and existing coal-fired power station. Emissions from the Proposed Development will be controlled by the EP regime, and I am pleased with the addition of Requirement 35 of the Recommended DCO which would ensure the effects on those residents in Hensall are monitored. The stack heights, despite being a matter of concern, would be appropriate; indeed no evidence was presented to suggest they should be taller. I am satisfied that the Proposed Development would accord with the relevant NPSs.
- 6.2.7 Requirements 5 (detailed design), 18 (CEMP), 35 (ambient air monitoring) and 36 (decommissioning) are adequately secured in the Recommended DCO and would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

Archaeology and Historic Environment

- 6.2.8 The construction of the Proposed Development may affect unknown archaeological assets in and around the Hall garths Medieval Moated site. However, the Applicant has sought to mitigate this through the submission of a Written Scheme of Investigation secured by Requirement 16 of the Recommended DCO and in doing so has complied with NPS Policies EN-1 and EN-2.
- 6.2.9 While two identified listed buildings could potentially experience likely significant effects to its setting, I am satisfied that the overall effects when compared against the existing coal-fired power station would be neutral, and off-set by the additional planting secured by Requirement 6 of the Recommended DCO.
- 6.2.10 I am satisfied that the Proposed Development would have no significant effects on archaeology and heritage assets from construction, operation and decommissioning activities and would preserve the setting of heritage assets. I am satisfied that the Proposed Development would accord with the relevant NPSs.
- 6.2.11 Requirement 16 (archaeology) is adequately secured in the Recommended DCO and would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

Biodiversity and Ecology

- 6.2.12 I am satisfied that the Proposed Development would not have any likely significant effects on European sites including at Thorne Moor Special Area of Conservation (SAC), with potential increases in depositions should selective catalytic reduction be deemed the Best Available Techniques by the Environment Agency being both negligible

and un-attributable to the Proposed Development. I find that sufficient information has been advanced by the Applicant so as to inform an appropriate assessment under the Habitat Regulations on the effects on Thorn Moor SAC, should the SoS feel the need to do so.

- 6.2.13 The Proposed Development will not cause any likely significant effects from construction and operation activities on local wildlife. I am satisfied that a development consent obligation under s106 of the Town and Country Planning Act 1990 (TCPA1990) adequately secures a financial contribution to offsite biodiversity enhancements, and the contribution meets the tests in the National Planning Policy Framework (the Framework). I am also satisfied that Proposed Development would accord with the relevant NPSs in this regard.
- 6.2.14 Requirements 6 (landscape and biodiversity strategy (LBS), 17 (protected species) and 18 (CEMP) are adequately secured in the Recommended DCO and would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

Carbon Capture Storage Readiness (CCR)

- 6.2.15 The application proposal meets NPS EN-2 requirements to be CCR ready. Requirements 31 and 32 (CHP delivery and monitoring) are adequately secured in the Recommended DCO and would ensure CCR is provided.

Combined Heat and Power Readiness (CHP)

- 6.2.16 The Application Proposal meets NPS EN-2 requirements to be CHP ready. Requirement 28 is adequately secured in the Recommended DCO and would ensure CHP viability is reviewed and delivered.

Flooding and Water

- 6.2.17 I am satisfied that the installation and removal of cofferdams in respect to Work No 4 (cooling water) would be undertaken in a manner that it would not give rise to significant adverse effects to flooding. I am further satisfied that the Proposed Development would have no significant effects during construction, operation and decommissioning on flood defences, flooding or water resources. I am satisfied that the Proposed Development would accord with the relevant NPSs.
- 6.2.18 The provisions contained within the Recommended Deemed Marine Licence (DML), and Requirements 5 (detailed design), 13 (drainage), 14 (flood risk), 15 (contaminated land), 18 (CEMP), and 36 (decommissioning) are adequately secured in the Recommended DCO and would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

Land Contamination and Ground Conditions

- 6.2.19 I am satisfied that the Proposed Development would have no significant effects during construction and operation on land contamination matters. I am satisfied that the Proposed Development would accord with the relevant NPSs. Requirements 15 (contaminated land), 18 (CEMP), and 25 (piling) are adequately secured in the Recommended DCO and would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

Landscape and Visual

- 6.2.20 The Proposed Development would have a significant adverse effect on landscape character and visual receptors owing to its sheer size and scale, and little in the way of mitigation can be undertaken. I am mindful of the advice contained in NPS EN-1 that new power stations are likely to have visual effects and that this must be weighed against the benefits and need for the scheme. I have already accepted these benefits, and taken with the fact that the Proposed Development would be considerably less visually prominent than the existing coal-fired power station which would be demolished, I am satisfied that the benefits of the scheme more than outweigh the identified significant landscape and visual effects caused by the construction and operation of the proposed development. I am satisfied that the Proposed Development would accord with the relevant NPSs.
- 6.2.21 Requirement 6 (landscape and biodiversity strategy) would ensure mitigation in the form of planting within the existing site compound identified in the ES [APP-037 - APP-124] is carried out.

Noise and Vibration

- 6.2.22 I am satisfied that the Proposed Development would have no significant effects during construction and operation of the Proposed Development on noise and vibration matters. I am satisfied that the Proposed Development would accord with the relevant NPSs.
- 6.2.23 Requirements 18 (CEMP), 20 (construction traffic management plan (CTMP)), 23 and 24 (noise from construction and operation) are adequately secured in the Recommended DCO and would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

Statutory Nuisance and Human Health

- 6.2.24 I am satisfied that the risks and hazards associated with the Proposed Development have been adequately assessed in the ES and would accord with the relevant NPSs. I am satisfied that the Proposed Development would not give rise to significant effects from construction, operation decommissioning activities on local persons in respect to health and well-being.
- 6.2.25 Requirements 8 (lighting), 18 (CEMP), 22 (construction hours), 29 and 30 (aviation lighting and air safety) are adequately secured in the

Recommended DCO and would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

Sustainability and Climate Change

- 6.2.26 I am satisfied that the Proposed Development would not give rise to significant effects taken by itself, and would amount to considerable betterment on sustainability and climate change over the existing coal-fired power station. I am satisfied that the Proposed Development would accord with the relevant NPSs.
- 6.2.27 Requirements 18 (CEMP), 20 (CTMP) (construction hours), 26 (site waste management plan (SWMP) and 36 (decommissioning) are adequately secured in the Recommended DCO and would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

Traffic and Transport

- 6.2.28 I am satisfied and would recommend that there would be no significant adverse effects during construction and operation of the Proposed Development on traffic and transport matters. I am satisfied that Proposed Development would accord with the relevant NPSs.
- 6.2.29 Requirements 7 (public rights of way), 9 (highways access), 20 (CTMP), 21 (CWTP), and 36 (decommissioning) are adequately secured in the Recommended DCO and would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

Waste Management

- 6.2.30 I am satisfied that the Proposed Development would have no significant effects on waste from construction, operation and decommissioning activities. I am satisfied that the Proposed Development would accord with the relevant NPSs.
- 6.2.31 Requirements 26 (SWMP) and 36 (decommissioning) are adequately secured in the Recommended DCO and would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

Cumulative and Combined Effects

- 6.2.32 I am satisfied that the Proposed Development would have no significant cumulative or combined effects from construction, operation and decommissioning activities. All Requirements in the Recommended DCO would ensure mitigation identified in the ES [APP-037 - APP-124] is carried out.

The Existing Coal-Fired Power Station

- 6.2.33 I am satisfied that the demolition of the existing coal-fired power station is adequately secured by means of a development consent obligation under s106 of the TCPA1990, and it meets the tests in the Framework.

6.3 THE PLANNING BALANCE

- 6.3.1 With the exception of landscape and visual matters, the ES identifies that the Proposed Development would either have no significant effects from construction, operation and decommissioning activities on the environment, or that the identified potential significant effects can be mitigated through practices which are adequately secured in the Recommended DCO. I concur with these findings.
- 6.3.2 The exception to this is in respect of landscape character and visual receptors, where likely significant effects from construction and operation of the Proposed Development are unavoidable, and cannot be entirely mitigated due to the very nature of the Proposed Development and its several large pieces of infrastructure.
- 6.3.3 However and as stated above, NPS EN-1 acknowledges this will be the case with large-scale infrastructure developments such as this, and a balancing exercise must be drawn between the public benefits and the harm caused.
- 6.3.4 The public benefits are clearly set out and accepted in NPS EN-1's identification of need for energy generating development. The choice of the site is obvious given its existing use for power generation and location close to a cooling water source. While potentially causing significant landscape and visual effects, the Proposed Development would be of a significantly reduced scale, and thus considerably less intrusive and visible compared with the existing coal-fired power station.
- 6.3.5 Furthermore, there would be considerable overall improvements of the environmental effects in respect of the discharge of air pollutants, and the effects on marine wildlife and water from abstraction and discharge rates and temperatures when comparing the proposed CCGT and the existing coal-fired power station. While I have sought to focus the Examination on the merits of the Proposed Development, these overall benefits I have identified must also clearly form part of the planning balance.
- 6.3.6 In my conclusion, I find that the identified harm done is outweighed by the substantial benefits from the provision of energy to meet the need identified in NPS EN-1 and by the other environmental benefits of the application as summarised above. I further conclude that there is no breach of NPS policy overall.
- 6.3.7 For the reasons set out in the preceding chapters and summarised above, I conclude that the Proposed Development is acceptable. I carry this conclusion forward to my consideration of compulsory acquisition and temporary possession proposals and objections to these in Chapter 7 below, noting also that my reasoning above identifies a basis for a number of changes to the DCO, documented in Chapter 8 below.

7 COMPULSORY ACQUISITION AND RELATED MATTERS

7.1 INTRODUCTION

7.1.1 The application subject to examination includes proposals for the compulsory acquisition (CA) of freehold of land, new rights over land, and temporary possession (TP) of land. This chapter records the examination of those proposals and related issues.

7.2 THE REQUIREMENTS OF THE PLANNING ACT 2008

7.2.1 CA powers can only be granted if the conditions set out in sections 122 and 123 of the Planning Act 2008 (PA2008), together with relevant guidance in "Guidance Related to Procedures for the Compulsory Acquisition of Land", DCLG, September 2013 (the DCLG CA Guidance) are met.

7.2.2 S122(1) of the PA2008 states that an Order granting development consent may include provision authorising the compulsory acquisition of land only if the SoS is satisfied that the conditions in s122 (2)(a), (b) and (c) and (3) are met. Only s122(2)(a), (b) and (3) are relevant, as no land is being exchanged.

7.2.3 S122(2)(a) states that the CA conditions are met if the land is required for the development to which the development consent relates. The DCLG CA Guidance states that for this to be met, the Applicant should be able to demonstrate to the satisfaction of the SoS that the land in question is needed for the development to which the consent is sought. The SoS will need to be satisfied that the land to be acquired is no more reasonably required for the purposes of the development.

7.2.4 S122(2)(b) states that the condition is met if the land is required to facilitate or is incidental to that development. The DCLG CA Guidance states that an example to demonstrate compliance would be for the purposes of landscaping. The SoS would need to be satisfied in such circumstances that the land is no more than reasonably necessary and is proportionate. This section of the Act applies to only Plot 40 as identified on the Land Plans ([APP-013] as originally submitted but updated at Deadline (DL) [REP2-007] and DL 6 [REP6-006].

7.2.5 The DCLG CA Guidance states as part of the s122 tests, the SoS will expect a demonstration that all reasonable alternatives have been explored to CA, and that there is a reasonable prospect of the requisite funds for acquisition becoming available.

7.2.6 S122 (3) requires demonstration of a compelling case in the public interest to acquire the land compulsorily. The DCLG CA Guidance states that for this to be met, the SoS will need to be persuaded that there is compelling evidence that the public benefits that would be

derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.

- 7.2.7 S123 of the PA2008 relates to land to which authorisation of compulsory acquisition can relate. S123(1) permits CA subject to conditions that: i) a request was made for CA; ii) that all persons with an interest in the land consent to the inclusion of the provision; and iii) the prescribed procedure has been followed in relation to the land.
- 7.2.8 S127 of the PA2008 relates to statutory undertakers land. S127(5) and (6) states that an order granting development consent may include provision authorising the CA of a right over statutory undertakers' land providing that it can be done so without serious detriment to the carrying out of the undertaking, or that any detriment can be made good. A number of statutory undertakers have land interests within the Order Limits.
- 7.2.9 S135 of the PA2008 states that an order granting development consent may include a provision authorising the compulsory acquisition of an interest in Crown land only if: i) if the land is held by or on behalf of the Crown; and ii) that the appropriate Crown authority consents to the acquisition.
- 7.2.10 S138 of the PA2008 relates to extinguishment of rights. S138 (4) states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. For the Proposed Development, this section of the Act is relevant to statutory undertakers with land and equipment interests within the Order Limits.
- 7.2.11 These matters were tested in the Examination and are reported on further below.
- 7.2.12 Further to Part 1 of Schedule 5 to PA2008 at Paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the associated DCLG CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole: only capable of proceeding if the primary development is justified.
- 7.2.13 I take all relevant legislation and guidance into account in my reasoning below and relevant conclusions are drawn at the end of this Chapter.

7.3 THE REQUEST FOR COMPULSORY ACQUISITION POWERS

- 7.3.1 The Applicant requests consent under s123(2) of the PA2008 for land to be CA and to take TP. The application draft DCO [APP-005] and all

subsequent versions submitted by the Applicant included provisions intended to authorise CA of land and rights over land. Powers for the TP of land are also sought.

7.3.2 On this basis, the application was accompanied by a Book of Reference (BoR) [APP-008], Statement of Reasons (SoR) [APP-009], Land Plans [APP-013], Crown Land Plans [APP-014] and a Funding Statement (FS) [APP-011]. Taken together, these documents set out the land and rights sought by the Applicant together with the reasons for their requirement and the basis under which compensation would be funded.

7.3.3 As is normal, the Examination and due diligence processes led to changes to some of this documentation. The following had been updated during the Examination so that by its close, it comprised:

- BoR Revision 3: Submitted at DL 2 [REP2-006];
- Crown Land Plans Revision 2: Submitted at DL 2 [REP2-008]; and
- Land Plans Revision 3: Submitted at DL 6 [REP6-006].

7.3.4 References to the BoR and the Land Plans in this chapter from this point should be read as references to the latest revisions cited above. It should be particularly noted that all Land Plan plot references employed in this chapter are correct as per the most recently submitted version at DL 6 [REP6-006].

7.3.5 The BoR was updated at DL 2 to correct some very minor errors contained within it, explained within the covering letter [REP2-001] and which I judged did not fundamentally change the application.

7.3.6 The Land Plans were initially updated at DL 2 [REP2-007] as I identified in my WQs [PD-007] inconsistencies and errors with the wording of the originally submitted Land Plans [APP-013] and its use of "Order Land" and "Order Limits", as well as with the draft DCO [APP-005]. The Land Plans were further updated at DL 6 [REP6-006] following a review by the applicant of land required for CA of freehold of land. I discuss this further below.

7.4 THE PURPOSES FOR WHICH THE LAND IS REQUIRED

7.4.1 The purposes for which the CA and TP powers are required are set out in the BoR [REP2-006] and SoR [APP-009], as augmented by relevant additional evidence discussed below. The powers sought are set out below.

CA of Freehold of Land

7.4.2 The Applicant seeks to acquire all interest, including freehold on land identified on the Land Plans [REP6-006] as being shaded pink. Only two sites are required: Plot 40 comprises a small area of highway verge located adjacent to an access gate on Wand Lane on the site's

eastern boundary; and Plot 610 which would comprise the location of Work No 7 (AGI).

CA of New Rights Over Land

- 7.4.3 The Applicant seeks to acquire new rights on land identified on the Land Plans [REP6-006] as being shaded blue. These plots are identified within Schedule 8 of the Recommended DCO. The new rights are required for the installation, construction, operation and maintenance of principally Work No 4 (cooling water), and Works No 6 (gas pipeline). Two small individual plots (Plot 10 and Plot 30) are required in connection with Work No 5 (borehole and towns water connection) and Work No 9 (surface water discharge) respectively, which are below the A19 and Hensall Dyke respectively.
- 7.4.4 As identified in the BoR [REP2-006], land identified to the north of the River Aire, and on the western side of Ings Lane on the southern side of the River Aire are in private ownership with the exception of Plots 195, 250, 240 and 215, which lie closest to the River Aire and which are in the freehold ownership of the Applicant and tenanted to individuals. Land on the western side of Ings Lane, in connection with Works No 4 (cooling water) are in the freehold ownership of the Applicant and tenanted to individuals with the exception of Plots 265, 270, 275, 285, 295, 310 and 320 closest to the River Aire which are in private ownership.
- 7.4.5 Plot 230 is within the non-tidal section of the River Aire, and is the location of the existing cooling water intake pipes. The BoR [REP2-006] identifies that the Applicant, the EA and the Canal & River Trust (CRT) as having freehold interests.

CA to Extinguish Existing Rights, Easements and Servitudes

- 7.4.6 The Applicant seeks to extinguish existing rights on land identified on the Land Plans [REP6-006] as shaded green. These powers are requested to ensure easements and other private rights affecting the land are extinguished or suspended which would otherwise potentially hinder construction or operation of the Proposed Development.
- 7.4.7 This land concerns all land within the existing coal-fired power station and the site for Work No 1 (proposed combined cycle gas turbine (CCGT)) and Work No 2 (construction laydown and carbon capture readiness area (CCR)), and three plots (Plots 95, 120 and 145) to the north of Wand Lane which are owned by the Applicant and on which the current and proposed Work No 4 (cooling water) and Work No 6 (gas pipeline) exist and would exist.

Temporary Possession

- 7.4.8 The Applicant seeks to take TP of land to permit construction or maintenance of the Proposed Development. This is identified on the Land Plans [REP6-006] as being shaded yellow. These plots are set out in Schedule 10 of the Recommended DCO.

Crown Land

7.4.9 Plots 245, 255 and 690 are identified in the BoR [REP2-006] and on the Crown Land Plan [REP2-008] as having Crown interest, administered and run by the EA. These plots are contained within the tidal section of the River Aire, and new rights are sought to:

- Construct the discharge infrastructure in respect to Work No 4 (cooling water); and
- Construct Work No 6 (gas pipeline) underneath the River Aire.

Statutory Undertakers' Land

7.4.10 Work No 3 (electrical connection works) will be required to connect to the National Grid Electricity Transmission's (NGETs) existing substation, identified as Plot 65 on the Land Plan [REP6-006]. CA of land is not sought. The SoR [APP-009] states that it is anticipated that the works can be carried out under a connection agreement. The same principles apply to Works No 7 (AGI) in respect to connection to the National Grid Gas (NGG) Feeder gas pipeline.

7.4.11 The SoR [APP-009] states that the Applicant has identified land within the Order Limits belonging to Northern Power Grid (Yorkshire) plc., BT, Northern Gas Networks and Yorkshire Water, and as such may contain their infrastructure. In all cases, Protected Provisions are proposed in relation to each undertaker.

7.5 THE CASE MADE FOR COMPULSORY ACQUISITION

Need

7.5.1 The Applicant states in the SoR [APP-009] that to ensure that the Proposed Development can be built, maintained and operated, and to meet the Government's policy in relation to the timely provision of new generating capacity, the Applicant requires the acquisition of a number of property interests in third party ownership, and has therefore applied for the grant of powers to facilitate acquisition and/or creation of new rights and interests, and to extinguish rights over land.

7.5.2 In respect of CA of land, the SoR [APP-009] states that this power is only requested on land where other powers would not be sufficient or appropriate to enable the construction, operation or maintenance of the Proposed Development. Otherwise, new rights are required in order to construct, operate and maintain the infrastructure on land not within its ownership. The extinguishment of existing rights is required to ensure that easements and other private rights identified as affecting the land are suspended or extinguished so as to facilitate the construction and operation of the Proposed Development without hindrance. Furthermore, there may be unknown rights, restrictions, easements or servitudes affecting the land which also need to be extinguished in order to facilitate the construction and operation of the Proposed Development.

- 7.5.3 In respect of temporary use, the Applicant states that the land identified in the Land Plans [REP6-006] is not required to be acquired compulsorily. These areas principally relate to Work No 4 (cooling water) and Work No 6 (gas pipeline). The construction working width is set at 36m. There are exceptions to this, where a wider working width is to accommodate crossings of watercourses, drains, roads or similar, for construction compounds, and for access points. The Applicant further argues that the construction area allowed for a particular crossing depends on the likely construction method to be employed, for instance, the crossing method for the River Aire (where the gas pipeline will be tunnelled underneath the river requires a substantial area of land on both sides of the river. The working width would also be considerably wider on Plot 165 [REP6-006] where both Work No 4 (cooling water) and Work No 6 (gas pipeline) align.
- 7.5.4 The Applicant states [APP-009] that underpinning the need for CA is so that the Proposed Development can be constructed and be operational within a reasonable commercial timeframe, and the powers sought and land required is no more than is required to facilitate the Proposed Development. Nevertheless, individual private agreements with each person with an interest in the land will be sought. The SoR [APP-009] sets out the progress to these negotiations.
- 7.5.5 The Applicant states [APP-009] that the need for CA is entirely consistent with the NPSs particularly NPS EN-1's requirement to boost energy supply in the UK.

Alternatives

- 7.5.6 In Chapter 4 of this Report I have examined the alternative locations for the proposed CCGT and gas pipeline routes. A main consideration for the selection of the proposed route for the gas pipeline was because it was the shortest of all the considered alternative routes, and would generate less land needed to be subject to CA. I concluded that they had been adequately justified.
- 7.5.7 The SoR [APP-009] states that in order to provide a gas connection to the development site, there is no alternative but to seek to acquire land, new rights over existing land and the temporary use of land. It also asserts that a 'Do Nothing' scenario is not appropriate given the established national need for new energy generation as prescribed in NPS EN-1, EN-2 and EN-4. Furthermore the closure of the existing Eggborough coal-fired power station in the near future underlines the importance of providing new generating capacity at the Site.

Availability and Adequacy of Funds

- 7.5.8 A FS [APP-011] accompanies the application which includes a full statement of accounts. The FS [APP-011] states that the Applicant's last reported accounts to 30 September 2015 confirmed it had net assets of £6m which includes full provision of future closure costs of

the site. The Applicant's parent company filed accounts of €11.3bn. The project costs are estimated to be £1bn and include construction, preparation, supervision and land acquisition costs including compensation payable in respect of any CA. The Proposed Development would be funded from the cash reserves of the Applicant, with additional support from its parent company if required. Construction costs will be funded from a combination of the parent company's resources and debt finance, with the exact combination dependent upon market conditions at the date construction commences.

- 7.5.9 The Applicant states [APP-011] that it has extensive experience of financing major capital projects, that funds would meet the capital expenditure for the cost of the Proposed Development, of acquiring or obtaining land and compensation. Its own advice states that the Proposed Development is commercially viable and resources are committed.
- 7.5.10 The Applicant considers [APP-011] that it has the ability to procure the financial resources required for the Proposed Development, including the cost of acquiring any land and rights and the payment of compensation, as applicable. They state that they are not aware of any interests within the Order land in respect of which a person may be able to make a blight claim, but in the event this did occur, the Applicant would have sufficient funds to meet any compensation due. It also states that the SoS can be satisfied that the requisite funds for payment of compensation will be available at the appropriate time.

The Objectors' Case

- 7.5.11 There were no specific outright objections to CA made or received during the Examination by any party.
- 7.5.12 NGG/NGET in their RR [RR-007] and in their response to DL 1 [REP1-013] did object in respect to the use of Plot 65 in respect to Work No 3 (electricity connections), but did so on the basis that at that current time, protected provisions in respect of NGG/NGET infrastructure and crossing agreements had yet to be reached. NGG/NGET requested a CA Hearing (CAH), which I held on the afternoon of Thursday 23 November 2017 [EV-012], but it failed to attend.
- 7.5.13 I was informed by the Applicant at the CAH held on Thursday 23 November 2017 [EV-012] and confirmed in writing at DL 3 [REP3-012] that the parties had made significant progress on agreeing such protected provisions, and crossing agreements would be dealt with by an Asset Agreement, which falls outside of my considerations. NGG/NGET wrote to me on 7 March 2018 [AS-006] stating that such agreements had been reached and that they withdraw their objection to the scheme. This is confirmed in the statement of common ground (SoCG) signed between the parties submitted at DL 9 [REP9-006].

- 7.5.14 The CRT initially objected in its RR [RR-008] to the CA freehold of its land, which it deemed unnecessary and unjustified. However, CRT stated in its response to DL 2 [REP2-031] that it had clarified the position with the Applicant; CA of the freehold was not being sought; and subsequently its objection on this was removed.
- 7.5.15 The CRT in its RR and WRs during the Examination [RR-008, REP2-031, REP3-024, and REP6-008] and at the CAH held on Thursday 23 November 2018 [EV-012] have maintained an objection to the Protected Provisions clause set out in Schedule 12, Part 3 of the Recommended DCO, and this was not resolved by the parties by the close of the Examination. I report on this specifically and in more detail in Chapter 8 of this Report.
- 7.5.16 The Marine Management Organisation (MMO) raised comments in its WR [REP2-033] in respect to Protected Provisions under Schedule 12 Part 1 of the Recommended DCO. It noted that a separate marine licence would be required if construction or relocation of utilities were to take place within the marine environment. The MMO throughout the Examination were principally concerned with the provisions and wording of the draft Deemed Marine Licence, which forms Schedule 13 of the Recommended DCO. I report on these discussions and changes in Chapter 8 of this Report.

7.6 EXA'S EXAMINATION OF THE CASE FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION

s122/s123 Tests

- 7.6.1 The land for Work No 1 (CCGT) and Work No 2 (construction laydown and CCR) lie entirely within the freehold ownership of the Applicant [REP2-006] and is within the site compound of the existing coal-fired power station. Aside from small connection points, the land for Works No 5 (borehole and towns water connection) and Works No 9 (surface water drainage) also lie within the existing coal-fired power station site. This land is identified on Land Plans [REP6-006] as required to remove any existing rights, easement or servitudes over this land.
- 7.6.2 As this land lies within an existing enclosed site, I am satisfied this is an entirely reasonable request as any existing right or easement could endanger or severely interfere or impede the project's delivery. I did not question this further during the Examination. I am equally satisfied that the Applicant has applied due diligence to ascertaining any existing rights and easements.
- 7.6.3 CA for new rights over Plots 10 and 30 in connection with Works No 5 (borehole and towns water connection) and Work No 9 (surface water drainage) was never raised or questioned during the Examination by any party, and I likewise had no reason to do so, being that they comprise relatively small parcels of land under the A19 and Hensall Dyke respectively.

- 7.6.4 The selection of the application site for the Proposed Development is manifestly obvious given its previous use and existing grid connections. I am equally satisfied that the ES [APP-044] and the SoR [APP-009] had satisfactorily explained the route selection of Work No 6 (gas pipeline). I therefore did not consider it necessary to investigate this further.
- 7.6.5 I am also satisfied that the land take and working width for Work No 4 (cooling water) and Work No 6 (gas pipeline) at 36m, wider in places where Work No 6 negotiates water and road crossing and where the two align at land south of the River Aire and into the existing coal-fired power station site, has been sufficiently justified by the Applicant in the ES [APP-044 and APP-009].
- 7.6.6 The SoR [APP-009] and BoR [REP2-006] identify that much of the route of the Works No 4 [cooling water] is already within the Applicant's freehold ownership. Yet the original Land Plans submitted with the application [APP-013] identified a number of parcels were sought for CA of the freehold of the land, and this despite the SoR [APP-009] identifying that the tenants of these lands had made private agreements for the land to be used.
- 7.6.7 I was not clear why therefore these plots needed to be CA for the freehold, and I asked the Applicant to justify this position at the CAH held on Thursday 23 November 2017 [EV-012]. The Applicant responded that it was not precisely known where the cooling water infrastructure lay beneath the ground, and that parts of it may in fact be on land not owned by the Applicant. However, it accepted that the freehold CA of these plots may not now be necessary because private agreements had been reached, and stated that it would undertake a review of land required for CA. At DL 6, the Applicant had submitted revised Land Plans [REP6-006] and an updated draft DCO [REP6-003] in which the plots identified for CA for freehold of land along the route of Works No 4 [cooling water] were changed to CA for rights over land as only being sought.
- 7.6.8 The Land Plans [REP6-006] subsequently identify only two plots of land are required for CA of the freehold. Plot 610 would be for Work No 7 (above-ground installation (AGI)). As this would be entirely necessary and essential infrastructure to operate the Proposed Development, and would be an enclosed and secure compound, I am satisfied that the CA of this plot is justified. I asked the Applicant in my FWQ [PD-011] to justify its size to test that it was no more than necessary, and its response [REP5-005] did so.
- 7.6.9 I also asked [PD-011] for clarification for the need to acquire Plot 40. The Applicant stated [REP5-005] that the land was largely within its existing compound and comprised landscaping which it maintains and would continue to maintain as part of Work No 8 (landscaping). However, the land is unregistered and the Applicant does not have title deeds to it. CA of the freehold is to regularise the land, and the Applicant is not aware of any third party ownership. The Applicant felt

that the CA of this land fell squarely within permitted condition s122 (2)(b) of the PA2008. I was satisfied with this response.

- 7.6.10 Should any such third parties come forward at a later stage, compensation would be available for any loss incurred. I therefore consider that any interference with human rights arising from implementation of the Proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest.
- 7.6.11 Notwithstanding the above, the SoR [APP-009] indicates that the Applicant is seeking to sign private agreements with all landowners, tenants and other persons with interest on the land such that CA of land and rights over land may not be ultimately relied upon. At the CAH held on Thursday 23 November 2017 [EV-012], I asked the Applicant to update me on this position.
- 7.6.12 The Applicant confirmed [EV-012] and in its written response [REP3-012] that all but two landowners had now agreed and signed private agreements for purchase of the freehold and for new rights over the Order Land and respectively identified in the Land Plans [REP6-006]. Of the two landowners that hadn't, Heads of Terms (HoT) had been agreed with one. The other was the EA, whom sought to agree the technical provisions before concluding the land and commercial negotiations. The Applicant stated that those negotiations have been run in parallel, and now that with the signing of a SoCG between the parties the commercial negotiations can continue with a view to reaching agreement as soon as possible.
- 7.6.13 The SoCG signed between the Applicant and the EA was submitted by the Applicant at DL 3 [REP3-008]. The Applicant confirmed in its submissions at DL 9 [REP9-008] that agreement with the EA, and all other persons with an interest in the land had been signed. This is a significant step, one that may mean that the powers of CA of land may not be drawn upon.
- 7.6.14 I asked a number of WQs [PD-007] in respect of clarity of CA within the draft DCO [APP-005], which were satisfactorily addressed by the Applicant in its response [REP2-014]. At the CAH held on Thursday 23 November 2017 [EV-012] I clarified the need for CA on individual plots, and I was satisfied with the responses given by the Applicant.
- 7.6.15 No party raised concerns over the funding of the Proposed Development. I sought clarification in WQ [PD-007] on how the Applicant arrived at its CA costs as these had not been separately identified from the project costs. The Applicant responded [REP2-014] that the likely CA costs cannot be disclosed as this could prejudice its discussions with the Affected Persons (Aps), but that sufficient funds are available to meet all costs. I was satisfied with this response and asked no further questions.

- 7.6.16 The draft DCO at that time [APP-005] did not contain an Article requiring financial security requiring compensation due following the use of CA powers, and I requested such an insertion into the DCO. The Applicant agreed as it appeared within the DL 3 submitted draft DCO [REP3-003].
- 7.6.17 I am satisfied that the Applicant has demonstrated that CA of the freehold of land of Plots 40 and 610, the new rights over land identified in Schedule 8 of the Recommended DCO, the extinguishment of existing rights on land within the existing and proposed power station site has been adequately justified, and is no more than is reasonably necessary to facilitate the Proposed Development. I am satisfied that the Proposed Development is adequately funded.
- 7.6.18 The need for the development has already been established by the NPS and accepted in this Examination. The imminent closure of the existing coal-fired power station and the need for the site to continue producing energy is a substantial benefit of the Proposed Development. The public benefits are thus tangible, and more than outweigh any private loss of land for a temporary period for the construction of the necessary infrastructure, and inconvenience through any maintenance activities required.
- 7.6.19 I am therefore satisfied that the CA tests set out in s122 and s123 of the PA2008 have been met.

S135 Tests

- 7.6.20 As identified above, Plots 245, 255 and 690 fall within the Crown interest. Plots 245 and 255 are shown on the Land Plans [REP6-006] as being land required for new rights to construct Work No 6 (gas pipeline) under the tidal section of the River Aire. Plot 690 is required in connection with Work No 4 (cooling water) to construct the discharge cooling water.
- 7.6.21 I received at DL 2 [REP2-024] a letter from The Crown Estate (TCE) stating the Applicant is currently engaged with TCE's agents, and working constructively with TCE to reach an agreement for an appropriate interest in TCE's relevant land. The parties are expectant that an agreement will be reached by the close of the Examination. Agreed wording for Article 42 of the Recommended DCO was also put forward in this letter.
- 7.6.22 I asked a FWQ [PD-011] for the Applicant to provide an update. It replied [REP5-005] that HoTs have been agreed with TCE, and that an email was sent to the affected party's agent on 4 January 2018 seeking an update on production of a plan to be appended to that HoT. A response was received on 5 January 2018 confirming the plan is yet to be produced but there are no outstanding issues preventing its production.

- 7.6.23 The Applicant stated in its submission at DL 9 [REP9-008] that it had signed an agreement with TCE. However, no further communication was received from TCE during the Examination to confirm this or to state that it had authorised Crown land to be used.
- 7.6.24 Without this confirmation, I cannot recommend to the SoS that the tests of s135 of the PA2008 have been met. However, I am generally satisfied from the above that communication between the Applicant and TCE has taken place and that sufficient progress has been made, and that such an Agreement is, more likely than not, to exist.
- 7.6.25 I would recommend that the SoS seek confirmation from TCE accordingly that it has consented for Crown Land to be used.

S127/s138 Tests

- 7.6.26 Schedule 12 Part 1 of the Recommended DCO sets out the Protected Provisions for electricity, gas, water and sewerage undertakers. As stated above, agreements have been reached between the Applicant and NGG/NGET in the form of a private Asset Protection Agreement, confirmed within the SoCG signed between the parties [REP9-006]. The Applicant confirms [REP9-008] that Northern Power Grid (Yorkshire) plc., BT and Yorkshire Water raised no comments on the wording of the Protected Provisions and find they are adequately protected.
- 7.6.27 As with NGG/NGET, the Applicant and Northern Gas Networks have agreed to sign a private Asset Protection Agreement to protect its interests. However, this was not signed by the close of the Examination. Northern Gas Networks (or BT, Yorkshire Water or Northern Power Grid (Yorkshire) plc.) did not participate in the Examination at any stage to voice any concerns in this regard.
- 7.6.28 With the provision of Schedule 12, Part 1 of the Recommended DCO, I am satisfied that the statutory undertakers would be adequately protected from the construction and operation of the Proposed Development and that there would be no serious detriment to the carrying out of their respective undertakings. The tests of s127 and s138 of the PA2008 are satisfied.
- 7.6.29 However, the SoS may want to seek confirmation from the Applicant that the private Asset Protection Agreement has been signed. However, if such confirmation is not provided by the Applicant, or such an Agreement has not been signed at the point confirmation is sought, I am satisfied the SoS can be confident that Northern Gas Networks' undertakings would be preserved and protected.

Temporary Possession

- 7.6.30 The Land Plans [REP6-006] identifies a number of plots in which TP is needed to construct Work No 4 (cooling water), Work No 6 (gas pipeline) and Work No 7 (AGI). This includes construction compounds and storage areas as well as temporary haul roads along the route of

Works No 6. No IPs or Aps raised any concerns with the quantum or size of the sites needed. On examination of the Land Plans [REP6-006] and the ES [APP-043 and APP-044] I had no reasons to question the Applicant on this matter, and I did not pose any questions during the Examination.

7.7 THE EXA'S RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION POWERS

7.7.1 S122 and s123 of the PA2008 sets out the purposes for which CA may be authorised. I am satisfied that the legal interests in all the plots of land included in the revised BoR [REP2-006] and shown on the Land Plans [REP6-006] would be required for both the principal development and for land required to facilitate that provision. I am satisfied, and recommend to the SoS that the requirements of s122 of PA2008 are therefore met.

7.7.2 Concerning s122(3), I am satisfied, and recommend to the SoS that a compelling case in the public interest exists for the following reasons:

- The development for which the land is sought would be in accordance with national policy as set out in the relevant NPSs and development consent should be granted;
- The NPSs identify a national need for electricity generating capacity of the type that is the subject of the application;
- There is a need to secure the land and rights required and to construct the development within a reasonable commercial timeframe, and the development represents a significant public benefit to weigh in the balance;
- The private loss to those affected has been mitigated through the selection of the land and the minimisation of the extent of the rights and interests proposed to be acquired;
- The Applicant has explored all reasonable alternatives to the CA of the rights and interests sought; and
- Secure funding would be available to enable the compulsory acquisition following the DCO being made and a guarantee of its availability is proposed in the DCO.

7.7.3 S135 of the PA2008 is met subject to the SoS confirming with TCE that it has consented to Crown land being used for the construction of the Proposed Development as confirmed by the Applicant [REP9-008].

7.7.4 S127 and s138 of the PA2008 are met insofar as the Proposed Development would not cause serious detriment to the carrying on of the undertaking. The SoS may wish to seek confirmation from the Applicant that it has signed a private Asset Protection Agreement with Northern Gas Networks. However, if such a confirmation is not forthcoming or such an Agreement has not been signed at the point confirmation is sought, I am satisfied the SoS can be confident that Northern Gas Networks' Protected Provisions and undertaking would be preserved by Schedule 12, Part 1 of the Recommended DCO.

- 7.7.5 The case for CA powers required to be based on the case for the development overall. I have shown in Chapter 6 that I have reached the view that development consent should be granted. As I have set out above, I am satisfied that the CA powers sought by the Applicant are justified and should be granted because I have concluded that there is a compelling case in the public interest for land and interests to be compulsorily acquired and therefore the proposal would comply with PA2008.
- 7.7.6 As far as human rights are concerned, I am satisfied that the Examination has ensured a fair and public hearing; that any interference with human rights arising from implementation of the Proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest; and that compensation would be available in respect of any quantifiable loss. There is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

8 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

8.1 INTRODUCTION

- 8.1.1 The application draft Development Consent Order (DCO) and draft Deemed Marine Licence (DML) [APP-005], and the Explanatory Memorandum (EM) [APP-006] were submitted by the Applicant as part of the application for development consent. The EM describes the purpose of the draft DCO as originally submitted, with each of its articles and schedules.
- 8.1.2 The application draft DCO [APP-005] was broadly based on the Model Provisions (MPs), but departed from those clauses to draw upon drafting used in made Orders for similar development under the Planning Act 2008 (PA2008), the Transport and Works Act 1992 and other Acts authorising development. Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remain a starting point for the consideration of the DCO and a comparison with them has been provided as part of the application [APP-007]. Precedent cases have also been considered where appropriate. The draft DCO [APP-005] and subsequent iterations are in the form of a statutory instrument as required by s117(4) of the PA2008.
- 8.1.3 This Chapter provides an overview of the contentious and non-contentious changes made to the DCO during the Examination process, between the application draft DCO and a final preferred draft DCO submitted by the Applicant at Deadline (DL) 9 [REP9-003]. It then considers changes made to the draft DCO in order to arrive at the Recommended DCO in Appendix D to this Report.
- 8.1.4 I do not report on every change made in the updated versions, as many were as a result of typographical errors; or slight revisions of the wording following either private discussion between the Applicant and relevant Interested Parties (IPs) or from their Written Representations (WRs), or as a result of my written questions (WQs) [PD-007] and further written questions (FWQs) [PD-011].

8.2 STRUCTURE OF THE DCO

- 8.2.1 The Recommended DCO is structured as follows:
- Part 1, Articles 1 and 2 sets out how the Order may be cited and when it comes into force. Article 2 sets out the meaning of various terms used in the Order;
 - Part 2, Articles 3 to 7 provide development consent for the Proposed Development, and allow it to be constructed, maintained and operated. Articles 6 and 7 set out who has the benefit of the powers of the Order and how those powers can be transferred;

- Part 3, Articles 8 to 13 provide for the undertaker to be able to carry out works to and within streets, to create or improve accesses, to temporarily stop up streets, suspend public rights of navigation and to be able to divert and temporarily stop up public rights of way;
- Part 4, Articles 14 to 16 set out three supplemental powers relating to discharge of water, authority to survey land and removal of human remains;
- Part 5, Articles 17 to 30 provide for the undertaker to be able to compulsorily acquire the Order land and rights over/within it, and to be able to temporarily use parts of the Order land for the construction or maintenance of the Proposed Development. The provisions provide for compensation to be payable to Affected Persons in respect of these powers, where that is not already secured elsewhere. These articles also provide for powers in relation to equipment of statutory undertakers;
- Part 6, Articles 31 and 32 provide powers in relation to trees which need to be removed or lopped in relation to the Proposed Development and any protective works to buildings; and
- Part 7, Articles 33 to 43 is concerned with miscellaneous and other general matters.

8.2.2 There are 14 Schedules to the Order, providing for the description of the Proposed Development (Schedule 1), the requirements applying to it (Schedule 2), matters in relation to streets, rights of way and public rights of navigation (Schedules 3 to 7), land in which only rights may be acquired (Schedule 8), amendments to statutes to ensure appropriate compensation is payable where new rights over land are acquired under the Order (Schedule 9), land which may be used temporarily for the Proposed Development (Schedule 10), the procedure for discharging requirements (Schedule 11), provisions protecting statutory undertakers and their apparatus (Schedule 12), a DML (Schedule 13) and relevant parameters for multi- or single-shaft options (Schedule 14).

8.3 DESCRIPTION OF WORKS

8.3.1 Part 1 of the Recommended DCO provides definitions of the authorised development, limits of deviation, the Land Plans, the Order Land, Order Limits and the undertaker. Article 38 sets out the plans to be certified by the SoS once the Order has been made. These are:

- The access and rights of way plans;
- The Book of Reference;
- The Combined Heat and Power assessment;
- The Environmental Statement;
- The Flood Risk Assessment;
- The Land Plans;
- The Works Plans;
- The Indicative Landscape and Biodiversity Strategy; and
- The Application Guide.

8.3.2 The Application Guide did not form part of the draft DCO when submitted with the application. I requested in my FWQs [PD-011] that it should be, along with a definition in Article 2, so as to provide clarity as to the updated documents submitted during the Examination. The change was made with the updated DCO at DL 5 [REP5-002]. No party raised any concern with the description of the works or the documents to be certified. I had some concerns with some definitions in the draft DCO submitted with the Application [APP-005] and I discuss these below.

8.3.3 Schedule 1 of the Recommended DCO lists the authorised development. This is set out in further detail in Chapter 2 of this Report. No party raised any concern with the description of the authorised development during the Examination.

8.4 EXAMINATION OF THE DCO

8.4.1 My initial examination of the draft DCO submitted with the Application [APP-005] did not identify any serious concerns such that an issue specific hearing (ISH) on the DCO matters was necessary at the outset of the Examination, as has been the case on other projects.

8.4.2 I posed a number of WQs [PD-007] principally in respect to the wording and provisions within the DCO [APP-005]. The Applicant responded to these questions [REP2-014] and produced an updated DCO [REP2-003] accordingly which included changes where the Applicant agreed were necessary, as well as resulting from private and individual discussions with IPs, and the correction of typographical errors it had found.

8.4.3 I considered outstanding issues remained, particularly Article 2 and Schedule 2 definitions of "commence", "maintain" and "permitted preliminary works", and I held an ISH on the draft DCO on Thursday 23 November 2017 [EV-011] to discuss these matters further, along with the wording and provisions of Requirements 16 and 24 in Schedule 2, and the draft Deemed Marine Licence (DML) contained within Schedule 13. At the CAH held on the same day, the Protected Provisions for the Canal & River Trust (CRT), which is set out in Schedule 12 Part 3, was also discussed at some length. Following both hearings, the Applicant updated the DCO at DL 3 [REP3-003] to reflect those discussions.

8.4.4 I posed FWQs [PD-011] in respect principally to Article 2, and a further update was made to the DCO at DL 5 [REP5-002] in response to my questions as well as a number of changes within the Schedules. An updated DCO was submitted at DL 6 [REP6-003] which made minor changes to the Schedules.

8.4.5 I issued my draft DCO [PD-013] suggesting further changes and amendments. The Applicant responded at DL 8 [REP8-005] accepting the majority but rejecting others, and issued a revised and updated DCO [REP8-003]. A final version of the DCO was submitted shortly

before the close of the Examination at DL 9 [REP9-003]. My Recommended DCO is based on the version submitted at DL 9 [REP9-003] with a few suggested changes which I discuss below. The principle changes to the DCO during the Examination are also set out below.

8.5 CONTENTIOUS CHANGES IN THE EXAMINATION

Part 1, Article 2 - Definition of "Commence"

- 8.5.1 I raised concerns in my WOs [PD-007] with the approach taken by the Applicant to include two definitions of 'Commence' within the draft DCO [APP-005]: one in Article 2 and the other within Schedule 2, which had different wording interpretations, principally that Schedule 2 excluded Permitted Preliminary Works. The Applicant's response [REP2-014] stated that this was a deliberate intention because they performed to different functions within the DCO. The definitions were left unchanged in the updated DCO submitted at DL 2 [REP2-003].
- 8.5.2 I remained dissatisfied with this response, considering that it did not meet the requirements of paragraph 4.1.11 of the Office of the Parliamentary Counsel Drafting Guidance. This advises against the usage of the same label to denote different things in the same Bill as this may confuse, and contravenes the drafting principles of consistency. At the ISH on the DCO held on Thursday 23 November 2017 [EV-011] the Applicant agreed to review its position.
- 8.5.3 The draft DCO submitted at DL 3 [REP3-003] made an attempt to conjoin the two definitions within Article 2, but I found it did not do so successfully and instead only made the definition more confusing. In my FWOs [PD-011] I proposed alternative wording based on that accepted by the Secretary of State (SoS) in the Wrexham Gas Fired Generating Station Order 2017 (S.I.2017 No.766) (the Wrexham DCO). This was accepted by the Applicant and the revised wording was included in the draft DCO submitted at DL 5 [REP5-002].
- 8.5.4 I am content with the definition of "commence" in the Recommended DCO.

Part 1, Article 2 - Definition of "Maintain"

- 8.5.5 The draft DCO submitted with the Application [APP-005] included within the definition of "maintain" "*...to the extent that such activities are not permitted if the same are unlikely to give rise to any materially new or materially different environmental effects from those identified in the environmental statement*".
- 8.5.6 In my WOs [PD-007], I raised concerns with this wording. This is because maintenance activities would not require approval of the local authority, and as worded I was concerned that numerous and cumulative unchecked amendments to the proposed CCGT power station could take place under the guise of maintenance works, providing they were not materially new or different, and which could

exceed the assessment of 'maintenance' works insofar as they were presented in the Environmental Statement (ES) [APP-037 - APP-124]. I requested "*to the extent assessed in the environmental statement*" substitute the wording for clarity. The Applicant's response at DL 2 [REP2-014] rejected my concerns and made only minor alterations in its DCO update at DL 2 [REP2-003].

- 8.5.7 I was dissatisfied with this response, and raised the matter at the ISH on the DCO held on Thursday 23 November 2017 [EV-011]. I particularly questioned what "*materially new or materially different*" actually meant given that neither were identified in the DCO, and who would be the arbiter of whether something fell into this category or not. Moreover, the Explanatory Note which accompanied the draft DCO at DL 2 [REP2-005] confirmed that maintenance works do not give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement, and I questioned why the definition in the DCO could not say this.
- 8.5.8 Notwithstanding a commitment to review its position, the Applicant made no substantive changes to the definition of "maintain" in its draft DCO updated for DL 3 [REP3-003], considering the revisions concerning the prevention of cumulative and wholesale works would satisfy my concerns. It did not, and I posed a FWQ [PD-011] on the matters raised at the ISH on the DCO held on Thursday 23 November 2017 [EV-011], specifically that the Applicant confirmed in its DL 3 written response [REP3-011] that maintenance has been implicitly assessed and would fall within the scope of the ES.
- 8.5.9 I proposed alternative wording based on that accepted by the SoS in the Wrexham DCO. This was accepted by the Applicant and the revised wording was included in the draft DCO submitted at DL 5 [REP5-002]. This substitutes the application version [APP-005] with the words "*...but not the whole of the authorised development, to the extent that such activities have been assessed in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly*".
- 8.5.10 I am content with the definition of "maintain" in the Recommended DCO.

Schedule 2 - Definition of "Permitted Preliminary Works"

- 8.5.11 I raised concerns in my WQs [PD-007] with the definition as worded within the draft DCO [APP-005]. Principally, I found that the wording was imprecise and did not focus on specifically what the Applicant was seeking to do, but instead allowed wide-ranging activities to take place prior to the commencement of the Proposed Development. The Applicant did not agree in its written response [REP2-014]. It pointed to a similar approach adopted by the SoS in both the Ferrybridge Multifuel 2 Power Station Order 2015, and no changes were made to the updated DCO submitted at DL 2 [REP2-003].

- 8.5.12 I remained dissatisfied with this response, and raised it at the ISH on the DCO held on Thursday 23 November 2017 [EV-011]. The Applicant again defended its position of the extant wording, considering a tighter definition could unduly hinder the deliverability of the project and prevent the Applicant from commencing on site as soon as possible. While the Applicant cited the approach taken by the SoS in the Orders mentioned above, I cited the Wrexham DCO in which a tighter definition was ultimately used.
- 8.5.13 The Applicant made no changes to the definition of "permitted preliminary works" in its updated DCO submitted at DL 3 [REP3-003], but relocated it to Article 2 owing to changes it had made to the definition of "commence" as discussed above.
- 8.5.14 I asked the Applicant to justify its assertion that a tighter definition could jeopardise the Proposed Development, and I invited it to submit tighter and more precise wording in my FWQs [PD-011]. The Applicant instead altered the wording significantly for its updated DCO submitted at DL 5 [REP5-002]; the wording now being sufficiently precise on what permitted preliminary works comprise. This is reflected in the DCO final version submitted at DL 9 [REP9-003].
- 8.5.15 As a consequence of this change, the words "*save for the permitted preliminary works*" were added to Schedule 2 Requirements 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, 29, 30, 33, 34 and 40, indicating that works in the respective areas may fall within the permitted preliminary works definition.
- 8.5.16 I examined the implications of this, particularly whether permitted preliminary works would undermine the Requirement itself. For example, if permitted preliminary works resulted in hedgerow or tree removal, this could ultimately affect wildlife and its habitats, and consequently affect the Landscape and Biodiversity Strategy that is required by Requirement 6. My concerns in this matter applied to Requirements 6 (landscaping), 15 (contaminated land), 16 (archaeology) and 17 (protected species). I requested the wording be removed from these Requirements when I issued my draft DCO [PD-013]. The Applicant deleted the wording for these Requirements in its updated DCO submitted at DL 8 [REP8-003].
- 8.5.17 I am content with the definition of "permitted preliminary works" in the Recommended DCO.

Schedule 2, Requirement 24

- 8.5.18 I have discussed this issue in Chapter 4, and there is some repetition in this paragraph, however I do feel it necessary to discuss the matter again here. In its WR [REP2-037], NYCC/SDC had raised concerns regarding Requirement 24 of the draft DCO [APP-005], considering that the Requirement was insufficient in respect to imposing noise standards. In response to my WQs on the matter [PD-007], the

Applicant and NYCC/SDC stated that they were unable to agree the wording.

- 8.5.19 The matter became a main agenda item at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 to EV-010]. At this event, I asked the parties for an outline of their respective positions. The Applicant explained that work had been undertaken to see if the rating levels of 0 dB during the daytime and 3 dB during the night time could be achieved, as required by NYCC/SDC. The Applicant confirmed that 0 dB could be achieved during the daytime, but it was not in a position to commit to a 3 dB level tolerance at this early concept design stage. It could however achieve a rating level of 5 dB at night, which was in line with the parameters assessed in the ES [APP-047].
- 8.5.20 On that basis, I asked the Applicant why Requirement 24(2) could not include the provision to restrict daytime noise levels to 0 dB, and it agreed. I also asked whether the 5 dB night time rating could be retained but whether an additional provision could be made in which the Applicant could commit to a lower night time tolerance level once it had established the final design. This was also accepted by the Applicant and NYCC/SDC.
- 8.5.21 Requirement 24 was subsequently updated at DL 3 [REP3-003]. NYCC/SDC confirmed in their response [REP5-012] to my FWQ NV 2.1 [PD-011] that subject to very minor modifications, they were content with the revised wording. The agreed wording is set out in the Recommended DCO.
- 8.5.22 This is no longer a contentious matter, and I am satisfied with the wording of Requirement 24 in the Recommended DCO.

Schedule 12, Part 3 (Protected Provisions in relation to the Canal & River Trust)

- 8.5.23 The draft DCO which accompanied the Application [APP-005] made no Protected Provision for CRT, and CRT requested in its WR [REP2-031] that such provisions should be added. I asked for an update on this matter at the CAH held on Thursday 23 November 2017 [EV-012]. The Applicant stated that wording would be added to the updated version of the DCO which was submitted at DL 3 [REP3-003].
- 8.5.24 Notwithstanding, CRT expressed objections to the forthcoming wording in the updated draft DCO [REP3-003] on two grounds.
- 8.5.25 The first concerns paragraph 32(6). This stated that "*The aggregate cap of the undertaker's gross liability shall be limited to £1,000,000 (one million pounds) for any one occurrence or all occurrences of a series arising out of one original cause*".
- 8.5.26 CRT stated at the CAH held on Thursday 23 November 2017 [EV-012], also confirmed in its responses at DL 3 [REP3-020] that such an indemnity cap placed upon it would be unacceptable because,

amongst other things, it is a registered charity with finite resources, that it is receiving no benefit from the Proposed Development, and its statutory function as a navigational authority warrants protection from any such financial costs. I asked the Applicant to justify the paragraph in my FWQ [PD-011].

- 8.5.27 The Applicant responded [REP5-005] that it was raising the cap figure to £5,000,000 and that there would be no risk or liability on CRT. It further stated that an uncapped liability would raise financial risk of the project and may have detrimental economic impacts on the Proposed Development as it would be unable to control the costs of indirect losses. The Applicant also stated that it had received an alternative wording for CRT's Protected Provisions which it will consider.
- 8.5.28 At DL 6, the updated draft DCO [REP6-003] made some revisions to paragraphs 18(5) and 18(7), but retained Paragraphs 32(6) in respect to the indemnity cap.
- 8.5.29 CRT's second objection is in relation to paragraph 32(2)(b) of the draft DCO [REP3-003], which excludes the Applicant from liability for any consequential losses experienced by CRT as a result of the Proposed Development. In its response at DL 6, CRT further explained [REP6-008] that it would only accept consequential losses which are reasonably foreseeable.
- 8.5.30 Having considered the matter further, I reached a preliminary conclusion that both paragraphs 32(2)(b) and 32(6) of the updated DCO [REP6-003] placed an unreasonable and unjustified burden on CRT, who face a risk of meeting potential costs and losses through no fault of its own. In my draft DCO [PD-013] I recommended paragraph 32(2)(b) be amended in line with the CRT's draft wording set out in its response to DL 6 [REP6-008] to allow it to claim for consequential losses if reasonably foreseeable, and the liability cap set out in paragraph 32(6) be deleted. This was not accepted by the Applicant in its response [REP8-005], for reasons previously given in its response to my FWQs [PD-011] at DL 5 [REP5-005].
- 8.5.31 I have considered the Applicant's response carefully. However, I do not find that the Applicant has reasonably justified why CRT should be financially burdened with an indemnity cap if damages caused by the Applicant exceed £5,000,000, which the Applicant states is highly unlikely in any event. I also find that CRT should be within its reasonable rights to claim for foreseeable consequential losses as a result of the construction of the Proposed Development.
- 8.5.32 I therefore recommend to the SoS that he amend paragraph 32(2)(b) of the final version of the DCO [REP9-003] from:
- *“(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 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 CRT shall not be entitled to recover any consequential losses from the undertaker)."

To:

- *"(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 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 CRT shall not be entitled to recover any consequential losses which are not reasonably foreseeable from the undertaker)."*

- 8.5.33 I also recommend that the SoS remove the indemnity cap on CRT by deleting paragraph 32(6) of the final version of the DCO [REP9-003].
- 8.5.34 CRT in its response to DL 6 [REP6-008] recommended a number of other changes to its Protected Provision Schedule in the draft DCO [REP6-003]. It stated that paragraphs 30(2)(3) and (4) were unnecessary because paragraph 30(1) contained similarly restricted wording in respect to the repayment of CRTs fees. CRT also recommended wording changes to paragraph 30(1).
- 8.5.35 In my draft DCO [PD-013], I put it to the Applicant that these paragraphs should be removed and amended as recommended by CRT. The Applicant responded [REP8-005] stating that the deletion and amendment of the paragraphs would deny a negotiation process for the Applicant to examine a case to be put by CRT in the event of repayment of fees, and for those costs to be mitigated before they are demanded. CRT's interests, the Applicant says, would be protected. I am satisfied with the response and am content to recommend the paragraphs in the final DCO [REP9-003] remain unchanged.
- 8.5.36 CRT in its response to DL 6 [REP6-008] also recommended paragraph 17(3) of the draft DCO [REP5-002] but which remained unchanged for within the draft DCO submitted at DL 6 [REP6-003] be amended. However in my draft DCO [PD-013], I considered that the revised wording would allow CRT's Code of Practice to override the DCO which would be a statutory instrument, and not provide the SoS with any certainty as to what the DCO would be permitting. I do not recommend therefore this change is made. CRT's other suggested amendments to the Schedule were accepted by the Applicant [REP8-005] and included for the final draft DCO [REP9-003].

8.6 NON-CONTENTIOUS CHANGES IN THE EXAMINATION

Article 2

- 8.6.1 Article 2 of the Recommended DCO set out the interpretations to be used. In my WQs [PD-007], I expressed concerns that the term "Order Land" was not correctly defined and that it was inconsistent with the terms used within the originally submitted BoR [APP-008] and updated prior to the opening of the Examination [AS-001], and SoR [APP-009]. The Applicant in its response [REP2-014] stated that it felt the definition was precise, but amended the wording to that within the Recommended DCO. As stated in Chapter 7 of this Report, the Land Plans [APP-013] also inconsistently and irrationally used "Order Land" and "Order Limits" and this was also corrected at DL 2 [REP2-007].

Article 7

- 8.6.2 Article 7 of the Recommended DCO allows the power of the Applicant to transfer the benefit of the Order. All draft DCOs up to DL 6 [REP6-003] only included provisions up to paragraph 4. However, I noted that in other Orders specifically the Wrexham DCO, the SoS required notification of a transfer of benefit if his approval of such action is not required.
- 8.6.3 In my draft DCO [PD-013], I recommended new paragraphs (5) to (8) were added to Article 7. The Applicant responded [REP8-005] accepting all but suggested paragraph 6(f). This stated that the notification referred to in paragraph (5) must state "*a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted*". The Applicant considered that it was not necessary, because the SoS is protected pursuant to sub-paragraph (8), as the notice given in accordance with sub-paragraph (6) must be signed by both the undertaker and the person to whom the benefit is to be transferred.
- 8.6.4 I accepted this explanation, and the wording of Article 7 as updated in the final version of the draft DCO [REP9-003] reflects that in the Recommended DCO.

Article 17

- 8.6.5 Article 17 of the Recommended DCO concerns the CA of land. I raised concerns in my WQs [PD-007] that the wording contained within the application draft DCO [APP-005] was not sufficiently clear as to which land was being subject to CA. In its responses [REP2-003 and REP2-014] the Applicant amended the Article to include a new subparagraph (4) which identified the plots not subject to CA, as well as a new subparagraph (5) at the request of NGG/NGET.
- 8.6.6 At the ISH on the draft DCO held on Thursday 23 November 2017 [EV-011], I requested an amendment to the new subparagraph 4 to

ensure Article 28 also applied, and this was added to the updated DCO submitted at DL 3 [REP3-003].

Article 18

- 8.6.7 Article 18 of the Recommended DCO concerns the statutory authority to override easements and other land. I had no general concerns with this provision or its wording, but requested at the ISH on the draft DCO held on Thursday 23 November 2017 [EV-011] that this Article be subject to Article 17(4), and this was inserted to the updated DCO submitted at DL 3 [REP3-003].

Article 20

- 8.6.8 Article 20 of the Recommended DCO concerns the CA of new rights of land. I raised concerns in my WQs [PD-007] that the wording contained within the Application draft DCO [APP-005] was not sufficiently clear as to which land was being subject to CA of new rights. In its responses [REP2-003 and REP2-014] the Applicant stated that it did not propose to amend the Article as it considered it was clear. However, the Article was amended in the updated version submitted at DL 2 [REP2-003] to include a new subparagraph (8) which clarified where the Article did not apply at the request of NGG/NGET.

- 8.6.9 At the ISH on the draft DCO held on Thursday 23 November 2017 [EV-011], I requested that this Article be subject to Article 17(4), and this was inserted to the updated DCO submitted at DL 3 [REP3-003].

Article 21

- 8.6.10 Article 21 of the Recommended DCO concerns the extinguishing of private rights. In my WQs [PD-007] I sought clarification that the Article was subject to the Order Land. In its responses [REP2-003 and REP2-014] the Applicant agreed and amended the Article to make this clear. At the ISH on the draft DCO held on Thursday 23 November 2017 [EV-011], I requested that this Article be subject to Article 17(4), and this was inserted to the updated DCO submitted at DL 3 [REP3-003].

Articles 26 and 27

- 8.6.11 Article 2(8) was inserted by the Applicant in its updated DCO submitted at DL 6 [REP6-003]. This Article seeks to dis-apply the provisions of the Neighbourhood Planning Act 2017 (NPA2017) insofar as they relate to Articles 26 and 27 of the DCO.
- 8.6.12 In my draft DCO [PD-013], I requested the Applicant to justify this position particularly as the Act makes specific provisions for a three month notification period and to include the period to which TP is to be taken. I requested that Article 26(2) the draft DCO [REP6-003] was amended accordingly to reflect the known provisions of the NPA2017.

- 8.6.13 However, I was sufficiently persuaded by the Applicant's response [REP8-005] and concluded that to request the DCO conform to legislation which is not currently enacted would undermine the subsequent parliamentary processes still to be followed in respect to secondary legislation, and on which provisions may change. I therefore recommended changes suggested to these Articles should not be made.
- 8.6.14 For similar reasons, I accepted that a change I proposed in my draft DCO [PD-013], in which I requested additional paragraphs be added to Article 26 in respect of counter-notice provisions, should also not go forward into the Recommended DCO.

Article 28

- 8.6.15 Article 28 of the Recommended DCO concerns statutory undertakers. In my draft DCO [PD-013], I noted that Article 17(4) of the draft DCO [REP6-003] excluded Article 28, but Article 28 did not state that it was subject to Article 17(4). I requested this be added, and the change was made when the DCO was updated at DL 8 [REP8-003].

Article 42

- 8.6.16 Article 42 of the Recommended DCO concerns Crown rights. Paragraph (1)(a) opens with the words "to take", and as no power exists for undertakers to take Crown land I requested in my WOs [PD-007] that this wording be removed. The Applicant responded [REP2-014] that the wording secures Crown land cannot be taken, and to omit this wording would open the Order to interpretation. I accepted this explanation, and did not pursue the matter further in the Examination.

Article 43

- 8.6.17 Article 43 of the Recommended DCO concerns guarantees in respect of payment and compensation. This Article was added by the Applicant in its updated DCO submitted at DL 3 [REP3-003] following my request at the CAH held on Thursday 23 November 2017 [EV-012] that funding ought to be secured in the DCO as that the Proposed Development has a reasonable prospect of the requisite funds to becoming available. The SoS accepted such an article was necessary in the Wrexham DCO.

Schedule 2, Requirement 5

- 8.6.18 Requirement 5 of the Recommended DCO requires the detailed design of the Proposed Development to be submitted prior to commencement of the Proposed Development. As set out in Chapter 4 of this Report, the issue of cofferdam installation and the potential effects on flooding and marine wildlife was a concern of a number of IPs. This primarily concerned whether the draft DCO [APP-005] was sufficiently precise concerning cofferdam installation and removal. The updated DCO submitted for DL 2 [REP2-003] and in response to my WQs [PD-007]

amended Requirement 51 to include details of the method and outfall of Work No 4 (cooling water).

Schedule 2, Requirement 6

- 8.6.19 Requirement 6 of the Recommended DCO requires the submission of a Landscape and Biodiversity Strategy to be submitted prior to commencement of the Proposed Development. As discussed further in Chapter 4 of this Report, while not discussed in any detail during the Examination, I asked both NYCC/SDC and the Applicant in my FWOs [PD-011] to expand on NYCC/SDC's concerns raised in their WR and LIR [REP2-037 and REP2-039] on its concerns that the Indicative Landscape and Biodiversity Strategy [APP-024] failed to make adequate provision for green infrastructure, hedgerow replacement and other planting.
- 8.6.20 The Applicant responded [REP5-005] and [REP6-001] stating that the parties had agreed that the issue could be resolved with the re-wording of Requirement 6. At DL 7, the draft SoCG between the parties [REP7-003] included an agreed form of wording. I considered these changes against the draft DCO [REP6-003] and deemed them to be acceptable, and I posed the changes be made in my draft DCO [PD-013]. The wording of the updated DCO submitted at DL 8 [REP8-003] reflects this agreed change.

Schedule 2, Requirement 16

- 8.6.21 Requirement 16 of the Recommended DCO requires a written scheme of investigation to be submitted prior to commencement of development in respect of archaeology matters. As set out in Chapter 4 of this Report, NYCC/SDC had some concerns the Requirement was not sufficiently precise or clear in respect to unknown findings should archaeological remains be found during the construction of the Proposed Development.
- 8.6.22 I was advised at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV-010] that both parties had held private discussions and had provisionally agreed wording for this Requirement. The updated DCO submitted at DL 3 [REP3-003] amended the application version [APP-005] by inserting a new subparagraph (4) requiring details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found, as well as other minor changes to subparagraph (5).

Schedule 2, Requirement 35

- 8.6.23 Requirement 35 of the Recommended DCO requires a written scheme for air quality to be submitted prior to the commissioning of the Proposed Development. This Requirement was inserted into the updated DCO submitted at DL 2 [REP2-003] at the request of NYCC/SDC and as a result of the Applicant's response to RRs received from residents. I sought clarity at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 - EV-010] as to the

necessity for the Requirement, and I am satisfied with the responses given by the parties. The wording was slightly amended for the updated DCO submitted at DL 5 [REP5-002] at the request of NYCC/SDC.

Schedule 2, Requirement 40

- 8.6.24 Requirement 40 of the Recommended DCO requires a scheme for monitoring ground subsidence in and around the flood defences for the River Aire to be submitted prior to commencement of Work No 6 (gas pipeline). This Requirement was inserted into the updated DCO submitted at DL 3 [REP3-003] at the request of the EA. There are some slight changes in wording between this version of the DCO and that Recommended in Appendix D to this Report. I had no specific concerns with the need or wording of this Requirement.

Requirements 18, 20 and 21

- 8.6.25 These Requirements of the Recommended DCO instruct the Applicant to submit a CEMP, CTMP and CTWP prior to the commencement of the Proposed Development. In each Requirement, the draft DCO submitted with the application stated that the plans must be "*in accordance with the principles...*" of the draft documents submitted as part of the ES. I considered this wording was imprecise and should instead state "*in accordance with...*". The Applicant revised the wording of these Requirements in its updated draft DCO submitted at DL 2 [REP2-003].

Schedule 8

- 8.6.26 Schedule 8 of the Recommended DCO list the plots identified in the Land Plans [REP6-006] as to be CA for new rights. At the CAH held on Thursday 23 November 2017 [EV-012] I sought clarification of the plots which were affected by new rights in relation to Works No 4 (cooling water) and Works No 6 (gas pipeline). An updated version of the DCO submitted at DL 3 [REP3-003] made these changes.
- 8.6.27 Schedule 8 of the Recommended DCO was comprehensively updated at DL 6 [REP6-003] following a review of the land needed for CA of the freehold. I discuss this in further detail in Chapter 7 of this Report.

Schedule 11

- 8.6.28 Schedule 11 of the Recommended DCO concerns the procedures for discharging the requirements in Schedule 2. All draft DCOs up to DL 6 [REP6-003] stated at paragraph (4)(2)(b) in respect to appeals, that the SoS must appoint a person within 20 days of receiving the appeal. I questioned the enforceability of this paragraph in my DCO [PD-013] as well as whether the Applicant could or should compel the SoS to such an action in any event. Notwithstanding that the SoS had accepted the 20-day restriction in other Orders that I observed, I nevertheless proposed this to be amended to "*as soon as reasonably*

practicable". This was accepted by the Applicant and updated in the draft DCO submitted at DL 8 [REP8-003].

Schedule 12, Part 2

- 8.6.29 Schedule 12, Part 2 of the Recommended DCO concerns the Protected Provisions of operators of electronic communication code networks. The final version of the DCO submitted at DL 9 [REP9-003] made a number of changes to the wording of this Schedule. The Applicant stated [REP9-001] that this was in response to the requirements of the Digital Economy Act 2017, which amended the Communications Act 2003. I have reviewed these amendments and I am satisfied they are acceptable.

Schedule 12, Part 4

- 8.6.30 Schedule 12, Part 4, which concerned the Protected Provisions of NGG/NGET, was deleted from the draft DCO at DL 6 [REP6-003], having only been inserted in the draft DCO at DL 2 [REP2-003]. This followed a private Asset Protection Agreement signed between the parties, which rendered the Schedule unnecessary.

8.7 RECOMMENDED TECHNICAL CHANGES TO THE FINAL DRAFT DCO

- 8.7.1 In this Chapter I have already set out two changes to the final version of the DCO [REP9-003], namely amended wording to Schedule 12, Part 3, paragraph 32(2)(b), and to delete entirely paragraph 32(6). I have also explained where I proposed main (not minor and typographical) changes to Articles and Schedules in my draft DCO [PD-013] but where I accepted the Applicant's explanations [REP8-005] not to do so.
- 8.7.2 Five further changes are recommended. In addition to the above, I identified in my draft DCO [PD-013] that the draft DCO [REP6-003] contained numerous references to "*shall*" or "*should*". This I deemed to be imprecise, and recommended that these form of wording be replaced by the more definitive terms. I identified in my draft DCO [PD-013] which Articles and Schedules applied.
- 8.7.3 The Applicant accepted [REP8-005] all but three instances, those being to Article 11(9), Article 32(9) and Schedule 12, Part 3 paragraph 21(2), which it considered should be retained in places. A number of recent SoS decisions have made reference to the need for precise wording for an Order, and I see no reason why these Articles should not follow the same format as others. I recommend therefore that the SoS accept the minor changes I have made to those Articles and Schedules within the Recommended DCO. I have also renumbered the paragraphs within Schedule 14 Part 2 so that they run consecutively within the Schedule.
- 8.7.4 The final technical change concerns the definition of "Application Guide" defined in Article 2. The definition as set out in the final draft

DCO [REP9-003] pre-dated an updated version of the document [REP9-014] which was submitted shortly before the close of the Examination. The Applicant [REP9-014] stated that it accepted that the final draft DCO [REP9-003] required amending. This I have done, and the revised wording is set out in the Recommended DCO.

- 8.7.5 Schedule 11, Paragraph 4(10) of the Applicant's final draft DCO [REP9-003] states *"The appointed person may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten years' experience"*. I did not raise this as an issue with the Applicant during the Examination, but I subsequently formed the view after the close of the Examination that this imposes an unnecessary limitation of the SoS's power to appoint an appropriate appointed person. While I consider it to be a relatively minor and uncontroversial change, I nevertheless consider it should be deleted, and I have removed it from the Recommended DCO.

8.8 THE DEEMED MARINE LICENCE

- 8.8.1 Schedule 13 of the Recommended DCO is the DML. Throughout the Examination, the MMO has submitted a number of WRs [REP2-033, REP3-026, REP4-008 and REP7-006] in respect to what it perceives is the adequacy of the draft DML. In the most part, it has sought amendments to wording and additional conditions, which were added to the updated draft DML submitted at DL 2 [REP2-003]. My WQs [PD-007] largely replicated the comments raised by the MMO, but they largely became academic as the Applicant was in private contact with the MMO, and was already aware and working to resolve its concerns. The updated draft DML submitted at DL 2 [REP2-003] made a number of amendments including the insertion of a number of additional conditions at the request of the MMO. Changes to the co-ordinates in Tables 12 and 13 of the draft DML were updated at DL 8 [REP8-003]. These changes are agreed by the parties in the signed SoCG [REP8-007].

- 8.8.2 The MMO's principle concern, above all others, was the wording of part 2, paragraph (3)(4)(b) of the draft DML [APP-005]. This read:

"The undertaker (and any agent, contractor or subcontractor acting on its behalf) may engage in the licensed activities in any area within the Order limits (as defined in article 2 (interpretation) of this Order) which falls outwith the area bounded by the coordinates set out in this sub-paragraph but which falls below mean high water spring tide when the licensed activities are carried out."

- 8.8.3 The MMO in its WR [REP2-033] stated that paragraph (3)(4)(b) of the draft DML [APP-005] essentially would allow the Applicant to undertake the Proposed Development over a wider area than that specified in the submitted Indicative Deemed Marine Licence Co-Ordinates [APP-025]. As the wider area had not been assessed, the effects would be unknown and as such, the MMO objected to such wording particularly if any works were required below the mean high

water springs. The Applicant, already aware of the MMO's concerns, stated in its response submitted at DL 2 [REP2-030] that the wording needed to be sufficiently flexible to allow the Proposed Development to take place.

- 8.8.4 At the ISH on the DCO held on Thursday 23 November 2017 [EV-011] I asked for an update of this position, and was informed by both the MMO and the Applicant that private discussions were on-going to resolve this wording. The updated Draft DML submitted at DL 5 [REP5-002] altered the wording of paragraph (3)(4)(b) to specify the circumstances that such workings could take place, stating that:

"if there is a change in mean high water springs during the construction, maintenance and operation of the licensed activities, the area bounded by the coordinates set out in Table 13 in this sub-paragraph to the extent that they fall below mean high water spring tide at the time the licensed activities are carried out".

- 8.8.5 The revised wording of paragraph (3)(4)(b) remains the same in the Recommended DCO, and is agreed within the SoCG signed between the Applicant and the MMO [REP8-007]. I am satisfied that the Recommended DML would adequately protect the interests and functions of the MMO.

8.9 OTHER LEGAL AGREEMENTS AND RELATED DOCUMENTS

- 8.9.1 As discussed in Chapter 4 of this Report, the Proposed Development is accompanied by:

- A signed and executed Planning Agreement under s106 of the Town and Country Planning Act 1990 to secure the demolition of the existing coal-fired power station in a timely manner if the Order is made by the SoS and the Proposed Development commences [REP9-012];
- A signed and executed Planning Agreement under s106 of the Town and Country Planning Act 1990 to secure a financial contribution towards off-site habitat creation in the Lower Aire Valley [REP9-011]; and
- A signed and executed Agreement under s111 of the Local Government Act 1972, s1 of the Localism Act 2011 and s93 of the Local Government Act 2003 to ensure the parties will adopt a collaborative and constructive approach to discharge the Requirements the subject of this Order [REP9-010].

- 8.9.2 In my judgement, the first two are essential for the reasons I have stated in Chapter 4 of this Report. I would not have recommended to the SoS that the Order be made had they not accompanied the application.

8.10 CONCLUSIONS ON THE DEVELOPMENT CONSENT ORDER AND DEEMED MARINE LICENCE

- 8.10.1 I have considered all iterations of the draft DCO as provided by the Applicant, and I am satisfied that it has addressed outstanding matters.
- 8.10.2 I have identified a small number of matters in respect of which I consider that correcting changes are required to the final draft DCO [REP9-003]. These have been the subject of recommendations in this Chapter. They are also included in the Recommended DCO in Appendix D of this report. The recommended DCO also includes a number of minor changes from the Applicant's final preferred draft.
- 8.10.3 Taking all matters raised in this Chapter and all matters relevant to the DCO and DML raised in the remainder of this Report fully into account, I recommend that that the SoS make the Order and accept the Recommended DCO and DML which includes my changes as set out.

LIST OF EXA'S CHANGES SET OUT IN THE RECOMMENDED DEVELOPMENT CONSENT ORDER (DCO) THAT DIFFER FROM THE APPLICANT'S FINAL DRAFT DCO [REP9-003]

| Article/Schedule | Changed Text | Explanation in Chapter 8 |
|--|---|----------------------------|
| Article 2, Part 1 "Application Guide" | <i>"Application guide means the application revisions 10.0 date March 2018 and certified as such by the Secretary of State for the purposes of this Order".</i> | Paragraph 8.7.4 |
| Article 11(9), Part 1 "Temporary stopping up of streets..." | <i>"Following a receipt of a notice relating to a suspension pursuant to paragraph (8) the Canal and River Trust must issue a notice to mariners giving the commencement date and other particulars of the suspension to which the notice or consent relates, and that suspension takes effect on the date specified and as otherwise described in the notice".</i> | Paragraphs 8.7.2 and 8.7.3 |

| Article/Schedule | Changed Text | Explanation in Chapter 8 |
|---|--|-----------------------------|
| Article 32(9), Part 1 "Protective works to buildings" | <i>"Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1985 Act (Compensation for injurious affection)".</i> | Paragraphs 8.7.2 and 8.7.3 |
| Schedule 11, Paragraph 4(10) "Appeals" | [deleted] | Paragraph 8.7.5 |
| Schedule 12, Part 3 Paragraph 21(2) "Protected provisions of Canal & River Trust" | <i>"The approval of the engineer under sub- paragraph (1) must 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 received by CRT the engineer has not intimated his disapproval of those plans and the ground of his disapproval he is deemed to have approved the plans as submitted"</i> | Paragraphs 8.7.2 and 8.7.3 |
| Schedule 12, Part 3, Paragraph 32(2)(b) "Protected provisions of Canal & River Trust" | <i>"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 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 CRT shall not be entitled to recover any consequential losses which are not reasonably foreseeable from the undertaker)"</i> | Paragraphs 8.5.23 to 8.5.32 |

| Article/Schedule | Changed Text | Explanation in Chapter 8 |
|---|--------------|-----------------------------|
| Schedule 12, Part 3 Paragraph 32(6) "Protected provisions of Canal & River Trust" | [deleted] | Paragraphs 8.5.33 to 8.5.36 |

9 SUMMARY OF FINDINGS AND CONCLUSIONS

- 9.1.1 In relation to s104 of PA2008, I conclude that making of the Recommended DCO would be in accordance with NPSs EN-1, EN-2, EN-4 and EN-5. It would also accord with the development plan and other relevant policy, all of which have been taken into account in this Report. I have had regard to the LIR produced by NYCC/SDC in making this recommendation.
- 9.1.2 In making the DCO, the SoS would be fulfilling their duties under the relevant EU Directives as transposed into UK law by regulation, as well as the biodiversity duty under the Natural Environment and Rural Communities Act 2006. Whilst the SoS is the competent authority under the Habitats Regulations, I conclude that the Proposed Development would not adversely affect European sites, species or habitats, and I have taken this into account in reaching my recommendation.
- 9.1.3 With regard to all other matters and representations received, I have found no important and relevant matters that would individually or collectively lead to a different recommendation to that below.
- 9.1.4 The Proposed Development would have no adverse effects that would outweigh its benefits; and there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSs.
- 9.1.5 In relation to the application for CA and TP powers within the recommended DCO, I conclude that the Proposed Development for which the land and rights are sought would be in accordance with national policy, as set out in the NPSs, and that the NPSs identify a national need for electricity generating capacity, which includes capacity sourced from gas combustion.
- 9.1.6 The need to secure the land and rights required, and to construct the Proposed Development within a reasonable commercial timeframe, represent a significant public benefit. The private loss to those affected is mitigated through the choice of the application land, and the limitation to the minimum extent possible of the rights and interests proposed to be acquired.
- 9.1.7 The Applicant has explored all reasonable alternatives to the CA of land, rights and interests sought and there are no alternatives that ought to be preferred. I am satisfied that adequate and secure funding would be available to enable CA within the statutory period following the Order being made.
- 9.1.8 The proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree.

- 9.1.9 Considering all of the above factors together however, there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plans (as amended). I conclude that the Proposed Development would comply with s122(2) and s122(3) of PA2008.
- 9.1.10 For all of the above reasons, and in the light of my findings and conclusions on important and relevant matters set out in the report, I recommend that the Secretary of State for Business, Energy and Industrial Strategy makes the Eggborough CCGT (Generating Station) Order in the form recommended at Appendix D to this Report.

APPENDICES

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APPENDIX A: EVENTS IN THE EXAMINATION

APPENDIX A – EVENTS IN THE EXAMINATION

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority (ExA).

| Date | Examination Event |
|-------------------|--|
| 27 September 2017 | Preliminary Meeting |
| 4 October 2017 | Issue by ExA of: <ul style="list-style-type: none"> • Examination Timetable • ExA’s Written Questions |
| 11 October 2017 | <p>Deadline 1</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on updated application documents • Responses to further information requested by the ExA • Statements of Common Ground including any updated versions • Notification of wish to speak at a Compulsory Acquisition Hearing • Notification of wish to make oral representations at an Issue Specific Hearing • Notification of wish to speak at an Open Floor Hearing • Notification of wish to attend an accompanied Site Inspection (ASI), suggested locations and justifications • Notification by statutory parties of wish to be considered as an Interested Party |

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|-------------------------------------|---|
| 24 October 2017 | <p>Issue by the ExA of:</p> <ul style="list-style-type: none"> Any Notification of hearings |
| 1 November 2017 | <p>Deadline 2</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> Comments on Relevant Representations (RRs) Summaries of all RRs exceeding 1500 words Written Representations (WRs) Summaries of all WRs exceeding 1500 words Local Impact Reports from any local authorities Responses to ExA's Written Questions Updated Compulsory Acquisition Schedule (Annex to Written Questions) |
| 21 November 2017 | Accompanied Site Inspection |
| 22 November 2017 | Issue Specific Hearing on Environmental Matters |
| 23 November 2017 (Morning) | Issue Specific Hearing on draft DCO |
| 23 November 2017 (Afternoon) | Compulsory acquisition hearing |

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| <p>30 November 2017</p> | <p>Deadline 3</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs • Comments on Local Impact Reports • Comments on responses to ExA's Written Questions • Revised draft DCO from Applicant • Post hearing submissions including written Submissions of oral case • Guide to Application document tracker • Responses to further information requested by the ExA |
| <p>14 December 2017</p> | <p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • ExA's Further Written Questions |
| <p>21 December 2017</p> | <p>Deadline 4</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on Applicant's revised draft DCO • Updated Compulsory Acquisition schedule • Updated Statements of Common Ground • Responses to further information requested by the ExA |
| <p>9 January 2018</p> | <p>Deadline 5</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Responses to ExA's Further Written Questions • Responses to Further Information Requested by the ExA |
| <p>25 January 2018</p> | <p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • Report on the Implications for European Sites (RIES) |

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| <p>31 January 2018</p> | <p>Deadline 6</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Updated Guide to application documents • Applicant’s revised draft DCO • Comments on responses to further questions • Responses to further information requested by the ExA |
| <p>14 February 2018</p> | <p>Deadline 7</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on Applicant’s revised draft DCO • Responses to further information requested by the ExA • Comments on the RIES |
| <p>21 February 2018</p> | <p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • The ExA’s draft DCO |
| <p>28 February 2018</p> | <p>Deadline 8</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on the ExA’s draft DCO • Updated Statements of Common Ground • Updated Compulsory Acquisition schedule • Responses to further information requested by the ExA • Responses to Comments on the RIES |

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| <p>14 March 2018</p> | <p>Deadline 9</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Responses to comments on the ExA's draft DCO • Final DCO to be submitted by the Applicant in the SI template with the SI template validation report • Final updated Book of Reference • Final Statements of Common Ground • Final Compulsory Acquisition Schedule • Final Guide to Application document tracker • Responses to further information requested by the ExA |
| <p>27 March 2018</p> | <p>CLOSE OF EXAMINATION</p> |

APPENDIX B: EXAMINATION LIBRARY

APPENDIX B - EXAMINATION LIBRARY INCLUDING THE REPORT ON IMPLICATIONS ON EUROPEAN SITES ((RIES)

This Examination Library relates to the Eggborough CCGT Project application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

EN010081 – Eggborough CCGT**Examination Library - Index**

| Category | Reference |
|---|------------------|
| Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received | APP-xxx |
| Adequacy of Consultation responses | AoC-xxx |
| Relevant Representations | RR-xxx |
| Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority’s questions, s55, and post acceptance s51 | PD-xxx |
| Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination | AS-xxx |
| Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant’s hearing notices, and responses to Rule 6 and Rule 8 letters | EV-xxx |
| Representations – by Deadline | |
| Deadline 1: | REP1-xxx |
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| Deadline 4: | REP4-xxx |
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| Deadline 7: | REP7-xxx |
| Deadline 8: | REP8-xxx |
| Deadline 9: | REP9-xxx |
| Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents | OD-xxx |

EN010081 – Eggborough CCGT**Examination Library****Application Documents**

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| APP-001 | 1.1 - Application Cover Letter |
| APP-002 | 1.2 - Application Guide - Final |
| APP-003 | 1.3 - Application Form - Final |
| APP-004 | 1.4 - Notices for Statutory Publicity |
| APP-005 | 2.1 - Draft Development Consent Order |
| APP-006 | 2.2 - Explanatory Memorandum - Final |
| APP-007 | 2.3 - Draft DCO - Comparisons to Model Provisions version |
| APP-008 | 3.1 - Book of Reference |
| APP-009 | 3.2 - Statement of Reasons |
| APP-010 | Not used |
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| APP-012 | 4.1 - Location Plan |
| APP-013 | 4.2 - Land Plans (Key Plan and Sheets 1 - 4) |
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| APP-015 | 4.4 - Works Plans (Key Plan and Sheets 1 - 9) |
| APP-016 | 4.5 - Access and Rights of Way Plans (Key Plan and Sheets 1 - 4) |
| APP-017 | 4.6 - Indicative Generating Station Plan (Key Plan and Sheets 1 - 6) |
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| APP-027 | 5.2 - Grid Connection Statement |
| APP-028 | 5.3 - Gas Connection Statement |
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| APP-030 | 5.5 - Planning Statement - Final |
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| APP-036 | 5.11 - Indicative Lighting Strategy |
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| APP-038 | 6.2 - Environmental Statement - Volume 1 (Main Report) |
| APP-039 | 6.2.1 - ES Chapter 1 - Introduction |
| APP-040 | 6.2.2 - ES Chapter 2 - Assessment Methodology |
| APP-041 | 6.2.3 - ES Chapter 3 - Description of the Site |

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| APP-045 | 6.2.7 - ES Chapter 7 - Legislative Context and Planning Policy Framework |
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| APP-049 | 6.2.11 - ES Chapter 11 - Water Resources, Flood Risk and Drainage |
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| APP-062 | 6.3.2 Figure 3.1 - The Site Boundary Plan |
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| APP-071 | 6.3.11 Figure 5.3 - Indicative cofferdam arrangement (cooling water abstraction point) |
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| APP-073 | 6.3.13 Figure 6.1 - Initial CCGT Site Options |
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| APP-076 | 6.3.16 Figure 8.2 - Operational Process Contribution to Long-Term NO₂ Concentration |
| APP-077 | 6.3.17 Figure 8.3 - Operational Process Contribution to Short-Term NO₂ Concentration |
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| APP-108 | 6.4.12 - Appendix 10E - Great Crested Newt Survey Report |
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| APP-123 | 6.4.26 - Appendix 18A - Carbon assessment |
| APP-124 | 6.4.27 - Appendix 21A - Commitments Register |
| APP-125 | 7.12 Statement of Common Ground - Sport England - Final - May 17 |
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| AoC-001 | City of Bradford Metropolitan District Council |
| AoC-002 | Cumbria County Council |
| AoC-003 | Doncaster Metropolitan Borough Council |
| AoC-004 | Durham County Council |
| AoC-005 | East Riding of Yorkshire Council |
| AoC-006 | Harrogate Borough Council |
| AoC-007 | Leeds City Council |
| AoC-008 | North Yorkshire County Council and Selby District Council |
| AoC-009 | North York Moors National Park Authority |
| AoC-010 | Redcar and Cleveland Borough Council |
| AoC-011 | Stockton Borough Council |
| AoC-012 | Wakefield Metropolitan District Council |
| Relevant Representations | |
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| RR-002 | Christopher Frank Pearson |
| RR-003 | Jamie Turner on behalf of Geeta Sahay |
| RR-004 | East Riding of Yorkshire Council |
| RR-005 | Natural England |
| RR-006 | Historic England |
| RR-007 | Shakespeare Martineau on behalf of National Grid Plc |
| RR-008 | Canal & River Trust |
| RR-009 | Stephen Laurenson |
| RR-010 | The Coal Authority |
| RR-011 | Yorkshire Wildlife Trust |
| RR-012 | Civil Aviation Authority |
| RR-013 | Environment Agency |
| RR-014 | Health and Safety Executive |
| RR-015 | Mary Laurenson |
| RR-016 | Public Health England |
| RR-017 | BNP Paribas Real Estate on behalf of Royal Mail Group Limited |
| RR-018 | Selby District Council and North Yorkshire County Council |
| RR-019 | The Marine Management Organisation (MMO) |
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| PD-002 | Section 55 Acceptance of Application Checklist |
| PD-003 | Notification of Decision to Accept Application |
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| PD-005 | Rule 6 Letter |
| PD-006 | Rule 8 Letter |

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| PD-007 | Written Questions |
| PD-008 | Response to Mr R Tams to a request to be an interested party |
| PD-008a | Response to Mr R Tams to a request to be an interested party |
| PD-009 | Notification of Hearing and Accompanied Site Inspection for November 2017 |
| PD-010 | Rule 8(3) and Rule 17 Letter |
| PD-011 | Further Written Questions |
| PD-012 | Request for Further Information - Rule 17 |
| PD-013 | Examining Authority's Draft Development Consent Order (DCO) issued on 19 February 2018 |
| PD-014 | Notification of Completion of the Examining Authority's Examination Section 99 Notification of Completion of ExA Examination |
| PD-015 | Report on the Implications for European Sites (RIES) Issued by the Examining Authority - 25 January 2018 |
| Additional Submissions | |
| AS-001 | Eggborough Power Limited Additional Submission - 3.1 Updated Book of Reference version 2. Accepted at the discretion of the Examining Authority |
| AS-002 | Eggborough Power Limited Additional Submission - Comments on draft Examination Timetable accepted at the discretion of the Examining Authority |
| AS-003 | Northern Gas Networks Additional Submission - Accepted at the discretion of the Examining Authority |
| AS-004 | Joint Nature Conservation Committee Additional Submission - Accepted at the discretion of the Examining Authority |
| AS-005 | Dalton Warner Davis Applicant's response to post-Acceptance s51 advice dated 27 June 2017 |
| AS-006 | Shakespeare Martineau on behalf of National Grid Plc Additional Submission - Accepted at the discretion of the Examining Authority |
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| EV-002 | Recording of Preliminary Meeting |

| Accompanied Site Visits and Hearings | |
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| EV-003 | Note of Unaccompanied Site Inspection - 26 September 2017 |
| EV-004 | Agenda for Issue Specific Hearings and Compulsory Acquisition Hearing Hearings on 22 and 23 November 2017 |
| EV-005 | Accompanied Site Inspection Itinerary 21 November 2017 |
| EV-006 | Eggborough Power Limited Accompanied Site Inspection Route |
| Issue Specific Hearing on Environmental Matters – 22 November 2017 | |
| EV-007 | Action Points from Issue Specific Hearing on Environmental Matters |
| EV-008 | Recording of Issue Specific Hearing on Environmental Matters - Part 1 |
| EV-009 | Recording of Issue Specific Hearing on Environmental Matters - Part 2 |
| EV-010 | Recording of Issue Specific Hearing on Environmental Matters - Part 3 |
| Issue Specific Hearing on the draft DCO – 23 November 2017 | |
| EV-011 | Recording of Issue Specific Hearing on the draft DCO |
| Compulsory Acquisition Hearing – 23 November 2017 | |
| EV-012 | Recording of Compulsory Acquisition Hearing |
| Representations | |
| Deadline 1 – 11 October 2017 | |
| <ul style="list-style-type: none"> • Comments on updated application documents • Statements of Common Ground including any updated versions • Notification of wish to make oral representations at an Issue Specific Hearing • Notification of wish to attend an Accompanied Site Inspection (ASI), suggested locations and justifications • Responses to further information requested by the ExA • Notification of wish to speak at a Compulsory Acquisition Hearing • Notification of wish to speak at an Open Floor Hearing • Notification by statutory parties of wish to be considered as an Interested Party | |
| REP1-001 | Eggborough Power Limited Covering Letter for Deadline 1 Submissions |
| REP1-002 | Eggborough Power Limited 7.2 Statement of Common Ground between Eggborough Power Limited and Highways England (Revision 3.0) |

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| REP1-003 | Eggborough Power Limited 7.3 Statement of Common Ground between Eggborough Power Limited and Environment Agency (Revision 2.0) |
| REP1-004 | Eggborough Power Limited 7.4 Statement of Common Ground between Eggborough Power Limited and Historic England (Revision 4.0) |
| REP1-005 | Eggborough Power Limited 7.5 Statement of Common Ground between Eggborough Power Limited and The Coal Authority (Revision 3.0) |
| REP1-006 | Eggborough Power Limited 7.6 Statement of Common Ground between Eggborough Power Limited and Canal and River Trust (Revision 2.0) |
| REP1-007 | Eggborough Power Limited 7.7 Statement of Common Ground between Eggborough Power Limited and Natural England (Revision 1.0) |
| REP1-008 | Eggborough Power Limited 7.8 Statement of Common Ground between Eggborough Power Limited and The Civil Aviation Authority (Revision 2.0) |
| REP1-009 | Eggborough Power Limited 7.9 Statement of Common Ground between Eggborough Power Limited and National Grid Gas PLC (NGG) and National Grid Electricity Transmission Plc (NGET) (Revision 2.0) |
| REP1-010 | Eggborough Power Limited 7.10 Statement of Common Ground between Eggborough Power Limited and the Marine Management Organisation (MMO) (Revision 2.0) |
| REP1-011 | Hensall Parish Council Response to Rule 8 letter |
| REP1-012 | The Marine Management Organisation (MMO) Submission for Deadline 1 |
| REP1-013 | Martineau on behalf of National Grid Plc Response to Rule 8 letter |
| Late Submission for Deadline 1 | |
| REP1-014 | North Yorkshire County Council and Selby District Council Response to letter of 11 October received from the Applicant. Late Submission for Deadline 1 accepted at the discretion of the Examining Authority |

Deadline 2 – 1 November 2017

- Comments on Relevant Representations (RRs)
- Summaries of all RR's exceeding 1500 words
- Written Representations (WRs)
- Summaries of all WRs exceeding 1500 words
- Local Impact Reports from any local authorities
- Responses to ExA's Written Questions
- Updated Compulsory Acquisition Schedule (Annex to Written Questions)

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| REP2-001 | Eggborough Power Limited Covering Email |
| REP2-002 | Eggborough Power Limited 1.2 Application Guide (Rev. 2.0) |
| REP2-003 | Eggborough Power Limited 2.1 Updated Draft DCO (Rev. 2.0) |
| REP2-004 | Eggborough Power Limited 2.4 – Draft DCO – Comparison to Submission Version (May 2017) (Rev. 1.0) |
| REP2-005 | Eggborough Power Limited 2.5 Explanatory Note on Changes to Draft DCO (Rev. 1.0) |
| REP2-006 | Eggborough Power Limited 3.1 Book of Reference (Parts 1-5) (Track Change Version) (Rev. 3.0) |
| REP2-007 | Eggborough Power Limited 4.2 Land Plans (Key Plan and Sheets 1-4) (Rev. 2.0) |
| REP2-008 | Eggborough Power Limited 4.3 Crown Land Plan (Rev. 2.0) |
| REP2-009 | Eggborough Power Limited 4.14 Deemed Marine Licence Coordinates Plan (Rev. 2.0) |
| REP2-010 | Eggborough Power Limited 5.4 Other Consents and Licences (Rev. 2.0) |
| REP2-011 | Eggborough Power Limited 7.1 Draft Statement of Common Ground with North Yorkshire County Council and Selby District Council (Rev. 2.0) |
| REP2-012 | Eggborough Power Limited 7.5 Statement of Common Ground with The Coal Authority (Rev. 3.0) |
| REP2-013 | Eggborough Power Limited 7.11 Draft Statement of Common Ground with the Yorkshire Wildlife Trust (Rev. 1.0) |

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| REP2-014 | Eggborough Power Limited 9.1 Applicant's Responses to the Examining Authority's First Written Questions |
| REP2-015 | Eggborough Power Limited 9.1 Appendix 1 – Compulsory Acquisition Schedule |
| REP2-016 | Eggborough Power Limited 9.1 Appendix 2 – Figure 8.1 |
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| REP2-034 | National Grid Plc Written Representation |
| REP2-035 | National Grid Plc Response to ExA's Written Questions |
| REP2-036 | North Yorkshire County Council and Selby District Council Cover letter |
| REP2-037 | North Yorkshire County Council and Selby District Council Joint Written Representation |
| REP2-038 | North Yorkshire County Council and Selby District Council Joint Response to ExA's Written Questions |
| REP2-039 | North Yorkshire County Council and Selby District Council Joint Local Impact Report |
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| <ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs • Comments on Local Impact Reports • Comments on responses to ExA's Written Questions • Revised draft DCO from Applicant • Post hearing submissions including written submissions of oral case • Guide to Application document tracker • Responses to further information requested by the ExA | |
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| REP3-002 | Eggborough Power Limited 1.2 Application Guide (Rev. 3.0) |

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| REP3-003 | Eggborough Power Limited 2.1 Updated Draft DCO (Rev. 3.0) |
| REP3-004 | Eggborough Power Limited 2.6 Draft DCO – Comparison to Deadline 2 Version (Rev. 1.0) |
| REP3-005 | Eggborough Power Limited 2.7 Explanatory Note on Changes to Draft DCO (Deadline 3) (Rev. 1.0) |
| REP3-006 | Eggborough Power Limited 7.1 Updated Draft Statement of Common Ground with North Yorkshire County Council and Selby District Council (Rev. 3.0) |
| REP3-007 | Eggborough Power Limited 7.11 Updated Draft Statement of Common Ground with the Yorkshire Wildlife Trust (Rev. 2.0) |
| REP3-008 | Eggborough Power Limited 7.3 Statement of Common Ground with the Environment Agency (Rev. 3.0) |
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| REP3-010 | Eggborough Power Limited 9.4 Written Summary of Applicant’s Oral Case put at the Issue Specific Hearing on Environmental Matters held on 22 November 2017 |
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| REP3-025 | National Grid Letter from National Grid |
| REP3-026 | Marine Management Organisation MMO Response to Deadline 3 |
| REP3-027 | North Yorkshire County Council and Selby District Council Letter to ExA |
| Late Submission for Deadline 3 | |
| REP3-028 | Hensall Parish Council Late Deadline 3 Submission - Accepted at the discretion of the Examining Authority |
| Deadline 4 – 21 December 2017 | |
| <ul style="list-style-type: none"> • Comments on Applicant’s revised draft DCO • Updated Compulsory Acquisition schedule • Updated Statements of Common Ground • Responses to further information requested by the ExA | |
| REP4-001 | Eggborough Power Limited Covering Email |
| REP4- 002 | Eggborough Power Limited 1.2 Application Guide (Rev. 4.0) |

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| REP4-003 | Eggborough Power Limited 7.9 Statement of Common Ground with National Grid Gas Plc & National Grid Electricity Transmission Plc (Rev. 2.0) |
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| REP4-005 | Eggborough Power Limited 9.8 Draft Section 106 Agreement with Selby District Council and the Yorkshire Wildlife Trust (Rev. 2.0) |
| REP4-006 | Eggborough Power Limited 9.9 Compulsory Acquisition Update (Rev. 1.0) |
| REP4-007 | Eggborough Power Limited 9.10 Applicant's Response to Deadline 3 Submissions (Rev. 1.0) |
| REP4-008 | Marine Management Organisation Submission for Deadline 4 and 5 |
| REP4-009 | North Yorkshire County Council Deadline 4 Submission |
| Deadline 5 – 09 January 2018 | |
| <ul style="list-style-type: none"> • Responses to ExA's Further Written Questions (if required) • Responses to further information requested by the ExA | |
| REP5-001 | Eggborough Power Limited 1.2 Application Guide (Rev. 5.0) |
| REP5-002 | Eggborough Power Limited 2.1 Updated Draft DCO (Rev. 4.0) |
| REP5-003 | Eggborough Power Limited 2.8 Draft DCO – Comparison to Deadline 3 Version |
| REP5-004 | Eggborough Power Limited 2.9 Explanatory Note on Changes to Draft DCO |
| REP5-005 | Eggborough Power Limited 9.11 Applicant's Responses to the Examining Authority's ('ExA's') Further Written Questions |
| REP5-006 | Eggborough Power Limited 9.12 Response to the ExA's Request for Further Information on Habitats Regulations Assessment (including Appendix 1) |

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| REP5-007 | Eggborough Power Limited 9.13 Draft Section 106 Planning Agreement with Selby District Council – Demolition of the existing coal-fired power station |
| REP5-008 | Eggborough Power Limited 9.14 Correction to Applicant’s Response to Deadline 3 Submissions |
| REP5-009 | Eggborough Power Limited Cover Email |
| REP5-010 | The Environment Agency Response to ExA Written Questions |
| REP5-011 | North Yorkshire County Council Letter to PINS |
| REP5-012 | North Yorkshire County Council and Selby District Council Response to ExA Written Questions |
| <p>Deadline 6 – 31 January 2018</p> <ul style="list-style-type: none"> • Updated Guide to application documents • Applicant’s revised draft DCO • Comments on responses to further questions (if required) • Post hearing submissions including written submissions of oral case • Updated Guide to Application document tracker • Responses to further information requested by the ExA | |
| REP6-001 | Eggborough Power Limited Covering Letter |
| REP6-002 | Eggborough Power Limited 1.2 Application Guide (Rev.6.0) |
| REP6-003 | Eggborough Power Limited 2.1 Updated Draft Development Consent Order (DCO) - Rev. 5.0 |
| REP6-004 | Eggborough Power Limited 2.10 Draft Development Consent Order (DCO) - Comparison to Deadline 5 Version |
| REP6-005 | Eggborough Power Limited 2.11 Explanatory Note on Changes to Draft Development Consent Order (DCO) |
| REP6-006 | Eggborough Power Limited 4.2 Updated Land Plans (Rev.3.0) |
| REP6-007 | Eggborough Power Limited 7.11 Updated Draft Statement of Common Ground (SoCG) with the Yorkshire Wildlife Trust (Rev.3.0) |

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| REP6-008 | Wardhadaway on behalf of Canal and River Trust Submission for Deadline 6 |
| Deadline 7 – 14 February 2018 <ul style="list-style-type: none"> • Comments on Applicant’s revised draft DCO • Comments on the RIES • Responses to further information requested by the ExA | |
| REP7-001 | Eggborough Power Limited 1.2 Application Guide (Rev. 7.0) |
| REP7-002 | Eggborough Power Limited 4.14 Indicative Deemed Marine Licence Coordinates Plans (Rev. 3.0) |
| REP7-003 | Eggborough Power Limited 7.1 Statement of Common Ground with North Yorkshire County Council (NYCC) and Selby District Council (SDC) - Rev. 4 |
| REP7-004 | Eggborough Power Limited 7.10 Statement of Common Ground with the Marine Management Organisation (MMO) - Rev. 4.0 |
| REP7-005 | Eggborough Power Limited 9.15 Comments on Report on Implications for European Sites (RIES) |
| REP7-006 | Marine Management Organisation (MMO) Submission for Deadline 7 |
| REP7-007 | Natural England Submission for Deadline 7 |
| Deadline 8 – 28 February 2018 <ul style="list-style-type: none"> • Comments on the ExA’s draft DCO (if required) • Updated Statements of Common Ground • Responses to comments on the RIES • Updated Compulsory Acquisition schedule • Responses to further information requested by the ExA | |
| REP8-001 | Eggborough Power Limited Covering Letter |
| REP8-002 | Eggborough Power Limited 1.2 Application Guide (Rev. 8.0) |
| REP8-003 | Eggborough Power Limited 2.1 Draft Development Consent Order (DCO) - Rev. 6.0 |
| REP8-004 | Eggborough Power Limited 2.12 Draft DCO - Comparison against Deadline 6 Version |

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| REP8-005 | Eggborough Power Limited 2.13 Explanatory Note on Changes to Draft DCO |
| REP8-006 | Eggborough Power Limited 5.10 Indicative Landscape and Biodiversity Strategy (Rev. 2.0) |
| REP8-007 | Eggborough Power Limited 7.10 Statement of Common Ground (SoCG) with the Marine Management Organisation (MMO) - Rev. 4.0 |
| REP8-008 | Eggborough Power Limited 7.11 Statement of Common Ground (SoCG) with the Yorkshire Wildlife Trust |
| REP8-009 | Marine Management Organisation (MMO) Submission for Deadline 8 |
| <p>Deadline 9 – 14 March 2018</p> <ul style="list-style-type: none"> • Responses to comments on the ExA’s draft DCO (if required) • Final DCO to be submitted by the Applicant in the SI template with the SI template validation report • Final updated Book of Reference • Final Statements of Common Ground • Final Compulsory Acquisition Schedule • Final Guide to Application document tracker • Responses to further information requested by the ExA | |
| REP9-001 | Eggborough Power Limited Covering Letter |
| REP9-002 | Eggborough Power Limited 1.2 Application Guide (Rev. 9.0) |
| REP9-003 | Eggborough Power Limited 2.1 Draft Development Consent Order (DCO) - Rev. 7.0 |
| REP9-004 | Eggborough Power Limited 2.14 Draft DCO - Comparison to Deadline 8 Version |
| REP9-005 | Eggborough Power Limited 7.1 Statement of Common Ground (SoCG) with North Yorkshire County Council (NYCC) and Selby District Council (SDC) - Rev. 5.0 |
| REP9-006 | Eggborough Power Limited 7.9 Statement of Common Ground (SoCG) with National Grid Gas Plc (NGG) and National Grid Electricity Transmission Plc (NGET) - Rev. 3.0 |
| REP9-007 | Eggborough Power Limited 9.8 Section 106 Planning Agreement with Selby District Council and |

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| | Yorkshire Wildlife Trust - Biodiversity enhancement - Rev. 3.0 (Final Version) |
| REP9-008 | Eggborough Power Limited 9.9 Compulsory Acquisition Update |
| REP9-009 | Eggborough Power Limited 9.13 Section 106 Planning Agreement with Selby District Council - Demolition of coal station - Rev. 2.0 (Final Version) |
| REP9-010 | Eggborough Power Limited Planning Performance Agreement with Selby District Council - Discharge of requirements - Rev. 1.0 (Final Version) |
| Late Submissions for Deadline 9 | |
| REP9-011 | Eggborough Power Limited Late Submission for Deadline 9 accepted at the discretion of the Examining Authority – S106 Planning Agreement on Biodiversity |
| REP9-012 | Eggborough Power Limited Late Submission for Deadline 9 accepted at the discretion of the Examining Authority – S106 Planning Agreement on Demolition of Coal Station |
| REP9-013 | Eggborough Power Limited Late Submission for Deadline 9 accepted at the discretion of the Examining Authority – Planning Performance Agreement |
| REP9-014 | Eggborough Power Limited Late Submission for Deadline 9 accepted at the discretion of the Examining Authority - Application Guide - Rev.10.0 (End of Examination Version) |
| REP9-015 | Eggborough Power Limited Late Submission for Deadline 9 accepted at the discretion of the Examining Authority - Statement of Common Ground with Canal and River Trust |
| REP9-016 | Canal and River Trust Late Submission for Deadline 9 accepted at the discretion of the Examining Authority |
| Other Documents | |
| OD-001 | Dalton Warner Davis - Certificate of Compliance cover letter |
| OD-002 | Certificate of Compliance reg 13 |
| OD-003 | Certificate of Compliance s56 |

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| OD-004 | Certificate of Compliance s59 |
| OD-005 | Regulation 24 Transboundary Screening document |

APPENDIX C: LIST OF ABBREVIATIONS

APPENDIX C: LIST OF ABBREVIATIONS

| Abbreviation or usage | Reference |
|--------------------------------------|--|
| 2009 EIA Regulations | Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) |
| AA | Appropriate Assessment |
| ALC | Agricultural Land Classification |
| AN10 | The Planning Inspectorate's Advice Note 10 |
| AGI | Above Ground Installation |
| AONB | Area of Outstanding Natural Beauty |
| AP | Affected Person(s) |
| APFP | Applications: Prescribed Forms and Procedures |
| ASI | Accompanies Site Inspection |
| BAT | Best Available Techniques |
| BEIS | (Department for) Business, Energy and Industrial Strategy |
| BoR | Book of Reference |
| CA | Compulsory Acquisition |
| CAA | Civil Aviation Authority |
| CAH | Compulsory Acquisition Hearing |
| CCGT | Combined Cycle Gas Turbine |
| CCR | Carbon Capture Readiness |
| CEMP | Construction Environmental Management Plan |
| CHP | Combined Heat and Power Readiness |
| CRT | Canal & River Trust |
| Core Strategy | The Selby District Core Strategy Local Plan 2013 |
| CTMP | Construction Traffic Management Plan |
| CWTP | Construction Workers Travel Plan |
| dB | Decibel |
| DCLG compulsory acquisition guidance | 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land', Department of Communities and Local Government, September 2013 |
| Draft DCO | Development consent order submitted during the Examination |
| DECC | The Former Department of Energy and Climate Change |
| DEFRA | The Department of the Environment, Food and Rural Affairs |
| DL (number) | Examination Deadline (see Appendix A for a list) |
| DML | Deemed Marine Licence |
| EA | Environment Agency |
| EA Permitting Guidance | Department for Environment, Food & Rural Affairs (DEFRA) and Environment Agency: Air Emissions Risk Assessment for Your Environmental Permit |
| EIA | Environmental Impact Assessment |
| EM | Explanatory Memorandum |
| EN-1 | Overarching National Policy Statement for Energy (EN-1) |

| Abbreviation or usage | Reference |
|-----------------------|--|
| EN-2 | National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2) |
| EN-4 | National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) |
| EN-5 | National Policy Statement for Electricity Networks Infrastructure (EN-5) |
| EPR | Examination Procedure Rules |
| ES | Environmental Statement |
| EU | European Union |
| ExA | Examining Authority |
| Final DCO | The draft Development Consent Order submitted at Deadline 9 [REP9-003] |
| FRA | Flood Risk Assessment |
| FS | Funding Statement |
| FWQ | Further Written Questions |
| HE | Historic England |
| HoTs | Heads of Terms |
| Habitats Directive | Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora |
| Habitats Regulations | The Conservation of Habitats and Species Regulations 2017 |
| HGVs | Heavy Goods Vehicles |
| HRA | Habitat Regulations Assessment |
| HRA Report | The Applicant's further information on Habitat Regulations Assessment submitted at Deadline 5 [REP5-006] |
| HSE | Health and Safety Executive |
| IAQM Guidance | Institute of Air Quality Management Guidance 2016 |
| IDB | Internal Drainage Board |
| ILBS | Indicative Landscape and Biodiversity Strategy |
| IP | Interested Party/ies |
| ISH | Issue Specific Hearing |
| Km | Kilometre |
| KV | Kilovolts |
| LA | Local Authority |
| LIR | Local Impact Report |
| LOAEL | Lowest Observable Adverse Effect Level |
| Local Plan | The saved policies of the Selby District Local Plan 2005 |
| LSE | Likely Significant Effects |
| m | Metres |
| MCZ | Marine Conservation Zone |
| MMO | Marine Management Organisation |
| MPS | Marine Policy Statement |
| MW | Megawatt(s) |
| N/ha/yr | Kilograms of nitrogen per hectare per year |
| NGET | National Grid Electricity Transmission |
| NGG | National Grid Gas |

| Abbreviation or usage | Reference |
|-----------------------|---|
| NE | Natural England |
| NERCA2006 | The Natural Environment and Rural Communities Act |
| NOx | Oxides of nitrogen |
| NPA2017 | The Neighbourhood Planning Act 2017 |
| NPPF | National Planning Policy Framework |
| NPS | National Policy Statement |
| NSIP | Nationally Significant Infrastructure Project |
| NYCC | North Yorkshire County Council |
| NYCC/SDC | North Yorkshire County Council/Selby District Council |
| PA2008 | Planning Act 2008 |
| PM | Preliminary Meeting |
| PRoW | Public Rights of Way |
| Ramsar | The Ramsar Convention on Wetlands |
| Recommended DCO | The Development Consent Order recommended to the SoS |
| RIES | Report on the Implications for European sites |
| RR | Relevant Representation(s) |
| Rule 6 Letter | Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 |
| Rule 8 Letter | Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 |
| Rule 17 Letter | Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 |
| SAC | Special Area of Conservation |
| SCR | Selective Catalytic Reduction |
| SDC | Selby District Council |
| SNCB | Statutory Nature Conservation Body |
| SNCBs | Statutory nature conservation bodies – a collective reference |
| SWMP | Site Waste Management Plan |
| SoCG | Statement of Common Ground |
| SoR | Statement of Reasons |
| SoS | Secretary of State |
| SPA | Special Protection Area |
| SSSI | Sites of Special Scientific Interest |
| TCPA1990 | Town and Country Planning Act 1990 |
| TCE | The Crown Estate |
| TP | Temporary Possession |
| The Inspectorate | Planning Inspectorate |
| UK | United Kingdom |
| USI | Unaccompanied Site Inspection |
| Waste Plan | The North Yorkshire Waste Local Plan 2006 |
| WFD | Council Directive 2000/60/EC (as amended) A framework for the Community action in the field of water policy (the Water Framework Directive) |
| WQ | Written Question |
| WR | Written Representation(s) |
| YWT | Yorkshire Wildlife Trust |

APPENDIX D: RECOMMENDED DEVELOPMENT CONSENT ORDER

201* No.

INFRASTRUCTURE PLANNING

The Eggborough CCGT (Generating Station) Order

Made - - - - - ***

Coming into force - - - - - ***

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) and Part 5 of the Planning Act 2008(b) for an Order granting development consent.

The application was examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(a).

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755 and S.I. 2017/572.

(b) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).

The Secretary of State, in accordance with section 104(2) of the 2008 Act, has had regard to the relevant national policy statements, the joint local impact report submitted by North Yorkshire County Council and Selby District Council and those matters which the Secretary of State thinks are both important and relevant to his decision.

The Secretary of State, having considered the representations made and not withdrawn and the application with the documents that accompanied the application, has determined to make an Order giving effect to the proposals comprised in the application.

The Secretary of State's determination was published on [X].

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115, 120, 122, 123 and 149A of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Eggborough CCGT (Generating Station) Order 201[x] and comes in to force on [x] 201[x].

Interpretation

2.—(1) In this Order—

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

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

(a) S.I. 2010/103, amended by S.I. 2012/635.

(b) 1961 c.33. Section 1 and subsections (A1), (1) and (3)-(6) of section 4 were amended by articles 5(1), (2) (6) of, and paragraphs 31, 37(a), 37(b), 38, 39(a), 39(b), 39(c), of Schedule 1 and Schedule 5 of Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). There are other amendments to the 1961 Act which are not relevant to this Order.

(c) 1965 c.56. Subsections (1)-(3) of section 1 and section 30 were amended by subsections (1) and (3) of section 34 of, and paragraph 14 of Schedule 4 to, and Schedule 6 to, the Acquisition of Land Act 1981 (c.67). Subsection (4) of section 1 was amended by section 4 of and paragraph 13(1)(a) and (b) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11). Subsection (5) of section 1 was amended by section 109 of and paragraph 124 of Schedule 10 to, the Courts Act 2003 (c.39). Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991(c.34). Section 4 and subsection (2) of section 11 were amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by section 67 of the Planning and Compensation Act 1991 (c.34). Subsection (2A)(d) and 2(d) of section 5, section 6, subsections (1) and (3) of section 8 and subsection (1) of section 10, subsection (3) of section 11, subsection (1) of section 15, subsection (1) of section 16, subsection (2) of section 17, subsections (1) and (2)(b) of section 18, subsection (2) of section 19 and subsection (3) of section 20 were amended by articles 5(1), (2) and (6) of, and paragraphs 59, 61, 62, 63, 65, 66, 67, 68, 69 ad 70 of Schedule 1 to, and Schedule 5 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Subsection (3) of section 10 was amended by section 4 of, and paragraph 13(2)(a) and (b) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Subsection (1) of section 11 and sections 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by sections 14 and 70 of, and paragraphs 12(1) and 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by sections 62 and 139 of, and paragraphs 27 and 28(1) and (2) to, the Tribunals, Courts and Enforcement Act 2007 (c.15). Subsection 2 of section 20 was amended by section 70 of, and paragraph 4 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Subsections 3 and 4 of section 23 and subsection (1) of section 25 were amended by section 59 of, and paragraph 4 of part 2 of Schedule 11 to, the Constitutional Reform Act 2005 (c.4). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1965 Act which are not relevant to this Order.

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

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act(b);

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

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

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

“the 2009 Act” means the Marine and Coastal Access Act 2009(f);

“the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(g);

“access and rights of way plans” means the plans submitted under regulation 5(2)(k) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field

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- (a) 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 Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are amendments to the 1981 Act which are not relevant to this Order.
- (c) 1990 c.8. Subsection (4)(aa) of section 56 was added by Planning and Compensation Act 1991 (c.34). Subsection (5)(a) of section 56 was amended by subsection (2)(a) of section 40 of the Planning and Compulsory Purchase Act 2004 (c.5) and subsection (1) of section 30 of, and paragraphs 2 and 3 of part 2 of Schedule 4 to, the Infrastructure Act 2015 (c.7). Subsection (5)(b) of section 56 was amended by subsection (4) of section 31 of, and paragraphs 8 and 10 of Schedule 6 to, Planning and Compensation Act 1991 (c.34). Subsections (3), (4), (6) and (7) of section 198 were amended by subsection (1) of section 192 and subsection (2)(a) of section 238 of, and paragraphs 7 and 8 of Schedule 8 to, and Schedule 13 to, the 2008 Act. Subsection (4)(a) of section 198 was amended by sections 31, 32, 42 and 84 of, and paragraphs 8 and 20 of Schedule 6 and paragraphs 8 and 34 of Schedule 7 to and Parts 1 and 2 of Schedule 19 to, the Planning and Compensation Act 1991 (c.34). Subsections (8) and (9) of section 198 were amended by subsection (3) of section 42 to the Planning and Compulsory Purchase Act 2004 (c.5). There are other amendments to the 1990 Act which are not relevant to this Order.
- (d) 1991 c.22. Sections 48(3A) and 50(1A), were inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 49, subsection (3) of section 63, subsection 7A(a) of section 74, subsections (2) and (10)(a) and section 86 were amended by subsection (6) of section 1 of, and paragraphs 113, 117 - 121 of part 2 of Schedule 1 to, the Infrastructure Act 2015 (c.7). Sections 51, 53-60, 65-69, subsections (1A), (4), (4B) and (6) of section 70, 71-72, 73A-73F, subsections (3)(b) and (7B) of section 74, 75, 78A, 39-80, 83, 88, subsection (2) of section 89, 90, 92-93, 95A and 96-97 were amended by sections 40, 42-45, 47-56, 58 and 59 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18). Subsection (5) of section 63 was added by section 32 of, and paragraph 27 of schedule 3 to, the Flood and Water Management Act 2010 (c.29). Subsection (4) of section 64 was added by section 81 of, and paragraph 7 of Schedule 2 to, the Road Traffic Act 1991 (c.40). Subsections (3) and (4A) of section 70 were amended by regulation 17E of The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 (S.I. 2007/1951). Subsections (2A), (3), (3)(b), (4), (5A)-(5C), (7), (7A) and (7B) were amended by sections 256 and 274 of, and part V(2) of Schedule 31 to, the Transport Act 2000 (c.38). Subsection (1)(a) of section 89 was amended by subsection (1) of section 2 of, and paragraph 57(1) of Schedule 1 to, the Water Consolidation (Consequential Provisions) Act 1991 (c.60). There are other amendments to the 1991 Act which are not relevant to this Order.
- (e) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20). Part 7 amended by S.I. 2017/16.
- (f) 2009 c.23.
- (g) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755 and S.I. 2017/572.

boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

“application guide” means the application guide revision 10.0 dated March 2018 and certified as such by the Secretary of State for the purposes of this Order;

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

“the book of reference” means the book of reference submitted under regulation 5(2)(d) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

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

“Canal and River Trust” means the body of that name which is a company limited by guarantee (Company No. 7807276) and a registered charity (Charity Commission No. 1146792) whose registered office is at First Floor, North Station House, 500 Elder Gate, Milton Keynes, MK9 1BB;

“combined heat and power assessment” means the combined heat and power assessment submitted under regulation 5(2)(q) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“commence” means the carrying out of a material operation, as defined in section 155 of the Planning Act 2008 (which explains when development begins), comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commercial use” means that the commissioning of the authorised development has been completed and it is generating electricity on a commercial basis;

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

“Eggborough Power Limited” means Eggborough Power Limited (Company No. 03782700) whose registered office is at Eggborough Power Station, Eggborough, Goole, East Yorkshire, DN14 0BS;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the environmental statement” means the environmental statement submitted under regulation 5(2)(a) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“environmental statement commitments register” means the document of that name dated May 2017;

“the flood risk assessment” means the flood risk assessment submitted under regulation 5(2)(e) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

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

“the indicative landscaping and biodiversity strategy” means the indicative landscaping and biodiversity strategy under regulation 5(2)(q) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“the indicative lighting strategy” means the indicative lighting strategy under regulation 5(2)(q) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“the land plans” means the land plans submitted under regulation 5(2)(i) of the 2009 Regulations and certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation shown for each work number on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of the authorised development, to the extent that such activities have been assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“NGET” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH;

“NGG” means National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“Order land” means the land delineated and marked as such on the land plans;

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

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

“plot” means the plots listed in the book of reference and as shown on the land plans;

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

“requirements” means those matters set out in Schedule 2 to this Order;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

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

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act for which purposes “highway authority” has the meaning given in this article;

“street works” means the works listed in article 8(1);

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

“undertaker” means Eggborough Power Limited or the person who has the benefit of this Order in accordance with articles 6 and 7;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“working day” means any day other than a Saturday, Sunday or English bank or public holiday; and

“the works plans” means the works plans submitted under regulation 5(2)(j) of the 2009 Regulations and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order.

(3) Save for the definition of the “undertaker”, the definitions in paragraph (1) do not apply to Schedule 13 (deemed marine licence under Part 4 (marine licensing) of the 2009 Act).

(a) 1981 c.67.

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

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

(6) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans.

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

(8) The provisions of the Neighbourhood Planning Act 2017^(a), insofar as they relate to temporary possession of land under articles 26 (temporary use of land for carrying out the authorised development) and 27 (temporary use of land for maintaining the authorised development) of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, maintenance or operation of the authorised development.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

Maintenance of authorised development

4.—(1) Except to the extent that this Order or an agreement made under this Order provides otherwise and subject to the provisions of this Order and to the requirements, the undertaker is authorised to and, subject to the requirements, may at any time maintain the authorised development.

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

Operation of authorised development

5.—(1) The undertaker is hereby authorised to use and operate the generating station comprised in the authorised development.

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

Benefit of the Order

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to—

- (a) Work No. 3B in relation to which this Order has effect for the benefit of the undertaker and NGET; and
- (b) Work No 7A in relation to which this Order has effect for the benefit of the undertaker and NGG.

(a) 2017 c.20.

Consent to transfer benefit of the Order

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

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

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

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

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is—
 - (i) the holder of a licence under section 6 of the Electricity Act 1989(a);
 - (ii) in relation only to a transfer or lease of Work No. 6 or Work No. 7 the holder of a licence under section 7 of the Gas Act 1986(b); or
 - (iii) in relation to a transfer or lease of any works within a highway a highway authority responsible for the highways within the Order land; or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4) the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;

(a) 1989 c.29. Part 1 has been amended by S.I. 2017/493 and Section 6(1) has been amended by section 30 of the Utilities Act 2000 (c.27) and sections 136 and 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20). Section 64 has been amended by article 24(c) of the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999 (S.I. 1999/506), section 108 of, paragraphs 24 and 38 of part 2 of Schedule 6 to, and Schedule 8 to the Utilities Act 2000 (c.27), sections 44, 89, 102, 143, 147, 180 and 197 of, paragraphs 3 and 15 of Schedule 19 to, and Part 1 of Schedule 23 to, the Energy Act 2000 (c.20), section 79 of, and paragraph 5 of Schedule 8 to, the Climate Change Act 2008 (c.27), section 72 of, and paragraph 5 of Schedule 8 to, the Energy Act 2011 (c.16), regulation 48 of the Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), articles 2 and 13 of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), section 26 of, and paragraphs 30 and 43 of part 1 of Schedule 6 to, the Enterprise and Regulatory Reform Act 2013 (c.24), and regulation 5 of the Electricity and Gas (Internal Markets) Regulations (S.I. 2014/3332).

(b) 1986 c.44. Section 7 (1) was amended by section 76 of the Utilities Act 2000 (c.27) and section 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20).

- (d) pursuant to paragraph (3) the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

PART 3 STREETS

Street works

8.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it; 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) Where the person carrying out any works pursuant to paragraph (1) is not the street authority the provisions of sections 54 to 106 of the 1991 Act apply to any such works.

Power to alter layout, etc., of streets

9.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 4 (streets subject to temporary alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4) the undertaker may for the purposes of constructing and maintaining the authorised development alter the layout of any street and, without limitation on the scope of this paragraph—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing place(s).

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Construction and maintenance of new or altered means of access

10.—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (those parts of the access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (those parts of the access to be maintained by the street authority) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 9(1) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 (those works to restore the temporary accesses which will be maintained by the street authority) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed.

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker is not by reason of any duty under that section to maintain a street to be taken to be a street authority in relating to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Temporary stopping up of streets, public rights of way and public rights of navigation

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

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

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in column (2) of Schedule 6 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule and the public rights of way specified in column (2) of Part 1 of Schedule 7 (public rights of way to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

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

- (a) any street, public right of way specified in paragraph (3) without first consulting the highway authority; and
- (b) any other street or public right of way without the consent of the highway authority, and the highway authority may attach reasonable conditions to any such consent.

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

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(7) The undertaker, during and for the purposes of carrying out and maintaining the authorised development, may temporarily suspend the public rights of navigation in relation to the areas specified in column (4) of Part 2 of Schedule 7 (public rights of navigation to be temporarily suspended) for the purposes of constructing or carrying out the work listed at column (3) of that Part 2 of Schedule 7.

(8) Prior to the proposed commencement date of any suspension of the public rights of navigation under paragraph (7), the undertaker must give notice to the Canal and River Trust.

(9) Following a receipt of a notice relating to a suspension pursuant to paragraph (8) the Canal and River Trust must issue a notice to mariners giving the commencement date and other particulars of the suspension to which the notice or consent relates, and that suspension takes effect on the date specified and as otherwise described in the notice.

(10) During the period that public rights of navigation are temporarily suspended under this article, the undertaker must upon application allow reasonable access to the area where such rights of navigation would otherwise apply subject to such conditions as the undertaker may reasonably impose.

(11) The undertaker may not exercise the powers of paragraph (7) of this article after the completion of construction of the authorised development.

(12) The powers in paragraph (7) are subject to Part 3 (Protective Provisions for the Protection of the Canal and River Trust) of Schedule 12.

Access to works

12.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access, in the locations specified in Part 1 of Schedule 4 (streets subject to permanent alteration of layout);
- (b) form and layout the temporary means of access in the location specified in Part 2 of Schedule 4 (streets subject to temporary alteration of layout); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

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

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;
- (d) any stopping up, alteration or diversion of a street authorised by this Order;
- (e) the undertaking in the street of any of the works referred to in article 10(1) (construction and maintenance of new or altered means of access); and/or
- (f) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing publicly maintainable highway; and/or
 - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the 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) specify 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 development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

(a) 1991 c.56.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs but approval must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) Except as authorised under this Order, the undertaker must not, in carrying out or maintaining works, damage or interfere with the bed or banks of any watercourse forming part of a main river.
- (6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(a).
- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(b) (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(c) 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 development and—
- (a) survey or investigate the land;
 - (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
 - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least fourteen 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 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 are to be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority.

(a) S.I. 2016/1154.

(b) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

(c) 1991 c.57.

(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 Order land.

(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 planning authority.

(5) At any time within fifty-six 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 is to 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 fifty-six 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 fifty-six days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of fifty-six days; or
- (c) within fifty-six 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 must be 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 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 address 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) is not to apply to a removal carried out in accordance with this article.

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 development or to facilitate it, or is incidental to it and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

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

(3) This article is subject to article 20 (compulsory acquisition of rights), article 26 (temporary use of land for carrying out the authorised development) and article 42 (Crown rights).

(4) Nothing in this article or articles 18 (statutory authority to override easements and other rights), 20 (compulsory acquisition of rights), 21 (private rights) or article 28 (statutory undertakers) permits the undertaker to exercise any powers of compulsory acquisition in respect of plots 25, 45, 60, 65, 110, 115, 130, 140, 395, 405, 475, 485, 570 and 605.

(5) This article does not apply in relation to any right or apparatus 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.

(a) 1857 c.81. Section 25 Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2. There are other amendments to this Act which are not relevant to this Order.

Statutory authority to override easements and other rights

18.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the use of land arising by virtue of a contract.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

(6) This article is subject to article 17(4).

Time limit for exercise of authority to acquire land compulsorily

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

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

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph is to prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

20.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 17 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column 1 of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land as are specified in column 2 of that Schedule.

(3) Subject to section 8 of the 1965 Act (other provision as to divided land), where the undertaker acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase for creation of new rights) 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.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) 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.

(7) This article is subject to article 42 (Crown rights) and article 17(4).

(8) This article does not apply in relation to any right or apparatus 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.

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 earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) 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 and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

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

(6) This article does not apply in relation to any right or apparatus 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.

(7) Paragraphs (1) to (4) have effect subject to—

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

that any or all of those paragraphs 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 in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) This article is subject to article 17(4).

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

(2) The 1981 Act, as applied, has effect with the following modifications.

(3) In section 1 (application of act) for subsection (2) there is substituted—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) Omit section 5 (earliest date for execution of declaration).

(5) Omit section 5A (time limit for general vesting declaration).

(6) In section 5B (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 19 of the Eggborough CCGT (Generating Station) Order [x]”.

(7) In section 6 (notices after execution of declaration) for subsection (1)(b) there is substituted—

“(1b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008,”.

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

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 24 (application of Part 1 of the Compulsory Purchase Act 1965) 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) and paragraph (1) of article 20 (compulsory acquisition of rights) 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 to be required to acquire an interest in any other part of the land.

(3) Paragraph (2) must not prevent Schedule 2A to the 1965 Act (as modified by article 24 (application of part 1 of the Compulsory Purchase Act 1965)) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Application of Part 1 of the Compulsory Purchase Act 1965

24.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 19 of the Eggborough CCGT (Generating Station) Order [x]”.

(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 19 of the Eggborough CCGT (Generating Station) Order [x]”.

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) omit paragraph 1(2) and 14(2); and
- (b) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 32 (protective works to buildings), 26 (temporary use of land for carrying out the authorised development) or 27 (temporary use of land for maintaining the authorised development) of the Eggborough CCGT (Generating Station) Order [x].”

Rights under or over streets

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule;
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (2) of Schedule 10, or any mitigation works.

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

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

- (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 works for which temporary possession of the land was taken; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building removed under this article.

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

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

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

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

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

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

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 10.

Temporary use of land for maintaining the authorised development

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

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

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

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

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of 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 development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) In this article “the maintenance period” means the period of 5 years beginning with the date on which that part of the authorised development is first operational.

Statutory undertakers

28.—(1) Subject to article 17(4) and the provisions of Schedule 12 (protective provisions), the undertaker may—

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

Apparatus and rights of statutory undertakers in stopped up streets

29. Where a street is temporarily altered or diverted or its use is temporarily stopped up under article 10 (construction and maintenance of new or altered means of access) or article 11 (temporary stopping up of streets, public rights of way and public rights of navigation) any statutory utility whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 12 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

30.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (apparatus and rights of statutory undertakers in stopped up streets) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (apparatus and rights of statutory undertakers in stopped up streets), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 29 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

- (a) “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

PART 6 OPERATIONS

Felling or lopping of trees

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

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

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

(a) 2003 c.21.

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

(4) The undertaker may not pursuant to paragraph (1) fell or lop a tree within the extent of the publicly maintainable highway without the consent of the highway authority.

(5) Save in the case of emergency, the undertaker must not less than fourteen days before entering any land pursuant to paragraph (1) serve notice of the intended entry on the owners and occupiers and, where the land is highway maintainable at the public expense, on the highway authority.

Protective works to buildings

32.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the start of commercial use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than fourteen days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 41 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first in commercial use it

appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development, the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

PART 7

MISCELLANEOUS AND GENERAL

Protective provisions

33. Schedule 12 (protective provisions) has effect.

Deemed marine licence

34. The marine licence set out in Schedule 13 is deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensable marine activities (as defined in section 66 of the 2009 Act) set out in Part 2, and subject to the conditions set out in Part 3, of the licence.

Application of landlord and tenant law

35.—(1) This article applies to—

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

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

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

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

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

Operational land for purposes of the 1990 Act

36. 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).

Defence to proceedings in respect of statutory nuisance

37.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (a)(summary proceedings by persons aggrieved by statutory nuisances) 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 is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction 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(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974, does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Certification of plans etc

38.—(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 and rights of way plans
- (b) the book of reference;
- (c) the combined heat and power assessment;
- (d) the environmental statement;
- (e) the flood risk assessment;
- (f) the land plans;
- (g) the works plans;
- (h) the indicative landscaping and biodiversity strategy;
- (i) the indicative lighting strategy; and
- (j) the application guide

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

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

(a) 1990 c.43; there are amendments which are not relevant to this Order.

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

Service of notices

39.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978^(a) (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body, and,
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(a) 1978 c. 30.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Procedure in relation to certain approvals etc

40.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority, or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Save for applications made pursuant to Schedule 11 (Procedure for discharge of requirements), if, within eight weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed in writing with the undertaker) it has not notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval), it is deemed to have approved the application or request.

(3) Schedule 11 (Procedure for discharge of requirements) is to have effect in relation to all consents, agreements or approvals required from the relevant planning authority pursuant to the requirements.

Arbitration

41. Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Crown rights

42.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
 - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
 - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise of any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) Consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Guarantees in respect of payment of compensation

43.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State.

(2) The provisions are—

- (a) article 17 (compulsory acquisition of land);
- (b) article 20 (compulsory acquisition of rights etc);
- (c) article 21 (private rights);
- (d) article 25 (rights under or over streets);
- (e) article 26 (temporary use of land for carrying out the authorised development);
- (f) article 27 (temporary use of land for maintaining the authorised development); and
- (g) article 28 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

| | | |
|---------|---|-------------|
| Address | | <i>Name</i> |
| Date | Department for Business, Energy and Industrial Strategy | Title |

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of North Yorkshire and the District of Selby a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development, comprising—

Work No. 1 – an electricity generating station located on land at the Eggborough Power Station site, near Selby, North Yorkshire, fuelled by natural gas and with a gross output capacity of up to 2,500 megawatts at ISO conditions comprising—

- (a) **Work No. 1A** – a combined cycle gas turbine plant, comprising—
 - (i) up to three combined cycle gas turbine units;
 - (ii) turbine hall buildings for gas turbines and steam turbines;
 - (iii) heat recovery steam generators;
 - (iv) gas turbine air intake filters;
 - (v) emissions stacks;
 - (vi) transformers;
 - (vii) deaerator and feed water pump buildings;
 - (viii) nitrogen oxide emissions control equipment and chemical storage;
 - (ix) chemical sampling / dosing plant;
 - (x) demineralised water treatment plant, including storage tanks;
 - (xi) gas reception facility, including gas supply pipeline connection works, gas receiving area, gas compression equipment and building, pipeline internal gauge launcher for pipe inspection, emergency shutdown valves, gas vents and gas metering, dehydration and pressure reduction equipment;
 - (xii) auxiliary boilers and stacks;
 - (xiii) standby diesel generators; and
 - (xiv) continuous emissions monitoring system,
- (b) **Work No. 1B** – a peaking plant and black start plant, fuelled by natural gas and with a combined gross output capacity of up to 299 megawatts at ISO conditions, comprising—
 - (i) a peaking plant comprising up to two open cycle gas turbine units or up to ten reciprocating gas engines;
 - (ii) a black start plant comprising one open cycle gas turbine unit or up to three reciprocating gas engines;
 - (iii) diesel generators for black start plant start-up prior to gas-firing;
 - (iv) buildings for peaking plant and black start plant;
 - (v) gas turbine air intake filters;
 - (vi) continuous emissions monitoring system;
 - (vii) transformers; and
 - (viii) emissions stacks,
- (c) **Work No. 1C** – combined cycle gas turbine plant cooling infrastructure, comprising—
 - (i) up to three banks of cooling towers;

- (ii) cooling water pumps, plant and buildings; and
- (iii) cooling water dosing and sampling plant and buildings,
- (d) in connection with and in addition to Work Nos. 1A, 1B and 1C—
 - (i) administration and control buildings;
 - (ii) diesel fuel storage tanks and unloading area;
 - (iii) pipework, pipe runs and pipe racks;
 - (iv) an electrical substation, electrical equipment, buildings and enclosures;
 - (v) auxiliary plant, buildings, enclosures and structures;
 - (vi) workshop and stores buildings;
 - (vii) fire fighting equipment, buildings and distribution pipework;
 - (viii) fire and raw water storage tanks;
 - (ix) fire water retention basin;
 - (x) chemical storage facilities;
 - (xi) lubrication oils and grease storage facilities;
 - (xii) permanent plant laydown area for operation and maintenance activities;
 - (xiii) closed circuit cooling water plant and buildings;
 - (xiv) waste water treatment plant and building; and
 - (xv) mechanical, electrical, gas, telecommunications and water networks, pipework, cables, racks, infrastructure, instrumentation and utilities, including connections between Work Nos. 3, 4, 5, and 6, and parts of Work Nos. 1A, 1B and 1C.

and 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 comprising—

- (e) **Work No. 2A** – temporary construction and laydown area comprising hard standing, laydown and open storage areas, backfilling of the lagoon, contractor compounds and construction staff welfare facilities, gatehouse and weighbridge, vehicle parking and cycle storage facilities, internal roads and pedestrian and cycle routes, security fencing and gates, external lighting including lighting columns, and, closed circuit television cameras and columns; and
- (f) **Work No. 2B** – carbon capture readiness reserve space.

Work No. 3 – electrical connection works comprising—

- (g) **Work No. 3A** – up to 400 kilovolt underground electrical cables and control systems cables to and from the existing National Grid substation; and
- (h) **Work No. 3B** – works within the existing National Grid substation, including underground and over ground cables, connections to busbars and new, upgraded or replacement equipment.

Work No. 4 – cooling water connection works, comprising works to the existing cooling water supply and discharge pipelines and intake and outfall structures, including, as necessary, new, upgraded or replacement pipelines, plant, buildings, enclosures and structures, and underground electrical supply cables, transformers and control systems cables.

Work No. 5 – groundwater and towns water supply connection works, including works to the existing towns water pipelines and groundwater boreholes and pipelines, replacement and new pipelines, plant, buildings, enclosures and structures and underground electrical supply cables, transformers and control systems cables.

Work No. 6 – gas supply pipeline connection works for the transport of natural gas to Work No. 1, comprising an underground high pressure steel pipeline of up to 1,000 millimetres (nominal

bore) in diameter and approximately 4.6 kilometres in length, including cathodic protection posts, marker posts and underground electrical supply cables, transformers and control systems cables running from within the Eggborough Power Station site, north under the River Aire to a connection point with the National Transmission System for gas No. 29 Feeder pipeline west of Burn Village.

Work No. 7 – an above ground installation west of Burn Village, connecting the gas supply pipeline (Work No. 6) to the National Transmission System No. 29 Feeder pipeline, comprising—

- (i) **Work No. 7A** – a compound for National Grid’s apparatus, comprising—
 - (i) an offtake connection from the National Transmission System;
 - (ii) above and below ground valves, flanges and pipework;
 - (iii) an above or below ground remotely operated valve;
 - (iv) an above or below ground remotely operated valve bypass;
 - (v) an above or below ground pressurisation bridge;
 - (vi) instrumentation and electrical kiosks; and
 - (vii) telemetry equipment kiosks and communications equipment,
- (j) **Work No. 7B** – a compound for the undertaker’s apparatus, comprising—
 - (i) above and below ground valves, flanges and pipework;
 - (ii) an above or below ground isolation valve;
 - (iii) an above or below ground pipeline inline gauge launching facility;
 - (iv) instrumentation and electrical kiosks; and
 - (v) telemetry equipment kiosks and communications equipment,
- (k) in connection with Work Nos. 7A and 7B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, closed circuit television cameras and columns and perimeter landscaping.

Work No. 8 – retained landscaping comprising—

- (l) soft landscaping including planting;
- (m) biodiversity enhancement measures; and
- (n) security fencing, gates, boundary treatment and other means of enclosure.

Work No. 9 – surface water drainage connection to Hensall Dyke, comprising works to install, repair or replace drainage pipes and works to Hensall Dyke.

Work No. 10 – vehicular, pedestrian and cycle access works and rail infrastructure including alterations to or replacement of the existing private rail line, installation of new rail lines and crossover points and ancillary equipment.

In connection with and in addition to Works Nos. 1 to 7 and Work Nos. 9 and 10, further associated development including—

- (o) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (p) electrical, gas, potable water supply, foul water drainage and telecommunications infrastructure connections and works, and works to alter the position of such services and utilities connections;
- (q) hard standing and hard landscaping;
- (r) soft landscaping, including embankments and planting;
- (s) biodiversity enhancement measures;
- (t) security fencing, gates, boundary treatment and other means of enclosure;
- (u) external lighting, including lighting columns;

- (v) gatehouses and weighbridges;
- (w) closed circuit television cameras and columns and other security measures;
- (x) site establishment and preparation works, including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the creation of temporary construction access points; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (y) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;
- (z) vehicle parking and cycle storage facilities;
- (aa) accesses, roads and pedestrian and cycle routes;
- (bb) tunnelling, boring and drilling works;
- (cc) and, to the extent that it does not form part of such works, further associated development comprising such other works (i) as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) which fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

Interpretation

1. In this schedule—

“carbon capture readiness reserve space” means the area comprised in Work No. 2B shown on the works plans;

“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, and “commission” and other cognate expressions, in relation to the authorised development, are to be construed accordingly;

“Environment Agency” means the non-departmental public body of that name created by section 1 of the Environment Act 1995(a);

“existing coal-fired power station” means the Eggborough coal-fired power station which, at the date of this Order, is located both within the Order limits and within the immediate vicinity of the Order limits;

“Highways England” means Highways England Company Limited or such other person who is appointed as the strategic highways company in respect of the M62 motorway pursuant to section 1 of the Infrastructure Act 2015(b);

“lead local flood authority” means the body designated as such, for the area in which the authorised development is located, pursuant to sub-section 6(7) of the Flood and Water Management Act 2010(c);

“Marine Management Organisation” means the body of that name created by section 1 of the 2009 Act;

“North Yorkshire Police” means the police force for the area in which the authorised development is located pursuant to section 1 of the Police Act 1996(d);

“North Yorkshire County Council” means the county council for the area in which the authorised development is located pursuant to section 1 of the Local Government Act 1972(e);

“a part” of the authorised development means any part of Works Nos. 1-10;

“permitted preliminary works” means works within the areas of Work Nos. 1, 2, 3, 4, 5, 6, 8, 9 and 10 to the extent that those are within the area of the existing coal-fired power station, consisting of environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors (excluding earthworks and excavations), the provision of temporary means of enclosure and site security for construction, the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;

“shut-down period” means a period after construction works have finished during which activities including changing out of work wear, the departure of workers, post-works briefings and closing and securing the site take place;

(a) 1995 c.25
(b) 2015 c.7
(c) 2010 c.29
(d) 1996 c.16
(e) 1972 c.70

“Sport England” means the non-departmental public body of that name of 21 Bloomsbury Street, London, WC1B 3HF;

“start-up period” means a period prior to construction works commencing during which activities including the opening up of the site, the arrival of workers, changing in to work wear and pre-works briefings take place; and

“Yorkshire Wildlife Trust” means Yorkshire Wildlife Trust (company registration number 409650 and registered charity number 210807) of 1 St. George’s Place, York, YO24 1GN.

Commencement of the authorised development

2.—(1) The authorised development must not be commenced after the expiration of 5 (five) years from the date this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority fourteen days’ notice of its intention to commence the authorised development.

Notice of commencement and completion of commissioning

3.—(1) Notice of the intended start of commissioning of the authorised development must be given to the relevant planning authority prior to such start and in any event within seven days from the date that commissioning is started.

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

Notice of commencement of commercial use and requirement for cessation of existing coal-fired power station electricity generation

4.—(1) Notice of the intended start of commercial use of the authorised development must be given to the relevant planning authority prior to such start and in any event within seven days from the date that commercial use is started.

(2) The authorised development must not enter commercial use if the existing coal-fired power station has not ceased to generate electricity.

Detailed design

5.—(1) In relation to any part of the authorised development comprised in Work No. 1 no development of that part must commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraph (d) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes; and
- (e) surface water management.

(2) Prior to commencing any part of Work No. 1 the undertaker must notify the relevant planning authority as to whether it is to construct that part in accordance with the design parameters in Part 1 of Schedule 14 (single-shaft parameters) or Part 2 of Schedule 14 (multi-shaft parameters), and the design parameters notified pursuant to this paragraph are the “relevant parameters” for the purposes of this requirement.

(3) Work No. 1 must be carried out in accordance with the relevant parameters.

(4) No part of the authorised development comprised in Work No. 2 must commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraphs (a), (d) and (e) after consultation with the highway authority, approved by the relevant planning authority—

- (a) hard standings, laydown and open storage areas;
- (b) contractor compounds and construction staff welfare facilities;
- (c) gatehouse;
- (d) vehicle parking and cycle storage facilities;
- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes;
- (f) surface water drainage; and
- (g) the area to be reserved as the carbon capture readiness reserve space.

(5) No part of the authorised development comprised in Work No. 3, save for the permitted preliminary works, must commence until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of installation of the 400 kilovolt underground electrical cables to the existing National Grid substation; and
- (b) the connections within the existing National Grid substation, including the underground and overground electrical cables, connections to the existing busbars and new, upgraded or replacement equipment.

(6) No part of the authorised development comprised in Work No. 4 must commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the Environment Agency, the Marine Management Organisation and the Canal and River Trust, approved by the relevant planning authority—

- (a) the route and method of construction of any upgraded or replacement cooling water supply and discharge pipelines;
- (b) the method of construction, siting, layout, scale and external appearance of any upgraded or replacement intake and outfall structures within the River Aire, including the screens to be installed to those structures in accordance with the Eel (England and Wales) Regulations 2009^(a) and any ancillary plant, buildings, enclosures or structures; and
- (c) the method and timing of installation and removal of the cofferdams at the intake and outfall points, their phasing, and the extent to which each extends into the River Aire.

(7) No part of the authorised development comprised in Work No. 5 must commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the highway authority and Sport England, approved by the relevant planning authority—

- (a) the route and method of construction of any upgraded or replacement ground and towns water supply pipelines;
- (b) the method of construction, siting, layout, scale and external appearance of any upgraded or replacement ancillary plant, buildings, enclosures or structures;
- (c) measures to minimise disruption to users of the Eggborough Sports and Social Club recreational and sports facilities; and
- (d) the reinstatement of the land to allow for continued recreational and sports use.

(8) No part of the authorised development comprised in Work No. 6 must commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the highway authority and the Environment Agency, approved by the relevant planning authority—

(a) S.I 2009/3344.

- (a) temporary construction laydown and open storage areas, including contractor compounds;
- (b) temporary construction accesses;
- (c) vehicle parking facilities;
- (d) the route and method of installation of the high pressure steel pipeline and any electrical supply, telemetry and other apparatus, including under and within the footprint of any flood defences;
- (e) the approximate number and location of cathodic protection posts and marker posts; and
- (f) surface water drainage.

(9) No part of the authorised development comprised in Work No. 7 must commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraph (d) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the method of connecting the gas supply pipeline to the National Transmission System No. 29 Feeder pipeline;
- (b) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;
- (c) hard standings;
- (d) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities; and
- (e) surface water drainage.

(10) No part of the authorised development comprised in Work No. 9 must commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the relevant internal drainage board, been approved by the relevant planning authority—

- (a) the alterations, repairs to or replacement of surface water drainage pipes to Hensall Dyke; and
- (b) any works to Hensall Dyke.

(11) No part of the authorised development comprised in Work No. 10 must commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and after consultation with the highway authority approved by the relevant planning authority—

- (a) works to vehicular, cycle and pedestrian access; and
- (b) the alterations to or replacement of the existing private rail lines, new rail lines, crossover points and ancillary equipment.

(12) Work Nos. 1, 2, 3, 4, 5, 6, 7, 9 and 10 must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

Landscaping and biodiversity protection management and enhancement

6.—(1) No part of the authorised development must commence until a landscaping and biodiversity protection plan for that part has been submitted to and, after consultation with North Yorkshire County Council and the Yorkshire Wildlife Trust, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of—

- (a) measures to protect existing shrub and tree planting that is to be retained; and
- (b) biodiversity and habitat mitigation and impact avoidance.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) No part of the authorised development must be commissioned until a landscaping and biodiversity management and enhancement plan for that part has been submitted to and, after

consultation with North Yorkshire County Council and the Yorkshire Wildlife Trust, approved by the relevant planning authority.

- (5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—
- (a) implementation and management of all new shrub and tree planting;
 - (b) measures to enhance and maintain existing shrub and tree planting that is to be retained;
 - (c) measures to enhance biodiversity and habitats;
 - (d) an implementation timetable; and
 - (e) annual landscaping and biodiversity management and maintenance.

(6) Any shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.

(7) The plan submitted and approved pursuant to sub-paragraph (4) must be in accordance with the principles of the indicative landscaping and biodiversity strategy.

(8) The plan must be implemented and maintained as approved during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Public rights of way diversions

7.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the access and rights of way plans for that part has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

- (2) The plan must include details of—
- (a) measures to minimise the length of any sections of public rights of way to be temporarily closed; and
 - (b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the highway authority.

External lighting

8.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of requirement 29) has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development must be commissioned until a scheme for all permanent external lighting to be installed (with the exception of the aviation warning lighting required by virtue of requirement 29) has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this requirement must be in accordance with the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the construction and operation of the authorised development.

(4) The schemes must be implemented as approved unless otherwise agreed with the relevant planning authority.

Highway accesses

9.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent or temporary means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of reinstating any such means of access after construction has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details prior to the start of construction of the relevant part of the authorised development (other than the accesses), and where temporary, reinstated prior to the authorised development being brought into commercial use, unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may be brought into commercial use until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent means of access to a highway to be used by vehicular traffic, has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(4) The highway accesses approved pursuant to sub-paragraph (3) must be constructed in accordance with the details approved unless otherwise agreed with the relevant planning authority.

Means of enclosure

10.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development have, for that part, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development in accordance with the details approved pursuant to sub-paragraph (1).

(3) No part of the authorised development must be brought into commercial use until details of any proposed permanent means of enclosure, have, for that part, been submitted to and approved by the relevant planning authority.

(4) No part of the authorised development may be brought into commercial use until any approved permanent means of enclosure has been completed.

(5) The authorised development must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(6) In this requirement, “means of enclosure” means fencing, walls or other means of boundary treatment and enclosure.

Site security - above ground installation (Work No. 7)

11.—(1) No part of the authorised development comprised in Work No. 7 must be brought into use until a written scheme detailing security measures to minimise the risk of crime has, for that part, been submitted to and, after consultation with North Yorkshire Police, approved by the relevant planning authority.

(2) The approved scheme must be maintained and operated throughout the operation of Work No. 7.

Fire prevention

12.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until a fire prevention method statement providing details of fire detection measures, fire suppression measures and the location of accesses to all fire appliances in all of the

major building structures and storage areas within the authorised development, including measures to contain and treat water used to suppress any fire has, for that part, been submitted to and approved by the relevant planning authority.

(2) The authorised development must be implemented in accordance with the approved details and all relevant fire suppression measures and fire appliances must be maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the authorised development.

Surface and foul water drainage

13.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until details of the temporary surface and foul water drainage systems, including means of pollution control in accordance with the construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and after consultation with the Environment Agency, lead local flood authority and relevant internal drainage board, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface and foul water drainage systems, including a programme for their implementation, must be submitted to, and after consultation with the Environment Agency and relevant internal drainage board, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in chapter 11 and appendix 11A of the environmental statement.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Flood risk mitigation

14.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction, has, for that part, been submitted to, and after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development must be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(4) The schemes submitted and approved pursuant to paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in chapter 11 and appendix 11A of the environmental statement.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(6) The authorised development must not be commissioned until the flood risk mitigation has been implemented and a flood emergency response and contingency plan has been submitted to, and after consultation with the Environment Agency, approved by the relevant planning authority.

(7) The plan approved pursuant to sub-paragraph (6) must be implemented throughout the commissioning and operation of the authorised development unless otherwise agreed with the relevant planning authority.

Contaminated land and groundwater

15.—(1) No part of the authorised development must commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the principles set out in chapter 12 of the environmental statement and the environmental statement commitments register and must be included in the construction environmental management plan submitted pursuant to requirement 18.

(3) The scheme must include a risk assessment, supported by site investigation data, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a materials management plan, which sets out long-term measures with respect to any contaminants remaining on the site.

(4) The authorised development, including any remediation, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

Archaeology

16.—(1) No part of the authorised development must commence until a written scheme of investigation for that part has been submitted to and, after consultation with North Yorkshire County Council in its capacity as the relevant archaeological body, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with chapter 13 of the environmental statement.

(3) The scheme must identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) The scheme must provide details of the measures to be taken to protect record or preserve any significant archaeological features that may be found.

(5) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation approved by the relevant planning authority in consultation with North Yorkshire County Council unless otherwise agreed with the relevant planning authority.

Protected species

17.—(1) No part of the authorised development must commence until further survey work for that part has been carried out to establish whether any protected species are present on any of the land affected, or likely to be affected, by that part of the authorised development.

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

(3) The authorised development must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

Construction environmental management plan

18.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until a construction environmental management plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with appendix 5A of the environmental statement and the indicative landscaping and biodiversity strategy and incorporate—

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;
- (b) a scheme for the control of any emissions to air;
- (c) a soil management plan;
- (d) a sediment control plan;
- (e) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions; and
- (f) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating to such impacts during the construction of the authorised development.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

Protection of highway surfaces

19.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant highways which are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

Construction traffic management plan

20.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until a construction traffic management plan has been submitted to and, after consultation with Highways England and the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with chapter 14 of the environmental statement and the framework construction traffic management plan contained in appendix 14A to the environmental statement.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;

- (c) the construction programme;
- (d) details of the likely programme for the demolition of the existing coal-fired power station and, in the event that peak traffic numbers from each of that project and the construction of the authorised development are likely to coincide and give rise to potentially significant effects, details of measures within the undertaker's direct control, to ensure that significant effects arising from the combined traffic on local roads are where possible avoided, reduced or mitigated; and
- (e) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Construction workers travel plan

21.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until a construction workers travel plan has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with chapter 14 of the environmental statement and the framework construction workers travel plan contained in appendix 14A of the environmental statement.

(3) The plan submitted and approved must include—

- (a) measures to promote the use of sustainable transport modes to and from the authorised development by construction staff;
- (b) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (c) details of parking for construction personnel within the construction sites; and
- (d) a monitoring and review regime.

(4) The approved plan must be implemented within three months of commencement of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

Construction hours

22.—(1) Construction work relating to the authorised development must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0700 to 1300 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0800 to 1800 hours on Monday to Friday; and
- (b) 0800 to 1300 hours on a Saturday.

(3) The restrictions in sub-paragraphs (1) and (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) do not exceed a noise limit measured at the Order limits and which must be first agreed with the relevant planning authority in accordance with requirement 23;
- (b) are carried out with the prior approval of the relevant planning authority; or
- (c) are associated with an emergency.

(4) The restrictions in sub-paragraph (2) do not apply to the delivery of abnormal indivisible loads, where this is—

- (a) associated with an emergency; or
- (b) carried out with the prior approval of the relevant planning authority.

(5) Sub-paragraph (1) does not preclude—

- (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0630 to 0700 and a shut-down period from 1300 to 1330 on a Saturday; or
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(6) In this requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

Control of noise and vibration - construction

23.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until a scheme for the monitoring and control of noise and vibration during the construction of that part of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must specify—

- (a) each location from which noise is to be monitored;
- (b) the method of noise measurement;
- (c) the maximum permitted levels of noise at each monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the relevant planning authority for specific construction activities;
- (d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and
- (e) the noise control measures to be employed.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

Control of noise - operation

24.—(1) No part of the authorised development must be brought into commercial use until a scheme for management and monitoring of noise during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) Noise (in terms of the BS4142:2014 rating level) from the operation of the authorised development must be no greater than equal to the defined representative background sound level during the daytime and no greater than +5dB different to the defined representative background sound level during the night time adjacent to the nearest residential properties at such locations as agreed with the relevant planning authority.

(3) The scheme submitted pursuant to sub-paragraph (1) must include a report setting out the extent to which the undertaker is able to achieve lower night time noise levels than those set out in sub-paragraph (2) and an explanation as to the levels that can be achieved.

(4) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

(5) In this requirement “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700.

Piling and penetrative foundation design

25.—(1) No part of the authorised development comprised within Work No. 1 must commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment, for that part, has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

Waste management on site - construction wastes

26.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until a construction site waste management plan for that part has been submitted to and, after consultation with North Yorkshire County Council in its capacity as the relevant waste planning authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 17 and appendix 5A of the environmental statement.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Restoration of land used temporarily for construction

27.—(1) The authorised development must not be brought into commercial use until a scheme for the restoration of any land within the Order limits which has been used temporarily for construction has been submitted to and approved by the relevant planning authority.

(2) The land must be restored within three years of the authorised development being brought into commercial use (or such other period as the relevant planning authority may approve), in accordance with—

- (a) the restoration scheme approved in accordance with sub-paragraph (1); and
- (b) the landscaping and biodiversity management and enhancement plan approved in accordance with requirement 6(4).

Combined heat and power

28.—(1) The authorised development must not be brought into commercial use until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems, should they be identified and commercially viable.

(2) The undertaker must maintain such space and routes during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after the authorised development is first brought into commercial use, the undertaker must submit to the planning authority for its approval a report ('the CHP review') updating the CHP assessment.

(4) The CHP review submitted and approved must—

- (a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission; and
- (b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review unless otherwise agreed with the relevant planning authority.

(6) On each date during the operation of the authorised development that is four years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (3).

Aviation warning lighting

29.—(1) No part of the authorised development comprised within Work No. 1 must commence, save for the permitted preliminary works, until details of the aviation warning lighting to be installed for that part during construction and operation have been submitted to, and after consultation with the Civil Aviation Authority, approved by the relevant planning authority.

(2) The aviation warning lighting approved pursuant to paragraph (1) must be installed and operated in accordance with the approved details.

Air safety

30. No part of the authorised development must commence, save for the permitted preliminary works, until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

Carbon capture readiness reserve space

31.—(1) Until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State—

- (a) dispose of any interest in the carbon capture readiness reserve space; or
- (b) do anything, or allow anything to be done or to occur,

which may reasonably be expected to diminish the undertaker's ability, within two years of such action or occurrence, to prepare the carbon capture readiness reserve space for the installation and operation of carbon capture equipment, should it be deemed necessary to do so.

Carbon capture readiness monitoring report

32.—(1) The undertaker must make a report ('carbon capture readiness monitoring report') to the Secretary of State—

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

(2) Each carbon capture readiness monitoring report must provide evidence that the undertaker has complied with requirement 31—

- (a) in the case of the first carbon capture readiness monitoring report, since this Order was made; and
- (b) in the case of any subsequent report, since the making of the previous carbon capture readiness monitoring report, and explain how the undertaker expects to continue to comply with requirement 31 over the next two years.

(3) Each carbon capture readiness monitoring report must state whether the undertaker considers the retrofit of carbon capture technology is feasible explaining the reasons for any such conclusion and whether any impediments could be overcome.

(4) Each carbon capture readiness 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 any carbon capture readiness proposals.

Local liaison committee

33.—(1) The authorised development must not commence, save for the permitted preliminary works, 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’).

(2) The undertaker must invite the relevant planning authority and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison committee.

(3) The undertaker must provide a full secretariat service and supply an appropriate venue for the local liaison committee meetings to take place.

(4) The local liaison committee must—

- (a) include representatives of the undertaker;
- (b) 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 by the majority of the members of the local liaison committee; and
- (c) during the operation of the authorised development meet once a year unless otherwise agreed by the majority of the members of the local liaison committee.

Employment, skills and training plan

34.—(1) No part of the authorised development must commence, save for the permitted preliminary works, until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction and employment opportunities during operation of the authorised development has been submitted to, and after consultation with North Yorkshire County Council, approved by the relevant planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of the authorised development unless otherwise agreed by the relevant planning authority.

Ambient air monitoring

35.—(1) The authorised development must not be commissioned until a written scheme of air quality monitoring has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must provide for the monitoring of nitrogen oxides and must specify—

- (a) each location within the vicinity of Hensall at which air pollution is to be measured;
- (b) the equipment and method of measurement to be used; and
- (c) the frequency of measurement.

(3) The first measurement made in accordance with the scheme must be made not less than 12 months before the authorised development is brought into commercial use.

(4) Unless the relevant planning authority gives the undertaker notice under sub-paragraph (6), the final measurement made in accordance with the scheme must be made at least 24 months after the first commercial use of the authorised development.

(5) The scheme must be implemented as approved.

(6) The relevant planning authority may, if it considers appropriate, give notice to the undertaker that the scheme is to be extended for the period specified in the notice, which may not be more

than 24 months from the date of the final measurement in accordance with the scheme as originally approved.

(7) The relevant planning authority may not serve notice pursuant to sub-paragraph (6) after the date which is 18 months after the date that the authorised development is brought into commercial use.

(8) For each year during which measurements are made pursuant to this requirement, the undertaker must, within three months after the final measurement made in that year, provide the relevant planning authority with a report of measurements made in accordance with the scheme in that year.

Decommissioning

36.—(1) Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan.

(3) The plan submitted and approved must be in accordance with the principles set out in the environmental statement and must include measures to address any significant noise and vibration effects.

(4) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the scheme.

(5) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Requirement for written approval

37. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

Approved details and amendments to them

38.—(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 38.

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

Amendments agreed by the relevant planning authority

39.—(1) Where the words ‘unless otherwise agreed by the relevant planning authority’ appear in the above requirements, any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of that authority that

the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the requirement or the relevant sub-paragraph requires consultation with specified persons, any such approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

Ground subsidence

40.—(1) No part of the authorised development comprised in Work No. 6 must commence, save for the permitted preliminary works, until a scheme for monitoring ground subsidence in and around the flood defences for the River Aire has been submitted to, and following consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme must set out—

- (a) the details of the work which is to be subject to monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the duration of monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, will require the undertaker to submit a ground subsidence mitigation scheme for the Environment Agency's approval in accordance with sub-paragraph (3).

(3) If the monitoring identifies that ground subsidence has exceeded the level described in sub-paragraph (2)(e), a scheme setting out mitigation measures in relation to the ground subsidence must be submitted as soon as is reasonably practicable to and, following consultation with the Environment Agency, approved by the relevant planning authority.

(4) The mitigation scheme approved pursuant to sub-paragraph (3) must be implemented as approved unless otherwise agreed in writing with the relevant planning authority.

SCHEDULE 3

Article 8

STREETS SUBJECT TO STREET WORKS

Table 1

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Streets subject to street works</i> | <i>(3)</i> <i>Description of the street works</i> |
|---------------------------|--|--|
| In the District of Selby | A19 / Fox Lane | Widening and improvement works to the junction at A19 / Fox Lane between the points marked W and X on sheet 3 of the access and rights of way plans |
| In the District of Selby | A19 / North of Burn Lodge Farm | Works for the installation and maintenance of Work No. 6 between the points marked AL and AM on sheet 4 of the access and rights of way plans |
| In the District of Selby | A19 / South of Burn Lodge Farm | Works for the provision of a new temporary construction access between the points marked AD and AE on sheet 4 of the access and rights of way plans |
| In the District of Selby | A19 / Tranmore Lane | Works for the installation and maintenance of Work No. 5 between the points marked A and B on sheet 1 of the access and rights of way plans |
| In the District of Selby | A19 / unnamed private road | Works to resurface the access in the area cross hatched in blue at the point marked C on sheet 1 of the access and rights of way plans |
| In the District of Selby | Hazel Old Lane | Works to repair, replace or maintain the existing culvert as part of Work No. 9 between the points marked F and G on sheet 1 of the access and rights of way plans |
| In the District of Selby | Millfield Road | Works for the installation and maintenance of Work No. 6 between the points marked U and V on sheet 3 of the access and rights of way plans |
| In the District of Selby | Millfield Road | Works for the provision of a new permanent access on the |

| | | |
|--------------------------|----------------|---|
| | | south side of Millfield Road between the points marked U and V on sheet 3 of the access and rights of way plans |
| In the District of Selby | Millfield Road | Works for the provision of a new permanent access on the north side of Millfield Road between the points marked U and V on sheet 3 of the access and rights of way plans |
| In the District of Selby | Fox Lane | Works to temporarily widen and improve the existing street between the points marked W and Z and create a new temporary access at the point marked Y on sheet 3 of the access and rights of way plans |
| In the District of Selby | Wand Lane | Works for the installation and maintenance of Work No. 4 between the points marked I and J on sheet 2 of the access and rights of way plans |
| In the District of Selby | Wand Lane | Works for the installation and maintenance of Work No. 5 between the points marked I and J on sheet 2 of the access and rights of way plans |
| In the District of Selby | Wand Lane | Works for the installation and maintenance of Work No. 6 between the points marked I and J on sheet 2 of the access and rights of way plans |
| In the District of Selby | Wand Lane | Works for the provision of a new temporary construction access between the points marked I and J on sheet 2 of the access and rights of way plans |
| In the District of Selby | Wand Lane | Works for the improvement of the access at the point marked AJ on sheet 2 of the access and rights of way plans |
| In the District of Selby | West Lane | Works for the provision of a new permanent access between the points marked AI and AH on sheet 4 of the access and rights of way plans |
| In the District of Selby | West Lane | Works for the provision of a |

| | | |
|--------------------------|---------------|--|
| | | new temporary construction access between the points marked AI and AG on sheet 4 of the access and rights of way plans |
| In the District of Selby | West Lane | Works for the installation and maintenance of Work No. 6 between the points marked AH and AG on sheet 4 of the access and rights of way plans |
| In the District of Selby | West Lane | Works for the provision of a new permanent access on the east side of West Lane between the points marked AG and AH on sheet 4 of the access and rights of way plans |
| In the District of Selby | Whitings Lane | Works to resurface the access in the area cross hatched in red at the point marked AC on sheet 4 of the access and rights of way plans |

SCHEDULE 4

Articles 9 and 12

STREETS SUBJECT TO PERMANENT AND TEMPORARY
ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

Table 2

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Streets subject to alteration of layout</i> | <i>(3)</i> <i>Description of alteration</i> |
|---------------------------|--|--|
| In the District of Selby | Millfield Road | Works for the provision of a new permanent access on the south side of Millfield Road between the points marked U and V on sheet 3 of the access and rights of way plans |
| In the District of Selby | Millfield Road | Works for the provision of a new permanent access on the north side of Millfield Road between the points marked U and V on sheet 3 of the access and rights of way plans |
| In the District of Selby | Wand Lane | Works for the improvement of the access at the point marked AJ on sheet 2 of the access and rights of way plans |
| In the District of Selby | West Lane | Works for the provision of a new permanent access between the points marked AI and AH on sheet 4 of the access and rights of way plans |
| In the District of Selby | West Lane | Works for the provision of a new permanent access on the east side of West Lane between the points marked AG and AH on sheet 4 of the access and rights of way plans |

PART 2

TEMPORARY ALTERATION OF LAYOUT

Table 3

| <i>(1)</i> | <i>(2)</i> | <i>(3)</i> |
|------------|------------|------------|
|------------|------------|------------|

| <i>Area</i> | <i>Streets subject to alteration of layout</i> | <i>Description of alteration</i> |
|--------------------------|--|--|
| In the District of Selby | A19 / South of Burn Lodge Farm | Works for the provision of a new construction access between the points marked AD and AE on sheet 4 of the access and rights of way plans |
| In the District of Selby | A19 / Fox Lane | Widening and improvement works to the junction at A19 / Fox Lane between the points marked W and X on sheet 3 of the access and rights of way plans |
| In the District of Selby | Fox Lane | Works to temporarily widen and improve the existing street between the points marked W and Z and to create a new temporary access at the point marked Y on sheet 3 of the access and rights of way plans |
| In the District of Selby | Wand Lane | Works for the provision of a new construction access between the points marked I and J on sheet 2 of the access and rights of way plans |
| In the District of Selby | West Lane | Works for the provision of a new temporary construction access between the points marked AI and AG on sheet 4 of the access and rights of way plans |

SCHEDULE 5

Article 10

ACCESS

PART 1

THOSE PARTS OF THE ACCESS TO BE MAINTAINED AT THE PUBLIC EXPENSE

Table 4

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street</i> | <i>(3)</i> <i>Description of relevant part of access</i> |
|---------------------------|-----------------------------|--|
| In the District of Selby | A19 / unnamed private road | That part of the access in the area cross hatched in blue at the point marked C on sheet 1 of the access and rights of way plans |
| In the District of Selby | Wand Lane | Works for the improvement of the access in the area cross hatched in blue at the point marked AJ on sheet 2 of the access and rights of way plans |
| In the District of Selby | Millfield Road | That part of the access cross hatched in blue in-between the points marked U and V on sheet 3 of the access and rights of way plans |
| In the District of Selby | West Lane | That part of the access shown cross hatched in blue marked between points AI and AH on sheet 4 of the access and rights of way plans |
| In the District of Selby | West Lane | That part of the access cross hatched in blue on the east side of West Lane between the points marked AG and AH on sheet 4 of the access and rights of way plans |

PART 2
THOSE PARTS OF THE ACCESS TO BE MAINTAINED BY THE STREET
AUTHORITY

Table 5

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street</i> | <i>(3)</i> <i>Description of relevant part of access</i> |
|---------------------------|---------------------------------------|--|
| In the District of Selby | Hazel Old Lane / unnamed private road | That part of the access in-between the points marked D and E on sheet 1 of the access and rights of way plans |
| In the District of Selby | Millfield Road | That part of the access cross hatched in red on the south side of Millfield Road in-between the points marked U and V on sheet 3 of the access and rights of way plans |
| In the District of Selby | Millfield Road | That part of the access cross hatched in red on the north side of Millfield Road in-between the points marked U and V on sheet 3 of the access and rights of way plans |
| In the District of Selby | Wand Lane | That part of the access shown cross hatched in red at the point marked H on sheet 2 of the access and rights of way plans |
| In the District of Selby | Wand Land | That part of the access shown cross hatched in red at the point marked AJ on sheet 2 of the access and rights of way plans |
| In the District of Selby | Unnamed private road (off A19) | That part of the access shown cross hatched in red between the points marked T and S on sheet 3 of the access and rights of way plans |
| In the District of Selby | West Lane | That part of the access shown cross hatched in red marked between points AI and AH on sheet 4 of the access and rights of way plans |
| In the District of Selby | West Lane | That part of the access cross hatched in red on the east side |

of West Lane between the points marked AG and AH on sheet 4 of the access and rights of way plans

In the District of Selby

Whittings Lane

That part of the access in the area cross hatched in red at the point marked AC on sheet 4 of the access and rights of way plans

PART 3

THOSE WORKS TO RESTORE THE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

Table 6

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street</i> | <i>(3)</i> <i>Description of relevant part of access</i> |
|---------------------------|--------------------------------|--|
| In the District of Selby | Wand Lane | That part of the access in-between the points marked I and J on sheet 2 of the access and rights of way plans |
| In the District of Selby | A19 / South of Burn Lodge Farm | That part of the access cross hatched in blue between points AD and AE on sheet 4 of the access and rights of way plans |
| In the District of Selby | Fox Lane | That part of the access cross hatched in red between the points marked Y and AA on sheet 3 of the access and rights of way plans |
| In the District of Selby | Unnamed private road (off A19) | That part cross hatched red in-between point AF and the start of the blue cross hatching at the points marked AD and AE on sheet 4 of the access and rights of way plans |
| In the District of Selby | West Lane | That part of the access cross hatched in red between the points marked AI and AG on sheet 4 of the access and rights of way plans |

SCHEDULE 6

Article 11

STREETS TO BE TEMPORARILY STOPPED UP

Table 7

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Street</i> | <i>(3)</i> <i>Description of extent of temporary stopping up</i> |
|---------------------------|--------------------------------|---|
| In the District of Selby | A19 / Fox Lane | Temporary closure of the part of the streets shown points W and X, and W and Z on sheet 3 of the access and rights of way plans |
| In the District of Selby | A19 / South of Burn Lodge Farm | Temporary closure of the part of the street between the points AD and AE on sheet 4 of the access and rights of way plans |
| In the District of Selby | A19 / Tranmore Lane | Temporary closure of the part of the street shown between points marked A and B on sheet 1 of the access and rights of way plans |
| In the District of Selby | A19 / unnamed private road | Temporary closure of the part of the street in the area cross hatched in blue on sheet 1 of the access and rights of way plans |
| In the District of Selby | Hazel Old Lane | Temporary closure of the part of the street shown between point F and G on sheet 1 of the access and rights of way plans |
| In the District of Selby | Millfield Road | Temporary closure of the part of the street for the installation and maintenance of Work No. 6 between the points marked U and V on sheet 3 of the access and rights of way plans |
| In the District of Selby | Millfield Road | Temporary closure of the part of the street for the provision of a permanent access on the south side of Millfield Road between points U and V on sheet 3 of the access and rights of way plans |
| In the District of Selby | Millfield Road | Temporary closure of the part of the street for the provision of a permanent access on the |

| | | |
|--------------------------|---------------|--|
| | | north side of Millfield Road between points U and V on sheet 3 of the access and rights of way plans |
| In the District of Selby | Wand Lane | Temporary closure of the part of the street for the installation and maintenance of Work No. 4 between the points marked I and J on sheet 2 of the access and rights of way plans |
| In the District of Selby | Wand Lane | Temporary closure of the part of the street for the installation and maintenance of Work No. 5 between the points marked I and J on sheet 2 of the access and rights of way plans |
| In the District of Selby | Wand Lane | Temporary closure of the part of the street for the installation and maintenance of Work No. 6 between the points marked I and J on sheet 2 of the access and rights of way plans |
| In the District of Selby | West Lane | Temporary closure of part of the street between points AI and AG on sheet 4 of the access and right of way plans for the provision of a temporary construction access |
| In the District of Selby | West Lane | Temporary closure of part of the street between points AI and AG on sheet 4 of the access and right of way plans to facilitate the provision of new permanent accesses |
| In the District of Selby | West Lane | Temporary closure of the part of the street between points AH and AG on sheet 4 of the access and right of way plans for the installation and maintenance of Work No. 6 |
| In the District of Selby | Whitings Lane | Temporary closure of the part of the street cross hatched in red at the point marked AC on sheet 4 of the access and rights of way plans |

SCHEDULE 7

Article 11

PUBLIC RIGHTS OF WAY AND PUBLIC RIGHTS OF NAVIGATION TO BE STOPPED UP OR SUSPENDED

PART 1

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

Table 8

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Public right of way to be temporarily stopped up</i> | <i>(3)</i> <i>Extent of stopping up</i> |
|---------------------------|---|--|
| In the District of Selby | Public footpath 35.27/1/1 | Between the points marked K and L on sheet 2 of the access and rights of way plans |
| In the District of Selby | Public footpath 35.21/5/1 | Between the points marked Q and R on sheet 3 of the access and rights of way plans |
| In the District of Selby | Public bridleway 35.14/4/1 | Between the points marked AB and AC on sheet 4 of the access and rights of way plans |

PART 2

PUBLIC RIGHTS OF NAVIGATION TO BE TEMPORARILY SUSPENDED

Table 9

| <i>(1)</i> <i>Area</i> | <i>(2)</i> <i>Location of public right of navigation to be temporarily suspended</i> | <i>(3)</i> <i>Work No.</i> | <i>(4)</i> <i>Extent of suspension</i> |
|---------------------------|---|-------------------------------|--|
| In the District of Selby | River Aire | Work No. 4 | Between the points marked M and N and in the area shaded blue on sheet 2 of the access and rights of way plans |
| In the District of Selby | River Aire | Work No. 4 | Between the points marked O and P and in the area shaded blue on sheet 3 of the access and rights of way plans |

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this schedule—

“Work No. 4 infrastructure” means any works or development comprised within Work No. 4 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 4 on the works plans;

“Work No. 5 infrastructure” means any works or development comprised within Work No. 5 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans;

“Work No. 6 infrastructure” means any works or development comprised within Work No. 6 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans;

“Work No. 9 infrastructure” means any works or development comprised within Work No. 9 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 9 on the works plans;

Table 10

| <i>(1)</i> <i>Number of plot shown on the land plans</i> | <i>(2)</i> <i>Rights etc. which may be acquired</i> |
|---|--|
| 10 | For and in connection with the Work No. 5 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5 infrastructure, together with the right to install, retain, use and maintain the Work No. 5 infrastructure, and a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land. |
| 30 | For and in connection with the Work No. 9 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, together with the right to install, retain, use and maintain the Work No. 9 infrastructure, a right of support for it, and the |

right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

90, 125, 135, 165, 170, 175, 190, 195, 215, 250 Work No. 6

For and in connection with the Work No. 6 infrastructure within a corridor of up to 14m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, together with the right to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

90, 125, 135, 165, 170, 175, 190, 195, 215, 250 Work No. 4

For and in connection with the Work No. 4 infrastructure within a corridor of up to 14m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4

infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

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For and in connection with the Work No. 4 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, boats, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water and a right to abstract water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing.

240, 245

For and in connection with the Work No. 4 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, boats, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water and a right to discharge water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing.

255, 355, 360, 365, 380, 400, 420, 445, 490, 530, 540, 545, 555, 575, 595, 600

For and in connection with the Work No. 6 infrastructure within a corridor of up to 14m in width the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and

| | |
|--|--|
| | <p>maintenance of the Work No. 6 infrastructure, together with the right to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> |
| <p>180, 200, 205, 210, 260, 265, 270, 275, 280, 285, 290, 295, 300, 305, 310, 315, 320</p> | <p>For and in connection with the Work No. 4 infrastructure within a corridor of up to 14m in width the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of the Work No 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> |
| <p>500, 510</p> | <p>Right of access for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> |
| <hr/> <p>515, 525</p> | <hr/> <p>Right for the undertaker and all persons authorised on its behalf to improve the access and a right to enter, pass and re-pass, on foot,</p> |

with or without vehicles, plant and machinery, and a right to park vehicles, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure along with the right to prevent any works on or uses of the land which may interfere with or obstruct the right to park or access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

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Right for the undertaker and all persons authorised on its behalf to create a new access or improve an access, to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of Work No. 7 along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to Work No. 7, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5—

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

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in sub-paragraph 2.

(2) For section 5A (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 9 to the Eggborough CCGT (Generating Station) Order [x]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

Application of the 1965 Act

4.—(1) The 1965 Act is to have 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 the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(2) Without limitation on the scope 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,

(a) 1973 c.26

in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

5. For section 7 of the 1965 Act (measure of compensation) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

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 modified 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 modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restriction, 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 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of 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 (interests omitted from purchase) of the 1965 Act is modified so 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. For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 10

Article 26

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 11

| <i>(1)</i> <i>Number of plot shown on the land plans</i> | <i>(2)</i> <i>Purpose for which temporary possession may be taken</i> |
|---|---|
| 235, 330, 340, 345 | Temporary use required to facilitate construction of Work No. 4 |
| 370, 375, 425, 430, 495, 505, 535, 550, 580, 585, 590, 620, 625, 630, 635, 655, 660, 685, 690 | Temporary use as laydown, construction compound and construction use required to facilitate construction of Work No. 6 |
| 385, 390, 410, 415, 435, 440, 640, 645, 650 | Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work No.6 |
| 665, 670, 675, 680 | Temporary use as laydown, construction compound and construction use required to facilitate construction of Work Nos. 4 and 6 |
| 450, 455, 460, 465, 470, 480, 560, 565 | Temporary use to facilitate construction access to Work No. 6 |
| 615 | Temporary use as laydown, construction compound and construction use required to facilitate construction of Work No. 7 |

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of their decision on the application within a period of nine weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph (2); or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to sub-paragraph (4), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant planning authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement

then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

2.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant planning authority must, within fourteen business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement

consultee within five business days of receipt of such a request and in any event within twenty-one days of receipt of the application.

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Fees

3.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to that authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within eight weeks from the date on which it is received unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to sub-paragraph 1(1)(c) of this Schedule.

Appeals

4.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 1(3);
- (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 to be as follows—

- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
- (b) The Secretary of State is to appoint a person as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (c) The relevant planning authority and the requirement consultee must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to

(a) S.I 2012/2920 as amended by S.I 2013/2153 and S.I 2014/357 and S/I 2014/2026.

each other and to the undertaker on the day on which they are submitted to the appointed person;

- (d) The appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

The appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(2)(e).

(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 him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, 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 to be deemed to be an approval for the purpose of Schedule 2 (Requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to 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 11

5. In this Schedule 11—

“business day” means a day other than a 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^(a); and

“requirement consultee” means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

^(a) 1971 c.80

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);
- (g) water undertaker within the meaning of the Water Industry Act 1991; and

(a) 1989 c.29.

(b) 1991 c.56.

(c) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary stopping up of streets, public rights of way and public rights of navigation), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not—

- (a) where the utility undertaker is NGG or NGET, acquire any land interest or apparatus or override any easement and/or other interest otherwise than by agreement; or
- (b) in the case of any other utility undertaker, acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than twenty-eight days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of twenty-one days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than twenty-eight days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection

with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 41 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act(b);

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide;

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network;

13. The exercise of the powers of article 28 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the

(a) 2003 c.21 as amended by the Digital Economy Act 2017 (c. 30)

(b) added by Schedule 1 of the Digital Economy Act 2017 (c.30)

undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 41 (arbitration).

15. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

16. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF CANAL AND RIVER TRUST

Interpretation

17.—(1) For the protection of CRT the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and CRT.

(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal and River Trust (April 2017) or any updates or amendments thereto;

“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;

“CRT” means the Canal & River Trust;

“CRT’s network” means CRT’s network of waterways;

“detriment” means any damage to the waterway or any other property of CRT caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (c) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (d) 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;
- (e) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (f) the pollution of the waterway;
- (g) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (h) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in CRT’s network);
- (i) 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” is to be construed accordingly;

“protective work” means a work constructed under paragraph 21(3)(a);

“specified work” means so much of Work No 4 as is situated upon, across, under, over or within 15 metres of, or may in any way affect 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 navigation.

(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply.

Powers requiring CRT’s consent

18.—(1) The undertaker must 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 must 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 must not exercise the powers conferred by 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 must not exercise the powers conferred by this Order to temporarily stop up streets or public rights of way under article 11 (temporary stopping up of streets, public rights of way and public rights of navigation), as applied by Schedule 6 (streets to be temporarily stopped up), Part 1 of Schedule 7 (public rights of way to be temporarily stopped up) and Part 2 of Schedule 7 (public rights of navigation to be temporarily suspended) so as to divert any right of access to or any right of navigation along the waterway but such right of access may be diverted with the consent of CRT.

(5) The undertaker must not exercise the powers conferred by this Order to abstract water from the waterway if either—

- (a) that abstraction substantially deviates (which for the purpose of this paragraph 18 means a deviation in angle greater than 20°) as compared to the angle of abstraction at 30 May 2017; or
- (b) the rate of abstraction increases beyond the licensed levels for the existing coal-fired power station as at 30 May 2017

unless such abstraction is with the consent of CRT.

(6) The consent of CRT pursuant to sub-paragraphs (1) to (4) must 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 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.

(7) The consent of CRT pursuant to sub-paragraph (5) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions including specifying the maximum velocity of the flow of water which may be abstracted at right angles to the waterway at any time.

Fencing

19. Where so required by the engineer the undertaker must 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

20.—(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 must bear the reasonable and proper 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 must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must 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 and which the undertaker holds 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 must 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 will 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 must be provided to both CRT and the undertaker at no cost to CRT.

Approval of plans, protective works etc.

21.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to CRT proper and sufficient plans of that work, on CRT forms, 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 must 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) must 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 received by CRT the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he is 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 must be constructed by the undertaker or by CRT at the undertaker's request with all reasonable dispatch and the undertaker must 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 must 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 is to 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 subparagraph must state the works that are to be completed by the undertaker and lay out a reasonable 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 must reimburse CRT all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

22.—(1) Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable 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 must 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

23. The undertaker must 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

24. The undertaker must 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

25.—(1) Any specified or protective works must, 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 21 and paragraph 22;
- (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; and
- (e) in such a manner so as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 14 (discharge of water).

(2) Nothing in this Order authorises 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 must 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.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), CRT and the undertaker must take account of any survey issued pursuant to paragraph 20 and any other information agreed between them pursuant to this Part 3 of this Schedule.

Prevention of pollution

26. The undertaker must 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 must 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

27.—(1) The undertaker on being given reasonable notice must—

- (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 must—

- (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 must reimburse CRT's reasonable costs in relation to the supply of such information.

Alterations to the waterway

28.—(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 must be specified in the notice), the undertaker must 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 is to be set off against any sum payable by the undertaker to CRT under this paragraph.

Maintenance of works

29. 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 it reasonably considers that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker must, 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.

30.—(1) The undertaker must repay to CRT in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by CRT—

- (a) in constructing any protective works under the provisions of paragraph 21(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 is 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.
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by CRT to ensure the safe navigation of the waterway save that nothing is to require CRT to construct and/or carry out any measures.

(2) If CRT considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), CRT will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of twenty-one days—

- (a) provide confirmation to CRT that the estimate is agreed and pay to CRT, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to CRT that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) CRT must take in to account any representations made by the undertaker in accordance with this paragraph 30 and must, within twenty-one days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) CRT must, when estimating and incurring any charge, cost or expense pursuant this paragraph 30, do so with a view to being reasonably economic and acting as if CRT were itself to fund the relevant fee, charge, cost or expense.

Costs of alterations, etc.

31. Any additional expenses which CRT may reasonably 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 must, provided that 56 days' notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to CRT.

Making good of detriment; compensation and indemnity, etc.

32.—(1) If any detriment is 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) must make good such detriment and must 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 must 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 protective work; and subject to sub-paragraph (4) the undertaker must 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 CRT is not entitled to recover any consequential losses which are not reasonably foreseeable 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 is not to (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) imposes 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 must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

Arbitration

33. 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) must be referred to and settled by arbitration in accordance with article 41 (arbitration) of this Order.

Capitalised sums

34. Any capitalised sum which is required to be paid under this Part of this Schedule must 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.

DEEMED MARINE LICENCE UNDER PART 4 (MARINE LICENSING) OF THE MARINE AND COASTAL ACCESS ACT 2009

PART 1

INTRODUCTION

1.—(1) In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

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

“authorised project” means the authorised development;

“the English inshore region” has the same meaning as that given in section 322 (interpretation) of the 2009 Act;

“licence holder” means the undertaker and any agent, contractor or sub-contractor acting on its behalf;

“licensable marine activities” means any activity licensable under section 66 of the 2009 Act;

“licensed activity” means any activity described in Part 2 of this licence;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve to the extent that such activities have been assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“mean high water spring tide” means the highest level which spring tides reach on average over a period of time;

“MMO” means the Marine Management Organisation;

“river” means for the purposes of this Schedule 13 the areas of Work No. 4 which are below mean high water spring tide within the River Aire;

“Order” means The Eggborough CCGT (Generating Station) Order [x];

“Order land” means the land delineated and marked as such on the land plans;

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

“undertaker” means Eggborough Power Limited (registered company number 03782700);

“Work No. 4” means cooling water connection works, comprising works to the existing cooling water supply and discharge pipelines and intake and outfall structures, including, as necessary, new, upgraded or replacement pipelines, plant, buildings, enclosures and structures, and underground electrical supply cables, transformers and control systems cables,

Addresses

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this Schedule is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH, telephone 0300 123 1032 and where contact to the local MMO office is required, the following contact details should be used: Marine Management Organisation, Room 13, Crosskill House, Mil Lane, Beverley, HU17 9JB, telephone 0208 026 0519.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consent@marinemangement.org.uk or where contact to the local MMO office is required is beverley@marinemangement.org.uk.

PART 2

LICENSED ACTIVITIES

3.—(1) Subject to the licence conditions in Part 3 of this licence, this licence authorises the licence holder to carry out any licensable marine activities under section 66(1) of the 2009 Act which—

- (a) form part of, or are related to, the authorised project; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

(2) Such activities are authorised in relation to the construction, maintenance and operation of—

- (a) Work No. 4 — works including the installation and removal of a cofferdam and works to the existing cooling water discharge structure, including, as necessary, upgraded or replacement pipelines and structures.

(3) The activity set out in sub-paragraph (2)(a) is authorised in relation to the construction, maintenance and operation of those elements of Work No. 4 of Schedule 1 (authorised development) of this Order as defined in paragraph 1 of this schedule, and any further associated development listed in items (a) to (m) in Schedule 1 in connection with Work No. 4, which fall within the English inshore region.

(4) The undertaker (and any agent, contractor or subcontractor acting on its behalf) may engage in the licensed activities in—

- (a) the area bounded by the coordinates set out in Table 12 in this sub-paragraph; and
- (b) if there is a change in mean high water springs during the construction, maintenance and operation of the licensed activities, the area bounded by the coordinates set out in Table 13 in this sub-paragraph to the extent that they fall below mean high water spring tide at the time the licensed activities are carried out.

(5) The coordinates in Table 12 and Table 13 are defined in accordance with reference system WGS84 –World Geodetic System 1984.

Table 12

| <i>Work No.</i> | <i>Easting</i> | <i>Northing</i> |
|-----------------|----------------|-----------------|
| 4 | 624397.000 | 5953948.000 |
| | 624393.000 | 5953940.000 |
| | 624387.000 | 5953937.000 |
| | 624378.000 | 5953936.000 |
| | 624368.000 | 5953936.000 |
| | 624363.000 | 5953938.000 |
| | 624355.000 | 5953938.000 |
| | 624347.000 | 5953943.000 |
| | 624345.000 | 5953943.000 |
| | 624342.000 | 5953946.000 |
| | 624335.000 | 5953951.000 |
| | 624326.000 | 5953957.000 |
| | 624318.000 | 5953963.000 |
| | 624327.000 | 5953980.000 |

Table 13

| <i>Work No.</i> | <i>Easting</i> | <i>Northing</i> |
|-----------------|----------------|-----------------|
|-----------------|----------------|-----------------|

| | | |
|---|------------|-------------|
| 4 | 624397.000 | 5953948.000 |
| | 624384.000 | 5953924.000 |
| | 624312.000 | 5953951.000 |
| | 624326.000 | 5953979.000 |

PART 3 CONDITIONS

General

4. Should the licence holder become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity and failure to do so may render this licence invalid and may lead to enforcement action.

5. Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team within 12 hours of being identified in accordance with the following—

- (a) within office hours: 0300 200 2024;
- (b) outside office hours: 07770 977 825; or
- (c) at all times if other numbers are unavailable: 0845 051 8486 or dispersants@marinemanagement.org.uk

6.—(1) Where the licensed activities are to be carried out in the area bounded by the coordinates in Table 13 and any part of that area is below mean high water springs, the licence holder must submit to the MMO for approval an assessment not less than 10 weeks prior to commencing the licensed activities.

(2) The assessment submitted pursuant to sub-paragraph (1) must contain as a minimum clear designs for works together with an assessment of the bank stability, the impacts of the proposed works on the hydromorphology of the river and how the proposed solution will be resilient to any future bank erosion.

Pre-Construction

7.—(1) The licence holder must submit a method statement to the MMO at least 6 weeks prior to the proposed commencement of the licensed activities.

(2) The licensed activities must not commence until written approval is provided by the MMO.

8. The licence holder must inform the MMO in writing of the intended start date and the likely duration of licensed activities on a site at least ten working days prior to the commencement of the first licensed activity on that site.

9. A notice to mariners must be issued prior to activities commencing and a copy sent to the MMO within five working days of issue.

10.—(1) The licence holder must notify the MMO in writing of any agents, contractors or subcontractors that will carry on any licensed activity listed in this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

(2) The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or subcontractors that will carry on the licensed activity on behalf of the licence holder.

11.—(1) The licence holder must notify the MMO in writing of any vessel being used to carry on any licensed activity listed in this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed

activity. Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

(2) The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been read and understood by the masters of any vessel being used to carry on any licensed activity listed in this licence, and that a copy of this licence is held on board any such vessel.

During Construction, Operation and Maintenance

12. The licence holder must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with Environment Agency Pollution Prevention Control Guidelines.

13. The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.

14. The licence holder must not discharge waste concrete slurry or wash water from concrete or cement into the river. The licence holder must site concrete and cement mixing and washing areas at least 10 metres from the river or surface water drain to minimise the risk of run off entering the river.

15.—(1) Vibro piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth. If percussive piling is necessary soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved.

(2) The soft-start duration must be a period of not less than twenty minutes.

(3) Should piling cease for a period greater than ten minutes, then the soft start procedure must be repeated.

16. If concrete is to be sprayed suitable protective sheeting must be provided to prevent rebounded or windblown concrete from entering the water environment. Rebounded material must be cleared away before the sheeting is removed.

17. During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

Post Construction

18. The licence holder must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within six weeks of completion of the licensed activity.

19. The licence holder must ensure that the MMO local Marine Office is notified of the completion of works and operations within ten days following the completion of the works.

SCHEDULE 14
DESIGN PARAMETERS

Requirement 5

PART 1
SINGLE SHAFT PARAMETERS

1. The maximum parameters for the buildings and structures for the single shaft layout are set out at table 14.

2. The maximum parameters and grid reference location of the combined cycle gas turbine stacks are set out in table 15.

3. The finished ground level in respect of Work No. 1 is between 7.9 metres AOD and 9.9 metres AOD.

Table 14

| <i>(1)</i> <i>Component</i> | <i>(2)</i> <i>Maximum length (m)</i> | <i>(3)</i> <i>Maximum width (m)</i> | <i>(4)</i> <i>Maximum height (m)</i> | <i>(5)</i> <i>Maximum diameter (m)</i> |
|--|---|--|---|---|
| Gas turbine hall building | 76 | 76 | 30 | - |
| Heat recovery steam generator | 63 | 28 | 50 | - |
| Electrical building near heat recovery steam generator | 30 | 27 | 10 | - |
| Combine cycle gas turbine air intake filters (each) | 24 | 16 | 30 | - |
| Electrical building near air intake filter | 39 | 16 | 10 | - |
| Generator transformer | 30 | 24 | 15 | - |
| Feed water pump building | 64 | 23 | 20 | - |
| Demineralised water treatment plant, fire pumps and laboratory | 57 | 33 | 20 | - |
| Demineralised water | - | - | 20 | 25 |

| | | | | |
|---|-----|----|----|-----|
| storage tank | | | | |
| Gas reception facility | 65 | 52 | 5 | - |
| Gas compressors | 50 | 20 | 10 | - |
| Auxiliary boiler | 30 | 15 | 20 | - |
| Auxiliary boiler stacks (each) | - | - | 25 | 1.5 |
| Combined cycle gas turbine | 19 | 9 | 8 | - |
| standby diesel generators | | | | |
| Continuous emissions monitoring system | 10 | 3 | 3 | - |
| container | | | | |
| Cooling towers (each) | 240 | 27 | 25 | - |
| Cooling water electrical module | 15 | 6 | 10 | - |
| Cooling water pumps | 30 | 15 | 8 | - |
| Cooling water sampling and dosing plant | 19 | 11 | 8 | - |
| Peaking plant building | 103 | 65 | 30 | - |
| Peaking plant stack(s) (each) (open cycle gas turbine) | - | - | 45 | 8 |
| Peaking plant stack(s) (each) (gas engine) | - | - | 28 | 1.3 |
| Black start facility | 55 | 43 | 30 | - |
| Black start facility stack(s) (each) (open cycle gas turbine) | - | - | 45 | 2.5 |
| Black start facility stack(s) (each) (gas engine) | - | - | 25 | 1.3 |
| Diesel tank for black start | - | - | 12 | 4 |

| | | | | |
|---|-----|----|----|----|
| diesel generator | | | | |
| Electrical control room and administration building | 85 | 24 | 20 | - |
| Electrical substation | 40 | 17 | 15 | - |
| Workshop and stores | 51 | 20 | 12 | - |
| Raw and fire water tank | - | - | 20 | 25 |
| Gas bottle stores (each) | 17 | 5 | 3 | - |
| Closed-circuit cooling water coolers | 15 | 10 | 10 | - |
| Waste water treatment plant | 55 | 28 | 20 | - |
| Firewater and stormwater retention basins | 110 | 50 | 0 | - |
| Gatehouse | 12 | 12 | 5 | - |

Table 15

| (1) <i>Component</i> | (2) <i>Grid reference of centre point of each stack (using reference system OSGB36 - Ordnance Survey Great Britain 1936)</i> | (3) <i>Maximum diameter of each stack (m)</i> | (4) <i>Top of each stack in mAOD</i> |
|----------------------------------|---|--|---|
| Combined cycle gas turbine stack | First stack— 457600 423933 Second Stack— 457593 423944 Third Stack— 457587 423933 | 9.6 | 99.9 |

PART 2

MULTI-SHAFT PARAMETERS

4. The maximum parameters for the buildings and structures for the multi shaft layout are set out at table 16.

5. The maximum parameters and grid reference location of the combined cycle gas turbine stacks are set out in table 17.

6. The finished ground level in respect of Work No. 1 is between 7.9 metres AOD and 9.9 metres AOD.

Table 16

| <i>(1)</i> <i>Component</i> | <i>(2)</i> <i>Maximum length (m)</i> | <i>(3)</i> <i>Maximum width (m)</i> | <i>(4)</i> <i>Maximum height (m)</i> | <i>(5)</i> <i>Maximum diameter (m)</i> |
|--|---|--|---|---|
| Gas turbine hall building | 76 | 76 | 30 | - |
| Steam turbine hall building | 64 | 54 | 30 | - |
| Heat recovery steam generator | 63 | 28 | 50 | - |
| Electrical building near heat recovery steam generator | 30 | 27 | 10 | - |
| Combine cycle gas turbine air intake filters (each) | 24 | 16 | 30 | - |
| Electrical building near air intake filter | 24 | 16 | 10 | - |
| Generator transformer | 21 | 20 | 15 | - |
| Feed water pump building | 54 | 26 | 20 | - |
| Demineralise d water treatment plant, fire pumps and laboratory | 57 | 33 | 20 | - |
| Demineralise d water storage tank | - | - | 20 | 25 |
| Gas reception facility | 65 | 52 | 5 | - |
| Gas compressors | 50 | 20 | 10 | - |
| Auxiliary boiler | 30 | 15 | 20 | - |
| Auxiliary boiler stacks (each) | - | - | 25 | 1.5 |
| Combined | 19 | 9 | 8 | - |

| | | | | |
|---|-----|----|----|-----|
| cycle gas turbine standby diesel generators | | | | |
| Continuous emissions monitoring system container | 10 | 3 | 3 | - |
| Cooling towers (each) | 240 | 27 | 30 | - |
| Cooling water electrical module | 15 | 6 | 10 | - |
| Cooling water pumps | 30 | 15 | 8 | - |
| Cooling water sampling and dosing plant | 19 | 11 | 8 | - |
| Peaking plant building | 103 | 65 | 30 | - |
| Peaking plant stack(s) (each) (open cycle gas turbine) | - | - | 45 | 8 |
| Peaking plant stack(s) (each) (gas engine) | - | - | 28 | 1.3 |
| Black start facility | 55 | 43 | 30 | - |
| Black start facility stack(s) (each) (open cycle gas turbine) | - | - | 45 | 2.5 |
| Black start facility stack(s) (each) (gas engine) | - | - | 25 | 1.3 |
| Diesel tank for black start diesel generator | - | - | 12 | 4 |
| Electrical control room and administration building | 85 | 24 | 20 | - |
| Electrical substation | 35 | 15 | 15 | - |
| Workshop and stores | 51 | 20 | 12 | - |

| | | | | |
|---|-----|----|----|----|
| Raw and fire water tank | - | - | 20 | 25 |
| Gas bottle stores (each) | 17 | 5 | 3 | - |
| Closed-circuit cooling water coolers | 15 | 10 | 10 | - |
| Waste water treatment plant | 55 | 28 | 20 | - |
| Firewater and stormwater retention basins | 110 | 50 | 0 | - |
| Gatehouse | 12 | 12 | 5 | - |

Table 17

| (1) <i>Component</i> | (2) <i>Grid reference of centre point of each stack (using reference system OSGB36 - Ordnance Survey Great Britain 1936)</i> | (3) <i>Maximum diameter of each stack (m)</i> | (4) <i>Top of each stack in mAOD</i> |
|----------------------------------|---|--|---|
| Combined cycle gas turbine stack | First stack— 457600 423933 | 9.6 | 99.9 |
| | Second Stack— 457593 423944 | | |
| | Third Stack— 457587 423933 | | |

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Eggborough Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

This Order also grants a deemed marine licence under Part 4 of the Marine and Coastal Access Act 2009.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 38 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at [●].