The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Keadby 3 Carbon Capture Power Station Project

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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7 September 2022

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OVERVIEW

File Ref: EN010114

The application, dated 1 June 2021, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 1 June 2021.

The Applicant is Keadby Generation Limited.

The application was accepted for examination on 28 June 2021.

The examination of the application began on 7 December 2021 and was completed on 7 June 2022.

The development proposed comprises construction, operation and maintenance of a new electricity generating station of up to 910 megawatts (MW) gross electrical output, equipped with carbon capture and compression plant and fuelled by natural gas, including connections for cooling water, electrical, gas and utilities, construction laydown areas and other associated development.

In addition, the Proposed Development includes carbon capture technology, which will be a first of its kind in the UK, with the potential to contribute towards meeting the United Kingdom's carbon commitment and supporting the transition to a low carbon economy.

Summary of Recommendation:

The Examining Authority recommends that, subject to satisfying themself on the points set out in Section 9.2 of this report, the Secretary of State for Business, Energy and Industrial Strategy makes the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Development Consent Order in the form attached at Appendix C to this report.

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The Planning Inspectorate

ERRATA SHEET – Keadby 3 Carbon Capture Power Station Project - File Ref: EN010114

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Business, Energy and Industrial Strategy, dated 7 September 2022

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

Page No.	Paragraph	Error	Correction
226	4.21.11	Check the last reference to "*paragraph 170e*". Should this read "*paragraph 174e*" as the sentence in the NPPF?	Correct to "*paragraph 174e*".
132	4.13.10	Check reference to "*paragraph 174b*". Should this read "*paragraph 174d*"?	Correct to "*paragraph 174d*".
151	4.14.13	Check reference to "*…developing the CUSS system.*" Should this read "*…developing the CCUS system*."?	Correct to "*…developing the CCUS system*."

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application for the Keadby 3 Carbon Capture Power Station (the Proposed Development) was submitted by Keadby Generation Limited (the Applicant) to the Planning Inspectorate on 1 June 2021 under section (s) 31 of the Planning Act 2008 (PA2008) [APP-003] and accepted for Examination under s55 of the PA2008 on 28 June 2021 [PD-001].

1.1.2. The Proposed Development is for the construction, operation and maintenance of a new electricity generating station with a gross electrical output of up to 910 megawatts (MW), at International Organization for Standardization (ISO) conditions. It will be equipped with carbon capture and compression plant and fuelled by natural gas. It comprises Work No. 1 that is made up from Work Nos. 1A, 1B, 1C, 1D and 1E. The Explanatory Memorandum (EM) document [REP7a-008], at paragraph 6.1, sets out the development for which development consent is required, as a Nationally Significant Infrastructure Project (NSIP). This paragraph of the EM also explains associated development as being included within the Order and describes those works under Works Nos 2 to 11 (inclusive) as set out in paragraphs 6.2 to 6.11 (inclusive) of the EM. Work No. 1 and the associated development, being Works Nos 2 to 11 (inclusive), are as set out as detailed below:

- Work No. 1 – a carbon capture enabled electricity generating station located on land at the Keadby Power Station site, west of Scunthorpe, gas fuelled, and with a gross output capacity of up to 910 MW at ISO standard reference conditions comprising:

  Work No. 1A – a combined cycle gas turbine plant, comprising:

  (i) a combined cycle gas turbine;
  (ii) a steam turbine;
  (iii) gas turbine hall and steam turbine hall;
  (iv) heat recovery steam generator;
  (v) gas turbine air intake filters;
  (vi) emissions stack;
  (vii) transformers;
  (viii) deaerator and feed water pump house buildings;
  (ix) nitrogen oxide emissions control equipment and chemical storage;
  (x) chemical sampling/ dosing plants; and
  (xi) continuous emissions monitoring system.

  Work No. 1B – combined cycle gas turbine plant cooling infrastructure, comprising:

  (i) hybrid cooling towers;
  (ii) cooling water pumps, plant and buildings; and
  (iii) cooling water dosing and sampling plant and buildings.

Work No. 1C – carbon dioxide capture plant, comprising:

(i) flue gas pre-treatment plant, including cooling and scrubbing plant and flue gas blower;
(ii) carbon dioxide absorber unit(s) and associated stack(s);
(iii) carbon dioxide stripper and solvent regenerator;
(iv) ammonia emissions monitoring and control equipment and associated chemical storage;
(v) carbon dioxide conditioning and compression plant; and
(vi) ancillary equipment, including air compressors, pumps, heat exchangers, water treatment plant and pipework.

Work No. 1D – natural gas reception facility, comprising:

(i) above and below ground valves, flanges and pipework;
(ii) gas supply pipeline connection works;
(iii) gas receiving area;
(iv) gas de-compression equipment and maintenance building and pipeline internal gauge launcher;
(v) an above or below ground isolation valve;
(vi) gas vents;
(vii) gas metering, dehydration and pressure reduction equipment;
(viii) instrumentation and electrical kiosk(s);
(ix) telemetry equipment kiosk(s); and
(x) standby generator sockets.

Work No. 1E – generating station supporting uses, comprising:

(i) administration and control buildings;
(ii) raw water storage tank(s);
(iii) demineralised water treatment plant, including storage tanks; and
(iv) permanent plant laydown area(s) for operation and maintenance activities.

In connection with and in addition to Work Nos. 1A, 1B, 1C, 1D and 1E:

(i) administration and control buildings;
(ii) auxiliary plant, buildings, enclosures and structures;
(iv) auxiliary boiler;
(v) emergency diesel generators and bunded diesel storage tank(s);
(vi) chemical storage facilities;
(vii) demineralised water treatment plant, including storage tank;
(viii) firefighting equipment and building;
(ix) fire storage tank(s);
(x) fire water retention basin;
(xi) gatehouses;
(xii) mechanical, electrical, gas, telecommunications and water networks, pipework, pipe runs, cables, racks, infrastructure,

instrumentation and utilities including connections between Work Nos. 2, 3, 4, 5, 6, 7 and 8, and parts of Work Nos. 1A, 1B, 1C, 1D and 1E;

(xiii) permanent plant laydown area(s) for operation and maintenance activities;

(xiv) waste water treatment facilities; and

(xv) workshop and stores building

and associated development within the meaning of s115(2) of the PA2008 in connection with the nationally significant infrastructure project referred to in Work No. 1, comprising:

- Work No. 2 – associated development comprising a high-pressure gas supply pipeline for the transport of natural gas to Work No. 1, comprising a high-pressure steel pipeline of up to 800 millimetres (nominal bore) in diameter and approximately 0.3 Kilometres in length, including cathodic protection posts and marker posts, running within the Keadby Power Station site between Work No. 1D and Work No. 2B, and above ground installation comprising:

  Work No. 2A – a compound for National Grid Gas's apparatus, comprising:

  (i) an offtake connection from the National Transmission System (NTS);
  (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 bridle;
  (vi) instrumentation and electrical kiosks;
  (vii) pipeline inspection gauge receiving facility; and
  (viii) telemetry equipment kiosks and communications equipment.

  Work No. 2B – 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.

  In connection with Work Nos. 2A and 2B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, and closed-circuit television cameras and columns.

- Work No. 3 – associated development comprising electrical connection works for the export and import of electricity to and from national electricity transmission networks and the import of electricity from district electricity transmission networks, comprising:

Work No. 3A – up to 400 kilovolt (kV) overground and/ or underground electrical cables and control systems cables running from Work No. 1A to the existing National Grid Electricity Transmission substation located west of Chapel Lane, including works within the substation; and

Work No. 3B – up to 132 kV underground electrical cables running from Work No. 1A to the existing Northern Powergrid 132kV substation located at Chapel Lane, including above ground infrastructure works within the substation.

- Work No. 4 – associated development comprising water supply connection works to provide cooling and make-up water to Work No. 1, comprising either:

  (i) Work No. 4A – underground and/ or overground water supply pipeline running between Work No. 1E and the canal including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipeline, plant, buildings, enclosures, intake structures screens and other structures, cable, temporary moorings, temporary repositioning of existing moorings, access works, vehicle parking, screening, lighting, and signage; or

  (ii) Work No. 4B – works to the existing cooling water supply pipelines running between Works No. 1E and the existing intake structures within the River Trent, including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipelines, plant, enclosures, intake structures, cable placement of material, temporary moorings, installation and repositioning of existing hazard dolphins, access works, screening, lighting, and signage.

- Work No. 5 – associated development comprising works to discharge used cooling water and treated wastewater comprising works to the existing cooling water discharge pipeline(s) running from Work No. 1B to the existing outfall structures within the River Trent including, as necessary new, upgraded or replacement pipelines, plant, enclosures, outfall structures and other structures and cables.

- Work No. 6 – associated development comprising towns water connection to supply towns water to Work No.1 from the supply point east of Chapel Lane including works to the existing towns water pipelines, replacement and new pipelines, plant, enclosures and structures.

- Work No. 7 – associated development comprising a high-pressure carbon dioxide pipeline for the export of carbon dioxide from Work No. 1C to the National Grid Carbon Gathering Network and above ground carbon dioxide compression and export infrastructure on land at Keadby Power Station, comprising:

Work No. 7A – compressor station comprising deoxygenation, dehydration, and staged compression facilities, and outlet metering and electrical connection; and

Work No. 7B – National Grid above ground infrastructure compound, comprising export connection to the National Grid Carbon Gathering Network, above and below ground valves, flanges and pipework, above or below ground remotely operated valve, above or below ground remotely operated valve bypass, compression facilities, instrumentation and electrical kiosks, electrical connection, inlet metering and telemetry equipment kiosks and communications equipment.

In connection with Work Nos. 7A and 7B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, and closed-circuit television cameras and columns.

- Work No. 8 – associated development comprising new permanent accesses to Work Nos. 1, 2 and 7 comprising:

  Work No. 8A – access route comprising the maintenance and improvement of an existing private track running between Work Nos. 1 and 2 including private bridge and the existing junction with the A18 nearby to the west of Pilfrey Farm, comprising surfacing works and signage, and creation of on and off-slips;

  Work No. 8B – installation of laybys and gatehouse building nearby to the north of the junction with the A18, barriers, enclosures, drainage and lighting; and

  Work No. 8C – emergency access route comprising the installation of a bridge crossing of an existing drainage channel, the maintenance and improvement of an existing private track running between Work No. 1 and Chapel Lane, Keadby, surfacing and strengthening works, drainage, enclosures and lighting.

- Work No. 9 – associated development comprising temporary construction and laydown areas and temporary and permanent accesses, comprising:

  Work No. 9A – temporary construction and laydown areas comprising hard standing, earthworks and levelling, laydown and open storage areas, contractor compounds and construction staff welfare facilities, surface water drainage and gatehouse and weighbridge;

  Work No. 9B – the maintenance and improvement of the existing private tracks connecting the existing junctions with the A18 to the west of Pilfrey Farm with Work No. 9A via two existing private bridge crossings of the Hatfield Waste Drain, including the replacement, widening, improvement and maintenance of the westernmost existing

private bridge crossing, surfacing, drainage and strengthening works, barriers and enclosures; and

Work No. 9C – temporary construction and laydown area in association with the replacement of the private bridge in Work No. 9B, comprising laydown and open storage areas, hard standing, and the placement of mobile cranes.

- Work No. 10 – associated development comprising temporary haulage route and waterborne transport offloading facilities on land east of the Keadby Power Station site and at the River Trent comprising:

  Work No. 10A – the maintenance and improvement of the existing temporary paved haulage route and ditch crossings and their subsequent removal;

  Work No. 10B – the inspection and repair of the existing jetty, and temporary placement of mobile cranes including the temporary oversailing of crane arms above the river; and

  Work No. 10C – use of riverbed of the River Trent for the mooring of vessels and craft at the waterborne transport offloading area at lower tide.

- Work No. 11 – associated development comprising landscaping and planting and boundary treatment comprising:

  Works 11A – soft landscaping including planting and biodiversity enhancement measures; and

  Works 11B – security fencing, gates, boundary treatment and other means of enclosure.

- In connection with and in addition to Works Nos. 1 to 11, further associated development including:

  (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
  (b) 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;
  (c) hard standings and hard landscaping;
  (d) soft landscaping, including bunds, embankments and planting;
  (e) biodiversity enhancement measures;
  (f) fencing, gates, boundary treatment and means of enclosure;
  (g) external lighting, including lighting columns;
  (h) gatehouses and weighbridges;
  (i) closed-circuit television cameras and columns and other security measures;

(j) 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 formation of embankments) 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;
(k) 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;
(l) vehicle parking and cycle storage facilities;
(m) accesses, roads and pedestrian and cycle routes;
(n) tunnelling, boring and drilling works;
(o) demolition;
(p) temporary works associated with the maintenance of the authorised development including laydown for outages, contractor facilities, offices and staff welfare facilities; security fencing and gates; external lighting; wheel wash facilities; and signage; 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 (ES).

1.1.3. The Development Consent Order, if made, shall be named "the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order…", with the year in which the Order is made specified at the end of the Order name.

1.1.4. The location of the Proposed Development is described in the ES at Chapter 3 [APP-046], as updated by the ES Addendum – Volume I Main Volume [REP6a-065] and as shown on the Site Location Plan and Land Plans, final updated versions of which were received at Deadline (DL) 6a ([REP6a-042] and [REF6a-043] respectively). The site lies within the administrative county of North Lincolnshire Council (NLC) and is wholly in England.

1.1.5. The legislative tests for whether the Proposed Development is an NSIP were considered by the Secretary of State (SoS) for the Department of Levelling Up, Housing and Communities in its decision to accept the application for Examination in accordance with s55 of PA2008 [PD-001].

1.1.6. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the Application Form [APP-003] that the Proposed Development is an NSIP as it comprises an onshore gas-fired electricity generating station with a capacity of more than 50 MW and associated development, that falls within s15(2) of PA2008, and so requires development consent in accordance with s31 of PA2008. The Proposed Development therefore meets the definition of an NSIP set out in s14(1)(a) of PA2008.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 12 August 2021, I was appointed as the Examining Authority (ExA) for the application under s61 and s79 of PA2008 [PD-004].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

1.3.1. The persons involved in the Examination were:

- persons who were entitled to be Interested Parties (IP) because they had made a Relevant Representation (RR) or were a Statutory Party who requested to become an IP; and
- Affected Persons (AP) who were affected by a Compulsory Acquisition (CA) and/ or Temporary Possession (TP) proposal made as part of the application and objected to it at any stage in the Examination.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

1.4.1. The Examination began on 7 December 2021 and concluded on 7 June 2022.

1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found on the Examination Timetable page of the project webpage on the Planning Inspectorate's National Infrastructure Planning website and within the Examination Timetable which can be found at Annex A of my Rule 8 letter [PD-008], as amended by my procedural decisions to amend the Examination Timetable made under Rule 8(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) [PD-012, PD-018 and PD-020].

THE PRELIMINARY MEETING

1.4.3. On 8 November 2021 the ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (the Rule 6 letter) inviting them to the Preliminary Meeting (PM) [PD-007], outlining:

- the arrangements and agenda for the PM;
- an Initial Assessment of the Principal Issues;
- the draft Examination Timetable;
- availability of RRs and application documents; and
- the ExA's procedural decisions.

1.4.4. The PM took place virtually on 7 December 2021 and was livestreamed. A video recording of the PM [EV-004] and a note of the meeting [EV-005] were published on the Planning Inspectorate's National Infrastructure Planning website[1].

1.4.5. The ExA's procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 letter [PD-008], dated 14 December 2021.

KEY PROCEDURAL DECISIONS

1.4.6. The procedural decisions set out in the Rule 8 letter related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs. The decisions can be obtained from the Rule 8 letter [PD-008] and so there is no need to reiterate them here.

SITE INSPECTIONS

1.4.7. Site inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.

1.4.8. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, an Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and/ or there are requests made to accompany an inspection, an Accompanied Site Inspection (ASI) is held.

1.4.9. The ExA held the following USIs:

- USI1 was carried out during daylight hours on 28 October 2021 to familiarise myself with the site and surrounding area and to support the Examination. I visited a number of locations and viewed the site from up close and further afield. All locations were publicly accessible. A note of the USI1, providing a procedural record of the USI1, can be found in the Examination Library under reference [EV-001].

- USI2 was carried out during the evening of 28 October 2021 to familiarise myself with the site and surrounding area at night and to support the Examination. I visited Viewpoint 9 (Meredyke Road, Luddington) and Viewpoint 10 (Middle Lane, Amcotts), noting external illumination in the area and also the external illumination visible when looking back towards the site of the Proposed Development. All locations were publicly accessible. A note of the USI2, providing a

[1] https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/keadby-3-low-carbon-gas-power-station-project/?ipcsection=overview.

procedural record of the USI2, can be found in the Examination Library under reference [EV-002].

1.4.10. A site note providing a procedural record of each USI can be found in the Examination Library under the above references.

1.4.11. I also held an ASI on 12 April 2022 [EV-003] to familiarise myself with the site and look at the physical features that can be seen on, or from it. This included visiting land over which CA/ TP powers are sought and observing the road network, both within and adjoining the Proposed Development site. The itinerary for the ASI can be found in the Examination Library under the above reference.

1.4.12. I have had regard to the information and impressions obtained during my site inspections in all relevant sections of this report.

HEARING PROCESSES

1.4.13. Hearings are held in PA2008 Examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard - in summary terms:
  - where persons affected by CA and/ or TP proposals, an AP, object and request to be heard at a CA Hearing (CAH); and/ or
  - where IPs request to be heard at an Open Floor Hearing (OFH).
- To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.

1.4.14. I held a number of hearings to ensure the thorough examination of the issues raised by the application.

1.4.15. Two Issue Specific Hearings (ISH) were held under s91 of PA2008 virtually and livestreamed.

1.4.16. The first ISH into Environmental Matters (ISH1) was held on:

- Tuesday 15 March 2022.

1.4.17. ISH1 sat in four sessions, with all sessions being video recorded. The recordings of the ISH1 Session 1 [EV-013], ISH1 Session 2 [EV-014], ISH1 Session 3 [EV-015] and ISH1 Session 4 [EV-016] have been published on the Planning Inspectorate's National Infrastructure Planning website[2].

1.4.18. The second ISH was held on the subject matter of the draft Development Consent Order (DCO) (ISH2) on:

[2] https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/keadby-3-carbon-capture-power-station/?ipcsection=overview

- Thursday 17 March 2022.

1.4.19. ISH2 sat in three sessions, with all sessions being recorded. The recordings of the ISH2 Session 1 [EV-025], ISH2 Session 2 [EV-026] and ISH2 Session 3 [EV-027] have been published on the Planning Inspectorate's National Infrastructure Planning website[3].

1.4.20. A CAH was held under s92 of PA2008 virtually and livestreamed on:

- Wednesday 16 March 2022.

1.4.21. The CAH sat in two sessions, with both sessions being recorded. The recordings of the CAH Session 1 [EV-021] and CAH Session 2 [EV-022] have been published on the Planning Inspectorate's National Infrastructure Planning website[4].

1.4.22. All APs were provided with an opportunity to be heard. I also used the CAH to examine the Applicant's case for CA and TP more generally.

1.4.23. An OFH was held under s93 of PA2008 virtually and was livestreamed. This OFH was held on:

- Monday 14 March 2022.

1.4.24. The OFH sat in a single session and was recorded. The recording of the OFH [EV-011] has been published on the Planning Inspectorate's National Infrastructure Planning website[5].

WRITTEN PROCESSES

1.4.25. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the application and arising from the Examination. All of this material is recorded in the Examination Library (Appendix A) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets [] and the Examination Library (Appendix A) provides hyperlinks to the original documents held online. For this reason, this report does not contain extensive summaries of all documents and representations, although full regard has been had to them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them.

1.4.26. Key written sources are set out further below.

Relevant Representations

[3] https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/keadby-3-carbon-capture-power-station/?ipcsection=overview
[4] https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/keadby-3-carbon-capture-power-station/?ipcsection=overview
[5] https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/keadby-3-carbon-capture-power-station/?ipcsection=overview

1.4.27. Fifteen RRs were received by the Planning Inspectorate [RR-001 to RR-015]. All makers of RRs received the Rule 6 letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered in Chapters 4, 5 and 7 of this report.

Written Representations and Other Examination Documents

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

- make Written Representations (WR) (DL2);
- comment on WRs made by the Applicant and other IPs (DL3);
- summarise their oral submissions at hearings in writing (DL5);
- make other written submissions requested or accepted by the ExA; and
- comment on the Report on Implications for European Sites [PD-021], published for consultation by the ExA on 3 May 2022, by DL7 (24 May 2022).

1.4.29. I have fully considered all WRs and other Examination documents. The issues that they raise are considered in Chapters 4, 5 and 7 of this report.

Local Impact Reports

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

1.4.31. One LIR was received by the ExA from NLC [REP1-022].

1.4.32. This LIR has been taken fully into account by the ExA in all relevant chapters of this report.

Statements of Common Ground

1.4.33. A Statement of Common Ground (SoCG) is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them.

1.4.34. By the end of the Examination, the following bodies had concluded SoCGs with the Applicant:

- Canal and River Trust [REP7-007].
- Environment Agency (EA) [REP5-014].
- Historic England (HE) [REP1-011].
- Isle of Axholme and North Nottinghamshire Water Level Management Board, which is the Internal Drainage Board (IDB) for the area within which the Proposed Development is located [REP6a-022].
- Maritime and Coastguard Agency [REP1-016].

- Marine Management Organisation (MMO) [REP1-010].
- Natural England (NE) [REP7-005].
- National Grid Carbon Limited (NGC) [REP7-006].
- National Grid Gas Plc (NGG) and National Grid Electricity Transmission Plc (NGET) [REP6-009].
- National Highways [REP1-019].
- Network Rail (NR) [REP7-008].
- NLC [REP6-005].
- Northern Powergrid [REP7-009].
- Severn Trent Water [REP6-012].
- Trinity House/ Associated British Ports [REP1-017].
- UK Health Security Agency [REP7-010].

1.4.35. I have taken all of the SoCGs listed above into account in all relevant chapters of this report.

1.4.36. A draft SoCG was also submitted between the Applicant and Keadby with Althorpe Parish Council [REP7-011]. However, this document remained unsigned/ undated at the close of the Examination.

1.4.37. The Applicant in response to question 8 of my Rule 17 letter, dated 12 May 2022 [REP7-014], explained that it attempted to seek the signing of the SoCG with Keadby with Althorpe Parish Council on 17 May 2022, via an offer of in person attendance at and presentation to the parish council meeting of 18 May 2022. However, its offer came after the parish council's meeting agendas had been published and the Applicant states its attendance was not permitted. The Applicant advises that no further parish council meetings were scheduled during the remaining period of the Examination and the parish council's working group was unable to sign the SoCG.

1.4.38. Also in the above-mentioned response [REP7-014], the Applicant advised it was submitting the unsigned but updated draft SoCG that it was proposing to complete with the parish council at DL7 (24 May 2022) [REP7-011], so as to provide clarifications of previous matters not yet agreed (using evidence contained in the parish council's published material) and updates (ie the position reached on the same environmental topics with key environmental consultees such as the EA, NLC and Canal and River Trust).

1.4.39. The Applicant considers this unsigned/ undated update of the draft SoCG [REP7-011], along with the appended evidence, fairly and clearly presents the impact of the Proposed Development and the limited extent of matters that were not agreed in relation to the earlier January draft of the SoCG with the parish council previously submitted at DL2 (1 February 2022) [REP2-005]. In the response to the Rule 17 letter, dated 12 May 2022 [REP7-014], the Applicant highlights that two of the matters not previously agreed centre on issues that have been resolved to the satisfaction of consultees such as the EA (air quality) and the Canal and River Trust (canal water levels), while the third has been addressed by them by the inclusion of the parish council on relevant planting proposals as a consultee, secured in Requirement 6 of the draft DCO (dDCO).

1.4.40. As the above draft SoCG remained unsigned/ undated at the close of the Examination I have afforded it only limited weight in relation to my recommendation.

1.4.41. The ExA also requested SoCGs be sought with Doncaster Metropolitan Council and the Health and Safety Executive (HSE). However, the Applicant states in its letter [REP1-001], submitted at DL1, that despite offering a SoCG to these bodies they responded as follows:

- Doncaster Metropolitan Council - *"we are of the view that the council does not need to agree a SoCG. The concern raised is already covered in the information submitted."* (e-mail between the Applicant and Doncaster Metropolitan Council (principal planning officer) dated 6 December 2021).
- The HSE wrote to the Applicant on 21 December 2021 confirming that it did not advise against the proposal nor raise any representations in regard to the Control of Major Accident Hazards (COMAH), explosives or hazardous substances consent and that it therefore had no comments to make or discussions to undertake such that a SoCG is necessary. A copy of the e-mail that contained the HSE response to the Applicant is appended to the Applicant's letter [REP1-001], submitted at DL1.

1.4.42. The SoCG(s) (other than unsigned or incomplete ones referred to above) have been taken fully into account by the ExA in all relevant chapters of this report.

Written Questions

1.4.43. The ExA asked two rounds of written questions:

- The ExA's First Written Questions (ExQ1) [PD-009] and procedural decisions were set out in the Rule 8 letter [PD-008], dated 14 December 2021.
- The ExA's Further Written Questions (ExQ2) [PD-016] were issued on 12 April 2022.

1.4.44. The following requests for further information and comments under Rule 17 of the EPR were issued on:

- 17 January 2021 [PD-010], which sought further information and comments in writing by DL2 (1 February 2022) from the Applicant and IPs in relation to archaeology and the Applicant's request to adjust the project name, and allowed for IPs to comment on the information submitted in response to the request by DL3 (15 February 2022);

- 7 March 2022 [PD-015], which sought:

  - further responses from IPs in regard to the reply of Public Health England to the scoping request, as its response had not been previously published due to a clerical error. Responses were also sought from IPs in regard to the late scoping consultation response that had been submitted by the Ministry of Defence (MoD). I asked

all IPs whether these responses would have had any bearing on the approach or findings of the ES submitted with the application and allowed for IPs to comment on these responses by DL5 (5 April 2022) and any IP wishing to comment on information submitted in response to this request at DL5 to do so at DL6 (26 April 2022); and
    - clarification from Cadent Gas, NGET and NGG in regard to representations made by them that appeared to be contradictory. Responses were requested by DL5 (5 April 2022) and were open to the Applicant and all IPs;

- 13 April 2022 [PD-017] that, having reflected on matters raised by the DL5 change request submissions, sought:
    - further information and comments in regard to whether Regulations 5 to 19 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 were considered to be engaged and if so whether consent to the inclusion of additional land had been obtained and provided by all APs that had a relevant land interest pertaining to that additional land; and
    - comment from NE and the Canal and River Trust on specified paragraphs and appendix contained within the Applicant's Landscaping and Biodiversity Management and Enhancement Plan [REP5-034], submitted as part of the DL5 change request submission; this change request and related documentation were subsequently withdrawn by the Applicant by its letter of the 25 April 2022 [REP6-018] and subsequently replaced by a resubmitted change request and related documentation submitted at DL6a. The change request is explained in more detail at paragraph 2.2.3 of this report.

- 25 April 2022 [PD-018], which sought further information and comments in writing by D6a (10 May 2022) from the Applicant and IPs in relation to:
    - what consents/ agreements are still required from NGET and if so, what stage those consents/ agreements had reached;
    - whether NE wished to comment on the Applicant's Canal Water Abstraction Assessment [REP5-017]; and
    - clarification on the proposed solar schemes and separation distances required between the 132kV thermal cable and proposed ground cable related to such developments, as referred to by Pollock Associates in its DL5 submissions [REP5-057 to REP5-060].

  Any IP wishing to comment on information submitted at DL6a in response to this request was advised they could do so at DL7 (24 May 2022);

- 29 April 2022 [PD-019] that encouraged the Applicant to consider withdrawing the change requests made to that point in time (documents [REP5-019], [REP5-020 to REP5-048], [REP6-018] and [REP6-019 to REP6-029]) with a view to it submitting a new change request that clearly set out the proposed changes, along with a full suite of all the necessary and associated documents. The Applicant

was given until DL6a (10 May 2022) to decide whether to withdraw and resubmit a change request and related documentation;

- 12 May 2022 [PD-020], which sought clarification by DL7 (24 May 2022) from the Applicant and named IPs in regard to their responses to specified ExQ1, ExQ2 and Rule 17 letters. The clarification sought was in terms of the following matters:

  - archaeology and the Applicant's Outline Written Scheme of Investigation;
  - CA/ TP and progress made;
  - noise;
  - the dDCO, including the Deemed Marine Licence (DML), and amendments to it;
  - progress on resolving matters with NGET;
  - progress on reaching agreement with specified IPs in regard to SoCGs; and
  - protective provisions and any necessary related side/ option/ interface agreements.

  Any IP wishing to comment on information submitted at DL7 (24 May 2022) in response to this request was advised they could do so at DL7a (6 June 2022); and

- 26 May 2022 [PD-022], which sought clarification by DL7a (6 June 2022) from the Applicant and named IPs in regard to:

  - an update to application document 5.4 'Schedule of Other Consents and Licences' [APP-033], which had been requested by the ExA during ISH2 (See: ISH2 Session 3 [EV-027]) but not submitted into the Examination;
  - the matter of detriment to Statutory Undertakers' (SU) undertakings in the absence of SUs withdrawing any outstanding objection, prior to the close of the Examination, including the absence of written confirmation from SUs about the status of the protective provisions and any necessary side agreements;
  - clarification from the Applicant in regard to its answer to ExQ2 Q2.16.13(i);
  - clarification from NGET as to whether its DL7 submission was also authorised to be made on behalf of NGG; and
  - a summary from the named IPs in regard to:
    i) any outstanding objection(s);
    ii) protective provisions;
    iii) CA/ TP; and
    iv) the status of any side agreement, interface agreement or other relevant agreements they consider necessary to provide relevant protections or mitigations from the Proposed Development.

1.4.45. All responses to the ExA's written questions have been fully considered and taken into account in all relevant chapters of this report.

REQUESTS TO JOIN AND LEAVE THE EXAMINATION

1.4.46. The Applicant wrote to the ExA on 27 September 2021 [AS-004] and 30 September 2021 [AS-005] advising a number of SSE group companies (SSE Plc; SSE Generation Limited; Keadby Wind Farm Limited and Keadby Developments Limited), who are persons within one or more categories set out in s57 (Categories for purposes of s56(2)(d)), were omitted from the notifications and publicity undertaken pursuant to s56 of the PA2008 and Regulation 16 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 572) (as amended) (the EIA Regulations). Hereafter these SSE Group companies are referred to as the Omitted Companies.

1.4.47. The ExA noted the Omitted Companies were persons/ parties included within the Book of Reference, within one or more of the Categories (Categories 1, 2, and/ or 3) specified within s57 of the PA2008. As such the Omitted Companies would each be an AP, with the rights afforded under s92 of the PA2008.

1.4.48. In the interests of natural justice and to ensure that the Examination had regard to all important and relevant issues, the ExA took steps to notify the Omitted Companies of the application for an Order Granting Development Consent for the Keadby 3 Carbon Capture Power Station Project, notifying them that they may be eligible to become an IP under s102(1)(ab) of the PA2008 affording them a reasonable opportunity to participate in the Examination, should they wish to do so, prior to any procedural decisions being made to guide the Examination of the application going forward.

1.4.49. All of the Omitted Companies responded (Keadby Developments Limited [AS-007] dated 7 October 2021; SSE Plc [AS-009] dated 12 October 2021; and SSE Generation Limited and Keadby Wind Farm Limited [AS-008] dated 22 October 2021) to the ExA's consultation confirming that they would *"…not be submitting any representation to the DCO."*

1.4.50. On the 29 October 2021, I exercised my discretion to accept an Additional Submission from Anglian Water Services Limited, [AS-006]. It confirmed that it would not be participating in the Examination, as it was not the water infrastructure provider for the location of the Proposed Development.

1.4.51. On the 15 December 2021, I exercised my discretion to accept an Additional Submission from the Joint Nature Conservation Committee (JNCC), [AS-011]. It confirmed that the Proposed Development *"…is not located within the offshore area, does not have any potential offshore nature conservation issues and is not concerned with nature conservation at a UK-level, therefore JNCC does not have any comment to make on the consultation."*

1.4.52. On the 7 March 2022, I exercised my discretion to accept an Additional Submission from ESP Utilities Group Ltd [AS-016] that confirmed *"…it*

has no gas or electricity apparatus in the vicinity of this site address and will not be affected by your (sic) [the] *proposed works."*

1.4.53. On the 24 May 2022, I exercised my discretion to accept an Additional Submission from Northern Gas Networks [AS-028] confirming its original response was sent in error and that it does not own/ maintain any gas assets in the area.

1.4.54. No other Additional Submissions were received during the Examination by persons who were not already IPs at or after the PM.

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

- The Canal and River Trust, which is an IP/ AP, in its letter dated 6 June 2022 [REP7a-015] withdrew its objection to the Proposed Development advising *"…it has reached a voluntary agreement with the Applicant"*. It also confirmed:
  - it was *"…satisfied with the amended wording of the protective provisions in the latest draft DCO.";*
  - its concerns in relation to CA of land/ rights over land owned by it had been addressed through the voluntary agreement; and
  - the Applicant has agreed terms for a side agreement that sets the framework for the future working relationship between it and the Canal and River Trust in respect of the Proposed Development.
- NGC, which is an IP, in a letter dated 6 June 2022 [REP7a-018] confirmed *"…an agreement on all remaining matters regarding protective provisions has now been reached. As such, NGC can confirm it has no outstanding objections at the close of the examination."* It also confirmed:
  - *"Protective provisions have been agreed and the Applicant will include these in the final version of the draft DCO to be submitted at Deadline 7a. There are no active negotiations in relation to any other agreements, since for present purposes all relevant matters have been included and secured through the protective provisions."*
- NGET/ NGG, which is an IP/ AP, in a letter dated 7 June 2022 [AS-031] confirmed *"…the immediate withdrawal of the objections to the Project submitted by both NGET and NGG."* The letter provided no reasoning/ explanation for its decision.
- Northern Powergrid (Yorkshire) Plc, which is an IP/ AP, wrote in an email dated 7 June 2022 [AS-032] advising it *"…has now reached agreement with the Applicant and forthwith withdraws their* (sic) [its] *objection to the Order."*

1.4.56. With the exception of the IPs/ APs listed in paragraph 1.4.55 of this report, no additional IPs/ APs wrote to the ExA to formally record the settlement of their issues and the withdrawal of their representations.

1.5. ENVIRONMENTAL IMPACT ASSESSMENT

1.5.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).

1.5.2. On 15 May 2020, the Applicant submitted a scoping report to the SoS for Housing, Communities and Local Government under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion) [APP-065]. The Applicant notified the SoS under Regulation 8(1)(b) of the EIA Regulations that it proposed to provide an ES in respect of the Proposed Development.

1.5.3. On 25 June 2020 the Planning Inspectorate provided a Scoping Opinion [APP-066]. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development. The application was accompanied by an ES [APP-042 to APP-159].

1.5.4. On 17 July 2020 the Applicant provided the Planning Inspectorate with a certificate confirming that Regulation 16 of the EIA Regulations had been complied with [OD-004].

1.5.5. As identified in paragraph 1.4.44 of this report, during the course of the Examination, I was made aware of a clerical error that had occurred during the scoping process that resulted in a consultation response from Public Health England (now United Kingdom Health Security Agency) being overlooked in the publication of the Planning Inspectorate's Scoping Opinion and a late consultation response from the MoD not being published or provided to the Applicant prior to submission of the application.

1.5.6. In the light of this clerical error, I issued a request for further information on the 7 March 2022 [PD-015] under Rule 17 of the EPR seeking views from all IPs on whether the advice contained in the consultation responses from Public Health England and/ or the MoD would have had any bearing on the approach or findings of the ES submitted with the application. Any IP wishing to comment was asked to do so by DL5 (5 April 2022) and any IP wishing to comment on information submitted in response to this request at DL5 to do so at DL6 (26 April 2022). No responses were received from the Applicant or any IPs raising concerns in regard to this matter.

1.5.7. Consideration is given to the adequacy of the ES and matters arising from it in Chapter 4 of this report.

1.6. HABITATS REGULATIONS ASSESSMENT

1.6.1. The Proposed Development is development for which a Habitats Regulations Assessment Report has been provided.

1.6.2. Consideration is given to the adequacy of the Habitats Regulations Assessment Report, associated information and evidence and the matters arising from it in Chapters 4 and 5 of this report.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. During the Examination, NLC in its LIR [REP1-022] indicated it was aware the local community considered the Applicant should help to mitigate the impact of the scheme on the residents of the surrounding area by contributing to a community fund. It was suggested that the community fund could be similar to the fund SSE put in place to provide community benefits to local residents in the North Axholme area in an attempt to mitigate the impacts of the Keadby Wind Farm development.

1.7.2. No other IP made a similar request during the Examination, including Keadby with Althorpe Parish Council [RR-005] or in the draft SoCG [REP7-011] with the Keadby with Althorpe Parish Council. I pursued this matter with NLC during the ISH2, asking whether it was pursuing any contributions towards the local community and if so whether it could demonstrate how such contributions would meet the legal tests and comply with the relevant Government guidance. In response NLC confirmed it was simply seeking to raise concerns that had been brought to its attention and was suggesting a voluntary bond may have been appropriate, however, it was not something that it intended to pursue or seek a legal agreement on under s106 of the Town and Country Planning Act 1990.

1.7.3. In terms of other formal undertakings, obligations and/ or agreements with the Applicant that are important and relevant considerations for the SoS:

- The Canal and River Trust in its letter of the 6 June 2022 [REP7a-015] confirmed that it was withdrawing its objection to the Proposed Development as *"…it has reached a voluntary agreement with the Applicant"*. It also confirmed that it was *"…satisfied with the amended wording of the protective provisions in the latest draft DCO."*

  In terms of its concerns in relation to the CA of land/ rights over land owned by it, the Canal and River Trust confirmed that these had been addressed through the voluntary agreement and that it has made significant progress with the Applicant on reaching agreement for the voluntary acquisition of land and rights by the Applicant. Furthermore, it confirmed that it and the Applicant have agreed terms for a side agreement that sets the framework for the future working relationship between it and the Applicant in respect of the Proposed Development.

- NGET/ NGG – NGET in response to the ExA's Rule 17 letter of the 22 May 2022 [REP7-017] confirmed, that subject to certain amendments (subsequently undertaken by the Applicant and contained in the most recent version of the dDCO [REP7a-006]) it agreed *"…that the protective provisions for electricity and gas in Schedule 10 of the dDCO adequately match the standard protective*

provisions of National Grid Electricity Transmission plc and National Grid Gas plc". However, due to the wording of the NGET response, clarification was sought in the ExA's Rule 17 letter, dated 26 May 2022 [PD-022], as to whether the NGET response was also authorised and made on behalf of NGG.

NGET/ NGG responded on 6 June 2022 [REP7a-019] confirming NGG were *"…also content with the form of Protective Provisions (as amended by the Promoter in accordance with our* [its] *response dated 24th May) at Schedule 10 of the dDCO."* Within the same response [REP7a-019] NGET/ NGG also confirmed *"NGET and the Promoter have agreed the terms of a Side Agreement, which has been executed by the Promoter, and will be sealed and completed by NGET during the course of today (6th June 2022). On completion of the Side Agreement, NGET and NGG will withdraw their objection."*

As set out in paragraph 1.4.55 of this report, NGET/ NGG in its letter of 7 June 2022 withdrew the objections it had raised to the Proposed Development [AS-031].

1.7.4. Turning to other formal undertakings, obligations and/ or agreements with the Applicant that remained outstanding at the close of the Examination. The EA and NR have been clear that such agreements (framework/ side agreement) are necessary. No agreements with the EA/ NR, or confirmation of the satisfactory completion of such agreements, had been entered into the Examination by the time it closed.

1.7.5. The EA in its response to the ExA's Rule 17 letter of the 26 May 2022 [REP7a-016] summarised that it had received and was considering:

- a draft deed of variation to an existing easement relating to plots 3, 10 and 26 (received 20 May 2022); and
- a draft deed of variation to an existing easement relating to plot 30 (received 26 April 2022).

It also advised outstanding documents were still to be drafted/ agreed relating to:

- an easement/ options agreement in respect of plot 52;
- an agreement to securing access around plot 80a to enable continued maintenance of the North Soak Syphon;
- TP agreement in relation to plots 31, 46, 47, 53 and 54.

1.7.6. The EA confirmed its view that all these outstanding issues are capable of resolution by agreement and that it will continue to work on finalising the required agreements during the decision period. It stated that it would *"…write directly to the Secretary of State when we are in a position to withdraw the outstanding objection."*

1.7.7. NR considers a *"Framework Agreement"* with the Applicant is necessary in relation to the CA rights sought. In its response to the ExA's Rule 17 letter of the 26 May 2022 [REP7a-020] NR stated it hoped that such an

agreement *"…will be concluded shortly"*. Within the same response NR also stated that *"The current form of the Protective Provisions, as currently set out in the dDCO, are not agreed by NR as they do not provide the protections NR requires."* However, no further update as to progress of this framework agreement or protective provisions was provided by NR prior to the close of the Examination and this matter remained outstanding.

1.7.8. As such, should the SoS for Business, Energy and Industrial Strategy (BEIS) be minded to make the DCO they will need to satisfy themselves that the EA and NR have agreed satisfactory protective provisions and any side-agreement between the parties, as appropriate, has been completed.

1.7.9. By the end of the Examination there were no other matters subject to any separate undertakings, obligations and/ or agreements. All relevant considerations are addressed in this report as bearing on the DCO. These undertakings, obligations and/ or agreements (other than unsigned or incomplete ones referred to above) have been taken fully into account by me in all relevant chapters of this report.

1.8. OTHER CONSENTS

1.8.1. The application document 'Other Consents and Licences' [REP7a-010] and questions during this Examination have identified the following consents that the Proposed Development has obtained or must obtain, in addition to development consent under PA2008. The latest position on these is recorded below:

- **An Electricity Generation Licence** under the Electricity Act 1989 will be required prior to operation of the Proposed Development for the generation of electricity by the generating station (Work No. 1).
  Regulator: The Office of Gas and Electricity Markets.
  Position: Licence to be applied for prior to commissioning of the Proposed Development.

- **A Greenhouse Gas Permit** under the Greenhouse Gas Emissions Trading Scheme Order 2020 will be required for the emission of carbon dioxide from the proposed power station.
  Regulator: The EA.
  Position: Application to be submitted prior to commissioning of the proposed power station.

- **An Environmental Permit** under the Environmental Permitting (England and Wales) Regulations 2016:

  - to operate the Power Station is required.
    Regulator: The EA.
    Position: In progress. An application to vary the existing permit (EPR/YP3133LL/V011) was submitted to the EA in July 2021, with the Applicant responding to a request for further information from the EA in respect of the application's Duly Made status. A DL of

20 June 2022 has been agreed with the EA. The Applicant's completed SoCG with the EA [REP5-014] confirms:
  - the above approach to varying the existing permit was agreed with the EA;
  - the permit variation application was submitted to the EA in July 2021;
  - the permit variation application included an appraisal of best available techniques and air impacts based on the current design understanding; and
  - a subsequent permit variation may be required if the design changes;

- for flood risk activities is required for works close to EA main rivers and flood defences, including the Stainforth and Keadby Canal, the Three Rivers, Hatfield Waste Drain (Mabey Bridge/ A18 works) and the River Trent.
  Regulator: The EA.
  Position: Application, where required, to be submitted at least two months prior to the start of construction; and

- for discharge to surface water may be required for discharge of uncontaminated surface water from any dewatering of excavations if this lasts for more than three continuous months.
  Regulator: The EA.
  Position: Application to be submitted prior to the construction, if required by the contractor.

- **Groundwater Investigation Consent**, under s32 of the Water Resources Act 1991 (as amended) may be required for test pumping, prior to dewatering excavations during construction.
  Regulator: The EA.
  Position: Application to be submitted prior to the construction, if required by the contractor.

- **A Connection Agreement** for connection to the Electricity Transmission system through the modification application process with National Grid Electricity Systems Operator will be required for the connection to the electricity transmission system via the National Grid 400 kV substation located within the Proposed Development site (Works No. 3). The Applicant advises that the *"…connection will function both for export of electricity from the generating station, or import of electricity from the 400kV network to the generating station."*
  Regulator: National Grid Electricity Systems Operator.
  Position: The Applicant's completed SoCG with NGET and NGG, submitted at DL6 [REP6-009] states *"the Electrical Modification Application Offer has been issued to the Applicant on the 13 March 2022 for review. If accepted this offer would supersede the existing Bilateral Connection Agreement…, but if not accepted there would be no impact on the existing contract which would remain valid..."* The Applicant states in its submitted application document 'Schedule of Other Consents and Licences' [REP7a-010] that it is to *"…respond to*

offer on or before 13th July 2022." No further update in regard to this matter was entered into the Examination prior to its close.

- **A Commercial Agreement** with Northern Powergrid for a 132 kV electricity supply from the Northern Powergrid 132 kV substation.
  Regulator: Northern Powergrid.
  Position: The Applicant advises that a formal application was submitted in January 2022. Distribution connection options and timescales have been discussed with Northern Powergrid with an offer released on the 6 May 2022. Furthermore, it is noted that in regard to this matter the Applicant's completed SoCG with Northern Powergrid [REP7-009] advises *"the normal application process will be followed"* and the *"formal offer can be accepted on or before the 6th August 2022"*.

- **A Planning and Advanced Reservation of Capacity Agreement (PARCA)** for the reservation of gas from the NTS.
  Regulator: NGG.
  Position: The Applicant's completed SoCG with NGET/ NGG [REP6-009] confirms *"it is agreed that Gas Capacity is to be secured through a PARCA Application which is to be submitted in* (sic) *on 11 July 2022."* The SoCG also confirms:
  - pre-application meetings have taken place and this consent is required prior to operation; and
  - the parties have continued to progress feasibility studies for the proposed connection and it is agreed that Work 2A is sufficiently sized and suitably located for developing and operating the gas connection.

  Capacity is to be confirmed and reserved prior to operation.

- **Network Exit Agreement** for connection to the NTS.
  Regulator: NGG.
  Position: This agreement is required prior to the operation of the Power Station. The Applicant states an Application to Offer (A2O) submission, seeking a connection to the NTS has been lodged and a Draft Feasibility Study issued by NGG. The Applicant and NGG confirmed, via its signed SoCG [REP6-009], *"It is agreed that the A2O Application 'clock start' date was achieved in March 2022 following payment of the application fee and reaching technical competency"*. The Applicant also states it *"…expects to receive an offer in late 2022."*

- **Land Drainage Consent** under s23 and s66 of the Land Drainage Act 1991 (prohibition on obstructions etc. in watercourses) is required for the proposed surface water discharge (Work No. 5) and other works affecting ordinary watercourses.
  Regulator: NLC/ IDB.
  Position: Application to be submitted prior to relevant works commencing.

- **A Pipeline Safety Notification** under Regulation 20 of the Pipeline Safety Regulations 1996 will be required in connection with the gas connection (Work No. 2).
  Regulator: The HSE.
  Position: HSE must be notified a minimum of six months prior to commencement of the gas connection.

- **A Gas Safety Case** as required by Regulation 3 of the Gas Safety (Management) Regulations 1996 in connection with the gas connection (Work No. 2) must be prepared and submitted to HSE for approval prior to gas being conveyed, although an exemption may apply.
  Regulator: The HSE.
  Position: Safety case to be submitted prior to commencement of the start of construction of the proposed gas connection.

- **A Notification of Construction Works** under the Construction (Design and Management) Regulations 2015 must be provided to the HSE prior to the start of construction.
  Regulator: The HSE.
  Position: Notification in writing will be made prior to the commencement of construction work.

- **Construction Noise Consent** under s61 of the Control of Pollution Act 1974 may be required prior to construction of the Proposed Development for certain activities.
  Regulator: NLC.
  Position: Would be applied for prior to the start of construction, or prior to specific construction activities, if required.

- **A Permit for Transport of Abnormal Loads** under the Road Vehicles (Authorisation of Special Types) (General) Order 2003 or the Road Traffic Act 1988.
  Regulator: Vehicle Certification Agency; National Highways; and NLC, acting as the Local Highway Authority.
  Position: Permits will be sought once the number and type of abnormal loads and abnormal indivisible loads has been established.

- **A Fire Notice**, if required, under the Regulatory Reform (Fire Safety) Order 2005.
  Regulator: The Local Fire and Rescue Authority.
  Position: An application would be submitted prior to the start of construction, or prior to specific construction activities, if required.

- **Building Regulations Approval** under the Building Regulations Act 2010 (as amended) will be required in respect of buildings and structures forming part of the Proposed Development.
  Regulator: NLC.
  Position: Building Regulations Approval will be sought prior to and during the construction phase.

- **An Agreement under s278 of the Highways Act** for the carrying out of works to the public highway, if not included within the powers specified in the DCO, including works to the public highway related to the A18 site access.
  Regulator: NLC.
  Position: Will be sought prior to construction, if required. However, it should be noted that comparable powers are proposed within Articles 10, 11 and 12 of the dDCO, that would, if the DCO is made, have the ability to approve plans/ ensure works are constructed to NLC's satisfaction in the same way a s278 agreement would require. A separate s278 agreement would only be required if additional highway related works were to occur outside the "Order Limits". The Applicant's SoCG with NLC [REP6-005] notes NLC is satisfied with the content of Articles 11 and 12, whilst making no comment on Article 10, with the exception that an *"an appeal process is not required"* in relation to that article. NLC's response to the ExA's Rule 17 letter dated 12 May 2022 [REP7-015] also confirms *"The applicant has taken on board the comments raised by the local highway authority and has addressed the previously outstanding matters to our satisfaction."*

- **A Temporary Traffic Regulation Order** (TTRO) is likely to be required for construction traffic management on the A18 for main works phase and may be required in respect of crossings on Chapel Lane, creating new access or to minimise queueing/ prevent certain turns during the construction period.
  Regulator: NLC.
  Position: TTRO would be sought:
  - prior to construction once the number and nature of TTROs is established following appointment of the contractor; and
  - when in operation prior to major outages.

- **Hazardous Substances Consent** under s4 and s6 of The Planning (Hazardous Substances) Act 1990 & Schedule 1 of The Planning (Hazardous Substances) Regulations 2015 may be required if the nature, amounts and concentrations of substances stored on site exceed those specified in the Planning (Hazardous Substances) Act 1990 & Schedule 1 of The Planning (Hazardous Substances) Regulations 2015.
  Regulator: NLC.
  Position: Hazardous Substances Consent application would be applied for during construction once the volumes of hazardous substances to be stored on site are known, if required.

- **A COMAH Licence** under the Control of Major Accident Hazards (COMAH) Regulations 2015 in relation to the proposed Power and Carbon Capture site.
  Regulator: HSE.
  Position: The Applicant indicates early contact is to be made with the HSE during detailed design to determine whether a safety report is required and if so, what information it is required to contain. If required:

- notification will be made prior to construction; and
- a licence would be applied for during construction once the volumes of hazardous substances to be stored on site are known.

- **A Water Abstraction Licence** under s24 and s25 of The Water Resources Act 1991 (as amended) to provide cooling water for the Proposed Development.
  Regulator: The EA.
  Position:
  - For Canal Water Abstraction Option - As confirmed in the Applicant's completed SoCG with the Canal and River Trust [REP7-007], the Canal and River Trust submitted the Water Abstraction Licence application to the EA on 3 December 2021. The SoCG also states *"the Applicant and the Trust remain actively engaged since submission of the Application and are working closely and constructively together, and with other parties (including the Environment Agency and Historic England (see Scheduled Monument Consent below)) on matters relating to the Water Abstraction Licence Application submitted by the Trust to the Environment Agency (December 2021)"*.
  - For River Water Abstraction Option – A variation of the Keadby 1 Power Station Water Abstraction Licence would be required. Whilst this is not the Applicant's preferred option for abstraction, should it be chosen a variation application would be submitted prior to the start of construction.

- **A Water Abstraction Licence** under s24 and s25 of The Water Resources Act 1991 (as amended) may be required for test pumping (>20m^3/ day) to investigate aquifer properties and assess the risks to surrounding water features, prior to dewatering excavations during construction.
  Regulator: The EA.
  Position: Application to be submitted prior to the start of construction, if required.

- **A Permit for Temporary Storage within the Floodplain of a Main River** may be required for certain activities during construction of the Proposed Development under the EA's Standard Rules Permit (SR2015 No.29).
  Regulator: The EA.
  Position: Application to be submitted prior to commencement of construction, if required.

- **A Consent to Discharge to Foul Sewer,** under the Water Industries Act 1991 is required for the discharge of foul drainage from the Proposed Development.
  Regulator: Severn Trent Water.
  Position: Application to be submitted prior to construction, if required.

- **A Marine Licence** under the Marine and Coastal Access Act 2009, would be required if not covered by the DCO, for any works within the UK Marine Area (ie within or over the tidal River Trent). It should be

noted that it is proposed to incorporate a DML within the body of the DCO. See Schedule 13 of the dDCO [REP7a-006].
Regulator: MMO.
Position: The Applicant's signed SoCG with MMO [REP6-007] notes certain drafting amendments to the DML, which the Applicant addressed in the updated dDCO submitted at DL6a (10 May 2022) and maintained in the final preferred version of the DCO [REP7a-006], submitted at DL7A (6 June 2022). The SoCG confirms "*that there are no outstanding matters to be agreed.*" The DML at Schedule 13 of the dDCO [REP7a-006] establishes timescales for approvals.

- **Scheduled Monument Consent** under the Ancient Monuments and Archaeological Areas Act 1979 to enable modifications to Keadby Lock by raising the lock gates by 300 millimetres to prevent water being lost into the River Trent from the canal.
  Regulator: Department for Digital Culture, Media and Sport, as advised by HE.
  Position: Pre-application advice and copy of draft Scheduled Monument Consent was submitted to HE, by the Canal and River Trust, in February 2022. Initial feedback from HE, received the same month, confirmed no issues are foreseen with the application. The Applicant states it understands that the Canal and River Trust will submit a formal application to HE following ongoing design studies, prior to construction.

- **A Site of Special Scientific Interest Assent/ Consent** under s28E(1)(a) of the Wildlife and Countryside Act 1981.
  Regulator: NE.
  Position: Ahead of commencement, a notice of intention to complete works must be submitted to NE.

- **A European Protected Species Licence** under the Conservation of Habitats and Species Regulations 2017 (as amended) may be required for any components of the Proposed Development that affect protected species.
  Regulator: NE.
  Position: Pre-construction surveys, taking into account seasonal requirements and time taken to obtain licence prior to construction works, are secured by a requirement within the proposed DCO. These surveys would confirm the position and the need for any licences. An application for a European Protected Species Licence would be submitted prior to start of construction, if required.

- **A Water Vole Licence** under s10(3)(c) of the Wildlife and Countryside Act 1981 (as amended) is likely to be required pre-construction to enable works in and around ditches which may displace water voles. The exact nature of licence required to be agreed following pre-construction surveys.
  Regulator: NE.
  Position: Pre-construction surveys, taking into account seasonal requirements and time taken to obtain licence, are to be undertaken prior to construction works. The pre-construction surveys are

proposed to be secured by a requirement within the proposed DCO. A Water Vole Licence application would be submitted prior to start of construction, if required.

- **A Badger Licence** under the Protection of Badgers Act 1992 would be required for any components of the Proposed Development that have the potential to disturb these species.
  Regulator: NE.
  Position: Application to be submitted prior to start of construction, if required.

- **The IDB Byelaws:**

  - Introduction of water into an IDB watercourse by virtue of IDB Byelaw 3.
  - Consent for buildings, structures or planting within 9 metres (m) of landward toe of embankment/ wall, within 9m of top of batter where there is no embankment/ wall or within 9m of enclosing structure for enclosed watercourses by virtue of IDB Byelaw 10.
  - Consent for any gas or water main/ pipe/ electrical main or cable in, over or under any IDB watercourse or bank by virtue of IDB Byelaw 17(a).
  - Consent for bridges and culverts in vicinity of IDB drains, in terms of any works that affect structures for the passage of water into or out of the IDB watercourses or banks by virtue of IDB Byelaw 17(c).
  - Consent for installing any fence, post, pylon, wall, wharf, jetty, pier, quay, bridge, loading stage, piling, groyne, revetment or any other building or structure whatsoever in, over or across any IDB watercourse or in or on any bank thereof by virtue of IDB Byelaw 17(d).
  - The installation of engineering features within or adjacent to riparian watercourses, as required by the Land Drainage Act 1994 and IDB byelaws. The Applicant considers, as the proposed Power and Carbon Capture site is bounded to the east and west by riparian watercourses, it is likely to have a riparian responsibility to maintain the proper flow of water in any riparian watercourse which borders or flows through land.

  Regulator: The IDB.
  Position: Applications under the relevant IDB byelaw to be submitted prior to construction, if required.

- **Licence to be a Waste Carrier, Broker or Dealer**
  Regulator: The EA.
  Position: Registration would be sought prior to the carrying, brokering or dealing of waste.

1.8.2. In relation to the outstanding consents recorded above, the ExA has considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, concludes that there are no apparent impediments to the implementation of the Proposed Development, should the SoS for BEIS make the DCO.

1.9. STRUCTURE OF THIS REPORT

1.9.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the application, the processes used to carry out the Examination and make this report.
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoS' decision.
- **Chapter 4** sets out the planning issues that arose from the application and during the Examination.
- **Chapter 5** considers effects on European sites and Habitats Regulations Assessment.
- **Chapter 6** sets out the balance of planning considerations arising from Chapters 4 and 5, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 7** sets out the ExA's examination of CA and TP proposals.
- **Chapter 8** considers the implications of the matters arising from the preceding chapters for the DCO.
- **Chapter 9** summarises all relevant considerations and sets out the ExA's recommendation to the SoS for BEIS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Library.
- **Appendix B** – List of Abbreviations.
- **Appendix C** – The Recommended DCO.

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

1.9.4. In accordance with s83(1)(b)(i) and (ii) of the PA2008, this report sets out my findings and conclusions in respect of the application and my recommendation to the SoS for BEIS on the decision to be made on the application.

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

2.1.1. The application was submitted on 1 June 2021 under section (s) 31 of the Planning Act 2008 (PA2008) [APP-003] and accepted for Examination under s55 of the PA2008 on 28 June 2021 [PD-001]. The Application seeks development consent under the Planning Act 2008 for the construction, operation and maintenance of a carbon capture equipped electricity generating station with the capacity to generate 910 megawatts (MW) gross electrical output on land at and in the vicinity of the Keadby Power Station site, Trentside, Keadby, North Lincolnshire, DN17 3EF. The location of the site is shown on the Location Plan [REP6a-042].

2.1.2. The Environmental Statement (ES) Non-Technical Summary [APP-042], indicates that the Proposed Development would be designed to operate continuously 24 hours a day, seven days a week, with programmed offline periods for maintenance. No restriction on the number of days or hours of operations are included in the draft Development Consent Order (dDCO) as its operation would be driven by demand, and regulated by the Environment Agency through an environmental permit.

THE PROPOSED DEVELOPMENT

2.1.3. Schedule 1 of the dDCO [REP7a-006] sets out the formal description of the elements that comprise the project. These are summarised in paragraph 1.1.2 of this report and shown on the Works Plans [REP6a-044]. Further detail can be found in Chapter 4 (The Proposed Development) of the ES [APP-047], as updated by the Applicant's ES Addendum Volume I [REP6a-065], submitted as part of the Applicant's change request made at Deadline (DL) 6a (Tuesday 10 May 2022).

2.1.4. However, the final design of the Proposed Development has not yet been determined. This is, in part, due to:

- the fact that a number of the design aspects and features of the Proposed Development cannot be confirmed until the detailed design of the Proposed Development has been completed. For example, the building sizes may vary, depending on the engineering, procurement and construction contractor selected and their specific configuration and selection of plant and equipment; and
- it being important that the consent retains some flexibility to allow for changing economic conditions and the advancement of Combined Cycle Gas Turbine (CCGT) and Carbon Capture Plant (CCP) technology in the period between preparing the application and starting construction.

2.1.5. To ensure a robust assessment of the likely significant environmental effects of the Proposed Development, the application presents a worst-case assessment of potential environmental effects. Wherever an element of flexibility is maintained, alternatives have been assessed and the worst-case impacts have been reported in the ES. Further details can

be found in the ES at Chapter 4 (The Proposed Development) [APP-047], as updated by the Applicant's ES Addendum Volume I [REP6a-065], submitted as part of the Applicant's change request made at DL6a (Tuesday 10 May 2022), which includes details of the maximum building/ structures and fixes the design parameters (see Table 3 (Maximum Design Parameters (including limits of deviation)) of that document). These design parameters are included at Schedule 11 (Design Parameters), with detailed design secured by Schedule 2 (Requirement) under Requirement 5 (Detailed Design), of the dDCO (Current version REP7a-006]).

ASSOCIATED DEVELOPMENT GAS CONNECTION

2.1.6. The National Transmission System high-pressure gas transmission network traverses the Proposed Development site and runs within the Order Limits, south of the proposed Power and Carbon Capture (PCC) site.

2.1.7. The Applicant proposes a new natural gas connection (Work No. 2), as detailed in paragraph 1.1.2 of this report, which would comprise a gas pipeline of up to 800 millimetres in diameter (nominal bore) for the transportation of natural gas to the Proposed Development. The gas pipeline would link into Keadby Power Station's existing natural gas supply infrastructure and this would be achieved by linking into the Minimum Offtake Connection (MOC)/ Above Ground Installation (AGI).

2.1.8. A single gas connection route is identified in the application, and runs north, from the existing natural gas supply infrastructure (MOC/ AGI), a short distance to the proposed PPC site. The gas connection route is completely contained within the proposed Order Limits ([REP6a-067] Figure 3.1).

2.1.9. Further details can be found in the Gas Connection Statement submitted with the application [APP-032] and detailed in the Indicative Gas Supply Pipeline Connection Plans and Gas AGI Plans [APP-020].

ELECTRICAL CONNECTION

2.1.10. The Proposed Development includes a new connection to the electricity grid to enable the export of electricity from the CCGT power station. It would comprise a direct connection to the 400 kilovolt (kV) transmission system via the existing National Grid 400kV substation located directly to the east of the proposed PCC Site.

2.1.11. Power would be exported from the National Grid Electricity Transmission Plc (NGET) substation via the existing NGET transmission network and the Applicant states a Bilateral Connection Agreement is in place between it and the National Grid Electricity System Operator in regard to the required export capacity.

2.1.12. The Works Plans [REP6a-044] and Indicative Electrical Connection Plan [APP-017] show the route for the cables (Work No. 3A) and the connection locations. Further details can also be found in the Electricity

Grid Connection Statement submitted at DL5 [REP5-010] as part of the application.

2.1.13. A 132kV electrical connection is also included within the Proposed Development site boundary for the purposes of providing an option for lower voltage electrical connection to supply the proposed PCC site during plant start-up. The connection would run from the existing Northern Powergrid substation located north and east of the Proposed Development site at Chapel Lane. There are two potential route options for the connecting cable between the substation compound and the proposed PCC site identified. These route options are included within the Proposed Development site boundary. The two option routes are illustrated in Figure 3.3 of ES Volume III [APP-103] and on the Works Plan [REP6a-044] (see Works No. 3B Sheet 9 of 27). Note Figure 3.3 of ES Volume III is indicated as being amended by the ES Addendum Volume 3 Figures document submitted at DL6a [REP6a-067]. However, no such Figure (Figure 3.3) was included in that ES Addendum document.

2.1.14. One prospective route crosses Chapel Lane, an adopted highway, from the existing substation and runs along Chapel Lane and north and west towards the main site, utilising farm access tracks previously used during the construction of the existing SSE Renewables Keadby Windfarm. The alternative option runs from the existing substation and through an area of semi-improved grassland south of existing overhead electricity transmission lines associated with the existing National Grid 400kV substation.

UTILITIES AND SERVICE CONNECTIONS

2.1.15. In regard to utilities and connections for essential services, the Proposed Development site includes land within both Keadby 1 and Keadby 2 Power Stations for the purposes of facilitating such connections, including water and other necessary infrastructure necessary to ensure safe operation and control.

2.1.16. Further details can be found in the ES at Chapter 3 (The Site and Surrounding Area) [APP-046] and Chapter 4 (The Proposed Development) [APP-047], as updated by the Applicant's ES Addendum Volume I [REP6a-065], submitted as part of the Applicant's change request made at DL6a (Tuesday 10 May 2022).

2.2. THE APPLICATION AS EXAMINED

2.2.1. Changes were made to some of the application documents during the Examination, including the wording of the dDCO. These changes sought to address my written questions, as well as points raised by Interested Parties (IP). They aim to improve the clarity of the drafting of the Development Consent Order (DCO) and address any omissions, discrepancies and other matters which were raised during the Examination.

2.2.2. The Applicant's changes to the application documents, together with any additional information submitted, are detailed in the Application Guide submitted at DL7a [REP7a-003]. This provides a guide to all documents submitted as part of the application and was updated at each DL when new or revised documents were submitted. It provides a full record of all documentation submitted into the Examination.

CHANGE REQUESTS

2.2.3. At DL6a [REP6a-032], the Applicant made a request to make four changes to the application. This change request withdrew all previous change requests made [REP5-019 and REP6-018] and all documents related to those requests (documents [REP5-020 to REP5-048] and [REP6-019 to REP6-029]). The Applicant in its Design and Access Statement [REP6a-051] states the *"Proposed Development Changes have resulted from design contractor involvement, which has continued to refine the detail of this 'First of a Kind' Project implementation"* and listed the proposed changes as follows:

Change No. 1	Inclusion of riverbed within the Waterborne Transport Offloading Area (Railway Wharf) to be numbered in Schedule 1 of the DCO as Work 10C;
Change No. 2	Not used[6];
Change No. 3	Increase to the maximum heights of the carbon dioxide absorbers/ stacks, if two are installed;
Change No. 4	Increase to the maximum heights of the carbon dioxide stripper column; and
Change No. 5	Increase in proposed soil import volumes to create a suitable development platform.

2.2.4. When taken cumulatively I considered the proposed changes were material but did not amount to a different project being proposed. For the reasons set out in my procedural decision of the 12 May 2022

[6] The Applicant previously consulted on and, at Deadline 5, proposed another change ("Change No. 2 - Changes to the Additional Abnormal Indivisible Load Route largely within SSE land and all within existing Order Limits"). This was subsequently withdrawn by the Applicant by letter dated 26 April 2022 [REP6-018]. It should be noted that the Applicant's letter dated 26 April 2022 [REP6-018] was also subsequently withdrawn, by the Applicant's 'Single change request letter' dated 12 May 2022 [REP6a-032]. As such "Change No. 2 - Changes to the Additional Abnormal Indivisible Load Route largely within SSE land and all within existing Order Limits" forms no part of the DCO Examination.

[PD-020] I accepted the proposed changes, set out in Change Nos. 1, 3, 4, and 5, listed above, into the Examination.

2.2.5. I have remained aware throughout the Examination of the need to consider whether changes to the application documents have changed the application to a point where it became a different application and whether the Secretary of State would have power therefore under section (s) 114 of the Planning Act 2008 to make a DCO having regard to the development consent applied for.

2.2.6. The '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.

2.2.7. It is clear from consideration of this context throughout the Examination that the changes to the application, which consist of the above-mentioned change request and document updating, have not resulted in significant change to the Proposed Development from that which was applied for. The changes taken into account in reaching this conclusion are documented in the chapters below of this report. It follows that the Secretary of State for the Department for Business, Energy and Industrial Strategy has the power to make the DCO as discussed in Chapter 9 and provided in Appendix C to this report.

2.3. THE SITE

2.3.1. A more detailed description of the site is provided in the ES at Chapter 3 [APP-046], as updated by the Applicant's ES Addendum Volume I [REP6a-065], submitted as part of the Applicant's change request made at DL6a (Tuesday 10 May 2022).

2.3.2. The Proposed Development site comprises land within and adjacent to the boundary of the existing Keadby 1 Power Station (K1) and Keadby 2 Power Station (K2) (currently being commissioned) to the west of Scunthorpe.

2.3.3. K1 was commissioned in 1996 and was built on the site of a former coal fired power station which was operational between 1952 and 1984. K1 consists of two CCGT units fired by natural gas and has a combined gross electrical capacity of approximately 735 MW. K2 is located to the west of K1 and comprises a single CCGT unit fired by natural gas and will have a gross electrical capacity of approximately 910 MW.

2.3.4. The Proposed Development site encompasses an area of approximately 69.7 hectares of generally flat low-lying land. This includes an area of approximately 18.7 hectares to the west of K2 in which the generating station (CCGT plant, cooling infrastructure and CCP) and gas connection will be developed (the proposed PCC site).

2.3.5. The main parts of the Proposed Development, correlate into areas comprising Work Nos. 1 to 11 (inclusive), together with other associated development, as detailed in paragraph 1.1.2 of this report.

2.3.6. Within the PCC site the ground level varies from a low point of approximately -0.6 metres (m) Above Ordnance Datum (AOD), to a high point of 6.7m AOD within the proposed PCC site, although the average levels across the site are circa 1.0m AOD. Levels on the K1 and K2 sites are slightly elevated compared to the surrounding land within the Proposed Development site, with levels typically between 1.0 and 3.0m AOD. Levels within the construction laydown areas (farmland) south of the Stainforth and Keadby Canal are typically circa 1.0m AOD. Whilst the levels of the A18 carriageway have slightly higher levels (circa 2.5m AOD) than surrounding lower lying land, although the levels at the proposed small permanent gatehouse/ security building on the Proposed Development site access road are circa 1.5m AOD.

2.3.7. The site lies within the boundary of the administrative area of North Lincolnshire Council (NLC), a unitary authority.

2.4. THE SURROUNDING AREA

2.4.1. The Proposed Development site is located within and adjoining land to the west of the existing Keadby Power Station site. Geographically, the Keadby Power Station site is located to the west of the River Trent and village of Keadby, some 7 kilometres west of Scunthorpe town centre.

2.4.2. Beyond the current Keadby Power Station site, land uses are predominantly arable farming, although various types of power infrastructure have been developed near to the Proposed Development site in recent years, including overhead electricity transmission and distribution infrastructure and the Keadby Windfarm to the north which became operational in 2014. Additional wind turbines and electricity transmission and distribution infrastructure is present over the wider surrounding area. The former Keadby Ash Tip is located immediately west of the proposed PCC site. Residential accommodation and canal and river related uses are found in the nearby villages of Keadby and Gunness.

2.4.3. Vehicular access to the Proposed Development site is proposed to be via the A18, located to the south of the site. Once off the A18 the vehicular access is a private road with the majority of vehicles accessing the site via this private route, which crosses over the Stainforth and Keadby Canal and the Scunthorpe to Doncaster rail line via the North Pilfrey Bridge. Abnormal indivisible loads will primarily access the site via alternative routes, as set out in Works No. 10A above. Both the Stainforth and Keadby Canal and the Scunthorpe to Doncaster rail line run east west adjoining the site.

2.5. OTHER DEVELOPMENTS

2.5.1. The Proposed Development site is located within and adjacent to the boundary of the existing K1 site and the K2 site currently being

commissioned. The existing K1 site, which is operational, provides up to 735 MW, whilst the K2 site is anticipated to commence operations in October 2022 with the capability of providing up to 910 MW. The former Keadby Ash Tip is located immediately west of the proposed PCC site.

2.5.2. Various other types of power infrastructure have been developed within and adjoining the Proposed Development site in recent years. Both National Grid's 400kV substation and Northern Powergrid's 132kV substations lay within the Order Limits, with electricity pylons carrying overhead electricity cables that radiate out of the Order Limits and run north, east, south and west. Keadby Windfarm is located to the north of the Proposed Development site and became operational in 2014. Additional wind turbines and electricity transmission and distribution infrastructure is also present over the wider surrounding area, although none of the infrastructure related to the wind farms interfaces or overlaps with the Proposed Development.

2.6. RELEVANT PLANNING HISTORY

2.6.1. The Applicant's Planning Statement [REP3-006] briefly outlines the planning history associated with the application site, as well as other land, in the vicinity of the application site. The planning history related to the other land primarily details development that involves minor connection works within the Order Limits of the proposed DCO, as well as various types of power infrastructure that have been developed near to the Proposed Development site in recent years, including windfarms, overhead electricity transmission and distribution infrastructure present over the wider surrounding area. Other planning history of note relates to the former Keadby Ash Tip.

2.6.2. The Planning Statement [REP3-006] also notes the history of operational power generation at Keadby over a significant period from 1952, with K1 being commissioned in 1996 and K2 commencing construction in 2019 and currently being in its commissioning phase.

2.6.3. NLC's Local Impact Report [REP1-022] does not raise any concerns in regard to the Applicant's account of the site's planning history for the Proposed Development site and surrounding area. Furthermore, the Applicant's agreed Statement of Common Ground (SoCG) with NLC [REP6-005] sets out the Applicant provided a list of past planning decisions, based on the online public register, along with information held by the Applicant relating to historical consents at Keadby Power Station to NLC on 5 May 2021. It also stated that NLC having reviewed this list confirmed it does not have further substantive information to add to this list. Appendix 2 to the Applicant's SoCG with NLC includes correspondence from NLC which confirms having checked its systems *"the site history appears robust"*.

2.6.4. The planning history associated with the application site, as well as other land that is located mainly in the vicinity of the application site, is detailed in Table 2.1 of the Applicant's Planning Statement [REP3-006]. With the exception of a submission made at DL5, by Pollock Associates

(representing an IP) [REP5-057], no issues arise out of the Applicant's account of the site's planning history for the Proposed Development site and surrounding area.

2.6.5. Pollock Associates in its DL5 submission [REP5-057] references a *"proposed solar scheme"*. This reference, in part, informed my Rule 17 letter, dated 25 April 2022, [PD-018] that sought amongst other matters, further information in relation to the *"proposed solar scheme"*. In its response to my request for further information, Pollock Associates made a submission at DL6 [REP6-038] that indicated that two separate screening requests, related to two separate solar schemes, had been submitted to NLC, but no screening response had been received.

2.6.6. NLC in its DL6 submission [REP6-031] stated two separate screening requests have been submitted to it in respect of two proposed solar farms on land west of Chapel Lane, Keadby and land north of Chapel Lane, Keadby. In the same response NLC also stated these screening requests were submitted by Sirius Planning Ltd on 16 December 2021 and both are still pending, as they were awaiting further information from the agent. As such it advised that no formal screening opinion had been adopted by it to date. NLC provided details of these screening requests as set out below:

- PA/SCR/2021/7: EIA screening request relating to a 49.9 MW solar farm on Land west of Chapel Lane, between Keadby and Ealand. Decision still pending, as awaiting further information from the agent.

- PA/SCR/2021/8: EIA screening request relating to a 49.9 MW solar farm on Land north of Chapel Lane, Keadby. Decision still pending, as awaiting further information from the agent.

2.6.7. NLC in its above-mentioned response confirmed it has no record of a formal planning application(s) being submitted for the referenced solar scheme. In regard to planning decisions Pollock Associates, in its submission made at DL6 [REP6-038], confirmed *"…as the screening request has not yet benn* (sic) [been] *received there is no planning decision."*

2.6.8. No further updates were received from the Applicant or any IPs prior to the close of the Examination in relation to the above-mentioned screening requests or any formal planning application(s) being submitted for the solar schemes referred to.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

3.1.1. This chapter sets out the relevant legal and policy context for the application. I have taken this into account in the Examination of the Proposed Development and in presenting findings and making recommendations to the Secretary of State (SoS).

3.1.2. The legislative and decision-making framework, as understood by the Applicant, is described in its Planning Statement [REP3-006] at section 3, whilst:

- Section 4 addresses United Kingdom (UK) Energy and Climate Change Policy, as understood by the Applicant;
- Section 5 addresses the National Planning Policy Framework (July 2021) (NPPF) and the Local Development Plan, as understood by the Applicant;
- Section 6 sets out the Applicant's assessment of the Proposed Development against:
  - the relevant National Policy Statements (NPS) EN-1 (Overarching National Policy Statement for Energy), NPS EN-2 (National Policy Statement for Fossil Fuel Electricity Generating Infrastructure), NPS EN-4 (National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines) and NPS EN-5 (National Policy Statement for Electricity Networks Infrastructure);
  - Marine Policy Statement(s) (MPS);
  - the NPPF; and
  - local planning policies of the North Lincolnshire Local Development Framework (NLLDF); and
- Section 7 is the Applicant's assessment of the benefits and adverse impact of the Proposed Development.

3.1.3. In addition to the above, individual chapters of the Applicant's Environmental Statement (ES) provide specific, topic-based legal and policy background relating to particular topics.

3.1.4. The Local Impact Report (LIR) of North Lincolnshire Council (NLC) [REP1-022] sets out the local authority's position regarding its development plan policies.

3.2. THE PLANNING ACT 2008

3.2.1. The application is for a Development Consent Order (DCO) under the Planning Act 2008 (PA2008) for a Combined Cycle Gas Turbine (CCGT) generating station with an electrical output of up to 910 megawatts (MW). The components of the Proposed Development are set out in Chapter 1 of this report.

3.2.2. This application is for a Nationally Significant Infrastructure Project (NSIP) as it falls within section (s) 4(1)(a) of the PA2008 and includes *"the construction or extension of a generating station"* with a gross

electrical output in excess of 50 MW, that meets the provisions set out in s15(2) of the PA2008.

3.2.3. Section 104 of the PA2008 applies: *"...in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates."*

3.2.4. Section 104(2) of the PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) are any relevant NPS, any LIRs, any appropriate marine policy documents, 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. Section 104(3) requires the SoS to decide the application in accordance with any relevant NPS, except to the extent that one or more of the exceptions in subsections (4) to (8) applies.

3.2.6. This report sets out my findings, conclusions and recommendations taking these matters fully into account and applying the criteria set out in s104 of the PA2008, whilst the remainder of this chapter addresses the identification and application of relevant NPSs and the LIR and identifies other legal and policy matters that are capable of being important and relevant considerations.

3.3. NATIONAL POLICY STATEMENTS

3.3.1. The Overarching NPS for Energy[7] (NPS EN-1) published in July 2011 sets out the Government's policy for delivery of major energy infrastructure. It was accompanied by five technology-specific NPSs for the energy sector of which the NPS for Fossil Fuel Electricity Generating Infrastructure[8] (NPS EN-2), NPS for Gas Supply Infrastructure and Gas and Oil Pipelines[9] (NPS EN-4) and the NPS for Electricity Networks Infrastructure[10] (NPS EN-5) are relevant.

[7] Overarching National Policy Statement for Energy (EN-1) (Department of Energy & Climate Change 2011). Retrieved from: https://www.gov.uk/government/publications/national-policy-statements-for-energy-infrastructure.
[8] National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2) (Department of Energy & Climate Change 2011). Retrieved from: https://www.gov.uk/government/publications/national-policy-statements-for-energy-infrastructure.
[9] National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) (Department of Energy & Climate Change 2011). Retrieved from: https://www.gov.uk/government/publications/national-policy-statements-for-energy-infrastructure.
[10] National Policy Statement for Electricity Networks Infrastructure (EN-5) (Department of Energy & Climate Change 2011). Retrieved from: https://www.gov.uk/government/publications/national-policy-statements-for-energy-infrastructure.

NPS EN-1: OVERARCHING NATIONAL POLICY STATEMENT FOR ENERGY

3.3.2. Part 2 of NPS EN-1 sets out *"Government policy on energy and energy infrastructure development"*. It confirms:

- the Government's commitment to meet its legally binding target to cut greenhouse gas (GHG) emissions by at least 80% by 2050 compared to 1990 levels (which has since been increased to a commitment to reach net zero emissions by 2050[11]);
- the need to affect a transition to a low carbon economy, so as to reduce GHG emissions; and
- the importance of maintaining secure and reliable energy supplies as older fossil fuel generating plant close due to the European Union (EU) Emissions Trading System and the UK moves towards a low carbon economy.

3.3.3. NPS EN-1 sets out the Government's policy for delivery of major energy infrastructure projects. Paragraph 3.1.1 states:

"the UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions".

3.3.4. Paragraph 3.1.2 states that it is for industry to propose new energy infrastructure and that the Government does not consider it appropriate for planning policy to set targets for or limits on different technologies.

3.3.5. Paragraph 3.1.3 sets out 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"*, whilst paragraph 3.1.4 indicates that the SoS *"should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008"*. Indeed, the scale of the need for new electricity generating capacity is set out within NPS EN-1 at paragraph 3.3.7 with up to 22 gigawatts of existing capacity (including a large amount of fossil fuel power generation) needing to be replaced in part due to the Industrial Emissions Directive, but also as a result of some power stations reaching the end of their operational lives. In response to this, NPS EN-1, at paragraph 3.3.23, identifies a minimum need for 59 gigawatts of new generating capacity over the period to 2025.

3.3.6. NPS EN-1 gives particular regard to the need to have sufficient capacity to meet demand and provide back up to intermittent renewable energy such as wind and solar. Paragraph 3.3.2 states: *"The Government needs to ensure sufficient generating capacity is available to meet maximum peak demand, with a safety margin of spare capacity to accommodate*

[11] UK becomes first major economy to pass net zero emissions law (27 June 2019). Retrieved from: https://www.gov.uk/government/news/uk-becomes-first-major-economy-to-pass-net-zero-emissions-law.

unexpectedly high demand and to mitigate risks such as unexpected plant closures and extreme weather events…"

3.3.7. The need for more electricity capacity is also set out in NPS EN-1, at paragraph 3.3.11, which states: *"…some renewable sources (such as wind, solar and tidal) are intermittent and cannot be adjusted to meet demand. As a result, the more renewable generating capacity we have the more generation capacity we will require overall, to provide back-up at times when the availability of intermittent renewable sources is low."*

3.3.8. The urgency of the need for new electricity capacity is explained in terms of (paragraph 3.3.15) meeting our obligations for 2050, particularly for low carbon energy, whilst it is noted (paragraph 3.3.16) that a failure to decarbonise and diversify energy sources could result in becoming locked into a system of high carbon generation, making it very difficult and expensive to meet the 2050 carbon reduction target.

3.3.9. Paragraph 3.3.24 states that it is not the Government's intention to set targets or limits on any new generating infrastructure to be consented in accordance with the energy NPSs.

3.3.10. Section 3.6 of NPS EN-1 acknowledges that fossil fuel generation plays a vital role in providing reliable energy supplies and providing flexibility in response to changes in supply and demand and diversity in energy mix. Government policy is that fossil fuel-based generating stations must be constructed and operate in line with increasingly demanding climate change goals.

3.3.11. Paragraph 4.1.2 of NPS EN-1 indicates that the SoS should start with a presumption in favour of granting consent to applications for energy NSIPs, and that the presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. This presumption is subject to the requirements of s104(3) PA2008.

3.3.12. As set out in paragraph 4.1.3 of NPS EN-1, account should be taken of the potential benefits of the Proposed Development to meeting the need for energy infrastructure, job creation and any longer term or wider benefits. Account should also be taken of potential adverse impacts, including any long term and cumulative ones, as well as measures to avoid, reduce or compensate for them. Paragraph 4.1.4 continues by stating that within this context the SoS should take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels.

3.3.13. Additionally, other policies and considerations, including those contained in the development plan for the area may constitute matters that the SoS may regard as important and relevant to the decision. However, the primacy of NPSs for NSIPs is clear. In the event of a conflict between policies contained in any other document and those in an NPS, those in the NPS prevail for the purposes of decision-making on NSIPs (NPS EN-1, paragraph 4.1.5).

3.3.14. Part 5 of NPS EN-1 lists a number of generic impacts that relate to most types of energy infrastructure, which the SoS should take into account when preparing and considering applications. These include land use; socio-economics; air quality and emissions; noise and vibration; dust, odour, artificial light, steam and smoke; traffic and transport; civil and military aviation; biodiversity and geological conservation; historic environment; landscape and visual; water quality and resources; flood risk and waste, amongst others.

NPS EN-2: NATIONAL POLICY STATEMENT FOR FOSSIL FUEL AND ELECTRICITY GENERATING INFRASTRUCTURE

3.3.15. NPS EN-2 sets out the factors which influence the development of sites for fossil fuel power stations and the criteria which the Government expects applications to meet when applying for 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, climate change adaptation and consideration of good design.

3.3.16. In terms of the impacts of gas generating stations, NPS EN-2 reiterates the policy in NPS EN-1 and adds the need to consider impacts of air emissions, landscape and visual amenity, noise and vibration and water quality and resources.

NPS EN-4: NATIONAL POLICY STATEMENT FOR GAS SUPPLY INFRASTRUCTURE AND GAS AND OIL PIPELINES

3.3.17. NPS EN-4 provides guidance on the assessment of applications for new gas and oil pipelines. The Proposed Development includes a new gas pipeline connection to the existing gas pipeline which connects to the National Transmission System for gas. The new gas connection does not represent an NSIP in its own right, but it is included as associated development.

3.3.18. Technology specific considerations for gas pipelines include proximity to sensitive land uses (eg residential development and schools) when planning routes; pipeline safety; noise and vibration; biodiversity; landscape and visual amenity; water quality and resources; and soils and geology.

NPS EN-5: NATIONAL POLICY STATEMENT FOR ELECTRICITY NETWORKS INFRASTRUCTURE

3.3.19. NPS EN-5 outlines the principles which should be applied to applications for new electricity transmission lines as well as associated infrastructure. The Proposed Development would involve the provision of an electricity cable to the boundary of the existing National Grid Electricity Transmission substation, which will be connected into the transmission

system by the Statutory Undertaker under its Statutory Undertaker provisions. The supply of the provision of the electricity cable to the boundary of the existing National Grid Electricity Transmission substation is included as associated development.

3.3.20. Technology specific considerations to be taken into account for such works include biodiversity, landscape and visual amenity, noise and vibration and the impacts of electric and magnetic fields.

DRAFT REVISED NATIONAL POLICY STATEMENTS

3.3.21. On 6 September 2021 the Department for Business, Energy and Industrial Strategy (BEIS) published revised draft NPSs in relation to energy (draft NPS EN-1 to NPS EN-5 (inclusive)) for consultation. These draft NPSs reiterate the urgent need for low carbon energy development and carbon capture, as well as emphasising the importance of good design.

3.3.22. Draft NPS EN-1 (Overarching NPS for Energy) recognises the need for new nationally significant infrastructure. It acknowledges gaseous fuels have a key role to play in the UK energy landscape, whilst also noting *"It is not the role of the planning system to deliver or limit specific amounts of any form of gas infrastructure covered by this NPS"* (paragraph 3.4.25). Section 3.4 also recognises the need to meet the ongoing demand for natural gas, whilst maintaining the need for a diverse mix of gas supply infrastructure in order to meet our energy objectives, and the need to deliver affordable decarbonisation.

3.3.23. Section 3.5 of draft NPS EN-1 recognises the importance of new carbon capture and storage (CCS) infrastructure stating it *"…will be needed to ensure the transition to a net zero economy".* However, it also stresses *"It is not the role of the planning system to deliver or limit specific amounts of CCS infrastructure covered by this NPS"* (paragraph 3.5.8 of draft NPS EN-1).

3.3.24. In terms of draft NPSs on Fossil Fuel Electricity Generating Infrastructure (draft NPS EN-2) and Gas Supply Infrastructure and Gas and Oil Pipelines (draft NPS EN-4) the aspect of the text concerning good design for energy infrastructure is not considered to be materially different to the text in the current adopted NPS EN-2 and NPS EN-4. However, in terms of draft NPS EN-5 (Electricity Networks Infrastructure) this emphasises that safety and security are the primary focus of designing electricity networks infrastructure and that such considerations could limit the ability to influence aesthetic appearance (paragraph 2.7.2 of draft NPS EN-5).

3.3.25. Finally, the draft NPSs, are clear that *"…for any application accepted for examination before designation of the 2021 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS."* However, it is also clear that any emerging draft NPSs may potentially be important or relevant matters for consideration, pursuant to s104(2)(d) of the PA2008.

3.4. MARINE AND COASTAL ACCESS ACT 2009 (MaCAA)

3.4.1. In a case decided under s104 PA2008, subsection (2)(aa) requires the SoS to have regard to the appropriate marine policy documents determined in accordance with s59 MaCAA. The Proposed Development includes works relating to the River Trent (Work No. 4B, Work No. 5 and Work No. 10C as described in paragraph 1.1.2 of this report), although it should be noted that Work No. 4B will only be required if the Applicant's preferred canal water abstraction (Work No. 4A) is not feasible. Any temporary works within the River Trent to the existing infrastructure would be enclosed by a temporary cofferdam.

3.4.2. The UK MPS was published by the Department for Environment, Food and Rural Affairs (DEFRA) on 30 September 2011. It provides a framework for the taking of decisions affecting the marine environment. In summary, it advises that decision makers should weigh the proposed benefits and adverse impacts of each proposal drawing on different lines of evidence to consider the different impacts of a proposal.

3.4.3. In addition to the MPS, the East Inshore and East Offshore Marine Plans were formally adopted by the SoS in 2014 and introduce a strategic approach to planning within the English inshore and offshore waters. These plans provide guidance documents for developers to ensure the sustainable development of the marine area and protection of the marine ecosystem.

3.4.4. The East Inshore Marine Plan area includes the coastline stretching from Flamborough Head to Felixstowe, extending out to the seaward limit of the territorial sea (approximately 12 nautical miles). It also includes:

- any area submerged at mean high water spring tide;
- the waters of any estuary, river or channel, so far as the tide flows at mean high water spring tide; and
- waters in any area which is closed (permanently or intermittently) by a lock or other artificial means against the regular action of the tide, but into and from which seawater is caused or permitted to flow (continuously or from time to time).

3.4.5. This includes the tidal limits for the Humber Estuary, which incorporates areas of North Lincolnshire. The East Inshore Marine Plan states *"A clean and healthy marine environment, including healthy beaches and good water quality, are important to tourism and recreation"*.

3.4.6. The East Inshore and East Offshore Marine Plans apply national policies in a local context, ensuring the needs and aspirations of both marine plan areas are reflected by considering plan area level issues and supporting evidence.

3.4.7. Both the MPS and East Inshore and East Offshore Marine Plans are material considerations that fall to be considered in this report.

3.4.8. The draft DCO submitted as part of the application also contains at Schedule 13 a Deemed Marine Licence under Part 4 of the MaCAA.

3.5. UK REGULATIONS DERIVING FROM EUROPEAN LAW

EUROPEAN UNION WITHDRAWAL

3.5.1. The UK left the EU as a member state on 31 January 2020 with the transition period concluding on 31 December 2020. EU derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day as retained law unless it is specifically superseded.

3.5.2. This report has been prepared on the basis of the retained law and references in it to European terms such as 'habitats' have generally been retained for consistency with the Examination documents. However, where terminology has changed, for example 'National Site Network' (NSN) rather than 'Natura 2000 network', the amended terminology will be utilised.

3.5.3. Since there may be changes in legislation between the writing of this report and the SoS's decision, it will be for the SoS to satisfy themselves as to the position on retained law and obligations at the point of decision.

3.6. UK REGULATIONS

THE INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2017

3.6.1. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations), as amended by the Infrastructure Planning (Publication and Notification of Applications etc.) (Coronavirus) (Amendment) Regulations 2020, provide the legislative framework for the Environmental Impact Assessment (EIA) of the Proposed Development and its Examination. They originate from EU Council Directive 2011/92/EU, amended by 2014/52/EU, on the assessment of the effects of certain public and private projects on the environment. The EIA Regulations define the procedure by which information about the environmental effects of a project is collated and taken into account by the relevant decision-making body before consent is granted for a development.

3.6.2. The Proposed Development is a Schedule 1 development as set out in the EIA Regulations and is therefore development for which an EIA is required. As such the Applicant undertook an EIA and provided an ES with the application [APP-042 to APP-159], with some elements of the ES being updated during the Examination (ie ES Addendum – Volume I Main Volume [REP6a-065], the Site Location Plan [REP6a-042] and Land Plans [REF6a-043]).

THE ENVIRONMENTAL PERMITTING REGULATIONS

3.6.3. The Environmental Permitting (England and Wales) Regulations 2016 (EP Regulations) apply to all new installations and implemented the EU

Directive 2008/1/EC concerning Integrated Pollution Prevention and Control and the Industrial Emissions Directive 2010/75/EU. It applies to all new installations and transpose the requirements of the EU Industrial Emissions Directive into UK law. As the Proposed Development includes combustion activities falling within Part 2 of Schedule 1 of the EP Regulations, an Environmental Permit (EP) would be required before the Proposed Development commences operation.

3.6.4. The EP Regulations provide a regulatory system to ensure a high level of protection of environmental and health impacts, secured by demonstrating that the proposed approach used adopts Best Available Technique (BAT) to prevent or minimise the effects of the activity on the environment, taking account of relevant local factors. Generating stations exceeding 50 MW are covered by the Industrial Emissions Directive and the EP Regulations.

3.6.5. As set out in Chapter 1 of this report, the Applicant in its Statement of Common Ground with the Environment Agency [REP5-014] confirms that it *"…has been agreed… that the environmental permit for the Proposed Development should be applied for as a variation to the existing Keadby Power Station environmental permit (EPR/YP3133LL/V011)."* This document also confirms that the *"…permit variation application was submitted to the Environment Agency in July 2021 and included an appraisal of BAT and air impacts based on the current design understanding"* and that it *"…is agreed by both Parties that a subsequent permit variation may be required if the design changes."* This matter is addressed further in Chapter 4.

THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 AND THE CONSERVATION OF OFFSHORE MARINE HABITATS AND SPECIES REGULATIONS 2017

3.6.6. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations), the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) and the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 govern the assessment processes that must be undertaken in relation to NSN sites and Ramsar sites and the Proposed Development. Such an assessment is referred to as the Habitats Regulations Assessment (HRA). NSN sites are European sites, which include Special Areas of Conservation (SAC) and Special Protection Areas (SPA), which no longer form part of the EU's Natura 2000 ecological network.

3.6.7. These regulations were originated in part from:

- EU Council Directive 2009/147/EC on the conservation of wild birds (Birds Directive), which is a European nature conservation legislative measure for the protection for all wild bird species naturally occurring in the EU. The directive placed great emphasis on the protection of habitats for endangered as well as migratory species. It requires

classification of areas as SPAs comprising all the most suitable territories for these species. Since 1994 all SPAs formed an integral part of the Natura 2000 ecological network, now referred to as the NSN in UK legislation in respect of European sites in the UK; and

- EU Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive), which is a European nature conservation legislative measure. Habitat types requiring designation as a SAC are listed in Annex I of the Habitats Directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European Protected Species.

3.6.8. The SoS as the decision maker is the competent authority for the HRA.

3.6.9. On 1 January 2021, during the course of the Examination, DEFRA published the policy paper 'Changes to the Habitats Regulations 2017'. It outlines the arrangements for the transfer of responsibility for the protection of UK sites previously designated under the Birds and Habitats Directives from the EU to the UK Government following the UK's departure from the EU. DEFRA published the guidance, 'Habitats regulations assessments: protecting a European site' on 24 February 2021 to assist competent authorities, and I have had regard to this in preparing this report for the SoS.

3.6.10. Any proposals affecting Ramsar sites designated under the Ramsar Convention of Wetlands of International Importance 1971 (as amended) (Ramsar Convention), proposed SACs, potential SPAs and areas secured as sites compensating for damage to a European site also require an HRA under Government policy.

3.6.11. Chapter 5 sets out full details of the HRA that is required for the Proposed Development.

THE ENVIRONMENT ACT 2021

3.6.12. The Environment Act 2021 was given Royal Assent after the submission of this DCO application and sets out legislation to provide an environmental framework for the UK after leaving the EU. In summary, the Act includes new legislation relating to binding targets on air and water quality, biodiversity, and resource efficiency and waste reduction. Irrespective of this, the only aspect of the Act that had come into effect by the close of the Examination related to the creation of the Office for Environmental Protection.

AIR QUALITY STANDARDS REGULATIONS 2010 MADE UNDER THE ENVIRONMENT ACT 1995

3.6.13. Air Quality Standards Regulations 2010 made under the Environment Act 1995 (EA1995) derived from the EU Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe (Air Quality Directive) required Member States to assess ambient air quality with respect to

sulphur dioxide (SO_2), nitrogen dioxide (NO_2), nitrogen oxides (NO_x), particulate matter (PM_{10} and $PM_{2.5}$), lead, benzene, carbon monoxide (CO) and ozone. The directive aimed to protect human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollutants. It set legally binding concentration-based limit values (LV) as well as target values to be achieved for the main air pollutants and establishes control actions where these are exceeded.

THE AIR QUALITY STANDARDS REGULATIONS 2010

3.6.14. The Air Quality Standards Regulations 2010 require the SoS to assess ambient air quality for the presence of SO_2, NO_2, NO_x, PM_{10} and $PM_{2.5}$, lead, benzene and CO. They set limit values for compliance and establish control actions where the limit values are exceeded.

THE UK AIR QULAITY STRATEGY

3.6.15. EA1995 established a requirement for the production of an Air Quality Strategy (AQS) for improving ambient air quality. The AQS establishes a long-term vision for improving air quality and offers options to reduce the risk to health and the environment from air pollution. It sets UK air quality standards and objectives for the pollutants in the Air Quality Standards Regulations 2010.

3.6.16. Individual plans prepared beneath the AQS provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and Air Quality Management Areas where Air Quality Management Plans are prepared by local authorities aimed at reducing levels of the relevant pollutant.

3.6.17. As a consequence of decisions taken over a number of years to broadly promote the growth of diesel vehicles as a proportion of national fleets, combined with a divergence between regulatory and real environment outcomes in the testing of emissions from diesel vehicles, the UK as well as a number of European countries now experience issues with the achievement of NO_2 LV compliance. NSIP proposals giving rise to air emissions from combustion plant or significant changes to the volume or location of vehicle movements may have implications for the achievement of NO_2 LV compliance.

3.6.18. In response to litigation a revised draft Air Quality Plan for NO_2 was published by DEFRA on 26 July 2017[12]. This refers to Zone Plans for action in a large number of localities. However, a High Court Order was made on 21 February 2018 (ClientEarth No 3)[13], providing that whilst the revised draft Air Quality Plan remains in force, it and its supporting Zone Plans are unlawful because they do not contain measures sufficient to

[12] Air quality plan for nitrogen dioxide (NO_2) in the UK, DEFRA (2017)
[13] ClientEarth v SoS EFRA (No3), [2018] EWHC 315 (Admin)

ensure substantive compliance with the Air Quality Directive in a number of local authority areas.

3.6.19. The remedy required was the production of a supplement to the 2017 plan ensuring necessary information and feasible compliance measures are in place. Following a consultation on possible measures to be included in this supplement in identified locations in May 2018[14], the Government published the final version of its Clean Air Strategy in January 2019[15].

THE WATER ENVIRONMENT REGULATIONS

3.6.20. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (as amended) (Water Environment Regulations) transposed the Water Framework Directive (Council Directive 2000/60/EC) (WFD) in to English and Welsh domestic legislation. The WFD established a framework for community action in the field of water policy and a framework for water policy, managing the quality of receiving waters. Amongst other objectives, it seeks to prevent the deterioration of aquatic ecosystems and improve them by progressively reducing pollution and mitigating the effects of floods.

3.6.21. The Water Environment Regulations include objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods.

3.6.22. NPS EN-1 states at paragraph 5.15.3 that an ES should describe existing physical characteristics of the water environment affected by the proposed project and any impact of physical modifications to these characteristics. It should also address any impacts of the proposed project on water bodies or protected areas under the WFD.

3.7. OTHER LEGAL PROVISIONS AND POLICY

THE INFRASTRUCTURE PLANNING (DECISIONS) REGULATIONS 2010

3.7.1. The Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations) contain provisions in respect of the treatment of listed buildings, conservation areas, scheduled monuments and biodiversity.

3.7.2. Regulation 3 of the Decisions Regulations provides that:

'*(1) When deciding an application which affects a listed building or its setting, the decision-maker must have regard to the desirability of*

[14] Supplement to the UK plan for tackling roadside nitrogen dioxide concentrations: a consultation, May 2018, DEFRA and DfT
[15] Clean Air Strategy, January 2019, BEIS, DEFRA, DfT, DoHSC, HM Treasury, MHCLG.

preserving the listed building or its setting or any features of special architectural or historic interest that it possesses.

(2) When deciding an application relating to a conservation area, the decision-maker must have regard to the desirability of preserving or enhancing the character or appearance of that area.

(3) when deciding an application for development consent which affects or is likely to affect a scheduled monument or its setting, the decision maker must have regard to the desirability of preserving the scheduled monument or its setting.'

3.7.3. In respect of biological diversity, Regulation 7 requires regard be given to the United Nations Environmental Programme Convention on Biological Diversity of 1992 in consideration of the likely impacts of the Proposed Development and of appropriate objectives and mechanisms for mitigation and compensation. The provisions on EIA and transboundary matters with regard to impacts on biodiversity referred to in this chapter, satisfies the requirements of Article 14 of the Convention (Impact Assessment and Minimising Adverse Impacts).

UNITED NATIONS ENVIRONMENT PROGRAMME CONVENSION ON BIOLOGICAL DIVERSITY 1992

3.7.4. Responsibility for the UK contribution to the Convention on Biological Diversity lies with DEFRA which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond. This is of relevance to biodiversity, biological environment, ecology, HRA and EIA matters, which are considered in Chapters 4 and 5 of this report.

THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

3.7.5. The Town and Country Planning Act 1990 (as amended) (TCPA1990) regularises the development of land in England and Wales and includes an extensive set of planning regulations.

THE HIGHWAYS ACT 1980

3.7.6. The Highways Act 1980 deals specifically with the management and operation of the road network in England and Wales.

CONTROL OF POLLUTION ACT 1974

3.7.7. The Control of Pollution Act 1974 provides the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, a s60 notice may be issued by the local authority with instructions to cease work until specific conditions to reduce noise have been adopted. Section 61 of the Act 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

3.7.8. 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 NPSE 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"*.

3.7.9. The Explanatory Note within the NPSE provides further guidance on defining significant adverse effects and adverse effects. One such concept identifies the 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.

3.7.10. When assessing the effects of a Proposed Development on the noise environment, the aim should be to avoid noise levels above the SOAEL, and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

NATIONAL PLANNING PRACTICE GUIDANCE – NOISE 2019

3.7.11. This guidance provides advice on how planning can manage potential noise effects in a new development. In terms of how to recognise when noise could be a concern, the guidance provides a table outlining perception, outcomes, effect level and action required.

THE ENVIRONMENT ACT 1995

3.7.12. The EA1995, which applies to England, Scotland and Wales, is a wide-ranging piece of legislation and sets standards for environmental management.

ENVIRONMENTAL PROTECTION ACT 1990

3.7.13. Section 79(1) of the Environmental Protection Act 1990 identifies what is considered to be a statutory nuisance.

THE AIR QUALITY STRATEGY FOR ENGLAND

3.7.14. The EA1995 requires the UK Government and devolved administrations to produce a national AQS containing standards, objectives and measures

for improving ambient (outdoor) air quality, and to keep these policies under review. The Proposed Development has the potential to affect air quality through generation of emissions from construction, industrial and transport sources.

WATER RESOURCES ACT 1991, FLOOD AND WATER MANAGEMENT ACT 2010, WATER ACT 2003 AND 2014, LAND DRAINAGE ACT 1991

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

THE UK BIODIVERSITY ACTION PLAN

3.7.16. The Examination considered priority habitats and species listed in the UK Biodiversity Action Plan. Biodiversity and ecological considerations are discussed in Chapter 4 of this report.

THE WILDLIFE AND COUNTRYSIDE ACT 1981

3.7.17. The Wildlife and Countryside Act 1981 (as amended) (WCA81), is the primary legislation that protects certain habitats and species in the UK. It provides for and protects wildlife, nature conservation, countryside protection, National Parks, and Public Rights of Way (PRoW) including the notification, confirmation, protection and management of Sites of Special Scientific Interest (SSSI). These sites are identified for their flora, fauna, geological or physiographical features by the statutory nature conservation bodies in the UK. The statutory nature conservation body for England is Natural England.

3.7.18. WCA81 contains provisions relevant to Ramsar sites, National Nature Reserves and Marine Nature Reserves. If a species protected under the WCA81 is likely to be affected by a development, a protected species licence will be required from Natural England. Sites protected under the Act (including SSSIs) that are affected by a Proposed Development must also be considered. The effects of development on the PRoW network are also relevant.

3.7.19. WCA81 is relevant to the Proposed Development in view of the sites and species identified in the ES. Relevant considerations are discussed in Chapter 4 of this report.

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

3.7.20. The Natural Environment and Rural Communities Act 2006 makes provision for bodies concerned with the natural environment and rural communities, including in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions,

have regard, so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with the biodiversity duty, regard must be had to the United Nations Environment Programme Convention on Biological Diversity.

3.7.21. I have had regard to the Natural Environment and Rural Communities Act 2006 and the biodiversity duty in all relevant sections of this report.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

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

THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

3.7.23. The Countryside and Rights of Way Act 2000 (as amended) includes provisions in respect of PRoWs and access to land. It brought in improved provisions for the protection and management of SSSIs and other designations under the WCA81.

THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

3.7.24. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) empowers the SoS to maintain a list of built structures of historic or architectural importance and sets out the principal statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas.

3.7.25. As required by Regulation 3 of the Decisions Regulations, I have had regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest which it possesses as set out in Chapter 4. Similarly, I have also had regard to the desirability of preserving or enhancing the character or appearance of any conservation area.

ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS ACT 1979

3.7.26. The Ancient Monuments and Archaeological Areas Act 1979 provides for scheduled monuments to be protected and for the maintenance of a list of scheduled monuments. It also imposes a requirement to obtain 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 TCPA1990 and the NPPF.

3.7.27. As required by Regulation 3 of the Decisions Regulations, I have had regard to the desirability of preserving an affected scheduled monument or it's setting as set out in Chapter 4 of this report.

ELECTRICITY ACT 1989

3.7.28. Under the Electricity Act 1989, the Applicant has a duty to develop and maintain an efficient, co-ordinated and economical system of electrical transmission. It also confers a duty upon the Applicant to ensure that it has regard to amenity when carrying out its undertaking.

THE HUMAN RIGHTS ACT 1998

3.7.29. The European Convention on Human Rights is incorporated into domestic law by the Human Rights Act 1998. I have taken this into account as part of the Examination of this application.

THE PUBLIC SECTOR EQUALITY DUTY (PSED)

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

CLIMATE CHANGE

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

THE CLIMATE CHANGE ACT 2008 (AS AMENDED)

3.7.32. The Climate Change Act 2008 (as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019) established the world's first long-term, legally binding framework to tackle the dangers of climate change. It sets statutory climate change projections and carbon budgets. A key provision is the setting of legally binding targets GHG emission reductions in the UK of at least 100% by 2050 ("Net Zero", increased from 80% by the June 2019 amendment order) and at least 26% by 2020, against a 1990 baseline.

3.7.33. The Act also created the Committee on Climate Change, which has responsibility for setting five-year carbon budgets covering successive periods of emissions reduction to 2050, advising and scrutinising the UK Government's associated climate change adaptation programmes and producing a National Adaptation Plan for the UK Government to implement. The Sixth Carbon Budget Report was published in December 2020, whilst the Carbon Budget Order 2021 came into force on 24 June 2021, prior to the Examination of this Proposed Development commencing.

3.7.34. The PA2008 s10(3)(a) requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. I have had regard to these objectives throughout this report, notably in Chapters 4 and 6.

THE PARIS AGREEMENT

3.7.35. In December 2015, the Paris Agreement was concluded as an agreement within the United Nations Framework Convention on Climate Change and adopted by consensus on 12 December 2015 by all 195 participating states and the EU, bringing about a strong international commitment to mitigating climate change. In particular, Article 2 establishes not only a firm commitment to restrict the increase in the global average temperature to *"well below 2 degrees Celsius above pre-industrial levels"*, but also to *"pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels"* and an aspiration to achieve "Net Zero" GHG emissions during the second half of the 21st century.

3.7.36. On 22 April 2016, the UK signed the Paris Agreement and then ratified it on 18 November 2016.

THE RAMSAR CONVENTION OF WETLANDS OF INTERNATIONAL IMPORTANCE 1971 (AS AMENDED)

3.7.37. The Ramsar Convention is an international treaty that provides a framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. The Ramsar Convention applies a broad definition of wetlands, which includes lakes, rivers, aquifers, marshes, wet grasslands and estuaries.

3.7.38. Participating nations are expected to designate relevant sites, known as 'Ramsar sites' to be included on the Ramsar List of Wetlands of International Importance, and the UK Government has designated a number of such sites. The Government has chosen to apply, as a matter of policy, the provisions that apply to the consideration of NSN sites (including SACs and SPAs to Ramsar sites (and proposing SACs, potential SPAs and areas secured as sites compensating for damage to a European site)).

3.8. MADE DEVELOPMENT CONSENT ORDERS

3.8.1. The Applicant in its Explanatory Memorandum [REP7a-008] and responses to the Examining Authority's (ExA) First Written Questions [REP2-006] and requests for further information on 12 May 2022, made under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 [REP7-014], has made reference to the following made Orders to support its position:

- Transport and Works (Model Provisions to Railways and Tramways) Order 2006.

- Rookery South (Resource Recovery Facility) Order 2011.
- Hinkley Point C (Nuclear Generating Station) Order 2013.
- North Blyth Biomass Power Station Order 2013.
- North Killingholme (Generating Station) Order 2013.
- Ferrybridge Multifuel 2 Power Station Order 2014.
- Hirwaun Generating Station Order 2015.
- Network Rail (Ordsall Chord) Order 2015.
- Progress Power (Gas Fired Power Station) Order 2015.
- North Wales Windfarm Connection Order 2016.
- Keuper Underground Gas Storage Facility Order 2017.
- The London Overground (Barking Riverside Extension) Order 2017.
- Wrexham Gas Fired Generating Station Order 2017.
- The A19/ A184 Testo's Junction Alteration Development Consent Order 2018.
- Eggborough Gas Fired Generating Station Order 2018.
- The Silvertown Tunnel Order 2018.
- Drax Power (Generating Stations) Order 2019.
- Millbrook Gas Fired Generating Station Order 2019.
- Immingham Open Cycle Gas Turbine Order 2020.
- Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020.
- Southampton to London Pipeline Development Consent Order 2020.
- West Burton C (Gas Fire Generating Station) Order 2020.
- The M25 Junction 28 Development Consent Order 2022.

3.8.2. In addition to the above, the Applicant in its response to the ExA's First Written Questions [REP2-006] has made reference to the following draft Order to support its position:

- The draft White Rose CCS (Generating Station) Order.

3.8.3. I have had regard to all of the above-mentioned Orders where relevant.

3.9. OTHER RELEVANT POLICY, PLANS AND REPORTS

3.9.1. Other relevant Government policy has been taken into account by the ExA, including the following:

- **Energy white paper**: Powering our net zero future (BEIS), 2020):
    - Clean electricity will become the predominant form of energy, entailing a potential doubling of electricity demand and consequently a fourfold increase in low-carbon electricity generation. We must secure this transition while retaining the essential reliability, resilience and affordability of our energy.
    - Given the pivotal role of electricity in delivering net zero emissions, we must aim for a fully decarbonised, reliable and low-cost power system by 2050.
    - The electricity market should determine the best solutions for very low emissions and reliable supply, at a low cost to consumers.
    - The review will seek the appropriate balance between environmental, social and economic costs.

- **The National Infrastructure Plan 2014** sets out a vision for the UK's infrastructure, reinforcing the Government's commitment to investing in infrastructure and improving its quality and performance.
- **The National Infrastructure Delivery Plan (2016 - 2021)**, which built upon the National Infrastructure Plan 2014 and brought together the Government's plans for economic infrastructure over a five-year period (2016 - 2021) with those to support the delivery of housing and social infrastructure. Chapter 5 of this National Infrastructure Delivery Plan dealt with 'Energy' and set out the key projects and programmes in the sector over the five-year period including identifying the continuing importance of gas in heating our homes and the need for new high efficiency CCGT technology to come forward.
- **The 'Clean Growth Strategy – Leading the way to a low carbon future' (BEIS) 2017**, which sets out the aims of the Government to deliver increased economic growth while reducing carbon emissions.
- **The 'Clean Growth – The UK Carbon Capture, Usage and Storage (CCUS) deployment pathway - An Action Plan' (BEIS), 2018** confirming the Government's vision for the UK to become a global leader in CCUS. The action plan aims at enabling the development of the first CCUS facility in the UK, with commissioning in the mid-2020s, supporting the ambition of being able to deploy CCUS at scale during the 2030s.
- **National Infrastructure Assessment 2018 (National Infrastructure Commission)** looked across different infrastructure sectors coming to an independent conclusion based on the best available evidence that the National Infrastructure Assessment presented a clear, long-term strategy for the UK's economic infrastructure from 2020 to 2050, providing long term clarity for industry and the supply chain. This document also set out a number of recommendations, with a key theme being 'Low cost, low carbon' stating that the UK can and should have low cost and low carbon electricity, heat and waste.
- **'Net Zero' by 2050 (HM Government, 2019)** was the Government announcement made when the Climate Change Act 2008 (2050 Target Amendment) Order 2019 came into force on 27 June 2019. This Order enshrined within UK law the commitment to achieve 'Net Zero' in terms of GHG emissions by 2050.
- **The National Infrastructure Commission's report 'Net Zero - Opportunities for the power sector'** was published in March 2020, in order to update the modelling, assumptions and recommendations in the National Infrastructure Assessment 2018 mentioned above and respond to the Government's decision in June 2019 to legislate for a 'Net Zero' GHG emissions target for the whole economy by 2050, via the Climate Change Act 2008 (2050 Target Amendment) Order 2019.
- **Government Response on potential business models for Carbon Capture, Usage and Storage (2020),** which set out the Government's response to stakeholder engagement on matters falling under the following headings:

- Deploying CCUS in the 2020s.
- Parameters, Integration and Usage.
- CO_2 Transport and Storage.
- Power CCUS.
- Industrial CCUS.
- Low Carbon Hydrogen Production.

- **The National Infrastructure Strategy (November 2020)**, which sets out a foundation for future priorities and investments in order to radicalise the delivery of effective infrastructure in pursuance of the net zero emissions target by 2050. It accompanied the Prime Minister's 10-point plan to decarbonise the economy across all sectors including energy, transport and industry. In particular, it considers:

  - increasing reliance on renewable and low carbon energy projects and technologies;

  - enhancing the digital network by expanding the gigabit-capable broadband programme to enable full-fibre connectivity across 85% of the UK by 2030;

  - embedding good design in all infrastructure projects;

  - improving public transport to tackle congestion and air pollution arising from traffic; and

  - working within Government departments to review NPSs.

- **Net Zero Strategy: Build Back Greener (HM Government, 2021)** expands on key commitments in the Energy white paper, proposing to deliver *"four carbon capture, usage and storage (CCUS) clusters, capturing 20-30 $MtCO_2$ across the economy, including 6 $MtCO_2$ of industrial emissions, per year by 2030."*

  Note: This strategy was recently found to be unlawful by the High Court, in its judgment [2022] EWHC 1841 (Admin)[16]. Whilst the Net Zero Strategy was not quashed, a report that addresses the concerns identified within the strategy must be prepared and submitted, with compliance required by 31 March 2023.

- **Government Consultation regarding Future policy framework for power with CCUS.** This consultation document is seeking views and evidence on how government can best support the continued deployment of power with CCUS projects into the 2030s beyond Track-1 of the Cluster Sequencing process. The call for evidence closes 17 October 2022. Topic areas include:

  - competitive allocation design for power with CCUS;
  - the evolution of the business model used to support power with CCUS;
  - the development of the power with CCUS sector and supply chain; and

[16] https://www.judiciary.uk/wp-content/uploads/2022/07/FoE-v-BEIS-judgment-180722.pdf

- how power with CCUS could operate under future market arrangements.

- **UK Low Carbon Transition Plan (2009)**.
- **National Strategy for Climate and Energy (July 2009)**.

3.10. THE NATIONAL PLANNING POLICY FRAMEWORK

3.10.1. The NPPF (July 2021) and its accompanying Planning Practice Guidance set out the Government's planning policies for England and how these are expected to be applied. This is for the particular purpose of making development plans and deciding applications for planning permission and related determinations under the TCPA1990.

3.10.2. Throughout and at the close of the Examination the NPPF (July 2021) was the relevant version of the NPPF. Both the NPPF and Planning Practice Guidance are likely to be important and relevant considerations in decisions on NSIPs, but only to the extent relevant to that project. Paragraph 5 of the NPPF makes it clear that the document does not contain specific policies for NSIPs, where particular considerations can apply. However, it does note that the NPPF and the policies within it may be matters considered to be both important and relevant to NSIPs.

3.11. LOCAL IMPACT REPORTS

3.11.1. Sections 104 and 105 of the PA2008 state that in deciding an application the SoS must have regard to any LIR within the meaning of s60(3) of the PA2008. A LIR is a report made by a relevant local authority giving details of the likely impact of a proposed development on the authority's area (or any part of that area) that had been invited and submitted to the ExA under s60 of the PA2008.

3.11.2. The ExA's Rule 6 letter [PD-007] contained a formal request under s60(2) of the PA2008 to eligible local authorities to submit LIRs by Deadline 1. One LIR from NLC was submitted [REP1-022].

3.11.3. The LIR set out the principal local planning policies and other policies relevant to the Proposed Development and provided commentary on the consideration of local impacts. Matters raised in the LIR are discussed in this report and have been fully considered by me.

3.12. THE DEVELOPMENT PLAN

3.12.1. The legal requirement under s38(6) of the Planning and Compulsory Purchase Act 2004 to determine applications for development consent in accordance with development plan documents does not apply to applications under the PA2008. However, in the case of this application I consider the development plan to be important and relevant.

3.12.2. NPS EN-1 confirms that policies in development plans and other Local Development Framework documents may be considered important and relevant in planning decision-making. However, in the event of a conflict, the NPSs prevail for the purpose of decision-making by the SoS. The

development plan is therefore a material consideration for the SoS and has accordingly been considered as part of the policy context for the Proposed Development.

3.12.3. The development plan comprises the following documents:

- NLLDF Core Strategy (NLC, 2011) - adopted June 2011.
- NLLDF Housing and Employment Land Allocations Development Plan Document (NLC, 2016) - adopted March 2016.
- The saved policies of the North Lincolnshire Local Plan (Local Development Frameworks Government Office for Yorkshire and The Humber, 2007) - adopted May 2003, saved September 2007.

3.12.4. The development plan policies most relevant are listed against each policy document below:

- NLLDF Core Strategy (NLC, 2011) - adopted June 2011:
  - Spatial Objective 1 (An Area Wide Renaissance).
  - Spatial Objective 4 (Creating Greater Economic Success).
  - Spatial Objective 6 (Protecting and Enhancing the World Class Environment).
  - Spatial Objective 7 (Efficient Use and Management of Resources).
  - Spatial Objective 10 (Creating A Quality Environment).
  - Policy CS1 (Spatial Strategy for North Lincolnshire).
  - Policy CS2 (Delivering More Sustainable Development).
  - Policy CS3 (Development Limits).
  - Policy CS5 (Delivering Quality Design in North Lincolnshire).
  - Policy CS6 (Historic Environment).
  - Policy CS11 (Provision and Distribution of Employment Land).
  - Policy CS16 (North Lincolnshire's Landscape, Greenspace and Waterscape).
  - Policy CS17 (Biodiversity).
  - Policy CS18 (Sustainable Resource Use and Climate Change).
  - Policy CS19 (Flood Risk).
  - Policy CS20 (Sustainable Waste Management).
  - Policy CS25 (Promoting Sustainable Transport).
- Saved Policies of the North Lincolnshire Local Plan (Local Development Frameworks Government Office for Yorkshire and The Humber, 2007) - adopted May 2003, saved September 2007:
  - Policy IN10 (Wharves).
  - Policy RD1 (Development involving High Quality Agricultural Land).
  - Policy RD2 (Development in the Open Countryside).
  - Policy T1 (Location of Development).
  - Policy T2 (Access to Development).
  - Policy T5 (Green Travel Plans).
  - Policy T6 (Pedestrian Routes and Footpaths).
  - Policy T8 (Cyclists and Development).
  - Policy T14 (The North Lincolnshire Strategic Road Network).
  - Policy T19 (Car Parking Provision and Standards).
  - Policy T23 (Water Freight).
  - Policy T24 (Road Freight).

- Policy LC1 (Special Protection Areas, Special Areas of Conservation and Ramsar Sites).
- Policy LC2 (Sites of Special Scientific Interest and National Nature Reserves).
- Policy LC4 (Development Affecting Sites of Local Nature Conservation Importance).
- Policy LC5 (Species Protection).
- Policy LC6 (Habitat Creation).
- Policy LC7 (Landscape Protection).
- Policy LC12 (Protection of Trees, Woodland and Hedgerows).
- Policy HE5 (Development affecting Listed Buildings).
- Policy HE9 (Archaeological Evaluation).
- Policy DS1 (General Requirements).
- Policy DS7 (Contaminated Land).
- Policy DS10 (New Hazardous Installations and Pipelines).
- Policy DS11 (Polluting Activities).
- Policy DS12 (Light Pollution).
- Policy DS13 (Groundwater Protection and Land Drainage).
- Policy DS14 (Foul Sewage and Surface Water Drainage).
- Policy DS15 (Water Resources).
- Policy DS16 (Flood Risk).
- Policy DS17 (Overhead Power Lines and High Powered Electrical Installations).

3.13. TRANSBOUNDARY EFFECTS

3.13.1. In July 2020, during the Pre-application stage, and under the EIA Regulation 32 process, the Planning Inspectorate undertook transboundary screening of the Proposed Development on behalf of the SoS [OD-001] and found that the likelihood of transboundary effects resulting from the Proposed Development was so low that it did not warrant the issue of a detailed transboundary screening. However, the screening indicated that this position would remain under review and regard would be had to any new or materially different information coming to light which may alter that decision.

3.13.2. Following the acceptance of the NSIP application for the Proposed Development for Examination, in July 2021, and under the EIA Regulation 32 process, the Planning Inspectorate re-considered the likelihood of transboundary effects resulting from the Proposed Development on behalf of the SoS [OD-001]. This re-consideration by the Planning Inspectorate, took into account any changes that had been made to the Proposed Development since the previous transboundary screening process was undertaken and found that the Proposed Development is unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area State. This position has remained under review throughout the Examination, but no new or materially different information has come to light that alters this conclusion.

3.13.3. In reaching this conclusion, the likely impacts of the Proposed Development, including consideration of potential pathways and the

extent, magnitude, probability, duration, frequency and reversibility of the impacts were considered.

3.13.4. No correspondence was received in relation to transboundary issues.

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), as the Examining Authority (ExA) I made an Initial Assessment of Principal Issues (IAPI) arising from the Proposed Development and of the Relevant Representations (RR) received. This was done within 21 days of the day after receipt of the s58 certificate of compliance with s56 of the PA2008 provided by the Applicant [OD-005].

4.1.2. My IAPI, arising from the Proposed Development, was published as Annex C to my letter of 8 November 2021 under Rule 6 of the EPR [PD-007] and is summarised, in alphabetical order, as follows:

- Air Quality.
- Biodiversity, Ecology and Nature Conservation.
- Climate Change.
- Compulsory Acquisition (CA) and/ or Temporary Possession (TP).
- Cultural Heritage.
- Design and Layout.
- Draft Development Consent Order (dDCO).
- Environmental Impact Assessment (EIA) and Environmental Statement (ES).
- Flood Risk, Hydrology and Water Resources.
- Geology and Land Contamination.
- Habitats Regulations Assessment (HRA).
- Landscape and Visual Amenity.
- Noise and Vibration.
- Planning Policy.
- Socio-Economic Effects.
- Traffic, Transport and Waste Management.

4.1.3. At the Preliminary Meeting [EV-004] no party questioned my IAPI. Whilst the principal issues I identified subsequently formed the basis of the final assessment, I have considered them under the following headings in this chapter, in no particular order of importance:

- Air Quality and Emissions, which includes from dust, smoke and steam.
- Biodiversity, Ecology and Nature Conservation, which includes from dust and artificial light.
- Climate Change.
- Cultural Heritage.
- Geology and Land Contamination.
- Landscape and Visual Amenity, which includes visual effect and any impact from artificial light.
- Noise and Vibration.
- Socio-Economic Effects (Including Human Health), which includes from dust.
- Traffic, Transport and Waste Management.

- Water Quality/ Resources and Flood Risk/ Resilience.

4.1.4. Matters relating to the dDCO are addressed in this chapter within the framework of the individual planning issues to which they relate. The dDCO itself is reported on in Chapter 8 of this report.

4.1.5. In addition to the planning issues, this chapter also addresses the following topics arising from the conduct of the Examination:

- Issues arising in written and oral submissions.
- Issues arising in Local Impact Report(s) (LIR).
- Conformity with National Policy Statements (NPS).
- Conformity with the development plan.
- The application of other policies.
- The principle of the development.
- EIA.
- HRA.
- Environmental Permitting Regime.

4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

4.2.1. Fifteen RRs were made [RR-001 to RR-015] and have been considered. These can be summarised as follows:

STATUTORY PARTIES

Canal and River Trust

4.2.2. The Canal and River Trust in its response to the RR consultation [AS-001] made representations concerning: abstraction from the Stainforth and Keadby Canal (Work No. 4A); the proximity of the construction and laydown areas in relation to Work No. 9A; the impact the Development Consent Order (DCO) will have on land within its ownership; the impact on it as a navigation authority, including along the canal and potential obstructions to Keadby Lock due to the proximity of the proposed offloading area; the impact on the canal walls resulting from vibration; habitat enhancement; CA/ TP of land; and protective provisions (PP).

4.2.3. In its subsequent Written Representation (WR) [REP2-018] the Canal and River Trust expanded on its concerns regarding: the potential impact the Proposed Development could have on the operation of Keadby Lock; CA/ TP of land; and PPs.

4.2.4. Throughout the Examination discussions between the Applicant and this Interested Party (IP) have been ongoing, with agreement being reached between them in regard to the project and the modifications, as set out in Chapter 8, being made by the Applicant in its dDCO. As a result the Canal and River Trust confirmed in its Deadline (DL) 7a submission [REP7a-015], dated 6 June 2022, it was withdrawing its objection to the Proposed Development; it was satisfied in terms of PPs; and that it had agreed terms for a side agreement that sets the framework for the future working relationship between it and the Applicant in respect of the development.

Doncaster Metropolitan Borough Council

4.2.5. Doncaster Metropolitan Borough Council in its RR [RR-002] confirmed it had no objections to the documentation or pre-examination of this development, but requested to be re-consulted when the full examination commenced. It confirmed the documents it had requested in relation to air quality satisfactorily addressed its concerns regarding the impact of the proposal on the nitrogen dioxide (NO_2) concentrations in Thorne town centre. It also confirmed the Transport Assessment (TA) (contained within the ES) had been reviewed and considered by it and that the numbers of construction worker vehicles associated with this development, which would impact on the highway network in the traditional peak hours in Doncaster, were negligible and would not be discernible within daily traffic variations. Additionally, it confirmed it was satisfied that all construction vehicles (heavy goods vehicles (HGV)) would access/ depart the site via the M180 at Junction 2, and that this would be controlled by an HGV Routing Plan and will not impact on Doncaster's local highway network.

4.2.6. Doncaster Metropolitan Borough Council made no further submissions and took no further part in the Examination.

Environment Agency

4.2.7. **Environment Agency** (EA) in its response to the RR consultation [AS-002] confirmed, having reviewed the DCO application, ES and supporting documents submitted, it has no objection in principle to the Proposed Development, as submitted. However it also stated it:

- was registering a holding objection on the grounds that the supporting Flood Risk Assessment (FRA) may not accord with the requirements of the Overarching National Planning Statement for Energy (NPS EN-1), Chapter 5.7 – Flood Risk. Although it confirmed further detail on the outcome of its model review and concerns on the issue of flood risk would be provided in its WR. It also set out that it considered its holding objection was capable of being resolved during the examination process;
- may pursue an objection in relation to the EA land interests the Applicant seeks to acquire;
- had questions concerning air quality, including whether commissioning and air quality should be considered at this point and its view that a more specific review would be appropriate when the final details emerge in regard to the amines degradation evaluation;
- had reviewed the relevant ES chapter in regard to Biodiversity and Nature Conservation and the Deemed Marine Licence (DML) at Schedule 13 of the dDCO [APP-005] (current version [REP7a-006]) and it was generally satisfied in this regard, although some changes to requirements (R) were needed and it reserved the right to request amendments to the DCO Rs in the future; and
- was satisfied with the Geology, Hydrogeology and Land Contamination Chapter of the ES from a controlled water protection perspective.

4.2.8. In its subsequent WR [REP2-022] the EA expanded on its concerns regarding: air quality, including in regard to the Environmental Permit (EP); biodiversity; flood risk; water resources; carbon capture; Construction Environmental Management Plan (CEMP); CA/ TP of land; and disapplication of legislation. The EA summarised its WR as set out below:

- The Applicant has committed to providing a Fish Management Plan but the method for securing this has still to be agreed with the EA. The EA defers to the Marine Management Organisation's (MMO) advice in respect of the issue of noise impacts on migratory fish resulting from percussive piling in the marine environment.
- The FRA [AS-010] (supported by a flood model), has now been submitted to support the application and it is the EA's view that this is fit for its designed purpose. The Applicant has agreed to make an amendment to Schedule 2, R14(2) to secure the required finished floor level for Works Nos. 1A and 1C of 2.8 metres (m) Above Ordnance Datum (AOD) to ensure occupant's safety, should a breach to the tidal River Trent defence occur.
- The application includes two proposals for obtaining cooling water for the Proposed Development to abstract from either the Stainforth and Keadby Canal or the River Trent. The Applicant's preferred method is to abstract from the Stainforth and Keadby Canal, which is under the jurisdiction of the Canal and River Trust. An application has been submitted to the EA by the Canal and River Trust to vary its existing abstraction licence to facilitate the requirements of the Proposed Development. At the current time the EA cannot provide any information on the likelihood of the licence being granted.
- The Applicant has set aside enough land to accommodate the Carbon Capture Plant (CCP). However, despite applying to build a CCP at the same time as the power plant, it has not demonstrated *"there are no foreseeable barriers"* to the technical feasibility of installing its chosen carbon plant. The EA does not consider taking steam direct from the Heat Recovery Steam Generator (HRSG) to be Best Available Technique (BAT). So, the Applicant needs to justify this proposal and/ or confirm that the efficiency of taking steam from HRSG is comparable to that of taking steam from the steam turbine, given that expanding steam through the turbine to the desired pressure will produce work (ie electricity) and is likely to be more efficient.
- The submitted draft CEMP is satisfactory and the EA is satisfied that the submission of a final CEMP is adequately secured through R17 of the DCO.
- The EA seeks further clarification from the Applicant in respect of Article 8 (Application and modification of statutory provisions).
- The EA has landholdings or holds an interest in several plots of land, which will be affected by the Proposed Development. Discussions and negotiations are ongoing in respect of these. At this point in time the EA cannot identify whether or not the proposed acquisitions would affect the EA's operations, in particular in relation to its flood risk management role.
- The EA can confirm that it has no objection in principle to the Proposed Development, as submitted, but the holding objection in

relation to the EA's land interests, which the Applicant seeks to acquire remains.

4.2.9. In terms of both the EA's RR and WR it reserved the right to add or amend to these representations, including requests for DCO Rs and PPs, should further information be forthcoming during the course of the Examination on issues within its remit. It should be noted that by the close of the Examination the EA only maintained an objection in relation to the CA/ TP of land and the finalised wording of a related side agreement being negotiated between the parties. Indeed, the EA in its DL7a submission [REP7a-016], dated 6 June 2022, stated it *"…is of the view that all the outstanding issues are capable of resolution by agreement…"* and advised it *"…will continue to work on finalising the required agreements during the decision period and we will write directly to the Secretary of State when we are in a position to withdraw the outstanding objection."*

Historic England

4.2.10. Historic England (HE) in its RR [RR-003] confirmed it did not object to the grant of the DCO and that it was in dialogue with the Applicant towards agreeing a Statement of Common Ground (SoCG), which was subsequently agreed between the parties and submitted at DL1 [REP1-011]. HE confirmed that it would not look to double up on the role of the North Lincolnshire Council (NLC) archaeologist and would not look to certify the completeness or quality of work done though SoCG, but simply agree where the material submitted for Examination had addressed the scope of matters highlighted in its advice. Cultural heritage is discussed further in a section 4.15 of this report below.

Humberside Police

4.2.11. Humberside Police in its RR [RR-004] confirmed, having viewed the Consultation Report and appendices, it had no concerns or comments to make.

Keadby with Althorpe Parish Council

4.2.12. Keadby with Althorpe Parish Council in its RR [RR-005] raised concerns in regard to: possible impact on air quality; landscape and visual impact of a third power station in the area; and the water environment and flood risk. In regard to the latter, it stated its concern related to water possibly being abstracted from the Stainforth and Keadby Canal, which could require the water in the canal to be kept artificially high to meet this requirement. This matter is addressed in the Water Quality/ Resources and Flood Risk/ Resilience section (section 4.21) of this report.

4.2.13. Despite the Applicant submitting a draft SoCG that it sought to enter into with Keadby with Althorpe Parish Council, it remained incomplete (unsigned and undated) at the close of the Examination. Additionally, it was noted that after the submission of its RR Keadby with Althorpe Parish Council took no further part in the Examination.

Marine Management Organisation

4.2.14. The MMO in its RR [RR-006] focused on the content of the dDCO and DML commenting on the content of those documents and suggesting changes. In addition the MMO sought clarity regarding the ES in terms of:

- whether any dredging or disposal at sea was required;
- coastal processes and pre-application advice in regard to whether representative local examples of similar impacts that could be presented as evidence. Also the lack of specific mention in terms of cumulative or inter-related coastal process effects and any potential scour and whether protection would be required for the cofferdam for works within the River Trent;
- impact of the Proposed Development resulting from underwater sound effects on fish, especially from noise and vibrations arising from any piling and the construction, etc of any cofferdams; and
- the need to ensure that section 7 of the ES would be updated regularly, to reflect any new plans or projects which may need consideration.

Maritime and Coastguard Agency

4.2.15. The Maritime and Coastguard Agency (MCA) in its RR [RR-007] expressed a desire to be consulted on the establishment of any infrastructure or works in or over the marine environment, and any Harbour Orders providing statutory powers for the ongoing safe operation of the facility. It highlighted a Marine Licence may be required for any works required in or over the marine environment, under the Marine and Coastal Access Act 2009, to which it would be a consultee on any licence application made, in regard to navigation safety. It also pointed the developers to the Port Marine Safety Code and its Guide to Good Practice and the need to liaise and consult with any relevant Statutory Harbour Authority to develop a robust Safety Management System for the project under this code.

Natural England

4.2.16. Natural England (NE) in its RR [RR-010] advised further information was required to determine the potential of the project to impact on any Special Areas of Conservation (SAC) habitat, as well as the passage/ wintering bird assemblage of the Humber Estuary Special Protection Area (SPA); Humber Estuary SAC; Humber Estuary Ramsar site; Humber Estuary Site of Special Scientific Interest (SSSI); Thorne Moor SAC; Hatfield Moor SAC; Thorne and Hatfield Moors SPA; Thorne, Crowle and Goole Moors SSSI; and Hatfield Moors SSSI.

4.2.17. Additionally NE identified that the European badger and European water vole may be affected by the Proposed Development.

4.2.18. NE indicated that it was in discussions with the Applicant, and its consultant team, and would continue to do so throughout the

Examination, with a view to resolving concerns and agreeing outstanding matters in a SoCG.

4.2.19. Overall, NE considered further information was required to assess the following impact pathways:

- Disruption of river and sea lamprey migration routes due to cofferdam installation, including from noise and vibration impacts.
- Loss or modification of designated SAC habitat, including salt marsh habitat.
- Air quality impacts to designated sites during operation of the Proposed Development, especially from nitrogen oxides (NO_x) and ammonia (NH_3) emissions from the operational power station.
- Noise and vibratory disturbance to SPA/ Ramsar birds during construction and operation.
- Water quality impacts to Humber Estuary SAC/ SPA due to the cooling water discharge.

4.2.20. In addition to the above, NE stated:

- it was not satisfied that it can be excluded beyond reasonable scientific doubt that the project would not have an adverse effect on the integrity of the Humber Estuary SAC and the Humber Estuary SPA and Ramsar; nor that the criteria for derogating from the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) are fulfilled;
- it was not satisfied that the project is not likely to damage features of interest of the Humber Estuary SSSI; and
- many of the measures to reduce the impact on the above-mentioned designated sites would constitute mitigation, so there would be a need for the HRA to proceed to Appropriate Assessment (AA) and advise no adverse effect, rather than no likely significant effect (LSE). It also considered that many of the mitigation measures proposed should be secured within the DCO.

4.2.21. NE advised failure to reach agreement with the Applicant on the matters it had highlighted in its RR would mean the ExA would be required to consider them further in its consideration of the application. However, it also stated that in its opinion, all the matters it had set out in its RR are capable of being overcome. It should be noted that the Applicant reached agreement with NE on the matters highlighted in its RR (see the Applicant's SoCG completed with NE [REP7-005] which confirmed "no matters outstanding between the Parties"). As such there is no need for the ExA to consider these matters further in this DCO application.

Network Rail Infrastructure Limited

4.2.22. Network Rail Infrastructure Limited (NR) in its RR [RR-011] advises it does not object in principle to the DCO, but does object to the powers contained in Articles 20 (Statutory authority to override easements and other rights), 22 (CA of rights etc.), 23 (Private rights), 28 (Temporary use of land for carrying out the authorised development), 29 (Temporary use of land for maintaining the authorised development) and

33 (Statutory authority to override easements and other rights) of the dDCO, that authorise the Applicant CA/ TP rights in or over land, or temporarily use land, which forms part of its operational railway land and upon which NR relies for the carrying out of its statutory undertaking.

4.2.23. NR in its RR stated any temporary use of or entry upon NR's operational railway can only be granted with its consent, advising any such use of the railway must be in accordance with the statutory requirements imposed on NR as operator of the railway network and all requirements necessary to ensure the safe operation of the railway. NR also advised that any acquisition of permanent rights could only be granted with NR's consent and would require an easement agreed with NR and such an easement would need to go through its land clearance process.

4.2.24. NR confirmed it was assessing any impact on the Keadby Canal Junction Level Crossing and the Chapel Lane Level Crossing and that it had concerns due to:

- the proposed DCO scheme seeking to authorise work either above or adjacent to NR's operational railway and works, which may impede NR's ability to ensure the safe, efficient and economical operation of the railway network;
- PPs not being included for the protection of NR in the dDCO, as NR requires certain standard protections for the benefit of the operational railway and to manage this interface;
- the absence of an asset protection agreement, to ensure the appropriate and necessary technical, engineering and safety requirements for working on or near NR's operational railway are applied to the DCO scheme; and
- requiring protection from CA, as NR is an affected landowner. NR points out that there are references in the DCO Book of Reference to land for which NR is the owner and occupier, giving plot numbers 28 and 29 of the DCO Book of Reference as examples.

4.2.25. Finally, NR's RR sets out the criteria for the withdrawal of its objections, which is summarised below:

- The inclusion of its standard form PPs; the need for the Applicant to enter a Deed of Undertaking/ Framework Agreement to provide formal protection for NR's statutory undertaking.
- Any required easement, licences and asset protection agreements or any other required agreements are entered into in respect of addressing both the acquisition of rights over and/ or temporary use of NR's existing operational land and carrying out of works in, over or adjacent to NR's existing operational land.
- NR is provided clearance to enter into any of the agreements referred to above following internal consultation with affected stakeholders across the business.
- Any indirect impacts on the railway and associated infrastructure such as level crossing are appropriately mitigated.

4.2.26. NR in its subsequent WR [REP2-030] expanded on the objections it raised in its RR. It explained the role of NR in regard to: being a

Statutory Undertaker (SU); its statutory and regulatory obligations in terms of its ownership and operation of the railway network; and in relation to the DCO process.

4.2.27. In the light of these roles, NR explained as the DCO is seeking to authorise work either above or adjacent to NR's operational railway and works which may impede NR's ability to ensure the safe, efficient and economical operation of the railway network, NR requires certain standard protections for the benefit of the operational railway and to manage this interface. NR sets out its requirements for the protection of its operational railway and associated railway infrastructure within the WR.

4.2.28. NR acknowledged in its WR that there was an existing lease of easement in relation to the bridge between NR and SSE Plc. However, it explains this agreement would need to be varied in order to allow the bridge to be used for the Proposed Development. NR also explained the existing agreement was being reviewed, alongside its draft Heads of Terms to ascertain whether a variation can be undertaken or a new agreement will be needed and to confirm what protections are required to ensure the safe operation of the railway.

4.2.29. In terms of its concerns regarding the use of the bridge for the Proposed Development NR stated it was assessing the impacts of any variation to the railway and made initial comments concerning:

- meaning of 'improvement';
- any impacts of increased use;
- any mitigation measures required to prevent falling material;
- how the cable will be affixed to the bridge, the impacts of this and any required mitigation measures or asset protection agreements;
- the appropriate level of public liability insurance will be required;
- any weight restrictions required; and
- any traffic management over the bridge which needs be identified.

4.2.30. NR also confirmed it was assessing other potential impacts of the DCO and the Proposed Development on the railway, being:

- the potential increased risk of trespass;
- any risk associated with unloading/ loading in areas adjacent to railway infrastructure including any crane operations, piling operations and increased vibration;
- any indirect impact on the Chapel Lane Level Crossing; and
- any other operations which could impact on the safety of the railway.

4.2.31. In addition, NR expanded on its objections to the CA/ TP powers sought, as contained in Articles 20 (Statutory authority to override easements and other rights), 22 (CA of rights etc.), 23 (Private rights), 28 (Temporary use of land for carrying out the authorised development), 29 (Temporary use of land for maintaining the authorised development) and 33 (Statutory authority to override easements and other rights) of the draft DCO, which would authorise the promoter to compulsorily acquire rights in or over land, or temporarily use land, which forms part

of NR's operational railway land and which NR relies upon for the carrying out of its statutory undertaking.

4.2.32. NR stated any temporary use of or entry upon NR's operational railway can only be granted with NR's consent as any such use of the railway must be in accordance with the statutory requirements imposed on NR as operator of the railway network and all requirements necessary to ensure the safe operation of the railway.

4.2.33. It also stated any acquisition of permanent rights could only be granted with NR's consent and would require an easement agreed with it. It also advised that such an acquisition would need to go through its land clearance process as required by NR's Network Licence.

4.2.34. NR also confirmed it was reviewing whether there are any other rights over the DCO land which would need to be retained, pointing out that any existing rights which NR has over the land would need to be retained and cannot be subject to extinguishment under the Order.

4.2.35. Finally NR's WR addressed the issue of PPs and associated agreements stating:

- it notes that the promoter has not included PPs for the protection of NR in the draft DCO;
- the inclusion of NR's standard form PPs in both Transport and Works Act Orders and DCOs is well precedented and includes, for example, protections for compulsory purchase of NR's land and interests and processes for approving works on or affecting the railway. NR requires its standard form PPs in the DCO;
- in addition to PPs for the benefit of NR an asset protection agreement will need to be entered into by the promoter to ensure the appropriate and necessary technical, engineering and safety requirements for working on or near NR's operational railway are applied to the DCO scheme;
- a Framework Agreement will need to be entered into by the promoter, together with any required property agreements and asset protection agreements; and
- a copy of NR's preferred PPs and a draft Framework Agreement has been shared with the promoter's solicitor.

4.2.36. NR concluded by advising it was waiting for confirmation as to whether the promoter will include the PPs in the DCO and enter into the Framework Agreement. The matter of the PPs sought by NR is addressed in sections 8.3 and 8.4 of this report.

National Grid

4.2.37. National Grid (NG), being National Grid Gas plc (NGG) and National Grid Electricity Transmission plc (NGET), in its RR [RR-008] stated it was seeking to protect its position in relation to infrastructure and land, which is within or in close proximity to the proposed Order Limits. Furthermore, NG advised that it has rights to retain its apparatus in-situ and rights of access to inspect, maintain, renew and repair such apparatus located

within or in close proximity to the Order Limits and that these rights must be maintained at all times and access to inspect and maintain such apparatus must not be restricted. Having reviewed the documentation and plans submitted NG advised that it considers the following apparatus/ assets, which form an essential part of the transmission network in England and Wales, are within, or in close proximity to, the Order Limits:

- Electricity Apparatus/ Assets:
  - Substation:
    - Keadby 400kV substation and associated overhead and underground apparatus including cables.
  - Overhead Lines:
    - ZDA 400kV over head line.
    - 4TM 400kV over head line.
    - 4ZQ 400kV over head line.
    - 4KG 400kV over head line.
  - Other Apparatus:
    - Above and below ground associated apparatus including underground electricity cables within the scoping area.
- Gas Apparatus/ Assets:
  - Keadby Power Station Gas Transmission Site.
  - Feeder Main 7 – Eastoft to Keadby Power Station.
  - Above and below ground associated apparatus.

4.2.38. NG's RR noted draft PPs for its benefit were included in the submitted dDCO and advised it was in the process of reviewing those PPs against its standard PPs. It also notes that Work Nos. 2A and 3A relate to connections into the gas and electricity transmission systems respectively, and that NG has the benefit of these works under the dDCO. NG advised it is in the process of assessing these works to ensure adequate provision has been made for the connections.

4.2.39. As a responsible SU, NG advises its primary concern is to meet its statutory obligations and ensure that any development does not impact in any adverse way upon those statutory obligations. With this in mind it reserved the right to make further representations as part of the examination process but stated it would negotiate with the Applicant with a view to reaching a satisfactory agreement.

4.2.40. NGET/ NGG also made a WR [REP2-028] reiterating the above-mentioned apparatus/ assets that are within, or in close proximity to, the Order Limits reiterating they form an essential part of the electricity/ gas transmission network in England and Wales. Within the WR [REP2-028] NGET/ NGG confirmed its land interests advising:

- NG anticipates that land rights agreements will be required with the promoter for easement options and to grant rights for temporary working areas;
- NG objects to compulsory purchase powers being granted over its land. The land and rights are essential to the operational of the gas

and electricity transmission systems and all rights and interests must be maintained; and
- it is also essential that NG retains access to its apparatus at all times for operational and maintenance purposes.

4.2.41. In terms of the benefit of the Order, NGET/ NGG noted:

- Work Nos. 2A and 3A relate to connections into the gas and electricity transmission systems respectively and that NG will have the benefit of these works under the dDCO; and
- NG is in the process of assessing these works to ensure adequate provision has been made for the connections, with any concerns in relation to these connection works being raised with the promoter.

4.2.42. In terms of PPs and side agreement, NGET/ NGG advised it notes that PPs for its benefit have been included in the dDCO and it confirmed it was reviewing these and considering whether any supplementary agreement would be required. Again NG stated it will raise any issues in this regard with the promoter.

4.2.43. By the close of the Examination NGET/ NGG, in its representations submitted at DL7 [REP7-017] and DL7a [REP7a-019], confirmed it had reached agreement with the Applicant, including in regard to the PPs. Additionally, in a letter from NGET/ NGG [AS-031], dated 7 June 2022, which was accepted into the Examination as an Additional Submission (AS), NGET/ NGG confirmed it withdrew its objection to the Proposed Development. This matter is addressed at paragraph 8.3.7 of this report.

NG Ventures

4.2.44. NG Ventures (referred to hereafter as National Grid Carbon Ltd (NGC)) in its RR [RR-009] explained its role in the deployment of Carbon Capture, Usage and Storage (CCUS) at scale in the Humber and the Humber Low Carbon Pipelines (HLCP) network and that NGC's interest relates to the interfaces between the Proposed Development and the HLCP. Additionally, it questioned the Applicant's rejection of hydrogen as a fuel for this power station.

4.2.45. NGC highlighted that Work No. 7 in the dDCO [APP-005] represents the point at which the authorised development will deliver pressurised carbon dioxide (CO_2) to the NGC network, although the interface between NGC and the Applicant had yet to be agreed. In terms of Work Nos. 7A and 7B, NGC noted that not all of Work No. 7 appeared on the Applicant's Works Plans [APP-012] and that whilst detailed design for Work No. 7 is governed by R5(7), NGC stated it wish to be consulted on any approval sought from the relevant planning authority under this R. It also advised that NGC would wish to see PPs for its apparatus.

4.2.46. It should be noted that discussions with NGC continued throughout the Examination with the Applicant and NGC reaching agreement in relation to PPs. NGC confirmed in its DL7a submission [REP7a-018] that "*…it has no outstanding objections at the close of the examination."*

Northern Powergrid

4.2.47. Northern Powergrid in its RR [RR-012] advised it was in principle supportive of the Proposed Development, but had concerns regarding the impacts the proposed scheme would have on existing assets and their pending improvement works, including its existing 132kV primary substation, pylons, overhead cables, underground cables and access and servicing rights. In regard to the CA/ TP rights sought, it stated it does not consider these rights necessary to acquire these interests where an agreement between the parties would be more appropriate. Furthermore, it raised concerns over the proposed PPs contained within the dDCO, as it did not consider they take into account site specific issues and did not accord with Northern Powergrid's standard PP requirements.

4.2.48. Throughout the Examination discussions between the Applicant and this IP have been ongoing, with agreement being reached between them in regard to the project and the modifications, as set out below and in Chapter 8, being made by the Applicant in its dDCO. As a result of these ongoing discussions, Northern Powergrid confirmed, in its letter of the 7 June 2022 [AS-032], it had *"…now reached agreement with the Applicant and forthwith withdraws their objection to the Order."*

Public Health England

4.2.49. Public Health England, which subsequently became the United Kingdom Health Security Agency (UKHSA), in its RR [RR-013] made a number of comments and recommendations, as summarised below:

- Operational amine emissions and limited details being available regarding the monitoring to be undertaken to assess emissions from the site and the effectiveness of mitigation measures.
- Inconsistencies, including: the frequency of use of the Abnormal Indivisible Load (AIL) road; the description in timescales in the variation of HGV movements when comparing the construction programme management; the Traffic and Transport Assessment and Air Quality Chapters; and dust and land contamination impacts.
- Additional detail regarding cumulative impacts from emissions of particulate matter (PM_x), being PM_{10} (PM_{10}µg/m3 or less) and $PM_{2.5}$ ($PM_{2.5}$µg/m3 or less) from Non-Road Mechanical Machinery (NRMM) and the use of any generators on baseline assessments and the potential impact on the air quality management area.
- A dust monitoring and recording strategy, as recommended in the CEMP, being developed in agreement with NLC.
- UKHSA sought clarification as to why Roe Farm and Vazon Bridge had not been included as receptors.
- Land contamination – recommended further clarifications, justifications and, where necessary, mitigation measures in regard to the consideration of human health receptors being limited to 50m.

Ministry of Defence

4.2.50. Ministry of Defence (MoD) in its response to the RR consultation [AS-003], through its Defence Infrastructure Organisation, confirmed the

application relates to a site outside of MoD statutory safeguarding areas. As such it stated that it had no safeguarding objections to this proposal.

4.2.51. However, it also identified the Proposed Development will occupy Low Flying Area 11 within which military fixed wing aircraft are permitted to fly down to 250 feet (76.2m) above terrain features. As such it considers the development proposed will cause a potential obstruction hazard to these military low flying training activities. To address this impact, the MoD advised *"…it would be necessary for the development to be fitted with MoD accredited 25 candela omni-directional red lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration or equivalent infrared lighting on the four tallest structures (Absorber Column, HRSG Building and HRSG Stack, CO_2 Stripper)."*

4.2.52. Additionally the MoD advised the height of the development will necessitate that aeronautical charts and mapping records are amended and, at Defence Infrastructure Organisation Safeguarding's requests, an R that specifies prior to the commencement of the development, the developer must notify and provide the following information, to the United Kingdom (UK) Digital Vertical Obstruction File & Powerlines at the Defence Geographic Centre:

- Precise location of development;
- Date of commencement of construction;
- Date of completion of construction;
- The height above ground level of the tallest structure;
- The maximum extension height of any construction equipment; and
- Details of aviation warning lighting fitted to the structure(s).

OTHER INTERESTED PARTIES

ClientEarth

4.2.53. ClientEarth in its RR [RR-001] raised concern in regard to the terms of the proposed dDCO and whether it would secure the operation of the power plant commercially only when the associated carbon capture, transport and storage infrastructure are also in commercial operation, with the effect that at least 90% of the carbon emissions generated by the power plant will not be emitted into the atmosphere and would be stored permanently underground.

4.2.54. It considered the dDCO, as submitted with the Proposed Development [APP-005], did not adequately ensure that the Applicant's minimum level of emissions would be captured and permanently stored or that the carbon capture, transport and storage infrastructure would be used throughout commercial operations.

4.2.55. ClientEarth made a WR at DL2 [REP2-020] and took part in the Issue Specific Hearing (ISH) 2 (into the DCO), [EV-025, EV-026 and EV-027]. It also provided post-hearing submissions [REP5-051] at DL5. The Applicant responded, as it considered appropriate, to these submissions [REP1-021, REP3-021 and REP6-017] and amended the dDCO by updating the definitions of *"carbon capture and compression plant"*,

"commercial use" and *"commissioning"* at Article 2(1). These amendments to the DCO were made at DL6 [REP6-019], which was subsequently withdrawn by the Applicant. However, the changes were retained in subsequent versions of the dDCO, including the Applicant's final preferred version of the DCO, submitted at DL7a [REP7a-006].

4.2.56. In the light of the changes made by the Applicant to the dDCO submitted at DL6, ClientEarth in its representation made at DL6a [REP6a-068] confirmed it was *"…content that the precise wording proposed by the Applicant serves to ensure that, subject to reasonable operating exceptions:*

a. the generating station will only be operated commercially with carbon capture;
b. a minimum carbon dioxide capture rate of 90% will be achieved during commercial operation of the generating station; and
c. all captured carbon dioxide will be supplied to the National Grid gathering network for onward permanent storage.[17]"

4.2.57. In the same representation [REP6a-068] ClientEarth confirmed it *"…is satisfied that these changes address the concerns that ClientEarth has raised in the examination regarding the carbon capture and storage aspects of the proposed development."*

Denise Steel

4.2.58. **Denise Steel** in her RR [RR-014] raised concerns over light pollution, especially in terms of its effect on residential amenity, that may result from the Proposed Development during both construction and subsequent stages. The RR suggested landscaping in the form of planting of a double line of trees to interrupt the passage of light across the open countryside towards Amcott should be considered. This concern was repeated by Denise Steel in a subsequent WR received at DL5 [REP5-052]. This concern is addressed in the Landscape and Visual Amenity section further below.

John Carney

4.2.59. John Carney in his RR [RR-015] did not identify any specific issues in regard to the Proposed Development, nor any specific procedural elements related to the DCO. His RR centred around concerns over an alleged closure of a highway, which he suggests is a statutory highway. This claim is repeated, in a representation dated 9 May 2022, made by John Carney, which I accepted as an AS [AS-027] in which he also states it is a *"Formal Objection to water abstraction alteration to lock gated level at Keadby and closure of Highway which SSE have done already…"* The matters raised by John Carney are addressed in the Water Quality/ Resources And Flood Risk/ Resilience and Traffic, Transport and

[17] As previously explained (see e.g. REP5-051, p. 6), this is the basis upon which the proposed development has been assessed in the Environmental Statement.

Waste Management sections (sections 4.21 and 4.20 respectively) of this report.

OTHER MATTERS (WRITTEN REPRESENTATIONS)

4.2.60. Participants in the Examination were provided with the opportunity to make WRs at DL2, to comment on them at DL3 and to respond in writing to my questions, to matters arising at hearings, to requests for further information and to ASs, over eight DLs (DL2 to DL7a).

4.2.61. A total of 32 ASs, from 17 separate parties, were provided, which I accepted and have taken into account [AS-001 to AS-032], comprising the following:

- Canal and River Trust [AS-001 and AS-018].
- EA [AS-002 and AS-019].
- MoD [AS-003].
- Anglian Water Ltd [AS-006].
- SSE Generation Ltd and Keadby Wind Farm Ltd [AS-008].
- SSE Plc [AS-009].
- Joint Nature Conservation Committee [AS-011].
- Cadent Gas [AS-012, AS-014 and AS-015].
- Northern Gas Networks Ltd [AS-013 and AS-028].
- ESP Utilities Group Ltd [AS-016].
- NR [AS-017].
- National Grid Ventures Plc [AS-020].
- John Carney [AS-027].
- Pollock Associates, on behalf of Messrs Strawson and Severn [AS-030].
- NGET/ NGG [AS-031].
- Northern Powergrid (Yorkshire) Ltd [AS-032].
- Applicant [AS-004, AS-005, AS-007, AS-010, AS-021, AS-022, AS-023, AS-024, AS-025, AS-026 and AS-029].

4.2.62. Signed SoCGs between the Applicant and the following parties have been provided and have been taken into account as follows:

- Canal and River Trust [REP7-007].
- EA [REP5-014].
- HE [REP1-011].
- Isle of Axholme and North Nottinghamshire Water Level Management Board (IDB) [REP6a-022].
- MCA [REP1-016].
- MMO [REP1-010].
- NE [REP7-005].
- NGC [REP7-006].
- NGG and NGET [REP6-009].
- National Highways [REP1-019].
- NR [REP7-008].
- NLC [REP6-005].
- Northern Powergrid [REP7-009].
- Severn Trent Water [REP6-012].
- Trinity House/ Associated British Ports [REP1-017].

- UKHSA [REP7-010].

4.2.63. The Applicant, NLC and the Canal and River Trust participated in the ISH in regard to environmental matters (ISH1), which was held virtually and undertaken in four sessions (ISH1 Session 1 [EV-013], ISH1 Session 2 [EV-014], ISH1 Session 3 [EV-015] and ISH1 Session 4 [EV-016]). No new issues were raised in oral representations which were not addressed in written submissions.

4.2.64. The Applicant, NLC, ClientEarth and NGC participated in the ISH2, which was held virtually and undertaken in three sessions (ISH2 Session 1 [EV-025], ISH2 Session 2 [EV-026] and ISH2 Session 3 [EV-027]). No new issues were raised in oral representations which were not addressed in written submissions.

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

4.3. ISSUES ARISING IN LOCAL IMPACT REPORTS

4.3.1. Only NLC submitted an LIR [REP1-022], which was submitted at DL1 of the Examination. Section 104(2) of the PA2008 requires the Secretary of State (SoS) to consider the contents of an LIR when making a decision on an application.

4.3.2. NLC's LIR [REP1-022] provided information on the following matters:

- Location, including a description of the site and surroundings.
- The policy framework, including NPSs and the draft NPSs, Marine Policy Statement (MPS), the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG), as well as the local policy framework including the Local Development Plan and the emerging Local Plan.
- Relevant issues, including:
    - pre-application consultation;
    - landscape and visual impact;
    - traffic and transport;
    - biodiversity and nature conservation;
    - cultural heritage;
    - noise and vibration;
    - air quality;
    - land contamination;
    - light;
    - hydrology and flood risk;
    - socio-economic impact; and
    - other matters.

4.3.3. As recorded in Chapter 3 above, and as set out in the LIR, the development plan for the area comprises:

- the saved policies of the North Lincolnshire Local Plan (2003) (NLLP);
- the North Lincolnshire Core Strategy (2011) (NLCS); and
- the North Lincolnshire Housing and Employment Land Allocations Development Plan Document (2016).

4.3.4. NLC's LIR highlights the matters summarised in paragraphs 4.3.5 to 4.3.64 of this report, as set out below:

Policy Considerations

4.3.5. With regard to policy considerations NLC considered that the Proposed Development would in principle accord with the NLLP, Policies RD2, CS2, and CS3 and NLCS Policy CS11. Forming this view NLC stated:

- the NLLP Policies RD2, CS2, and CS3 allow employment related development appropriate to the open countryside provided that the open countryside is the only appropriate location and that the development cannot reasonably be accommodated within development boundaries;
- given the scale and nature of the development proposed it would not be possible to be located within existing development boundaries and as such there is a need to locate the development within the open countryside (ie outside of development limits). Notwithstanding this, large parts of the application site constitute brownfield land, being previously developed;
- in terms of the appropriateness of the location, both the application site and the local area has a history of power generation and associated infrastructure. The site also offers access to electrical and gas connections that are essential to the Proposed Development and the siting adjacent to the existing power stations provides synergies in terms of key infrastructure, services, operations and maintenance. Furthermore the siting of the Proposed Development also means that it will be viewed in the context of existing largescale industrial structures and energy infrastructure. For these reasons it is considered that the Proposed Development is an appropriate form of development in this location subject to it complying with the relevant policies contained in the Local Development Plan;
- Policy CS11 of the NLCS seeks to identify strategic sites for future employment related development. Whilst the application site is not identified as a strategic employment site, Policy CS11 seeks to support development that would meet local employment needs and maximise other special locations. There is no further definition of special locations within the policy; however it does confirm that in North Lincolnshire the main business sectors are defined as *"clusters"* as there are a number of companies working in one particular or related industry, this includes the energy industry. Given the existing two power stations and other energy-related infrastructure (wind farms, NG substation, transmission lines, etc) in the area the application could be deemed an appropriate location for the Proposed Development as it forms an energy *"cluster"* and as such constitutes a special location in accordance with Policy CS11; and

- overall it is considered that the Proposed Development generally accords with the aims of the Local Development Plan and that the principle of development is acceptable subject to conformity with the relevant policies of the plan, including those that seek to protect the environment and amenity of the area.

Pre-application Consultation

4.3.6. In terms of pre-application consultation NLC confirms it has previously expressed the opinion that it has no objection to the degree of community consultation undertaken and that this consultation was undertaken as required by s42, s47 and s48 of the PA2008.

Landscape and Visual Impact

4.3.7. With regard to landscape and visual impact, having assessed the submitted information concerning these matters in the ES, NLC confirms the representative viewpoints (VP) were discussed with it and agreed, as was the study area (10 Kilometres (km)). NLC confirms that it was also pleased to note that the assessment included consideration of the proposed northern boundary extension of the Lincolnshire Wolds Area of Outstanding Natural Beauty, as shown in the ES at Figure 14.3 (Landscape Context) [APP-133]. Having considered this document, NLC confirmed it was satisfied that the submitted assessment can be relied upon as a reasoned explanation of the potential impacts of the Proposed Development.

4.3.8. It also considered the site is located within an area that is characterised by significant industrial, energy-related development, including the adjacent Keadby 1 and Keadby 2 Power Stations, Keadby Windfarm, a NG 400kV substation and electricity pylons and transmission lines and agrees that the Proposed Development would not be out of keeping with the existing character of the area.

4.3.9. NLC noted that potential impacts on local and more distant views and landscape character types have been assessed, but considered, overall, the potential for harm is relatively low as the new structures will be set within an area already affected by power stations, pylons and windfarms.

4.3.10. Whilst moderate adverse effects on visual amenity are predicted at three VPs, NLC explained that this has to be considered in the context as a minor additional effect on areas already affected by intrusive structures.

4.3.11. NLC noted the impact avoidance measures, as set out in sections 14.5 and 14.7 of the ES and in the submitted Landscaping and Biodiversity Management and Enhancement Plan (LBMEP) [APP-039] (current version [REP7-003]) and recognises that these measures are proposed to be secured by R5, R6 and R7 of the dDCO [APP-005].

4.3.12. NLC stated it supports these measures, recognising in particular that:

- it is not possible to screen such large-scale structures, but screening of low level *"clutter"* can be valuable;

- on the northern boundary, screening planting could adversely affect water vole habitat and would itself be inappropriate in an otherwise open landscape; and
- details of finishes etc are important in minimising visual impacts against the skyline.

4.3.13. Given the scale and mass of the Proposed Development NLC confirmed it did not consider it feasible to eliminate the visual impacts of the development and as such there would be residual effects in this regard. However, it considered this is balanced with the fact that this location already supports substantial industrial developments, which contribute significantly to the character of the area.

Traffic and Transport

4.3.14. Regarding traffic and transport, NLC confirmed it had assessed the submitted information concerning the assessment of potential traffic and transport effects of the Proposed Development, as set out in the ES Chapter 10 [APP-053], including:

- the TA;
- the Framework Construction Phase Traffic Management Plan; and
- the Framework Construction Workers Travel Plan (CWTP).

4.3.15. It confirmed that the relevant advice issued had been incorporated into the submitted information and it is satisfied that the TA demonstrates that the Proposed Development will not have an adverse impact on the highway network. It also confirmed that the Framework Construction Phase Traffic Management Plan and Framework CWTP had been reviewed and were considered to be acceptable.

4.3.16. In reaching the above comments, NLC noted:

- that in terms of construction access these are similar to those agreed for Keadby 2 (currently being commissioned), with all construction access accessing the site directly from the A18, either via Mabey Bridge (which is to be replaced prior to the main construction works taking place and at the same time as the works to the access from the A18) or the skewed bridge, which lies a short distance east of the Mabey Bridge (AIL or whilst the Mabey Bridge is being replaced); and
- this access will also become the main access for all construction and operational traffic and the Applicant is proposing to upgrade the existing junction to facilitate this, via the provision of a right turn holding lane to improve road safety.

4.3.17. NLC points out:

- the improvements to the A18 junction constitute a departure from the Design Manual for Roads and Bridges standards and that this will still need to be subject to agreement with the Local Highway Authority; and
- the Local Highway Authority is likely to agree a Temporary Traffic Regulation Order (TTRO), for a 40mph speed limit on the A18 in the vicinity of the site access, but the TTRO would only be for the duration

of construction works and a permanent reduction to the speed limit would not be supported.

4.3.18. In addition to the above, NLC noted:

- a new gatehouse is proposed to be provided at the site access and it confirms that the submitted plans show that it is set sufficiently far back to prevent vehicles queuing back onto the A18;
- the majority of AILs are proposed to access the site via the skewed bridge (which lies a short distance to the east of the Maybe Bridge and accessed via the A18); however the option is retained to direct a small number of AILs (up to ten) via Bonnyhale Road, if required. Whilst it confirmed that the Local Highway Authority had no objection to this, in principle, it advised it would be preferable if as many AILs as possible could access the site via the skewed bridge and that any trips via Bonnyhale Road be kept to a minimum;
- the estimated peak months for construction workers on site and the related figures and confirms that the Local Highway Authority is satisfied with the methodology for calculating construction movements and that this will not have an adverse impact on the highway network; and
- no recent traffic counts had been undertaken due to COVID-19 and the impact this has had on traffic levels. However, the Local Highway Authority agreed at the scoping stage to use historic traffic data, together with the appropriate growth factors to calculate current flows.

4.3.19. Overall, NLC considered the Proposed Development to have a neutral impact on the local highway network.

Biodiversity and Ecology

4.3.20. In terms of biodiversity and ecology, having assessed the submitted information concerning the assessment of potential ecological effects of the Proposed Development NLC noted the Proposed Development site lies adjacent to the Humber Estuary SAC and Ramsar site. It also noted that atmospheric dispersion modelling has been necessary to evaluate the potential for air pollution effects on more distant sites, such as Humber Estuary SPA, Thorne Moor SAC and Thorne and Hatfield Moors SPA.

4.3.21. NLC considered the Applicant had provided the ExA with all the information reasonably required for an HRA in the form of a shadow HRA and has identified potential impacts, which it considers appear to have been assessed appropriately, taking into account NE's advice. In terms of AA, and in consideration of mitigation options which form part of the committed design of the Proposed Development, NLC's ecologist confirmed it had no reason to disagree with the Applicant's conclusions of the HRA, including the conclusion that emissions to air would not have an adverse effect on the integrity of any European sites.

4.3.22. In terms of:

- protected and priority species, NLC confirmed having reviewed the preliminary ecological appraisal the survey effort deployed is appropriate for the site in question, whilst it notes NE has identified parts of the proposal site as being within an *"amber risk zone"* for great crested newts. However, NLC noted, the submitted Preliminary Ecological Appraisal Report provided adequate evidence, in terms of site-based habitat suitability assessment and past survey results, to justify this species being scoped out of further assessment; and
- habitats/ features, NLC considered the ES at sections 11.5, 11.6 and 11.7 of Chapter 11 (and associated appendices) dealt appropriately with Development Design and Impact Avoidance, Likely Impacts and Effects and mitigation and enhancement measures in terms of hedgerows/ trees; drains; ephemeral/ short perennial vegetation; scrub; acid Grassland; open mosaic habitats (OMH) on previously developed land; Local Wildlife Sites (LWS); and statutorily designated sites (SSSI, SAC, SPA and Ramsar).

4.3.23. In regard to this NLC advised it welcomed/ noted:

- the tightening of the red-line boundary, following the scoping stage, so as to exclude some large areas of sensitive habitat; and
- care had been taken to minimise impacts on undesignated acid grassland, OMHs and terrestrial invertebrate communities of national importance.

4.3.24. As such NLC considered the Proposed Development to accord with Policy CS17 of the NLCS and paragraphs 174 and 180 of the NPPF.

4.3.25. NLC also welcomed the Applicant's biodiversity enhancement proposals, and the habitat management and monitoring proposed to deliver these, which included:

- the creation of flower-rich native grassland;
- new species-rich native hedgerow plantings;
- enhancement of field drains for water voles and other aquatic biodiversity;
- installation of nest boxes for barn owl and other birds, habitat creation for willow tit; and
- installation of roosting boxes for bats.

4.3.26. NLC confirmed that the proposed new grassland creation included areas directly connected to habitat corridors designated as the Stainforth and Keadby Canal Corridor LWS and the Hatfield Waste Drain LWS and that these proposed new grasslands would complement and enhance these LWSs.

4.3.27. It noted that applying Department for the Environment, Food and Rural Affairs (DEFRA) Metric 2.0 (which was current at the time that the document was written), the following would result from the Proposed Development:

- A gain in habitat units of at least 11.27% is achievable.
- A gain in hedgerow units of 35.92% is achievable.

- The broad requirements of planning policy to achieve no net loss and a net gain are met.

4.3.28. NLC stated it supports this approach and considers it to align with Policy CS17 of the NLCS and the requirements of the NPPF. It also considered that, subject to the acceptable discharge of R6 of the dDCO, the development would ultimately achieve a minor positive impact on ecological receptors.

Cultural Heritage

4.3.29. Turning to cultural heritage, NLC noted the Applicant's assessment of potential effects of the Proposed Development on heritage assets, as set out in ES Chapter 15 [APP-058] and the fact that historic environment data indicates that the construction of the Proposed Development has high potential to impact directly on the known and potential archaeological and palaeo-environmental resource of the application site. NLC advised that the significance of the potential unrecorded archaeology is currently unknown but may be of high significance.

4.3.30. NLC pointed out its Historic Environment Record (HER) informed the EIA scoping report in June 2020 and made recommendations in line with the relevant national and local planning policies (Policy CS6 of the NLCS and Policies HE8 and HE9 of the NLLP). It stated this advice recommended that undertaking a staged programme of archaeological field evaluation would be necessary to prepare a robust assessment of the heritage significance of the site and inform any appropriate mitigation for inclusion in the ES. As such, it considered that it was important that this information was available in the ES to inform the DCO application and the subsequent discharge of any Rs should consent be granted.

4.3.31. NLC advised that the following archaeological field evaluation stages were required, with all stages needing to be completed as part of the EIA evaluation process. The archaeological field evaluation stages identified were as follows:

- A programme of hand and/ or machine drilled coring to produce a detailed deposit model of the sub-surface topography of the application area, to identify and model the deposit sequence and former land surfaces, and provide an understanding of the development of the landscape; and to obtain appropriate samples for assessment of preservation potential and the potential for palaeo-environmental evidence to inform the archaeological record; this assessment should include all relevant palaeo-environmental indicators and provision for a programme of scientific dating of the deposit sequence.
- Dependent on ground conditions, field surveys comprising fieldwalking and geophysical survey.
- Excavation of sample trial trenches to determine the nature, extent, state of preservation and importance of any archaeological remains, such as those associated with the warping channels mapped in this area, the peat deposits and the pre-peat landscape.

4.3.32. However, NLC noted that only the preliminary stages of the evaluation were completed pre-submission, and the ES did not refer to the process of completing the remaining stages of pre-determination evaluation or provide detailed Written Scheme of Investigation (WSI) for the individual evaluation stages. It also noted that no further archaeological field evaluation was undertaken after April 2021.

4.3.33. Of the evaluation stages undertaken (first and second bullet points above) NLC advised that the results of these had been submitted as part of the ES at Appendices 15B and 15C. It also noted that a deposit model was produced from the results of the geoarchaeological hand auger survey which was constrained by the shallow depth of the cores (approx. 1.30m below ground level) and that the potential for palaeo-environmental and organic archaeological remains. Additionally, NLC highlighted that the geophysical survey identified a number of anomalies potentially representing isolated enclosures in the power station and laydown areas and these may be of Romano-British origin given the recorded finds in the surrounding area. NLC also advised of other anomalies corresponding to known cropmarks, which appeared to form part of the post-medieval warping drainage systems and that undetermined anomalies may represent unrecorded archaeological features. NLC considered the exact nature of these potential archaeological features detected by the geophysical survey to be unclear and as a result their significance was uncertain.

4.3.34. Given the constraints of the hand auger survey and the comments of NLC's HER, highlighted above, NLC raised concerns as to the adequacy of the ES in regard to impact on archaeology. It considered archaeological trial trenching to be required to investigate and confirm the findings of the geophysical survey, with the results of these initial evaluation stages confirming the archaeological potential of the proposed areas of development.

4.3.35. NLC noted that the geoarchaeological report makes specific recommendations for the further evaluation to confirm the deposit model including test pitting during archaeological trial trenching and a programme of scientific dating to provide the chronology of the stratigraphic sequence and assess the archaeological potential. NLC considered that this should also include coring to sample the deposits for palaeo-environmental indicators that can enhance the archaeological record.

4.3.36. In conclusion of NLC's LIR concerns regarding cultural heritage, it confirmed its view that the Applicant should commission the second stages of the evaluation recommended in the HER's pre-application advice as soon as possible. NLC confirmed that the remaining stages of evaluation should comprise the following:

- Stage 2 geoarchaeological assessment as recommended in ES, Appendix 15B, and a programme of coring and sampling to assess the potential of the deposits for palaeo-environmental evidence to inform the archaeological record, to include all relevant palaeo-environmental

indicators together with a programme of scientific dating to establish a site chronology and to inform recommendations for further fieldwork and analysis. NLC advised that a specification for this work should be agreed with its HER prior to commencement of fieldwork.

- Excavation of sample trial trenches to determine the nature, extent, state of preservation and importance of any archaeological remains, such as those associated with the identified geophysical survey anomalies, cropmarks and warping channels mapped in this area, the underlying peat deposits and the pre-peat land surfaces. NLC advised that the trial trenching programme should encompass the recommended geoarchaeological test pitting and that a specification for this work should be agreed with NLC's HER prior to commencement of fieldwork.

4.3.37. NLC advised that the results of the second stages of the evaluation would inform the assessment of significance and the impact of the proposals, as well as what mitigation measures may be appropriate, to be set out in a WSI.

4.3.38. It stressed that the completion of the field evaluation, prior to the determination of the DCO, is necessary to ensure the identification of any previously unknown remains, and to date and characterise all the heritage assets. It stated that the results should be used to update the assessment of heritage significance in the EIA and inform the preparation of an appropriate archaeological mitigation strategy.

4.3.39. In terms of cultural heritage and the dDCO, NLC noted R16 (Archaeology) of the dDCO and pointed out that in its opinion the Outline WSI cannot be agreed as appropriate and adequate as a WSI for archaeological mitigation. It considered amendments to the wording should be considered once the archaeological field evaluation was complete and reported on, and a detailed mitigation strategy had been prepared and agreed with the appropriate bodies.

4.3.40. Finally, in terms of cultural heritage, NLC noted the terms of the article of the dDCO concerning the removal of human remains and commented that it is important that any human remains are archaeologically recorded, assessed and analysed, as appropriate, according to the professional standards and guidelines for the excavation of human bones.

Noise and Vibration

4.3.41. With regard to noise and vibration NLC stated it had assessed the submitted information concerning the assessment of potential effects of the Proposed Development in respect of noise and vibration, both during construction, operation (including maintenance) and decommissioning.

4.3.42. NLC advised it was satisfied with the information contained in the ES in this regard and that the comments it had made on the preliminary ES, submitted in 2020, were addressed with the report being updated accordingly.

4.3.43. However, in terms of core construction working hours and HGV deliveries NLC highlighted that its Environmental Health Department typically recommends that construction operations are undertaken Monday to Friday (except bank holidays) between the hours 08:00 to 18:00 and Saturday 08:00 to 13:00 in line with other local authorities and to protect the amenity of those living in the vicinity.

Air Quality

4.3.44. Turning to air quality, NLC confirmed it had assessed the submitted information as set out in the ES Chapter 8 [APP-051] and noted the air quality assessment, especially in terms of construction dust and the potential risk arising from such impacts occurring at sensitive receptors. It noted the assessment concludes that there is a low to medium risk of unmitigated dust impacts on human health (PM_{10}) and dust soiling from unmitigated clearance works (demolition), earthworks, construction and track out activities.

4.3.45. Bearing the above in mind, it considered that with the implementation of appropriate mitigation and control measures, as set out in the Framework CEMP, the potential effect from fugitive emissions of construction dust would not be significant.

4.3.46. In terms of the construction traffic assessment, NLC noted that dispersion modelling had been used to predict road pollutant concentrations at sensitive receptors as a result of the Institute of Air Quality Management screening criteria being fulfilled. The assessment concluded that the impact at all human receptors can be considered negligible as both: the change between the Do Minimum and Do Something scenarios for all receptors is less than 1% of the Air Quality Assessment Level (AQAL); and all receptors are below 75% of the AQAL. As such NLC concluded the effect of changes in traffic flows due to construction traffic on human health is negligible and not significant.

4.3.47. NLC noted that no detailed assessment of operational traffic emissions had been made; the predicted impacts for the construction phase traffic emissions showed that the effect of additional construction traffic will be not significant at the identified receptors; and the number of additional vehicles for the operational phase, including outages required for maintenance, is well below the numbers assessed for the construction phase, with the Applicant considering that the effect of operational traffic is not significant.

4.3.48. In response NLC points out that the assessment has considered the impact of the operational process emissions on local air quality under normal operating conditions, with the Combined Cycle Gas Turbine (CCGT) being operational and the flue gas being abated by the CCP, operating for 8,760 hours per year. The assessment has used the dispersion model (atmospheric dispersion modelling system) to predict the increases in pollutant species released from the operational Proposed Development to the local study area. The dispersion modelling considered the effects of the following pollutants:

- NO_x.
- Carbon monoxide (CO).
- NH_3 slip (from the Selective Catalytic Reduction NO_x Abatement System).
- Amines and their potential degradation products from the CCP.

4.3.49. NLC confirms it was pleased to see that the human receptor, Vazon Bridge House, located closest to the Proposed Development had been included in the air quality assessment and that commentary was made on the cumulative impact of the development, as it is recognised that there is a potential impact on local air quality from emission sources which have either received or may soon receive planning permission or consent but have yet to come into operation. In regard to this NLC noted:

- the evaluation of the release height for the main stack has shown that a release height of 105m is capable of mitigating the short-term and long-term impacts of emissions to an acceptable level, with regard to existing air quality and ambient air quality standards at human health receptors; and
- a separate assessment of the impact of the degradation of amines to form other species including nitrosamines and nitramines (N-amines) has also been undertaken, the source of these emissions being from the absorber stack.

4.3.50. NLC confirmed its Environmental Health Officers had reviewed the assessment of amine degradation and raised a number of questions, which the Applicant subsequently responded to.

4.3.51. In terms of the Applicant's framework CEMP, NLC noted that the final CEMP would be produced by the contractor appointed by the Applicant to undertake the construction of the Proposed Development. It noted that the submission, approval and implementation of this will be secured through an R of the DCO. However, NLC highlighted the following in relation to the Framework CEMP:

- NLC typically asks for construction operations to be undertaken between Monday to Friday (except bank holidays) 08:00 to 18:00 hours and Saturday 08:00 to 13:00 hours in line with other local authorities and to protect the amenity of those living in the vicinity.
- The document makes reference to *"prohibit open fires on site"* and it would prefer to see a no burning of waste policy implemented on site.

Land Contamination

4.3.52. In terms of land contamination, NLC noted the Applicant's ES Chapter 13 [APP-056] and the Phase 1 Desk Based Assessment Report (Appendix 13A) [APP-087] which confirmed the application site covers an area of approximately 72.7 hectares and is currently occupied by:

- Keadby Power Station, including numerous above ground tanks in the central/ eastern area;

- a large 400kV electricity substation operated by NG in the northern area;
- predominantly open land in the west (Keadby Common) including areas of former agricultural land (used by the Keadby 2 Power Station construction project as lay-down and temporary spoil storage) with further open land on the eastern spurs (proposed water connection corridor);
- a pumping station and residential housing located on the eastern-most extent of the eastern spur; and
- a pumping station located on the north-eastern spur.

4.3.53. NLC stated the proposed site is situated on former agricultural land associated with Keadby Common and lies north and north-west of the Keadby 2 laydown area. A site walkover was undertaken by AECOM during July 2020 and the phase 1 assessment also includes a review of previous site reports that have been undertaken relating to the Proposed Development site and surrounding area. In consideration of this, NLC noted:

- based on the current review of all the data, the conceptual site model confirmed that there is a potential risk for contaminants to be present in the ground and that a low to moderate risk to human health of current and future on-site occupants, in the absence of mitigation and a low to moderate/ low risk to the human health of off-site users;
- a moderate/ low risk for contamination to impact the groundwater within the superficial deposits and bedrock, and a moderate/ low to moderate potential risk to surface water receptors has been concluded;
- a qualitative assessment of the risks posed by land contamination within the study area has been undertaken and a baseline risk score has been produced for each potential risk identified; and
- the recommendation is for a ground investigation to be undertaken before construction to inform the development of the preliminary and detailed design. The ground investigation will be designed to target the potentially contaminative sources identified, including the historical landfilling activities identified on the Proposed Development site. Based on the findings of the investigation, where the risks are deemed to be unacceptable, a further detailed quantitative risk assessment and, if required, detailed remediation strategies will be provided.

4.3.54. The NLC has confirmed its Environmental Health Officer considers the phase 1 investigation and its conclusions to be acceptable, subject to the findings of the intrusive site investigation.

Lighting

4.3.55. In terms of lighting, NLC confirms it has assessed the submitted Indicative Lighting Strategy [APP-040], which addressed both the construction and operational phases of the development. It states that subject to an appropriate lighting scheme being produced to satisfy R7 of the dDCO, it considers the potential light impacts from the Proposed Development will be adequately mitigated.

Hydrology and Flood Risk

4.3.56. With regard to hydrology and flood risk, NLC confirmed it has assessed the submitted information in respect of flood risk and drainage, ES Chapter 12 (Water Environment and Flood Risk) [APP-055]. It states the submitted FRA and Drainage Strategy is considered to be acceptable in that it identifies pluvial flood risk and provides for various mitigation measures to be addressed in the detailed surface water drainage strategy. Additionally NLC has reviewed R12 of the dDCO [APP-005] which necessitates the submission and agreement of the detailed Surface Water Drainage Strategy. In the light of this NLC has confirmed it is satisfied that, subject to the acceptable discharge of this R, the impact of the proposals on flood risk and drainage will be adequately mitigated.

Socio-economic Impacts

4.3.57. Moving onto socio-economic impacts, NLC advised it had assessed ES Chapter 16 [APP-059], concerning the assessment of potential effects of the Proposed Development in respect of socio-economics and is satisfied that the approach to the assessment is robust. NLC states from previous delivery of large-scale projects in the area it agrees that it is realistic that there will be a major short-term positive impact on employment created during the employment phase of the development.

4.3.58. Whilst NLC recognises that these will be temporary jobs, with a proportion of these jobs being drawn from outside of the local area, the operational jobs created, although much lower in numbers, will have a minor positive long-term impact on the area. NLC considers that both temporary and permanent jobs generated by the Proposed Development will result in additional spend to the area through accommodation, leisure use and local shops/ services as well as the potential for additional work given to local supply chain companies, but notes the potential for minor impact. However, it considers local companies may also secure long-term contracts once the facility is operational.

4.3.59. NLC advises the Proposed Development has the potential to support further growth of the construction and energy sectors in North Lincolnshire, adding to Gross Value Added (GVA) and providing an opportunity to address skills shortages in this key sector (as highlighted in local and regional industrial strategies). Therefore it is considered to positively influence the ability to attract and retain skilled workers over the lifetime of the Proposed Development. It also considers the skills and experience gained and developed for businesses and workers, has the potential to lead to opportunities with any future local developments.

4.3.60. NLC notes that this will be further supported by R37 of the dDCO, which secures the submission and implementation of an employment, skills and training plan. NLC agrees that this provides an appropriate mechanism to promote employment, skills and training opportunities during construction and employment opportunities during operation for local residents.

4.3.61. NLC points out that the energy sector has been identified as a key growth sector across the Humber and the Greater Lincolnshire regions. It states that this sector is identified in the North Lincolnshire Economic Growth Plan as a growth sector within the area and that the proposal also aligns with the wider Humber Plus (Hull and East Yorkshire Local Enterprise Partnership & Greater Lincolnshire Local Enterprise Partnership) policies for an emerging sector around CCUS.

4.3.62. In conclusion of socio-economic matters NLC considers the Proposed Development is in an area of current industrial activity and is not considered to have an adverse impact on the visitor economy of North Lincolnshire.

Other Matters

4.3.63. In terms of other matters, NLC states that the local community has fed back to it that, as there are a number of existing large-scale energy developments in the area surrounding the site and the Proposed Development will add to these existing developments and their impacts, the further development of the Keadby Power Station site will have a detrimental impact upon their quality of life. In this situation, it has indicated that it considers it would be appropriate for the Applicant to contribute towards measures which the local community feel would help to mitigate against this impact. NLC states that it understands these concerns and would be supportive of any proposal offered by the Applicant, which will help to mitigate the impact of the scheme on the residents of the surrounding area.

4.3.64. NLC advises that a community fund was put in place by SSE to provide community benefits to local residents in the North Axholme Area in an attempt to mitigate the impacts of the Keadby Wind Farm development and suggested that a similar scheme may be an appropriate way of mitigating the impacts upon local residents in this instance.

CONCLUSION OF LIR ISSUES

4.3.65. In summary, NLC considers:

- short term and negative social and environmental impacts are anticipated. Such impacts include increased traffic generation, construction disturbance and increased emissions. Longer term adverse impacts include the visual intrusion caused by the buildings and structures, but NLC is of the view that via the implementation of impact avoidance, design and mitigation measures that will be secured through Rs contained within the dDCO and through other regulatory regimes that these negative impacts will not be significant;

- there is potential for residual long-term negative effects on non-designated heritage assets. NLC considered that this impact could potentially be mitigated through Rs in the dDCO for the reasons outlined above, but it is the view of NLC that the current archaeological assessment is inadequate to inform the EIA and DCO

application and as such the proposed R16 is not appropriate or acceptable;

- the development will have short-term and long-term beneficial economic impacts in terms of job creation and inward investment into North Lincolnshire. Through the proposed Rs the development will also provide an opportunity to address highlighted skill shortages in a key sector strategically promoted for growth by NLC in this area. These beneficial impacts are considered to be of moderate importance; and

- the Proposed Development would provide a positive impact in terms of low carbon electricity generation, which will help to deliver carbon reduction policies set out in the NPPF, UK Clean Growth Strategy, Environment Bill, Humber Clean Growth Local White Paper and the NLCS. The development could contribute to a reduction in the carbon emissions of the energy supply in the UK and provide a secure and stable energy source. NLC believes that this is a significant positive impact but that it has to be balanced against the potential environmental impacts of the proposed scheme.

4.4. CONFORMITY WITH THE NATIONAL POLICY STATEMENTS

INTRODUCTION

4.4.1. This section sets out an overarching analysis of the conformity of the Proposed Development with the relevant NPSs, identified in Chapter 3 above as being NPS EN-1, NPS EN-2 (NPS for Fossil Fuel Electricity Generating Infrastructure) (NPS EN-2), NPS EN-4 (NPS for Gas Supply Infrastructure and Gas and Oil Pipelines) (NPS EN-4) and NPS EN-5 (Electricity Network Infrastructure) (NPS EN-5).

4.4.2. Under s104(3) of the PA2008, the SoS is required to decide the application in accordance with any relevant NPSs that have effect in relation to the application, subject to certain defined exceptions set out in subsections 104(4) to 104(8), none of which are applicable to this case.

4.4.3. This section also sets out an overarching analysis of the conformity of the Proposed Development with the relevant draft NPSs, identified in Chapter 3 above as being draft NPS EN-1, draft NPS EN-2, draft NPS EN-4 and draft NPS EN-5, which were published on 6 September 2021 by the Department for Business, Energy and Industrial Strategy (BEIS) for consultation.

NPS EN-1

4.4.4. The Applicant analysed the performance of the Proposed Development against relevant policies in NPS EN-1, NPS EN-2, NPS EN4 and NPS EN-5 within its Planning Statement (PS) [REP3-006]. The ES considers the principle of, and need for, the Proposed Development within the framework provided by the NPSs.

4.4.5. NPS EN-1 makes clear that there is a need for the UK to move away from fossil fuels for electricity generation. Nevertheless, it recognises the urgent need for energy infrastructure to achieve energy security with substantial weight being given to the contribution which projects would make towards satisfying this need. It also requires that the application should be assessed on the basis that the Government has demonstrated that there is a need for the types of infrastructure covered by the energy NPSs.

4.4.6. Additionally, paragraphs 3.6.4 to 3.6.7 of NPS EN-1 explain the role Carbon Capture and Storage (CCS) can have in meeting emissions targets while maintaining security of supply, as CCS has the potential to reduce carbon emissions by 90%. These paragraphs note the uncertainty about the future deployment of CCS in the economy, but consider they can be resolved by demonstrating CCS at commercial scale, which the Government is supportive of, noting commercial scale demonstration projects are a priority for UK energy projects. Indeed, on the consenting of new fossil fuel generating stations that are at or above 300 megawatts (MW), the Government requires them to be constructed to be Carbon Capture Ready (CCR) (paragraph 3.6.6 NPS EN-1).

4.4.7. Paragraph 3.6.8 of NPS EN-1 emphasises the need for new fossil fuel generation to provide back-up to renewable generating capacity and to help with the transition to low carbon electricity generation.

4.4.8. Section 3.8.1 of NPS EN-1 highlights that although the UK's reliance on fossil fuels will fall, the transition will take some time, and gas will continue to play an important part in the country's fuel mix for some years to come. It recognises the continued need for gas-fired generation to form part of the energy mix, albeit with CCS, in order to ensure security and flexibility of electricity supplies. This is also recognised in more recent Government policy, notably the Energy White Paper (EWP), (HM Government, 2020).

4.4.9. Part 4 of NPS EN-1 sets out a number of assessment principles that must be taken into account by applicants and the SoS in preparing and determining applications for nationally significant energy infrastructure. General points include the requirement for the SoS to start with a presumption in favour of granting consent for applications for energy Nationally Significant Infrastructure Projects (NSIP) (paragraph 4.1.2). This presumption applies unless any more specific and relevant policies set out in the relevant NPS clearly indicate that consent should be refused or any of the considerations referred to in s104 of the PA2008 apply.

4.4.10. Paragraph 4.4.1 of NPS EN-1 states that there is no general requirement to consider alternatives or to establish whether the proposed development represents the best option. Whilst paragraph 4.4.2 indicates that applicants are obliged to include within their ES information about the main alternatives studied and explain the main reasons for their choice.

4.4.11. Section 5 of NPS EN-1 sets out potential generic impacts of energy infrastructure which must be taken into account in assessing projects. Further detail specifically applicable to fossil fuel electricity generating infrastructure and gas supply infrastructure and gas and oil pipelines is given in NPS EN-2 and NPS EN-4 respectively, whilst details specifically applicable to electricity network infrastructure are given in NPS EN-5. These impacts are assessed, where relevant, in the following sections of this report.

4.4.12. With regard to draft NPS EN-1 (Overarching NPS for Energy), this draft NPS is broadly consistent with the existing NPS recognising the need for new nationally significant infrastructure, whilst acknowledging gaseous fuels have a key role to play in the UK energy landscape. It is also broadly consisted with the existing NPS in regard to matters to consider. Section 3.4 of draft NPS EN-1 recognises the need to meet the ongoing demand for natural gas, whilst maintaining the need for a diverse mix of gas supply infrastructure in order to meet our energy objectives, and the need to deliver affordable decarbonisation.

4.4.13. Section 3.5 of draft NPS EN-1 recognises the importance of new CCS infrastructure stating it *"…will be needed to ensure the transition to a net zero economy".* However, it also stresses *"It is not the role of the planning system to deliver or limit specific amounts of CCS infrastructure covered by this NPS"* (paragraph 3.5.8 of draft NPS EN-1).

NPS EN-2

4.4.14. NPS EN-2 confirms the vital role fossil fuel generating stations will play in providing reliable electricity supplies and a secure and diverse mix as the UK makes its transition towards a secure decarbonised electricity system. It also re-iterates key elements of NPS EN-1 already referred to above confirming the SoS should not give development consent for new combustion generating stations with a generating capacity at or over 300 MW unless it is satisfied that the proposed development meets all the criteria for being CCR as set out in EN-1 (NPS EN-2 paragraph 2.3.4).

4.4.15. Section 2.4 of NPS EN-2 acknowledges the impacts of fossil fuel generating stations, as set out in the generic impacts identified in Part 5 of EN-1, providing additional detail on air emissions, landscape and visual, noise and vibration, and water quality and resources, amongst others.

4.4.16. In terms of draft NPS EN-2 (Fossil Fuel Electricity Generating Infrastructure) this draft NPS is broadly consistent with the existing NPS especially in regard to matters to consider. I also note it pursues good design for energy infrastructure and is not materially different to the current adopted NPS EN-2 in that regard.

NPS EN-4

4.4.17. NPS EN-4 is relevant to the Proposed Development as natural gas will be used as the fuel for the operation of the electricity generating station and the Proposed Development includes a relatively small gas supply pipeline.

The gas connection is associated development as defined by s115 of the PA2008.

4.4.18. This NPS (NPS EN-4) states, at Part 1, that the efficient import, storage and transmission of natural gas is crucial to meeting the UK energy needs during the transition to a low carbon economy (paragraph 1.1.1). It also notes the national objectives relating to security of supply cannot be achieved without enabling investment in new infrastructure.

4.4.19. Part 2 of NPS EN-4 deals with assessment and technology-specific information, including consideration of climate change adaptation and good design and other factors that are relevant to gas pipelines and supply infrastructure. It outlines key technology-specific considerations for gas pipelines, including the proximity to sensitive land uses (eg residential development and schools) when planning routes; pipeline safety; noise and vibration; biodiversity; landscape and visual; water quality and resources; and soils and geology.

4.4.20. In terms of draft NPS EN-4 (Gas Supply Infrastructure and Gas and Oil Pipelines) this draft NPS is broadly consistent with the existing NPS especially in regard to matters to consider. I also note it pursues good design for energy infrastructure and is not materially different to the current adopted NPS EN-4 in that regard.

NPS EN-5

4.4.21. NPS EN-5 is also relevant to the Proposed Development as part of the associated development includes a new electrical connection between the low carbon electricity generating station and the NG substation for the export of electricity. Part 2 of NPS EN-5 deals with assessment and technology-specific information relating to electrical grid connection infrastructure. This includes factors influencing site selection, general assessment principles for electricity networks, climate change adaptation and consideration of good design. Part 2 also identifies a number of potential impacts for consideration, including biodiversity and geological conservation, landscape and visual, noise and vibration and electric and magnetic fields.

4.4.22. In terms of draft NPS EN-5 (Electricity Networks Infrastructure), this draft NPS is broadly consistent with the existing NPS in terms of considerations. However, I note that paragraph 2.7.2 of this draft NPS emphasises that safety and security are the primary focus of designing electricity networks infrastructure and that such considerations could limit the ability to influence aesthetic appearance.

4.4.23. Overall in terms of the draft NPSs, it should be noted that their status at this time is clear, in that *"…for any application accepted for examination before designation of the 2021 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS."* However, it is also clear that any emerging draft NPSs may potentially be important or relevant matters for consideration, pursuant to s104(2)(d) of the PA2008.

CONCLUSIONS ON NPS POLICY

4.4.24. Taking all relevant documents and policies into account, I conclude:

- no instances of non-compliance with NPSs or draft NPSs were identified by IPs;
- the need for the Proposed Development is established through the NPSs and the draft NPSs;
- the Proposed Development conforms to high-level policy in NPS EN-1, NPS EN-2, NPS EN-4, NPS EN-5 and the draft NPSs; and
- the compliance of the Proposed Development has been examined against policy detail and tests applicable to individual planning issues as set out in relevant NPS and draft NPS paragraphs, and this analysis is carried out in sections 4.12 to 4.21 below.

4.4.25. It should be noted that the draft NPSs consultation stage closed on 29 November 2021 and feedback is currently being analysed. As such I have given the draft NPSs limited weight in my considerations.

4.5. CONFORMITY WITH THE MARINE POLICY STATEMENT AND MARINE PLANS

4.5.1. The marine policy context is set out in Chapter 3 of this report and comprises the MPS and East Inshore and East Offshore Marine Plans (EMP). The MPS states, at paragraph 3.3.1, that *"A secure, sustainable and affordable supply of energy is of central importance to the economic and social wellbeing of the UK*". It continues that *"Contributing to securing the UK's energy objectives, while protecting the environment, will be a priority for marine planning*".

4.5.2. The MMO took an active part in the Examination making a RR [RR-006] and making further submissions at DL1 [REP1-025], DL2 [REP2-024], DL3 [REP3-026], DL4 [REP4-014], DL5 [REP5-053], DL6 [REP6-035] and DL7a [REP7a-017]. Additionally a signed SoCG between the Applicant and the MMO [REP6-007] was submitted at DL6, which confirmed that there were *"…no outstanding matters to be agreed"*. This SoCG also confirmed agreement had been reached between these parties in regard to:

- consultation;
- dredging or disposal at sea;
- the adequacy of the ES and other relevant documents associated with the DCO application;
- confirmation on a single lead DEFRA body concerned with the operation of the Proposed Development, including cooling water systems operation;
- marine ecology, including underwater sound effects on fish;
- coastal processes, including hydrodynamics and scour protection;
- water quality, including the Water Framework Directive (WFD) Assessment undertaken for the Proposed Development;
- navigational risk; and
- the scope, content and drafting of the DML.

4.5.3. Bearing in mind the agreements reached in the SoCG and the level of involvement the MMO had during the Examination, the ExA concludes that with the level of mitigation proposed, which is secured through the DML contained in the dDCO at Schedule 13, there would be no unacceptable or significant levels of impact resulting from the Proposed Development on the marine environment.

4.6. CONFORMITY WITH THE DEVELOPMENT PLAN

4.6.1. The application site lies wholly within the administrative district of NLC. As recorded in Chapter 3 of this report, the LIR from NLC [REP1-022] identified that the development plan in force for the area comprises the NLCS and the North Lincolnshire Housing and Employment Land Allocations Development Plan Document (2016), adopted in 2011 and 2016 respectively, and the saved policies of the NLLP, which were adopted in 2003. With the exception of initial concerns primarily surrounding the matter of archaeology, that were subsequently resolved during the Examination to the satisfaction of NLC, no important and relevant issues were raised in the LIR that gave rise to in-principal breaches of relevant NPS policy or to objections to the Proposed Development.

4.6.2. NLC signed a SoCG with the Applicant [REP6-005], which included matters agreed prior to the Examination and addressed the Applicant's Proposed Development changes. This SoCG [REP6-005] superseded the draft SoCG between the Applicant and NLC submitted at DL1.

4.6.3. It is clear from the SoCG completed with NLC that by the time of its submission into the Examination all matters, including the concerns set out in the LIR (including those related to archaeology), had been adequately resolved and were agreed in respect to the effects of the Proposed Development, and that adequate mitigation would secure conformity with the development plan. No matters of disagreement remained existing between these parties and there were no relevant matters not agreed.

4.6.4. I have reviewed the development plan policies identified in NLC's LIR and, bearing in mind works undertaken by the Applicant together with additional information submitted during the Examination, I am satisfied that any concerns raised in the LIR have been adequately resolved. In the light of this, I am not aware of any issues arising from NLC's LIR that conflict with relevant policy directions arising from NPSs.

4.6.5. NPSs are the primary source of policy for a decision under PA2008; development plan policies are important and relevant considerations. None of them indicate against the directions set out in NPS EN-1, NPS EN-2, NPS EN-4 or NPS EN-5 or the emerging draft NPS's related to energy infrastructure.

4.6.6. With the concerns identified in NLC's LIR being addressed by the Applicant during the Examination, no further harms or conflict with the development plan were identified.

4.7. APPLICATION OF OTHER POLICIES

4.7.1. The legislative and policy framework applicable to the assessment of this application is summarised at a high level in Chapter 3 of this report. Individual references to relevant legislation and policy detail are drawn out in sections 4.12 to 4.21 of this report. No IPs raised any concerns or objections regarding the Proposed Development's conformity against such legislation and policy.

4.8. THE PRINCIPLE OF THE DEVELOPMENT

NEED

4.8.1. The Applicant's PS [REP3-006] sets out its case for the need for the Proposed Development. This broadly relies on NPS EN-1 which recognises that energy is vital to economic prosperity and social well-being and, as such, it is important to ensure that the UK has secure and affordable energy (paragraph 2.1.2). It also makes clear the urgent need for new energy projects to be brought forward as soon as possible (paragraph 3.3.15), the need for major investment in a range of forms of power generation (paragraph 2.2.1) and, in the context of reducing carbon emissions, to meet the Government's commitment to meet the UK's legally binding target to cut greenhouse gas (GHG) emissions (originally at least 80% by 2050, and now committed by the UK to achieve a 100% reduction in emissions by 2050).

CONSIDERATION OF ALTERNATIVES

4.8.2. NPS EN-1 and NPS EN-2 do not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, applicants are required to include within their ES information about the main alternatives studied and include an indication of the main reasons for the choice of site, taking into account the environmental, social and economic effects including where relevant commercial feasibility (paragraph 4.4.2). Furthermore, paragraph 4.4.3 of EN-1 advises that the consideration of alternatives should be carried out in a proportionate manner.

4.8.3. During ISH1 session 1 [EV-017], I specifically sought the Applicant's comments on its considerations of alternative sites. The Applicant responded by advising it has a number of alternative sites in the UK that are available for development and are being considered for similar schemes. These included the DCO application site, Medway, Ferrybridge and Peterhead. However, it pointed out only the DCO application site was in close proximity to the Zero Carbon Humber cluster and the underlying carbon pipeline that the Proposed Development could connect directly into.

4.8.4. The Applicant also explained another key advantage of the Proposed Development site was that it could be developed more quickly than the other sites mentioned above and that the Applicant was concentrating its efforts on this site, as opposed to the others. Indeed, I noted during my Unaccompanied Site Inspections (USI) and Accompanied Site Inspection

(ASI) that the Keadby 2 Power Station was under construction and has recently entered its commissioning phase.

4.8.5. In addition to the above, the Applicant explained that overarching this context was the EWP, which referred to at least one power CCUS project and that these ambitions have been subsequently expanded as a result of the Net Zero Strategy. As such the Applicant considers the Proposed Development sits comfortably with the Net Zero Strategy.

4.8.6. In the light of the Applicant's responses and having formally assessed the Applicant's ES (Chapter 6 – Consideration of Alternatives [APP-049]), I consider the Proposed Development represents the best option for the choice of site, taking into account the environmental, social, economic effects and commercial feasibility.

LOCATION

4.8.7. Details of the Proposed Development site and the surrounding area are provided in Chapter 2 above.

4.8.8. The site is located within and near to the existing Keadby Power Station site. The application sets out (in various places including [APP-049] and [REP6a-005]) the reasons that the site has been selected by the Applicant as opposed to other potentially available sites. These include:

- the absence of major structures requiring demolition, treatment and removal on the proposed PCC site;
- sufficient space is available within the proposed PCC site to accommodate the power generation and carbon capture equipment, without encroaching on the exclusion areas for the Keadby Wind Farm turbines to the north and the existing overhead lines to the south and east;
- the proposed PCC site enables connections to be developed to existing electrical, gas and, in the future, CO_2 pipeline infrastructure;
- adequate supplies of cooling water can be provided via the nearby Stainforth and Keadby Canal or River Trent, whilst existing infrastructure for discharge of the treated effluent into the River Trent can also be utilised; and
- use of the proposed PCC site minimises interference with the Landscape and Creative Conservation Plan for Keadby 2 Power Station. It also avoids areas of highest biodiversity value within the wider Keadby Power Station site.

4.8.9. I also note the comments of NLC in its LIR, which confirms, subject to complying with the relevant policies contained in the Local Development Plan, the Proposed Development is an appropriate form of development in this location. It considers this to be the case due to the following summarised reasons:

- The Proposed Development would in principle accord with NLCS Policy CS11 and Policies RD2, CS2, and CS3 of the NLLP, with the latter policies allowing employment related development appropriate to the open countryside provided that the open countryside is the only

appropriate location and that the development cannot reasonably be accommodated within development boundaries.

- Given the scale and nature of the Proposed Development it would not be possible to be located within existing development boundaries and as such there is a need to locate the development within the open countryside (ie outside of development limits).
- Large parts of the application site constitute brownfield land, being previously developed.
- The application site and the local area has a history of power generation and associated infrastructure and offers access to electrical and gas connections that are essential to the Proposed Development and the siting adjacent to the existing power stations provides synergies in terms of key infrastructure, services, operations and maintenance.
- The siting of the Proposed Development means that it will be viewed in the context of existing largescale industrial structures and energy infrastructure.

4.8.10. Additionally, during ISH1 session 1 [EV-017], the Applicant emphasised the location of the Proposed Development was also informed by the close proximity of the Proposed Development of the Zero Carbon Humber cluster, and the underlying carbon pipeline that the Proposed Development could connect directly into. It also pointed to the fact it considered that the site could be developed more quickly than the other sites in its ownership, especially bearing in mind the scale of recent construction having taken place on the adjoining Keadby 2 Power Station site, which has recently entered its commissioning phase.

4.8.11. Overall it is considered that the Proposed Development generally accords with the aims of the Local Development Plan and that the principle of development is acceptable subject to conformity with the relevant policies of the plan, including those that seek to protect the environment and amenity of the area.

4.8.12. I accept that the site is located in an area with a history of power generation and associated infrastructure and offers access to electrical and gas connections that are essential to the Proposed Development. I also accept the siting, adjacent to the existing power stations and other energy-related infrastructure, provides synergies in terms of key infrastructure, services, operations and maintenance. These factors weigh positively in favour of the Proposed Development. Whilst the countryside location of the development is noted, I also note that NLC considers the Proposed Development complies with the relevant countryside policies and I have no reason to disagree with NLC's position in this regard.

4.8.13. However, taking into account my USI and the evidence presented in the Examination, it is also clear that the location of the Proposed Development site also has a number of potential disadvantages, primarily related to its proximity to nearby European sites.

4.8.14. Detailed consideration in regard to the potential disadvantages are set out in the remainder of this report.

GENERATING PLANT

4.8.15. The Applicant's Design and Access Statement [REP6a-051] sets out the design principles of the Proposed Development, at Appendix 1, but is clearly focused on minimising adverse impacts, including in regard to:

- visual amenity through appropriate siting of infrastructure and selection of appropriate materials and colours;
- landscaping and biodiversity enhancement;
- habitat reinstatement;
- boundary treatments;
- lighting; and
- access improvements.

4.8.16. The Proposed Development site is highly suitable for energy generation and the development of CCP due to its location, size, grid connections, access and synergies in terms of key infrastructure, services, operations and maintenance and its potential to provide a secure and stable energy source. I also consider it suitable due to the opportunity it has to positively impact in terms of low carbon electricity generation and the potential it has to contribute to a reduction in the carbon emissions that result from the UK's energy supply.

4.8.17. The design of the Proposed Development has had regard to its immediate context and the functional requirements of its various components. Appendix 1 of the Applicant's Design and Access Statement [REP6a-051] sets out a number of design principles that guided the design of the Proposed Development. The design principles related to efficiency, safety, durability, making use of the location, designing the main building with regard to its surroundings, avoiding impacts on the operation of the adjoining power stations and the environment, retaining flexibility, securing opportunities for biodiversity, creating a safe and efficient access and providing appropriate internal circulation and landscaping.

4.8.18. In my view this list of design principles, supplied by the Applicant (see Appendix 1 of the Applicant's Design and Access Statement [REP6a-051]) is adequate and complete. However, a number of comments were received from statutory consultees in relation to environmental, safety, and access matters and these were given appropriate consideration by the Applicant.

4.8.19. The design of the Proposed Development complies with these design principles and addresses the comments of these statutory consultees and is secured via the Works Plans [REP6a-044] and R5 (Detailed design) in Schedule 2 of the dDCO (the current version of which was submitted at DL7a [REP7a-006]). In reaching this opinion, I have taken account of the Applicant's indication that at the detailed design stage, where it is reasonably practicable to do so, it would consider the potential for the raising of the floor level of the CCGT critical operational infrastructure (from no less than 3.6m AOD) up to 4.4m AOD.

COMBINED HEAT AND POWER

4.8.20. As noted in Chapter 3, NPS EN-1 recognises the contribution that Combined Heat and Power (CHP) can make to reducing emissions. It requires that applicants either include CHP in the project or present evidence in the application that the possibilities for CHP have been fully explored. Where a proposal is for thermal generation without CHP, applicants should explain why CHP is not economically or practically feasible, provide details of any potential future heat requirements in the area that the station could meet and detail the provisions in the proposed scheme for ensuring that any potential heat demand in the future can be exploited.

4.8.21. The Applicant has provided a report concerning CHP entitled CHP Readiness Assessment [APP-036] that assesses the feasibility of operating the Proposed Development as a CHP plant. Although this identifies a number of theoretical heat users within a 15km radius of the Proposed Development, the Applicant's CHP Readiness Assessment [APP-036] indicates that provision of CHP is not presently economically viable. However, it proposes to construct the Proposed Development as *"CHP-Ready"*, being designed to be available, with minimum modification, to supply heat in the future. The Applicant considers that this would represent BAT. To satisfy the BAT tests on an ongoing basis, the Applicant states it is committed to carrying out periodic reviews of opportunities for the supply of heat to realise CHP.

4.8.22. I accept that the provision of CHP is not presently economically viable but consider the Proposed Development should be constructed so as to be *"CHP-Ready"*. Requirement 32 of the dDCO relates to the provision of CHP and was subject to discussion during ISH2 session 3 [EV-027]. I consider the current wording of R32 would ensure the Proposed Development is *"CHP-Ready"* and would secure sufficient space and routes within the design of the Proposed Development for the later provision of CHP for off-site users, that is acceptable to the local planning authority, should development consent be granted.

GAS CONNECTION

4.8.23. Details in relation to the proposed gas connections can be found in the Applicant's Gas Connection Statement [APP-032]. It is clear from this document that a new gas connection and pipeline will be required. The gas connection is associated development and would comprise an underground gas pipeline of up to 800 millimetres (mm) in diameter for the transport of natural gas.

4.8.24. The Applicant states the proposed gas pipeline would connect the Proposed Development via a new natural gas reception facility within the Proposed Development site to the existing high-pressure national transmission system gas pipeline that traverses the site (Feeder 7 – Eastoft) (Work No. 2), as detailed in paragraph 1.1.2 of this report. The gas pipeline would link into Keadby Power Station's existing natural gas supply infrastructure by linking into the Minimum Offtake Connection (MOC)/ Above Ground Installation (AGI). The gas connection route is

identified in the application and shown on the Indicative Gas Supply Pipeline Connection Plans and Gas AGI Plans [APP-020].

4.8.25. A single gas connection route is identified in the application, and runs north, from the existing natural gas supply infrastructure (MOC/ AGI), a short distance to the proposed PPC site. The gas connection route is completely contained within the proposed Order Limits (ES Figure 3.1 [REP6a-067]).

4.8.26. Further details can be found in the Gas Connection Statement submitted with the application [APP-032] and detailed in the Indicative Gas Supply Pipeline Connection Plans and Gas AGI Plans [APP-020].

4.8.27. During the Examination, the Applicant completed a SoCG with NGET/ NGG [REP6-009] that confirmed *"it is agreed that Gas Capacity is to be secured through a PARCA* [Planning and Advanced Reservation of Capacity Agreement] *Application which is to be submitted in* (sic) *on 11 July 2022."* The SoCG also confirms:

- gas connection to the Natural Gas Transmission Network is to be secured through an Application to Offer (A2O) application, which was submitted during winter 2021 and that pre-application meetings have taken place and this timeline is designed to best balance risk;
- the connection will be similar to that delivered for Keadby 2 Power Station and an indicative location is presented in DCO application documents;
- gas capacity is to be secured through a Planning and Advanced Reservation of Capacity Agreement application which is to be submitted from April 2022; and
- the parties have continued to progress feasibility studies for the proposed connection and it is agreed that Work 2A is sufficiently sized and suitably located for developing and operating the gas connection.

4.8.28. In addition to the above, the Applicant's Schedule of Other Consents and Licences [REP7a-010] reiterates many of the above-mentioned points, but also confirms:

- the A2O application for a connection to the national transmission system has been submitted and a draft feasibility study has been issued by NGG; and
- the Applicant expects to receive an offer in late 2022.

4.8.29. As such I am satisfied that appropriate gas connections between the generating station and NGG's MOC/ AGI are being pursued and can be secured.

ELECTRICITY CONNECTION

4.8.30. The Proposed Development includes new electrical connection works to and from the existing NGET 400kV substation for the export and import of electricity (Work No. 3A). It also proposes electrical connection works to and from the existing Northern Powergrid 132kV substation for the supply of electricity at up to 132kV to the proposed PCC site (Work

No. 3B). The Applicant in its Electricity Grid Connection Statement [REP5-010] states *"It is expected that both the 400kV and 132kV import connections would be developed for resilience reasons"* (paragraph 2.1.3).

4.8.31. In terms of the 400kV connection option, the Applicant states that this would include *"…any upgrades to existing switchgear or other existing equipment that may be required, as well as identify the preferred option for import of electricity for auxiliary power."* The Applicant anticipates that the electrical connection (Work No. 3A) will comprise a direct connection to the 400kV transmission system, which would connect to the existing National Grid 400kV substation directly to the east of the proposed PCC site. The connection between the Proposed Development and existing 400kV substation would comprise 400kV single circuit electrical cables (or suitable alternative) and control system circuits. The Applicant states the *"…circuits would be installed primarily below ground but some sections may be above ground."*

4.8.32. Indicative Electrical Connection Plans [APP-012] (Sheet 1 of 3 and Sheet 2 of 3) provide illustrative plans of the proposed 400kV connection.

4.8.33. With regard to the 132kV connection options, this would be achieved in one of two ways. The first option being routed north from the existing Northern Powergrid 132kV substation on Chapel Lane and then west along Chapel Lane to the proposed emergency access road and then north and west along the proposed emergency access road. This route will then turn south back towards the proposed PPC site, where it will connect. This route is approximately 1km in length and is shown in light purple on the Indicative Electrical Connection Plans [APP-012] (Sheet 3 of 3), which provide an illustrative plan of the proposed northern route of the proposed 132kV connection.

4.8.34. The second option also starts from the existing Northern Powergrid 132kV substation on Chapel Lane, but runs west and south, eventually turning north back towards the proposed PPC site, where it will connect. This route is also approximately 1km in length and is shown in dark purple on the Indicative Electrical Connection Plans [APP-012] (Sheet 3 of 3), which provide an illustrative plan of the proposed southern route of the proposed 132kV connection.

4.8.35. In terms of the 400kV electrical connection, the Applicant's SoCG with NG [REP6-009] confirms, as matters agreed, that *"the Electrical Modification Application Offer has been issued to the Applicant on the 13 March 2022 for review. If accepted this offer would supersede the existing Bilateral Connection Agreement…, but if not accepted there would be no impact on the existing contract which would remain valid..."* The Applicant has also stated in its submitted application document Schedule of Other Consents and Licences [REP7a-010] that it is to *"…respond to offer on or before 13th July 2022."*

4.8.36. In terms of the 132kV connection, the Applicant advises that a formal application was submitted in January 2022. Distribution connection options and timescales have been discussed with Northern Powergrid with an offer released by them on 6 May 2022. Furthermore, it is noted that in regard to this matter the Applicant's completed SoCG with Northern Powergrid [REP7-009] states *"the normal application process will be followed"* and the *"formal offer can be accepted on or before the 6th August 2022"*.

4.8.37. The Indicative Electrical Connection Plans [APP-012] shows the route for the cables (Work No. 3A and the northern and southern routes of Work No. 3D) and the connection locations. Further details can also be found in the Electricity Grid Connection Statement submitted with the application [REP5-010].

4.8.38. Irrespective of the above, whichever of the grid connections as set out above is used, I am satisfied that appropriate electricity grid connections between the generating station and National Grid transmission system can be secured.

DESIGN AND LAYOUT

4.8.39. In order to ensure a robust assessment of the likely significant environmental effects of the Proposed Development, the Applicant has adopted a Rochdale Envelope approach and the application presents a worst-case assessment of potential environmental effects.

4.8.40. A Design and Access Statement [REP6a-051] was provided as part of the application. This document explains the design principles and concepts which were applied to the Proposed Development and how the Applicant has taken into account the context of the site and its wider setting. It sets out the design information being provided with the application, describes the approach and evolution of the design process and explains why the Applicant is seeking flexibility in the design of the Proposed Development. In addition, it identifies the key design principles and components, access arrangements and how the detailed design of the Proposed Development will be in accordance with the design details and parameters upon which the EIA is based.

4.8.41. As such the maximum dimensions for the layout of the Proposed Development have been set and are as outlined in the table below:

Table 1: Maximum Design Parameters

Component	Length (m)	Width (m)	Height (m) above ground level	Height (m) AOD
Gas Turbine Hall	22	50	31.8	34.6
HRSG Building	28	50	55.8	58.6
HRSG Stack	-	Up to 8 (diameter)	84.8	87.6
Steam Turbine Hall	50	40	34.8	37.6
Carbon Dioxide Stripper	-	Up to 15 (diameter)	63.0	65.8
Absorber (if one developed)	16	43	98.8	101.6
Absorber Stack (if one developed)	-	Up to 6.7 (diameter)	104.8	107.6
Absorber (if two developed)	-	19	80	82.8
Absorber Stack (if two developed)	-	Up to 6.7 (diameter)	95.5	98.3

4.8.42. Additionally, the application was accompanied by the following plans: Indicative Proposed Power and Carbon Capture Layout, Elevations and Sections [REP6a-047]; Indicative CO_2 AGI Plans; [APP-021]; Indicative Landscape and Biodiversity Plan [REP6a-048] and Works Plans [REP6a-044].

4.8.43. The maximum design parameters, as set out in Table 1 above, are secured by virtue of Schedule 11 (Design Parameters) of the recommended Development Consent Order (rDCO), which is attached at Appendix C of this report. Irrespective of this, there are a number of

elements of the Proposed Development that are yet to be determined. These are secured by R5 (Detailed Design) of the rDCO, which requires the submission of detailed design information for approval by the local planning authority prior to development commencing on the various works.

CONCLUSION ON THE PRINCIPLE OF DEVELOPMENT

4.8.44. The need for the Proposed Development is established through the NPSs, which recognises the public benefits of increased energy generation for all types of infrastructure and maintaining the need for security and flexibility of energy supply, amongst other things. I consider that the Proposed Development would contribute to meeting this need.

4.8.45. In addition I am satisfied that sufficient consideration has been given to the design and layout and adequate information provided on the consideration of alternatives, including location, the nature of the power generation proposed, CHP and gas and electrical connections to satisfy the requirements of NPS EN-1.

4.8.46. I also accept that the provision of CHP is not presently economically viable but consider the Proposed Development should be constructed so as to be CHP-ready. Requirement 32 of the rDCO, attached to this report at Appendix C, would adequately secure sufficient space and routes within the design of the development for the latter provision of CHP for off-site users, that would be acceptable to the appropriate local planning authority. As such I consider the scheme would be CHP-ready.

4.8.47. Turning to the matter of whether the Proposed Development would be CCR, this matter and how the Proposed Development is to be controlled in this regard is discussed in more detail in paragraphs 4.14.56 to 4.14.60 of this report. However, having carefully considered the Proposed Development in this regard, I consider the Proposed Development would be CCR.

4.8.48. Accordingly, I consider the Proposed Development meets the general requirements of NPS EN-1 in principle. I consider the specific impacts of the Proposed Development in Sections 4.12 to 4.21 further below.

4.9. ENVIRONMENTAL IMPACT ASSESSMENT

4.9.1. An ES accompanied the application [APP-042 to APP-083, APP-085, APP-087 to APP-099, APP-104, APP-105, APP-108 to APP-110, APP-112 to APP-130, APP-136 to APP-148, APP-155 to APP-157, plus AS-010, REP5-012, REP6a-064, REP6a-065, REP6a-066 and REP6a-067].

4.9.2. Chapter 2 of the ES sets out the methodology used [APP-045]. 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).

4.9.3. 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 proposes mitigation measures to avoid, reduce and offset the significance of the effect, expressed as residual effects after taking account of mitigation.

4.9.4. My assessment of the Proposed Development undertaken in Sections 4.12 to 4.21 of this report has been made in consideration of the environmental effects from the identified stages as set out in the ES.

4.9.5. Article 2 (Interpretation) of the dDCO identifies the documents proposed to be certified in the ES post-Examination. These include the:

- Access and Rights of Way Plan [REP6a-045];
- Application Guide [REP7a-003];
- Book of Reference [REP6a-038];
- Combined Heat and Power Assessment [APP-036];
- Design Principles Statement (Appendix 1 of the Design and Access Statement) [REP6a-051];
- ES [APP-042 to APP-083, APP-085, APP-087 to APP-099, APP-104, APP-105, APP-108 to APP-110, APP-112 to APP-130, APP-136 to APP-148, APP-155 to APP-157, plus AS-010, REP5-012, REP6a-064, REP6a-065, REP6a-066 and REP6a-067];
- FRA [AS-010];
- Framework CEMP [REP6-003];
- Framework Construction Traffic Management Plan (CTMP) [REP6a-016];
- Framework CWTP [APP-162];
- Haul Road Plans [REP6a-050];
- Indicative Landscape and Biodiversity Plan [REP6a-048];
- Land Plans [REP6a-043];
- LBMEP [REP7-003];
- Indicative Surface Water Drainage Plan [APP-022];
- Indicative Lighting Strategy [APP-040];
- Outline WSI [REP6a-018];
- Pilfrey Laydown Plans [APP-029]; and
- Works Plans [REP6a-044].

4.9.6. Subject to my proposed amendments set out in Table 5 below (see Chapter 8 of this report), I accept the above list to be correct and reflective of the documents submitted as part of the ES, as amended by the Access and Rights of Way Plan [REP6a-045]; Application Guide [REP7a-003]; Book of Reference [REP6a-038]; Design Principles Statement (Appendix 1 of the Design and Access Statement) [REP6a-051]; ES [APP-042 to APP-083, APP-085 and APP-087 to APP-159, plus REP5-012, REP6a-064, REP6a-065, REP6a-066 and REP6a-067]; FRA [AS-010]; Framework CEMP [REP6-003]; Framework CTMP [REP6a-016]; Haul Road Plans [REP6a-050]; Indicative Landscape and Biodiversity Plan [REP6a-048]; Land Plans [REP6a-043];

LBMEP [REP7-003]; Outline WSI [REP6a-018]; Pilfrey Laydown Plans [APP-029]; and Works Plans [REP6a-044].

4.9.7. The ES, as updated, sufficiently considers alternatives, including in terms of the location and nature of the power generation proposed to satisfy the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (EIA Regulations). The ES is, in my view, adequate for assessing the environmental impacts of the Proposed Development and sufficient to enable the SoS for Business, Energy and Industrial Strategy to take a decision in compliance with the EIA Regulations.

4.10. HABITATS REGULATIONS ASSESMENT

4.10.1. The Proposed Development is one that has been identified as giving rise to the potential for LSEs on European sites and hence is subject to HRA. A separate record of considerations relevant to HRA has been set out in Chapter 5 of this report below.

4.10.2. 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 have taken it into account in the conclusions reached here and in the Planning Balance (Chapter 6 of this report). Further, project design and mitigation proposals included in the ES and secured in the dDCO have been fully considered for HRA purposes.

4.10.3. Overall, I am satisfied that sufficient consideration has been given to alternatives, including the location and nature of the power generation proposed to satisfy the requirements of the Habitats Regulations. I am also satisfied on the adequacy of the data provided such that it does allow the SoS for Business, Energy and Industrial Strategy to act as the competent authority to undertake an AA.

4.10.4. These issues are considered in further detail in Sections 4.12 to 4.21 and Chapters 5 and 6 of this report.

4.11. ENVIRONMENTAL PERMITTING REGIME

4.11.1. As stated in Chapter 3 of this report, the Proposed Development falls under the Environmental Permitting (England and Wales) Regulations 2016. As a result, elements of the Proposed Development would require an EP. An application is made separately and independently to the EA, which is the competent authority to issue and regulate EPs. For the purposes of this report, the process of applying for the EP is identified as the EP regime.

4.11.2. The Applicant's approach is set out in the SoCG completed with the EA [REP5-014], which agrees the EP for the Proposed Development should be applied for as a variation to the existing Keadby Power Station EP (EPR/YP3133LL/V011). The SoCG agrees the permit variation application was submitted to the EA in July 2021 and included an appraisal of BAT and air impacts based on the current design understanding. Furthermore,

both parties have agreed that subsequent permit variations may be required if the design changes.

4.11.3. The Applicant confirmed in its 'Written summaries of oral submissions made at hearings' [REP5-016] that the wider operation of the Proposed Development, including the CCP, would be the subject of an EP that would include emissions monitoring protocols and quantification of waste disposal.

4.11.4. Irrespective of the above, the EA in its response to the ExA's Further Written Questions (ExQ2) [REP6-033], submitted at DL6 (26 May 2022), in response to Q2.2.1 stated:

"…at the current time there is insufficient information to consider the permit application 'duly made'. Our National Permitting Service is in the process of advising the Applicant of this and the additional information required to enable it to be 'duly made'. It is …possible that the application will be 'duly made' before the close of the Examination period. However, the application may not be determined before the SoS's decision period ends."

4.11.5. Despite the above, I do not consider there to be any reasons as to why the EP application, as applied for, or any subsequent variation application, would not be granted as no specific concerns that could not be acceptably addressed were identified during the Examination.

4.11.6. Irrespective of the above, in the absence of an EP specific to the Proposed Development, I consider it important and relevant to control the gross output capacity of the proposed power station, as being up to 910 MW at International Organization for Standardization (ISO) standard reference conditions, as specified within Schedule 1 (Authorised Development) of the rDCO, attached at Appendix C of this report, should the SoS be minded to make the DCO.

4.12. AIR QUALITY AND EMISSIONS

INTRODUCTION

4.12.1. This section addresses the potential impacts and effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development, including the CCP, in regard to air quality and emissions.

POLICY CONSIDERATIONS

4.12.2. Paragraph 4.10.2 of NPS EN-1 sets out the different functions of the planning and pollution control systems in relation to air quality matters. It confirms that the planning system is concerned with the development and use of land in the public interest and in improving the natural environment, public health and safety and amenity. Pollution control is concerned with the use of measures to prohibit or limit the releases of substances to the environment to the lowest practicable level.

4.12.3. As set out in paragraph 4.10.3 of NPS EN-1, the SoS is required to focus on whether the project 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 indicates 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 complement but not duplicate them.

4.12.4. Paragraph 5.2.1 of NPS EN-1 notes that infrastructure development can have adverse effects on air quality involving emissions to air which can lead to adverse impacts on health, protected species and habitats. Levels for pollutants in ambient air are set out in the Air Quality Strategy for England.

4.12.5. NPS EN1 also notes:

- *"CO_2 emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided…",* but that *"…any ES on air emissions will include an assessment of CO_2 emissions, but the policies set out in Section 2, including the European Union's Emissions Trading Scheme (ETS), apply to these emissions…"* (paragraph 5.2.2); and
- *"A particular effect of air emissions from some energy infrastructure may be eutrophication, which is the excessive enrichment of nutrients in the environment."* (paragraph 5.2.3).

4.12.6. In terms of the ETS, mentioned in paragraph 4.12.5 of this report, it should be noted that the UK established an ETS to replace the UK's participation in the European Union's ETS and increased the climate ambition of the UK's carbon pricing policy.

4.12.7. NPS EN-1 also notes that emissions from combustion plants are generally released through exhaust stacks and therefore the design of stacks, particularly height, is the primary driver for the delivery of optimal dispersion of emissions. However, it also states the *"EA will require the exhaust stack height of a thermal combustion generating plant, including fossil fuel generating stations and waste or biomass plant, to be optimised in relation to impact on air quality. The IPC* [SoS] *need not, therefore, be concerned with the exhaust stack height optimisation process in relation to air emissions…"* (paragraph 5.2.4).

4.12.8. With regard to dust, odour, smoke and steam, NPS EN1 states at paragraph 5.6.4 *"The applicant should assess the potential for… emissions of odour, dust, steam, smoke and artificial light to have a detrimental impact on amenity, as part of the Environmental Statement."* It also advises consultation should be undertaken with the relevant local planning authority and, where appropriate the EA, in regard to the scope and methodology of the assessment (paragraph 5.6.6).

4.12.9. NPS EN-1 also sets out that the SoS should give air quality considerations substantial weight where a project would lead to a deterioration in air quality in an area, new breaches of national air quality limits or substantial changes in air quality levels even where no breaches

occur. Paragraph 5.2.10 of NPS EN-1 advises that account must be taken of any relevant statutory air quality limits.

4.12.10. Paragraph 2.5.3 of NPS EN-2 notes that fossil fuel generating stations are likely to emit NO_x and sulphur oxides and that to meet the large combustion plants requirements of the Industrial Emissions Directive (2010/75/EU) a range of mitigation must be applied, regulated through the EP Regulations.

4.12.11. NPS EN-2 also states *"The applicant should carry out an assessment as required in EN-1, consulting the Environment Agency and other statutory authorities at the initial stages of developing their proposals, as set out in EN-1 Section 4.2."* (paragraph 2.5.5) and *"Mitigation will depend on the type of generating station. However, Flue Gas Desulphurisation… and Selective Catalytic Reduction… will have additionally adverse impacts for noise and vibration, release of dust and handling of potentially hazardous materials, for example the ammonia used as a reagent."* (paragraph 2.5.7).

4.12.12. The NPPF does not set out policies for NSIPs (see paragraph 5 of the NPPF), but its policies may have relevance to the development of such projects. As such, the relevant paragraphs of the NPPF in relation to this air quality section are considered to be paragraphs 174, 186 and 188, with paragraph 186 indicating that planning decisions should sustain and contribute to compliance with relevant limit values or national objectives for pollutants and the cumulative impacts from individual sites in local areas.

4.12.13. NPPG with specific reference to air quality states that the planning system should consider the potential effect of new developments on air quality where relevant limits have been exceeded or are near the limit. This NPPG also raises concerns where the development is likely to adversely affect the implementation of air quality strategies and action plans and/ or, in particular, lead to a breach of EU legislation (including that applicable to wildlife). Furthermore this NPPG notes that dust can also be a planning concern, for example, because of the effect on local amenity. It also advises a number of factors should be taken into consideration when deciding whether air quality is relevant to an application, including if the development will:

- significantly affect traffic in the immediate vicinity of the Proposed Development site or further afield;
- introduce new point sources of air pollution;
- expose people to existing sources of air pollutants;
- give rise to potentially unacceptable impact (such as dust) during construction for nearby sensitive locations; and
- affect biodiversity.

4.12.14. In terms of Local Development Plan policy, saved Policy DS1 of the NLLP requires a high standard of design and sets out a number of criteria to which development should accord. This includes no unacceptable loss of amenity to neighbouring land uses should result in terms of noise, smell, fumes, dust or other nuisance, or through the effects of overlooking or

overshadowing. In terms of policies specific to polluting activities, saved Policy DS11 of the NLLP indicates that development should only be permitted where it can be demonstrated that the levels of potentially polluting emissions do not pose a danger by ways specified within the policy, including by posing a threat to water resources; or creating adverse environmental conditions.

4.12.15. NLCS Spatial Objectives 5 and 7 are considered of relevance to this air quality section as they relate to creating a quality environment and the efficient use and management of resources, respectively. In terms of the latter spatial objective this seeks, amongst other things, to minimise pollution, as well as maintaining and improving air, soil and water quality. Finally, Policy CS5 of the NLCS relates to the delivery of quality design in North Lincolnshire and could be considered to be relevant to the matter of air quality.

THE APPLICANT'S CASE

4.12.16. The Applicant's air quality assessment can be found in ES Chapter 8 (Air Quality) [APP-051] and ES Chapter 19 (Cumulative and Combined Effects) [APP-062], as added to by the ES Addendum Volume II Chapters and Appendices [REP6a-066]. These chapters consider the potential air quality impacts from the Proposed Development on human health and ecosystems during construction, operation and decommissioning, as well as the cumulative effects of emissions when taken with other committed developments in the area. The ES addendum document mentioned above considers the air quality effects arising from the relevant additional information and Proposed Development changes that were submitted during the Examination. The addendum only considers changes in legislation, baseline conditions or potential effects since the submitted ES was prepared.

4.12.17. Chapter 8 (Air Quality) [APP-051], as added to by the ES Addendum Volume II Chapters and Appendices [REP6a-066], was accompanied by:

- ES Figures 8.1 (Air Quality - Operation Study Area Human Health Receptors) [APP-108];
- Figure 8.2 (Air Quality - Study Area Ecology Receptors) [APP-109];
- Figure 8.3 (Air Quality - Construction Study Area) [APP-110];
- Figure 8.4 (Operational Study - Modelled Buildings), as submitted as part of ES Addendum Volume III Figures [REP6a-067];
- Figure 8.5 (Air Quality Study Area - Monitoring Locations) [APP-112];
- Figure 8.6 (Annual Mean Nitrogen Dioxide Process Contribution - 2015 Meteorological Year) [APP-113];
- Figure 8.7 (99.79th Percentile 1 Hour Mean Nitrogen Dioxide Process Contribution - 2015 Meteorological Year) [APP-114];
- Figure 8.8 (Annual Mean Oxides of Nitrogen Process Contribution - 2015 Meteorological Year) [APP-115]; and
- Figure 8.9 (Maximum 24 Hour Mean Oxides of Nitrogen Process Contribution - 2017 Meteorological Year) [APP-116].

4.12.18. Chapter 8 was also supported by Appendices:

- 8A (Air Quality - Construction Phase) [APP-069];
- 8B (Air Quality - Operational Phase) [APP-070], as supplemented to by [REP6a-066]; and
- 8C (Air Quality Assessment of Amine Degradation Products) [APP-071].

4.12.19. Chapter 19 (Cumulative and Combined Effects) [APP-062], as added to by the ES Addendum Volume II Chapters and Appendices [REP6a-066], was accompanied by ES Figure 19.1 (Long list of Developments Initially Considered for Cumulative Impact Assessment) [APP-158] and ES Figure 19.2 (Short list of Developments Considered in Cumulative Impact Assessment) [APP-159], which have subsequently been updated, as set out below.

4.12.20. The Applicant's document ES Addendum Volume II Chapters and Appendices [REP6a-066] added to both Chapters 8 (Air Quality) and 19 (Cumulative and Combined Effects) in terms of the accepted change request and additional information. This document [REP6a-066] also added to Appendix 8B (Air Quality - Operational Phase) [APP-070], whilst ES Addendum Volume III Figures [REP6a-067] provided the following updated figures:

- Figure 19.1 - Long list of Developments Initially Considered for Cumulative Impact Assessment – Rev 03.
- Figure 19.2 - Short list of Developments Considered in Cumulative Impact Assessment – Rev 03.

4.12.21. All of the ES figures and appendices mentioned above can be found in ES Volume II or III, as added to by ES Addendum Volume II Figures [REP6a-066] and ES Addendum Volume III Figures [REP6a-067].

4.12.22. The air quality assessment identifies key pollutants of concern resulting from construction and operation of the Proposed Development and that have potentially elevated background concentrations from other sources. These are NO_x, NO_2, CO, NH_3 and PM_x.

4.12.23. The documentation indicates that despite there being some sensitive human receptors along roads where construction traffic will be present, the largest change in Annual Average Daily Traffic (AADT) flow occurs on the A18 to the west of the construction site access, and along the A161. It considers the effects of changes in pollutant concentrations due to construction traffic and changes in traffic flows on the road network are not significant, given that the magnitude of change between the Do Minimum and Do Something scenarios are considered to be so small where human receptors are present.

4.12.24. Furthermore, the documents consider the impacts at all nationally and internationally designated ecological receptors identified (see Table 8.9: 'Identified receptors with potential for air quality impacts…' identified by reference numbers TE10 to TE13) are considered unlikely to give rise to significant effects as the change in pollutant concentrations are less than 1% of the relevant critical level or critical load, or that these are not exceeded. Additionally, the predicted changes in pollutant concentrations

at locally designated sites (see Table 8.9 mentioned above and identified by reference numbers TE1 to TE9), are less than 100% of the short and long-term AQALs, and it is considered that this is unlikely to give rise to significant effects. As such, the effect of changes in traffic flows due to construction traffic on human health and ecological receptors is considered to be negligible (not significant).

4.12.25. In terms of air quality impacts arising from construction dust, the assessment identifies a number of residential receptors (high sensitivity) and ecological receptors (low to medium sensitivity where they are LWSs; high sensitivity where they are internationally/ nationally designated (ie the Humber Estuary Ramsar, SAC and SSSI)) within 350m of the site. The assessment also considers that unmitigated dust impacts are considered to be medium to high risk for human health receptors, and medium risk for ecological receptors and therefore identifies mitigation measures appropriate to the scale of perceived risk that would be applied as part of the CEMP.

4.12.26. With regard to air quality impacts arising from the use of NRMM and abnormal loads delivered by waterborne transport the Applicant's ES considers:

- in terms of NRMM:
  - as emissions from site plant and NRMM will be controlled by measures set out in the Framework CEMP, the potential for NRMM emissions within the Proposed Development site that would result in air quality impacts on local human health receptors would be negligible and are considered to be not significant; and
  - in terms of the final cooling water option, if the preferred canal water abstraction option (Work No. 4A) is selected there would be no requirement for a cofferdam within the River Trent. As such no emissions from construction works, site plant and/ or NRMM are considered to occur on the designated sites (Ramsar/ SSSI/ SAC). In terms of the river water abstraction option (Work No. 4B), due to the limited number of site plant and NRMM anticipated to be in use on the works section of the Proposed Development site closest to the estuary and the limited number and intermittent hours of operation it is not considered any impact would be experienced on the Ramsar/ SSSI/ SAC sites as a result of site plant and NRMM emissions. As such the Applicant considers any such effects are likely to be negligible (not significant); and
- in terms of abnormal loads delivered by waterborne transport the impact on the RAMSAR/ SSSI/ SAC and human health receptors are likely to be negligible (not significant) due to the limited number of vehicles and river vessels accessing these routes, the limited duration of activities and the intermittent hours that the routes will be used.

4.12.27. In terms of the potential air quality impacts on designated SPA and Ramsar sites and SACs, especially in terms of NO_x concentrations and acid deposition resulting from the Proposed Development in combination

with other plans and projects during operation, I consider these matters further in section 4.13 and Chapters 5 and 6 of this report.

4.12.28. Turning to operation of the Proposed Development in regard to air quality, the ES predicts the impacts of all pollutant species released would result in negligible adverse effects at all receptors within the study area. It considers the impacts of NO_2, CO, NH_3, amines, acetaldehyde, formaldehyde and acetic acid can therefore be considered to be 'not significant' at all human health receptors.

4.12.29. With regard to the effects of amine degradation products, the Applicant considers the evidence in the ES on air quality shows the Proposed Development will be well below the proposed EA Environmental Assessment Level (EAL) for N-amines. The Applicant highlights the worst-case N-amine concentration at a sensitive receptor is less than 20% of the EAL and this is when applying conservative assumptions such as the use of the N-Nitrosodimethylamine EAL to represent the effects of all N-amine species.

4.12.30. In terms of operational phase of the Proposed Development, the ES Chapter 8 (Air Quality) [APP-051], as updated by the ES Addendum Volume II (Chapters and Appendices) [REP6a-066] states that NO_x and NH_3 effects are not significant. This is due to:

- in terms of NO_x:
    - impacts of daily NO_x at the worst-affected ecological receptor (Three Rivers LWS) being assessed as a medium magnitude of impact. The Predicted Environmental Concentration (PEC) (41.8µg/m^3) indicates that an exceedance of the daily critical level (75µg/m^3) is very unlikely, with impacts at 56% of the critical level. It is therefore considered that the effect of this is not significant, given that the EA guidance states that where the short or long term process contributions at LWS is <=100% of the critical level, there are unlikely to be significant effects due to changes in air quality; and
    - annual average impacts of NO_x at the worst-affected receptor (Humber Estuary Ramsar/ SAC/ SSSI) are considered to have a negligible adverse impact and therefore effects are considered to be not significant. This is because emissions are under the threshold to be determined as not significant (70%), given that the PEC is 47% of the relevant critical level; and
- in terms of NH_3:
    - the annual mean of NH_3 that impacts at the worst-affected ecological receptor (Humber Estuary Ramsar/ SAC/ SSSI) represents 0.5% of the relevant critical level and therefore indicates an imperceptible magnitude of impact. Due to the high background of NH_3 in the area, the background alone represents 79% of the critical level, and therefore the PEC represents 79% of the critical level, resulting in a negligible adverse impact; and

- annual average impacts of NH_3 for the worst-affected receptor sites that are assigned the lower NH_3 critical level for the protection of lichens and bryophytes also has an imperceptible magnitude of impact. This level of impact is predicted to occur at Risby Warren SSSI circa 9km from the main site, where the background concentration of NH_3 is already exceeding the critical level. This results in a negligible adverse magnitude of impact on this site.

4.12.31. In terms of the change request and operation of the development, the ES Addendum Volume II [REP6a-066] included modelling of up to two absorber stacks (see section 5.2 of Appendix 8B (Air Quality Operational Phase), which indicated concentrations of NO_x and NH_3 are very slightly higher at the majority of the ecological receptors assessed. However, when considering this evidence, the Applicant notes the overall magnitude of impact and significance of effects remains comparable with those presented with the original ES Chapter 8 (Air Quality) [APP-051]. As such the increased height of up to two absorbers (Proposed Development Change 3) is not considered to materially change the air quality effects of the Proposed Development which are classified as not significant.

4.12.32. In terms of the decommissioning phase of the Proposed Development, the Applicant's ES predicted air quality to be comparable to, or less than, those assessed for construction activities (ie not significant). This is based upon the assumption that groundwork, traffic movements and site work likely to be required to decommission the Proposed Development would be less than that required for its construction. The Applicant stresses that appropriate best practice mitigation measures will be applied during any decommissioning works and documented in a Decommissioning Environmental Management Plan (DEMP).

4.12.33. Regardless of the above, moving on from impacts, in terms of mitigation the assessments on air quality indicate that any residual impacts can be controlled through the use of embedded impact avoidance and additional mitigation and management measures in the final CEMP. A list of the key elements of the final CEMP can be found in the Framework CEMP [REP6-003] and includes the use of best practice measures, such as the adoption of a Considerate Constructors Scheme.

4.12.34. The CEMP and appropriate best practice measures would be secured through R17 of the dDCO [REP7a-006]. Similarly, R38 of the dDCO requires the submission and agreement of a DEMP, which would include details of: the buildings to be demolished; the means of removal of the materials resulting from the decommissioning works; the phasing of the demolition and removal works; any restoration works to restore the land to a condition agreed with the relevant planning authority; the phasing of any restoration works; and a timetable for the implementation of the plan. These details are intended to help ensure that effects on air quality can be similarly controlled and/ or mitigated during decommissioning.

4.12.35. In terms of the accepted change request, neither the ES Addendum Volume II Chapters and Appendices [REP6a-066] or ES Addendum

Volume III Figures [REP6a-067] identify any changes in terms of construction, operation or decommissioning of the Proposed Development from those set out in the ES Chapters 8 (Air Quality) [APP-051]. With regard to the CCP the Applicant considers that overall the increased height of up to two absorbers (Proposed Development Change 3) would not materially change the air quality effects of the Proposed Development from those set out in its ES Chapters 8 (Air Quality) [APP-051] (ie classified as not significant).

4.12.36. With regard to Cumulative and Combined Effects (ES Chapter 19 [APP-062]), the ES Addendum Volume II Chapters and Appendices [REP6a-066], as supported by ES Addendum Volume III Figures [REP6a-067] concludes, in terms of the change request:

- combined effects, including either option of single or twin absorbers, if the change requests are implemented the effects would remain the same (ie as previously set out in Chapter 19 (Cumulative and Combined Effects) [APP-062]); and
- cumulative effects, based on the currently available information, significant cumulative effects are still considered unlikely notwithstanding the Proposed Development Changes (ie as previously set out in Chapter 19 (Cumulative and Combined Effects) [APP-062]).

VIEWS OF INTERESTED PARTIES

4.12.37. Doncaster Metropolitan Borough Council in its RR [RR-002] confirmed the Applicant satisfactorily addressed its concerns regarding the impact of the proposal on the NO_2 concentrations in Thorne town centre in the documentation submitted with the DCO application. It made no further comment concerning air quality during the Examination.

4.12.38. The EA in its response to the RR consultation [AS-002] confirmed, having reviewed the DCO application, ES and supporting documents submitted, it has no objection in principle to the Proposed Development, as submitted. However, in regard to air quality it questioned whether commissioning and air quality should be considered at this point, and it considered a more specific review would be appropriate when the final details emerge in regard to the amine degradation evaluation.

4.12.39. Keadby with Althorpe Parish Council in its RR [RR-005] raised concerns in regard to possible impact on air quality. However, it never clarified or quantified its concerns in regard to this matter. The Applicant submitted a draft SoCG with Keadby with Althorpe Parish Council, which aimed to agree the approach taken by the Applicant to air quality, whilst also noting:

- the finalised detailed design of the Proposed Development has yet to be completed;
- assessment scenario models indicated all human health receptors within 2km are assessed as negligible adverse/ not significant; and
- conservative assumptions had been applied in terms of amine degradation products and the effects of such products are well below the EA's EAL for N-amines.

4.12.40. Irrespective of the above, this draft SoCG remained incomplete (unsigned and undated) at the close of the Examination and as such I afford it very limited weight.

4.12.41. NE sought clarification in its RR [RR-010] in regard to the air quality impacts on the Humber Estuary SPA and Ramsar sites and the Thorne Moor, Hatfield Moor and Thorne and Hatfield Moors SPAs arising from NO_x and NH_3 emissions and acid deposition in combination with other plans and projects during operation. I consider these matters further in section 4.13 and Chapters 5 and 6 of this report.

4.12.42. The UKHSA in its RR [RR-013] identified a number of inconsistencies in the DCO submission, including in regard to dust, as well as the Traffic and Transport Assessment and Air Quality chapters of the ES; and dust and land contamination impacts. These matters were satisfactorily addressed during the Examination by the Applicant, and I note that the Applicant's completed SoCG with the UKHSA [REP7-010], submitted at DL7, confirmed that issues raised by the UKHSA in its RR had been appropriately addressed and there were no matters not agreed between the parties.

4.12.43. NLC in its LIR noted the Applicant's ES Chapter 8 [APP-051] on air quality and that it included an Air Quality Assessment, as well as dispersion modelling. NLC made a number of comments regarding air quality, including in relation to the potential risk/ impacts occurring at sensitive receptors. However, NLC recognised:

- with the implementation of appropriate mitigation and control measures, as set out in the Framework CEMP, the potential effect from fugitive emissions of construction dust would not be significant;
- the effect of changes in traffic flows due to construction traffic on human health is negligible and not significant;
- dispersion modelling considered the effects of NO_x, NH_3 and amines and their potential degradation products from the CCP;
- the evaluation of the release height for the main stack has shown that a release height of 105m is capable of mitigating the short and long-term impacts of emissions to an acceptable level, with regard to existing air quality and ambient air quality standards at human health receptors; and
- a separate assessment of the impact of the degradation of amines to form other species including nitrosamines and nitramines (N-amines) has also been undertaken, the source of these emissions being from the absorber stack.

4.12.44. NLC's LIR also advised that its Environmental Health Officers had reviewed the assessment of amine degradation, which had raised a number of questions. The Applicant responded to these questions during the Examination.

4.12.45. No other IPs raised concerns in regard to air quality or the assessments carried out by the Applicant in relation to this matter. Furthermore, no additional concerns arose in terms of air quality from the accepted change request or the Applicant's ES Addendum Volume II Chapters and

Appendices [REP6a-066], as supported by ES Addendum Volume III Figures [REP6a-067].

EXAMINATION

4.12.46. In the ExA's First Written Questions (ExQ1) [PD-009], I asked the Applicant questions around air quality, including in relation to:

- the use and control of amine products (Q1.2.2, Q1.2.3, Q1.2.4, Q1.2.9, Q1.2.10, Q1.2.11 and Q1.2.15);
- limited details being available regarding monitoring to be undertaken to assess emissions from the site and the effectiveness of mitigation measures (Q1.2.3);
- accuracy of the ES Air Quality chapter and Air Quality Assessment (Q1.2.5, Q1.2.8 and Q1.2.12);
- cumulative impacts from emissions of PM_x from NRMM and the use of any generators (Q1.2.13);
- dust control measures (Q1.2.14);
- use of BAT (Q1.2.15); and
- whether the DCO should secure abatement measures to reduce the NO_x and NH_3 emissions from the development (Q1.2.17).

4.12.47. In its response to my ExQ1, the Applicant [REP2-006] confirmed detailed information on the amines to be used and the associated emissions to air were obtained from each licensor and worst-case emission levels were derived from all the information provided. It also confirmed this enabled it to construct a Rochdale Envelope that enables a worst-case assessment of potential effects. Within the same response, the Applicant also advised that the final solvent selection will be made following completion of the detailed design and award of contract for the construction of the Proposed Development and that in its opinion the DCO should not be used to control amine products. The EA, in its response to my ExQ1 [REP2-021], confirmed that amine products would be controlled through the EP regime.

4.12.48. In addition to the above, the Applicant confirmed it would be utilising BAT and that monitoring will be applied, where appropriate, including in relation to amine products, and secured through the EP monitoring conditions. The EA confirmed that whilst there are currently no accredited monitoring methodologies available in regard to this matter, it was developing appropriate accredited methods and it envisaged that once available these will be applied, where appropriate, and secured through the EP monitoring conditions.

4.12.49. I sought clarification from the EA in regard to this matter at ExQ2 (Q2.2.3), with it confirming in its response [REP6-033] that *"…monitoring methods are to be developed for amines and their degradation products for the EA by the National Physical Laboratory."* However, it explained that this was subject to funding, but it hoped the work would be completed within a two-year period.

4.12.50. In terms of the cumulative impacts of the Proposed Development, including from dust and emissions of PM_x from NRMM/ the use of any

generators, the Applicant advised all of these matters would be controlled through the CEMP and any additional permits (such as an EP for the use of generators, dependant on their aggregated capacity). It considered the CEMP would provide sufficient control over air quality effects and, as such, no further assessment was considered necessary or appropriate at that point in time. No further concerns were raised by IPs in this regard and I have no reason to conclude otherwise from the evidence before me in the Examination.

4.12.51. With regard to abatement measures to reduce the NO_x and NH_3 emissions from the Proposed Development, the Applicant submitted an updated HRA AA Report at DL6a [REP6a-055]. This report clarified the design measures within the Proposed Development that are implicit to meet regulatory requirements and those that are proposed mitigation (abatement) measures, specifically those for the control of NH_3 emissions (eg potential use of acid wash) in order to manage atmospheric pollutants so that they remain below the critical levels/ loads set for all of the relevant European sites.

4.12.52. Turning to the accuracy of the ES Air Quality chapter and Air Quality Assessment, and in terms of air quality matters generally, I note the Applicant's completed SoCG with NE [REP7-005]. This SoCG, in regard to these matters, agrees the updated air quality information was submitted into the Examination at DL5 within the updated HRA AA [REP5-036]. Additionally, it agrees the ES addendum [REP5-045 to REP5-048] addresses the points requested by NE in its comments on the Proposed Development changes. It should be noted that the ES addendum documents submitted at DL5 were withdrawn by the Applicant in its letter submitted at DL6a [REP6a-032], but were resubmitted, unchanged in regard to this matter, at the same DL, as the ES addendum documents [REP6a-064 to REP6a-067], which address the accepted change request.

4.12.53. In addition to the above, the Applicant's completed SoCG with the EA [REP5-014], agrees the EP should be applied for as a variation to the existing Keadby Power Station EP (EPR/YP3133LL/V011) and that the permit variation application, including an appraisal of BAT and air impacts based on the current design understanding, was submitted to the EA in July 2021. It was also agreed that a subsequent permit variation may be required if the design changes.

4.12.54. With regard to NLC's LIR and the comments it made in regard to air quality, as outlined in section 4.3 of this report, the Applicant's completed SoCG with NLC [REP6-005] agrees the environmental effects on air quality from construction of the Proposed Development have been identified as not significant. It also agrees:

- no additional mitigation other than the use of the CEMP has been identified as necessary for the construction phase of the Proposed Development;
- there would be no unacceptable impacts upon air quality as a result of the construction of the Proposed Development; and

- the assessment carried out is in accordance with the principles set out in section 5.2 of NPS EN-1, along with any comparable section in NPS EN-2, NPS EN-4 and NPS EN-5.

4.12.55. Finally, in terms of the accepted change request and the Applicant's ES Addendum documents, especially ES Addendum Volume II Chapters and Appendices [REP6a-066], as supported by ES Addendum Volume III Figures [REP6a-067], I see no reason to disagree with the conclusions reached within those documents, as set out above in paragraph 4.12.35 and 4.12.36 of this report.

4.12.56. Bearing all of the above in mind, I am satisfied that the Applicant's responses, together with the responses of relevant IPs provided the necessary clarification and I consider there are no outstanding matters in respect of air quality or emissions that need to be addressed.

ExA Conclusions

4.12.57. The air quality assessment undertaken by the Applicant adequately assesses impacts on air quality. However, in the absence of an EP specific to this Proposed Development, it is important to control the gross output capacity of the proposed power station.

4.12.58. I am satisfied, subject to the controlling of the gross output capacity of the proposed power station and the imposition of appropriate Rs in the DCO, that no significant effects on air quality are likely to arise. I consider residual impacts can be effectively managed through the mitigation measures secured in R17 (CEMP) and R38 (Decommissioning) of the rDCO, whilst the control of the gross output capacity of the proposed power station is adequately secured by the description of Work No. 1 in Schedule 1 (Authorised Development) of the rDCO. The rDCO is attached to this report at Appendix C.

4.12.59. I consider the requirements of the Air Quality Directive, the NPS EN-1 and draft NPS EN-1 will be met. Air quality effect is therefore neutral in the planning balance.

4.13. BIODIVERSITY, ECOLOGY AND NATURE CONSERVATION

INTRODUCTION

4.13.1. This section addresses the potential impacts and effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development in regard to biodiversity, ecology and nature conservation.

POLICY CONSIDERATIONS

4.13.2. Section 4.3 of NPS EN-1 sets out the policy considerations relevant to HRA. These are considered in Chapter 5 of this report.

4.13.3. NPS EN-1 at paragraph 5.3.3 sets out the importance of assessing, as part of the ES, the effects of the Proposed Development 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. Paragraph 5.3.4 sets out that the applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

4.13.4. Paragraph 5.3.7 states that, as a general principle, development should aim to avoid significant harm to biodiversity and geological conservation interests including through mitigation. It also requires the applicant to show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

4.13.5. Paragraph 5.3.8 advises that the SoS, in taking decisions, 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.

4.13.6. NPS EN-1 paragraph 5.3.18 states *"The applicant should include appropriate mitigation measures as an integral part of the proposed development. In particular, the applicant should demonstrate that:*

- *during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works;*
- *during construction and operation best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements;*
- *habitats will, where practicable, be restored after construction works have finished; and*
- *opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals."*

4.13.7. NPS EN-2 at paragraph 2.10.2 notes where the project is likely to have effects on water quality or resources the applicant should undertake an assessment as required in NPS EN-1 (section 5.15). This NPS EN-2 paragraph also advises the assessment should particularly demonstrate that appropriate measures will be put in place to avoid or minimise adverse impacts of abstraction and discharge of cooling water.

4.13.8. The MPS provides a framework for taking decisions affecting the marine environment, which includes the River Trent at Keadby. Policies ECO1, ECO2, BIO1, BIO2 and MPA1 of the EMP are relevant considerations, as these set out requirements in regard to: cumulative impacts affecting the ecosystem of the marine plan and adjacent marine and terrestrial areas; releases of hazardous substances; protection and enhancement of biodiversity; and requirements to address strategic objectives for maintenance of an ecologically coherent network. These policies of the MPS are relevant due to the works proposed adjacent to the River Trent.

4.13.9. Additional policy guidance can be found in the NPPF which espouses a commitment to improving biodiversity, minimising impacts on it and supports development that integrates improved biodiversity as part of its design (paragraph 180d).

4.13.10. Additional policy guidance can be found in the NPPF, but it should be noted that paragraph 5 makes it clear that the NPPF does not set out policies for NSIPs. However, it is also recognised that policies in the NPPF may have relevance to the development of such projects. Overarching environmental objectives of the NPPF seek to protect and enhance our natural environment, minimising impacts on and improving biodiversity and securing measurable net gains for biodiversity (paragraph 174b), whilst also introducing additional considerations including definitions of and requirements in relation to irreplaceable habitats which must be addressed in the development design and assessment process. It also espouses a commitment to improving biodiversity, minimising impacts on it and supports development that integrates improved biodiversity as part of its design (paragraph 180d).

4.13.11. Local Development Plan policies seek to protect and enhance biodiversity and ensure ecological enhancement through good design, in alignment with paragraph 180d of the NPPF. Additionally, NLCS Policy CS17 sets out requirements to achieve effective stewardship of the biodiversity of North Lincolnshire, whilst saved Policies LC1, LC2, LC4, LC5, LC6 and LC12 of the NLLP set out requirements in regard to nature conservation designations, species and habitats.

4.13.12. In terms of emerging Local Development Plan policy, NLC is preparing a new Local Plan to 2036. Policies of potential relevance to biodiversity and nature conservation are Policies:

- DQE3p (Biodiversity and Geodiversity), which updates requirements to achieve effective stewardship of the biodiversity of North Lincolnshire, including nature conservation designations, sites that meet criteria for the selection of LWSs, habitats and species; and
- DQE8p (Climate Change and Low Carbon Living), which expects that all development proposals should be resilient to climate change and decrease the negative impacts of climate change on neighbouring areas, including through incorporation, where feasible, of multi-functional green infrastructure, which can help species adapt to climate change through preventing fragmentation or isolation of habitats.

THE APPLICANT'S CASE

4.13.13. Chapter 11 (Biodiversity and Nature Conservation) of the ES [APP-054] (as added to by the ES Addendum Volumes I (Main Volume) [REP6a-065] and II (Chapters and Appendices) [REP6a-066] in terms of the accepted change request and additional information) sets out the study areas in Table 11.5 (Desk study area and data sources), the significance criteria and describes the assessment methodology used. In addition, an LBMEP [REP7-003] has been submitted, which sets out measures proposed to mitigate the potential impacts and effects of the Proposed Development

on landscape and biodiversity features, and to enhance the biodiversity, landscape and green infrastructure value of the Proposed Development site.

4.13.14. The ES addendum documents mentioned above consider the biodiversity, ecology and nature conservation impacts arising from the relevant additional information and Proposed Development changes that were submitted during the Examination. The addendum only considers changes in legislation, baseline conditions or potential effects since the submitted ES was prepared.

4.13.15. ES Chapter 11 (Biodiversity and Nature Conservation) [APP-054] considers the potential effects of the Proposed Development on ecological features, as well as: European sites (including the SAC, SPA and Ramsar sites) and national statutory nature conservation designations, such as SSSIs within 15km of the site; local statutory and non-statutory nature conservation designations (biodiversity), such as Local Nature Reserves, LWSs, Sites of Importance for Nature Conservation, ancient woodland within 2km; and protected and notable species (including habitats, protected and notable flora and protected and notable fauna including great crested newt, reptiles, badger, bats, water vole, otter, breeding birds, terrestrial invertebrates and aquatic invertebrates within 1km).

4.13.16. It considers that the design process for the Proposed Development has included consideration of ecological constraints and has incorporated, where possible, measures to reduce the potential for adverse ecological effects, in accordance with the mitigation hierarchy and relevant planning policy. The measures identified and adopted, during the construction, operation and decommissioning phases of the Proposed Development, include those that are inherent to the design of the scheme, and those that can realistically be expected to be applied as part of construction environmental best practice, or as a result of legislative requirements.

4.13.17. The Applicant's ES Chapter 11 (Biodiversity and Nature Conservation), as added to by the ES Addendum Volumes I (Main Volume) [REP6a-065] and II (Chapters and Appendices) [REP6a-066], in terms of the accepted change request and additional information, considers the construction impacts of the Proposed Development in regard to the following matters:

- The use of the Waterborne Transport Off-loading Area (paragraph 11.6.7).
- Potential construction air quality impacts in relation to dust (paragraphs 11.6.8 and 11.6.9).
- Potential construction air quality impacts in relation to NO_x (paragraph 11.6.10).
- The potential river water abstraction option upgrade, the construction/ use during construction/ removal of a cofferdam and the effect on habitat within the main channel of the river (paragraph 11.6.11 and 11.6.12).
- Other bank protection measures during construction (paragraph 11.6.13).

- Potential reduction in the extent and quality of intertidal mudflat habitats in the immediate vicinity of the river water abstraction option cofferdam (if required) (paragraph 11.6.14).
- Disturbance and displacement of birds from designated sites (Humber Estuary SSSI and Ramsar site) using adjacent habitats (eg adjacent mudflats at low tide) (paragraphs 11.6.15 and 11.6.16).
- The temporary impact on the ability of lamprey species to access breeding habitats in the wider River Trent catchment as a whole, and to return to the Humber Estuary from these habitats, and the effect of the development on other fish species, especially from underwater sound and vibration effects, in the event that the river water abstraction option is required (paragraph 11.6.17 to 11.6.23).

4.13.18. In the light of all of the above considerations, the Applicant considers the detailed evidence and commentary provided in the above-mentioned paragraphs, taking account of all relevant potential impact pathways, demonstrates the potential construction effect on the Humber Estuary SSSI, SAC and Ramsar site is assessed as negligible (not significant).

4.13.19. In terms of other European sites and national nature conservation designations, the Applicant's assessment concludes there are no likely significant direct or indirect construction impacts and effects on any other statutory nature conservation designations (see ES Chapter11, Table 11.7.) Furthermore, in relation to the European sites, the Applicant points to the HRA Screening Report [REP6a-055] that concludes the Proposed Development will have no LSEs.

4.13.20. In terms of non-statutory nature conservation designations, the Applicant recognises there would be a direct affect resulting from construction in regard to the Stainforth and Keadby Canal Corridor LWS, should the preferred potential canal water abstraction option be selected as the water supply option. The new water intake structure would be constructed directly adjacent to the intake constructed to supply Keadby 2 Power Station and the bank at this location is vertical and reinforced. As such the Applicant notes there is no marginal vegetation present that could be affected and, following the completion of construction works for Keadby 2 Power Station, points out there is no vegetation established within the land required for construction.

4.13.21. Assuming this preferred option is selected, the Applicant considers there to be only very limited potential to affect the designated biodiversity interest of the LWS as a result of the construction of the Proposed Development. The Applicant notes the potential worst-case impact on the nature conservation status and integrity of the Stainforth and Keadby Canal LWS would be adverse but no greater than that of the local level, given the habitat conditions present and existing limitations on vegetation establishment, the large size of the LWS, and the presence of the Keadby 2 Power Station water intake structure. Therefore, it considers the potential construction effect on the LWS to be negligible (not significant).

4.13.22. In support of its proposal, the Applicant points out it proposes some new native grassland habitats to be provided as part of the

LBMEP [REP7-003], which is to be located to abut the LWS at North Pilfrey Bridge. As such, it considers this would enhance the habitat corridor for which the LWS is designated.

4.13.23. In terms of the Hatfield Waste Drain LWS, the Applicant considers the replacement of the existing open span Mabey Bridge, over the LWS, at the Proposed Development site entrance off the A18 will result in disturbance to the banks of the LWS within the footprint of and immediately adjacent to the existing bridge. However, it does not consider the installation of a new open span steel decked bridge [APP-025] will affect the banks of the drain, as the new foundations are set back from the existing foundations and are largely restricted to the footprint of the existing bridge.

4.13.24. In terms of the area of bank vegetation (species-poor grassland and stands of common reed) affected, the Applicant points out that the area affected is very small in the context of the LWS, which is 10.3km long and therefore has over 20km of associated bank habitat. The existing bank vegetation is already affected to a large extent by the existing bridge structure, which spans above and casts shade over the drain bank where the replacement bridge will be constructed.

4.13.25. Additionally the Applicant states that any areas of bank temporarily disturbed during these works would be re-sown as far as reasonably practical and if deemed necessary with a suitable grassland seed mixture to stabilise the banks after which other flora will colonise from immediately adjacent areas, with the LWS returning to a condition consistent with the existing baseline conditions within circa one-year. The details of this approach are set out in the LBMEP [REP7-003]. Bearing this in mind, the Applicant considers that these minor construction works will not adversely affect either the integrity of the LWS or the nature conservation status of its habitats. Overall, it is indicated that the potential construction effect on the LWS would be negligible (not significant).

4.13.26. In terms of other local nature conservation designations, the Applicant considers there to be no likely significant direct or indirect construction impacts and effects.

4.13.27. Turning to habitat, the layout of the Proposed Development and choice of temporary construction laydown areas results in a small-scale loss of ephemeral/ short perennial vegetation and OMH in the south-west corner of the proposed PCC site. This is due to a minor overlap with the margin of the former Keadby Ash Tip. However, the Applicant argues the loss of habitat contributing to the wider OMH will not compromise the structure and function or conservation status of the wider OMH. This is because the affected area is small, peripheral and of sub-optimal condition. Therefore, the effect is assessed as meaningful at the local level only, and characterised as *"minor adverse (not significant)"*.

4.13.28. The localised areas required for temporary works related to the construction of the proposed PCC site would result in the permanent loss

of 0.8ha of dense scrub of local nature conservation value, as well as a likely minor losses of scrub. However, the Applicant considers that such minor losses would not be adverse for the nature conservation status of scrub habitats. The Applicant states comparable dense scrub will be reinstated as part of the soft landscaping that will accompany the Proposed Development and is supplemented by new plantings of structurally comparable native hedgerow. These plantings would not be in the same location as the dense scrub that will be lost, but the new habitat will form part of a cohesive landscape and biodiversity strategy, as set out in the LBMEP [REP7-003].

4.13.29. In terms of watercourses, the Applicant states that the construction of the main site would result in the loss of one minor field drain (Drain 4) (see Figure 11G of the ES [APP-082]). However, given the limited existing biodiversity and nature conservation value of this drain, it is argued that any impact arising from habitat loss can be readily compensated through sensitive design of the surface water attenuation infrastructure required for the Proposed Development, and habitat enhancement works proposed to improve the quality of other similarly low value drains associated with the boundaries of the main site.

4.13.30. Other drains potentially affected are Drain 1 (Glew Drain) and two other short sections of drain (a second section of Glew Drain and a section of Keadby Common Drain adjacent to Chapel Lane). However, it is not considered the construction works are likely to impact the nature conservation status of the aquatic and wetland plant assemblages associated with the above drains and that any minor impact is offset by the habitat enhancement works proposed on other drains nearby.

4.13.31. In terms of protected species, the Applicant considers there would be no likely effect on the nature conservation status of bat species and a bat assemblage of up to district value. More generally, the potential construction effect on the majority of protected species, including bats, badgers, grass snake, breeding birds, fish and aquatic invertebrates are all assessed as negligible (not significant).

4.13.32. In regard to water voles, the Applicant states that based on current levels of water vole activity, the Proposed Development is not likely to result in the loss of water vole from the Proposed Development site. It confirms there is sufficient unoccupied comparable habitat within the wider connected drain network around the main site to accommodate any water voles displaced by permanent or temporary habitat losses. Furthermore, it considers the patchy distribution of water vole activity indicates that it should be possible to position watercourse crossings to avoid the loss of any existing water vole territories.

4.13.33. Irrespective of this, the Applicant has committed to undertake further survey work in regard to protected species, prior to the development commencing, by virtue of R6 of the rDCO. This R also specifies that where a protected species is shown to be present, the landscaping and biodiversity protection plan submitted pursuant to the R must include a scheme of protection and mitigation measures of the protected species

identified. It is also noted the identified mitigation approach is also committed to within the Framework CEMP [REP6-003] and the Applicant advises this will be followed to achieve legislative compliance.

4.13.34. In terms of the operation of the development, the Applicant's ES considered the potential impacts and resultant effects relating to air emissions from the Proposed Development, in combination with background levels (which have been modified to include the future contribution from the Keadby 2 Power Station). These were found to be negligible and not significant, but the annual contribution of the Proposed Development to NO_x (in terms of the Process Contribution (PC)) was predicted to exceed 1% of the critical level at the Humber Estuary SAC and Ramsar site due to its close proximity to the Proposed Development. However, this did not occur at any of the other European and nationally designated sites. In this regard, the Applicant argued that the PEC (ie the existing baseline plus the Proposed Development emissions) was less than 70% of the critical level threshold for insignificance and given this, the potential impact from NO_x would be negligible and not significant at all European and national nature conservation sites.

4.13.35. For all other atmospheric pollutants (NH_3, nutrient nitrogen deposition and acid deposition), the Applicant stated the 1% threshold for insignificance is not predicted to be exceeded at any European or nationally designated sites as a result of the Proposed Development, so the effects are all as predicted.

4.13.36. In terms of the accepted change request, the only area of change identified in the ES addendum documents (ES Addendum Volume II Chapters and Appendices [REP6a-066] and ES Addendum Volume III Figures [REP6a-067]) was as a result of the revised maximum parameters for up to two absorbers/ stacks (Change Request 3). This indicated that the concentrations of NO_x and NH_3, and the related deposition of nutrient nitrogen, are very slightly higher. The modelling showed the following:

- The annual contribution of the Proposed Development to NO_x (in terms of the process contribution (PC)) is predicted to exceed 1% of the critical level at the Humber Estuary Site of SSSI, SAC and Ramsar site, and at four LWSs. However, the Applicant pointed out that the PEC (ie the existing baseline plus the Proposed Development emissions) would not exceed, and otherwise remains well below (<50% in all cases), the critical level set for a potential adverse impact on vegetation. Given this, it argues the potential impact from NO_x is negligible (not significant) at all of the aforementioned nature conservation sites.
- NH_3 exceeds 1% of the critical level at the Humber Estuary SSSI, SAC and Ramsar site. However, the Applicant points out that qualifying habitats receiving NH_3 levels above the 1% critical level are the mudflats and estuary habitats, and these do not support vegetation sensitive to NH_3. Given this it argues, the potential impact from NH_3 is considered as negligible (not significant) at the Humber Estuary SSSI, SAC and Ramsar site.

- In terms of nitrogen deposition, the nitrogen dose would exceed 1% of the critical level at the Humber Estuary SSSI, SAC and Ramsar site. In terms of the Humber Estuary, whilst the PEC of nitrogen is predicted to be 102% of the critical load, the Applicant points out that the qualifying mudflat and estuary habitats present in the affected area are not sensitive to nitrogen deposition as they do not support vegetation. Accordingly, it argues the potential impact from nitrogen deposition is negligible and not significant at the Humber Estuary SSSI, SAC and Ramsar site.

4.13.37. Overall, in terms of the operation of the development, the Applicant's ES, as added to by its Addendum (ES Addendum Volume II Chapters and Appendices [REP6a-066] and ES Addendum Volume III Figures [REP6a-067]) considers there to be no change to the conclusions that the potential impacts and resultant effects relating to air emissions from the Proposed Development, in combination with background levels (which have been modified to include the future contribution from the Keadby 2 Power Station), would be negligible and not significant.

4.13.38. In regard to impacts of discharging treated cooling water to the River Trent (water discharge corridor) and impacts associated with the potential river water abstraction option, the Applicant correctly notes that water abstraction and discharge of cooling water will require a permit from the EA. This would control the volumes and rates of abstraction, and the effluent quality and rates of discharged waters considering the requirement to maintain the biodiversity and nature conservation status of the River Trent and the Humber Estuary designations, including WFD objectives. Given these controls, discharged water will not contain pollutants at concentrations which could give rise to significant environmental effects and no impacts on water availability or chemical water quality are predicted. As such, no adverse effects on the Humber Estuary nature conservation designations are predicted.

4.13.39. No other pathways are identified that could result in adverse operational impacts and effects on statutory nature conservation designations. Bearing the above factors in mind, the predicted effect on all European sites and statutory nature conservation designations is considered to be negligible (not significant).

4.13.40. In terms of the potential impacts and resultant effects relating to air emissions on the identified relevant LWS within 2km of the Proposed Development, it was noted that there is a potential for an impact from nitrogen deposition at the Keadby Wetlands LWS. All other potential air quality impacts and effects are scoped out as in all cases the 1% threshold for insignificance is not predicted to be exceeded.

4.13.41. The Applicant sets out that at the Keadby Wetland LWS, the predicted nitrogen dose is 0.17 Kilogram of nitrogen per hectare per year (nitrogen yield) (kgN/ha/yr) (1.7% of the lower critical load) in the context of background deposition of 33.8kgN/ha/yr (modified to include the contribution from Keadby 2 Power Station). The background dose is already three times higher than the 10kgN/ha/yr critical load set for the most nitrogen sensitive habitats (wet woodland) potentially present. The

Applicant argues that this assessment is likely to be overly precautionary, as the vegetation described on the citation indicates that the LWS supports closed scrub vegetation and a tall herb community typical of eutrophic wetland habitats. As such, it considers that further additions of nitrogen are not likely to be detrimental in this context.

4.13.42. Regardless of the above, the Applicant refers to NE which identified that a highly precautionary (given the background deposition) minimum additional long-term dose of 0.4kgN/ha/yr would be required to alter the composition of the affected vegetation. The predicted PC of 0.17kgN/ha/yr is considerably below this and consequently the predicted effect is negligible (not significant).

4.13.43. Additionally, the Applicant states that both it and the EA are satisfied that sufficient water can be abstracted to meet the applicant's needs and maintain biodiversity and conservation status. As such the Applicant considered there would be no LSEs on the Stainforth and Keadby Canal LWS and, given no impacts on water availability or chemical water quality are likely, no adverse effects on the LWS are predicted.

4.13.44. In terms of the change request and impacts on LWSs, the Applicant notes change request 3 would result in the nitrogen dose exceeding 1% of the critical level at the Keadby Wetland LWS. However, it also notes that whilst the dose is higher than previously reported in section 11.6 of ES Chapter 11 (Biodiversity and Nature Conservation) [APP-054], the impact assessment rationale remains applicable. Therefore, it argues the predicted effect is negligible (not significant).

4.13.45. No other pathways were identified, by the Applicant or IPs that could result in adverse impacts and effects on non-statutory nature conservation designations.

4.13.46. In terms of acid grassland habitats and OMHs on previously developed land, the Applicant considered the effects from NO_x, NH_3, nutrient nitrogen deposition and acid deposition are all anticipated to be negligible, as the 1% threshold for insignificance was not predicted to be exceeded in all cases. However, the change request in terms of change request 3 notes NO_x, NH_3 and nitrogen deposition will exceed the 1% critical level, but for the reasons already set out in paragraphs 4.13.36, 4.13.37 and 4.13.44 of this report, the effects are argued to be negligible (not significant).

4.13.47. Turning to the impact of operation on wildlife, the Applicant confirms the effect on bats, terrestrial invertebrates, and flora are all assessed as negligible (not significant). Additionally, the ES confirms no likely significant impacts and effects from plant and animal invasive non-native species (INNS) are anticipated as a result of operation of the Proposed Development.

4.13.48. In terms of fish, the Applicant considered that a significant change in river water temperature from the addition of cooling water from the Proposed Development could have potential to impact both the existing

WFD status of the River Trent, the achievement of the legally required good ecological status by 2027 and/ or impact on fish through:

- thermal barriers from discharge of cooling water or impact on habitat suitability, including potential implications to fish migration; and
- changes in chemical status as a result of increased temperature, including concentration of dissolved oxygen.

4.13.49. However, it is considered that the thermal impacts are not likely to have an adverse effect on the conservation status of fish using the River Trent catchment, as the temperature of cooling water will be lower than that already associated with Keadby 1 Power Station. The ES notes that the Proposed Development would not operate at the same time as any discharge from Keadby 1 Power Station, but would use the existing Keadby 1 Power Station infrastructure.

4.13.50. Prior modelling of the greater thermal discharge from Keadby 1 Power Station has been undertaken and this concluded there would be no impact to the overall status of fish populations (including consideration of lamprey, salmon, eels and coarse fish species) as a result of temperature related mortality or thermal barriers to migratory fish movements. This finding is supported by/ confirmed a previous conclusion reached by the EA that it is unlikely that thermal discharge of the level assessed would have any significant impact on the migration of river and sea lamprey between the river and the Humber Estuary.

4.13.51. Given the above, it is concluded that there are no impact pathways likely to result in an adverse operational effect on the conservation status of fish populations in either the River Trent or the Stainforth and Keadby Canal. The potential effect is therefore assessed as negligible (not significant).

4.13.52. In regard to decommissioning, the Applicant considers that all above ground infrastructure would be removed to ground level, and hardstanding and sealed concrete areas will be left in place. Any areas of the Proposed Development that are below ground level will be backfilled to ground level to leave a levelled area and it is anticipated that buried pipelines will be capped and left in-situ. Therefore, the Applicant advises there will be no requirement to remove or disturb habitats to remove buried infrastructure, and no species associated with these habitats will be affected.

4.13.53. Irrespective of this, R38 of the dDCO [REP7a-006] requires the submission of a DEMP, to be submitted to the relevant planning authority, within 12 months of the undertaker deciding to decommission the Proposed Development. The DEMP would control the decommissioning activities and ensure it is conducted in accordance with the appropriate guidance and legislation at the time of closure of the Proposed Development.

4.13.54. On the basis of the above, no significant adverse effects are anticipated as a result of the decommissioning of the Proposed Development.

4.13.55. In regard to mitigation, monitoring and enhancement, it is proposed embedded mitigation measures would be undertaken to avoid adverse direct effects on habitats and species and to ensure legal compliance. These measures are incorporated into the Framework CEMP [REP6-003] and also carried over into the LBMEP [REP7-003]. Final versions of these documents are proposed to be secured by Rs in Schedule 2 of the dDCO [REP7a-006]. In summary, the mitigation measures during construction would include the following:

- A Water Vole Impact Avoidance Strategy, which is to be prepared and agreed with relevant stakeholders to specify the measures and supervision required to deliver legislative compliance during construction of the main site and watercourse crossings.
- Typical construction risk management and avoidance measures for nesting birds.
- A Fish Management Plan, which is to be prepared and agreed with relevant stakeholders to specify the measures and supervision required to deliver legislative compliance during installation and drawdown of any cofferdam used for the upgrade of the river water abstraction option (if chosen) on the River Trent or the canal water abstraction option on the Stainforth and Keadby Canal. This would also apply, if relevant, to replacement of the existing Mabey Bridge over the Hatfield Waste Drain LWS.
- Vegetation clearance and construction excavations are to be supervised by an Ecological Clerk of Works, in regard to all relevant works, to provide guidance on the measures required day-to-day to deliver legislative compliance.
- All excavations would be covered overnight, or where this is not practicable, a means of escape would be fitted (eg battered soil slope or scaffold plank) to provide an escape route should any animals (eg reptiles, badger, otter, brown hare and hedgehog) stray into the construction site and fall into an excavation.
- A plant INNS survey is to be undertaken prior to construction to determine the current location and extent of plant INNS, and to inform specification of an invasive species management plan. If determined as necessary through this survey and after consideration of other available plant and animal INNS data, an invasive species management plan will be prepared to accompany the final CEMP and would be agreed with relevant stakeholders. The invasive species management plan would specify the measures and supervision necessary during construction to prevent the spread of plant and animal INNS to new locations.

4.13.56. During operation, mitigation measures will be adopted to control emissions of NH_3 from the proposed PCC site. However, for the purposes of the Ecological Impact Assessment, it was considered that the mitigation could be an embedded impact avoidance measure and controlled through other legislation, as the development would have to conform to the EP required to operate the Proposed Development, which is issued, monitored and enforced by the EA.

4.13.57. Given the findings above, no other mitigation measures are considered necessary during operation of the Proposed Development. Compliance with relevant permits (to be agreed with relevant regulators post-consent) and Rs as set out in the dDCO [REP7a-006] are considered appropriate to manage the potential for adverse environmental and ecological effects.

4.13.58. In terms of mitigation required during decommissioning, this would be determined and agreed at a future date, prior to decommissioning, with the relevant stakeholders. Requirement 38 of the dDCO requires the submission of a DEMP to be submitted to and agreed with the relevant planning authority for the area. Relevant habitat and protected species surveys would be undertaken to inform the specification of relevant working methods and mitigation in the DEMP.

4.13.59. In terms of enhancements, a standalone LBMEP [REP7-003] forms part of the DCO application. This document sets out biodiversity enhancement proposals and the habitat management and monitoring proposed to deliver these. It also confirms that the proposed enhancement measures are suitable to achieve no net loss and a net gain in biodiversity within the Proposed Development site. It is proposed that submission and approval of the final LBMEP will be secured by an R in the dDCO [REP7a-006]. The biodiversity enhancement measures proposed comprise:

- creation of flower-rich native grassland;
- new species-rich native hedgerow plantings;
- enhancement of field drains for water voles and other aquatic biodiversity; and
- installation of nest boxes for barn owl and other birds, habitat creation for willow tit, and installation of roosting boxes for bats.

4.13.60. The proposed new grassland creation includes areas directly connected to habitat corridors designated as Stainforth and Keadby Canal Corridor LWS and Hatfield Waste Drain LWS. The proposed new grassland will complement and enhance these LWS.

4.13.61. The LBMEP demonstrates the above measures are suitable to achieve a gain for biodiversity in accordance with relevant planning policy.

4.13.62. Overall, the Proposed Development has been sensitively designed and positioned with reference to the existing baseline conditions and potential pathways for impact. As a consequence, no significant adverse residual construction, operation or decommissioning effects are anticipated as a result of construction of the Proposed Development. Furthermore, the Applicant considers the proposal achieves benefits for biodiversity.

VIEWS OF INTERESTED PARTIES

4.13.63. The Canal and River Trust in its response to the RR consultation [AS-001] commented on, amongst other matters, the proposed abstraction from the Stainforth and Keadby Canal (Work No. 4A) and habitat enhancement.

4.13.64. The EA in its response to the RR consultation [AS-002] commented on, amongst other matters, the relevant ES chapter in regard to Biodiversity and Nature Conservation and the DML at Schedule 13 of the dDCO [APP-005] (current version [REP7a-006]). The EA confirmed it was generally satisfied in this regard, although some changes to Rs were needed and it reserved the right to requests amendments to the DCO Rs in the future.

4.13.65. NE's comments and concerns are set out in paragraphs 4.2.16 to 4.2.21 of this report. They are not repeated here to avoid duplication. However, it should be noted that in the completed SoCG with NE [REP1-009], subsequently updated at DL7 [REP7-005], NE confirmed that there were no outstanding matters between the parties (the Applicant and NE) regarding the Proposed Development.

4.13.66. NLC in its LIR [REP1-022] made the following representation in terms of biodiversity and ecology. NLC advised, having assessed the submitted information concerning the assessment of potential ecological effects of the Proposed Development it noted the Proposed Development site lies adjacent to the Humber Estuary SAC and Ramsar site. It also noted that atmospheric dispersion modelling has been necessary to evaluate the potential for air pollution effects on more distant sites, such as Humber Estuary SPA, Thorne Moor SAC and Thorne and Hatfield Moors SPA.

4.13.67. NLC considered the Applicant had provided the ExA with all the information reasonably required for an HRA in the form of a shadow HRA and has identified potential impacts, which it considers appear to have been assessed appropriately, taking into account NE's advice. In terms of AA, and in consideration of mitigation options which form part of the committed design of the Proposed Development, NLC's ecologist confirmed it had no reason to disagree with the Applicant's conclusions in its shadow HRA, including the conclusion that emissions to air would not have an adverse effect on the integrity of any European sites.

4.13.68. In terms of:

- protected and priority species, NLC confirmed that having reviewed the preliminary ecological appraisal the survey effort deployed is appropriate for the site in question. Whilst it notes NE has identified parts of the proposal site as being within an *"amber risk zone"* for great crested newts, NLC noted the submitted Preliminary Ecological Appraisal Report provided adequate evidence, in terms of site-based habitat suitability assessment and past survey results, to justify this species being scoped out of further assessment; and
- habitats/ features, NLC considered the ES at sections 11.5, 11.6 and 11.7 of Chapter 11 (and associated appendices) dealt appropriately with development design and impact avoidance, likely impacts and effects and mitigation and enhancement measures in terms of hedgerows/ trees; drains; ephemeral/ short perennial vegetation; scrub; acid grassland; OMHs on previously developed land; LWSs; and statutorily designated sites (SSSI, SAC, SPA and Ramsar).

4.13.69. In regard to this NLC noted/ welcomed:

- the tightening of the red-line boundary, following the scoping stage, so as to exclude some large areas of sensitive habitat; and
- care had been taken to minimise impacts on undesignated acid grassland, OMHs and terrestrial invertebrate communities of national importance.

4.13.70. As such NLC considered the Proposed Development to accord with Policy CS17 of the NLCS and paragraphs 174 and 180 of the NPPF.

4.13.71. NLC also welcomed the Applicant's biodiversity enhancement proposals, and the habitat management and monitoring proposed to deliver these, which included:

- the creation of flower-rich native grassland;
- new species-rich native hedgerow plantings;
- enhancement of field drains for water voles and other aquatic biodiversity;
- installation of nest boxes for barn owl and other birds, habitat creation for willow tit; and
- installation of roosting boxes for bats.

4.13.72. NLC confirmed that the proposed new grassland creation included areas directly connected to habitat corridors designated as the Stainforth and Keadby Canal Corridor LWS and the Hatfield Waste Drain LWS and that these proposed new grasslands would complement and enhance these LWSs.

4.13.73. It noted that applying DEFRA Metric 2.0 (which was current at the time that the document was written), the following would result from the Proposed Development:

- A gain in habitat units of at least 11.27% is achievable.
- A gain in hedgerow units of 35.92% is achievable.
- The broad requirements of planning policy to achieve no net loss and a net gain are met.

4.13.74. NLC stated it supports this approach and considers it to align with Policy CS17 of the NLCS and the requirements of the NPPF. It also considered that, subject to the acceptable discharge of R6 of the dDCO, the development would ultimately achieve a minor positive impact on ecological receptors.

4.13.75. No other IPs raised concerns in regard to biodiversity, ecology or nature conservation or the assessments carried out by the Applicant in relation to this matter. Furthermore, no additional concerns arose in terms of biodiversity, ecology or nature conservation from the accepted change request or the Applicant's ES Addendum Volume II Chapters and Appendices [REP6a-066], as supported by ES Addendum Volume III Figures [REP6a-067].

EXAMINATION

4.13.76. In ExQ1 [PD-009], I asked the Applicant a number of questions in relation to biodiversity, ecology and the natural environment. These

included questions seeking clarification on additional information sought by:

- NE in terms of demonstrating LSEs can be ruled out, SSSIs, biodiversity net gain (BNG) and habitat compensation, good practice principles and guidance, the timing of the cofferdam installation and potential impact on wintering birds, etc;
- the EA in terms of surveys in regard to water voles and other protected species, the LBMEP, additional survey work; and
- the MMO in terms of the Applicant's underwater noise assessment and potential impacts on protected species, and risk of impact on local fish receptors.

4.13.77. My ExQ1 [PD-009] questions related to biodiversity, ecology and the natural environment also ask for responses in regard to: potential noise impacts; assumptions made; piling; and the potential impacts on air quality.

4.13.78. I also sought clarification from the EA, NE and the MMO in regard to various matters it raised in its RR and ASs submissions ([AS-002, RR-010 and RR-006], respectively) concerning biodiversity, ecology and the natural environment in my ExQ1 [PD-009] questions. I asked the MMO and NE whether impacts due to NO_x from traffic emissions could be scoped out based on the absence of the sensitive vegetation receptor (Q1.2.1). The MMO did not respond to this question in its response to my ExQ1 [REP2-024], however NE responded [REP2-030] confirming that such impacts could be scoped out. In addition to this question I also sought comment from NE in regard to the Applicant's response to its concerns about screening out sites with PCs that have been rounded down to a whole number and its request seeking a number of SSSIs to be further assessed to demonstrate that interest features will not be damaged or destroyed (Q1.2.3).

4.13.79. NE in its response to my ExQ1 [REP2-021] stated it was awaiting the updated version of the ES Air Quality chapter, which had been used to inform the HRA. Therefore, NE considered there to be inadequate information, at that point in time, to advise on whether it agreed with the conclusion that an adverse effect could be avoided, and interest features would not be damaged or destroyed. However, at DL1 the Applicant submitted a revised HRA AA Report [REP1-006] (current version [REP6a-055]) with a view to addressing this matter and in the Applicant's SoCG completed with NE [REP7-005], it was agreed that the updated air quality information had been submitted at DL1 and that it addressed the points raised by it in its RR in regard to this matter.

4.13.80. Furthermore, I also sought comments from both NE and the EA in regard to the EA's concerns regarding the age of some of the ecological/ biodiversity surveys undertaken and whether the LBMEP [APP-039] (current version [REP7-003]) included all protected species and invasive species update surveys they would like (Q1.3.2). In the EA's response to my ExQ1 [REP2-021], it confirmed all species it would seek updated surveys on were included within the Applicant's LBMEP. NE in its response to my ExQ1 [REP2-030], also confirmed it was satisfied.

4.13.81. In addition to the above, the Applicant submitted a completed SoCG with NE [REP1-009], subsequently updated at DL7 [REP7-005], which confirmed that there were no outstanding matters. In terms of ecology, this included agreement in regard to the following:

- The Proposed Development not adversely affecting the integrity of the SAC or SPA or any other designated sites.
- It can be excluded beyond reasonable scientific doubt that the Proposed Development would not have an adverse effect on the integrity of the Humber Estuary SAC and the Humber Estuary SPA and Ramsar, subject to mitigation being secured.
- The Proposed Development is not likely to damage features of interest of the Humber Estuary SSSI, subject to mitigation being secured.
- The level of detail around habitat loss, including information on the concrete apron and existing dredging and replenishment of silts along the riverbank at the proposed river water abstraction option, is appropriate to assist NE.
- Water quality effects on European sites, described in the updated HRA, had been adequately assessed.
- Noise and visual disturbance to designated bird species associated with the Humber Estuary SPA/ Ramsar had been adequately assessed, using the 50 decibels (dB) precautionary level advised by NE, and noise modelling findings sensitivity checked the findings of noise impacts on birds.

4.13.82. Similarly a completed SoCG with the MMO [REP6-007] was submitted by the Applicant at DL6. It also confirmed that, at the point of its submission of the SoCG, there were no outstanding matters to be agreed and that in terms of the adequacy of the ES, and other relevant documentation associated with the DCO application, the methods used to inform the assessment of effects upon the marine environment and associated topics were appropriate and in line with current best practice guidance. In addition to this, the SoCG agreed the same matters as listed in the above bullet points within the above paragraph related to NE, but for the sake of brevity are not repeated here.

4.13.83. The Applicant's completed SoCG with the EA [REP5-014] confirmed a number of matters were still outstanding, but in terms of biodiversity, ecology and the natural environment it agreed that matters relevant to the ecological aspects of the Proposed Development, that fall within the remit of the EA, had been adequately addressed. It also agreed that the development design and impact avoidance measures, as outlined as embedded mitigation in the ES Volume I Chapter 11: Biodiversity and Nature Conservation [APP-054], section 11.5, were appropriate and that all mitigation measures necessary to ensure compliance with legislation relating to those protected species, as well as good practice measures to safeguard animal welfare, had been included.

4.13.84. The EA in the Applicant's completed SoCG [REP5-014] also confirmed:

- the specified control measures within the Framework CEMP [APP-160] (current version [REP6-003]), including protected species surveys, are to be secured via R6 of the dDCO [APP-005] (current version

[REP7a-006]), are appropriate for the control of potential effects on protected species that fall within the remit of the EA during construction of the Proposed Development;
- R5(4) and R5(5) of the dDCO [APP-005] (current version [REP7a-006]), together with the EP obligations, would appropriately control the design of the selected cooling water abstraction in terms of all life stages of eel and provides a commitment to the final design being based on a BAT assessment;
- a Fish Management Plan, as specified by the LBMEP [APP-039] (current version [REP7-003]), prepared and agreed with relevant stakeholders, would be suitably secured via R6 of the dDCO [APP-005] (current version [REP7a-006]);
- the Fish Management Plan is further controlled via the CEMP (R17 of the dDCO [APP-005] (current version [REP7a-006]), which must be prepared in accordance with the Framework CEMP [APP-160] (current version [REP6-003]); and
- The EA defers to NE on all other biodiversity matters relating to this application.

4.13.85. At DL6 the Applicant submitted a completed SoCG with NLC. In terms of biodiversity, ecology, and nature conservation it agreed:

- potential construction effects on the Humber Estuary SSSI, SAC and Ramsar site are assessed as not significant, as any construction works within the (tidal) River Trent would be controlled by a DML, which is included in the dDCO [APP-005] (current version [REP7a-006]). Furthermore, there are no likely significant direct or indirect construction impacts and effects on any other statutory nature conservation designations and potential construction effects on the LWS is assessed as not significant;
- embedded mitigation would be secured in the final CEMP to be prepared in accordance with the Framework CEMP [APP-160] (current version [REP6-003]), including in relation to the construction of the cofferdam should it be required in the River Trent. As such, the assessment considered that there are no likely pathways for significant impacts on the conservation status of relevant fish species using the River Trent;
- works required for cooling water abstraction, whether within the Stainforth and Keadby Canal, or within the River Trent will be agreed with regulators and undertaken to provide compliance with the Eels (England and Wales) Regulations 2009. No impact pathways would be likely to result in an adverse operational effect on the conservation status of fish populations in either the River Trent or the Stainforth and Keadby Canal. The effect is therefore assessed as not significant;
- the LBMEP will achieve an overall net gain for biodiversity for the Proposed Development and R6 (Landscaping and biodiversity protection management and enhancement) of the dDCO (current version [REP7a-006]) would appropriately control the implementation of landscaping and biodiversity protection management and enhancement of the Proposed Development;
- there would be no new significant combined effects during either construction or operation of the Proposed Development; and

- the assessment carried out and its conclusions are compliant with the policy set out in NPS EN-1, NPS EN-2, NPS EN-4 and NPS EN-5.

4.13.86. With regard to the comments of the Canal and River Trust [AS-001] in regard to the proposed abstraction from the Stainforth and Keadby Canal (Work No. 4A) and habitat enhancement, I note that the Applicant submitted a completed SoCG with the Canal and River Trust [REP3-014], which agreed it had:

- no issue with the approach taken regarding nature conservation designations, habitats and species present within the Stainforth and Keadby Canal, including in regard to the result of construction and operation of the Proposed Development; and
- no issue with the proposed landscape and biodiversity enhancements outlined in the LBMEP [APP-039] (current version [REP7-003]).

4.13.87. Additionally, the SoCG with the Canal and River Trust [REP3-014] also agreed the Applicant proposes to undertake a review of biodiversity enhancement proposals using the DEFRA Metric 3.0 and that opportunities for additional enhancement of the canal-side would be considered, especially in the previously disturbed area.

4.13.88. No other IPs raised any significant concerns in their RRs or WRs in respect of biodiversity, ecology or nature conservation. However, throughout the Examination the Applicant and the Canal and River Trust have been in discussions. As a result, on 6 June 2022, the Canal and River Trust in a letter [REP7a-015] confirmed the withdrawal of its objection to the Proposed Development.

4.13.89. I consider the approach set out in the ES in regard to the assessment of the effects of the Proposed Development on biodiversity, ecology and nature conservation, including the ES Addendum Volume II Chapters and Appendices [REP6a-066] and ES Addendum Volume III Figures [REP6a-067] in relation to the change request, to be appropriate. This includes the approaches set out in:

- Chapter 11 of the ES [APP-054], as added to by the ES Addendum Volumes I (Main Volume) [REP6a-065] and II (Chapters and Appendices) [REP6a-066] in terms of the accepted change request and additional information;
- the LBMEP (Version 4.0) [REP7-003], which sets out measures proposed to mitigate the potential impacts and effects of the Proposed Development on landscape and biodiversity features, and to enhance the biodiversity, landscape and green infrastructure value of the Proposed Development site; and
- the Framework CEMP [REP6-003].

4.13.90. Indeed, in terms of the accepted change request and the Applicant's ES Addendum documents, especially ES Addendum Volume II Chapters and Appendices [REP6a-066], as supported by ES Addendum Volume III Figures [REP6a-067], I see no reason to disagree with the conclusions reached within those documents, as set out above in paragraph 4.13.36, 4.13.37, 4.13.44 and 4.13.46 of this report.

4.13.91. In the light of all of the above , I consider that the construction, operation and decommissioning phases would not be significant in terms of statutory and non-statutory wildlife sites, habitats or protected species, providing appropriate mitigation controls are put in place.

4.13.92. Furthermore, I consider measures within the Framework CEMP [REP6-003], a final version of which is secured under R17 of the dDCO [REP7a-006], would be appropriate to control effects on protected species, and that the Lighting Strategy [APP-040], secured by R7 of the dDCO [REP7a-006], would provide an appropriate means of minimising the effects of external lighting on ecology.

4.13.93. I also consider that the R6 of the dDCO [REP7a-006] together with the Framework CEMP [REP6-003] and the LBMEP [REP7-003], secured by R6 of the dDCO [REP7a-006], would provide appropriate measures to ensure BNG in excess of 10%, thus ensuring no net loss of biodiversity overall.

EXA CONCLUSIONS

4.13.94. I am satisfied all biodiversity, ecological, and nature conservation concerns raised by IPs, including those from NE, have been adequately addressed during the Examination. Subject to the imposition of Rs: 6 (Landscape and Biodiversity Protection Management and Enhancement); 7 (External Lighting); 17 (CEMP); 27 (Construction Hours); 28 (Control of Noise and Vibration – Construction); 29 (Control of Noise); and 30 (Piling and Penetrative Foundation Design) of the rDCO, I am satisfied that the Proposed Development is unlikely to have a significant effect on ecological and/ or nature conservation. Furthermore, whilst not a legal requirement at this point in time, I am satisfied that the Proposed Development will result in a BNG in excess of 10%.

4.13.95. I am also satisfied that the Rs detailed above, and as set out in the rDCO attached at Appendix C of this report, would adequately secure the mitigation necessary to address the biodiversity, ecological and nature conservation effects of the Proposed Development. Furthermore, I am satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and that the requirements of both NPS EN-1 and draft NPS EN-1 are met. The BNG arising from the Proposed Development will enhance biodiversity, as well as assist in enhancing ecological and nature conservation effects. As such I consider the effects to be a positive consideration in the planning balance.

4.14. CLIMATE CHANGE

INTRODUCTION

4.14.1. This section addresses the potential impacts and effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development in regard to climate change.

POLICY CONSIDERATIONS

4.14.2. The Climate Change Act 2008 (as amended) (CCA2008) sets a legally binding target for the UK to reduce its net GHG emissions from 1990 levels. It commits the UK Government to reducing GHG emissions by at least 100% of 1990 levels by 2050 (a net zero carbon target for the UK).

4.14.3. As noted in Chapter 3 of this report, the UK is a signatory to the Paris Agreement 2015 under the United Nations Framework Convention on Climate Change. This provides a framework to keep global warming below 2°C, pursuing efforts to limit the temperature increase to 1.5°C.

4.14.4. The 2011 Carbon Plan (Carbon Plan) is the UK's national strategy under CCA2008 for delivering emissions reductions through carbon budgets (2023-27) and preparing for further reductions to 2050. The Sixth Carbon Budget Report was published in December 2020 and the Carbon Budget Order 2021 came into force on 24 June 2021.

4.14.5. The Carbon Plan, at paragraph 38, states the Government will work with industry to ensure that low carbon growth continues into the future. It recognises industry must make significant reductions in the emissions intensity of production, while the Government assists in maintaining the competitiveness of strategically important sectors. It also identifies one of the sources of emissions reduction will come from CCS to address combustion and process emissions.

4.14.6. Paragraph 44 of the Carbon Plan notes that fossil fuels without CCS will only be used as back-up electricity capacity at times of very high demand, whilst paragraph 50 states fossil fuel generation with CCS could contribute as much as 10 gigawatts depending on assumptions about cost and build rates. Paragraph 1.1.4 talks about low carbon power generation, whilst paragraph 2.124 highlights CCS as part of advanced decarbonisation measures require to make the low carbon transition. The Carbon Plan indicates that by 2050, electricity supply will need to be almost completely decarbonised and power will be generated largely from three sources, which includes fossil fuel stations fitted with CCS technology.

4.14.7. The Carbon Plan at paragraphs 2.163 to 2.166 talks about CCS, in terms of overcoming the barriers of low carbon generation, and notes steps required, including bringing down costs and risks by supporting development of the technology at scale in a commercial environment. It confirms the Government is firmly committed to CCS.

4.14.8. In 2017, the Government published the 'Clean Growth Strategy – Leading the way to a low carbon future' (UK Government, 2017). This strategy details how increased investment and collaboration in CCUS in the UK can be used to drive industrial innovation and its importance in long-term emissions reduction.

4.14.9. The 'Clean Growth Strategy: The UK CCUS deployment pathway - An Action Plan' (UK Government, 2018) identifies CCUS as having a significant part to play in the UK's transition to a low carbon economy.

CCUS has been identified as a least cost energy system decarbonisation pathway to 2050. This action plan states:

"CCUS has economy-wide qualities which could be very valuable to delivering clean industrial growth. It could deliver tangible results in tackling some of the biggest challenges we face in decarbonising our economy, contributing to industrial competitiveness and generating new economic opportunities – a key part of our modern Industrial Strategy."

4.14.10. Within this action plan, Humberside was identified as a key location for CCUS due to its heavy industry and chemical manufacturing.

4.14.11. 'Net Zero – Opportunities for the Power Sector' was published by the National Infrastructure Commission (NIC) in 2020 and whilst not Government policy, NIC guidance may form the evidence base for future policy. It states that decarbonising the power sector is integral to achieving the goal of net zero by 2050. Core to the NIC recommendations is the conclusion that *"a highly renewable power system, combined with flexible technologies including hydrogen powered generation, could be substantially cheaper than alternatives that rely heavily on a fleet of nuclear power plants."*

4.14.12. The NIC recommendations set out on page 18 acknowledge there will be a mix of technologies in net zero power systems, including unabated thermal (with low running hours) and at least 18 gigawatts of gas CCS capacity by 2050, generating 23 terawatt hours of electricity. By 2050 it is expected that gas will primarily play a peaking role in the electricity system. 'Net Zero – Opportunities for the power sector' therefore highlights the important role of CCS in decarbonising the power sector by capturing CO_2 from new gas-fired generation.

4.14.13. This is also recognised in the Government's EWP, Powering our net zero future (HM Government, 2020), which sets out a ten-point plan to help the UK be at the forefront of net zero. The Government's consultation regarding Future Policy Framework for Power with CCUS, dated July 2022, is an illustration of its moves forward in developing the CUSS system. Relevant matters in the EWP to the Proposed Development include:

- establishing the UK as a world leader in the deployment of CCUS and clean hydrogen, supporting up to 60,000 jobs by 2030;
- up to £1 billion of public investment by 2025 to facilitate the deployment of CCUS in two industrial clusters by the mid-2020s, and a further two clusters by 2030, supporting the Governments ambition to capture 10 tonnes of CO_2 equivalent (tCO_{2e}) per year by the end of the decade;
- decarbonising in clusters to enable economies of scale, reducing the unit cost for each tonne of carbon abated, where clusters provide high quality jobs above the UK average wage; and
- ensuring that action now can harness the UK's strengths in engineering, procurement, construction, and management services, with export opportunities from CCUS estimated at £3.6 billion by 2030.

National Policy Statements

4.14.14. NPS EN-1 states that while *"the UK economy is reliant on fossil fuels, and they are likely to play a significant role for some time to come… the UK needs to wean itself off such a high-carbon energy mix: to reduce GHG emissions and to improve the security, availability and affordability of energy through diversification"* (paragraphs 2.2.5 and 2.2.6). However, it also emphasises the importance of a diverse mix of energy generating technologies (paragraph 2.2.20). The NPS states that the CO_2 emissions of individual applications do not need to be benchmarked against UK carbon budgets, and CO_2 emissions are not a reason to prevent project consent (paragraph 5.2).

4.14.15. Paragraph 2.2.4 of NPS EN-1 states that not all aspects of Government energy and climate change policy will be relevant to NSIP decisions or planning decisions by local authorities, and the planning system is only one of several vehicles that helps to deliver Government energy and climate change policy.

4.14.16. NPS EN-1 promotes CCS as an emerging technology that the Government is aiming to facilitate and encourage, including for gas-fired generating stations. Paragraph 2.2.23 of NPS EN-1 states that CCS is part of the UK's plans to *"reduce its dependence on fossil fuels, particularly unabated combustion"*. This policy statement further states the benefits of having a diverse mix of power generation, including energy supply security as fossil-fuel generation that can be brought online quickly to meet demand and can complement baseload supply from nuclear and renewables. However, these fossil-fuel power generators will need CCS to be low carbon.

4.14.17. NPS EN-1 states that the consenting of new fossil-fuelled power stations at or over 300 MW have to be constructed CCR, as described in sections 3.6 and 4.7 of NPS EN-1.

4.14.18. NPS EN-2 describes the need for all new fossil fuel electricity generating plants to assess the viability for supporting CCS technologies. The viability and support for CCS technologies is also set out and built upon in the emerging draft NPSs concerning delivery of energy infrastructure.

Marine Policy Statement/ Marine Plans

4.14.19. The MPS provides a framework for taking decisions affecting the marine environment, which includes the River Trent at Keadby. The EMP is also relevant, with Section 3.11 recognising that combustion (including gas-fired) power stations may *"want to utilise coastal or estuarine sites within the East Inshore Plan area to make use of once through water cooling systems for efficiency and economic purposes"* (paragraph 325).

4.14.20. Paragraph 326 recognises that *"The East marine plan areas afford a significant opportunity for the* [CCUS] *industry due to the large number of saline aquifers within the Bunter sandstone formation. Saline aquifers are estimated as having around 85% of the UK's potential storage capacity. Also, there are significant active and inactive hydrocarbon fields*

that could be used for storage. In addition, several clusters of industrial facilities emitting large amounts of carbon dioxide occur along England's East coast". Furthermore, paragraph 326 states *"The key issue with respect to Carbon Capture and Storage in the East marine plan areas is to help enable the broadly recognised opportunity to establish the sector."*

National Planning Policy Framework

4.14.21. The NPPF defines low-carbon technologies as *"…those that can help reduce emissions (compared to conventional use of fossil fuels)."* A core planning principle of the NPPF is that the planning system should *"…support the transition to a low carbon future in a changing climate"* (paragraph 152). Paragraph 158 states that in determining planning applications for renewable and low carbon development, *"…local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions..."*

National Planning Practice Guidance

4.14.22. The NPPG on climate change describes how to identify suitable mitigation and climate adaptation measures to incorporate into the planning process. It states, *"Effective spatial planning is an important part of a successful response to climate change as it can influence the emission of greenhouse gases… Planning can also help increase resilience to climate change impact through the location, mix and design of development."* (paragraph: 001, Reference ID: 6-001-20140306).

Biodiversity Strategy 2020 (2011)

4.14.23. A strategy for England's wildlife and ecosystem services (DEFRA, 2011) establishes principles for considering biodiversity and the potential effects of climate change.

Local Development Plan

4.14.24. The NLLDF (NLC, 2011) sets out the council's spatial vision, strategy and policies to deliver the strategy up to 2026. The NLCS covers several policies related to climate change, including: Policies CS16 (North Lincolnshire Landscape, Greenspace and Waterscape); CS17 (Biodiversity); CS18 (Sustainable Resource Use and Climate Change); CS19 (Flood Risk); and CS20 (Sustainable Waste Management).

4.14.25. Additionally, the North Lincolnshire Carbon Management Strategy (NLC, 2017) details the local authority's plan for reducing carbon from 2017 to 2020. It states that this area is one of the top five most vulnerable coasts in the UK, noting the potential for a 1m sea level rise in the area by 2100.

THE APPLICANT'S CASE

4.14.26. Chapter 17 of the ES [APP-060], entitled Climate Change and Sustainability, considers the potential effects of the Proposed Development on climate change, whilst Appendix 17A of the ES [APP-097] provides a sustainability review. Chapter 17 explains the Proposed Development would be fitted with carbon capture technology that will be designed to be capable of capturing over 90% of carbon emissions emitted from the generating station when operating normally.

4.14.27. The conditioned and dehydrated CO_2 produced from the CCP would be compressed to a pressure (to be agreed with NGC) and after metering, discharged into the CO_2 gathering network for onwards transport to an offshore carbon store for permanent storage and not released to the atmosphere. It should be noted here that the proposals for consenting of the carbon gathering network (the dioxide export pipeline) are to be progressed under a separate DCO consent by third parties and do not form part of this DCO submission.

4.14.28. The Applicant states that the total construction-related GHG emissions from the Proposed Development are calculated to be 80,275 tonnes CO_{2e} (tCO_{2e}) with the majority (80%) of emissions associated with the embodied carbon of construction materials. Assuming that emission related activities are similar during the 42 month construction period, the annual emissions during the construction period would be anticipated to be approximately 22,936 tCO_{2e}. A breakdown of construction emissions is set out at Table 17.26 of ES Chapter 17 [APP-060].

4.14.29. In terms of operation, using the assumptions as set out in ES Chapter 17 [APP-060] (paragraph 17.6.4) and assuming the reference scenario (ie the proposed PCC site will operate for up to c. 8,000 hours per year at 100% full load on the CCGT and 90% carbon capture rate), if operating unabated (ie without carbon capture) the total annual plant emissions would be c. 2,252,378 tCO_{2e}, and with lifetime emissions (ie over 25 years) of 56,309,456 tCO_{2e}. Using the same assumptions and reference scenario with the proposed CCP in operation (ie with carbon capture) the same figures would be 210,048 tCO_{2e} per year, with a lifetime total emissions figure of 5,251,170 tCO_{2e} over the 25 years.

4.14.30. Factoring in additional indirect operational emissions from sources including worker transport, waste generation and transport, consumption of water and disposal of wastewater these have been calculated to be 26,649 tCO_{2e} per year, bringing the total annual operational emissions of the abated plant (ie with carbon capture) to 236,695 tCO_{2e} and lifetime operational emissions of 5,917,384 tCO_{2e}. This shows that using the reference scenario, with carbon capture, up to 90.7% of these emissions will be captured, geosequestered and not released into the atmosphere.

4.14.31. In terms of carbon intensity of the Proposed Development (both with and without the carbon capture technology) this is compared in the ES Chapter 17 [APP-060] in Table 17.29. Unabated, the carbon intensity of the Proposed Development is 352.3 tCO_{2e}/ gigawatt hour (GWh) which is lower than the average for gas-fired power generation (371 tCO_{2e}/ GWh). Using the carbon capture technology, the abated plant (reference

scenario) will result in a carbon intensity of 35.9 tCO_{2e}/ GWh, which is significantly less than the grid average emissions in 2020 of 198 tCO_{2e}/ GWh.

4.14.32. In regard to decommissioning, at this stage of the design details regarding these activities have not been developed. However they are assumed to be commensurate with emissions generated during the construction stage (eg of the approximate magnitude of 70,688 tCO_{2e}).

4.14.33. Clearly the receptor for the GHG assessment is the global climate and the UK's carbon budgets are used as a proxy to assess the impacts to this receptor. Emissions associated with the Proposed Development have been examined for their significance against the UK carbon budgets. Assuming 42 months of construction, and one-year of operation occurring during the 4th carbon budget and five-years during each of the 5th and 6th carbon budgets. The percentage contribution of emissions from the Proposed Development to the respective carbon budgets are 0.02%, 0.07% and 0.12%, respectively.

4.14.34. The Applicant argues that the magnitude of impact of the Proposed Development is considered as low against the current UK carbon budgets. Total GHG emissions associated with the Proposed Development would not exceed 1% of the corresponding UK carbon budget limits and the GHG emissions are considered as having a low increase magnitude and is classified as minor adverse significance. As such, the operation of the Proposed Development is not expected to affect the UK in meeting its current carbon budgets, with the exception that the Proposed Development would support the UK's transition towards the net zero target.

4.14.35. Finally, no significant in-combination climate change impact or climate change resilience risks were identified and no further mitigation or enhancement measures have been proposed other than those secured within the CEMP during construction, and those that would be required under an EP during the operational stage of the Proposed Development.

VIEWS OF INTERESTED PARTIES

4.14.36. NLC in its LIR [REP1-022] has said the Proposed Development would provide a positive impact in terms of low carbon electricity generation, which will help to deliver carbon reduction policies set out in the NPPF, UK Clean Growth Strategy, Environment Bill, Humber Clean Growth Local White Paper and the NLCS. The development could contribute to a reduction in the carbon emissions of the energy supply in the UK and provide a secure and stable energy source. NLC believes that this is a significant positive impact but that it has to be balanced against the potential environmental impacts of the proposed scheme.

4.14.37. ClientEarth in its RR [RR-001] raised concern in regard to the terms of the proposed dDCO [APP-005] (current version [REP7a-006]) and whether it would secure the operation of the power plant commercially only when the associated carbon capture, transport and storage

infrastructure are also in commercial operation, with the effect that at least 90% of the carbon emissions generated by the power plant will not be emitted into the atmosphere and would be stored permanently underground.

4.14.38. It considered the dDCO, as submitted with the Proposed Development [APP-005], did not adequately ensure that the Applicant's minimum level of emissions would be captured and permanently stored or that the carbon capture, transport and storage infrastructure would be used throughout commercial operations.

4.14.39. ClientEarth made a WR at DL2 [REP2-020], which expanded on the concerns raised in its RR [RR-001]. In summary its WR noted the concerns cited by the Applicant in response to its RR [RR-001], but was of the view those concerns could be readily accommodated in ClientEarth's proposed conditions, which in its view remained necessary and reasonable in light of the Applicant's response. ClientEarth's WR [REP2-020] alleged *"…the Applicant appears to accept that the current draft DCO conditions do not secure the capture and permanent storage of produced carbon dioxide that is assumed in the Application; the Applicant also does not appear to object in principle to the inclusion of conditions securing these aspects of the proposal, subject to clarifying their precise scope."*

4.14.40. Ultimately, this matter was resolved during the Examination, and this is explained further in the 'Other Interested Parties' at paragraphs 4.2.53 to 4.2.57 of this report and the Climate Change 'Examination' section of this report (paragraphs 4.14.47 to 4.14.60). Following the matter being resolved ClientEarth in its representation submitted at DL6a [REP6a-068] confirmed it *"…is satisfied that these changes address the concerns that ClientEarth has raised in the examination regarding the carbon capture and storage aspects of the proposed development."*

4.14.41. The EA, in its WR [REP2-022] advised it considered the Applicant had set aside enough land to accommodate the CCP. However, it advised it did not consider the Applicant had demonstrated *"there are no foreseeable barriers"* to the technical feasibility of installing its chosen CCP. The EA noted the Applicant's response to its report on this matter, which was attached to its WR [REP2-022] at Appendix A, and advised its responses to all items, except for item C6 – Steam cycle, are satisfactory. In terms of the EA's comments on item C6 – Steam Cycle, as set out in its WR [REP2-022], it stated *"the Applicant needs* [to] *justify this proposal and/ or confirm that the efficiency of taking steam from HRSG is comparable to that of taking steam from the steam turbine, given that expanding steam through the turbine to the desired pressure will produce work (ie electricity and is likely to be more efficient)."*

4.14.42. The Applicant responded on this matter at DL3, in its Comments on Written Submissions [REP3-021]. The EA having reviewed the Applicant's reply on this matter confirmed [REP4-013] the *"response is satisfactory and… the EA can confirm that the Applicant has set aside enough land to accommodate the carbon capture plant, and has also now provided*

sufficient information for us to conclude that there are no foreseeable barriers to the technical feasibility of installing this."

4.14.43. NGC, writing as NG Ventures in its RR [RR-009], explained its role in the deployment of CCUS at scale in the Humber and the HLCP network and that NGC's interest relates to the interfaces between the Proposed Development and the HLCP. Additionally, it questioned the Applicant's rejection of hydrogen as a fuel for this power station.

4.14.44. NGC highlighted that Work No. 7 in the dDCO [APP-005] represents the point at which the authorised development will deliver pressurised CO_2 to the NGC network, although the interface between NGC and the Applicant had yet to be agreed. In terms of Work Nos. 7A and 7B, NGC noted that not all of Work No. 7 appeared on the Applicant's Works Plans [APP-012] and that whilst detailed design for Work No. 7 is governed by R5(7), NGC stated it wish to be consulted on any approval sought from the relevant planning authority under this R. It also advised that NGC would wish to see PPs for its apparatus.

4.14.45. It should be noted that discussions with NGC continued throughout the Examination with the Applicant and NGC reaching agreement in relation to PPs. NGC confirmed in its DL7a submission [REP7a-018] that "…*it has no outstanding objections at the close of the examination."*

4.14.46. No other IPs raised concerns in regard to climate change or the assessments carried out by the Applicant in relation to this matter.

EXAMINATION

4.14.47. As set out above, the EA at DL4 [REP4-013] confirmed "...*that the Applicant has set aside enough land to accommodate the carbon capture plant, and… provided sufficient information for us to conclude that there are no foreseeable barriers to the technical feasibility of installing this."* This was reiterated in the Applicant's completed SoCG with the EA [REP5-014].

4.14.48. The Applicant's completed SoCG with NGC [REP7-006] set out the relationship of the Proposed Development with the HLCP network, together with potential timescale for the two projects. It also set out the agreed position in regard to Rs within the dDCO [REP7a-006]. It also confirmed PPs for the benefit of NGC, for inclusion in Schedule 10 of the dDCO had been reached, but this was subject to the completion of the Applicant's internal approval process.

4.14.49. Ultimately, the Applicant and NGC reached agreement on the matters that were outstanding between the parties and in regard to the PPs in NGC's interest. NGC confirmed in its DL7a submission [REP7a-018] that "…*it has no outstanding objections at the close of the examination."*

4.14.50. The concerns raised by ClientEarth have been addressed by the Applicant. Its concerns, together with a brief explanation as to how the parties (the Applicant and Client Earth) responded and engaged in the Examination in regard to those concerns, are set out in paragraphs

4.2.53 to 4.2.57 of this report. They are not repeated here to avoid duplication. Ultimately, I note that ClientEarth in its representation made at DL6a [REP6a-068] confirmed it *"…is satisfied that these changes address the concerns that ClientEarth has raised in the examination regarding the carbon capture and storage aspects of the proposed development."*

4.14.51. NPS EN-1 explicitly recognises the Government's commitment to increasing the use of renewable energy and investment in low carbon energy generation to ensure a secure electricity market in the future. The NPS states that the CO_2 emissions of individual applications do not need to be benchmarked against UK carbon budgets, and CO_2 emissions are not a reason to prevent project consent.

4.14.52. Furthermore, NPS EN-2 describes the need for all new fossil fuel electricity generating plants to assess the viability for supporting CCS technologies. The EA having considered the submission in respect of carbon capture readiness and CCS and confirmed at DL4 [REP4-013] *"the Applicant has set aside enough land to accommodate the carbon capture plant, and has …provided sufficient information for us to conclude that there are no foreseeable barriers to the technical feasibility of installing this."* No evidence has been submitted into the Examination that would lead me to conclude otherwise, and I have no reason to conclude the Proposed Development would not be CCR as set out in the NPSs.

4.14.53. In regard to GHG emissions arising from the operation of the Proposed Development, it is clear that when considered in isolation, a rise in emissions would result. Using the Applicant's assumptions and reference scenarios, as set out above and explained in further detail in ES Chapter 17 [APP-060] the Proposed Development unabated (ie without carbon capture) would have a total annual plant emissions of c. 2,252,378 tCO_{2e}, with lifetime emissions (ie over 25 years) of 56,309,456 tCO_{2e}. In abated mode (ie with carbon capture) c. 90.7% of emissions would be captured and not released into the atmosphere. This means the same figures (annual plant emissions and total annual plant emissions) would be 210,048 tCO_{2e} and 5,251,170 $tCO_{2e,}$, respectively. When factoring in additional indirect operational emissions from sources (26,649 tCO_{2e} per year) the total annual operational emissions of the abated plant (ie with carbon capture) would be 236,695 tCO_{2e} and lifetime operational emissions of 5,917,384 tCO_{2e}.

4.14.54. In terms of carbon intensity of the Proposed Development (both with and without the carbon capture technology) this is compared in the ES Chapter 17 [APP-060] in Table 17.29. Unabated, the carbon intensity of the Proposed Development is 352.3 tCO_{2e}/ GWh which is lower than the average for gas-fired power generation (371 tCO_{2e}/ GWh). Using the carbon capture technology, the abated plant (reference scenario) will result in a carbon intensity of 35.9 tCO_{2e}/ GWh, which is significantly less than the grid average emissions in 2020 of 198 tCO_{2e}/ GWh.

4.14.55. Emissions from the construction of the Proposed Development would contribute considerably less than 1% of the total UK carbon budget

emissions during any five-year carbon period under which they arise. The magnitude of impact is considered low, with the significance of effects considered as minor adverse. I consider the Proposed Development is not expected to adversely affect the UK in meeting its current carbon budgets, with the exception that the Proposed Development would support the UK's transition towards the net zero target.

4.14.56. In terms of whether the Proposed Development would be CCR, the Applicant has given clear indications that it intends to construct the Proposed Development, including the CCP and related infrastructure within the Order Limits. The CCP is specified in the DCO, as Work No. 1C (see Schedule 1 (Authorised Development) of the dDCO [REP7a-006]). Work No. 7 (a high-pressure carbon pipeline) is also specified in Schedule 1 (Authorised Development) of the dDCO [REP7a-006] and is required to export CO_2 from Work No. 1C to the NG Carbon Gathering Network and above ground CO_2 compression and export infrastructure on land at Keadby Power Station.

4.14.57. Additionally, I note that Schedule 2, R33 (Carbon capture and compression plant) of the dDCO [REP7a-006] prevents the authorised development commencing, save for permitted preliminary works, until evidence has been submitted to and approved by the relevant planning authority as to certain specified consents, licences, permits and authorisations, in part relevant to the carbon gathering network, being in place. Additionally, this R prevents Work No. 1A (the CCGT plant) being brought into commercial use until Work No. 1C (the Carbon Dioxide Capture Plant) and Work No. 7A (the Compressor Station) has also been brought into commercial use. The compressor station would ultimately be linked to the high-pressure CO_2 pipeline.

4.14.58. Furthermore, as set out above the definitions of 'carbon capture and compression plant', 'commercial use' and 'commissioning' at Article 2(1) of the dDCO [REP7a-006] were amended during the course of the Examination with a view to addressing the concerns of ClientEarth. ClientEarth confirmed in its DL6a submissions [REP6a-068] it *"…is satisfied that these changes address the concerns that ClientEarth has raised in the examination regarding the carbon capture and storage aspects of the proposed development."*

4.14.59. Bearing in mind the wording of Article 3, Schedule 1 and R33 (Carbon capture and compression plant) of the rDCO, as attached at Appendix C to this report, I am satisfied that Proposed Development could not commence, save for permitted preliminary works, until the relevant planning authority is satisfied that certain specified consents, licences, permits and authorisations, in part relevant to the carbon gathering network, are in place. I am also satisfied the CCGT plant cannot be brought into commercial operation until Work No. 1C (the Carbon Dioxide Capture Plant) and Work No. 7A (the Compressor Station) are also brought into commercial use.

4.14.60. In addition to this, in the absence of an EP specific to the Proposed Development, I consider it appropriate that the gross output capacity of

the proposed power station be limited to no more than 910 MW at ISO standard reference conditions, as specified in Schedule 1 (Authorised Development) of the rDCO.

EXA CONCLUSIONS

4.14.61. I am satisfied from the evidence presented in the Examination that the Proposed Development would be CCR and contribute considerably less than 1% of the total UK carbon budget emissions during any five-year carbon period under which they arise. I also consider the Proposed Development would support the UK's transition towards the net zero target.

4.14.62. I consider that the rDCO, if made, would adequately secure Work No. 1C (the Carbon Dioxide Capture Plant) and Work No. 7A (the Compressor Station) and related infrastructure within the Order Limits, by virtue of Schedule 2, R33 (Carbon Capture and Compression Plant). I am also satisfied that this R of the rDCO would prevent the CCGT plant (Work No. 1A) being brought into commercial operation, until Work No. 1C (the Carbon Dioxide Capture Plant) and Work No. 7A (the Compressor Station) are also brought into commercial use.

4.14.63. In the absence of an EP specific to the Proposed Development, the gross output capacity of the proposed power station must be controlled as being up to 910 MW at ISO standard reference conditions. I am satisfied that this is achieved due to the gross output capacity being specified as being up to 910 MW at ISO standard reference conditions in Schedule 1 (Authorised Development) of the rDCO.

4.14.64. Bearing all of the above in mind, I am satisfied that the Proposed Development would contribute to meeting the UK's carbon commitment and supporting the transition to a low carbon economy, whilst bearing in mind the need for all types of infrastructure and maintaining the need for security and flexibility of supply as set out in NPS EN-1. On balance, I am satisfied that the Proposed Development would accord with the guidance in NPS EN-1, NPS EN-2, draft NPS EN-1 and draft NPS EN-2 and would be in accordance with the UK's commitments under the CCA2008 and the Paris Agreement 2015. Therefore, I consider climate change effects are a neutral consideration in the planning balance.

4.15. CULTURAL HERITAGE

INTRODUCTION

4.15.1. This section addresses the potential impacts and effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development on the historic environment, including designated and non-designated heritage assets.

POLICY CONSIDERATIONS

National Planning Statements

4.15.2. NPS EN-1 Part 5 identifies the construction, operation and decommissioning of energy infrastructure as having the potential to result in adverse impacts on the historic environment. This includes both designated and non-designated heritage assets. Consideration should be given to the significance of any heritage assets and whether the development would affect their setting. There should be a presumption in favour of the conservation of designated heritage assets. Loss affecting any designated assets should require clear and convincing justification. Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development.

4.15.3. In regard to archaeology, NPS EN-1 states *"where a development site includes, or has the potential to include, heritage assets of archaeological interest, the Applicant should carry out a desk-based assessment and if necessary, a field evaluation in order to properly assess the interest"* (paragraph 5.8.9). This NPS also makes it clear that *"Ultimately, the applicant should ensure that the extent of the impact of the proposed development on the heritage assets can be adequately understood from the application and supporting documents"* (paragraph 5.8.10).

Marine Policy Statement/ Marine Plans

4.15.4. The MPS provides a framework for taking decisions affecting the marine environment, which includes the River Trent at Keadby. Objective 5 of the EMP document seeks to conserve heritage assets, nationally protected landscapes and ensure that decisions consider the seascape of the local area. It states *"This objective relates to the historic environment, nationally important landscapes and seascapes. It recognises the need to consider if developments are appropriate to the area they would be located in and have influence upon, and as far as possible do not compromise the value of such assets and characteristics"*.

National Planning Policy Framework

4.15.5. The NPPF describes the setting of a heritage asset as the surroundings in which a heritage asset is experienced. A core planning principle in the NPPF is to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations (paragraph 189). When considering the impact of Proposed Development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and the more important the asset, the greater should be that weight (paragraph 199). Any harm or loss of designated heritage assets requires clear and convincing justification (paragraph 200). Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal (paragraph 202).

National Planning Practice Guidance

4.15.6. The NPPG regarding the historic environment provides further advice and guidance to accompany policies in the NPPF and expands on terms such as 'significance' and its importance in decision making. It is clear that

"understanding the significance of a heritage asset and its setting from an early stage in the design process can help to inform the development of proposals which avoid or minimise harm…" (paragraph: 008, Ref. ID: 18a-008-20190723). The NPPG is also clear that understanding the potential impact and acceptability of development proposals is very important, but *"information should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on its significance."* (paragraph: 009, Ref. ID: 18a-009-20140306).

4.15.7. When considering impacts to a heritage asset, the NPPG discusses levels of harm, noting where potential harm to designated heritage assets is identified, it needs to be categorised as either less than substantial harm or substantial harm (paragraph: 018, Ref. ID: 18a-018-20190723).

4.15.8. In terms of public benefits, the NPPG states benefits should follow from the proposed development and should be of a nature and scale to be of benefit to the public and not just a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be of public benefit (paragraph: 020, Ref. ID: 18a-020-20190723).

Local Development Plan

4.15.9. NLLP saved policies HE5 (Development Affecting Listed Buildings), HE8 (Ancient Monuments), HE9 (Archaeological Excavation) and LC14 (Area of Special Historic Interest), together with Policy CS6 (Historic Environment) of the adopted NLCS are considered relevant to the Proposed Development.

THE APPLICANT'S CASE

4.15.1. ES Chapter 15 [APP-058] assesses the effect of the Proposed Development on cultural heritage (Heritage Assessment), whilst ES Appendix 15A [APP-093] provides a Cultural Heritage Desk Based Assessment, Appendix 15B [APP-094] provides a Geoarchaeological Hand Auger Survey Fieldwork Report and Appendix 15C [APP-095] provides a Geophysical Survey Fieldwork Report. Chapter 15 is also accompanied by Figure 15.1 (Locations of Designated Heritage Assets) [APP-155], Figure 15.2 (Locations of Non-Designated Heritage Assets) [APP-156] and Figure 15.3 (Locations of Non-Designated Assets Inset A and B) [APP-157].

4.15.2. An addendum to ES Chapter 15 (Cultural Heritage) (ES Addendum Volume II Chapters and Appendices [REP6a-066]) was submitted as part of the change request documentation at DL6a. This addendum also included Appendix 15D (Interim Report on Archaeological Investigation and Recording). Additionally, in terms of cultural heritage, it should be noted ES Addendum Volume I [REP6a-065], at Table 3, highlights the maximum parameters for the gatehouse have been reduced to 4m. The Applicant indicates this is shown in its updated Indicative General Arrangement and Elevations A18 Gatehouse Plans [REP5-009].

4.15.3. The Heritage Assessment [APP-093] is a desk-based assessment, undertaken in order to identify the known cultural heritage resources within defined study areas, as well as assessing the potential for unknown archaeological remains to be present at the application site. It considers a study area with a 3km radius from the application site for designated heritage assets (see ES Figure 15.1 [APP-155]) and a 5km radius from the application site for designated assets of the highest value (ie world heritage sites, scheduled monuments and Grade I listed buildings). Additionally, a study area with a 1km radius from the application site was used to identify non-designated heritage assets (see ES Figures 15.2 [APP-156] and 15.3 [APP-157]).

4.15.4. The addendum to the ES Chapter 15 (Cultural Heritage) together with Appendix 15D (Interim Report on Archaeological Investigation and Recording), both submitted at DL6a [REP6a-066], comprised interim results of archaeological trial trenching and geoarchaeological assessment undertaken under an agreed WSI during March/ April 2022.

4.15.5. Data sources for the identification of heritage assets included, amongst other sources:

- National Heritage List for England;
- North Lincolnshire HER (report dated 8 June 2020);
- National Library of Scotland for historic Ordnance Survey mapping;
- Light detections and ranging data;
- Archaeology Data Service for information on previous cultural heritage assessments and fieldwork surveys;
- British Geological Survey online;
- Landmark EnviroCheck Report (2020);
- the results of previous archaeological assessment and investigations;
- the results of previous geotechnical investigations; and
- local authority data including conservation area appraisals.

4.15.6. Whilst the Applicant's assessment was desk-based, a site visit walkover survey and visual appraisal of heritage assets within the study area was undertaken in July 2020. This was done to:

- identify known archaeological sites within the Proposed Development site;
- identify historic buildings and related assets including listed buildings, conservation areas and locally listed buildings within the Proposed Development site and its surrounding study area;
- identify areas with the potential to contain any previously unidentified archaeological or historical remains;
- identify and assess the setting of heritage assets within the study area; and
- identify the location, extent and severity of modern ground disturbance and previous construction impacts.

4.15.7. Furthermore, two archaeological evaluation surveys, comprising a geoarchaeological hand auger survey and a geophysical survey were undertaken, with a summary of the results of these surveys presented in Appendix 15A (Cultural Heritage Desk-based Assessment) [APP-093],

with the fieldwork reports for the surveys presented in Appendix 15B [APP-094] and Appendix 15C [APP-095].

4.15.8. Additionally, archaeological trial trenching and geoarchaeological assessment was undertaken, under an agreed WSI, during March/ April 2022 and reported on in Appendix 15D (Interim Report on Archaeological Investigation and Recording) [REP6a-066].

4.15.9. The Applicant notes that the character of the historic landscape differs either side of the Stainforth and Keadby Canal. To the north of the canal, with the construction of the coal fired power station in the 1950s, the construction of Keadby 1 Power Station and the construction of Keadby 2 Power Station, which is nearing completion, the Proposed Development site has a more industrial character. To the south of the canal the Proposed Development site crosses a historic landscape that comprises post-medieval to modern private planned enclosures and modern fields.

4.15.10. As such, the historic landscape character within the Proposed Development site to the north of the Stainforth and Keadby Canal has been assessed as being of low sensitivity to change, whilst the Proposed Development site, south of the Canal, is considered to have a medium sensitivity to change due to its proximity to the Isle of Axholme Area of Special Historic Landscape Interest, which is centred on Epworth, with a northern boundary c.2km south of the proposed PCC site.

4.15.11. In terms of a future baseline and effect on built heritage, two scenarios have been assessed (Keadby 1 Power Station remains (Scenario 1)/ Keadby 1 Power Station removed (Scenario 2)). However, it is considered that the sensitivity (heritage value) of each of the heritage assets would remain unchanged due to the continued presence of Keadby 2 Power Station and Keadby Windfarm and the industrial nature of the existing developments that form part of their setting.

4.15.12. With regard to below ground archaeological remains, the Proposed Development is sited in close proximity to existing Keadby 1 and Keadby 2 Power Stations and their related infrastructure, which reduces the impact of the Proposed Development on below ground archaeological remains. It is also considered to reduce the impact of any new infrastructure in the surrounding landscape and the potential effects of that infrastructure, including in terms of its construction and operation, on below ground archaeology and on the setting of heritage assets.

4.15.13. Likely impacts and effects arising from construction on below ground archaeological remains and built heritage have been considered. In terms of below ground archaeological remains, 13 non-designated ground heritage assets where originally identified as having potential for impact. However, following the archaeological trial trenching and geoarchaeological assessment undertaken in March/ April 2022, four of these were removed. This was due to two being found not to exist, with the other two being identified as modern land drains of no archaeological value. Of the remaining nine the magnitude of impact ranged from no

impact to low, whilst the effect ranged from neutral/ not significant to minor adverse/ not significant.

4.15.14. It should be noted that prior to the March/ April 2022 archaeological trial trenching and geoarchaeological assessment the possible partial enclosure [AECOM3333] was assessed as having a magnitude of impact of high, with an effect of major/ significant. However, following the archaeological trial trenching and geoarchaeological assessment, as reported in the Applicants ES Addendum Volume II Chapters and Appendices [REP6a-066] (See Chapter 15 (Cultural Heritage) and Appendix 15D (Interim Report on Archaeological Investigation and Recording)), the Applicant advised *"the asset forms part of a larger landscape of warping systems and the ground disturbance is likely to result in the removal of a small proportion of the asset. This would result in a slight change to the asset but would not reduce its value. This would constitute a low magnitude of impact. In accordance with the matrix for classifying the significance of effects provided in Table 15.6 of Chapter 15: Cultural Heritage (APP-058), this would result in a minor adverse effect, which is not significant."* (paragraph 15.8.3).

4.15.15. Turning to impacts on built heritage arising from construction, a number of potential impacts to designated and non-designated built heritage assets within the study area were identified. These were as a result of change to their settings during construction. However, many of these impacts were derived from construction-related activities such as noise, lighting and vehicle movements, together with the presence of the Proposed Development within an asset's setting.

4.15.16. A number of assets were scoped out of further assessment in the baseline study due to the lack of potential for impacts resulting from the Proposed Development, with 12 remaining where there was considered potential for impact. Eleven of the 12 had a magnitude of impact ranging from no impact to medium, whilst the effect ranged from neutral/ not significant to minor adverse/ not significant.

4.15.17. The remaining asset is the locally designated Isle of Axholme Area of Special Historic Landscape Interest where the magnitude of impact was identified as low but the effect on its setting was recorded as moderate adverse/ significant.

4.15.18. The Applicant explains this locally designated (ie non-designated) asset is considered to be of high value in that the landscape lies in its historic and archaeological interest as a rare survival of open-field strip-cultivation and turbaries. The setting assessment noted that the proposed PCC site lies c.2km north of the northern extent of the area, where views are available across the flat landscape towards the Proposed Development site. These feature distant views of the existing Keadby 1 Power Station and Keadby Windfarm and the routes of associated pylons.

4.15.19. The assessment of landscape character within the Proposed Development site noted that it is defined as modern derelict industrial land and industrial works, and recently enclosed land. Whilst it was concluded

within the desk-based assessment (Appendix 15A: Cultural Heritage Desk Based Assessment [APP-093]) that this landscape character within the Proposed Development site was of low sensitivity to change, the significance of the Isle of Axholme Area places importance on the Proposed Development site as falling within its setting. The presence of the Proposed Development will perpetuate a form of development in the setting of the Isle of Axholme Area of Special Historic Landscape Interest that is out of character with the defining characteristics of the core area. Nevertheless, the Proposed Development will take place within an area already changed through development of a similar type and scale, which will minimise harm caused through the introduction of this type of development into the landscape.

4.15.20. An additional factor is the proposed A18 junction improvement and new permanent security gatehouse and parking on the access road off the A18. These elements of the Proposed Development will formalise an existing temporary arrangement at that location (associated with Keadby 2 Power Station construction), that brings this out of character development closer, in terms of view, than Keadby 1 and 2 Power Stations. Together with distant views of the Proposed Development, this is considered to result in a low magnitude of impact on the asset through the presence of the Proposed Development within its setting. This results in a moderate adverse effect, which, in the absence of mitigation would be significant.

4.15.21. In terms of operation there would be no additional physical impacts to below ground archaeological remains that could result in effects beyond those that have been assessed for construction impacts, as discussed above. In terms of the two scenarios mentioned above (Keadby 1 Power Station remains (Scenario 1)/ Keadby 1 Power Station removed (Scenario 2)), in the case of Scenario 1 no additional impacts to assets through changes to their setting are predicted as a result of operation of the Proposed Development. In the case of Scenario 2, impacts could include changes to the visibility of the Proposed Development in the setting of heritage assets, where the removal of Keadby 1 Power Station structures potentially opens up new views towards the Proposed Development. Alternatively, the demolition could result in a reduction in the perceived dominance of this type of development within the setting of heritage assets, which could be perceived as a benefit in terms of impact on the Isle of Axholme Area of Special Historic Landscape Interest (a non-designated heritage asset). In the event of Scenario 2 occurring the benefit would reduce the reported magnitude of impact to very low and, bearing in mind the Isle of Axholme Area of Special Historic Landscape Interest is considered to be of high value, this would result in a minor adverse effect which is not significant.

4.15.22. In terms of decommissioning the Applicant considers there would be no additional physical impacts to buried archaeological remains during decommissioning of the Proposed Development, as any impact upon archaeological remains would have been mitigated at the construction phase. There would be temporary impacts to the setting of designated heritage assets during decommissioning, resulting from the use of

machinery to dismantle the plant, but it is not considered that the impacts would be greater than those assessed during construction and operation. Additionally, it is considered that the impact on the setting of the Isle of Axholme Special Historic Landscape Area would not be significant during decommissioning. As such the impacts arising from decommissioning activities would be temporary and the duration would be shorter and no greater than the impacts during construction.

4.15.23. In terms of mitigation, as a result of the additional information submitted pursuant to the archaeological trial trenching and geoarchaeological assessment undertaken in March/ April 2022, the Outline WSI [REP6a-019] has been updated to reflect the current status of the archaeological works.

4.15.24. The Outline WSI provides a summary of the strategy on reporting for the archaeological evaluation works and sets out the potential mitigation strategies that may be required following the results of the final report (York Archaeology, 2022). It has also been subject to review, comment and agreement by NLC's Historic Environment Officer (HEO) prior to submission into Examination at DL6a. No additional mitigation measures are considered to be required for built heritage as a result of the additional information.

4.15.25. Turning to other works that would have an impact on heritage assets, the Applicant notes the Canal and River Trust, which maintains normal water levels for navigational purposes, is proposing modifications to the Keadby Lock, which is a scheduled monument and Grade II listed structure. The modifications would raise the lock gates by 300mm preventing water being lost into the River Trent from the canal. However, Keadby Lock lies outside the proposed Order Limits ([REP6a-067] Figure 3.1) and therefore any proposed alterations to them do not form part of this DCO submission.

4.15.26. As noted in the Applicant's document 'Schedule of Other Consents and Licences' [REP7a-010], a separate consent (Scheduled Monument Consent), under the Ancient Monuments and Archaeological Areas Act 1979, will be made separately by the Canal and River Trust direct to the Department for Digital Culture, Media and Sport for the alterations to the lock gates. This being the case, and so as not to fetter the discretion of the SoS for the Department for Digital Culture, Media and Sport in this regard, I shall not consider this matter any further as part of this report.

4.15.27. In conclusion of the Applicant's case in regard to this matter, it considers Chapter 15 (Cultural Heritage) [APP-058], as added to by the ES Addendum Volume II Chapters and Appendices [REP6a-066] that incorporated the addendum to ES Chapter 15 (Cultural Heritage) and provided Appendix 15D (Interim Report on Archaeological Investigation and Recording), sets out that matters including siting, layout, scale and external appearance are proposed to be secured by an R of the dDCO [REP7a-006]. Additionally, the Applicant highlights the maximum parameters for the gatehouse have been reduced to 4m (Table 3 – ES Addendum Volume I [REP6a-065]) as reflected in the updated

Indicative General Arrangement and Elevations A18 Gatehouse Plans [REP5-009]. Finally, the Applicant considers appropriate mitigation measures will be developed through the detailed design (required pursuant to R5 (Detailed Design)) of the dDCO [REP7a-006]. This will minimise harm to the setting of any built heritage assets.

VIEWS OF INTERESTED PARTIES

4.15.28. HE in its RR [RR-003] confirmed it did not object to the grant of the DCO and that it was in dialogue with the Applicant towards agreeing a SoCG, which was subsequently agreed between the parties and submitted at DL1 [REP1-011]. HE confirmed that it would not look to double up on the role of the NLC archaeologist and would not look to certify the completeness or quality of work done through the SoCG, but simply agree where the material submitted for Examination had addressed the scope of matters highlighted in its advice.

4.15.29. NLC noted the Applicant's assessment of potential effects of the Proposed Development on heritage assets, as set out in ES Chapter 15 [APP-058] and the fact that historic environment data indicates that the construction of the Proposed Development has high potential to impact directly on the known and potential archaeological and palaeo-environmental resource of the application site. NLC advised that the significance of the potential unrecorded archaeology is currently unknown but maybe of high significance.

4.15.30. NLC raised concerns as to the adequacy of the ES in regard to impact on archaeology. It considered archaeological trial trenching to be required to investigate and confirm the findings of the geophysical survey, with the results of these initial evaluation stages confirming the archaeological potential of the proposed areas of development. It also noted that the Applicant's geoarchaeological report made specific recommendations for the further evaluation to confirm the deposit model including test pitting during archaeological trial trenching and a programme of scientific dating to provide the chronology of the stratigraphic sequence and assess the archaeological potential. NLC considered that this should also include coring to sample the deposits for palaeo-environmental indicators that can enhance the archaeological record.

4.15.31. It was considered by NLC that the completion of the field evaluation, prior to the determination of the DCO, was necessary to ensure the identification of any previously unknown remains, and to date and characterise all the heritage assets. As such it stressed the Applicant should commission the second stages of the evaluation, recommended in the HER pre-application advice, as soon as possible. The second stages of the evaluation are set out in paragraph 4.3.36 of this report and are not repeated here to avoid duplication.

4.15.32. Ultimately, NLC advised that the results of the second stages of the evaluation should be used to update the assessment of heritage significance in the EIA and inform the preparation of an appropriate archaeological mitigation strategy, to be set out in a WSI.

4.15.33. In terms of cultural heritage and the dDCO, NLC noted R16 (Archaeology) of the dDCO and pointed out that in its opinion the Outline WSI cannot be agreed as appropriate and adequate as a WSI for archaeological mitigation. It considered amendments to the wording should be considered once the archaeological field evaluation was complete and reported on, and a detailed mitigation strategy had been prepared and agreed with the appropriate bodies.

4.15.34. Finally, NLC noted it is important that any human remains are archaeologically recorded, assessed and analysed, as appropriate, according to the professional standards and guidelines for the excavation of human bones. In this regard NLC noted Article 16 (Removal of Human Remains) of the dDCO [APP-005], as originally submitted.

4.15.35. Keadby with Althorpe Parish Council in its RR [RR-005] raised concerns in regard to landscape and visual impact of a third power station in the area. However, it did not mention any aspect of concern in regard to cultural heritage, including any concerns regarding the Isle of Axholme Area of Special Historic Landscape Interest. Furthermore, in terms of the concerns raised in its RR it never clarified or quantified these and took no further part in the Examination.

4.15.36. No other IPs raised concerns in regard to cultural heritage or the assessments carried out by the Applicant in relation to this matter. Furthermore, no additional concerns arose in terms of cultural heritage from the accepted change request or the Applicant's ES Addendum Volume I (Main Volume) [REP6a-065], ES Addendum Volume II Chapters and Appendices [REP6a-066] or the updated Indicative General Arrangement and Elevations A18 Gatehouse Plans [REP5-009].

EXAMINATION

4.15.37. HE, in the SoCG completed with the Applicant [REP1-011], agreed the approach taken to assess the effects of the Proposed Development on built heritage (including designated and non-designated assets) was appropriate. It also agreed appropriate consideration had been given to all scheduled monuments within the study area and no further specific mitigation, beyond the design and impact avoidance measures set out in ES Chapter 15 (Cultural Heritage) [APP-058], was required.

4.15.38. This SoCG [REP1-011] also confirmed HE deferred matters relating to on-site archaeology to NLC's HEO. However, NLC in its LIR [REP1-022] raised concerns as to the adequacy of the ES in terms of impact on archaeology. As a result of these concerns, I sought further information from both the Applicant and HE under Rule 17 of the EPR [PD-010] on the matter of archaeology.

4.15.39. HE, in its response [REP2-023], expressed its disappointment at the Applicant's approach to archaeology and advised it believed the Applicant should commission the second stages of the evaluation recommended by NLC's HEO, as opposed to dealing with this matter by R (should the DCO be made). Subsequent to HE's comments, the Applicant commissioned

the necessary archaeological works, in consultation with NLC's HEO, and submitted its findings at DL6a, as part of the change request [REP6a-066] that I accepted in my procedural decision/ Rule 17 letter dated 12 May 2022 [PD-020].

4.15.40. NLC's HEO confirmed, in response to my Rule 17 letter dated 12 May 2022 [PD-020], it had reviewed the Outline WSI and found the Applicant's approach to archaeology satisfactory. NLC confirmed *"…the concerns relating to archaeology set out in NLC's Local Impact Report have now been adequately addressed."* NLC also confirmed *"There are no outstanding concerns in this regard."* In the light of these comments and the evidence entered into the Examination, I have no reason to conclude differently in regard to archaeology.

4.15.41. Taking all important and relevant heritage asset matters into account, I have given careful consideration to the impact of the development on heritage assets, especially in relation to the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations) and relevant policy. NPS EN-1 has provided the basis for its consideration, supported by relevant parts of the NPPF and the Local Development Plan.

4.15.42. I recognise the importance of conserving both designated and non-designated heritage assets, however in the present case I am mindful that the Proposed Development will be seen within the existing industrial context with large stacks, industrial buildings and associated pylons already prominent in the skyline. Whilst the Proposed Development will result in the erection of tall structures these would not in my opinion be discernibly or significantly different from those that exist on the site of the existing Keadby 1 and 2 Power Stations.

4.15.43. Whilst the Proposed Development will be visible from designated and non-designated heritage assets, including Keadby Lock, Keadby Bridge, 94 Old Village Street and the Church of St Oswald (Althorpe), the new structures will be seen within the existing industrial context with large stacks, industrial buildings and associated pylons already prominent in the skyline. As such, I consider the Proposed Development will have a neutral to minor adverse (not significant) impact on the designated heritage assets and the majority of non-designated heritage assets.

4.15.44. The exception to this is the moderate adverse/ significant impact that the Proposed Development would have on the non-designated heritage asset of the Isle of Axholme Area of Special Historic Landscape Interest. However, no substantiated concerns were received from any IPs in regard to the magnitude of impact on the asset through the presence of the Proposed Development within its setting, which is considered to be low, or the fact that in the absence of mitigation there would be likely to be a moderate adverse/ significant effect.

4.15.45. In considering the assessment of effects on designated heritage assets it is clear that these range from neutral to minor adverse. As such, the Proposed Development would result in less than substantial harm to the significance of designated heritage assets, albeit minor adverse. This

harm needs to be weighed in terms of the scale of any harm or loss and the significance of any of the designated heritage assets against any public benefits arising from the Proposed Development.

4.15.46. In terms of non-designated heritage assets, as set out in paragraphs 4.15.43 and 4.15.44 of this report, I consider the Proposed Development will have a neutral to minor adverse effect on all but one non-designated heritage asset. Whilst an effect from the Proposed Development on the setting of the landscape character of the Isle of Axholme Special Historic Landscape Area would arise, from perpetuating a form of development that is out of character with the defining characteristics of the core area of the historic landscape, a balanced judgement as to the scale of any harm or loss and the significance on this and other non-designated heritage assets needs to be applied.

4.15.47. In terms of the accepted change request and the Applicant's ES Addendum documents, especially ES Addendum Volume I (Main Volume) [REP6a-065], ES Addendum Volume II Chapters and Appendices [REP6a-066] and the updated Indicative General Arrangement and Elevations A18 Gatehouse Plans [REP5-009], I see no reason to disagree with the conclusions reached within those documents that no changes to the conclusions of the assessment of likely significant residual effects on built heritage will occur, as presented in ES Chapter 15 (Cultural Heritage) [APP-058].

EXA CONCLUSIONS

4.15.48. I have found above that the Applicant has adequately assessed the significance of the heritage assets affected by the Proposed Development and that sufficient information to reach a conclusion on the nature, significance and value of identified designated and non-designated heritage assets, along with sufficient understanding of the contribution that setting makes to their significance and the implications of the Proposed Development for those settings has been submitted so that the extent of the impact can be understood. In my view, the application meets the requirements of NPS EN-1 and draft NPS EN-1 in that regard.

4.15.49. I am clear that the Proposed Development would result in less than substantial harm on designated heritage assets, whilst harm to non-designated heritage assets, especially the non-designated Isle of Axholme Special Historic Landscape Area, would also occur. These harms are weighed against the public benefits of the Proposed Development at section 6.3 of this report, in the planning balance, where I conclude on the cultural heritage effects of the Proposed Development.

4.16. GEOLOGY AND LAND CONTAMINATION

INTRODUCTION

4.16.1. This section addresses the potential impacts and effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development on ground conditions and land quality.

4.16.2. In regard to pollution control and other environmental regulatory regimes NPS EN-1 section 4.10 details that issues relating to discharges or emissions from a proposed project which may affect air quality, land quality and the marine environment, or which include noise and vibration may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes. Before consenting any potentially polluting developments it should be confirmed that:

- the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and
- the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits.

4.16.3. In terms of geological conservation, section 5.3 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… geological conservation importance…".

4.16.4. Paragraph 4.3.4 of NPS EN-1 states *"The applicant should show how the project has taken advantage of opportunities to conserve and enhance … geological conservation interests."*

4.16.5. In addressing land use matters, section 5.10 of NPS EN-1 notes that the reuse of previously developed land for new development can make a major contribution to sustainable development. It also advises that for developments on previously developed land applicants should ensure that they have considered the risk posed by land contamination.

National Planning Policy Framework

4.16.6. The NPPF does not set out policies for NSIPs (see paragraph 5 of the NPPF), but its policies may have relevance to the development of such projects. The NPPF includes policies related to conserving and enhancing the natural environment in section 15 of the NPPF, with paragraph 183 being of specific relevance as it states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities. The NPPF also encourages the use of previously developed land and in this regard paragraphs 119; 120 c); 174 a), e) and f); 175; 184; 185; and 188 are also of relevance.

Local Development Plan

4.16.7. NLCS Chapter 11 concerns the environment and resources and is considered relevant to the Proposed Development, as are saved policies LC1 (SPAs, SACs and Ramsar sites), LC2 (SSSIs and National Nature

Reserves), DS7 (Contaminated Land), DS13 (Groundwater Protection and Land Drainage) and DS15 (Water Resources) of the NLLP.

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4.16.8. Chapter 13 (Geology, Hydrogeology and Land Contamination) [APP-056] of the ES overlaps with Chapter 12 (Water Environment and Flood Risk) [APP-055] of the ES. Chapter 13 [APP-056], together with Appendices 13A (Phase 1 Desk Study Assessment) [APP-087]; 13B (Land Contamination Methodology Tables) [APP-088]; and 13C (Potential Areas of Contamination Further Risk and Impact Assessment) [APP-089], identify the relevant legal and policy context and describes the existing geological and hydrogeological conditions at the site.

4.16.9. Chapter 13 was added to by the ES Addendum Volume II Chapters and Appendices [REP6a-066]. Together they consider the potential geology, hydrogeology and land contamination impacts from the Proposed Development during construction, operation and decommissioning. The ES addendum document considers the effects of the Proposed Development on geology, hydrogeology and land contamination, which arising from the relevant additional information and Proposed Development changes that were submitted during the Examination. The addendum only considers changes in legislation, baseline conditions or potential effects since the submitted ES was prepared.

4.16.10. This chapter [APP-056], as supplemented by ES Addendum Volume II Chapters and Appendices [REP6a-066], sets out the significance criteria and describes the assessment methodology employed. It goes on to assess the likely nature and extent of existing sources of contamination which may be present and the potential impacts to the existing geological and hydrogeological conditions likely to arise as a result of the Proposed Development. It considers the potential risks to people, surrounding land uses, ecological receptors, soils and groundwater and identifies the measures required to ensure that sufficient mitigation is put in place to minimise any significant effects.

4.16.11. The Applicant has identified a number of potential impacts, but stresses the lists related to construction, operation and decommissioning, are not a closed/ limited list. The potential impacts identified for the different life phases of the Proposed Development include:

- Construction, comprising:
    - mobilising existing contamination in soil and groundwater as a result of ground disturbance and potential de-watering during construction;
    - increasing the potential for contaminants in unsaturated soils to leach to groundwater in open excavations during construction;
    - increasing the potential for contaminated surface run-off to migrate to surface water and groundwater receptors as a result of leaching from uncovered stockpiles;
    - introducing new sources of contamination, such as fuels and oils used in construction plant;

- creating preferential pathways for the migration of soil contamination and gases, for example, along new below ground service routes, service ducts and as a result of potential de-watering; and
- introducing new human health receptors such as site staff during construction and post construction;

- operation, comprising:
  - introducing commercial users (workers at the Proposed Development), and development infrastructure as new receptors;
  - contamination which has been encountered having been removed, remediated or mitigated, if required;
  - additional drainage and discharge routes and the potential for polluted surface water run-off and drainage to be directed towards groundwater and surface water receptors with the new drainage system acting as a more efficient pollutant pathway;
  - the potential for impacts arising from leaks/ spills of pollutants to pass directly into the underlying ground/ aquifers, bypassing the drainage system; and
  - reduction in soil erosion through additional hardstanding, improved drainage design and improvement in surface water runoff quality from required onsite surface water attenuation features, which would be incorporated into the layout of the Proposed Development; and

- decommissioning, comprising:
  - mobilising existing contamination in soil and groundwater as a result of ground disturbance during decommissioning;
  - increasing the potential for contaminants in unsaturated soils to leach to groundwater in open excavations during decommissioning;
  - increasing the potential for contaminated surface run-off to migrate to surface water and groundwater receptors as a result of leaching from uncovered stockpiles; and
  - introducing new sources of contamination, such as fuels and oils used in decommissioning plant.

4.16.12. Irrespective of the above, no significant effects were identified by the Applicant in its submission documentation relevant to Geology, Hydrogeology and Land Contamination (ES Chapter 13) [APP-056], including ES Addendum Volume II Chapters and Appendices [REP6a-066], and no additional mitigation, compensation and/ or enhancement measures were considered to be required during the construction, operation or decommissioning phase in order to further reduce the potential impacts and effects from the ground conditions on the Proposed Development site.

4.16.13. Section 13.5, of Chapter 13 (Geology, Hydrogeology and Land Contamination) [APP-056], as supplemented by ES Addendum Volume II Chapters and Appendices [REP6a-066], states ground investigation will be undertaken before construction to inform the development of the preliminary and detailed design. Depending on information gathered

through this ground investigation, monitoring of groundwater and surface water may be recommended before construction commences, during construction works and post-construction.

4.16.14. Rs within the dDCO [APP-005] (current version [REP7a-006]) outline measures to be taken to address any contamination of land, including groundwater at the Proposed Development site and secure the provision of:

- a scheme to deal with the contamination of land, including groundwater, likely to cause significant harm, including a risk assessment, supported by site investigation data, to identify the extent of any contamination and the remedial measures to be taken, together with a materials management plan, which sets out long-term measures with respect to any contaminants remaining on the site;
- a CEMP, which will be prepared prior to the commencement of construction activities. The CEMP will set out the expectations with regards to how works will be delivered, and specific requirements associated with control of soils, sediment and monitoring; and
- a DEMP which would consider potential environmental risks on the Proposed Development site from decommissioning and how those risks can be mitigated.

4.16.15. These measures are secured in R15 (Contaminated Land and Groundwater), R17 (CEMP) and R38 (Decommissioning) of the dDCO [REP7a-006].

4.16.16. The Phase 1 Desk Study Assessment [APP-087] identified the following potential risks:

- Encountering ground contamination due to the Proposed Development being located on a former coal-fired Keadby Power Station (now demolished) and extensive historical landfilling on-site and off-site in close proximity (to the west) of the site.
- Ground gas sources existing from the underlying made ground (depending on its thickness and composition) and from historical landfills.
- The geological stratigraphic sequence beneath the Proposed Development site being likely to comprise made ground, overlying superficial deposits.
- The superficial deposits being classified as a Secondary A aquifer and the solid geology a Secondary B aquifer. Groundwater abstraction is located on-site (not for potable water), and groundwater is likely to be present near surface (1m to 3m below ground level) located within the superficial deposits. This may affect temporary and permanent works.
- Numerous surface watercourses and surface water abstractions (not for potable water) being located on-site and within the study area.
- The Humber Estuary, which is located on the eastern-most extent of the Proposed Development site. This designated Ramsar site, SSSI and SAC extends north and south of the Proposed Development site. Additionally, a number of LWS sites have also been identified within or near to the Order Limits of the Proposed Development site.

4.16.17. Based on the initial conceptual site model and preliminary risk assessment, the Phase 1 Desk Study Assessment [APP-087] considers:

- the risk to human health of current and future on-site occupants in the absence of mitigation is considered to be generally moderate/ low to moderate and a low to moderate/ low risk to the human health of off-site users;
- the risk to groundwater within the superficial deposits and bedrock from contamination is moderate/ low;
- the risk to surface water receptors from contamination is moderate/ low to moderate;
- the risk to the Humber Estuary statutory ecological designations is moderate/ low based on the sensitivity of this designated ecological site; and
- the risks to the non-statutory designated LWS sites are low.

4.16.18. These risk ratings are mainly related to the potential for contamination to be present at elevated concentrations which may pose harm to receptors because of the type of land use (heavy industrial and landfilling) undertaken at the Proposed Development site. However, generally the likelihood of the linkage being realised was mainly assigned as low. In terms of brownfield sites, the overall risk rating of low to moderate is not uncommon. As such, the future design of the Proposed Development will be key to ensuring risk of contamination is appropriately mitigated.

4.16.19. The dDCO [REP7a-006] requires the detailed design of the various Work Nos, Work Nos. 1-10 (inclusive) to be agreed with the relevant planning authority (R5) prior to the commencement of works for that part of the Proposed Development. The DCO also requires:

- a scheme to deal with contamination of land, including groundwater, to be submitted to NLC for its approval, in consultation with the EA (R15); and
- a scheme to deal with piling and penetrative foundations (R30).

Both of these Rs specify the scheme must be submitted to NLC for its approval, in consultation with the EA, with the subsequently approved scheme being carried out in accordance with details approved.

4.16.20. The EA has indicated that the ES provides a satisfactory assessment of the potential pollution risks to surface water and groundwater, including impacts of the Proposed Development on source protection zones during construction and operation of the Proposed Development. It also confirmed:

- the impact avoidance and mitigation measures identified and specified by control measures within R15 (Contaminated land and groundwater) of the dDCO [APP-005] (current version [REP7a-006]) are appropriate; and
- the controls on the method of piled foundations secured by R30 (Piling and penetrative foundation design) of the dDCO [APP-005] (current version [REP7a-006]) are appropriate in relation to protection of controlled waters.

VIEWS OF INTERESTED PARTIES

4.16.21. NLC in its LIR [REP1-022] in regard to land contamination noted the size of the Proposed Development site, as well as its former uses. It also noted a site walkover was undertaken by the Applicant in July 2020 and that a phase 1 assessment, which included a review of previous site reports, had been undertaken in relation to the Proposed Development site and surrounding area. NLC noted:

- based on the current review of all the data, the conceptual site model confirmed that there is a potential risk for contaminants to be present in the ground and in the absence of mitigation:
  - a low to moderate risk to human health of current and future on-site occupants; and
  - a low to moderate/ low risk to the human health of off-site users;
- a moderate/ low risk for contamination to impact the groundwater within the superficial deposits and bedrock, and a moderate/ low to moderate potential risk to surface water receptors;
- a qualitative assessment of the risks posed by land contamination within the study area has been undertaken and a baseline risk score has been produced for each potential risk identified; and
- the recommendation is for a ground investigation to be undertaken before construction to inform the development of the preliminary and detailed design. The ground investigation will be designed to target the potentially contaminative sources identified, including the historical landfilling activities identified on the Proposed Development site. Based on the findings of the investigation, where the risks are deemed to be unacceptable, a further detailed quantitative risk assessment and, if required, detailed remediation strategies will be provided.

4.16.22. NLC confirmed in its LIR that its Environmental Health Officer had considered the phase 1 investigation and its conclusions and found them to be acceptable, subject to the findings of the intrusive site investigation.

4.16.23. The EA in its response to the RR consultation [AS-002] confirmed it was satisfied with the Geology, Hydrogeology and Land Contamination chapter of the ES from a controlled water protection perspective. The EA also confirmed in the SoCG signed with the Applicant [REP5-014] that the ES provides a satisfactory assessment of the potential pollution risks to surface water and groundwater including impacts of the Proposed Development on source protection zones during construction and operation of the Proposed Development. It also confirmed:

- the impact avoidance and mitigation measures identified and specified by control measures within R15 (Contaminated land and groundwater) of the dDCO [APP-005] (current version [REP7a-006]) are appropriate; and
- the controls on the method of piled foundations secured by R30 (Piling and penetrative foundation design) of the dDCO [APP-005] (current

version [REP7a-006]) are appropriate in relation to protection of controlled waters.

4.16.24. The UKHSA in its RR [RR-013] identified a number of inconsistencies in the DCO submission, including in regard to dust and land contamination impacts. However, these matters were satisfactorily addressed during the Examination by the Applicant, and I note that the Applicant completed a SoCG with the UKHSA [REP7-010], submitted at DL7, that confirmed the issues raised by the UKHSA in its RR had been appropriately addressed and there were no matters not agreed between the parties.

4.16.25. No other concerns were raised by IPs in respect of ground conditions or contamination or the assessments carried out by the Applicant in relation to it. Furthermore, no additional concerns arose in terms of geology, hydrology or land contamination from the accepted change request or the Applicant's ES Addendum Volume II Chapters and Appendices [REP6a-066].

EXAMINATION

4.16.26. No significant matters of concern were raised by IPs in RRs and WRs in respect of ground conditions and contamination issues.

4.16.27. A signed SoCG between the Applicant and the EA [REP5-014] confirmed that the ES provides a satisfactory assessment of the potential pollution risks to surface water and groundwater, including impacts of the Proposed Development on source protection zones during construction and operation of the Proposed Development. This was also confirmed in the EA's response to the RR consultation [AS-002] where it confirmed it was satisfied with the Geology, Hydrogeology and Land Contamination chapter of the ES from a controlled water protection perspective.

4.16.28. Within the SoCG completed with the Applicant [REP5-014] the EA also confirmed that the impact avoidance and mitigation measures identified within R15 (Contaminated land and groundwater) of the dDCO [APP-005] (current version [REP7a-006]), that relate to contaminated land and groundwater and unexpected contamination, were appropriate. It also agreed that R30 (Piling and penetrative foundation design) of the dDCO was appropriate as it would control the method of piled foundations in relation to the protection of controlled waters.

4.16.29. The Applicant's completed SoCG with UKHSA [REP7-010] confirmed that the inconsistencies it had identified in its RR [RR-013], including in regard to dust and land contamination impacts, were all satisfactorily addressed during the Examination by the Applicant. It also confirmed that there were no matters not agreed between the parties.

4.16.30. A submitted SoCG, completed between the Applicant and NLC [REP6-005], agreed the assessment of geology, groundwater and land contamination in the ES (Chapter 13) [APP-056] considered the potential effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development, with the desk-based

assessment identifying the potential effects associated with ground conditions using a source-pathway-receptor risk-based approach.

4.16.31. This SoCG [REP6-005] agreed best practice measures would be adopted to minimise pollution risks, including: the adoption of working methods to manage contamination risk to soils, groundwater, surface water; implementation of appropriate pollution incident control plans and procedures; and the safe storage of fuel, oils and equipment. It also agreed an R of the dDCO [APP-005] (current version [REP7a-006]) provides for a scheme to deal with any contamination of land, including groundwater, likely to cause significant harm.

4.16.32. NLC further agreed in the Applicant's completed SoCG with it, that impacts will be managed by appropriate construction mitigation measures (which will be outlined in a final CEMP) and as such adverse effects are not anticipated and have been assessed as not significant. The final CEMP would be secured by R17 (CEMP) of the dDCO [REP7a-006].

4.16.33. No evidence that made me disagree with positions of IPs set out above was submitted during the course of the Examination, including in terms of the accepted change request and the Applicant's ES Addendum documents, especially ES Addendum Volume II Chapters and Appendices [REP6a-066]. Bearing this in mind, I see no reason to disagree with the conclusions reached that no changes to the likely residual effects will result from the Proposed Development Change and the residual effects would remain as reported within section 13.9 of Chapter 13 (Geology, Hydrogeology and Land Contamination) [APP-056] (ie not significant). In the light of the above, I consider the assessment carried out and its conclusions in regard to the Proposed Development are compliant with all relevant legislation and policy requirements in respect of ground conditions and contamination and that relevant matters are adequately provided for and secured in the Applicant's dDCO [REP7a-006].

EXA CONCLUSIONS

4.16.34. I am satisfied that the Proposed Development accords with all relevant legislation and policy requirements in respect of ground conditions and contamination and that relevant matters are adequately provided for and secured in the rDCO, as attached at Appendix C of this report. This includes Rs: 12 (Surface Water Drainage); 13 (Foul Water Drainage); 15 (Contaminated Land and Groundwater); 17 (CEMP); 30 (Piling and Penetrative Foundation Design); and 38 (Decommissioning).

4.16.35. I am also satisfied that the Proposed Development would therefore accord with relevant legislation and policy requirements, including NPS EN-1, other relevant NPSs (NPS EN-2, NPS EN-4 and NPS EN-5), and the draft NPSs (draft NPS EN-1, draft NPS EN-2, draft NPS EN-4 and draft NPS EN-5). Matters relating to ground conditions and contamination are therefore a neutral consideration in the planning balance.

4.17. LANDSCAPE AND VISUAL AMENITY

INTRODUCTION

4.17.1. The Proposed Development site does not lie in any national or regional designation for landscape protection. It falls within an area characterised by open, low-lying, flat landscape with open views. Its immediate locality contains large scale structures and buildings, together with ancillary structures (including overhead electrical cables), which combine to significantly degrade the surrounding rural landscape character. Further details on the site itself and the surrounding area can be found in Chapter 3 of the ES [APP-046].

POLICY CONSIDERATIONS

4.17.2. Paragraph 5.9.1 of NPS EN-1 notes that the landscape and visual effects of energy projects will vary on a case-by-case basis according to the type of development, its location and the landscape setting of the proposed development. Exhaust stacks and their plumes are described as having the most obvious impact on landscape and visual amenity for thermal combustion generating stations. Paragraph 5.9.5 requires the Applicant to carry out a landscape and visual assessment.

4.17.3. NPS EN-1 notes that virtually all nationally significant energy infrastructure projects will have effects on the landscape, and that projects need to take account of the potential impact. Having regard to siting, operational and other relevant constraints, the aim should be to minimise harm, providing reasonable mitigation where possible and appropriate.

4.17.4. Paragraphs 5.9.15 to 5.9.16 of NPS EN-1 state *"The scale of such projects means that they will often be visible within many miles of the site of the proposed infrastructure. The IPC (Infrastructure Planning Commission) should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project." "In reaching a judgment, the IPC should consider whether any adverse impact is temporary, such as during construction, and/or whether any adverse impact on the landscape will be capable of being reversed in a timescale that the IPC considers reasonable."*

4.17.5. NPS EN-1 paragraph 5.9.18 recognises that all proposed energy infrastructure is likely to have visual effects for many visual receptors around proposed sites. As such it is a necessary consideration to judge whether the effects outweigh the benefits of the project.

4.17.6. Paragraph 5.9.22 of NSP EN-1 highlights *"Within a defined site, adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within that site, design including colours and materials, and landscaping schemes, depending on the size and type of the proposed project. Materials and designs of buildings should always be given careful consideration."*

4.17.7. Section 5.10 of NPS EN-1 establishes the requirements for identifying and mitigating impacts of energy infrastructure projects on open space, including green infrastructure. Paragraph 5.10.1 of this NPS recognises

"Given the likely locations of energy infrastructure projects there may be particular effects on open space…", with paragraph 5.10.3 noting *"the re-use of previously developed land for new development can make a major contribution to sustainable development by reducing the amount of countryside and undeveloped greenfield land that needs to be used…"*

4.17.8. In terms of the ES, paragraph 5.10.5 of NPS EN-1 states *"The ES … should identify existing and proposed land uses near the project, any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing. Applicants should also assess any effects of precluding a new development or use proposed in the development plan."*

4.17.9. Turning to mitigation measures, paragraph 5.10.19 recognises *"in the case of much energy infrastructure there may be little that can be done to mitigate the direct effects of an energy project on the existing use of the proposed site (assuming that some at least of that use can still be retained post project construction) applicants should nevertheless seek to minimise these effects and the effects on existing or planned uses near the site by the application of good design principles, including the layout of the project."*

4.17.10. Section 10(3)(b) PA2008 requires the SoS to have regard, in designating an NPS, to the desirability of good design. Section 4.5 of NPS EN-1 sets out the principles of good design that should be applied to all energy infrastructure.

4.17.11. NPS EN-2 at section 2.6 also deals with landscape and visual matters. It recognises that the main structures for a fossil fuel generating plant are large and will have an impact on the surrounding landscape and visual amenity, with the overall size of the development dependent upon technology and design. It also recognises that night-time lighting for continuous operation will also have an impact on visual amenity.

4.17.12. Paragraph 2.6.4 of NPS EN-2 advises an applicant to consider the design of the plant, including the materials to be used, and the visual impact of the stack in the context of the local landscape recognising that it is not possible to eliminate the visual impacts associated with a fossil fuel generating station.

4.17.13. Whilst recognising the above, NPS EN-2 also advises *"Mitigation is therefore to reduce the visual intrusion of the buildings in the landscape and minimise impact on visual amenity as far as reasonably practicable. Applicants should design fossil fuel generating stations with the aim of providing the best fit with the existing local landscape so as to reduce visual impacts. This may include design of buildings to minimise negative aspects of their appearance through decisions in areas such as size, external finish and colour of the plant as far as compliance with engineering and environmental requirements permit."* (paragraph 2.6.5).

4.17.14. In regard to reducing visual impact NPS EN-1 paragraph 2.6.7 states *"Reduction of visual impacts may often involve enclosing buildings at low level as seen from surrounding external viewpoints. This makes the scale of the plant less apparent, and helps conceal the lower level, smaller scale features of the plant. Earth bunds and mounds, tree planting, or both may be used for softening the visual intrusion and may also help to attenuate noise from site activities. Where the existing landscape is more industrial, design may involve other forms of visual impact mitigation."*

4.17.15. However in recognising the statutory and technical requirements which inform plant design, paragraph 2.6.10 of NPS EN-2 states that if the location is appropriate for the project and it has been designed sensitively to minimise harm to landscape and visual amenity, the visibility of a fossil fuel generating station should be given limited weight.

4.17.16. The MPS provides a framework for taking decisions affecting the marine environment, which includes the River Trent at Keadby. Policy SOC3 of the EMP requires proposals that affect the terrestrial or marine character of an area to be avoided, or if that is not possible to mitigate or justify the effects of the works within and adjacent to the marine environment. This policy of the MPS is relevant due to the works proposed adjacent to the River Trent.

4.17.17. The NPPF does not set out policies for NSIPs (see paragraph 5 of the NPPF), but its policies may have relevance to the development of such projects. The NPPF includes policies that ensure developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change. Chapter 15 of the NPPF relates to conserving and enhancing the natural environment, with paragraph 174 being considered to be of specific relevance as it provides assessment criteria and states *"Planning… decisions should contribute to and enhance the natural and local environment…"*

4.17.18. In terms of the Local Development Plan, the NLCS sets out the long term vision for North Lincolnshire to 2026, with the following policies being of relevance:

- Policy CS5 (Delivering Quality Design in North Lincolnshire).
- Policy CS16 (North Lincolnshire's Landscape, Greenspace and Waterscape).

THE APPLICANT'S CASE

4.17.19. Chapter 14 of the ES [APP-057] assesses the landscape and visual effects during all phases of the project based on the maximum extent of the Proposed Development. It identifies the Zone of Theoretical Visibility [APP-134] based on a stack height of 107.6m AOD. The application is also accompanied by a Works Plan (final submitted version being [REP6a-044]) and Indicative Proposed Power and Carbon Capture Layout, Elevations and Sections (final submitted version being [REP6a-047]). R5 of the dDCO includes provision for the submission of

detailed design to be submitted for approval by the local planning authority. This includes position, scale and appearance.

4.17.20. In addition to the above, Chapter 14 (Landscape and Visual Amenity) was added to by the ES Addendum Volume II Chapters and Appendices [REP6a-066], as supplemented by ES Addendum Volume III Figures [REP6a-067]. This chapter considers the landscape and visual amenity impacts arising from the Proposed Development on the surrounding area during construction, operation and decommissioning. The ES addendum document mentioned above considers the landscape and visual amenity impacts arising from the relevant additional information and Proposed Development changes that were submitted during the Examination. The addendum only considers changes in legislation, baseline conditions or potential effects since the submitted ES was prepared.

4.17.21. The Applicant advises a 10km radius study area was determined, through professional judgement, and consultation as to VPs was undertaken with relevant authorities. Based upon the tallest element, being the stack height mentioned above, the Applicant considers it to be highly unlikely that significant effects will be experienced from further than 10km from the boundary of the proposed PCC site.

4.17.22. A total of 13 representative VPs, which the Applicant considers illustrate the typical range of views of the Proposed Development, were submitted with the DCO application. These were agreed with NLC and can be found in Figures 14.6 to 14.18 of the ES [APP-136 to APP-148]. The representative VPs are also described in Table 14.5 of ES Chapter 14 [APP-057].

4.17.23. In addition to the above, a series of photomontages and wireframes were prepared and presented in Figures 14.19 to 11.24 of the ES [APP-149 to APP-154]. However these figures were updated in the ES Addendum Volume III Figures [REP6a-067] and illustrate the likely visibility of the Proposed Development at six of the assessed VPs (VP1 (Chapel Lane West, Keadby); VP2 (Gate Keepers Residence, Vazon Bridge, Keadby); VP4 (Public Right of Way (PRoW) (KEAD9/ KEAD10), north of Keadby); VP5 (PRoW (GUNN179), north-east of Gunness); VP6 (Trunk Road, Keadby); and VP13 (PRoWs (BELT30/ BELT 34), Isle of Axholme)).

4.17.24. The Applicant's assessments consider both the magnitude of impact and the significance of effect during the following life stages of the Proposed Development:

- Construction.
- Operation.
- Decommissioning.

4.17.25. In terms of operation, the Applicant's assessment considered two scenarios. The first being with Keadby 1 Power Station being present (Scenario 1) and the second being with the Keadby 1 Power Station structures not being present (Scenario 2).

4.17.26. During construction, upon opening and during operation (Scenarios 1 and 2) of the Proposed Development, the magnitude of impact from nine of the VP locations is either low (VP5) or very low (VP3 and VP7 to VP13 (inclusive)). The significance of effect on the same VPs, during construction, opening and operation (Scenarios 1 and 2) of the Proposed Development, is shown as negligible adverse (not significant) in regard to VP3 and VP7 and minor adverse (not significant) in regard to VP5 and VP8 to VP13 (inclusive).

4.17.27. In terms of magnitude of impact on the location of VP6, this is low in terms of construction, opening and operation (Scenario 1) and medium in terms of operation (Scenario 2). The significance of effect on VP6 during construction, opening and operation (Scenario 1) is shown to be minor adverse (not significant), with operation (Scenario 2) being moderate adverse (significant).

4.17.28. With regard to the remaining VPs (VPs 1, 2, and 4) the magnitude of impact during construction, opening and operation (Scenarios 1 and 2) is medium, whilst the significance of effect during the same phases of development has been identified as moderate adverse (significant). This is due to a number of factors, which included visibility of cranes during construction, visual effect from increase prominence, massing of built form and visibility of power related structures, etc. However, the Applicant stresses the need to consider these impacts against the existing power related infrastructure in the area including Keadby 2 Power Station currently being commissioned, as well as pylons, overhead lines and other power related infrastructure. Whilst the Applicant recognises the Proposed Development would be prominent from some VPs, it argues that the new structures would not alter the overall balance of the view.

4.17.29. The Applicant considers the main feature of change during construction would be the introduction of tall cranes and piling rigs. Additionally, it highlights there would be infrequent, short-duration and temporary disturbance to the landscape around Keadby village as a result of AIL deliveries to the Proposed Development site arriving at the Waterborne Transport Offloading Area.

4.17.30. Also during construction, the Applicant indicates there would be changes in the aesthetic and perceptual qualities through the movement of plant within close proximity of the Proposed Development site and the introduction of new large-scale structures at various stages of development within the proposed PCC site.

4.17.31. In terms of the change request no new significant construction effects on landscape and visual amenity receptors as a result of the Proposed Development Change are considered to occur in comparison with Chapter 14 (Landscape and Visual Amenity) [APP-057].

4.17.32. In terms of operation the Applicant notes the setting of the Proposed Development site is influenced by large-scale power-related development. In the light of this it anticipates that there is a low

likelihood that the effects will result in an inherent change to the existing landscape character at a local scale and negligible at a regional or national scale.

4.17.33. Overall, the Applicant considers the influence of the Proposed Development will be limited to the localised landscape immediately adjacent to the proposed PCC site. This includes in terms of the proposed change request in regard to the twin absorbers columns/ stacks option, which would result in a marginal increase in massing of tall structures. However, no change in the overall nature of views for identified representative viewpoints, including in relation to any plume, and the Applicant considers there would be no increase in the level of impact on receptors in comparison to the single absorber column/ stack (assessed as worst-case scenario) within ES Chapter 14 (Landscape and Visual Amenity) [APP-057].

4.17.34. As such there would be no change to the level of significance during the operation phase on landscape receptors, visual receptors and dynamic views as a result of the Proposed Development Change in comparison with ES Chapter 14 (Landscape and Visual Amenity) [APP-057].

4.17.35. With regard to decommissioning, using professional judgement, the Applicant considers impacts on landscape character and visual amenity to be similar to those identified at the construction stage. For landscape this is as a result of the scale and nature of the development in relation to the existing industrial structures and complexes present in the wider landscape and the large-scale of the landscape character area. For visual amenity, the Applicant considers this to be as a result of the visibility of decommissioning and demolition activities not being prominent for the majority of VPs as a result of long-distance views and, intervening vegetation. The Applicant does not consider any of these conclusions alter as a result of the accepted change request.

4.17.36. In terms of mitigation and enhancement measures, the Applicant advises opportunities for mitigation of the visual effects of the Proposed Development are limited due to the size and scale of the Proposed Development. It does not consider additional landscape features, such as trees and woodland, would be effective in reducing effects on visual amenity. The Applicant considers an integrated design approach, that considers massing and the disposition of taller structures, would potentially reduce visual impacts of the Proposed Development, as well as final finishes of the buildings and exact sizes of component parts, which are to be secured by an R of the dDCO.

4.17.37. Overall, given the existing presence of large-scale power-related development in close proximity to the Proposed Development site and its congruous nature, the Applicant considers there to be a low potential for impact on the landscape character of the surrounding areas to be affected.

VIEWS OF INTERESTED PARTIES

4.17.38. Keadby with Althorpe Parish Council in its RR [RR-005] raised concerns in regard to landscape and visual impact of a third power station in the area. However, it never clarified or quantified its concerns in this regard. The Applicant submitted a draft SoCG with Keadby with Althorpe Parish Council [REP7-011], which aimed to agree the approach taken by the Applicant to the landscape and visual impact of the Proposed Development, indicating:

- there were open views in the north-west and east towards the Proposed Development site, but there were more restricted views generally from the south and south-west due to existing buildings/ topography;
- photomontages were prepared providing an example of how the Proposed Development (and the Proposed Development changes) may look using maximum proposed heights;
- there are three receptors where effects would be moderate adverse/ significant due to larger structures against the skyline, although the majority of the Proposed Development would not be visible, being VP1, VP2 and VP4; and
- opportunity for mitigation of visual amenity effects is limited due to the size and scale of the Proposed Development and the Proposed Development changes.

4.17.39. Irrespective of the above, this draft SoCG remained incomplete (unsigned and undated) at the close of the Examination and as such I afford it very limited weight.

4.17.40. Denise Steel in her RR [RR-014] raised concerns over the light pollution, especially in terms of its effect on residential amenity, that may result from the Proposed Development during both construction and subsequent stages. The RR suggested landscaping in the form of planting of a double line of trees to interrupt the passage of light across the open countryside towards Amcott should be considered. This concern was repeated at DL5 [REP5-052] in a subsequent representation made by the same IP.

4.17.41. Matters concerning landscape and visual amenity raised by NLC in its LIR are set out in paragraphs 4.3.7 to 4.3.13 of this report. They are not repeated here to avoid duplication. Irrespective of this, it is worth noting that NLC's LIR confirmed it did not consider it feasible to eliminate the visual impacts of the Proposed Development and that as such there would be residual effects in this regard. However, NLC also considered in its LIR that any visual impacts/ residual effects need to be balanced with the fact that this location already supports substantial industrial developments, which contribute significantly to the character of the area.

4.17.42. No other IPs raised concerns in regard to landscape or visual amenity or the assessments carried out by the Applicant in relation to this matter. Furthermore, no additional concerns arose in terms of landscape and visual amenity from the accepted change request or the Applicant's ES Addendum Volume II Chapters and Appendices [REP6a-066], as supplemented by ES Addendum Volume III Figures [REP6a-067].

4.17.43. I undertook two USIs. The first during the day [EV-001] and the second at night [EV-002]. The second USI was undertaken at night in direct response to the RR of Denise Steel [RR-014]. It was undertaken in the dark with a view to observing existing external lighting at both Keadby 1 and Keadby 2 Power Station (Keadby 2 Power Station was under construction at the time of my USI) from VP9 (Meredyke Road, Luddington) and VP10 (Middle Lane, Amcotts). I also took the opportunity to view the Proposed Development site from these VPs at the same time.

4.17.44. In ExQ1 [PD-009], in response to the RR of Denise Steel [RR-014], I asked the Applicant whether tree planting to reduce alleged light pollution was potential mitigation and whether it would interrupt the perceived passage of light (Q1.13.4). The Applicant responded at DL2 in its response to my ExQ1 [REP2-006] by advising it was willing to consider the planting of additional trees on the Proposed Development site in non-operational areas, but pointed out such planting would not be for the purposes of mitigating effects of construction lighting for the Proposed Development in the direction of Amcotts village, as no significant effects are predicted.

4.17.45. I noted the Applicant submitted an Indicative Lighting Strategy [APP-040], submitted as part of the DCO application, and having reviewed that document it is clear that the Applicant has considered design principles and obtrusive light impact avoidance measures in Section 4. I also note that NLC confirmed it considers the potential light impacts from the development will be adequately mitigated, having assessed the Indicative Lighting Strategy [APP-040], through R7 (External Lighting) of the dDCO. Bearing in mind the comments of NLC, having visited VP9 and VP10 at night [EV-002], reviewed the Indicative Lighting Strategy [APP-040] and reviewed R7 (External Lighting] of the rDCO [REP7a-006], I am satisfied that this matter will be adequately controlled through the Rs in the rDCO and that the relevant planning authority would be able to pursue any breach of control should it consider it expedient to do so.

4.17.46. In addition to the USIs mentioned above, I also undertook an ASI following an itinerary [PD-014], as amended by the Applicant's 'Suggested Updates to the ASI Itinerary' [AS-023]. During my USIs and ASI, I visited a number of the representative VPs identified in the ES. These gave me an appreciation of the site, its surrounding agricultural and energy industry context and its relationship within the wider landscape and nearby heritage assets. The ASI ([PD-014], as amended by the Applicant's 'Suggested Updates to the ASI Itinerary' [AS-023]) and USI1 [EV-001] gave me an appreciation of the site during daylight, whilst USI2 [EV-002] gave me an appreciation of the site when viewed from VP9 and VP10 at night, when it was dark. I agree that the VPs in Figures 14.6 to 14.18 of the ES [APP-136 to APP-148] provide representative views of the site.

4.17.47. The ASI also gave me the opportunity to consider the Applicant's indication that at the detailed design stage, where it is reasonably practicable to do so, it would consider the potential for the raising of the CCGT critical operational infrastructure (from no less than 3.6m AOD) up to 4.4m AOD. The potential to raise the CCGT critical operational infrastructure is outlined in the Applicant's ES Chapter 12 (Water Environment and Flood Risk) [APP-055] and FRA (ES Appendix 12A) [AS-010].

4.17.48. Although indicative plans showing the generating station, floor plans, sections and elevations have been submitted [REP6a-047], they are indicative. Irrespective of this, it was clear from my USIs and ASI that the visual impact of the Proposed Development would be as a result of the size and height of the main buildings and from the proposed stacks, both of which would be visible close up and from further afield.

4.17.49. I noted the potential impacts on local and more distant views and landscape character types, but consider that the Proposed Development would be seen in the context of the significant existing industrial, energy-related development, including the adjacent Keadby 1 and Keadby 2 Power Stations, Keadby Windfarm, a NG 400kV substation and electricity pylons and transmission lines.

4.17.50. Whilst moderate adverse effects on visual amenity are predicted at three VPs (four VPs, if operations (Scenario 2) occurs), overall, the potential for harm is relatively low as the new structures will be viewed in its context (ie as a minor additional effect on areas already affected by intrusive structures being set within an area already affected by power stations, pylons and windfarms). The potential for the raising of the CCGT critical operational infrastructure (from no less than 3.6m AOD) up to 4.4m AOD, does not change my opinion in this regard, as I note the marginal increase in height would not be particularly perceptible, bearing in mind the scale, positioning/ location and existing setting of the Proposed Development. I am of the opinion that should this marginal increase in height occur, it would not have any significant effects on the surrounding area in general or the wider landscape, especially in terms of overall height, design, landscape visibility impact, etc.

4.17.51. In terms of the accepted change request and the Applicant's ES Addendum documents, especially ES Addendum Volume II (Chapters and Appendices [REP6a-066] and Volume III Figures [REP6a-067], I see no reason to disagree with the conclusions reached within those documents that the assessment that no changes to the likely residual effects identified in Chapter 14 (Landscape and Visual Amenity) [APP-058] will occur as a result of the change request.

4.17.52. Bearing all of the above in mind, I do not consider the Proposed Development would appear unduly prominent or out of place and the effects of the Proposed Development, in landscape and visual terms, do not outweigh the benefits of the project.

EXA CONCLUSIONS

4.17.53. The assessments of landscape and visual effects of the Proposed Development meet the requirements of NPS EN-1, NPS EN-2, draft NPS EN-1 and draft NPS EN-2. I am satisfied that the Proposed Development is unlikely to have a significant effect on landscape or visual amenity. R5 (Detailed Design) of the rDCO (attached at Appendix C of this report) will ensure that further consideration will be given to the design of the Proposed Development so as to reduce its visual impact, whilst Schedule 11 (Design Parameters) of the rDCO sets out the maximum parameters for key elements of the Proposed Development (Work No. 1A, Work No. 1C, Work No. 1E and Work No. 8B). The visual impact is therefore neutral in the planning balance.

4.18. NOISE AND VIBRATION

INTRODUCTION

4.18.1. This section addresses the potential impacts and effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development arising from noise and vibration.

POLICY CONSIDERATIONS

National Policy Statements

4.18.2. Section 5.11 of NPS EN-1 refers to the Government's policy on noise as set out in the Noise Policy Statement for England, recognising that excessive noise can have impacts on the quality of human life, health, and the use and enjoyment of areas of value and areas with high landscape quality. Noise resulting from a Proposed Development can also have adverse impacts on wildlife and biodiversity.

4.18.3. Factors which will determine noise impact include construction, the operational noise from a development and its characteristics, the proximity of the Proposed Development to noise sensitive premises and the proximity to quiet places and to designated biodiversity sites.

4.18.4. NPS EN-1 at paragraph 5.11.7 says that the Applicant should consult the EA and NE, as necessary and in particular with regard to assessment of noise on protected species or other wildlife. It also advises that the results of any noise surveys and predictions may inform the ecological assessment, but notes the seasonality of potentially affected species in nearby sites may also need to be taken into account.

4.18.5. Paragraph 5.11.8 of NPS EN-1 requires projects to demonstrate good design through the selection of the quietest cost-effective plant available; containment of noise within buildings wherever possible; optimisation of plant layout to minimise noise emissions; and, where possible, utilise landscaping, or noise barriers to reduce noise transmission.

4.18.6. Paragraph 5.11.9 of NPS EN-1 requires that, when determining the application, the SoS should not grant development consent unless satisfied that the proposals will:

- avoid significant adverse impacts on health and quality of life from noise;
- mitigate and minimise other adverse impacts on health and quality of life from noise; and
- where possible, contribute to improvements to health and quality of life through the effective management and control of noise.

4.18.7. NPS EN-2 sets out policy specific to fossil fuel power stations. Paragraph 2.7.1 identifies specific sources of noise that are relevant to the Proposed Development and include the gas and steam turbines that operate continuously during normal operation, whilst paragraph 2.7.2 states *"The ES should include a noise assessment as described in Section 5.11 in EN-1."*

4.18.8. Additionally, this NPS reiterates the point made in NPS EN-1, stating *"The primary mitigation for noise from fossil fuel generating stations is through good design, including enclosure of plant and machinery in noise-reducing buildings wherever possible and to minimise the potential for operations to create noise".* It also notes, at paragraph 2.7.5, *"Noise from gas turbines should be mitigated by attenuation of exhausts to reduce any risk of low-frequency noise transmission."*

National Planning Policy Framework

4.18.9. The NPPF does not set out policies for NSIPs (see paragraph 5 of the NPPF), but its policies may have relevance to the development of such projects. However, paragraph 185 of the NPPF is considered of relevance as it advises that new development should take account of the likely effects of pollution on health, living conditions and the natural environment and in doing so should mitigate and reduce to a minimum adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life.

4.18.10. Another NPPF paragraph of relevance in regard to noise is paragraph 174 e), which states *"Planning… decisions should contribute to and enhance the natural and local environment by… e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of… noise pollution…"*

National Planning Practice Guidance

4.18.11. The NPPG related to noise, which reiterates guidance on noise policy and assessment methods, notes that:

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

Local Development Plan

4.18.12. NLC does not have a specific policy relating to noise, but the NLCS adopted in June 2011 as part of the Local Development Framework has a supplementary planning document related to planning for health and wellbeing (published in November 2016). This supplementary planning document recognises that noise is an issue that can have an effect on physical and mental health and Policy 3 of this document states *"When considering the detail of development, proposals should: Seek to reduce noise and air pollution through ensuring planning applications include a Noise Impact Assessment… in areas of concern."*

THE APPLICANT'S CASE

4.18.13. ES Chapter 9 on Noise and Vibration [APP-052] provides an assessment for the Proposed Development's noise and vibration emissions from construction, operation (including maintenance) and decommissioning of the Proposed Development, and its practical effects. The assessment is supported by:

- Appendix 9A: Construction Noise Assessment Methodology Noise Perception and Terminology [APP-072];
- Appendix 9B: Operational Noise Information [APP-073], as supplemented by [REP6a-066] (see below);
- Figure 9.1: Noise Sensitive Receptors [APP-117];
- Figure 9.2: Main Civil Works Construction Noise Level Predictions [APP-118];
- Figure 9.3a: Operational Noise Level Predictions (Unmitigated Scenario) [APP-119]; and
- Figure 9.3b: Operational Noise Level Predictions (Mitigated Scenario) [APP-120].

4.18.14. The technical appendices [APP-072 and APP-073] provide detailed descriptions of the sensitive human receptors and the methodology for assessing the impacts of construction and operational noise emissions of the Proposed Development.

4.18.15. Additionally, at DL6a an addendum to the ES Volume II (Chapter and Appendices) [REP6a-066] was submitted to update relevant parts of the ES to address the change request. This addendum contains addendums to Chapter 9 (Noise and Vibrations) and Appendix 9B (Operational Noise Information) [REP6a-067].

4.18.16. The COVID-19 outbreak presented challenges in obtaining representative baseline sound levels because typical road, air and rail transport usage was reduced due to travel restrictions and social distancing measures. Other sound sources may also have been affected, such as changes in operating patterns at industrial and commercial premises. Therefore, sound level data from the 2015 and 2016 sound surveys undertaken as part of the Keadby 2 Power Station ES were used to inform the assessments for the Proposed Development. This approach to monitoring was agreed with NLC.

4.18.17. Noise Sensitive Receptor (NSR) locations, considered to be representative of the nearest and potentially most sensitive receptors to

the application site, were identified and the locations of these are shown in ES Figure 9.1 [APP-117]. In order to define existing sound conditions at these receptors, attended and unattended sound measurements were undertaken.

4.18.18. Initial surveys were completed in June, July and August 2015, while Keadby 1 Power Station was not operational (ie background noise), and a further survey was completed in January 2016 while Keadby 1 Power Station was operational (ie ambient noise). The Applicant indicates that the measurement data from those surveys indicate that sound levels were sometimes lower when Keadby 1 Power Station was operational. Due to this, and the likely variable effect of meteorological and other ambient conditions in the area during the 2015 and 2016 surveys, the Applicant used the lower of the ambient and background sound level data obtained in the assessment to provide a conservative approach.

4.18.19. ES Chapter 9 [APP-052] notes that as a construction contractor has not yet been appointed, site-specific details of the construction activities, programme and number and type of construction plant are not yet available. Therefore, detailed construction noise predictions at specific NSRs have not been undertaken. Rather, indicative construction noise predictions have been adopted using calculation methods set out in BS 5228:2009+A1:2014 (Code of practice for noise and vibration control on construction and open sites (BSI, 2014)), based on construction information from other power station projects, including those undertaken by the Applicant. In addition, indicative calculations have been undertaken for works associated with the gas connection, electrical connection and water connection corridors.

4.18.20. Bearing the above in mind, representative baseline sound levels were determined and are set out in Table 9.15 in the ES Chapter 9 [APP-052]. The minimum representative levels taken from across the survey sites for background sound levels are as follows:

- Summer 2015 survey without Keadby 1 Power Station operating:
  - Day - ranging between 35 dB $L_{Af90,\ 15min}$ and 37 dB $L_{Af90,\ 15min}$.
  - Night - ranging between 30 dB $L_{Af90,\ 15min}$ and 36 dB $L_{Af90,\ 15min}$.
- January 2016 survey with Keadby 1 Power Station operating:
  - Day - 39 dB $L_{Af90,\ 15min}$ (there was no range variation between the different NSRs).
  - Night - ranging between 38 dB $L_{Af90,\ 15min}$ and 40 dB $L_{Af90,\ 15min}$.

The minimum representative levels taken from across the survey sites for representative future background sound levels (ambient sound levels) are as follows:

- Day - ranging between 35 dB $L_{A90,T}$ and 50 dB $L_{A90,T}$.
- Night - ranging between 30 dB $L_{A90,T}$ and 47 dB $L_{A90,T}$.

4.18.21. In terms of the survey sites for representative future background sound levels given above, it should be noted that the noise sensitive receptor

NSR9 (Ealand Poultry Farm), which had the lowest night-time representative future background sound level (30 dB $L_{A90,T}$), is a predicted value, as shown in Table 9.29 of Chapter 9 of the ES [APP-052]. This is due to the Keadby 2 Power Station specific sound levels for that specific NSR not being available in the Keadby 2 Power Station ES. The predicted values presented in the table for NSR9 (Ealand Poultry Farm) is from the remodelling of Keadby 2 Power Station in-situ.

4.18.22. The Applicant's preferred approach for controlling construction noise and vibration is to reduce levels at source, where reasonably practicable. It proposes to mitigate noise during the construction in order to minimise impacts at local NSR and ecological receptors, particularly with respect to activities required outside of core working hours. The mitigation (to be included in the final CEMP) and as outlined in the Framework CEMP [REP6-003] is set out in paragraph 9.5.2 to 9.5.11 of Chapter 9 of the ES [APP-052]. The mitigation listed is extensive, appropriate and, as noted in the paragraphs, not exhaustive.

4.18.23. In terms of operation, the worst-case scenario, as detailed in Table 9.32 (Night-time BS4142 assessment without additional mitigation) of Chapter 9 of the ES [APP-052] produces a range of impact magnitudes from very low, at NSR1 (Vazon Bridge), to high at NSR7 (Keadby Grange) and NSR11 (North Moor Farm). These result in effects between negligible/ minor adverse (not significant) to major adverse (significant). However, the Applicant argues a consideration of context must be applied, bearing in mind Keadby 1 Power Station being a continuously operating industrial source since 1996 and background sound levels measured for the Keadby 2 Power Station ES (whilst Keadby 1 Power Station was operational) demonstrated that noise levels were 2-4 dB higher in the daytime and 2-8 dB higher at night.

4.18.24. The Applicant considers this is likely to mean that residents at all NSRs are already accustomed to an industrial sound source. Additionally, as Keadby 2 Power Station will be operational before the Proposed Development and will potentially operate at the same times as the Proposed Development, it is reasonable to assume that local residents may become further accustomed to an industrial sound source before the Proposed Development is operational.

4.18.25. Table 9.33 (Comparison of night-time ambient sound levels without additional mitigation) of Chapter 9 [APP-052] of the ES shows ambient sound levels vary in range from +2 dB (NSR1, NSR1A and NSA5-9 (inclusive)) to +7 DB (NSR7 and NSR10). NSR3 and NSR9 show the ambient sound level to vary by +3 dB, whilst the ambient sound level to NSR4 varies by +4 dB and NSRs 2 and 8 vary by +5 dB. The predicted ambient levels, with Keadby 2 Power Station in operation, are above the guideline external value at some of the NSRs, whilst minor increase in ambient sound levels occur at others. This is below the level of change in sound level that would be just perceptible under normal environmental conditions.

4.18.26. Based on the worst-case results (see Table 9.31 and Table 9.32 of Chapter 9 of the ES [APP-052]) mitigation would be required to achieve operational sound levels at the NLC criteria and below the Significant Observed Adverse Effect Level (SOAEL) and Lowest Observable Adverse Effect Level (LOAEL) at the following NSRs:

- NSR 2, NSR 3, NSR 4, NSR 7, NSR 8, NSR 9 and NSR 10 during the daytime.
- NSR 1A, NSR 2, NSR 3, NSR 4, NSR 5, NSR 6, NSR 7, NSR 8, NSR 9 and NSR 10 during the night-time.

4.18.27. Measures would therefore need to be put in place to control or restrict activities during evenings/ night-time so as not to exceed the SOAEL or relevant noise limit at locations to be agreed with NLC.

4.18.28. With regard to construction traffic noise, the Transport and Traffic chapter of the ES (Chapter 10) [APP-053], together with Appendix 10A (Transport Assessment) [APP-074], set out the forecast construction traffic associated with the Proposed Development. The Transport and Traffic Chapter of the ES (Chapter 10) [APP-053] also notes that access to the Proposed Development site, during both construction and operation, will be via the existing access roads off the A18, which is currently used by construction vehicles associated with the Keadby 2 Power Station. It confirms the HGV traffic route for construction vehicles will be via the M180 Junction 2, the A18 and then the A161 and that construction deliveries will not be undertaken outside of core working hours, unless agreed with the local planning authority on a case-by-case basis.

4.18.29. Furthermore, in terms of changes in road traffic noise, the Applicant's ES Chapter 9 [APP-052] predicts a sound level increase of 0.1 dB on the A18 Station Road (west of Keadby Bridge), 0.4 dB on the A18 (west of Proposed Development site access) and 0.5 dB on the A161 (between A18 and M180 Junction 2) during construction. This will result in a negligible effect (not significant) on NSRs located along or close to the proposed construction traffic route. The resulting increase in noise levels from construction traffic would therefore fall below the LOAEL at all selected NSRs.

4.18.30. In respect of vibration effects, ES Chapter 9 [APP-052] notes the Proposed Development site connects to the River Trent at a location where construction impacts could have a substantive but temporary effect on the ability of migratory fish species to access breeding habitats in the wider River Trent catchment as a whole, and to return to the Humber Estuary from these habitats.

4.18.31. The most likely potential mechanisms for such an impact are through either direct barriers to lamprey movement from any cofferdam, or indirect barriers to movement from noise and vibration disturbance (eg during piling operations).

4.18.32. The Applicant confirms its commitment to mitigate the impacts of piling noise and vibration on ecological receptors, including designated

European sites (SPA/ Ramsar/ SSSI, etc). It proposes restricting piling to a limited period/ times and to use soft-start (or similar) at the commencement of piling activity. Such restrictions would also mean that residential NSRs would be similarly unaffected outside of these core working hours by piling activities.

4.18.33. Mitigation through the provision of a Fish Management Plan, secured by the Framework CEMP [REP6-003], would mean that significant adverse effects on fish are unlikely as a result of direct and indirect barriers to migratory movements. Additionally appropriate sensitive timings and construction working hours for any cofferdam installation and removal, if required, in the River Trent is proposed and would be secured by R17 (CEMP) of the dDCO.

4.18.34. In terms of adverse effects on ecological receptors arising as a result of vibration from piling works, it has been agreed with NE that the impact of such piling works can be adequately mitigated through restrictions on when such activities can take place and their duration.

4.18.35. The control of construction noise and vibration is proposed to be secured by a R28 (Control of noise and vibration – construction) of the dDCO [APP-005] (current version [REP7a-006]).

4.18.36. In terms of decommissioning, the nature of such works are anticipated to be similar to, or less than, that of the construction works for the Proposed Development and are considered to be not significant for the proposed PCC site or electrical connections during day-time working. However, up to major adverse (significant) effects may result from the temporary works required to decommission plant and equipment within the water connection corridor during the daytime at NSR4, as any effect will primarily relate to the short distance to the river water abstraction option where works may be required. This means there is potential for short term significant effects of water connection corridor decommissioning works, in the absence of mitigation.

4.18.37. Therefore decommissioning would require submission of a DEMP to the relevant planning authority for its approval, and this is secured by a R38 (decommissioning) of the dDCO [APP-005] (current version [REP7a-006]).

4.18.38. In terms of the change request, the Applicant states, in its ES Addendum Volume II Chapters and Appendices [REP6a-066], the residual effects would remain as reported within section 9.9 of Chapter 9 (Noise and Vibration (ie not significant) on the basis that mitigation is employed such that the BS 5228 ABC noise limits (predicted construction noise levels assessed against criteria derived using the 'ABC Method' as described in Section E.3.2 of BS5228) are met, and the section 9.5 mitigation guidance is followed. It also advises there is no change to the conclusions of the noise and vibration effects of the Proposed Development being not significant, as presented in Chapter 9 (Noise and Vibration) [APP-052].

VIEWS OF INTERESTED PARTIES

4.18.39. NLC in its LIR [REP1-022] stated it had assessed the submitted information concerning the assessment of potential effects of the Proposed Development in respect of noise and vibration, both during construction, operation (including maintenance) and decommissioning of the Proposed Development. It confirmed it was satisfied with the information contained in the ES in this regard and that the comments it had made on the preliminary ES, submitted in 2020, were addressed with the report being updated accordingly.

4.18.40. Irrespective of this, NLC highlighted that in terms of core construction working hours and HGV deliveries its Environmental Health Department typically recommend that construction operations are undertaken Monday to Friday (except bank holidays) between the hours 08:00 to 18:00 and Saturday 08:00 to 13:00. It advised this is in line with other local authorities and to protect the amenity of those living in the vicinity.

4.18.41. The MMO in its RR [RR-006] sought clarity regarding the ES in terms of the impact of the Proposed Development resulting from underwater sound effects on fish, especially from noise and vibrations arising from any piling and the construction etc of any cofferdams.

4.18.42. NE in its RR [RR-010] sought further information to assess the following impact pathways:

- Disruption of river and sea lamprey migration routes due to cofferdam installation, including from noise and vibration impacts.
- Noise and vibratory disturbance to SPA/ Ramsar birds during construction and operation.

4.18.43. NE stated:

- it was not satisfied that it can be excluded beyond reasonable scientific doubt that the project would not have an adverse effect on the integrity of the Humber Estuary SAC and the Humber Estuary SPA and Ramsar; nor that the criteria for derogating from the Habitats Regulations are fulfilled;
- it was not satisfied that the project is not likely to damage features of interest of the Humber Estuary SSSI; and
- many of the measures to reduce the impact on the above-mentioned designated site would constitute mitigation, so there would be a need for the HRA to proceed to AA and advise no adverse effect, rather than no LSE. It also considered that many of the mitigation measures proposed should be secured within the DCO.

4.18.44. NE advised failure to reach agreement with the Applicant on the matters it had highlighted in its RR would mean the ExA would be required to consider them further in its consideration of the application. However, it also stated that in its opinion, all the matters it had set out in its RR were capable of being overcome.

4.18.45. The MMO, in its RR [RR-006], whilst focusing on the content of the dDCO and DML, also sought clarity regarding the ES in regard to, amongst other matters, the underwater sound effects on fish, especially from noise and vibrations arising from any piling and the construction etc of any cofferdams.

4.18.46. The Canal and River Trust in its response to the RR consultation [AS-001] commented on, amongst other matters, the proposed abstraction from the Stainforth and Keadby Canal (Work No. 4A) and impacts of the proposed works on the biodiversity of the canal.

4.18.47. No other IPs raised concerns in regard to noise and vibration or the assessments carried out by the Applicant in relation to this matter. Furthermore, no additional concerns arose in terms of noise and vibration from the accepted change request or the Applicant's ES Addendum Volume II Chapters and Appendices [REP6a-066].

EXAMINATION

4.18.48. To avoid duplication of considerations, the matters raised by NE, the Canal and River Trust and the MMO, as outlined in paragraphs 4.18.42 to 4.18.44 (NE), paragraphs 4.18.41 and 4.18.45 (MMO) and paragraph 4.18.46 (Canal and River Trust) of this report are considered in the Biodiversity and Nature Conservation section of this report (section 4.13) and in Chapters 5 and 6 of this report.

4.18.49. In ExQ1 [PD-009] and ExQ2 [PD-016] I asked a number of questions related to noise and vibration, to which the Applicant adequately responded [REP2-006 and REP6-016].

4.18.50. The SoCG completed between the Applicant and NLC [REP6-005] agreed NLC was satisfied with the information contained in the ES in regarding noise and vibration, both during construction, operation (including maintenance) and decommissioning of the Proposed Development. Whilst NLC highlighted its preferred core construction working hours and HGV deliveries, it confirmed in its response to my ExQ2 [REP6-030] (Q2.16.4) that:

- it acknowledged that on such a large and first-of-a-kind construction programme additional restriction of construction hours could significantly extend the construction period. This could delay the delivery of the nationally significant infrastructure proposed and could also result in additional amenity impacts due to the extended construction period;
- the construction hours proposed do not exceed those that were imposed upon the Keadby 2 Section 36 Consent and that they align with other similar projects. The construction of the Keadby 2 Power Station has been well managed and has not generated complaints to the local authority; and
- the Applicant has satisfactorily clarified the types and nature of activities to be undertaken in the start-up and shut-down periods, which will not be intrusive.

4.18.51. The Applicant confirms in ES Chapter 9 (Noise and Vibration) [APP-052] that its assessment was undertaken on the assumption that operational noise of a tonal, impulsive or intermittent nature, would be designed out of the Proposed Development during the detailed design phase. It states this would be done by the selection of appropriate plant, building cladding, louvres and silencers/ attenuators, as necessary.

4.18.52. I find no reasons from the evidence entered into the Examination to disagree with the Applicant, NLC or any other IP, in regard to matters concerning noise and vibration. This includes when the Proposed Development is in operation as a whole (ie with the new CCUS technologies operating), which will be mitigated during the detailed design stage and suitably controlled as a result of R29 (Control of noise – operation) in the DCO.

4.18.53. In addition to the above, I find ES Chapter 9 (Noise and Vibration) [APP-052], including its appendices and figures (Appendix 9A (Construction Noise Assessment Methodology) [APP-072]; Appendix 9B (Operational Noise Information) [APP-073]; Figure 9.1 (Noise Sensitive Receptors) [APP-117]; Figure 9.2 (Main Civil Works Construction Noise Level Predictions) [APP-118]; Figure 9.3a (Operational Noise Level Predictions (Unmitigated Scenario)) [APP-119]; Figure 9.3b (Operational Noise Level Predictions (Mitigated Scenario)) [APP-120]; the Addendums to the ES Volume II (Chapter and Appendices) [REP6a-066], which contains addendums to Chapter 9 (Noise and Vibrations); and Appendix 9B (Operational Noise Information) [REP6a-067]) to be robust and sound.

4.18.54. I consider the layout of the Proposed Development, together with the illustrative details of position, scale and appearance, are appropriate to the nature of the development proposed and, subject to R5 (Detailed Design), will secure good design, minimise noise emissions and reduce noise transmission.

4.18.55. I am also of the opinion that the assessments undertaken in regard to noise and vibration are considered appropriate for the scale, nature and location of the Proposed Development and makes appropriate recommendations for mitigation, which include: R17 (CEMP); R27 (Construction hours); R28 (Control of noise and vibration – construction); R29 (Control of noise – operation); R30 (Piling and penetrative foundation design); R38 (Decommissioning); and Schedule 13 (DML), Part 3, Conditions: 10 (Marine Method Statement); 18 (Piling – Type used); and 19 (Piling – Periods when to be undertaken and hours of operation) of the dDCO (current version [REP7a-006]).

4.18.56. However, in the absence of an EP specific to the Proposed Development, I consider that it is appropriate to control the gross output capacity of the proposed power station being limited to 910 MW at ISO standard reference conditions. I am satisfied that this is adequately achieved in Schedule 1 (Authorised Development) of the rDCO, which specifies that the carbon capture enabled electricity generating station subject to the

DCO (if made) would have a gross output capacity of up to 910 MW at ISO standard reference conditions.

4.18.57. Subject to the above, I am satisfied that the Proposed Development will avoid significant adverse impacts on health and quality of life from noise and vibration, and mitigate and minimise other adverse impacts on health and quality of life from noise and vibration.

EXA CONCLUSIONS

4.18.58. Given the evidence presented, I am satisfied that the assessments undertaken in regard to noise and vibration are appropriate for the scale, nature and location of the Proposed Development and make appropriate recommendations for mitigation that would be secured in the rDCO, attached at Appendix C, by virtue of the specification of authorised development as set out in Schedule 1; the Rs detailed above and secured in Schedule 2; and the conditions attached to the DML, as set out in Schedule 13, Part 3. I consider that noise and vibration issues have been addressed adequately and meet the requirements specified in section 5.11 of NPS EN-1, as well as NPS EN-2, draft NPS EN-1 and draft NPS EN-2. This aspect is neutral in the planning balance.

4.19. SOCIO-ECONOMIC EFFECTS

INTRODUCTION

4.19.1. This section addresses the potential impacts and effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development arising from socio-economic effects, including in regard to human health.

POLICY CONSIDERATIONS

4.19.2. NPS EN-1 identifies that information on the likely significant social and economic effects of the development should be set out alongside how any likely significant negative effects would be avoided or mitigated. It notes impacts at local or regional levels and cumulative effects should be considered.

4.19.3. In terms of general points, paragraph 4.1.3 of NPS EN-1 requires the decision-maker to take into account the proposed development's potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits.

4.19.4. Section 5.12 of NPS EN-1 notes that the assessment of a project should consider all relevant socio-economic impacts including the creation of jobs and training opportunities, provision of additional local services and local infrastructure, effects on tourism, influx of workers and cumulative effects with other projects in the vicinity. Mitigation measures to address adverse effects should be considered.

4.19.5. Paragraph 4.13.2 of NPS EN-1 sets out that where the proposed project has an effect on human beings, the ES should assess these effects for

each element of the project, identifying any adverse health impacts, and identifying measures to avoid, reduce or compensate for these impacts as appropriate. Paragraph 4.13.3 recognises that direct impacts on health may include increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation, and increases in pests.

4.19.6. Paragraph 4.13.5 of NPS EN-1 states that generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which will constitute effective mitigation of them, so that it is unlikely that health concerns will either constitute a reason to refuse consent or require specific mitigation under PA2008. However, account should be taken of health concerns when setting requirements relating to a range of impacts such as noise.

4.19.7. NPS EN-5 contains guidance on the assessment of the effects of electromagnetic fields (EMF) with reference to the guidelines on exposure of people to EMFs published by the International Commission on Non-Ionizing Radiation Protection.

4.19.8. The EWP: Powering our net zero future (2020) sets out a ten-point plan to help the UK be at the forefront of net zero. The EWP has a strong socio-economic component included, linking to the green industrial revolution. Some of the relevant matters included in the EWP are set out in paragraph 4.14.13 of this report, but are not repeated here in order to avoid duplication.

Marine Policy Statement/ Marine Plans

4.19.9. The MPS provides a framework for taking decisions affecting the marine environment, which includes the River Trent at Keadby. Objectives 1, 2, 3 and 9, as well as Policies EC1, EC2, CC1 and CC2 of the EMP document are relevant considerations as:

- Objective 1 seeks to promote the sustainable development of economically productive activities, taking account of spatial requirements of other activities of importance to the EMP;
- Objective 2 seeks to support activities that create employment at all skill levels, taking account of the spatial and other requirements of activities in the EMP areas;
- Objective 3 seeks to realise sustainably the potential of renewable energy helping to achieve the UK's energy security and carbon reduction objectives;
- Objective 9 seeks to facilitate action on climate change adaptation and mitigation in the EMP areas;
- Policy EC1 states proposals that provide economic productivity benefits which are additional to GVA currently generated by existing activities should be supported;
- Policy EC2 states proposals that provide additional employment benefits should be supported, particularly where these benefits have

the potential to meet employment needs in localities close to the marine plan areas;

- Policy CC1 states proposals should take account of how they may be impacted upon by, and respond to, climate change over their lifetime and how they may impact upon any climate change adaptation measures elsewhere during their lifetime and where detrimental impacts on climate change adaptation measures are identified, evidence should be provided as to how the proposal will reduce such impacts; and
- Policy CC2 states proposals for development should minimise emissions of GHG as far as is appropriate. Mitigation measures will also be encouraged where emissions remain following minimising steps. Consideration should also be given to emissions from other activities or users affected by the proposal.

4.19.10. These objectives and policies of the are relevant due to the works proposed adjacent to the River Trent.

National Planning Policy Framework

4.19.11. The NPPF does not directly apply to NSIPs but may be important and relevant to decision making. The NPPF requires local authorities to set out a clear economic vision and strategy for their area which encourages sustainable economic growth. It states that planning policies should help create the conditions in which businesses can invest, expand and adapt. Paragraph 8 of the NPPF states that to achieve sustainable development and support a competitive economy, the following economic objective should be delivered *"ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure."*

4.19.12. Paragraph 83 is also considered to be of relevance as it states that planning policies should *"recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations."*

4.19.13. Additionally, paragraph 152 states that *"the planning system should support the transition to a low carbon future in a changing climate… and support renewable and low carbon energy and associated infrastructure"* and is considered to be relevant to the Proposed Development.

Local Development Plan

4.19.14. The NLCS (2011) was adopted as part of the Local Development Framework. It notes the role of carbon capture in the area recognising, at paragraph 1.6, *"The emerging technology of carbon capture and storage - pumping CO2 from heavy industry and power generation to disused gas wells under the southern North Sea, will also be important, particularly given the presence of the steel, power generation and petrochemicals industries within and adjacent to the area."*

THE APPLICANT'S CASE

4.19.15. ES Chapter 16 [APP-059] assesses the socio-economic effects of the Proposed Development during construction, operation and decommissioning, whilst ES Appendix 16A (Population and Health Signposting) [APP-096] addresses effects on human health.

Socio-economic effects

4.19.16. The assessment considers the role of the Proposed Development in the generation of direct and indirect employment opportunities at the local and regional level during its construction and operation, including periods of maintenance and decommissioning, and how this would impact on the economic prosperity of the area. Where possible, socio-economic impacts have been appraised against relevant national standards. Where these do not exist professional experience and judgement have been applied.

4.19.17. The Office of National Statistics statistical geographies have been used to define the study area for the socio-economic assessment. The Proposed Development falls within a Lower Super Output Area (LSOA) North Lincolnshire 006C (Direct Impact Area); one of many small geographic areas defined by the Office of National Statistics. As well as understanding the socio-economic conditions immediately surrounding the Proposed Development site (as per the LSOA analysis), the socio-economic assessment also takes into account the principal labour market catchment area of the Travel to Work Area (TTWA). TTWAs contain at least 75% of the area's workforce that both live and work in the area. The Proposed Development site falls within the Scunthorpe TTWA (the Wider Impact Area).

4.19.18. The assessment outlines the socio-economic context of both the Direct Impact Area and the Wider Impact Area (together being the Study Area) and makes comparisons to the whole of England. Key indicators include population and labour force; skills and unemployment; and industry and the economy.

4.19.19. ES Chapter 16 [APP-059] sets out that at the peak of construction the Proposed Development would create approximately 1,076 jobs, when applying the displacement and multiplier effect. On a worst scenario basis 50% (some 538) workers in those jobs would be from within the Scunthorpe TTWA, across a wide range of sectors and skills. Additionally, the direct expenditure involved in the construction phase would lead to increased output generated in the Scunthorpe TTWA economy. It is considered that the employment created by the construction phase of the Proposed Development would have a major beneficial short-term (significant) effect on the Scunthorpe TTWA's economy.

4.19.20. The Applicant indicates that it proposes to provide an employment, skills and training development programme to help local residents and unemployed workers into roles at the Proposed Development. The skills and employment programme is secured by R37 (Employment, Skills and Training Plan) of the dDCO [REP7a-006], which seeks a plan detailing

arrangements to promote and monitor employment, skills and training development opportunities for residents of the borough of North Lincolnshire during construction and employment opportunities during operation of the authorised development.

4.19.21. During the operational phase of the Proposed Development, taking account of job leakage, displacement and the multiplier effect, it is estimated that the total net employment for the operational element of the Proposed Development will be up to 58 employees, of which 50 are predicted to be from the Scunthorpe TTWA.

4.19.22. Taking into account the existing overall size of the labour pool in the Scunthorpe TTWA, the magnitude of impact is considered to be medium during the operational phase due to the job creation for the local area. However, the sensitivity is assessed as low; therefore, the direct, indirect and induced employment created by the operational phase of the Proposed Development is likely to have a minor beneficial long-term (not significant) effect on the Scunthorpe TTWA economy.

4.19.23. The workforce employed to decommission the Proposed Development would have a minor, not significant, beneficial effect on the economy. This would arise from them spending their wages in the same way as those employed in the other stages of the Proposed Development.

4.19.24. Overall, the Applicant concludes the creation of construction employment during the construction period is considered to be a beneficial effect of the Proposed Development and is considered a major (significant) beneficial effect on the local area. No significant adverse effects have been identified by the Applicant.

Human health

4.19.25. ES Appendix 16A (Population and Health Signposting) [APP-096] provides an overview, highlighting key aspects of the technical assessments completed and presented elsewhere in the ES that are relevant to human health. It also includes baseline health-related data to inform the overall conclusions of the chapter, and presents information on potential EMF health effects from electricity cables and substations associated with the Proposed Development.

4.19.26. The technical assessments presented elsewhere in the ES include assessments relating to air quality, traffic and transport, noise and vibration, flood risk and water quality, ground conditions and contamination, landscape and visual amenity and socio-economics.

4.19.27. ES Appendix 16A [APP-096] concludes that, in most cases, there would be no significant effects during the construction, operation or decommissioning of the Proposed Development, particularly following impact avoidance and mitigation secured through Rs in the dDCO.

4.19.28. It also addresses effects of EMF on human health, recognising that there are potential health impacts associated with electrical and magnetic fields around substations and the connecting cables and power lines.

4.19.29. The Proposed Development will be exported into the NGET system, connecting to an existing National Grid 400kV substation via an overground (not overhead) or underground connection (immediately east of the proposed PCC site). Additionally, a connection to an existing 132kV Northern Powergrid substation forms part of the proposal with electrical cables being laid underground to connect the proposed PCC site with the 132kV Northern Powergrid substation on Chapel Lane.

4.19.30. In terms of the 400kV connection, the National Grid 400kV substation already exists and its perimeter wall is located circa 400m from the closest residential receptor (Roe Farm). However, the assessment concludes there will be no new EMF effects at this receptor associated with the Proposed Development because the substation will not be extended beyond its existing boundary. As such the existing National Grid 400kV substation was scoped out of the assessment.

4.19.31. The 132kV Northern Powergrid substation is located circa 210m from the closest residential receptors, Hawthorne and Holly House, on Chapel Lane. However, the assessment concludes that there will be no new EMF effects associated with its use and has scoped the 132kV Northern Powergrid substation out of the assessment.

4.19.32. In relation to the new sections of underground or overground (but not overhead) cables that may connect into the existing National Grid 400kV substation or the local distribution network off-site, a conservative approach was adopted with a study area in respect of underground cables being set at a 50m linear distance from the centreline of the cables. As there are no residential receptors within 50m of any potential EMF source, the Applicant considers there to be no LSEs anticipated in relation to EMF for any residential receptors.

4.19.33. Potential EMF effects are not predicted to arise during the construction or decommissioning phases of the Proposed Development since electrical currents would not flow through cables during their installation or removal and therefore direct and indirect effects would be avoided. Measures will be implemented to protect construction workers from any potential EMF effects associated with existing infrastructure at the Proposed Development site.

VIEWS OF INTERESTED PARTIES

4.19.34. NLC in its LIR [REP1-022] advised it had assessed ES Chapter 16 (Socio-economics) [APP-059] and confirmed it is satisfied that the approach to the assessment is robust. NLC stated from previous delivery of large-scale projects in the area it agrees that it is realistic that there will be a major short-term positive impact on employment created during the employment phase of the development.

4.19.35. Irrespective of this NLC recognises that these will be temporary jobs, with a proportion of these jobs being drawn from outside of the local area, and the operational jobs created, although much lower in numbers, will have a minor positive long-term impact on the area. NLC considers

that both temporary and permanent jobs generated by the development will result in additional spend to the area through accommodation, leisure use and local shops/ services as well as the potential for additional work given to local supply chain companies, but notes the potential for minor impact. However, it considers local companies may also secure long-term contracts once the facility is operational.

4.19.36. NLC advises the Proposed Development has the potential to support further growth of the construction and energy sectors in North Lincolnshire, adding to GVA and providing an opportunity to address highlighted skills shortages in this key sector (as highlighted in local and regional industrial strategies). Therefore it is considered to positively influence the ability to attract and retain skilled workers over the lifetime of the Proposed Development. It also considers the skills and experience gained and developed for businesses and workers, has the potential to lead to opportunities with any future local developments.

4.19.37. NLC note that this will be further supported by R37 of the dDCO, which secures the submission and implementation of an employment, skills and training plan. NLC agrees that this provides an appropriate mechanism to promote employment, skills and training opportunities during construction and employment opportunities during operation for local residents.

4.19.38. NLC points out that the energy sector has been identified as a key growth sector across the Humber and the Greater Lincolnshire regions. It states that this sector is identified in the North Lincolnshire Economic Growth Plan as a growth sector within the area and that the proposal also aligns with the wider Humber Plus (Hull and East Yorkshire Local Enterprise Partnership & Greater Lincolnshire Local Enterprise Partnership) policies for an emerging sector around CCUS.

4.19.39. In conclusion of socio-economic matters NLC considers the Proposed Development is in an area of current industrial activity and is not considered to have an adverse impact on the visitor economy of North Lincolnshire. It also reiterated the development will have short-term and long-term beneficial economic impacts in terms of job creation and inward investment into North Lincolnshire. Through the proposed Rs NLC considered the development will provide an opportunity to address highlighted skill shortages in a key sector strategically promoted for growth by the NLC in this area. These beneficial impacts are considered to be of moderate importance.

4.19.40. NR in its RR [RR-011] confirmed it was assessing any impact on the Keadby Canal Junction Level Crossing and the Chapel Lane Level Crossing and that it had concerns due to the proposed DCO scheme seeking to authorise work either above or adjacent to NR's operational railway and works, which may impede NR's ability to ensure the safe, efficient and economical operation of the railway network.

4.19.41. The UKHSA in its RR [RR-013] commented on operational amine emissions and limited details being available regarding the monitoring to

be undertaken; air quality matters, including cumulative impacts from emissions of PM_x from NRMM and the use of any generators on baseline assessments and potential impact on air quality management areas; the dust monitoring and recording strategy; why some residential receptors had not been selected; and land contamination.

4.19.42. The RR of UKHSA [RR-013] also identified a number of inconsistencies in the DCO submission, including frequency of use of the AIL road and the description in timescales in the variation of HGV movements in various chapters of the ES.

4.19.43. Irrespective of the above, I note that these matters were satisfactorily addressed during the Examination by the Applicant, with the Applicant completing a SoCG with the UKHSA [REP7-010], submitted at DL7, that confirmed the issues raised by the UKHSA in its RR had been appropriately addressed and there were no matters not agreed between the parties.

4.19.44. No other IPs raised concerns in regard to socio-economic effects, including in regard to human health, or the assessments carried out by the Applicant in relation to this matter.

EXAMINATION

4.19.45. I am satisfied that ES Chapter 16 [APP-059] has adequately demonstrated that the Proposed Development would provide economic benefits, including within the local area.

4.19.46. No significant matters of concerns were raised by IPs in RRs and WRs in respect of human health matters. Whilst the UKHSA in its RR [RR-013] made various comments and identified a number of inconsistencies in various chapters of the ES, these matters were satisfactorily addressed during the Examination by the Applicant, with the Applicant completing a SoCG with the UKHSA [REP7-010] that confirmed the issues raised by the UKHSA in its RR had been appropriately addressed and there were no matters not agreed between the parties.

4.19.47. Bearing all of the above in mind, I am satisfied that the ES has adequately addressed and considered human health matters relating to the Proposed Development and that necessary mitigation to avoid adverse effects in this regard would be appropriately secured through relevant Rs of the dDCO [REP7a-006].

EXA CONCLUSIONS

4.19.48. With regard to human health, I am satisfied that the ES has adequately addressed and considered human health matters relating to the Proposed Development and that necessary mitigation to avoid adverse effects in this regard would be appropriately secured through relevant Rs of the rDCO, including R17 (CEMP) and R25 (CTMP). As such, I consider the Proposed Development to be acceptable in terms of human health and would accord with NPS EN-1, NPS EN-5, draft NPS EN-1 and draft

NPS EN-5 and all relevant policies, including those in the Local Development Plan.

4.19.49. The operation of the Proposed Development would be regulated by the EA through an EP to control emissions from the Proposed Development using BAT. The Proposed Development would thus comply with relevant legislation and policy in respect of human health, including that of NPS EN-1, NPS EN-5, draft NPS EN-1 and draft NPS EN-5 and there are no disbenefits which weigh against the Proposed Development in this regard. As such human health effects are a neutral consideration in the planning balance.

4.19.50. In terms of socio-economic effects, I consider the Applicant has adequately assessed the socio-economic effects of the Proposed Development and has provided sufficient evidence to support its conclusions on those effects. I am satisfied that the Proposed Development would support economic development in the area and would accord with all relevant policies, including NPS EN-1 and draft NPS EN-1. This is of moderate public benefit in the planning balance.

4.20. TRAFFIC, TRANSPORT AND WASTE MANAGEMENT

INTRODUCTION

4.20.1. This section addresses the potential impacts and effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development arising from traffic, transport and waste management.

POLICY CONSIDERATIONS

Transport and Traffic

4.20.2. NPS EN-1 states that the transport of materials, goods and personnel to and from a project, during all project phases, can have a variety of impacts on the surrounding transport infrastructure. At paragraph 5.13.2, it states that the consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development. Paragraphs 5.13.3 and 5.13.4 state that the applicant should undertake a TA for any project likely to have a significant transport implication, and where appropriate the applicant should prepare a Travel Plan.

4.20.3. Where proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, Rs should be considered to mitigate the adverse impacts. Paragraph 5.13.8 advises that where mitigation is needed, possible demand management measures must be considered if feasible and operationally reasonable as a first measure. Water-borne or rail transport is also preferred over road transport at all stages of the project where cost-effective.

4.20.4. Paragraph 5.13.11 indicates that requirements may be attached to a consent, including to control numbers of HGV movements to and from the site in a specified period during its construction.

4.20.5. NPS EN-2 outlines the planning policy for traffic and transport, specifically in respect of fossil fuel generating stations such as the Proposed Development, focussing on accessibility issues.

Marine Policy Statement/ Marine Plans

4.20.6. The MPS provides a framework for taking decisions affecting the marine environment, which includes the River Trent at Keadby. Paragraph 3.4.7 of the MPS considers the importance of safe navigation of ships and minimising negative impacts on shipping activity, as well as the need to afford protection to the areas used by high intensities of traffic (paragraph 3.4.2).

4.20.7. Policy PS2 of the EMP seeks to resist proposals that require static sea surface infrastructure, which would encroach upon important navigation routes, unless there are exceptional circumstances. It also sets out a number of criteria, primarily related to ecology and biodiversity, that development would have to be assessed against. These policies of the MPS are relevant due to the works proposed within/ adjacent to the River Trent, should the river water abstraction option (Work No. 4B) be selected.

National Planning Policy Framework

4.20.8. The NPPF at paragraph 111 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. It also sets out that in all developments that will generate significant amounts of movement a Travel Plan will be required, and the application should be supported by a transport statement or TA so that the likely impacts of the proposal can be assessed (paragraph 113).

Local Development Plan

4.20.9. NLCS Policies CS18 and CS25 are considered to be relevant to this Proposed Development. Policy CS18 promotes sustainable resource use and supports development that reduces the need to travel, whilst policy CS25 explains NLC will support and promote a sustainable transport system in North Lincolnshire that offers a choice of transport modes and reduces the need to travel. It indicates this support is provided through a number of ways, including spatial planning and design, by utilising a range of demand and network management tools.

4.20.10. In terms of the saved policies of the NLLP, Policies T2 (Access to Development); T5 (Green Travel Plans); T14 (The North Lincolnshire Strategic Road Network); T15 (Highway Improvements); T23 (Water Freight); and T24 (Road Freight) are considered to be relevant to the Proposed Development.

4.20.11. Finally the North Lincolnshire Local Transport Plan 2011 – 2026 sets out a programme for a wide range of improvements to local transport over the period of the plan. It has a number of objectives, including:

- facilitating economic growth by targeting transport improvements in key development areas and along key strategic network corridors;
- reducing transport related CO_2 emissions and protect and enhance the natural and built environment through sustainable transport solutions;
- improving transport safety and security relating to death or injury from transport, in order to contribute to safer and stronger communities;
- providing equal opportunities through improvements in accessibility to key local hubs and services by sustainable modes of transport;
- enhancing people's health and wellbeing through the promotion of healthy modes of travel; and
- providing a high quality integrated transport system that contributes towards long term sustainable regeneration.

WASTE

National Policy Statements

4.20.12. NPS EN-1 states that, in determining a DCO application for energy infrastructure, the decision-maker should:

"consider the extent to which the applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from the construction, operation and decommissioning of the proposed development. It should be satisfied that:

- *any such waste will be properly managed, both on-site and off-site;*
- *the waste from the proposed facility can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available. Such waste arisings should not have an adverse effect on the capacity of existing waste management facilities to deal with other waste arisings in the area; and*
- *adequate steps have been taken to minimise the volume of waste arisings, and of the volume of waste arisings sent to disposal, except where that is the best overall environmental outcome."*

4.20.13. 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; and 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 Site Waste Management Plan. 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.

Waste Management Plan for England (DEFRA, 2013) (WMPE)

4.20.14. The WMPE fulfils the Article 28 (mandatory requirements) of the Waste Directive (Directive 2008/98/EC) (Waste Directive), and other required content as set out in Schedule 1 to the Waste (England and Wales) Regulations 2011. The WMPE is a high-level document, which outlines waste that is generated and how those materials are managed. The WMPE provides an analysis of current waste management practices in England, and evaluates implementation of the objectives and provisions of the Waste Directive. In terms of demolition and construction waste, the plan details how the UK is committed to meeting its target under the Waste Directive of recovering at least 70% by weight, of construction and demolition waste by 2020.

Our Waste, Our Resources: A Strategy for England (2018)

4.20.15. This strategy will help the government to meet its commitments in regard to waste and *"sets out how we will preserve our stock of material resources by minimising waste, promoting resource efficiency and moving towards a circular economy. At the same time we will minimise the damage caused to our natural environment by reducing and managing waste safely and carefully, and by tackling waste crime."* The strategy combines actions to be taken now and commitments for the coming years.

THE APPLICANT'S CASE

Transport and Traffic

4.20.16. ES Chapter 10 [APP-053] sets out the policy context, relevant guidance and considers the transport and traffic impacts of the Proposed Development during construction, operation, and decommissioning. The ES also includes a TA (Appendix 10A) [APP-074] and a Road Safety Audit – Stage 1 (Appendix 10B) [APP-075] which assesses the traffic and transport implications of the Proposed Development.

4.20.17. Additionally, at DL6a an addendum to the ES Volume II (Chapter and Appendices) [REP6a-066] was submitted to update relevant parts of the ES to address the change request. This addendum contained an addendum to Chapter 10 (Transport and Traffic).

4.20.18. Section 10.3 of the ES Chapter 10 [APP-053] sets out the assessment methodology and significance criteria. It considers that whilst construction of the Proposed Development could potentially start as early as Quarter 4 (Q4) 2022, given background traffic growth, a worst-case scenario was used for assessment purposes. This scenario sees construction commencing in 2029, later in the programme, with a peak of construction in 2031. This scenario also assumes an opening year of 2033, with decommissioning activities commencing after 2058, assuming

the Proposed Development would have an operational life of circa 25-years.

4.20.19. The TA (ES Appendix 10A) [APP-074] states *"All HGV construction traffic will access/ depart the Proposed Development Site from the M180 Junction 2 via the A161 and the A18."*

4.20.20. Bearing the above in mind, Table 10.10 of ES Chapter 10 [APP-053] considers the 2031 baseline traffic flows (24-hour AADT), whilst Table 10.12 details the 2031 baseline traffic flows plus the peak of construction daily two-way traffic flows. The assessment year of 2031 has been chosen as this would represent the peak of construction, assuming a 2029 commencement of construction on site. Table 10.12 indicates the Proposed Development's construction traffic will result in the following increases:

- A18 (west of the construction site access for Keadby 2) – HGV total increase of 15%, with a total increase of vehicles resulting from construction of the development of 9.8%.
- A161 (between the A18 and the M180 Junction 2) – HGV total increase of 15.1%, with a total increase of vehicles resulting from construction of the development of 11.6%.
- A18 Station Road (to the west of King George V Bridge) – HGV total increase of 0% (see paragraph 4.20.19 of this report), with a total increase of vehicles resulting from construction of the development of 2%.
- A18 High Levels Bank (east of Tudworth Roundabout) – HGV total increase of 0% (see paragraph 4.20.19 of this report), with a total increase of vehicles resulting from construction of the development of 2.2%.

4.20.21. Bearing in mind the above, additional traffic due to the Proposed Development construction activities will result in some increases in traffic flows including HGVs on the observed roads leading to the Proposed Development. However, in accordance with the Guidelines for Environmental Assessment of Road Traffic only those sensitive links that show a greater than 10% increase in total traffic flows (or HGV component) or, for all other links, a greater than 30% increase in total traffic or the HGV component, are considered when assessing the traffic impacts upon receptors.

4.20.22. In terms of the effects of the Proposed Development during construction on: severance; pedestrian amenity; fear and intimidation; highway safety; and driver delay, the Applicant classified these all as negligible (not significant). Overall, the impact on the Strategic Road Network (SRN) is classified as not significant.

4.20.23. The classification was assigned to each of the above categories by the Applicant for the following reasons:

- Severance – the predicted change in total traffic associated with Proposed Development construction activities is considerably less than 30% on each link road and therefore there would be very low impact.

- Pedestrian Amenity – the change in total traffic (or HGV component) is considerably less than 50% on each link road and therefore there would be very low impact.
- Fear and Intimidation – the change in total traffic is considerably less than 30% on each link road and therefore there would be very low impact.
- Highway Safety – Accident data for the most recent five-years for the study area provides information on the location and severity of each personal injury accident. Given that the level of increase in traffic flow resulting from the Proposed Development on road links is negligible, the effect on highway safety is also considered negligible.
- Driver Delay – Junction modelling was undertaken at the A18/ construction site access (see TA (Appendix 10A) [APP-074] for the AM and PM peak hours (07:00 – 08:00 and 16:00 – 17:00)). This demonstrated the junction would operate within its design capacity at the peak of construction (Q3 2031). Junction modelling, therefore, indicates that the driver delay effect of the Proposed Development would be negligible.

4.20.24. The impact of construction traffic on the SRN (M180) during the peak hours is very low, with a maximum increase of 3.6% predicted on the M180 to the west of Junction 2 during the AM peak hour. Peak levels of construction traffic are predicted to occur for two months of the 42-month build programme and outside of this period, construction traffic effects will be significantly reduced. Consequently, the effect on the SRN would be not significant.

4.20.25. With regard to the proposed change request, accepted into the Examination on 12 May 2022 [PD-020], Change 5 increases the importation of soil by up to an additional 50,000m^3 during the enabling works phase. These materials would be removed from/ delivered to the Proposed Development site via HGV using the access from the A18.

4.20.26. Assuming, as a worst-case scenario, material movements would take place over a two-month period during the initial six-month site enabling and preparation phase of construction, this additional importation of soils would increase the number of HGVs during this phase to 784 two-way (392 in and 392 out) per day; an increase of 160 two-way per day (original figures in the ES Chapter 10 [APP-053] were 624 two-way (312 in and 312 out) per day). When combined with the HGV movements related to potential spoil waste removal, the volume of HGVs associated with construction of the Proposed Development on the network is predicted to be at its maximum of 828 daily two-way vehicle movements (414 in and 414 out) for two months during the initial six-month site enabling and preparation phase of construction.

4.20.27. Development Change 5 would therefore not alter the peak months of construction traffic on which impacts and effects are assessed within the ES Chapter 10 [APP-053] and when 1,236 two-way vehicle movements are anticipated (1,116 two-way car/ van movements (558 in and 558 out) and 120 two-way HGV movements (60 in and 60 out) per day). As such, no new or different significant effects to traffic and

transportation during construction as a result of the Proposed Development change are considered to occur.

4.20.28. Overall, the effects of Proposed Development construction traffic on all road links and junctions within the study area are considered to be negligible adverse (not significant).

4.20.29. Once operational the ES Chapter 10 [APP-053] indicates the Proposed Development is likely to employ around 58 staff, resulting in around 116 vehicular movements throughout the day.

4.20.30. Fuel (natural gas) would be delivered by pipeline; therefore there would be no vehicular movements associated directly with the transport of gas to the Proposed Development site and therefore no HGV traffic would be generated by the delivery of fuel. In terms of other HGV traffic generated during the operation of the Proposed Development, this will relate to deliveries associated with operations and maintenance plant/ equipment.

4.20.31. Some delivery/ removal of hazardous loads associated with the CCP will be required, but full details for the expected hazardous substances and related quantities to be delivered/ removed during the operational phase of the Proposed Development are not yet known. However, if acid wash is used, for example, it is estimated that there would be circa one HGV per day delivering chemicals and up to five HGVs per day coming to remove waste. On this basis, the number of movements would not be significant when compared against the assessment screening criteria and based on the baseline road traffic volumes on the primary route to the Proposed Development site.

4.20.32. Routine maintenance will be undertaken annually with major overhauls occurring approximately once every two to five-years depending on the nature of plant operations in that period. These maintenance activities will require around 200 additional contractors to work on the Proposed Development site.

4.20.33. Due to the very low traffic flows which would result once the Proposed Development is operational (for the purposes of this assessment, assumed to be 2033), the vehicle numbers generated would be considerably lower than experienced during the construction period. The overall effects during operation and maintenance are therefore considered to be negligible adverse (not significant).

4.20.34. In terms of decommissioning, the activities involved in the decommissioning process for the Proposed Development are not yet known in detail, as it has a design life of approximately 25-years and the operational life that could extend longer than that. Some traffic movements associated with the removal (and recycling, as appropriate) of material arising from decommissioning and potentially the import of materials for land restoration and re-instatement. However, vehicle numbers are expected to be much lower than those experienced during the construction and it is considered that the percentage increase in traffic due to decommissioning would be 'not significant'.

4.20.35. In terms of impacts on the surrounding highway network, the Applicant states traffic movements will be controlled during the Proposed Development construction phase in order to minimise potential on that network; namely construction HGVs arriving or departing the Proposed Development site would travel to/ from the west via the A18, A161 and onwards to the M180 Junction 2. Additionally, a TTRO (secured from NLC, prior to construction) is likely to be proposed by the appointed contractor(s) to reduce speed on the A18 in the vicinity of the Proposed Development access from the A18 during the construction phase.

4.20.36. In addition to the above, the Applicant would implement a range of good practice mitigation measures during the construction phase to minimise traffic impacts upon local highways, including:

- implementation of the CWTP which includes measures and procedures to encourage construction workers to adopt modes of transport which reduce reliance on single occupancy private car use (a Framework CWTP is part of the DCO application documentation [APP-162]);
- liaison with the appointed contractor for the potential to implement construction worker minibuses and car sharing options (considered as part of the CWTP);
- implementation of the CTMP to include measures to control the routing and impact of HGVs on the local road network during construction. A routing plan was provided within the Framework CTMP [REP6a-016], which HGV drivers would be required to adhere to; and
- during the commissioning (and operational) phase, working with suppliers to ensure that all relevant materials (including chemicals) bought to the Proposed Development site that are classified as hazardous are transported in compliance with applicable regulations.

4.20.37. Access to the site, once operational, will be the same as the construction access (ie via the A18 access and crossing North Pilfrey Bridge). No access to the Proposed Development site would be available off the B1392).

4.20.38. The Applicant's TA [APP-074] concludes that the traffic and transportation impacts associated with the Proposed Development are temporary and relatively minor and would therefore not result in severe highway capacity or safety problems.

Waste

4.20.39. A Waste Management Technical Note [OD-003] (Technical Note) was submitted with the application. It sets out that the assessment identifies the likely types and quantities of waste that would be generated during the construction, operation and decommissioning of the Proposed Development and the waste treatment capacity of the immediate area and surrounding region. It also considers the potential impacts of waste from the Proposed Development on regional and national waste management capacity; and an assessment of the ancillary effects of waste management associated with the Proposed Development, such as increases in noise and other pollutants where these are not already covered in technical chapters of the ES.

4.20.40. Main construction wastes, including types and estimated quantities, were identified. These included:

- surplus excavated material from earthworks and construction of foundations (13,795m^3 (from piling) and 65,000m^3 (from earthworks));
- general construction waste including consumables, packaging and surplus or damaged materials (2,735 tonnes (2,735m^3, assuming bulk density of 0.32 tonnes/ m^3)); and
- waste from site offices and staff welfare facilities (640 tonnes (3,200m^3, assuming bulk density of 0.26 tonnes/ m^3)).

4.20.41. Operation wastes will comprise:

- waste from site offices (municipal waste – 3 tonnes per year; and industrial waste – 12 tonnes per year);
- waste from the CCGT unit (washing effluent – less than 50 tonnes per event and only expected to be required once every three to five-years; and cleaning and passivation effluent – 20 tonnes per event and only expected to be required once every three to five-years); and
- waste from the CCP (reclaimer sludge – <1 tonne per hour (<8,000 tonnes per annum); acid wash purge – <5 tonnes per hour (<40,000 tonnes per annum); reflux purge – <1 tonne per hour (<8,000 tonnes per annum); and ammonium sulphate effluent – <1 tonne per hour (<8,000 tonnes per annum)).

4.20.42. In terms of decommissioning the Applicant advises the Proposed Development has a design life of circa 25-years and on this basis, decommissioning activities are currently anticipated to commence after 2051. At the end of its operating life, above-ground equipment will be decommissioned and removed. However, prior to removing the relevant plant and equipment, all residues and operating chemicals will be cleaned out from the plant and disposed of in an appropriate manner.

4.20.43. Prevention of contamination will be a specific requirement of the EP for the operation of the Proposed Development. Once the relevant plant and equipment have been removed to ground level, it is expected that the hardstanding and sealed concrete areas will be left in place. Any areas of the Proposed Development which are to be decommissioned that are below ground level will be backfilled to ground level to leave a levelled area.

4.20.44. A DEMP will be produced within the period specified in the relevant legislation in force at the time of cessation of operations and agreed with the EA as part of the EP and sites surrender process.

4.20.45. The Technical Note identifies regional and national waste management capacity and considers the significance of effects associated with the estimated sources and volumes of waste arisings. In terms of movement of waste the Technical Note does not change the worst-case assessment of traffic effects presented in the ES. In terms of the sensitive receptors it recognises combined effects from traffic, noise, vibration and air

emissions during construction of the Proposed Development, including as a consequence of movements of construction waste, but considers these would be adequately controlled through the CTMP. It does not identify any significant effects arising from the movement of waste on sensitive receptors in terms of air quality, emissions or noise.

4.20.46. Overall the Technical Note considers taking into consideration reasonable worst-case estimates for the types and quantities of waste associated with construction, operation and decommissioning of the Proposed Development, and application of the waste hierarchy to manage waste arisings. The severity of impact to waste management infrastructure identified is not anticipated to be significant. No significant indirect effects have been identified in relation to waste management.

Cumulative and combined effects

4.20.47. Chapter 19 of the ES [APP-062] considers the cumulative and combined effects, including in relation to transport and traffic (which would include the transportation of waste), and does not identify any significant effects on roadside receptors (severance, pedestrian amenity, fear and intimidation or highway safety). Furthermore in terms of air quality and noise assessments these do not identify any significant effects on sensitive receptors located close to the road network. As such combined effects on roadside properties, due to road traffic and related air/ noise emissions, are not anticipated to be significant.

VIEWS OF INTERESTED PARTIES

4.20.48. Matters concerning traffic and transportation raised by NLC in its LIR [REP1-022] are set out in paragraphs 4.3.14 to 4.3.19 of this report. They are not repeated here to avoid duplication. Irrespective of this, it is worth noting that NLC in its LIR confirmed it considered the Proposed Development to have a neutral impact on the local highway network.

4.20.49. In terms of waste management NLC made no direct reference to waste management, other than highlighting the Framework CEMP made reference to prohibiting open fires on site and it would prefer to see a no burning of waste policy implemented on site.

4.20.50. The Canal and River Trust in its response to the RR consultation [AS-001] made a number of representations. Those concerning traffic, transport and waste management were related to abstraction from the Stainforth and Keadby Canal (Work No. 4A) and any impact the Proposed Development would have on it as a navigation authority. These included navigation along the canal and potential obstructions to Keadby Lock due to the proximity of the proposed offloading area. It also raised concern in regard to PPs.

4.20.51. Doncaster Metropolitan Borough Council in its RR [RR-002] confirmed the TA (contained within the ES) had been reviewed, and indicated the impact on the highway network in the traditional peak hours in Doncaster was negligible and would not be discernible within daily traffic variations. Additionally, it confirmed it was satisfied that all construction vehicles

(HGVs) would access/ depart the site via the M180 at Junction 2, and that this would be controlled by an HGV Routing Plan and will not impact on Doncaster's local highway network.

4.20.52. NR in its RR [RR-011] advised it did not object in principle to the DCO, but does object to the CA/ TP powers contained in articles of the DCO, as they would authorise the CA/ TP rights in or over land, or temporarily use land, which forms part of its operational railway land and upon which NR relies for the carrying out of its statutory undertaking. NR sought protection from CA, as NR is an affected landowner.

4.20.53. NR confirmed it was assessing any impact on the Keadby Canal Junction Level Crossing and the Chapel Lane Level Crossing and that it had concerns due to:

- the proposed DCO scheme seeking to authorise work either above or adjacent to NR's operational railway, and works which may impede NR's ability to ensure the safe, efficient and economical operation of the railway network;
- PPs not being included for the protection of NR in the dDCO, as NR requires certain standard protections for the benefit of the operational railway and to manage this interface; and
- the absence of an asset protection agreement, to ensure the appropriate and necessary technical, engineering and safety requirements for working on or near NR's operational railway are applied to the DCO scheme.

4.20.54. NR advised that any indirect impacts on the railway and associated infrastructure such as level crossings are appropriately mitigated. Its RR also set out criteria for the withdrawal of its objections, and these are summarised in paragraph 4.2.25 of this report and are not repeated here.

4.20.55. UKHSA in its RR [RR-013], in regard to traffic, transport and waste management, commented on inconsistencies in the ES. These included the frequency of use of the AIL road and the description in timescales in the variation of HGV movements when comparing the Construction Programme Management, the Traffic and Transport Assessment and Air Quality chapters.

4.20.56. John Carney in his RR [RR-015] did not identify any specific issues in regard to the Proposed Development, nor any specific procedural elements related to the DCO. His RR centred around concerns over an alleged closure of a highway, which he suggests is a statutory highway. This claim is repeated, in a representation dated 9 May 2022, made by John Carney, which I accepted as an AS [AS-027] in which he states it is a *"Formal Objection to water abstraction alteration to lock gated level at Keadby and closure of Highway which SSE have done already…"*

4.20.57. No other IPs raised concerns in regard to traffic, transport or waste management or the assessments carried out by the Applicant in relation to this matter. Furthermore, no additional concerns arose in terms of traffic, transport and waste management from the accepted change

request or the Applicant's ES Addendum Volume II Chapters and Appendices [REP6a-066].

EXAMINATION

Traffic and transport

4.20.58. During my ISH1 [EV-018] (session 2) in regard to environmental matters, I challenged the baseline data in the ES Chapter 10 [APP-053], which was between five and seven-years old. This data had been used due to the COVID-19 pandemic. I asked whether, bearing in mind restrictions had eased during the build up to the Examination and subsequently lifted, the baseline data used remained the best representative data available for the purposes of this assessment. I also asked what confidence I could have that the assumptions and assessments were robust and transport management measures are adequate/ appropriate.

4.20.59. In the Applicant's 'Response to Action Points Arising from Hearings' [REP5-015] using data extracted from the National Highways Webtris portal, it demonstrated that two-way average AADT had not recovered to pre-pandemic levels which they stated supported its *"conservative approach to the assessment by using slightly older but pre-pandemic traffic data in the assessment."* (ISH1-AP8).

4.20.60. NLC in its response to Hearing Action Points [REP5-049] advised it didn't hold any recent data in the vicinity of the site access on the A18, so looked at other areas in North Lincolnshire for comparable data on comparable A roads. Whilst not ideal, because data had been collected for other purposes and over different durations, it considered the data provided some form of comparison, which it would not otherwise have. Overall, the Local Highway Authority confirmed that in its opinion the approach adopted within the TA was robust and provides a worst-case scenario for traffic flows.

4.20.61. Having looked at the evidence provided by the Applicant and NLC, I concur with their position and consider the TA to be robust, fit for purpose and provides a worst-case scenario for traffic flows.

4.20.62. NLC in its LIR [REP1-022] points out that the improvements to the A18 junction constitute a departure from the DMRD standards and that this will still need to be subject to agreement with the Local Highway Authority. During the ISH1 (Session 2) [EV-018] I requested an update on this matter and whether there has been any further progress as to resolving the concerns of the Local Highway Authority (ISH1-AP10).

4.20.63. NLC in its response to Hearing Action Points [REP5-049] advised the Applicant has submitted proposed arrangements which had been reviewed, and that it broadly accepted the departures in principle, but it has raised a few points with the Applicant requiring clarification. I pursued further information in regard to this matter in my Rule 17 letter dated 12 May 2022 [PD-020], with NLC responding [REP7-015] *"The Applicant has taken on board the comments raised by the local highway*

authority and has addressed the previously outstanding matters to our satisfaction. The Departure from Standards is now agreed and there are no outstanding concerns in this regard." This position was also confirmed in the Applicant's completed SoCG with NLC [REP6-005], which also agreed highways access would be adequately controlled via R5 (Detailed Design) and R8 (Highways Access) of the dDCO (current version [REP7a-006]).

4.20.64. In regard to transport and traffic, the SoCG completed with NLC [REP6-005] also agreed NLC had an opportunity to review and comment on the updated traffic and transport assessment, which addressed the increased volume of imported soils by up to 50,000 cubic tonnes; and that the Proposed Development changes are minor in scale and appropriate in nature in the context of the overall development, and their scale and limited impacts are controlled acceptably in the dDCO (current version [REP7a-006]).

4.20.65. A SoCG was completed between the Applicant and National Highways [REP1-019], where it was agreed the residual effects of construction traffic related to the Proposed Development on the SRN, including all road sections and junctions, are anticipated to be negligible and thus not significant. It was also agreed the Applicant proposes to incorporate a range of good practice mitigation measures during the construction phase to minimise traffic impacts upon local highways and the SRN. This includes the provision of a Framework CTMP [APP-161] and Framework CWTP [APP-162] which the appointed contractor would be required to take account of in preparing a Construction Traffic and Routing Management Plan and Travel Plan for construction staff.

4.20.66. National Highways also agreed in this SoCG [REP1-019] that mitigation measures are appropriately secured by the dDCO [APP-005] (current version [REP7a-006]), including R25 (CTMP) and R26 (Construction worker travel plan) that seek to ensure the Proposed Development would not result in unacceptable impacts in traffic and transportation terms, including upon the SRN. The wording of these Rs (R25 and R26) was also agreed between these parties. I am satisfied that the Rs agreed between these parties contain suitable measures to ensure that construction traffic, traffic related to delivery and servicing and traffic related to operational travel would be suitably managed and controlled.

4.20.67. The SoCG with NR [REP7-008] confirms the main point of disagreement between the parties relates to the inclusion of a restriction on the exercise of CA/ TP powers over land and rights belonging to NR. This is relevant in this instance as the Applicant is seeking to CA new rights to enable access over plots 28 and 29 as shown on the Land Plans [REP6a-043] and set out in the Book of Reference [REP6a-038]. These plots comprise airspace occupied by a bridge over the railway that was constructed by SSE pursuant to a lease. SSE also maintains and uses the bridge. NR is the freehold owner of this airspace. These rights are required to facilitate Work No. 8A (access route comprising the maintenance and improvement of an existing private track) and Work

No. 9B (the maintenance and improvement of the existing private tracks). The proposed works provide for:

- the routing of construction traffic (including HGVs and abnormal loads) over the railway using the existing North Pilfrey Bridge in connection with the construction of the Proposed Development (Work Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9A, 10 and 11);
- the potential resurfacing, maintenance or improvement of the existing track passing over the North Pilfrey Bridge but no replacement, rebuilding or widening of the bridge or its parapets; and
- the continued use of a compound to the south of the railway which benefits from an existing planning permission granted by NLC, reference PA/2018/1950, dated 23 November 2018, defined as the *"Pilfrey laydown planning permission"* in the dDCO [APP-005] (current version [REP7a-006]).

4.20.68. In terms of impacts on railway assets it is agreed between the parties (SoCG [REP7-008]) that:

- Chapel Lane Level Crossing will not be utilised by construction or operational traffic related to the Proposed Development, since it is located well away from the designated HGV route and no part of the Proposed Development lies on the strip of land that is accessed by the level crossing. The nearest part of the Proposed Development (the canal water supply connection, Work No. 4A) would be constructed at least 25m to the north of the level crossing and on the other side of the South Soak Drain, and access during construction of this work would be via land to the north that is owned by the Applicant;
- the proposed generating station (Work No. 1) is to be sited some 200m north of the railway, beyond the overhead lines. No new overhead lines or towers near to the railway are proposed. Small associated development works such as underground water pipelines, roadways and administration buildings may be situated closer but at least 100m away; and
- conformity with the Framework CTMP is controlled by R25 in the dDCO [APP-005].

4.20.69. Bearing these factors in mind, including the main point of disagreement between the parties which relates to the inclusion of a restriction on the exercise of compulsory purchase powers over land and rights belonging to NR, which is discussed in Chapter 7 of this report, I consider that subject to the matter of PPs being resolved appropriately, I see no reason why traffic and transport associated with the Proposed Development would have any adverse effect on the railway or detriment to NR's undertakings.

4.20.70. The RR of John Carney [RR-015] whilst not identifying any specific issues in regard to the Proposed Development, nor any specific procedural elements related to the DCO, centred around his concerns over an alleged closure of a highway, which he suggests is a statutory highway. In his AS [AS-027] Mr Carney alleges *"SSE companies at Keadby… are stopping up 3 public Highways…"* referring to various images he has incorporated into his AS.

4.20.71. In response to this submission, the Applicant at DL7 [REP7-014] commented:

- *"the representation does not appear to identify any specific issues on the Proposed Development…, nor any specific procedural elements related to the DCO";*
- *"the Proposed Development utilises existing private road and highway infrastructure which already serves the existing Keadby Power Station and… used for the purposes of constructing Keadby 2…";*
- *"the DCO Application proposes no significant alterations to the status of the existing private roads or public highway serving or comprised in the application site";* and
- *"no permanent powers to stop-up highways are sought as part of the DCO".*

4.20.72. I note highways-related issues were agreed between the Applicant and NLC in the SoCG completed between those parties [REP6-005] and that Access and Public Rights of Way Plans [REP6a-045] were submitted as part of the DCO application. These plans were prepared using publicly available information from NLC, the Local Highway Authority, regarding the status of the highway network in the area and identify the status of the various roads within and adjoining the application site, which comprise private roads (not accessible to the public) and public highway.

4.20.73. Having fully considered the RR [RR-015] and AS [AS-027], including the imagery within the AS, submitted by Mr Carney, together with the responses of the Applicant [REP1-021 and REP7-014] and the Applicant's completed SoCG with NLC [REP6-005], I see no reason to disagree with the Applicant's position in this regard. I am not persuaded the objection identifies any specific issues on the Proposed Development or relates to any specific procedural elements of the DCO. As such I find no merit in the objection raised by Mr Carney in regard to the alleged closure of a highway.

4.20.74. As part of my USIs, I travelled parts of the strategic and local road networks. My USIs [EV-001 and EV-002] were undertaken by car and on foot. My observations can only be a general impression of conditions at the relevant locations visited, which was that the strategic and local road network was free-flowing and free of any congestion. In addition, as part of my ASI [EV-003] I observed the road network, both within and adjoining the Proposed Development site. Nothing in what I observed on my USIs or ASI caused me to question the findings/ conclusions from the data presented in the Examination.

4.20.75. In terms of the percentage increases of the construction traffic flows, as discussed above, I consider these to be acceptable and am satisfied that no detriment to amenity or the surrounding area in general will arise in regard to this matter.

4.20.76. Turning to the waterborne transportation, the only area of concern in this regard related to how it, and the Proposed Development generally, could impact of the navigation of the Stainforth and Keadby Canal/ River Trent. The Canal and River Trust is the statutory navigation authority for the

Stainforth and Keadby Canal and operates Keadby Lock, which controls passage onto the River Trent. Associated British Ports (ABP Humber) is the navigation authority on the River Trent north of Gainsborough Road Bridge.

4.20.77. In its response to the RR consultation [AS-001], as expanded upon in its WR [REP2-018], the Canal and River Trust raised concern regarding any impact the Proposed Development would have on it as a navigation authority, although it clearly indicated it wished to discuss *"…the potential for mitigation to limit the potential of any unscheduled obstruction to Keadby Lock…"*

4.20.78. Throughout the Examination discussions have been ongoing between the Applicant and the Canal and River Trust. An updated Navigational Risk Assessment (ES Appendix 12C [REP5-012]) was submitted at DL5. This document assessed the use of Railway Wharf for AIL deliveries and associated navigational risk. It also recommended the implementation of a range of suitable mitigation measures that would reduce any risk to a level as low as reasonably practicable and which could be suitably managed by risk controls to reduce them to a fully acceptable level. The primary risk reduction measures included:

- engagement and collaboration with ABP Humber and the Canal and River Trust to inform the final approach to marine works such that they have a minimal risk of disruption to the mariner;
- a suite of DML conditions, such as CEMP and method statement returns, to ensure that relevant stakeholders are informed on final proposals;
- additional DML conditions to ensure mariners are made fully aware of works such that they can plan safe passage; and
- 'standard-set' DML marking, lighting and warning conditions to ensure any mariners are fully aware of works.

4.20.79. These mitigation measures have been incorporated into the dDCO, as part of the PPs (See Schedule 10, Part 2 of the dDCO [REP7a-006]) and DML (See Schedule 13, Part 3 (Conditions)) of the dDCO [REP7a-006].

4.20.80. Prior to the close of the Examination, the Canal and River Trust reached an agreement with the Applicant in regard to its concerns and withdrew its objection to the Proposed Development [REP7a-015]. In its withdrawal of objection letter it confirmed that it was satisfied in terms of PPs; and that it had agreed terms for a side agreement that sets the framework for the future working relationship between it and the Applicant in respect of the development.

4.20.81. In the Applicant's SoCG completed with ABP Humber [REP1-017], the parties agreed the approach taken by the Applicant in terms of assessing the effects of the Proposed Development on navigational risk and safety within the River Trent was appropriate. Additionally the Applicant submitted at DL5 an updated Navigational Risk Assessment (ES Appendix 12C) [REP5-012] to address comments made by ABP Humber, so as to ensure it provided an appropriate assessment of risks to navigation and safety within the River Trent.

4.20.82. The Applicant's completed SoCG with the MMO [REP6-007] also confirmed agreement had been reached between the Applicant and the MMO in regard to navigational risk, amongst other matters.

4.20.83. I consider the Applicant's ES (Chapter 10 (Traffic and Transportation) [APP-053], as supplemented by the ES Addendum Volume II (Chapters and Appendices) [REP6a-066], and ES Chapter 12 (Water Environment and Flood Risk) [APP-055]), together with the updated Navigational Risk Assessment (ES Appendix 12C [REP5-012]), to be robust and sound, including in regard to waterborne transportation. These ES chapters and the updated Navigational Risk Assessment appropriately assess the scale, nature and location of the Proposed Development in terms of navigation, navigational safety and waterborne transportation, making appropriate recommendations for mitigation, which have been incorporated within the PPs and DML of the dDCO (current version [REP7a-006]).

4.20.84. Bearing all of the above in mind, and from the evidence entered into the Examination, I find no reason to disagree with the Canal and River Trust, ABP Humber and the MMO that, subject to appropriate mitigations, the impact of the Proposed Development on navigation/ navigational safety, taking account of any obstruction to Keadby Lock (including from waterborne transportation), would be acceptable. The proposed mitigation would be secured by the PPs and DML in the dDCO should the DCO be made in the recommended form (see the rDCO at Schedule 10, Part 2 for PPs (in favour of the Canal and River Trust) and Schedule 13 for the DML, Part 3 (Conditions) attached at Appendix C of this report).

4.20.85. In terms of the accepted change request and the Applicant's ES Addendum documents, especially ES Addendum Volume II (Chapters and Appendices [REP6a-066], I see no reason to disagree with the conclusions reached within those documents that the assessment that no changes to the likely residual effects identified in Chapter 10 (Traffic and Transportation) [APP-053], will occur as a result of the change request and that the residual effects would remain as reported within section 10.9 of Chapter 10 (Traffic and Transportation) (ie not significant).

4.20.86. Overall in terms of traffic and transport, including waterborne transportation, navigation and navigational safety of the Stainforth and Keadby Canal/ River Trent, subject to the imposition of Rs, PPs and other controls set out in the DML, including the PPs sought by NR, being incorporated into the DCO, as set out in the rDCO attached at Appendix C of this Report, I do not consider there to be any unresolved matters in respect of traffic and transportation.

Waste

4.20.87. No significant matters or concerns, that were found to be justified, were raised by IPs in RRs or WRs in respect of waste management issues.

4.20.88. During the course of the Examination, ISH1 (Session 2) [EV-018] I sought clarification in regard to the Technical Note, especially in regard

to operational waste and the treatment of additional hazardous waste, including whether there is capacity in the system to meet demands from this Proposed Development. I also sought a summary of assumptions made regarding travel distances for HGVs.

4.20.89. The Applicant adequately responded at DL5 [REP5-015], satisfying all the areas where I sought additional information and I am satisfied with the Applicant's responses in regard to these matters.

4.20.90. In the absence of any evidence that would lead me to a different conclusion, I am satisfied that operational wastes have been adequately considered in the Applicant's Technical Note [OD-003], as supplemented by its responses to my questions raised at ISH1 [REP5-015]. I also consider the Applicant's approach to waste management generally is acceptable and that a CEMP, as set out in R17 (CEMP) of the current dDCO [REP7a-006], will be adequately secured.

EXA CONCLUSIONS

4.20.91. I am satisfied that the transport and traffic assessment set out in the ES meets the requirements of NPS EN-1 and draft NPS EN-1. I am also satisfied that no significant traffic or transportation effects are likely to arise from the Proposed Development. While I acknowledge there would be an increase in traffic impacts, as well as some impact on navigation and navigational safety in both the Stainforth and Keadby Canal and River Trent, the control and management measures included in the rDCO would be sufficient to mitigate any negative impacts to an acceptable level. The overall effect in the planning balance is neutral.

4.20.92. In terms of waste management, I am satisfied that the Proposed Development would not result in any significant effects arising from waste generated during its construction, operation or decommissioning. I am also satisfied that matters relating to mitigation in respect of waste can be adequately secured through the rDCO, via R17 (CEMP), attached at Appendix C of this report.

4.20.93. I am also satisfied the Proposed Development would meet all legislative and policy requirements relating to waste management, including those of NPS EN-1 and draft NPS EN-1, and there are no disbenefits which weigh against the Proposed Development in this regard. As such I consider waste management effects to be a neutral consideration in the planning balance.

4.21. WATER QUALITY/ RESOURCES AND FLOOD RISK/ RESILIANCE

INTRODUCTION

4.21.1. This section addresses the potential effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development on surface water, flood risk and drainage.

POLICY CONSIDERATIONS

National Policy Statements

4.21.2. Section 5.7 of NPS EN-1 states that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. All applications for energy projects of 1 hectare or greater in Flood Zone (FZ) 1 and all proposals for energy projects located in FZs 2 and 3 in England should be accompanied by an FRA.

4.21.3. Paragraphs 5.7.13 to 5.7.16 of NPS EN-1 set out the need for development to pass a sequential test, then an exception test if development is to be considered permissible in a high-risk FZ area.

4.21.4. The overall aim of the sequential test is to steer new development away from areas at highest risk of flooding to those at lowest risk with the aim being to ensure development only takes place in areas at risk from flooding if there are no reasonably available alternatives at locations where the risk is less. It follows that only where there are no reasonably available sites in FZs 1 or 2 should the suitability of sites in FZ3 be considered.

4.21.5. For the exception test to be passed it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk and a site-specific FRA must demonstrate that the development will be safe for its lifetime, taking into account the vulnerability of its users and without increasing flood risk elsewhere.

4.21.6. Section 5.15 of NPS EN-1 addresses water quality and resources recognising that infrastructure development can have adverse effects on groundwater, inland surface water, transitional waters and coastal waters. The possibility of adverse impacts on health or on protected species and habitats could arise and result in a failure to meet environmental objectives established under the WFD. Activities that discharge to the water environment are subject to pollution control whilst the abstraction licensing regime regulates activities that take water from the water environment.

4.21.7. Paragraph 5.15.2 of NPS EN-1 sets out that where the project is likely to have effects on the water quality or resources the applicant should undertake an assessment addressing water quality, water resources and physical characteristics of the water environment.

4.21.8. NPS EN-2 states that where a project is likely to have effects on water quality or resources, the applicant for development consent should undertake an assessment which should particularly demonstrate that appropriate measures will be put in place to avoid or minimise adverse impacts of abstraction and discharge of cooling water (paragraph 2.10.2). The applicant for development consent should demonstrate measures to minimise adverse impacts on water quality and resources.

4.21.9. NPS EN-4 notes that the construction of pipelines can create corridors of surface clearance and excavation that can potentially affect watercourses, aquifers, water abstraction and discharge points (paragraph 2.22.2). Potential impacts include interference with groundwater flow pathways, mobilisation of contaminants already in the ground, and introduction of new contaminants. NPS EN-4 also advises that the applicant should provide an assessment of these impacts.

National Planning Policy Framework

4.21.10. Paragraphs 152 to 169 of the NPPF outline the development requirements in terms of climate change and all sources of flood risk confirming the requirement for a site-specific FRA. Paragraph 159 confirms that inappropriate development should be avoided in areas at the highest risk of flooding and where development is necessary in those areas it should be made safe without increasing flood risk elsewhere.

4.21.11. Paragraph 174 e) notes planning policies should contribute and enhance the natural environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as water quality, taking into account relevant information such as river basin management plans (RBMP) (paragraph 170e).

National Planning Practice Guidance

4.21.12. NPPG provides guidance on water supply, wastewater and water quality when assessing the significance of effects of the Proposed Development on the water environment. The guidance highlights that adequate water and wastewater infrastructure is needed to support sustainable development.

4.21.13. The NPPF and NPPG concerning flood risk and coastal change recommends that local plans should be supported by a Strategic FRA (SFRA) and should develop policies to manage flood risk from all sources taking account of advice from the EA and other relevant flood risk management bodies, such as the Lead Local Flood Authority and Internal Drainage Board. The NPPG sets out that local plans should apply a sequential, risk-based approach to the location of development to avoid, where possible, flood risk to public and property and manage any residual risk, taking account of the impacts of climate change.

DEFRA's '25-Year Environment Plan'

4.21.14. The 25-Year Environment Plan sets out the UK Government's goals for improving the environment within a generation and leaving it in a better state than we found it. The plan covers the provision of clean water, protection and enhancement of habitats, reducing the risk from environmental hazards and mitigating and adapting to climate change, using resources more sustainable and efficiently, managing exposure to chemicals and engagement with the natural environment. It includes

specific goals to achieve good environmental status in our seas, reduce the environmental impact of water abstraction, and meet the objectives of RBMPs under the WFD. At the heart of the plan's delivery is the natural capital approach with the aspiring goal of a net gain in biodiversity from new development.

"Future Water", The Government's Water Strategy for England

4.21.15. The Water Strategy for England sets out the Government's long-term vision for water and the framework for water management in England. It aims to enable sustainable and secure water supplies whilst ensuring an improved and protected water environment. This strategy brings together the issues of water demand, supply and water quality in the natural environment as well as surface water drainage and river/ coastal flooding into a single coherent long-term strategy, in the context of the need to reduce GHG emissions.

Cooling water abstraction

4.21.16. A number of sources of guidance exist in relation to optimal operation of direct cooled and cooling tower-cooled power stations in coastal and estuarine UK environments. 'Screening for Intake and Outfalls: a best practice guide' (EA, 2005) is one such source and the Applicant indicates this guidance has been considered in the design development process for the Proposed Development. Other relevant guidance considered in the BAT assessment for cooling technology includes:

- EU BAT Reference Document for Large Combustion Plants (July 2017);
- EU Reference Document on the application of BAT to Industrial Cooling Systems (December 2001);
- EA: Risk assessments for your EP (February 2020); and
- EA Evidence Document SC070015/SR3 Cooling Water Options for the New Generation of Nuclear Power Stations in the UK (June 2010).

4.21.17. The Applicant notes that an Assessment of BAT for Energy Efficiency has been completed in support of its EP application for the Proposed Development, which has been lodged with the EA.

Non-Statutory Technical Standards for Sustainable Drainage Systems (2015)

4.21.18. The Non-Statutory Technical Standards for Sustainable Drainage Systems was published in March 2015 and is the current guidance for the design, operation and maintenance of Sustainable Drainage Systems (SuDS). The standards set out that:

- peak run-off rates should be as close as is reasonably practicable to the predevelopment equivalent values ('greenfield' rate), but should never exceed the pre-development run-off rate;

- the drainage system should be designed so that flooding does not occur on any part of a development site for a 1 in 30 year rainfall event, and that no flooding of a building (including basement) would occur during a 1 in 100 year rainfall event; and
- pumping should only be used when it is not reasonably practicable to discharge by gravity.

4.21.19. The Proposed Development will also be considered by the EA in terms of the Land Drainage Act 1991 and the Water Resources Act 1991. Consent from the EA will be required for any proposed discharges to controlled waters.

River Basin Management Plan

4.21.20. This document is published by the EA and sets out how organisations, stakeholders and communities will work together to improve the water environment. The waterbodies within the study area fall under the Trent Lower and Erewash and Idle and Torne Management Catchments within the Humber RBMP (DEFRA/ EA, 2018).

Regional Policy

East Inshore and East Offshore Marine Plans

4.21.21. The EMP provides guidance for developers to ensure the sustainable development of the marine area and protection of the marine ecosystem.

4.21.22. The East Inshore Marine Plan area includes the coastline stretching from Flamborough Head to Felixstowe, extending out to the seaward limit of the territorial sea (approximately 12 nautical miles). It also includes:

- any area submerged at mean high water spring tide;
- the waters of any estuary, river or channel, so far as the tide flows at mean high water spring tide; and
- waters in any area which is closed (permanently or intermittently) by a lock or other artificial means against the regular action of the tide, but into and from which seawater is caused or permitted to flow (continuously or from time to time).

4.21.23. This includes the tidal limits for the Humber Estuary, which incorporates areas of North Lincolnshire. The plan states *"A clean and healthy marine environment, including healthy beaches and good water quality, are important to tourism and recreation"*.

4.21.24. The dDCO submitted as part of the application also contains at Schedule 13 a DML under Part 4 of the Marine and Coastal Access Act 2009.

Local Development Plan

4.21.25. Policies CS16 (North Lincolnshire's Landscape, Greenspace and Waterscape), CS17 (Biodiversity), CS18 (Sustainable Resource Use and Climate Change) and CS19 (Flood Risk) of the NLCS are considered to be

most relevant to this section (water quality/ resource, flood risk/ resilience) of this report. These policies seek:

- CS16 - to improve and address local deficiencies in the quality and quantity of accessible landscape, greenspace and waterscape, where appropriate;
- CS17 - to promote stewardship of North Lincolnshire's wildlife by safeguarding protected sites, maintaining a network of local sites and corridors, ensuring development retains, protects and enhances biological features and ensuring development seeks a net gain in biodiversity;
- CS18 – to ensure development meets high water efficiency standards, incorporating new technology to recycle and conserve water. SuDS should be used where possible; and
- CS19 - to mitigate flood risk impacts and requires development to be supported by a site-specific FRA.

4.21.26. In terms of emerging Local Development Plan policy, NLC is preparing a new local plan to 2036. Policies of potential relevance to water quality/ resource, flood risk/ resilience are:

- SSp1 (Presumption in Favour of Sustainable Development);
- DQE3p (Biodiversity and Geodiversity);
- DQ6p (Managing Flood Risk);
- DQE7p (Sustainable Urban Drainage Systems); and
- DQE12p (Green Infrastructure Network).

4.21.27. NLC, as Lead Local Flood Authority, has produced a SuDS and Flood Risk Guidance Document Supplementary Guidance Document (NLC, 2017), which provides developers and designers guidance on SuDS, including types of SuDS appropriate to a particular development, depending on the size and location. It also provides advice regarding adoption and maintenance of SuDS, riparian responsibilities and specific NLC requirements.

Flood Risk Assessments

4.21.28. A number of FRAs are also relevant, and these include:

- North Lincolnshire Preliminary FRA;
- North and North East Lincolnshire SFRA; and
- North Lincolnshire Council Local Flood Risk Management Strategy.

THE APPLICANT'S CASE

4.21.29. ES Chapter 12 (Water Environment and Flood Risk) [APP-055] assesses the potential effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development on surface water, flood risk and drainage. A separate FRA was provided, as ES Appendix 12A [APP-084] and subsequently superseded by a revised ES Appendix 12A [AS-010], accepted by me as an AS, on 29 November 2021. Additionally, a WFD Assessment Report was submitted (ES Appendix 12B [APP-085]), along with Navigational Risk Assessment (ES Appendix 12C [APP-086]). The Navigational Risk Assessment (ES

Appendix 12C) was subsequently superseded by a revised ES Appendix 12C - Navigational Risk Assessment at DL5 [REP5-012].

4.21.30. In addition to the above, ES Chapter 12 (Water Environment and Flood Risk) [APP-055] was accompanied by the following figures that form part of the ES (Volume III):

- Figure 12.1 - Surface Waterbodies and their Attributes [APP-123].
- Figure 12.2 - Groundwater Waterbodies and their Attributes [APP-124].
- Figure 12.3 - Flood Risk [APP-125].
- Figure 12.4 - Surface Water Flood Risk [APP-126].
- Figure 12.5 - Ecologically Designated Sites Relevant to the Water Environment [APP-127].
- Figure 12.6 - Internal Drainage Board Assets [APP-128].

4.21.31. Additionally, ES Chapter 12 (Water Environment and Flood Risk) [APP-055] cross refers to ES Chapter 13 (Geology, Hydrogeology and Land Contamination) [APP-056] and ES Chapter 19 (Cumulative and Combined Effects) [APP-062] due to the overlap between these subject areas.

Flood risk

4.21.32. The EA's 'Flood Map for Planning' (EA, 2020) identifies that the majority of the Proposed Development site and surrounding environs are located within FZ3, with the exception of a small section of the Proposed Development site within the new permanent access from A18, which is in FZ2. The River Trent is tidal adjacent to the site and tidal flood risk (flooding from the sea) is the dominant source of flooding.

4.21.33. The North Lincolnshire SFRA (NLC, 2011) defines the Proposed Development site as in the tidal FZ3a. It is not defined as in FZ3b (land where water has to flow or be stored in times of flood) as the Proposed Development site does not act as a functional floodplain as it benefits from the existing EA maintained flood defences (embankments) along the River Trent which prevent natural flooding from occurring.

4.21.34. As the site falls within FZ3a, the application of both the sequential and the exception test is required. A sequential test is required to assess flood risks across strategic development sites. In line with section 4.4 of NPS EN-1, consideration has been given to alternatives, however, no alternatives that were sequentially preferable (ie in FZ1, in the first instance, or FZ2) to the Proposed Development site were found. In supporting this position, the FRA [AS-010] notes the sustainability benefits of the Proposed Development, as presented in the PS [REP3-006]. In addition to this the Applicant argues:

- the Proposed Development represents the best option for the choice of site, taking into account the environmental, social, economic effects and commercial feasibility;
- the sustainability benefits of the Proposed Development, including the majority of the Proposed Development site occupies previously

developed land including land associated with the former coal-fired Keadby Power Station (now demolished), on-site historic landfill and land recently developed for Keadby 2 Power Station;
- the EWP, referred to at least one power CCUS project and that these ambitions have been subsequently expanded as a result of the Net Zero Strategy and the Proposed Development site sits comfortably with that strategy, bearing in mind its close proximity to the Zero Carbon Humber cluster and the underlying carbon pipeline that the Proposed Development could connect directly into;
- the Proposed Development site could be developed quickly, especially bearing in mind the construction activities on the adjacent Keadby 2 Power Station site; and
- for those elements of the Proposed Development site that are not previously developed and part of the Keadby Power Station site, a site selection process was undertaken comprising both brownfield land and other areas of land under intensive agricultural management for temporary use as construction laydown areas.

4.21.35. Bearing the above in mind, the Applicant argues the Proposed Development is considered to meet the sequential test.

4.21.36. In terms of the exception test, the Proposed Development's wider sustainability benefits to the community are outlined in the PS [REP3-006] and those benefits are considered to outweigh flood risk. Furthermore, in the light of the justifications set out above, no reasonable alternative sites in FZ1 or FZ2 were identified.

4.21.37. In light of the above, the Applicant states that two elements of the criteria for the exception test are demonstrated for the Proposed Development. In terms of the final element (ie the FRA must demonstrate that the Proposed Development will be safe, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall), the Applicant considers the FRA demonstrates that the Proposed Development would remain safe during its lifetime and would not increase flood risk elsewhere, subject to the exception discussed in tidal sources, set out below, where mitigation is identified.

Tidal sources

4.21.38. The Proposed Development site is at a low risk of flooding from tidal sources with the defences in place and the available flood and defence levels suggest there would not be overtopping of the defences during events up to and including a 0.5% Annual Exceedance Probability (AEP) (1 in 200 chance) of flooding.

4.21.39. There is a low residual risk of tidal flooding of the Proposed Development site originating from the North and South Soak Drains (see Table 9 of the ES Volume II Appendix 12A [AS-010]) where defences are 1.3m AOD.

4.21.40. The risk of overtopping in the future and as a result of climate change given sea level rise assumes that in the intervening period, no raising of the Trent tidal defences occurs. This is a highly conservative assumption and given the areas of land and property at risk across the wider area, it

is reasonable to assume that future increases in height of defences and upgrades may continue to protect the Proposed Development site, mitigating the overtopping risk.

4.21.41. In the event that the defences were to breach during the 0.5% AEP event, the hazard to the Proposed Development site would be high as flood waters would enter the area. The flood levels resulting from a breach event are higher than those that would be expected from overtopping of the defences and therefore represent a conservative flood level on the Proposed Development site. However, the probability of a breach occurring is low, meaning that the residual risk remains low.

4.21.42. During the EA's modelled Humber Extreme Water Level Study 2071 (HEWL) climate scenarios, the risk is potentially more significant. Breach modelling indicates that during the modelled HEWL scenarios, overtopping of the defences is expected to occur and the model represents this alongside the breach. The Proposed Development site is potentially at a high residual risk of flooding as a result of overtopping and/ or breach during events that exceed a 0.5% AEP (1 in 200 chance) of flooding on the River Trent, including the effects of climate change and assuming there is no future raising of the defences. This is an extreme scenario, within the extreme (H++) climate change scenario and a breach occurring simultaneously. It is not likely to occur, but as a residual risk it has been taken into account in the design of the Proposed Development site.

4.21.43. Appropriate mitigation measures are proposed to deal with this residual risk and ensure the occupiers of the Proposed Development site are safe and critical operational infrastructure can continue to function at the Proposed Development site in the event of such inundation. It is proposed that finished floor levels across parts of the main site (northern part of the proposed PCC site where the CCGT and CCP are proposed to be located shown in ES Volume II Appendix 12A [AS-010] at Plate 1) would be raised to 2.8m AOD, with critical operational infrastructure associated with the CCGT (as defined in paragraph 6.3.11 of the FRA (ES Appendix 12A [AS-010])) raised to at least 3.6m AOD.

4.21.44. The Applicant advises that consideration would be given at the detailed design stage to raising CCGT critical operational infrastructure further, taking into account the critical flood level + 300mm freeboard (up to 4.4m AOD) where it is reasonably practicable to do so.

4.21.45. Additionally, a safe place of refuge will be provided for employees in the extremely rare and unlikely event that the Trent tidal defences were to breach with a minimum internal finished floor level of 4.4 m AOD (the critical flood level (critical flood level + 300mm freeboard) within a building with a minimum ground floor level of 2.8m AOD (the 0.5% AEP + climate change breach level plus 300mm freeboard). Furthermore, additional flood resilience measures are also proposed for consideration at the detailed design stage.

4.21.46. Bearing the above in mind, following implementation of the mitigation measures, there are considered to be no on or off-site impacts as a result of the Proposed Development in relation to this residual flood risk.

Fluvial sources

4.21.47. The majority of the Proposed Development site is located in FZ3, with a small area in FZ2. Modelled fluvial peak water levels from the tidal Trent SFRA demonstrate that during a 0.1% AEP (1 in 1000 year) event, fluvial water levels in the North and South Soak Drains could rise up to 1.69m AOD. This is above the raised embankment levels of 1.3m AOD, however, a raised strip of land (2m AOD) on the south side of the Proposed Development site will be retained and act as a barrier to fluvial flooding on the Proposed Development site from the drains. Fluvial levels in the Trent are lower than the tidal levels on which the Proposed Development site assessment and mitigation has been based.

4.21.48. The SFRA states that the failure of the network of watercourses to drain the marshland surrounding the river is another main source of flooding.

4.21.49. Based on the information provided by the EA, it has been determined that the Proposed Development site is at a low risk of flooding from fluvial sources with the defences in place or resulting from overtopping of the defences during events that exceed a 0.5% AEP (1 in 200 year chance) and 0.1% AEP (1 in 1000 year chance).

Surface water runoff to the Proposed Development

4.21.50. The risk of surface water flooding within the Proposed Development site from elsewhere (or generated within) is considered to be low to very low.

4.21.51. Extensive drainage infrastructure already exists across the Proposed Development site related to Keadby 1 and Keadby 2 Power Stations and the Proposed Development drainage would be kept separate from this. Attenuation would be installed within the proposed PCC site and discharge would be at the greenfield runoff rate, or if this cannot be accommodated by the IDB, at the agricultural runoff/ alternative rate agreed with the IDB. The preferred method of surface discharge would be to the existing IDB network. In the event that this network is unable to accommodate all surface water, alternative and/ or hybrid solutions would be considered including the alternative discharge route to the River Trent via the water discharge corridor.

Groundwater

4.21.52. Based on historical assessment, as part of the Keadby 2 Power Station ES (ERM, 2016), groundwater flooding is effectively managed via a well-developed drainage system serving Keadby 1 and Keadby 2 Power Stations. As such the risk of groundwater flooding within the Proposed Development area within the site is considered to be low.

Artificial sources

4.21.53. The Proposed Development site is not considered at risk from reservoir flooding. The Stainforth and Keadby Canal is close to the Proposed Development site but given its shallow gradient and that it drains into the River Trent by a sluice, the risk of flooding is likely to be low.

4.21.54. Additionally a licence to abstract water from the canal, to supply cooling water for the Keadby 2 Power Station (once operational) has been granted to the Canal and River Trust and the Proposed Development is also seeking to abstract water from the canal as its preferred source of cooling water, with licensing discussions ongoing.

4.21.55. If any overtopping of the canal were to occur, this would drain into the North and South Soak Drains located at a lower elevation on either side of the canal and drain away into the Three Rivers a short distance to the south, and to the River Trent via sluice gates at Keadby Pumping Station. The canal levels are monitored and maintained by the Canal and River Trust. As a result, overtopping is unlikely and so the Proposed Development site is considered to be at low risk of flooding from the canal.

4.21.56. Overall, the risk of flooding from artificial waterbodies is considered to be low.

Residual risk mitigation measures

4.21.57. A number of additional mitigation strategies will be considered during the design process for the Proposed Development to ensure the operation of the Proposed Development site is maintained in the event of an extreme flood should the existing tidal defences fail in the vicinity of the Proposed Development site, or in the event of heavy rainfall that could result in surface water flooding at the Proposed Development site, should the design capacity of the drainage network be exceeded.

4.21.58. The mitigation, as set out in the FRA [AS-010], includes: providing flood resistance and resilience measures, including raising of critical operational infrastructure to a minimum of 3.60m AOD and, where reasonably practical to do so, 4.60m AOD; the provision of safe areas to ensure the occupiers of the site are safe; flood emergency response plans; flood warnings and alerts; emergency access and egress; and design capacity exceedance. Requirement 14 (Flood Risk Mitigation) of the dDCO [REP7-003] requires such measures to be submitted to and agreed with NLC, in consultation with the Lead Local Flood Authority.

4.21.59. As such, appropriate mitigation measures are proposed to mitigate this residual risk and ensure the occupiers of the site are safe and critical equipment can continue to function at the site in the event of such inundation, thus satisfying the requirements of the exception test.

Surface and foul water drainage

4.21.60. ES Chapter 12 (Water Environment and Flood Risk) [APP-055] identifies SUs, including bodies that may receive runoff or discharges from the site

during construction, operation and decommissioning of the Proposed Development.

4.21.61. The Applicant states a new surface water drainage network and management system will be provided for the proposed PCC site. It considers this will provide adequate interception, conveyance, treatment, and attenuation of surface water runoff from buildings and hard standing. The concept drainage strategy is set out in Appendix 12A: FRA [AS-010] (section 5) and an indicative layout for the surface water drainage system was submitted as part of the DCO application [APP-022].

4.21.62. In terms of surface water drainage from the Proposed Development, this will be discharged to Keadby Common Drain, following SuDS attenuation, subject to agreement from the IDB. In order to ensure that the Proposed Development does not increase the flood risk elsewhere, surface water discharge from the proposed PCC site will be restricted to the existing greenfield runoff rate or if this cannot be accommodated by the IDB, at the agricultural runoff/ alternative rate agreed with the IDB, in accordance with the requirements of the NPPF, EA and NLC.

4.21.63. The Applicant states that should the Proposed Development be restricted to the existing greenfield runoff rate, excess surface water up to the greenfield runoff rate would be discharged via the Keadby 2 Power Station site cooling tower ponds and water discharge corridor and into the River Trent. Furthermore, should the IDB consent not be granted to discharge to Keadby Common Drain, the Applicant indicates that outfall to the River Trent would be used, subject to EA consent, the controls of an EP and any associated monitoring requirements. It considers there would be a negligible impact to the River Trent given the mitigation measures and large dilution capacity of the watercourse.

4.21.64. Surface water runoff attenuation will be provided to ensure existing greenfield runoff rates are maintained up to the 1% AEP event plus a 40% allowance for climate change. In addition to the on-site attenuation pond, a range of SuDS solutions including filter drains and swales would be considered in the detailed drainage design and utilised to provide conveyance and attenuation across the Proposed Development site, providing further benefits for surface water quality.

4.21.65. In term of foul drainage, the Applicant states:

"All foul water from welfare facilities from the Proposed Development is intended to be directed via the existing foul water sewer for Keadby 2 Power Station to the Severn Trent Water pumping station on Chapel Lane, and from there to the nearest wastewater treatment works… It has been assumed that given the relatively small volumes involved, that Severn Trent Water will have adequate capacity to provide treatment within current permit standards… If the pipeline condition is not suitable for continued use, foul sewage would instead be treated on site in a package treatment plant with the treated water directed to the River Trent via the water discharge connection under the conditions of an EP."

4.21.66. Rs 12 (Surface Water Drainage) and 13 (Foul Water Drainage) of the dDCO [REP7-003] would secure details of both the surface and foul water drainage, including future maintenance in accordance with the relevant sections, as specified in the Rs. Additionally, R17 (CEMP) of the dDCO [REP7-006] secures the submission of a CEMP, that accords with the Framework CEMP, submitted with the DCO application [REP6-003]. The Applicant states that the CEMP, submitted pursuant to R17 (CEMP), would avoid, minimised and reduce potential for adverse effects to surface water resulting from construction. This would be as a result of the adoption of the general mitigation measures. In terms of decommissioning, the use of a DEMP, secured by R38 (Decommissioning) of the dDCO [REP7a-006], will detail how risks can be removed, mitigated or managed, including in relation to surface water drainage, during decommissioning and demolition.

Ground conditions and hydrogeology

4.21.67. ES Chapter 12 (Water Environment and Flood Risk) [APP-055] overlaps with ES Chapter 13 (Geology, Hydrogeology and Land Contamination) [APP-056]. Chapter 13 [APP-056], together with Appendices 13A (Phase 1 Desk Study Assessment) [APP-087]; 13B (Land Contamination Methodology Tables) [APP-088]; and 13C (Potential Areas of Contamination Further Risk and Impact Assessment) [APP-089], identify the relevant legal and policy context and describe the existing geological and hydrogeological conditions at the site. The Applicant's position in regard to ground conditions and hydrogeology are detailed in section 4.16 of this report above and are not repeated here with a view to avoiding duplication.

VIEWS OF INTERESTED PARTIES

4.21.68. NLC in its LIR [REP1-022], with regard to hydrology and flood risk, confirmed it has assessed the submitted information in respect of flood risk and drainage. It confirmed the submitted FRA and Drainage Strategy was considered to be acceptable in that it identifies pluvial flood risk and provides for various mitigation measures to be addressed in the detailed surface water drainage strategy.

4.21.69. Additionally, NLC confirmed that it had reviewed R12 (Surface Water Drainage) of the dDCO [APP-005], which necessitates the submission and agreement of a detailed surface water drainage strategy. In the light of this NLC confirmed it was satisfied that, subject to the acceptable discharge of this R, the impact of the proposals on flood risk and drainage will be adequately mitigated.

4.21.70. The EA in its response to the RR consultation [AS-002] confirmed, having reviewed the DCO application, ES and supporting documents submitted, confirmed it has no objection in principle to the Proposed Development, as submitted. However, in terms of flood risk it advised it was registering a holding objection on the grounds that the supporting FRA may not accord with the requirements of NPS EN-1, Chapter 5.7 – Flood Risk, although it confirmed further detail on the outcome of its model review

and concerns on the issue of flood risk would be provided in its WR and that it considered its holding objection was capable of being resolved during the Examination process.

4.21.71. In its subsequent WR [REP2-022] the EA confirmed that the FRA [AS-010] (supported by a flood model) was in its view fit for its designed purpose, and that the Applicant has agreed to make an amendment to Schedule 2, R14(2) to secure the required finished floor level for Works Nos. 1A and 1C of 2.8m AOD to ensure occupant's safety, should a breach to the tidal River Trent defence occur. The EA also states the submitted draft CEMP is satisfactory and that it was satisfied that the submission of a final CEMP is adequately secured through R17 of the DCO.

4.21.72. The EA's final submission at DL7a [REP7a-016] only maintained its holding objection concerning CA/ TP. It did not object to the principle of the Proposed Development in any other regard.

4.21.73. Keadby with Althorpe Parish Council in its RR [RR-005] raised concerns in regard to the water environment and flood risk. However, it never clarified or quantified its concerns in regard to this matter. The Applicant submitted a draft SoCG with Keadby with Althorpe Parish Council [REP7-011], which aimed to agree the approach taken by the Applicant to the water environment and flood risk that identified:

- the Applicant is considering two options for water abstraction, namely the canal water abstraction option and the river water abstraction option, with the canal water abstraction option being its preferred option;
- the Canal and River Trust, which maintains normal water levels for navigational purposes, is proposing modifications to the Keadby Lock to make better use of the significant losses of water via spillages over the lock gates, into the River Trent; and
- separate to the Canal and River Trust, local drainage boards manage water levels during periods of heavy rainfall through the use of drains.

4.21.74. Despite the Applicant submitting a draft SoCG that it sought to enter into with Keadby with Althorpe Parish Council, it remained incomplete (unsigned and undated) at the close of the Examination. Additionally, it was noted that after the submission of its RR Keadby with Althorpe Parish Council took no further part in the Examination.

4.21.75. MCA in its RR [RR-007] expressed a desire to be consulted on the establishment of any infrastructure or works in or over the marine environment.

4.21.76. The MMO in its RR [RR-006] focused on the content of the dDCO and DML commenting of the content of those documents and suggesting changes.

4.21.77. NE in its RR [RR-010] sought further information in regard to water quality impacts to Humber Estuary SAC/ SPA due to the cooling water discharge.

4.21.78. John Carney in his RR [RR-015] did not identify any specific issues in regard to the Proposed Development, nor any specific procedural elements related to the DCO. His RR centred around concerns over an alleged closure of a highway, which he suggests is a statutory highway. This claim is repeated, in a representation dated 9 May 2022, made by John Carney, which I accepted as an AS [AS-027] in which he also stated it is a *"Formal Objection to water abstraction alteration to lock gated level at Keadby…"*

4.21.79. No other IPs raised concerns in regard to water quality/ resources or flood risk/ resilience or the assessments carried out by the Applicant in relation to this matter.

EXAMINATION

4.21.80. In ExQ1 [PD-009], I asked a number of questions in relation to water quality/ resources or flood risk/ resilience, including: clarification as to potential adverse effects on the water environment (Q1.4.9); dredging operations and the effect on water quality (Q1.3.4); details as to the expected nitrate levels from surface water runoff (Q1.14.2); and Article 14 (Discharge of Water) of the dDCO [APP-005] (current version [REP7a-006]) (Q1.16.18).

4.21.81. I also sought in ExQ1 clarification/ additional information in regard to RRs made by IPs in regard to the following:

- NE in terms of its advice that the DCO should secure the measures to reduce water pollution impacts during construction of the development (Q1.14.1), and water quality impacts to Humber Estuary SAC/ SPA due to the cooling water discharge (Q1.3.4).
- The MMO in terms of various matters, including: why hydrodynamics were not used to derive an assessment of potential scour to assist in determining whether scour protection would be required for the cofferdam for works within the River Trent (Q1.1.6); and concern in regard to the DML (Q1.12.2).

4.21.82. The Applicant in its reply to my ExQ1 [REP2-006], provided the following summarised responses:

- In terms of measures to reduce water pollution impacts during construction of the development, the SoCG between the Applicant and NE [REP7-005] agrees *"…water quality effects on European Sites… have been adequately assessed…"* It also pointed out that it was not considered necessary to update the dDCO further than has been agreed with NE in the SoCG [REP1-009] (current version [REP7-005]).
- In regard to dredging operations and the effect on water quality, there are no requirements for dredging works during construction of the Proposed Development. Dredging was referred to as an activity likely to mobilise sediments in a manner broadly comparable with the localised and minor sediment disturbance that could occur during installation of a cofferdam to coincide with the existing concrete apron of the existing water intake structure. Additionally, the updated

HRA AA Report submitted at DL1 [REP1- 006] points out *"the MMO has… previously been involved in licensing for the Keadby 1 Power Station Intake & Outfall Dredging (MLA/2017/00312, covering a maximum volume of 25,000m3) and concluded that disturbance to bed sediments is not likely to impact water quality…"*

- In terms of potential adverse effects on the water environment, it is illegal to pollute watercourses, irrespective of their designation, under the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 and the Environmental Permitting (England and Wales) Regulations 2016.
- With regard to details as to the expected nitrate levels from surface water runoff, highlighting where within the ES the details can be located, the Applicant has stated it *"…anticipates that nitrate levels in surface water runoff will be negligible from the Proposed Development since preventative maintenance and use of bunding and impermeable surfacing will reduce pollutant levels in any surface water to be discharged from the Proposed Development Site..."* The Applicant also pointed out that whilst considered very unlikely, *"if elevated nitrate levels are identified as a potential risk at the detailed design stage, then discharge concentrations will be set and monitored through the Environment* (sic) *Permit."*
- In terms of why hydrodynamics were not used to derive an assessment of potential scour, the Applicant advised that it had discussed this matter directly with the MMO and agreed in the SoCG with it [REP1-010] (current version [REP6-007]). In terms of the impacts associated with potential scour these are anticipated to be minimal and not significant due to the short duration of the cofferdam works and given the scale of the River Trent. As such it was agreed in the SoCG by the parties that the commitment to use localised scour protection rock bags around the base of the River Trent cofferdam would be secured through the CEMP, a framework of which is included with the application as [APP-160] (current version [REP6-003]) and R17 (CEMP) of the dDCO [APP-005] (current version [REP7a-006]). It was agreed that this would control any localised scour effects if these were to occur.
- Furthermore, the SoCG between the Applicant and NE [REP7-005] confirms the parties agreed no adverse effect on the integrity of the relevant European sites would result from the Proposed Development.
- In terms of the MMO's concern in regard to the DML, the SoCG between the Applicant and the MMO [REP1-010] agreed that the MMO has been provided with an appropriate opportunity to review and provide feedback upon the draft DML and that the wording of the DML is largely accepted. However, it is agreed the DML will be updated to include the commitment to restrict piling works at night (19:00 to 07:00), in order to reduce the impact on species which tend to migrate at night/ in darkness as set out within the Framework CEMP [APP-160] and Appendix 20A: Schedule of Commitments [APP-098]. The Applicant also confirmed that other minor wording amendments as set out in the MMO's RR [RR-006] were noted and an updated dDCO [APP-005] would be submitted at DL2.

4.21.83. The EA in response to my ExQ1 [REP2-021] confirmed the content of the Framework CEMP is satisfactory. It also confirmed it had no objection to the wording of Article 14 (Discharge of Water) of the dDCO, noting the Applicant had acknowledged an EP for the discharge of water would still be required from the EA.

4.21.84. The EA completed a SoCG with the Applicant [REP5-014] in which it agreed:

- in terms of hydrology and water resources, including compliance with the WFD:
  - it was satisfied with the approach used within the WFD assessment and that it used the most up to date data from the EA, where this was requested. It also agreed in terms of the potential effects of the Proposed Development on the water environment;
  - Chapter 12 (Water Environment and Flood Risk) [APP-055] and Appendix 12B WFD Assessment [APP-085] taken together provided a satisfactory assessment of all relevant potential pollution risks to surface water and groundwater bodies during construction and operation of the Proposed Development;
  - that the design and impact avoidance and mitigation measures identified and specified by control measures within Rs 5(2) and 5(5) (Detailed Design), and R13 (Foul Water Drainage) of the dDCO [APP-005] (current version [REP7a-006]) are appropriate; and
  - the controls during construction are secured via a Framework CEMP [APP-160] (current version [REP6-003]), with the final CEMP being submitted for approval as secured by draft R17 of the dDCO [APP-005] (current version [REP7a-006]);
- in terms of flood risk:
  - the revised FRA [AS-010] adequately assesses and presents the potential flood risks and demonstrates that the proposed mitigation measures are adequate to minimise flood risk;
  - using updated hydraulic model and updated FRA [AS-010] (including the design and impact avoidance/ flood mitigation measures included) demonstrate that there would be negligible on or off-site impacts as a result of the Proposed Development in relation to residual flood risk;
  - the updated FRA provides a satisfactory conceptual drainage strategy to inform the assessment of potential flood risk; and
  - the dDCO wording in R14 provides an appropriate mechanism to secure the necessary mitigation measures in relation to flood risk mitigation, including the safe refuge area set at 4.4m AOD (above the Critical Flood Level), subject to R14(2) and Schedule 11 being amended to ensure the finished ground level for Work Nos. 1A and 1C being secured at of 2.8m AOD;
- in terms of water quantity, including alternative sources:
  - the ES, including Chapter 12 (Water Environment and Flood Risk) [APP-055] and Appendix 12B: WFD Assessment [APP-085]

(paragraphs 6.8.22 to 6.8.25) addresses matters related to the quantity of water proposed to be abstracted including assessment of effects on relevant WFD waterbodies;
    - pre-application engagement between the parties and the Canal and River Trust took place to agree details of the Water Abstraction Licence application that had been submitted by the Canal and River Trust to the EA for the provision of water from the canal to supply the Proposed Development; and
    - the EA will undertake an assessment of the environmental impacts and effects of the quantity and sources of water abstraction and discharge during its determination process of the Water Abstraction Licence application; and

- in terms of the CEMP:

    - the mitigation, management and enhancement measures outlined within the Framework CEMP [APP-160] (current version [REP6-003]) includes the necessary principal controls to adequately manage environmental risks associated with the construction of the Proposed Development including, but not limited to, pollution control measures and waste management; and
    - R17 (CEMP) of the dDCO [APP-005] (current version [REP7a-006]) is appropriate for controlling the environmental effects of construction, subject to addition of a Fish Management Plan.

4.21.85. Furthermore, the SoCG sets out that an EP permit variation application was submitted to the EA in July 2021. It was agreed between the parties that it would be submitted as a variation to the existing Keadby Power Station EP (EPR/YP3133LL/V011). The EP permit variation application included an appraisal of BAT and air impacts based on the current design understanding. Finally, it was agreed that a subsequent permit variation submission may be required if the design changes.

4.21.86. Within the SoCG completed between NLC and the Applicant [REP6-005], it was agreed:

- in terms of the water environment and flood risk:

    - a range of mitigation measures are proposed to mitigate residual risk so that the occupiers of the Proposed Development site are safe and critical operational infrastructure associated with the CCGT can continue to operate;
    - modelling has been used to set the final development platform level and finished floor levels for the proposed PCC site which would be secured via an R of the dDCO [APP-005] (current version [REP7a-006]) to ensure that the Proposed Development remains safe throughout its lifetime;
    - other measures, such as a Flood Emergency Response Plan and allocation of a place of safe refuge in case of flooding, are also proposed. The safe access assessment/ evacuation plan in the updated FRA [AS-010] is acceptable in terms of flood risk and drainage;
    - with the detailed drainage strategy including SuDS attenuation, the effects on surface water drainage and flood risk as a result of

the Proposed Development are anticipated to be not significant; and
    - foul water will be connected to existing infrastructure within the Proposed Development site, with it being treated locally at the treatment works on Chapel Lane. Impact of foul water discharge is considered to be not significant.

- in terms of hydrology and contamination:
    - potential impacts to groundwater and watercourses could occur during operation but with appropriate management, housekeeping and preventative maintenance practices, as required by the EP needed for an operational site, potential impacts to soil and groundwater will be minimised. As such, it was agreed that the effects have been assessed as not significant.

4.21.87. The SoCG also confirms Rs 12 (Surface Water Drainage), 13 (Foul Water Drainage), 14 (Flood Risk Mitigation), 15 (Contaminated Land and Groundwater) and 17 (CEMP) of the dDCO [APP-005] (current version [REP7a-006]) would appropriately control the design, construction, operation and decommissioning of the Proposed Development in terms of water quality/ resources or flood risk/ resilience.

4.21.88. The IDB for the area of the Proposed Development site, did not make an RR, nor did it seek to register as an IP. However, the Applicant completed a SoCG with the IDB that agreed:

- in terms of effects on surface water and flood risk:
    - in principle that the revised FRA [AS-010] provides satisfactory proposals to adequately manage surface water from the Proposed Development site, presents the potential flood risks and demonstrates that the proposed mitigation measures are adequate to minimise flood risk;
    - the Applicant's preferred method and rate of discharge (greenfield runoff rate) for surface water runoff can be appropriately accommodated either within the IDB network (subject to confirmation by the IDB that a discharge rate higher than agricultural runoff rate (1.4 litres per second per hectare) is acceptable), or, alternatively, a hybrid solution in combination with the preferred solution, discharging excess surface water via the water discharge corridor at the greenfield runoff rate, as indicated on Figure 4.9 [APP-018]; and
    - the mitigation, management and enhancement measures outlined within these documents include the necessary principal controls to ensure compliance with IDB bylaws, and appropriately acknowledge where consent of the IDB would need to be sought.

4.21.89. This SoCG also agreed that the design and impact avoidance and mitigation measures identified and specified by control measures within R12 (Surface Water Drainage) and R14 (Flood Risk Mitigation) of the dDCO are appropriate.

4.21.90. The MMO in its SoCG with the Applicant [REP6-007] confirmed it was satisfied in regard to underwater sound effects on fish and potential scour. It also agreed *"…all other matters if regulatory interest to the MMO that the methods used to inform the assessment of the effects on the marine environment and associated topics are appropriate and in line with current best practice and guidance."* In terms of water quality the SoCG agreed ES Chapter 12 (Water Environment and Flood Risk) [APP-055] and Appendix 12B: WFD Assessment [APP-085] *"satisfactorily assessed all relevant potential pollution risks to surface water during construction…"* with appropriate controls secured during construction being secured in the Framework CEMP. In terms of operation it agreed the EA would act as technical lead including in terms of the cooling water system and discharge that would be controlled under the EP.

4.21.91. The Applicant's completed SoCG with the MCA [REP1-016] agreed the conditions of the dDCO, including the DML [APP-005] (current version [REP7a-006]), had been subject to review and agreement by the MMO and Associated British Ports, as harbour authority and appropriately control the impacts of the Proposed Development, including mitigation proposed, in relation to matters of interest to the MCA. Furthermore the SoCG with the MCA confirmed *"…no changes to the draft DCO including DML (APP-005) are considered necessary from MCA's perspective…"*

4.21.92. NE in its completed SoCG with the Applicant [REP7-005] agreed *"water quality effects on European Sites described in the updated HRA have been adequately assessed."* Additionally, it was agreed that the dDCO [APP-005] had adequately addressed NE's concerns in regard to measures to reduce water pollution impacts during the construction phase of development and that these have been secured via R13 of the dDCO.

4.21.93. The AS of John Carney [AS-027] objects *"…to water abstraction alteration to lock gated level at Keadby…"* This objection was not previously raised in his RR [RR-015]. In this AS John Carney references the Stainforth and Keadby Canal Act (1793) and states the North Soke Drain is a flood defence. He indicates the River Don maintains the water level in the Stainforth and Keadby Canal and says it is notorious for flash floods, although I consider it unclear as to which water body (the river, canal or both) he is referring to. In response to this submission, the Applicant at DL7 [REP7-014] commented it was *"…overall unclear what specific concerns are being raised in relation to the Keadby 3 Carbon Capture Power Station Draft DCO or procedural points."* Additionally, the Applicant points to its FRA [AS-010] advising it demonstrates that the Proposed Development would remain safe during its lifetime and would not increase flood risk elsewhere.

4.21.94. In addition to the findings of the FRA [AS-010], in relation to this matter, I note the Applicant's Summary of Canal Water Abstraction Assessment [REP6a-058] presents an assessment of flood risk in relation to the water efficiency measures proposed at Keadby Lock and concludes a negligible impact on the flood risk of the canal as a result of the proposed works. The mechanism remains unchanged from the baseline flood risk given

the supervisory control and data acquisition technology in place which is designed to minimise variation from the normal maintained water level and automatically makes adjustments to the sluices to maintain the required water level, thus mitigating flood risk.

4.21.95. Additionally, I note that the FRA has been agreed by the EA through the Applicant's completed SoCG with the EA [REP5-014] and other parties with a remit for flood management, including NLC as the Lead Local Flood Authority and the IDB also accepting the conclusions of the FRA in the Applicant's completed SoCG with those statutory bodies ([REP6-005] and [REP6-013] respectively). Bearing these factors in mind, I have no reason to disagree with the Applicant's position in this regard and find no merit in the objection raised.

4.21.96. The EA has not raised any concerns in relation to the Proposed Development being located within FZ3, nor has it raised any concerns or objections in regard to the Applicant's submitted FRA or the Applicant's conclusions in regard to the sequential or exception tests. Indeed, the EA confirms with the exception of its concerns on CA/ TP, as discussed in Chapter 7 of this report, it has no objection in principle to the Proposed Development. Indeed neither the EA; NLC, as LLFA; nor the IDB raised any concerns to the Proposed Development, in terms of water quality/ resources or flood risk/ resilience, that remain unresolved.

4.21.97. I find no reasons from the evidence entered into the examination to disagree with the EA, NLC or the IDB in regard to matters concerning water quality/ resources or flood risk/ resilience. Furthermore, I find ES Chapter 12 (Water Environment and Flood Risk) [APP-055], ES Appendix 12A: FRA [AS-010] and ES Appendix 12B: WFD Assessment [APP-085] to be robust and sound. As such, the assessments undertaken in regard to water quality/ resources and flood risk/ resilience are considered appropriate for the scale, nature and location of the Proposed Development and make appropriate recommendations for mitigation, which are included in R14 (Flood risk mitigation) and R17 (CEMP) of the dDCO (current version [REP7a-006]).

4.21.98. From the evidence before me, having regard to the sequential and exception tests, I am satisfied that the Proposed Development is acceptable in terms of its location and in regard to all matters related to water quality/ resources and flood risk/ resilience.

EXA CONCLUSIONS

4.21.99. I am satisfied that the Applicant's submitted FRA was appropriately undertaken and meets the requirements of the NPS. I consider that the mitigation identified in the FRA and ES is sufficient and would be appropriately secured by Rs 14 (Flood risk mitigation) and 15 (Contaminated Land and Groundwater) of the rDCO, attached at Appendix C of this report, to guard against the risk of flooding and contamination of land and groundwater.

4.21.100. I am satisfied that water quality/ resources and flood risk/ resilience issues arising from the Proposed Development have been adequately addressed. I am content adequate mitigation measures relating to these matters are secured in the rDCO, attached at Appendix C of this report, including under R12 (Surface Water Drainage), R13 (Foul Water Drainage), R15 (Contaminated Land and Groundwater), R17 (CEMP), R30 (Piling and Penetrative Foundation Design) and R38 (Decommissioning).

4.21.101. I consider the Proposed Development would thus accord with relevant legislation and policy requirements, including those of NPS EN-1, NPS EN-2, NPS EN-4, NPS EN-5, draft NPS EN-1, draft NPS EN-2, draft NPS EN-4, draft NPS EN-5 and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 and that water quality, flood risk and flood resilience effects are a neutral consideration in the planning balance.

5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

5.1. INTRODUCTION

5.1.1. This chapter sets out the Examining Authority's (ExA) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS) for the Department for Business, Energy and Industrial Strategy (BEIS), as the competent authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations).

5.1.2. This chapter is structured as follows:

- Section 5.2: Findings in relation to likely significant effects (LSE) on the United Kingdom (UK) National Site Network (NSN) and other European sites.
- Section 5.3: Conservation objectives for sites and features.
- Section 5.4: Findings in relation to Adverse Effects on Integrity (AEoI).
- Section 5.5: HRA conclusions.

5.1.3. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s)[18] and no reasonable scientific doubt remains[19].

5.1.4. Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 3 of this report.

5.1.5. I have been mindful throughout the Examination of the need to ensure that the SoS for BEIS has such information as may reasonably be required to carry out their duties as the competent authority. I have

[18] For the purposes of this chapter, in line with the Habitats Regulations and relevant Government policy, the term "European sites" includes Special Areas of Conservation (SAC), candidate SACs, possible SACs, Special Protection Areas (SPA), potential SPAs, Sites of Community Importance, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites. For ease of reading, this chapter also collectively uses the term "European site" for 'European sites' defined in the Conservation of Habitats and Species Regulations 2017 and 'European Marine Sites' defined in the Conservation of Offshore Marine Habitats and Species Regulations 2017, unless otherwise stated. "UK National Site Network" refers to SACs and SPAs belonging to the United Kingdom already designated under the Directives and any further sites designated under the Habitats Regulations.

[19] CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij

sought evidence from the Applicant and the relevant Interested Parties (IP), including Natural England (NE) as the appropriate nature conservation body, through written questions and Issue Specific Hearings (ISH).

REPORT ON THE IMPLICATIONS FOR EUROPEAN SPECIES AND CONSULTATION

5.1.6. I produced a Report on the Implications for European Sites (RIES) [PD-021] which compiled, documented, and signposted HRA-relevant information provided in the Development Consent Order (DCO) application and Examination representations up to Deadline (DL) 6 (26 April 2022). The RIES was issued to set out my understanding of HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time. Consultation on the RIES took place between 3 May 2022 and 24 May 2022. Comments were received from the Applicant [REP7-013], NE [REP7-021] and North Lincolnshire Council [REP7-016] at DL7 (24 May 2022). Responses to these comments on the RIES were then submitted by the Marine Management Organisation (MMO) [REP7a-017] at DL7a (6 June 2022). These comments have been taken into account in the drafting of this chapter.

5.1.7. My recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations, should the SoS wish to do so.

PROPOSED DEVELOPMENT DECSRIPTION AND HRA IMPLICATIONS

5.1.8. The Applicant's assessment of effects is presented in the following application document:

- HRA Screening Report [APP-041].

5.1.9. Despite being titled a 'Screening Report', it considers a small number of impact pathways at HRA stage 2 (the Integrity Test).

5.1.10. The spatial relationship between the Order Limits of the Proposed Development and European sites is shown in Figure 2 of the Applicant's HRA Screening report [APP-041].

5.1.11. The Proposed Development is not directly connected with, or necessary to, the management of a European site. Therefore, the SoS for BEIS must make an appropriate assessment (AA) of the implications of the Proposed Development on potentially affected European sites in light of their conservation objectives.

Revisions during Examination

5.1.12. Further revisions of the HRA Screening Report were submitted during the Examination, with subsequent revisions being titled HRA AA Report, with

the most recent revision (Revision 4) being the HRA AA Report submitted at DL6a [REP6a-055]. This report generally refers to the latest (DL6a) version, unless otherwise specified.

5.1.13. In response to representations made by IPs during the Examination (NE [RR-010], the MMO [RR-006] and the Environment Agency (EA) [AS-002]), the Applicant provided an updated HRA AA Report at DL1 [REP1-006]. These amendments are discussed in sections 5.2 and 5.4 below, as relevant.

5.1.14. On 5 April 2022, the Applicant submitted a change request, which was amended at DL6 (26 April 2022), as described in Chapter 2 of this report (paragraph 2.2.3). The amended change request was accepted by me [PD-020] on 12 May 2022. The accepted change request includes a further revision to the HRA AA Report [REP6a-055/ REP6a-056] (clean/ tracked). Section 1.5 of the HRA AA Report [REP6a-055] provides a summary of the Proposed Development changes and the relationship to the HRA AA, concluding that Changes 1, 3, 4 and 5 produce no likely new or altered significant effects on the statutorily designated sites and do not trigger any specific requirement for updates of the HRA AA.

Transboundary effects

5.1.15. The Applicant did not identify any LSEs on European sites in European Economic Area States in its HRA AA Report [REP6a-055] or within its Environmental Statement [APP-042 to APP-159]. Only European sites which form part of the UK NSN are addressed in this report. No such impacts were raised for discussion by any IPs during the Examination.

SUMMARY OF HRA MATTERS CONSIDERED DURING THE EXAMINATION

5.1.16. The main HRA matters raised by me, NE and other IPs and discussed during the Examination include:

- whether some of the Applicant's negative screening conclusions had relied upon measures intended to avoid or reduce the harmful effects of the Proposed Development on the sites (which would go against the European Union Court of Justice (CJEU) People over Wind Judgement (C-323/17)[20]);
- inclusion of the impact pathway to bird foraging resources;
- confidence in the baseline habitat conditions (saltmarsh) and baseline air quality data;
- methodological concerns regarding noise disturbance thresholds; and
- concerns about the security of mitigation measures.

[20] The 2018 ruling by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of People Over Wind and Sweetman vs Coillte Teoranta (2018) ('the People Over Wind judgement'), confirmed that mitigation should not be taken into account at screening stage.

5.1.17. These matters are discussed in the sections below, as appropriate.

5.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

5.2.1. Under Regulation 63 of the Habitats Regulations, the competent authority must consider whether a development will have LSEs on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an AA and the activities, sites or plans and projects to be included for further consideration in the AA.

5.2.2. The European sites and qualifying features that were considered in the Applicant's assessment of LSEs are presented in Table 2.1 of the RIES [PD-021]. The sites included:

- Humber Estuary Special Area of Conservation (SAC);
- Humber Estuary Special Protection Area (SPA);
- Humber Estuary Ramsar site;
- Thorne Moor SAC;
- Hatfield Moor SAC; and
- Thorne and Hatfield Moors SPA.

5.2.3. NE in its response to my First Written Questions (ExQ1) Q1.4.4 [REP2-030], did not identify any other UK European site or European site features that could be affected by the project. No IPs raised concerns about the scope of the European sites considered or their qualifying features.

5.2.4. The Applicant's HRA AA Report sets out the methodology applied to determining what would constitute a significant effect within its HRA AA Report (paragraph 3.2.1 [REP6a-055]).

LIKELY SIGNIFICANT EFFECTS FROM THE PROPOSED DEVELOPMENT ALONE

5.2.5. The impact pathways screened by the Applicant for LSEs were:

- habitat disturbance and modification;
- visual and noise/ vibration disturbance;
- entrapment of lamprey;
- Invasive Non-Native Species (INNS);
- atmospheric pollution;
- deterioration of water quality; and
- impacts on foraging resources.

5.2.6. Thorne Moor SAC, Hatfield Moor SAC and Thorne and Hatfield Moors SPA, were screened for operational atmospheric pollution impacts, and, as evidenced in Appendix B1 of the HRA AA report [REP6a-055], the process contributions for all of the pollutants assessed did not exceed the 1% of critical load screening threshold and therefore these sites were screened out of the assessment. The Applicant identified the potential for LSE impacts of the Proposed Development alone on three European sites considered in the HRA AA Report [REP6a-055]: Humber Estuary SAC,

SPA and Ramsar site. These three European sites and the qualifying features identified for LSEs by the Applicant have been included in Table 2 of this report, against the relevant impact pathways.

5.2.7. On the whole the IPs, including NE, did not dispute the Applicant's positive screening conclusions of LSEs. However, with respect to operational air quality effects, NE advised [RR-010] that the Applicant must include the air quality modelling results without and with abatement measures applied to demonstrate the need for an AA, as well as clarify which European sites and pollutants are being referred to. This information was requested by me in ExQ1 [PD-009] (ExQ1 Q1.4.18 and Q1.4.20).

5.2.8. In response to these concerns, the Applicant revised the HRA Screening Report to clarify the design measures within the Proposed Development that were necessary to meet regulatory requirements and those that were proposed mitigation (abatement) measures for ammonia (NH_3) (ie acid wash) (section 6.6.1 to 6.6.7 [REP1-006]). The revised HRA AA Report presents the unabated results as evidence for the required mitigation.

5.2.9. I agree with the Applicant's conclusion of LSEs on these three European sites and have carried these forward to the consideration of AEoI (see section 5.4 of this report).

5.2.10. The Applicant concluded no LSEs on a number of qualifying features in its application HRA Screening Report [APP-041]. During the Examination, as described in section 3 of the RIES [PD-021], IPs disputed and I queried a number of the Applicant's negative conclusions regarding LSEs. I therefore sought to clarify the screening conclusions and positions of the Applicant and IPs during the Examination. Where there were differences of position related to the screening stage, these are discussed below.

Humber Estuary SAC and Ramsar – underwater noise/ vibration disturbance on lamprey species

5.2.11. As described in paragraphs 3.1.2 to 3.1.5 of the RIES [PD-021], the Applicant's original HRA Screening Report [APP-041] screened out LSEs from noise disturbance resulting from the installation of the cofferdam in the River Trent for the Humber Estuary SAC and Ramsar river and sea lamprey qualifying features on the basis that lamprey are low hearing sensitivity fish and therefore unlikely to be significantly affected by noise and vibration disturbance. NE [RR-010] advised that noise and vibration could nevertheless impact the lamprey migration as they would take shelter and stop until the noise passes. The Applicant [APP-041] proposed soft-start procedures as standard mitigation for marine receptors (paragraph 5.2.29).

5.2.12. In response to NE's concerns the Applicant secured the mitigation and revised the HRA AA Report [REP6a-055] screening in this pathway for AA, ensuring that it was consistent with case law (the People Over Wind judgement).

5.2.13. I agree with the conclusion of LSEs for the river and sea lamprey qualifying features of the Humber Estuary SAC and Ramsar site from underwater noise and vibration.

Humber Estuary SAC, SPA and Ramsar - water pollution

5.2.14. As described in paragraphs 3.1.15 to 3.1.16 of the RIES [PD-021], NE [RR-010] advised that the measures outlined to prevent water pollution impacts on the Humber Estuary SAC/ SPA during the construction stage of the Proposed Development (in sections 5.2.58 to 5.2.63 [APP-041]) would constitute mitigation and should therefore be screened into the AA. NE also sought these measures to be secured within the DCO.

5.2.15. The Applicant [REP2-006] considers that the measures are generic and applicable to all waterbodies regardless of designations, and are necessary to meet general legislative, regulatory and good practice requirements. However, "*for purposes of clarity*", the Applicant revised the HRA Screening Report to consider water pollution effects at AA (see HRA AA Report [REP6a-055] (paragraph 5.2.51)).

5.2.16. In light of the potential pollution pathways identified and the measures proposed to address these, I am of the view that on a precautionary basis the water pollution impact pathway should be taken forward for consideration of AEoI.

Humber Estuary SAC and Ramsar – entrapment of migrating lamprey species arising from cofferdam installation

5.2.17. As described in paragraphs 3.1.6 to 3.1.8 of the RIES [PD-021], NE [RR-010] queried the Applicant's assumption that the only migratory fish species likely to use the Stainforth and Keadby Canal is European eel, advising that either further information be provided (through surveys) to demonstrate that lamprey do not use the Stainforth and Keadby Canal, or that the same precautionary mitigation be applied to the cofferdam installation in the canal as for that applied to the river abstraction option.

5.2.18. At paragraph 3.1.9 of my RIES [PD-021], I required the Applicant to clarify what mitigation was proposed to prevent entrapment of lamprey species through the dewatering of the cofferdam for both the River Trent and Stainforth and Keadby Canal river abstraction options and justify how any mitigation proposed is consistent with the People Over Wind judgement.

5.2.19. The Applicant [REP7-013] clarified that the mitigation during any cofferdam installation (at either the river or canal abstraction option location) and dewatering involves fish rescue. This would be set out in a Fish Management Plan, secured via the Landscaping and Biodiversity Management and Enhancement Plan [REP7-003] and the framework Construction Environmental Management Plan (CEMP) [REP6-003].

5.2.20. In terms of consistency with the People Over Wind judgement query, mentioned in paragraph 5.1.16 of this report, the Applicant responded (paragraph 1.6 [REP7-013]) arguing "...*there is a legal duty, irrespective of any European site designations or the species involved, to meet welfare requirements for fish. Lamprey (as a fish) is therefore encompassed, as an incidental consequence of its presence in the relevant watercourses, by this fish welfare legislation and no species specific mitigation (protection measures and/ or habitat compensation) is therefore proposed*". NE in the Applicant's completed Statement of Common Ground (SoCG) [REP7-005] and 'Comment on the RIES' [REP7-021] raised no objection to this approach.

5.2.21. Given the measures that would be set out in the Fish Management Plan, I decided on a precautionary basis to consider potential entrapment effects on the lamprey features of the Humber Estuary SAC and Ramsar site arising from the installation of the cofferdam in either the River Trent or Stainforth and Keadby Canal for consideration of AEoI.

Humber Estuary SAC and Ramsar site – saltmarsh habitat disturbance and modification

5.2.22. As described in paragraphs 3.1.10 to 3.1.12 of the RIES [PD-021], NE [RR-010] advised that transitional reedbed vegetation found along the banks of the River Trent (described in section 5.2.4 of the original HRA Screening Report [APP-041]) be considered as saltmarsh habitat in the context of the Humber Estuary SAC and Ramsar site designations. NE advised [RR-010] that any loss of designated habitat within a designated site should be screened positively.

5.2.23. The Applicant in [REP2-006] and [REP6a-055] maintains its conclusion of no LSEs, clarifying that the perennial vegetation observed to be present along the river margins of the Trent is species-poor riparian vegetation which does not comprise the saltmarsh vegetation qualifying feature "*Salicornia and other annuals colonising mud"* (see paragraphs 5.2.5 to 5.2.7 [REP6a-055]).

5.2.24. NE confirmed [REP6-036] in response to my Further Written Questions (ExQ2) Q2.4.3 [PD-016] that the revised HRA provides evidence that the saltmarsh habitat (*Salicornia* qualifying feature) is not present in close proximity to the Proposed Development. On the basis of there being no adverse effect on saltmarsh habitat, it is not necessary to secure the reinstatement of such habitat by Requirement (R) in the DCO.

5.2.25. On the basis that the qualifying feature is absent, I am of the view that there would be no LSE on the *Salicornia* qualifying feature of the Humber Estuary SAC and Ramsar site arising from habitat disturbance during construction.

Humber Estuary SAC and Ramsar – dispersal of Invasive Non-native Species

5.2.26. Paragraph 5.2.30 of the HRA AA Report [REP6a-055] identifies a pathway for the introduction of INNS, via construction vehicles, plant and materials brought into the construction site from other locations, which could serve as vectors for the introduction of INNS to the River Trent.

5.2.27. During the Examination I queried [PD-009] (ExQ1 Q1.4.8) why the biosecurity measures for INNS in the Framework CEMP [APP-160] did not constitute a measure to avoid or reduce an effect on a European site and why the potential effects of INNS have not been taken forward to AA, consistent with the People Over Wind judgement.

5.2.28. The Applicant's reasoning [REP2-006] is that the biosecurity measures are required to ensure that during construction the Applicant meets general (rather than European site-specific) legal requirements in relation to INNS, and to protect the water supply and discharge infrastructure of the Proposed Development from damage during operation; they are not proposed to address a specific potential impact on European sites. This reasoning was incorporated into the revised HRA AA Report (paragraphs 5.2.29 to 5.2.31 [REP6a-055]).

5.2.29. In light of the proposed biosecurity measures, I decided on a precautionary basis to consider potential effects on the qualifying features of the Humber Estuary SAC and Ramsar site from the introduction of INNS for AEoI.

Humber Estuary SPA and Ramsar – noise disturbance to bird species

5.2.30. As described in paragraphs 3.1.17 to 3.1.20 of the RIES [PD-021], NE [RR-010] disagreed with the Applicant's construction noise assessment methodology and proposed an alternative.

5.2.31. In response to these concerns, the Applicant [REP1-021] undertook sensitivity testing using the alternative thresholds proposed by NE and incorporated the findings into a revised HRA AA Report (paragraphs 5.2.10 to 5.2.21 [REP1-006]), including accompanying noise contour plots (Figures 3 and 4). These findings were carried through into the most recent version of the HRA AA Report [REP6a-055] (see paragraphs 5.2.10 to 5.2.21 and Figures 3 and 4 of that report). The SoCG with NE [REP7-005] states that this matter is resolved.

5.2.32. In light of the above, I am content with the methodology applied and agree with the conclusions of the screening assessment, ie that the potential impact pathway from construction of the proposed PCC site can be discounted, but the installation of the cofferdam in the River Trent could give rise to an LSE in relation to the wading bird and shelduck qualifying interest features of the Humber Estuary SPA and Ramsar.

Humber Estuary SPA and Ramsar – impacts to bird foraging resource

5.2.33. NE [RR-010] considered that the original HRA Screening Report [APP-041] did not contain sufficient evidence regarding the impact of the development on designated bird foraging resource to ascertain whether there was likely to be an adverse effect on the features of the Humber Estuary SPA and Ramsar.

5.2.34. The Applicant responded [REP1-021] and submitted an updated HRA AA Report [REP1-006] to consider temporary and permanent impacts on bird foraging resources for qualifying species features (paragraphs 5.2.52 to 5.2.58 of that revised HRA AA Report), concluding no LSE. These findings were carried through into the most recent version of the HRA AA Report [REP6a-055] (see paragraphs 5.2.52 to 5.2.58 of that report).

5.2.35. The SoCG with NE [REP7-005] states that this matter is resolved.

5.2.36. In light of the additional evidence on bird foraging impacts submitted, I consider the information submitted is sufficient to demonstrate no LSE from the cofferdam installation works on foraging resources of qualifying species of the Humber Estuary SPA and Ramsar.

LIKELY SIGNIFICANT EFFECT FROM THE PROPOSED DEVELOPMENT IN-COMBINATION

5.2.37. The Applicant addressed potential in-combination effects arising from the Proposed Development within Section 7 of the HRA AA Report [REP6a-055] which sets out the methodology applied. The other plans and projects included in the in-combination assessment are set out in Appendix C [REP6a-055].

5.2.38. The scope of the in-combination assessment was not disputed by any IPs, however the MMO [RR-006] recommended that section 7 be updated regularly to reflect any new plans or projects that might need consideration as part of an iterative process. I requested during ISH1 Session 4 [EV-016] and in [EV-031] at ISH1-AP7 that the in-combination assessment be updated periodically to reflect this. The HRA AA Report was updated most recently at DL6a [REP6a-055], however the conclusions of the assessment remained unchanged.

5.2.39. No in-combination LSEs have been identified for the sites and qualifying features where LSEs were excluded from the Proposed Development alone. Paragraph 7.1.4 [REP6a-055] explains that in-combination effects have been excluded because:

- most of the schemes are of insufficient scale and/ or are located at too great a distance from the relevant European sites to be likely to interact with the Proposed Development; and
- in a few cases the schemes were insufficiently advanced or defined to be assessed.

5.2.40. Paragraph 7.1.4 notes that the air quality assessment already intrinsically considers relevant consented schemes within the model, therefore the HRA screening of the Proposed Development alone already

considers the potential in-combination effects with other relevant projects (including the Keadby 2 Power Station).

5.2.41. In the absence of any other projects at a scale or location to be likely to lead to significant effects, or projects at a sufficiently progressed stage to include in a meaningful assessment, I agree that there are not likely to be in-combination effects associated with the Proposed Development.

LIKELY SIGNIFICANT EFFECT - CONCLUSIONS

5.2.42. The Applicant concluded that LSEs could occur for qualifying features of three European sites in the NSN Humber Estuary SAC, SPA and Ramsar site. These sites, qualifying features and potential effects are presented in Table 2 of this report. The submitted SoCG between the Applicant and NE [REP7-005] records agreement on the conclusions of the screening assessment. By the close of the Examination, the Applicant's conclusions of potential LSEs on the European sites and their qualifying features were not disputed by any IPs.

5.2.43. I am satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed. I am generally satisfied with the approach to the assessment of alone and in-combination LSEs, however in view of the measures secured to mitigate effects from the introduction of INNS and the entrapment of lamprey from cofferdam installation, I have precautionarily considered these pathways for AEoI.

5.2.44. Taking into account the reasoning set out above, I consider that the Proposed Development is likely to have a significant effect from the impacts identified in Table 2 on the qualifying features of the European sites identified in Table 2 when considered alone.

Table 2: European sites and features for which LSEs were identified by the ExA

European site(s)	Qualifying feature(s)	LSE(s) alone from:	LSEs in-combination from:
Humber Estuary SAC	Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) Coastal lagoons Dunes with *Hippophae rhamnoides* Embryonic shifting dunes Fixed coastal dunes with herbaceous vegetation ("grey dunes") *Salicornia* and other annuals colonizing mud and sand Sandbanks which are slightly covered by sea water all the time	Introduction of INNS (Construction/ Decommissioning) Atmospheric pollution (Operation)	None identified due to location and nature of other plans and projects

	Shifting dunes along the shoreline with *Ammophila arenaria* ("white dunes")		
	Estuaries Mudflats and sandflats not covered by seawater at low tide	Habitat disturbance and modification (Construction/ Decommissioning) Introduction of INNS (Construction/ Decommissioning) Water quality (Construction/ Decommissioning) Atmospheric pollution (Operation)	
	Sea lamprey River lamprey	Entrapment (Construction/ Decommissioning) Introduction of INNS (Construction/ Decommissioning) Visual and noise/ vibration disturbance (Construction/ Decommissioning) Water quality (Construction/ Decommissioning) Atmospheric pollution (Operation)	
	Grey seal	Introduction of INNS (Construction/ Decommissioning)	

Humber Estuary SPA	*Botaurus stellaris*; Great bittern (breeding and non-breeding) *Circus aeruginosus*; Eurasian marsh harrier (Breeding) *Circus cyaneus*; Hen harrier (Non-breeding) *Recurvirostra avosetta*; Pied avocet (Breeding and non-breeding) *Sterna albifrons*; Little tern (Breeding)	Introduction of INNS (Construction/ Decommissioning) Atmospheric pollution (Operation)	
	Tadorna tadorna; Common shelduck (Non-breeding) *Pluvialis apricaria*; European golden plover (Non-breeding) *Calidris canutus*; Red knot (Non-breeding) *Calidris alpina alpina*; Dunlin (Non-breeding)	Introduction of INNS (Construction/ Decommissioning) Visual and noise/ vibration disturbance (Construction/ Decommissioning) Water quality (Construction/ Decommissioning) Atmospheric pollution (Operation)	

	Philomachus pugnax; Ruff (Non-breeding) *Limosa limosa islandica*; Black-tailed godwit (Non-breeding) *Limosa lapponica*; Bar-tailed godwit (Non-breeding) *Tringa totanus*; Common redshank (Non-breeding) Non-breeding waterbird assemblage		
Humber Estuary Ramsar site	Atlantic salt meadows (Glauco-Puccinellietalia maritimae) Coastal lagoons Dunes with *Hippophae rhamnoides* Embryonic shifting dunes Fixed coastal dunes with herbaceous vegetation ("grey dunes")	Introduction of INNS (Construction/ Decommissioning) Atmospheric pollution (Operation)	

	Salicornia and other annuals colonizing mud and sand Sandbanks which are slightly by sea water all the time Shifting dunes covered along the shoreline with *Ammophila arenaria* ("white dunes") *Recurvirostra avosetta*; Pied avocet (Breeding and non-breeding)		
	Estuaries Mudflats and sandflats not covered by seawater at low tide	Habitat disturbance and modification (Construction/ Decommissioning) Introduction of INNS (Construction/ Decommissioning) Water quality (Construction/ Decommissioning) Atmospheric pollution (Operation)	
	Tadorna tadorna; Common shelduck (Non-breeding)	Introduction of INNS (Construction/ Decommissioning)	

	Pluvialis apricaria; European golden plover (Non-breeding) *Calidris canutus*; Red knot (Non-breeding) *Calidris alpina alpina*; Dunlin (Non-breeding) *Limosa limosa islandica*; Black-tailed godwit (Non-breeding) *Limosa lapponica*; Bar-tailed godwit (Non-breeding) *Tringa totanus*; Common redshank (Non-breeding) Waterbird assemblage	Visual and noise/ vibration disturbance (Construction/ Decommissioning) Water quality (Construction/ Decommissioning/ Operation) Atmospheric pollution (Operation)	
	Sea lamprey River lamprey	Visual and noise/ vibration disturbance (Construction/ Decommissioning) Water quality (Construction/ Decommissioning/ Operation) Entrapment (Construction) Introduction of INNS (Construction/ Decommissioning)	

		Atmospheric pollution (Operation)	
	Grey seal Natterjack toad	Introduction of INNS (Construction/ Decommissioning)	

5.3. CONSERVATION OBJECTIVES

5.3.1. The conservation objectives for the sites and features identified above are set out in section 4 of the Applicant's HRA AA Report [REP6a-055], with the exception of the Humber Estuary Ramsar site for which no conservation objectives are provided. The HRA does not explicitly state that the conservation objectives for the concurrent Humber Estuary sites (SPA and SAC) have been applied to the Ramsar site, although the screening and information to inform AA imply as much in the conclusions. Given the spatial overlap between the sites, and the consistency of qualifying features between them, I consider this to be a reasonable approach. No issues were raised by any IPs in relation to conservation objectives or threats/ pressures to site integrity.

5.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY

INTRODUCTION

5.4.1. My consideration of AEoI is described below. This section is presented as a thematic discussion of potential effects as they apply to groups of European sites, including the conclusions reached for each European site and qualifying feature.

5.4.2. The European sites and qualifying features identified in Table 2 were further assessed by the Applicant to determine if they could be subject to AEoI from the Proposed Development, either alone or in-combination. The assessment of AEoI was made in light of the conservation objectives for the European sites [REP6a-055].

5.4.3. The Applicant's HRA AA Report relied upon a number of mitigation measures to reach its conclusion. Where there have been discussions relating to mitigation during the Examination, these are detailed in the relevant paragraphs below.

5.4.4. The impact pathways that are considered for AEoI are as follows:

- Habitat disturbance and modification (construction/ decommissioning).
- Visual and noise/ vibration disturbance (construction/ decommissioning).
- Deterioration of water quality (construction/ decommissioning).
- Entrapment of lamprey (construction).
- Introduction of INNS.
- Atmospheric pollution (operation).

5.4.5. The sites and features relevant to each pathway are set out in the sections below.

HABITAT DISTURBANCE AND MODIFICATION

5.4.6. The Applicant's HRA AA Report (section 6.2 [REP6a-055]) provided information for an AA in relation to the disturbance and modification of

habitat during the installation of a cofferdam and upgrades to the existing Keadby 1 Power Station river water abstraction structure (if required) during the construction period. This impact pathway is relevant to the qualifying mudflats and sandflats not covered by seawater at low tide and estuaries habitats of the Humber Estuary SAC and the Humber Estuary Ramsar site.

5.4.7. The Applicant concluded disturbance to the habitats as a result of the Proposed Development would have no AEoI on the qualifying features of the above European sites, on the basis that the scale, location and type of construction activities are not likely to result in habitat disturbances that would meaningfully alter the extent, structure and function of the mudflat and estuary habitats (paragraph 6.2.8 [REP6a-055]).

5.4.8. In its Relevant Representation (RR), NE [RR-010] raised the potential for habitat reinstatement to be required, under the impression that saltmarsh habitat was present within the vicinity of the cofferdam. Following confirmation that the temporary reduction in the extent of habitat relates to the mudflat feature, NE confirmed [REP6-036], in response to ExQ 2.4.3 [PD-016], that securing reinstatement of such habitat by R in the DCO would not be required for the mudflat feature of the estuary, given its likely recoverability.

5.4.9. On the basis of the information before the Examination, I am of the view that there would be no AEoI from habitat disturbance and modification on the qualifying mudflat and estuary habitats of the Humber Estuary SAC and the Humber Estuary Ramsar site.

VISUAL AND NOISE DISTURBANCE ON BIRD SPECIES

5.4.10. The Applicant's HRA AA Report (section 6.3 [REP6a-055]) provided information for an AA in relation to visual and noise disturbance on bird species during installation of a cofferdam and upgrades to the existing Keadby 1 Power Station river water abstraction structure (if required) during the construction period.

5.4.11. This impact pathway is relevant to the non-breeding populations of wading bird species and shelduck occurring in association with mudflat habitats qualifying features of the Humber Estuary SPA and Ramsar site (see Table 2):

- *Tadorna tadorna,* Common shelduck (Non-breeding).
- *Pluvialis apricaria,* European golden plover (Non-breeding).
- *Calidris canutus,* Red knot (Non-breeding).
- *Calidris alpina alpina,* Dunlin (Non-breeding).
- *Philomachus pugnax*, Ruff (Non-breeding) (nb SPA feature only).
- *Limosa limosa islandica*, Black-tailed godwit (Non-breeding).
- *Limosa lapponica,* Bar-tailed godwit (Non-breeding).
- *Tringa tetanus*, Common redshank (Non-breeding).
- Waterbird assemblage.

5.4.12. The Applicant has not undertaken a specific assessment of visual disturbance as the noise impacts would extend further and therefore the noise assessment represents the worst-case scenario. In terms of mitigation, the Applicant has committed to a soft-start approach to piling, with vibratory piling as standard and percussive piling only used if required to drive a pile to its design depth (paragraph 6.3.3 [REP6a-055]). This is secured via the Deemed Marine Licence (Schedule 13 of the draft DCO (dDCO) [REP7a-006]) at Condition 18. The Applicant's HRA concludes, given the timing of the construction activities (during the summer when river flows are lowest), the small area of habitat affected as a proportion of available mudflat habitat (9,384 hectares), the highly mobile nature of the birds (given that the foraging habitats would only be available at low tide), and the location of the development (at the upper limit of the Ramsar site as it applies to the River Trent), that there will be no AEoI of the relevant European sites as a result of visual and noise disturbance of qualifying bird species during construction of the Proposed Development.

5.4.13. In its RR, NE [RR-010] advised that the DCO should secure the avoidance of the wintering bird period for the cofferdam installation and associated piling works, to prevent noise and visual disturbance to the designated features of the Humber Estuary SPA.

5.4.14. The Applicant confirmed that provisions to avoid the wintering bird period for cofferdam installation were secured in detailed design R5(4)(d) of the DCO which requires the timing of installation and removal to be approved prior to commencement of the work.

5.4.15. Based on the assessments and information provided by the Applicant, having considered the potential disturbance effects in light of the conservation objectives and the mitigation secured through the dDCO to avoid visual and noise disturbance, as referred to above, I am of the view that an AEoI can be excluded on the qualifying features of the Humber Estuary SPA and Ramsar sites listed above.

NOISE/ VIBRATION DISPTURBANCE ON LAMPREY SPECIES

5.4.16. Section 6.4 of the HRA AA Report [REP6a-055] provides information for an AA in relation to noise/ vibration disturbance on lamprey species during the installation of the cofferdam and upgrades to the existing Keadby 1 Power Station river water abstraction structure (if required) during the construction period. River and sea lamprey are qualifying features of the Humber Estuary SAC and Ramsar site.

5.4.17. As described in paragraphs 5.2.11 to 5.2.13 of this report, the Applicant secured the use of soft-start methods for piling activity, secured via Deemed Marine Licence (Schedule 13 of the dDCO [REP7a-006]) at Condition 18, allowing migrating lamprey species associated with the Humber Estuary SAC to pass the development site before piling begins. The SoCG with NE [REP7-005] confirms that it considers this adequately secures the use of soft-start procedures within the DCO.

5.4.18. Given that lamprey species are categorised as low hearing sensitivity fish species, and subject to the implementation of the soft-start mitigation as secured, I consider there would be no AEoI on the Humber Estuary SAC and Ramsar sea and river lamprey qualifying features.

DETERIORATION OF WATER QUALITY

5.4.19. The Applicant identified LSEs from potential water quality effects during the construction period on the qualifying habitats and dependent species of the Humber Estuary SAC, SPA and Ramsar site (see Table 2):

- Estuaries (SAC and Ramsar).
- Mudflats and sandflats not covered by seawater at low tide (SAC and Ramsar).
- Sea lamprey (SAC and Ramsar).
- River lamprey (SAC and Ramsar).
- *Tadorna tadorna,* Common shelduck (Non-breeding) (SPA and Ramsar).
- *Pluvialis apricaria,* European golden plover (Non-breeding) (SPA and Ramsar).
- *Calidris canutus,* Red knot (Non-breeding) (SPA and Ramsar).
- *Calidris alpina alpina,* Dunlin (Non-breeding) (SPA and Ramsar).
- *Philomachus pugnax*, Ruff (Non-breeding) (SPA).
- *Limosa limosa islandica*, Black-tailed godwit (Non-breeding) (SPA and Ramsar).
- *Limosa lapponica,* Bar-tailed godwit (Non-breeding) (SPA and Ramsar).
- *Tringa tetanus*, Common redshank (Non-breeding) (SPA and Ramsar).
- Waterbird assemblage (SPA and Ramsar).

5.4.20. Section 6.5 of the HRA AA Report provides the information to inform an AA. The Framework CEMP sets out standard mitigation measures to minimise the risk of water pollution to watercourses. The HRA AA Report (section 6.5 [REP6a-055]) concludes there will be no AEoI of the relevant European sites as a result of water pollution during construction of the Proposed Development.

5.4.21. In its RR, NE [RR-010] expressed its satisfaction with the measures outlined to prevent water pollution impacts during the construction phase but considered that these should be secured in the DCO. Construction practice measures to avoid, prevent and reduce adverse effects on the water environment are committed to in the Framework CEMP [REP6-003] (secured via R17 of the DCO) and foul water drainage measures for the treatment of sewage and grey water produced during the construction phase are secured via R13.

5.4.22. The SoCG with NE [REP7-005] confirms that it considers water quality effects on European sites described in the updated HRA have been adequately assessed.

5.4.23. I am satisfied that subject to the implementation of the mitigation measures as secured, there would be no AEoI on the qualifying features

of the Humber Estuary SAC, SPA and Ramsar site listed above from the water quality effects as a result of Proposed Development.

ENTRAPMENT OF LAMPREY SPECIES

5.4.24. This pathway is relevant to the river and sea lamprey qualifying features of the Humber Estuary SAC and Ramsar site.

5.4.25. The Applicant concluded no LSEs from the entrapment of lamprey arising from the dewatering of the cofferdam during construction, however as set out in section 5.4 of this report, I considered the pathway precautionarily for AEoI, in light of the mitigation measures proposed by the Applicant.

5.4.26. Paragraph 4.7.10 of the Landscaping and Biodiversity Management and Enhancement Plan [REP7-003] sets out the measures for inclusion in a Fish Management Plan:

- "*appropriate timings to minimise potential for capture of sensitive fish species e.g. migratory fish;*
- *provision for screening of pump intakes to prevent fish being drawn into the pipe/ pump;*
- *supervision of dewatering of any cofferdam(s) by an appropriately experienced Clerk of Works to oversee fish welfare and to support the relocation of any stranded fish or associated wildlife back to the main channel of the relevant watercourse outside the working area; and*
- *if appropriate, e.g. to meet additional requirements of the relevant regulators, other specialist techniques to support the capture and relocation of fish to the main channel of the relevant watercourse outside the working area prior to drawdown*."

5.4.27. The Applicant states in paragraph 5.2.27 of the HRA AA Report [REP6a-055] that the size range of lampreys likely to be trapped within the cofferdam and their resilient morphology (ie their anguilliform body shape) is sufficient to conclude that they would be detected during general fish rescue procedures and would suffer no injurious effect from fish rescue.

5.4.28. NE in the Applicant's completed SoCG [REP7-005] and 'Comment on the RIES' [REP7-021] raise no objection to this conclusion.

5.4.29. I am satisfied that subject to the implementation of the mitigation measures as secured, there would be no AEoI on the lamprey species qualifying features of the Humber Estuary SAC and Ramsar site from the entrapment of fish during cofferdam installation.

INTRODUCTION OF INNS

5.4.30. As set out above, the Applicant concluded no LSE from the introduction of INNS, however it appears to have placed reliance on measures in the CEMP in reaching the assessment conclusions. In light of the People Over Wind judgment and in keeping with the precautionary principle, I

consider it necessary to consider whether the spread of INNS would result in AEoI.

5.4.31. On a precautionary basis I included all qualifying features within the Humber Estuary SAC, SPA and Ramsar sites, as the risk of spread of INNS has the potential to be a site-wide effect:

- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) (SAC and Ramsar).
- Coastal lagoons (SAC and Ramsar).
- Dunes with *Hippophae rhamnoides* (SAC and Ramsar).
- Embryonic shifting dunes (SAC and Ramsar).
- Estuaries (SAC and Ramsar).
- Fixed coastal dunes with herbaceous vegetation ("grey dunes") (SAC and Ramsar).
- Mudflats and sandflats not covered by seawater at low tide (SAC and Ramsar).
- *Salicornia* and other annuals colonizing mud and sand (SAC and Ramsar).
- Sandbanks which are slightly by sea water all the time (SAC and Ramsar).
- Shifting dunes covered along the shoreline with *Ammophila arenaria* ("white dunes") (SAC and Ramsar).
- Sea lamprey (SAC and Ramsar).
- River lamprey (SAC and Ramsar).
- Grey seal (SAC and Ramsar).
- *Botaurus stellaris,* Great bittern (breeding and non-breeding) (SPA).
- *Circus aeruginosus*, Eurasian marsh harrier (Breeding) (SPA).
- *Circus cyaneus*, Hen harrier (Non-breeding) (SPA).
- *Recurvirostra avosetta*, Pied avocet (Breeding and non-breeding) (SPA).
- *Sterna albifrons*, Little tern (Breeding) (SPA).
- *Tadorna tadorna*, Common shelduck (Non-breeding) (SPA and Ramsar).
- *Pluvialis apricaria*, European golden plover (Non-breeding) (SPA and Ramsar).
- *Calidris canutus*, Red knot (Non-breeding) (SPA and Ramsar).
- *Calidris alpina alpina*, Dunlin (Non-breeding) (SPA and Ramsar).
- *Philomachus pugnax*, Ruff (Non-breeding) (SPA).
- *Limosa limosa islandica*, Black-tailed godwit (Non-breeding) (SPA and Ramsar).
- *Limosa lapponica*, Bar-tailed godwit (Non-breeding) (SPA and Ramsar).
- *Tringa tetanus*, Common redshank (Non-breeding) (SPA and Ramsar).
- Waterbird assemblage (SPA and Ramsar).
- Natterjack toad (Ramsar).

5.4.32. The CEMP [REP6-003] sets out the mitigation, comprising an Invasive Species Management Plan to specify the survey, control, eradication, biosecurity and supervision measures necessary.

5.4.33. In its RR [RR-010] (section 3.1.2), NE expressed satisfaction that the Proposed Development would not increase the risk of INNS impacts within the boundary of the Humber Estuary SPA and SAC.

5.4.34. I am satisfied that, subject to the implementation of the mitigation measures as secured, there would be no AEoI on all features of the Humber Estuary SAC, SPA and Ramsar site from the unintentional introduction or spread of INNS as a result of Proposed Development.

ATMOSPHERIC POLLUTION

5.4.35. The Applicant identified LSEs from operational emissions to air, specifically emissions of Nitrogen Oxides (NO_x) and nitrogen deposition (with NH_3), on the following qualifying features of the Humber Estuary SAC, SPA and Ramsar site (see Table 2):

- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) (SAC and Ramsar).
- Coastal lagoons (SAC and Ramsar).
- Dunes with *Hippophae rhamnoides* (SAC and Ramsar).
- Embryonic shifting dunes (SAC and Ramsar).
- Estuaries (SAC and Ramsar).
- Fixed coastal dunes with herbaceous vegetation ("grey dunes") (SAC and Ramsar).
- Mudflats and sandflats not covered by seawater at low tide (SAC and Ramsar).
- *Salicornia* and other annuals colonizing mud and sand (SAC and Ramsar).
- Sandbanks which are slightly by sea water all the time (SAC and Ramsar).
- Shifting dunes covered along the shoreline with *Ammophila arenaria* ("white dunes") (SAC and Ramsar).
- Sea lamprey (SAC and Ramsar).
- River lamprey (SAC and Ramsar).
- *Botaurus stellaris,* Great bittern (breeding and non-breeding) (SPA).
- *Circus aeruginosus*, Eurasian marsh harrier (Breeding) (SPA).
- *Circus cyaneus*, Hen harrier (Non-breeding) (SPA).
- *Recurvirostra avosetta*, Pied avocet (Breeding and non-breeding) (SPA).
- *Sterna albifrons*, Little tern (Breeding) (SPA).
- *Tadorna tadorna*, Common shelduck (Non-breeding) (SPA and Ramsar).
- *Pluvialis apricaria*, European golden plover (Non-breeding) (SPA and Ramsar).
- *Calidris canutus*, Red knot (Non-breeding) (SPA and Ramsar).
- *Calidris alpina alpina*, Dunlin (Non-breeding) (SPA and Ramsar).
- *Philomachus pugnax*, Ruff (Non-breeding) (SPA).
- *Limosa limosa islandica*, Black-tailed godwit (Non-breeding) (SPA and Ramsar).
- *Limosa lapponica*, Bar-tailed godwit (Non-breeding) (SPA and Ramsar).
- *Tringa tetanus*, Common redshank (Non-breeding) (SPA and Ramsar).

- Waterbird assemblage (SPA and Ramsar).

5.4.36. Section 6.6 of the HRA AA Report [REP6a-055] concludes that there will be no AEoI on the relevant qualifying features of the European sites because of atmospheric emissions during operation of the Proposed Development, as:

- the Predicted Environmental Concentration for the Humber Estuary sites is predicted to remain below the critical level set for NO_x so the potential impact from direct NO_x emissions is not significant; and
- after NH_3 abatement through acid wash, the process contribution to nitrogen deposition is not predicted to exceed 1% of the critical load at the Humber Estuary SAC and Ramsar site.

Baseline air quality data

5.4.37. NE [RR-010] recommended that the results of active diffusion tube monitoring (undertaken for a year and carried out to satisfy the conditions of the Keadby 2 Power Station) of ambient NO_x, nitrogen dioxide and NH_3 should be incorporated into the air quality assessment.

5.4.38. The Applicant [REP2-006] explained that the diffusion tube monitoring results had not been made available to the project at the time of writing the DCO. However, it provided an update to the original HRA Screening Report [APP-041] with a document entitled HRA AA Report at DL1 [REP1-006]. The updated document incorporated the diffusion tube monitoring results. The Applicant confirmed [REP2-006] that the new data did not affect the overall outcome of the air quality assessment or the HRA.

5.4.39. The SoCG with NE [REP7-005] states (Table 4.1) that the parties are now agreed that the correct approach has been taken and the results of the monitoring have been incorporated correctly within the updated HRA AA Report. It further states that the parties agree that the updated air quality information within the updated HRA AA Report submitted into examination at DL1 addresses the points requested by NE in its RR. The diffusion tube monitoring results have been carried through into the most recent version of the HRA AA Report [REP6a-055].

Mitigation

5.4.40. In its RR [RR-010] (section 5), NE proposed that the dDCO should secure use of the abatement measures to reduce the NO_x and NH_3 emissions from the development.

5.4.41. In response to Q1.2.17 [PD-009], the Applicant [REP2-006] clarified that the Proposed Development includes Selective Catalytic Reduction (SCR) for the abatement of NO_x (secured within Work 1A of the DCO) and the use of an acid wash to control NH_3 emissions. The Applicant explains that the SCR is required for regulatory purposes to meet the required Best Available Technique associated emission levels (BAT-AEL) limit values and to optimise the carbon dioxide capture efficiency, and the NH_3 abatement is required to manage atmospheric pollutants so that they

remain below the critical levels/ loads set for the relevant European sites. The SCR and flue gas washing will be required in order to ensure that the BAT-AELs are met in accordance with the EP.

5.4.42. In response to my ExQ2 (Q2.2.8) [PD-016], NE confirmed it was satisfied with the wording of the dDCO in regard to the abatement measures to reduce the NO_x and NH_3 emissions.

ExA conclusions on atmospheric pollution

5.4.43. I recognise that a further level of detailed information will be provided in respect of the EP and that this will be subject to a separate HRA. The EA is still in the determination stage of the EP and will not reach its final decision before the SoS is due to reach a conclusion on the DCO. My views provided in this chapter do not seek to fetter any later assessment(s) made by the EA in relation to EPs, consents or licences that are, or may be required for the Proposed Development.

5.4.44. Focusing therefore on the land use that would be authorised by the DCO, I am satisfied that subject to the implementation of the mitigation measures as secured, there would be no AEoI on the qualifying features of the Humber Estuary SAC, SPA and Ramsar site listed above, arising from the effects of operational emissions to air as a result of the Proposed Development.

AEoI ASSESSMENT OUTCOMES - SUMMARY

5.4.45. The Applicant's HRA AA Report concluded that AEoI can be excluded on the Humber Estuary SAC, SPA and Ramsar site, from the Proposed Development alone, or in-combination with other plans and projects. These conclusions were agreed with NE [REP7-005].

5.4.46. Some of the conclusions in the Applicant's HRA AA Report were subject to Examination though ExA written questions and ISHs. Based on the findings of the Examination, I am satisfied that AEoI on all qualifying features of the European sites can be excluded from the Proposed Development alone and in-combination.

5.5. HRA CONCLUSIONS

5.5.1. The Proposed Development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected sites must be assessed by the SoS for BEIS.

LIKELY SIGNIFICANT EFFECTS

5.5.2. Six European sites and their qualifying features were considered in the Applicant's assessment of LSEs:

- Humber Estuary SAC.
- Humber Estuary SPA.
- Humber Estuary Ramsar.

- Thorne Moor SAC.
- Hatfield Moor SAC.
- Thorne and Hatfield Moor SPA.

5.5.3. LSEs were identified from the Proposed Development alone for the Humber Estuary SAC, SPA and Ramsar site, for the features and pathways listed in Table 2.

5.5.4. The methodology and outcomes of the Applicant's screening for LSEs on European sites was subject to some discussion and scrutiny, however, by the close of the Examination the sites and features for which LSEs were identified were not disputed by any IP. I am satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

AEoI

5.5.5. My findings are that, subject to the mitigation measures to be secured in the dDCO, AEoI on the European sites assessed from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.

5.5.6. I consider that there is sufficient information before the SoS for BEIS to enable them to undertake an AA.

6. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

6.1. INTRODUCTION

6.1.1. This chapter provides an 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 of this report. 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 the Habitats Regulations Assessment (HRA) has been documented separately in Chapter 5, relevant facts and issues set out in that chapter are taken fully into account.

6.1.2. I have taken into account all Relevant Representations, Written Representations and responses to the Examining Authority's First Written Questions and Further Written Questions, as well as all other representations made during the course of the Examination including the Local Impact Report (LIR) from North Lincolnshire Council (NLC).

6.2. CONCLUSIONS ON THE PLANNING ISSUES

6.2.1. I have reached a number of conclusions on the effects of the Proposed Development and its performance against relevant policy and legislation which draw on the analysis of the planning considerations in Chapter 4 and the relevant facts and issues documented in the HRA in Chapter 5.

ISSUES ARISING IN WRITTEN AND ORAL SUBMISSIONS

6.2.2. With the exception of the outstanding objection from:

- Network Rail Infrastructure Ltd (NR) in relation to Protective Provisions (PP) and the completion of a side agreement; and
- the Environment Agency (EA) in regard to the completion of a side agreement,

there were no outstanding planning matters that arose during written and oral submissions that were not either addressed or resulted in concerns being raised that weighed materially against the Proposed Development.

6.2.3. In terms of progress with these parties, NR, in its Deadline 7a repsonse [REP7a-020] to my Rule 17 letter dated 26 May 2022 [PD-022], provided a copy of the PPs it was willing to agree to and these have been incorporated in Schedule 10 (PPs) (Part 5 For the Protection of Railway Interests) at Appendix C to this report. Additionally, NR confirmed in the same response it was in the process of negotiating a framework agreement with the Applicant to agree the necessary rights required for the Proposed Development.

6.2.4. In response to my Rule 17 letter dated 26 May 2022 [PD-022] the EA, in its Deadline 7a response [REP7a-016], confirmed it is of the view that all outstanding issues were capable of resolution by agreement and it would continue to work on finalising the required agreements during the decision period.

6.2.5. As such, should the Development Consent Order (DCO) be made, the Secretary of State (SoS) for Business, Energy and Industrial Strategy will need to satisfy themselves:

- NR and the EA have agreed the relevant side agreements; and
- NR have agreed the PPs in Part 5 of Schedule 10 of the DCO or that the PPs sought by NR, as set out in Appendix 1 of its DL7a representation [REP7a-020] are incorporated into the PPs of the DCO.

ISSUES ARISING IN THE LIR

6.2.6. With the exception of the matter of archaeology, which was subsequently satisfactorily resolved, NLC did not raise any specific issues in the LIR in respect of the DCO application and confirmed that no conflicts with the Local Development Plan have been identified. NLC's LIR considered:

- short-term and negative social and environmental impacts are anticipated but with the implementation of impact avoidance, design and mitigation measures secured through Requirements (R) contained within the draft DCO (dDCO), and through other regulatory regimes, these negative impacts will not be significant;

- whilst there is potential for residual long-term negative effects on non-designated heritage assets, this impact could potentially be mitigated through Rs in the dDCO;

- the development will have short-term and long-term beneficial economic impacts in terms of job creation and inward investment into North Lincolnshire. Additionally, through the proposed Rs the development will also provide an opportunity to address highlighted skill shortages in a key sector strategically promoted for growth by NLC in this area and these beneficial impacts are considered to be of moderate importance; and

- the Proposed Development would provide a positive impact in terms of low carbon electricity generation, which will help to deliver carbon reduction policies set out in the National Planning Policy Framework, UK Clean Growth Strategy, Environment Bill, Humber Clean Growth Local White Paper and the North Lincolnshire Core Strategy. The development could contribute to a reduction in the carbon emissions of the energy supply in the UK and provide a secure and stable energy source. NLC believes that this is a significant positive impact but that it has to be balanced against the potential environmental impacts of the proposed scheme.

6.2.7. Furthermore, the Applicant submitted a Statement of Common Ground (SoCG) completed with NLC [REP6-005] agreeing: all matters in respect

of the effects of the Proposed Development; that appropriate mitigation had been proposed and could be secured through the dDCO; and no matters of disagreement remained between these parties.

CONFORMITY WITH NATIONAL POLICY STATEMENTS (NPS)

6.2.8. In relation to NPS EN-1, NPS EN-2, NPS EN-4, NPS EN-5 and the emerging draft NPSs (draft NPS EN-1, draft NPS EN-2, draft NPS EN-4 and draft NPS EN-5) I find:

- no instances of non-compliance with NPSs or draft NPSs were identified by IPs;
- the need for the Proposed Development is established through the NPSs and the draft NPSs;
- the Proposed Development conforms to high-level policy in NPS EN-1, NPS EN-2, NPS EN-4, NPS EN-5 and the draft NPSs;
- in terms of alternatives, the Proposed Development represents the best option for the choice of site, taking into account the environmental, social, economic effects and commercial feasibility; and
- the compliance of the Proposed Development has been examined against policy detail and tests applicable to individual planning issues as set out in relevant NPSs.

CONFORMITY WITH THE LOCAL DEVELOPMENT PLAN

6.2.9. The Proposed Development conforms with the Local Development Plan for NLC and no instances of unaddressed policy conflict have been identified. Moreover, there are no issues arising from Local Development Plan policies of NLC that conflict with relevant policy directions arising from NPSs or the emerging draft NPSs related to energy infrastructure. Accordingly, Local Development Plan policies will be fully met by a decision that is in accordance with relevant NPSs and draft NPSs.

APPLICATION OF OTHER POLICIES

6.2.10. I have found that the Proposed Development conforms with other relevant policies identified by NLC and the Applicant. Furthermore, as there are no conflicts between NPS EN-1, NPS EN-2, NPS EN-4 and NPS EN-5 (as well as the emerging draft NPSs related to energy infrastructure) and these other policies, they would be addressed by a decision that is in accordance with relevant NPSs.

ENVIRONMENTAL IMPACT ASSESSMENT/ ENVIRONMENTAL STATEMENT

6.2.11. No submissions were made which raised concerns about the overall adequacy of the Environmental Impact Assessment or the Environmental Statement (ES). The ES and associated information submitted by the Applicant during the Examination sufficiently considered alternatives,

including in terms of the location and nature of the power generation proposed, and provided an adequate assessment of the environmental effects of the Proposed Development which meets the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. I have taken full account of all environmental information in my consideration of this application.

HRA CONSIDERATIONS

6.2.12. I am satisfied:

- that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified;
- from the evidence submitted with the Proposed Development and during the course of the Examination that, subject to the mitigation measures to be secured in the dDCO, adverse effects on integrity on the European sites assessed from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed; and
- that the SoS has sufficient information available to discharge his obligations on this matter under the Conservation of Habitats and Species Regulations 2017 .

ENVIRONMENTAL PERMITTING REGIME

6.2.13. The Proposed Development falls under the Environmental Permitting (England and Wales) Regulations 2016 and therefore will require an Environmental Permit (EP). The EA, as the regulatory authority for EPs, has confirmed the agreed approach to obtaining an EP should be via an application for variation to the existing Keadby Power Station EP (EPR/YP3133LL/V011). Furthermore, the Applicant's SoCG with the EA agrees the EP variation application was submitted to the EA in July 2021 and included an appraisal of best available technique and air impacts based on the current design understanding. This SoCG also confirms both parties agreed that subsequent EP variations may be required if the design changes.

6.2.14. The EA has received the EP variation application although by the close of the Examination the EA had not confirmed it has been duly made. In the light of this, the EA was not expected to determine the variation EP application prior to the end of the Examination, but it is not anticipated that there will be any substantial issues due to the EP being a variation to the existing Keadby Power Station EP (EPR/YP3133LL/V011). Bearing this in mind and, without prejudice to the exercise of discretion of the EA in regard to this matter, on the basis of the evidence set out in the Examination, I do not consider there to be any reasons as to why the variation to the existing EP application, as applied for, would not be granted. However, in the absence of an EP specific to this Proposed Development, it is important to control the gross output capacity of the proposed power station, as being up to 910 megawatts (MW) at International Organization for Standardization (ISO) standard reference

conditions. Subject to such a control, which is specified in Schedule 1 (Authorised Development) of the recommended DCO (rDCO) attached at Appendix C of this report, I have no concerns in this regard should the SoS grant the application.

OTHER CONSENTS AND LICENCES

6.2.15. In relation to other outstanding consents and licences, in addition to the above-mentioned EP, I have considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, have concluded that there are no apparent impediments to the implementation of the Proposed Development, should the SoS grant the application.

PRINCIPLE OF THE DEVELOPMENT

6.2.16. The need for the Proposed Development is established through the NPSs. The Applicant has given sufficient consideration to the design and layout and adequate information has been given on the consideration of alternatives to satisfy the requirements of NPS EN-1 and the emerging draft NPS EN-1.

6.2.17. Furthermore, I accept that the provision of Combined Heat and Power (CHP) is not presently economically viable but consider the Proposed Development should be constructed so as to be CHP-ready. Requirement 32 of the rDCO, attached to this report at Appendix C, would adequately secure sufficient space and routes within the design of the development for the latter provision of CHP for off-site users, which would be acceptable to the appropriate local planning authority. As such I consider the scheme would be CHP-ready.

6.2.18. I am also satisfied, for the reasons set out in Paragraphs 4.14.56 to 4.14.60 of this report, that the Proposed Development would be carbon capture ready, as required by NPS EN-1 and NPS EN-2, whilst also complying with the intentions of the emerging draft NPSs related to energy infrastructure.

6.2.19. Additionally, in the absence of an EP specific to this Proposed Development, it is important to control the gross output capacity of the proposed power station, as being up to 910 MW at ISO standard reference conditions. I have no concerns in regard to the principle of the development, subject to such a control, which is specified in Schedule 1 (Authorised Development) of the rDCO, which is attached at Appendix C of this report.

AIR QUALITY

6.2.20. The air quality assessment undertaken by the Applicant adequately assesses impacts on air quality. However, in the absence of an EP specific to this Proposed Development, it is important to control the gross output capacity of the proposed power station, as mentioned in the preceding paragraph.

6.2.21. I am satisfied, subject to the controlling of the gross output capacity of the proposed power station and the imposition of appropriate Rs in the DCO, that no significant effects on air quality are likely to arise. I consider residual impacts can be effectively managed through the mitigation measures secured in R17 (CEMP) and R38 (Decommissioning) of the rDCO, whilst the control of the gross output capacity of the proposed power station is adequately secured by the description of Work No. 1 in Schedule 1 (Authorised Development) of the rDCO. The rDCO is attached to this report at Appendix C.

6.2.22. I consider the requirements of the Air Quality Directive, the NPS EN-1 and the emerging draft NPS EN-1 will be met. Air quality effect is therefore neutral in the planning balance.

BIODIVERSITY AND NATURE CONSERVATION

6.2.23. I am satisfied all biodiversity, ecological, and nature conservation concerns raised by Interested Parties, including those from Natural England, have been adequately addressed during the Examination. Furthermore, I am satisfied that the Proposed Development is unlikely to have a significant effect on biodiversity, ecological, and/ or nature conservation, subject to the imposition of R7 (External Lighting); R11 (Landscape and Biodiversity Protection Management and Enhancement); R17 (CEMP); R27 (Construction Hours); R28 (Control of Noise and Vibration – Construction); R29 (Control of Noise); and R30 (Piling and Penetrative Foundation Design) of the rDCO.

6.2.24. I am also satisfied that the Rs detailed above, as set out in the rDCO attached at Appendix C of this report, would adequately secure the mitigation necessary to address the biodiversity, ecological and nature conservation effects of the Proposed Development. Furthermore, I am satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and that the requirements of both NPS EN-1 and draft NPS EN-1 are met. The BNG arising from the Proposed Development will enhance biodiversity, as well as assist in enhancing ecological and nature conservation effects. As such I consider the effects to be a positive consideration in the planning balance.

CLIMATE CHANGE

6.2.25. I am satisfied from the evidence presented in the Examination, that the Proposed Development would be carbon capture ready and contribute considerably less than 1% of the total UK carbon budget emissions during any five-year carbon period under which they arise. I also consider the Proposed Development would support the UK's transition towards the net zero target.

6.2.26. I consider that the rDCO (see Appendix C of this report), if made, would adequately secure Work No. 1C (the Carbon Dioxide Capture Plant) and Work No. 7A (the Compressor Station) and related infrastructure within the Order Limits, by virtue of Schedule 2, R33 (Carbon Capture and Compression Plant). I am also satisfied that this R of the rDCO would

prevent the combined cycle gas turbine plant (Work No. 1A) being brought into commercial operation, until Work No. 1C (the Carbon Dioxide Capture Plant) and Work No. 7A (the Compressor Station) are also brought into commercial use.

6.2.27. In the absence of an EP specific to the Proposed Development, the gross output capacity of the proposed power station must be controlled as being up to 910 MW at ISO standard reference conditions. I am satisfied that this is achieved due to the gross output capacity being specified as being up to 910 MW at ISO standard reference conditions in Schedule 1 (Authorised Development) of the rDCO.

6.2.28. Bearing all of the above in mind, as well as the need for all types of infrastructure and maintaining the need for security and flexibility of supply as set out in NPS EN-1, I am satisfied that the Proposed Development would:

- contribute to meeting the UK's carbon commitment; and
- support the transition to a low carbon economy.

6.2.29. On balance, I am satisfied that the Proposed Development would accord with the guidance in NPSs EN-1, NPS EN-2 and the emerging draft NPSs related to energy infrastructure. I am also satisfied that the Proposed Development would be in accordance with the UK's commitments under the Climate Change Act 2008 and the Paris Agreement 2015. Therefore, I consider climate change effects are a neutral consideration in the planning balance.

CULTURAL HERITAGE

6.2.30. I have found above that the Applicant has adequately assessed the significance of the heritage assets affected by the Proposed Development and that sufficient information to reach a conclusion on the nature, significance and value of identified designated and non-designated heritage assets, along with sufficient understanding of the contribution that setting makes to their significance and the implications of the Proposed Development for those settings has been submitted so that the extent of the impact can be understood. In my view, the application meets the requirements of NPS EN-1 and draft NPS EN-1 in that regard.

6.2.31. I am clear that the Proposed Development would result in less than substantial harm on designated heritage assets, whilst harm to non-designated heritage assets, especially the non-designated Isle of Axholme Special Historic Landscape Area, would also occur. These harms are weighed against the public benefits of the Proposed Development at section 6.3 of this report, in the planning balance, where I conclude on the cultural heritage effects of the Proposed Development.

GROUND CONDITIONS AND CONTAMINATION

6.2.32. I am satisfied that the Proposed Development accords with all relevant legislation and policy requirements in respect of ground conditions and contamination and that relevant matters are adequately provided for and

secured in the rDCO, as attached at Appendix C of this report. This includes Rs: 12 (Surface Water Drainage); 13 (Foul Water Drainage); 15 (Contaminated Land and Groundwater); 17 (CEMP); 30 (Piling and Penetrative Foundation Design); and 38 (Decommissioning).

6.2.33. I am also satisfied that the Proposed Development would therefore accord with relevant legislation and policy requirements, including NPS EN-1, other relevant NPSs (NPS EN-2, NPS EN-4 and NPS EN-5) and the emerging draft NPSs related to energy infrastructure. Matters relating to ground conditions and contamination are therefore a neutral consideration in the planning balance.

LANDSCAPE AND VISUAL AMENITY

6.2.34. The assessments of landscape and visual effects of the Proposed Development meet the requirements of NPS EN-1, NPS EN-2 and the emerging draft NPSs related to energy infrastructure. I am satisfied that the Proposed Development is unlikely to have a significant effect on landscape or visual amenity. R5 (Detailed Design) of the rDCO (attached at Appendix C of this report) will ensure that further consideration will be given to the design of the Proposed Development so as to reduce its visual impact, whilst Schedule 11 (Design Parameters) of the rDCO sets out the maximum parameters for key elements of the Proposed Development (Work No. 1A, Work No. 1C, Work No. 1E and Work No. 8B). The visual impact is therefore neutral in the planning balance.

NOISE AND VIBRATION

6.2.35. Given the evidence presented, I am satisfied that the assessments undertaken in regard to noise and vibration is appropriate for the scale, nature and location of the Proposed Development and makes appropriate recommendations for mitigation that would be secured in the rDCO, attached at Appendix C, by virtue of the specification of authorised development as set out in Schedule 1; the Rs detailed above and secured in Schedule 2; and the conditions attached to the Deemed Marine Licence, as set out in Schedule 13, Part 3. I consider that noise and vibration issues have been addressed adequately and meet the requirements specified in section 5.11 of NPS EN-1, as well as complying with NPS EN-2 and the emerging draft NPSs related to energy infrastructure. This aspect is neutral in the planning balance.

SOCIO-ECONIMIC EFFECTS (INCLUDING HUMAN HEALTH)

6.2.36. With regard to human health, I am satisfied that the ES has adequately addressed and considered human health matters relating to the Proposed Development and that necessary mitigation to avoid adverse effects in this regard would be appropriately secured through relevant Rs of the rDCO, including R17 (CEMP) and R25 (Construction Traffic Management Plan). As such, I consider the Proposed Development to be acceptable in terms of human health and would accord with NPS EN-1 and NPS EN-5,

as well as the emerging draft NPSs related to energy infrastructure, and all relevant policies, including those in the Local Development Plan.

6.2.37. The operation of the Proposed Development would be regulated by the EA through an EP to control emissions from the Proposed Development using best available technique. The Proposed Development would thus comply with relevant legislation and policy in respect of human health, including that of NPS EN-1, NPS EN-5, as well as the emerging draft NPSs related to energy infrastructure, and there are no disbenefits which weigh against the Proposed Development in this regard. As such human health effects are a neutral consideration in the planning balance.

6.2.38. In terms of socio-economic effects, I consider the Applicant has adequately assessed the socio-economic effects of the Proposed Development and has provided sufficient evidence to support its conclusions on those effects. I am satisfied that the Proposed Development would support economic development in the area and would accord with all relevant policies, including NPS EN-1 and the emerging draft NPSs related to energy infrastructure. This is of moderate public benefit in the planning balance.

TRAFFIC, TRANSPORT AND WASTE MANAGEMENT

6.2.39. I am satisfied that the traffic and transport assessment set out in the ES meets the requirements of NPS EN-1 and the emerging draft NPS EN-1. I am also satisfied that no significant traffic or transportation effects are likely to arise from the Proposed Development. While I acknowledge there would be an increase in traffic impacts, as well as some impact on navigation and navigational safety in both the Stainforth and Keadby Canal and River Trent, the control and management measures included in the rDCO would be sufficient to mitigate any negative impacts to an acceptable level. The overall effect in the planning balance is neutral.

6.2.40. In terms of waste management, I am satisfied that the Proposed Development would not result in any significant effects arising from waste generated during its construction, operation or decommissioning. I am also satisfied that matters relating to mitigation in respect of waste can be adequately secured through the rDCO, via R17 (CEMP), attached at Appendix C of this report.

6.2.41. I am also satisfied the Proposed Development would meet all legislative and policy requirements relating to waste management, including those of NPS EN-1 and the emerging draft NPS EN-1, and there are no disbenefits which weigh against the Proposed Development in this regard. As such I consider waste management effects to be a neutral consideration in the planning balance.

WATER QUALITY, FLOOD RISK AND FLOOD RESILIENCE

6.2.42. I am satisfied that the Applicant's submitted flood risk assessment was appropriately undertaken and meets the requirements of NPS EN-1 and

the emerging draft NPS EN-1. I consider that the mitigation identified in the flood risk assessment and ES is sufficient and would be appropriately secured by R14 (Flood risk mitigation) and R15 (Contaminated Land and Groundwater) of the rDCO, attached at Appendix C of this report, to guard against the risk of flooding and contamination of land and groundwater.

6.2.43. I am satisfied that water quality/ resources and flood risk/ resilience issues arising from the Proposed Development have been adequately addressed. I am content adequate mitigation measures relating to these matters are secured in the rDCO, attached at Appendix C of this report, including under R12 (Surface Water Drainage), R13 (Foul Water Drainage), R15 (Contaminated Land and Groundwater), R17 (CEMP), R30 (Piling and Penetrative Foundation Design) and R38 (Decommissioning).

6.2.44. I consider the Proposed Development would thus accord with relevant legislation and policy requirements, including those of NPS EN-1, NPS EN-2, NPS EN-4, NPS EN-5, the emerging draft NPSs related to energy infrastructure and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 and that water quality, flood risk and flood resilience effects are a neutral consideration in the planning balance.

CUMULATIVE AND COMBINED EFFECTS

6.2.45. I am satisfied that no long term and cumulative adverse impacts are likely to arise from construction, operation and decommissioning activities that would be associated with the Proposed Development. Accordingly, I am satisfied that the requirements of NPS EN-1, including the emerging draft NPSs related to energy infrastructure, are met in this regard and the cumulative and combined effects are a neutral consideration in the planning balance.

6.3. THE PLANNING BALANCE

6.3.1. In conclusion of cultural heritage matters, I have taken account of Regulation 3 of the Decisions Regulations, and had full regard to the desirability of:

- preserving scheduled monuments and their settings;
- preserving listed buildings, their settings and any features of special architectural or historic interest; and
- preserving or enhancing the character or appearance of conservation areas.

6.3.2. Furthermore, I considered whether the perceived harm to heritage assets had clear justification, in order to weigh that harm against the public benefits of the Proposed Development, in accordance with NPS EN-1 and the emerging draft NPS EN-1.

6.3.3. Bearing the above in mind, I consider the Applicant has adequately assessed the significance of the heritage assets affected by the Proposed Development. Sufficient information has been provided as part of the

Examination to reach a conclusion on the nature, significance and value of identified heritage assets, along with sufficient understanding of the contribution that setting makes to their significance and the implications of the Proposed Development for those settings, so that the extent of the impact can be understood. In my view, the application meets the requirements of NPS EN-1 and the emerging draft NPS EN-1 in that regard.

6.3.4. I agree with the Applicant that the Proposed Development would result in less than substantial harm to designated heritage assets. I also agree that the Proposed Development will have a neutral to minor adverse effect on all but one non-designated heritage asset; the exception being the Isle of Axholme Special Historic Landscape Area non-designated heritage asset, where the Applicant identified the magnitude of impact as low but the effect on its setting being recorded as moderate adverse/ significant. This harm would result from perpetuating a form of development that is out of character with the defining characteristics of the core area of the historic landscape. However, the harm to the non-designated heritage assets and the less than substantial harm to the designated heritage assets need to be weighed against the public benefits.

6.3.5. The Proposed Development would result in a number of public benefits, including its contribution to meeting the identified need for additional generating capacity and support for the local economy. It would also be a major investment in low carbon electricity generation, providing carbon capture and compression equipment installed from the outset, providing 910 MW (gross capacity) of dispatchable generation. This represents a considerable commitment to removing barriers to carbon capture, and deploying related infrastructure and would be a significant contribution towards the urgent national need for low carbon electricity generation established in NPS EN-1, carried through in the emerging draft NPS EN-1, and which has become more urgent following the legally binding target of net zero by 2050.

6.3.6. After considering the assessment of effects on heritage and historic assets, having regard to the considerations in Regulation 3 of the Decisions Regulations, I am satisfied that even though the Proposed Development results in less than substantial harm to the significance of designated heritage assets and harm to non-designated heritage assets, that harm is clearly outweighed by the public benefits of the Proposed Development. Therefore I consider the Proposed Development is acceptable in this regard. As such I consider the cultural heritage effects of the Proposed Development to be a neutral consideration in the planning balance.

6.3.7. Turning to the overall planning balance, taking all of the above factors into account, there are no adverse impacts of sufficient weight, either on their own or collectively, to argue against the DCO being made. The Proposed Development would result in less than substantial harm to designated heritage assets and harm to non-designated heritage assets, which are outweighed by the substantial benefit from the provision of

energy to meet the need identified in NPS EN-1, draft NPS EN-1 and by the other benefits of the application as summarised above. Additionally, there are a number of non-significant effects, all of which have been mitigated as required by NPS policy.

6.3.8. Overall, I conclude that there is no breach of NPS policy or the policies contained in the emerging draft NPSs. As such I consider the Proposed Development accords with the relevant NPSs (NPS EN-1, NPS EN-2, NPS EN-4 and NPS EN-5) and the emerging draft NPSs (draft NPS EN-1, draft NPS EN-2, draft NPS EN-4 and draft NPS EN-5). Furthermore, it is clear to me that the Proposed Development:

- complies with the appropriate Marine Policy Statement, including the East Inshore and East Offshore Marine Plans;
- satisfactorily resolved matters identified in NLC's LIR [REP1-022]; and
- does not breach any matters prescribed in relation to the development.

6.3.9. Furthermore, I do not consider there to be any other matters that are both important and relevant to the decision that would lead to a different conclusion being reached.

6.3.10. For the reasons set out in the preceding chapters and summarised above, I find that the Proposed Development is acceptable in planning terms.

7. COMPULSORY ACQUISITION AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. The application included proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights over land. This chapter records the examination of those proposals and related issues.

7.2. THE REQUEST FOR CA AND TP POWERS

7.2.1. The application draft Development Consent Order (dDCO) and all subsequent versions include provision for CA of freehold interests and private rights and the creation of new rights over land. They also contain provisions for the TP of land.

7.2.2. None of the land included in the CA request is National Trust Land, Common Land or Open Space. However, there are Crown interests within the Order Limits, which are shown on the Crown Land Plans (Application Document Ref. 4.5 Revision 4) [REP6a-046]. These relate to specific plot numbers within the following Work No. areas in order that the Applicant may implement the Proposed Development:

- Work No. 4B – River water supply connection works.
- Work No. 5 – Cooling water discharge pipeline.
- Work No. 10B – Maintenance of existing jetty and placement of crane for offloading of waterborne transport.
- Work No. 10C – use of riverbed of the River Trent for the mooring of vessels and craft at the waterborne transport offloading area at lower tide.

7.2.3. The application as originally submitted included a Statement of Reasons (SoR) [APP-008], Funding Statement [APP-009], Book of Reference (BoR) [APP-007] and Land Plans [APP-011]. However, revisions to these documents have been received throughout the Examination with the most up-to-date versions received as part of the change request made at Deadline (DL) 6a (Tuesday 10 May 2022). The change request was accepted by me in my procedural decisions [PD-020] dated Thursday 14 May 2022.

7.2.4. As such the most up-to-date versions of the above-mentioned documents are the SoR [REP6a-040], Funding Statement [REP5-007], BoR [REP6a-038] and Land Plans [REP6a-043]. These documents, taken together, form the basis of the analysis in this chapter. References to the SoR, BoR, Funding Statement and the Land Plans in this chapter from this point should be read as references to the latest revisions cited above, unless stated otherwise.

7.2.5. The dDCO distinguishes between the 'Order Land' and the 'Order Limits'. The Order Limits are tightly defined by reference to the Works Plan [REP6a-044] and consist of the land required for Work Nos. 1 to 11.

7.2.6. The Order Land comprises a number of areas of land within and adjacent to and within the existing Keadby 1 Power Station site and the Keadby 2 Power Station site, the latter being under construction and entering its commissioning phase. It also includes:

- previously developed land, along with gas, towns water and other connections, and access routes, within the Keadby Power Station site;
- the National Grid 400kV substation located directly adjacent to the proposed Power and Carbon Capture site, through which electricity generated by the Proposed Development will be exported;
- emergency vehicle access road and potential electrical connection to Northern Powergrid substation, the routes of which utilise an existing farm access track towards Chapel Lane and land within the existing Northern Powergrid substation on Chapel Lane;
- water connection corridors:
    - Canal water abstraction option which includes land within the existing Keadby Power Station site with an intake adjacent to the Keadby 2 Power Station intake and pumping station and interconnecting pipework.
    - River water abstraction option which includes a corridor that spans Trent Road and encompasses the existing Keadby Power Station pumping station, below ground cooling water pipework, and infrastructure within the River Trent.
    - Water discharge corridor which includes an existing discharge pipeline and outfall to the River Trent and follows a route of an existing easement for Keadby 1 Power Station;
- the existing river wharf at Railway Wharf (the Waterborne Transport Offloading Area) and existing temporary haul road into the existing Keadby 1 Power Station site (the 'Additional Abnormal Indivisible Load Route');
- a number of temporary Construction Laydown Areas on previously developed land and adjoining agricultural land; and
- land at the A18 Junction and an existing site access road, including two existing private bridge crossings of the Hatfield Waste Drain lying west of Pilfrey Farm (the western of which is known as Mabey Bridge, to be replaced, and the eastern of which is termed Skew Bridge (located a short distance from the Maybe Bridge)) and an existing temporary gatehouse, to be replaced in permanent form.

7.2.7. The above-mentioned Order land is described in section 5 of the SoR [REP6a-040] and identified on the Land Plans [REP6a-043].

7.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

7.3.1. The purposes for which the CA and TP powers are required are set out in the BoR and SoR. In summary, the Applicant considers whilst the majority of the land required for the implementation of this Nationally Significant Infrastructure Project is owned freehold by SSE Plc and its wholly owned subsidiary companies, including the Applicant (Keadby Generation Limited), the development of the Nationally Significant Infrastructure Project requires the acquisition of additional interests in

land, acquisition and creation of new rights under and over land, and the temporary use of land.

7.3.2. As such the Applicant, notwithstanding its intention to acquire these interests and rights by voluntary agreement, is seeking powers to compulsorily acquire land, interests and rights, so as to ensure that the necessary interests and rights in land can be secured without unnecessary delay. In the absence of such powers there would be uncertainty concerning its ability to implement the Proposed Development and neither the Applicant's objectives nor the Government's policy objectives (as set out in the National Policy Statements (NPS)) will be met.

7.3.3. The Applicant has sought CA and TP powers within the whole of the Order land even where some of that land is within its control. This is to address a number of potential proprietary impediments including the existence of unknown ownerships, rights or restrictions over the Order land and for the potential for land agreements not being completed. The rights being sought by the Applicant are:

- to enable it to acquire the freehold interest in land where other powers (such as, inter alia, the acquisition of new rights, overriding of rights, acquisition of subsoil only or temporary occupation) would not be sufficient or appropriate to enable the construction, operation and/ or maintenance of the Proposed Development (Article 18 of the dDCO [REP7a-006]);
- the extinguishment and/ or overriding of rights to facilitate the construction, operation and/ or maintenance of the Proposed Development (Articles 19 and 22 of the dDCO [REP7a-006]);
- to enable it to create new rights as well as the acquisition of existing rights to enable the construction, operation and/ or maintenance of the Proposed Development (Article 21 of the dDCO [REP7a-006]);
- the ability to acquire interests in the subsoil and/ or airspace where this is considered sufficient to enable the construction, operation and/ or maintenance of the Proposed Development without needing to acquire the entirety of the freehold interest (Article 24 of the dDCO [REP7a-006]);
- to take TP of land for the carrying out of the Proposed Development and for the purposes of maintenance (Articles 27 and 28 of the dDCO [REP7a-006]); and
- the right to enter upon and appropriate, so much of the subsoil or airspace under or over any street within the Order Limits as may be required for the purposes of the Proposed Development, or any purpose ancillary to the Proposed Development (Article 26 of the dDCO [REP7a-006]).

7.4. LEGISLATIVE REQUIREMENTS

7.4.1. Section (s) 122(2) of the Planning Act 2008 (PA2008) provides that a Development Consent Order (DCO) may include provision authorising CA only if the Secretary of State (SoS) is satisfied that certain conditions are met. These include that the land subject to CA is required for the

development to which the development consent relates or is required to facilitate or be incidental to the development.

7.4.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met, Department for Communities and Local Government's guidance on CA (the CA Guidance) indicates 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.

7.4.3. Section 123 requires the SoS to be satisfied that one of the three procedural conditions set out in subsections (2) to (4) are met, namely:

- that the application for the order included a request for CA of the land to be authorised - s123(2); or
- that all persons with an interest in the land consent to the inclusion of the provision – s123(3); or
- that the prescribed procedure has been followed in relation to the land - s123(4).

7.4.4. The application included a request for CA of the land to be authorised and, as such, I am satisfied that the condition set out in s123(2) of the PA2008 has been met.

7.4.5. Section 127 of the PA2008 applies to Statutory Undertaker (SU) land. Sections 127(2) and (3) state that an order granting development consent may include provision authorising the CA of SU land only to the extent that the SoS is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking. Similarly, s127(5) and (6) of the PA2008 provide for the inclusion of provisions in respect of the CA of rights belonging to SUs only to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good. A number of SUs have land interests within the Order Limits.

7.4.6. Section 138 of the PA2008 relates to the extinguishment of rights on SU land. It 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 PA2008 is relevant to SUs with land and equipment interests within the Order Limits.

7.4.7. TP powers are also capable of being within the scope of a DCO by virtue of paragraph 2, Part 1 of Schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated 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.

7.4.8. The Neighbourhood Planning Act 2017 includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions are not yet in force and are described as technical changes in the explanatory notes that accompany the Act. While it is not necessary to assess the proposal against these provisions, they provide a useful indication of how parliament considers these matters should be addressed and how a balance can be struck between acquiring authorities and those whose interests are affected by the use of such powers. As a result, I have had regard to the general principles that they set out in reaching my recommendation.

7.4.9. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also have to be addressed including:

- whether all reasonable alternatives to CA have been explored;
- whether the Applicant has a clear idea of how it intends to use the land subject to CA powers;
- whether the Applicant can demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- whether the SoS is satisfied that the purposes stated for the CA and TP are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

7.4.10. I have taken all relevant legislation and guidance into account in my reasoning below and relevant conclusions are drawn at the end of this chapter.

7.5. EXAMINATION OF THE CA AND TP CASE

7.5.1. In examining the application, I considered all written material in respect of CA and TP. I asked questions of both the Applicant and Affected Persons (APs) in my First Written Questions (ExQ1) and Further Written Questions (ExQ2). I also made a number of Rule 17 requests for further information and updates on the parties' respective positions in regard to CA and TP. In addition, I held a CA Hearing (CAH), which took place in two sessions [EV-021 and EV-022] where the issues were explored in further detail. I also undertook an Accompanied Site Inspection (ASI) where I was able to see parts of the CA land subject to objections and the land over which TP powers are sought. I describe these processes in further detail below.

WRITTEN PROCESSES

7.5.2. In ExQ1 [PD-009] (Q1.6.1 to Q1.6.23) I sought further information on a number of CA matters, including (but not limited to):

- whether there were any inaccuracies in the BoR, SoR or Land Plans and whether the BoR was compliant with relevant guidance[21];
- the adequacies of the Funding Statement;
- how discussions with APs were progressing (including SUs);
- the identification of all persons having an interest in land;
- no Category 3 persons being identified;
- any reasonable alternatives to CA or TP; and
- views of APs on any area of land or rights, subject to CA/ TP, which are not considered to be required.

7.5.3. Updates on the progress that had been made with APs in respect of CA and TP were provided by the Applicant at regular intervals, including: DL2 [REP2-010]; DL3 [REP3-018]; DL4 [REP4-008]; DL5 [REP5-018]; DL6 [REP6-015]; DL6a [REP6a-057]; and DL7a [REP7a-011].

7.5.4. In my Rule 17 letter, dated 16 May 2022 [PD-022], I also asked for the Canal and River Trust; Environment Agency (EA); National Grid Carbon Ltd; National Grid Electricity Transmission Ltd (NGET); National Grid Gas Ltd (NGG), Network Rail (NR); and Northern Powergrid to summarise their position in regard to:

- any outstanding objection(s);
- protective provisions (PP);
- CA/ TP; and
- the status of any side agreement, interface agreement or other relevant agreements they consider necessary to provide relevant protections or mitigations from the Proposed Development.

7.5.5. My ExQ2 included a number of additional questions (Q2.6.1 to Q2.6.7) arising out of the written evidence, from the responses to my ExQ1 and the matters discussed at the CAH [EV-021 and EV-022]. These included, but were not limited to:

- requests for updates on discussions between the Applicant and APs;
- whether all reasonable alternatives to CA/ TP had been explored;
- whether sufficient time had been allowed with APs for discussions in regard to CA/ TP;
- the effects of CA/ TP on SUs; and
- progress on PPs and whether they were suitable and fit for purpose.

HEARINGS

7.5.6. During the Examination, I held a CAH in two sessions [EV-021 and EV-022]. No APs or their representatives chose to attend the CAH, but it was digitally video recorded and livestreamed. The digital video recordings of the CAH sessions were published on the project webpage of

[21] Planning Act 2008, Guidance related to procedures for the compulsory acquisition of land, Department for Communities and Local Government, September 2013.

the National Infrastructure Planning website. At the CAH, I asked the Applicant a number of questions. I also invited any AP who wished to respond to anything arising from the CAH to do so in writing by DL5 (Tuesday 5 April 2022). This provided an opportunity for APs to make comment on the CA/ TP process and on the rights sought and provisions proposed in the dDCO.

7.5.7. My questioning at the CAH sought information and/ or clarification on a number of matters including:

- the Applicant's overall approach to CA and TP in the context of the relevant tests under the PA2008 and CA Guidance;
- purpose, structure and content of the BoR, SoR and the Funding Statement and the powers sought and the overall case for them being granted;
- matters not clear from the written evidence;
- the need for, and approach to, TP rights;
- progress on negotiations with APs;
- the need to acquire rights and alternatives;
- updates to the BoR and Land Plans;
- PPs in relation to SUs and others; and
- whether there is a compelling case in the public interest.

ACCOMPANIED SITE INSPECTION

7.5.8. As noted in Chapter 1, I undertook an ASI on Tuesday 12 April 2022 prior to which APs were invited to put forward suggested locations for inspection. During the ASI, I observed a number of sites affected by the Applicant's CA and TP proposals. This provided me with an understanding of the location of those plots as well as above ground infrastructure in-situ. Full details of the sites visited can be found in the ASI Itinerary [PD-014], as amended by the Applicant's Suggested Updates to the ASI Itinerary - Accepted at the discretion of the Examining Authority [AS-023] and ASI Plan and Photomontage Pack [AS-024] both of which were accepted into the Examination at my discretion, as they were considered to aid the ASI and my understanding of the site.

THE APPLICANT'S CASE

7.5.9. The Applicant's case for seeking CA and TP powers is set out in the SoR [REP6a-040]. In summary, the Applicant seeks CA and TP powers on the basis the proposal:

- meets an urgent need for new energy infrastructure;
- will be equipped with a carbon capture plant on its full generating capacity from the outset and will be a key enabler of a wider carbon capture, usage and storage network;
- is suitable in its context, whilst minimising and/ or mitigating adverse impacts to an acceptable degree; and
- is compliant with the NPS EN-1, NPS EN-2, NPS EN-4 and NPS EN-5 and accords with other decision making factors specified in s104 of the PA2008.

7.5.10. It argues the Proposed Development would contribute towards addressing the identified need for new electricity generating capacity and to the security, diversity and resilience of the UK's electricity supply. Attention is also drawn to the role the Proposed Development would have in supporting the UK's transition to low carbon electricity generation by going beyond the carbon capture readiness requirements of NPS EN-1 and NPS EN-2, as it incorporates carbon capture from the outset, which would be capable of capturing around 2 million tonnes of carbon dioxide per year from the mid to late 2020s.

7.5.11. The Applicant considers this would facilitate and connect into a wider carbon capture, usage and storage network, thereby enabling the significant regional and national economic benefits of the Zero Carbon Humber cluster to be realised, contributing substantially to the national need to decarbonise power and industry and achieve statutory net zero targets.

7.5.12. It also argues there a range of appropriate technical, environmental and commercial reasons for selecting the Proposed Development site, which include:

- the availability of existing electrical grid, gas, water and transport links, minimising the need for new or long connection corridors;
- the close proximity to the Zero Carbon Humber cluster and geological storage for carbon dioxide;
- the partially brownfield character of the Proposed Development site;
- the minimisation of the scale and duration of works on greenfield land; and
- the availability of sufficient land for the Proposed Development, much of which is in the control of the Applicant or companies within the same group companies and which is available and cost effective, given the proximity to similar infrastructure, providing opportunities for synergies.

7.5.13. As such, the Applicant argues that there are appropriate reasons to develop this type of infrastructure on the Proposed Development site and that the reasons it sets out in its SoR are appropriate site selection criteria as recognised in NPS EN-2 (Section 2.2).

7.5.14. In addition to the use of CA and TP powers, the Applicant also seeks:

- the extinguishment and/ or overriding of rights to facilitate the construction, operation and/ or maintenance of the Proposed Development (Articles 19 and 22 of the dDCO [REP7a-006]);
- the ability to create new rights as well as the acquisition of existing rights to enable the construction, operation and/ or maintenance of the Proposed Development (Article 21 of the dDCO [REP7a-006]);
- the ability to acquire interests in the subsoil and/ or airspace where this is considered sufficient to enable the construction, operation and/ or maintenance of the Proposed Development without needing to acquire the entirety of the freehold interest (Article 24 of the dDCO [REP7a-006]); and

- the right to enter upon and appropriate, so much of the subsoil or airspace under or over any street within the Order Limits as may be required for the purposes of the Proposed Development, or any purpose ancillary to the Proposed Development (Article 26 of the dDCO [REP7a-006]).

7.5.15. Bearing the above in mind, the Applicant states in paragraph 14.1.19 of the SoR [REP6a-040] the *"…proposed interference with the rights of those with an interest in the Order Land is for a legitimate purpose, namely the Proposed Development, and is necessary and proportionate to that purpose."* Within the same paragraph the Applicant also states it *"…considers that the very substantial public benefits to be derived from the proposed compulsory acquisition would decisively outweigh the private loss that would be suffered by those whose land or interests are to be acquired, and therefore justifies interfering with that land or rights."*

ALTERNATIVES

7.5.16. The Applicant considered a 'do nothing' scenario, but argues such a scenario would mean that this 'first of a kind' gas-fired power station with carbon capture would not be developed. This in turn would mean:

- dispatchable low carbon generating plant would not be available to support the increased deployment of renewables onto the UK transmission system; and
- a lack of additional investment in the local economy since the Proposed Development would not be developed.

7.5.17. In conclusion of the 'do-nothing' scenario the Applicant considered such a scenario not to be appropriate given the established national need for new low carbon dispatchable energy generation to meet the UK's net zero targets.

7.5.18. The Applicant confirmed it considered alternative sites and solutions during the evolution of the Proposed Development and design process. However, it found that none of these alternatives would provide comparative compelling benefits in the public interest to the Proposed Development and they were less desirable having regard to environmental and technical issues, including contiguous space availability and the presence of existing infrastructure. The Applicant sets out the benefits of the Proposed Development site within the *"Site Selection and Consideration of Alternative Solutions"* section of its SoR [REP6a-040] (paragraphs 7.6.1 to 7.6.8).

7.5.19. I note that the Applicant's SoR [REP6a-040] states it will continue to pursue negotiations to acquire the relevant interests by agreement. Indeed, as part of the Applicant's submissions at DLs, regular update on the progress that has been made with APs in respect of CA and TP were provided, including: DL2 [REP2-010]; DL3 [REP3-018]; DL4 [REP4-008]; DL5 [REP5-018]; DL6 [REP6-015]; DL6a [REP6a-057]; and DL7a [REP7a-011]. Through these updates and other submissions entered into the Examination it is clear that discussions between the Applicant and

many of the APs have been ongoing throughout the Examination, with agreement been reached to acquire the necessary land and rights with a number of them. I consider these matters in further detail below.

7.5.20. In conclusion, the Applicant's states *"All reasonable alternatives to compulsory acquisition have been explored. Given the national and local need for the Proposed Development and the support for it found in policy, as well as the suitability of the Order Land (for the reasons outlined above), compulsory acquisition of the land and rights and the temporary use of land, together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of private rights is justified."* (paragraph 14.1.5 of the SoR [REP6a-040]).

AVAILABILITY AND ADEQUACY OF FUNDS

7.5.21. The capital costs of the project, including the CA costs will be met by equity contributions and third-party finance. A Funding Statement [APP-009] accompanied the application, when first submitted, and was updated at DL5 (Tuesday 5 April 2022) by the Applicant's Funding Statement Revision 2 [REP5-007].

7.5.22. The Funding Statement indicates that the Applicant 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, including in the case of a claim for blight.

7.5.23. The adequacy of funding for CA was not raised by any Interested Party during the course of the Examination. As part of ExQ1, I sought clarification on

- a breakdown of the anticipated CA costs or the provision of a detailed explanation as to why such information should not be submitted into the Examination; and
- an estimate of the total CA cost, asking the Applicant to clarify how the CA figure was arrived at, and how these costs would be met.

7.5.24. I also questioned the Applicant's statement that it has *"…full confidence that all funding resources necessary to deliver the Proposed Development will be available when required to enable timely delivery…"*, asking at what point would it know the funding has been secured.

7.5.25. In response [REP2-006] the Applicant advised the actual and intended offers/ settlements of compensation are confidential between the parties and details thereof cannot be disclosed to third parties. The Applicant confirmed that it had appointed specialist companies in terms of compensation matters, but argued it would be prejudicial to ongoing negotiations to provide a detailed breakdown of the anticipated CA costs or an estimate of the total CA cost, as such information is commercially sensitive.

7.5.26. In terms of funding these liabilities, the Applicant confirmed it intends to fund these *"…from internal resources which are considered to be more than adequate without any need to draw on external or third party*

finance." It also confirmed funding will be available prior to the commencement of the CA process and, in any event, there is no reason to assume that additional funding could not be secured in the highly unlikely event that it was required bearing in mind the Applicant's financial status, confirming:

- its parent company (SSE) maintains a strong balance sheet and credit rating to support investor, counterparty and market confidence and to underpin future development of the business;
- its credit rating is important in maintaining an efficient cost of capital and in determining collateral requirements; and
- as at November 2021, SSE's long-term credit rating was:
    - BBB+ stable outlook (Standard & Poor's); and
    - Baa1 stable outlook (Moody's).

7.5.27. No Interested Parties have challenged the Applicant's Funding Statement [REP5-007] or its responses to my ExQ1 in regard to this matter. Indeed, no evidence seeking to contradict or challenge the Applicant's position on funding has been entered into the Examination and based on the information before me, I am satisfied that the necessary funds are available to the Applicant.

7.5.28. The dDCO includes provisions in Article 45 (Guarantees in respect of payments of compensation) which require the SoS Business, Energy and Industrial Strategy to approve a guarantee or alternative form of security for compensation that may be payable pursuant to the DCO before the provisions for CA can be exercised. This provides a clear mechanism whereby the necessary funding for CA can be guaranteed.

7.6. MATTERS RAISED IN THE EXAMINATION/ OBJECTIONS TO CA AND TP

7.6.1. At the start of the Examination, the following APs objected to CA and TP proposals:

- Canal and River Trust.
- EA.
- NGET/ NGG.
- NR.
- Northern Powergrid.

7.6.2. In addition to the above, Pollock Associates, on behalf of Messrs Strawson and Severn, objected to CA and TP proposals at DL5 (Tuesday 5 April 2022) [REP5-057 to REP5-060].

7.6.3. I was kept updated throughout the Examination on how matters were progressing with the abovementioned parties by means of a CA Schedule.

7.6.4. Formal notification of withdrawal of objections were received from the Canal and River Trust [REP7a-015], NGET/ NGG [AS-031] and Northern Powergrid [AS-032]. I am satisfied that these objections are now

withdrawn and that PPs have been agreed which offer the necessary protections for these APs. There are no outstanding issues or circumstances which would indicate that the CA powers sought in relation to the affected plots should not be granted. As a result, I do not consider them further below (except insofar as they are relevant to my consideration of the specific provisions of the dDCO in Chapter 8 of this report).

7.6.5. At the close of the Examination, the following APs still had objections outstanding:

- EA.
- NR.
- Pollock Associates on behalf of Messrs Strawson and Severn.

7.6.6. Table 3 below sets out details of the plots affected by the outstanding objections and the provides links to the representations received from APs.

Table 3: Objections to CA and TP outstanding at close of the Examination

AP	Plot Affected	Representation
EA. SU (s127/ 138 PA2008 apply).	Plots 3, 10, 26, 27, 28, 30, 31, 46, 47, 52, 53, 54, 75, 76, 77, 80, 80a, 81, 96, 156, 157 and 172.	[AS-001]; [AS-019]; [REP1-024]; [REP2-021]; [REP2-022]; [REP3-025]; [REP4-013]; [REP6-033]; [REP6-034]; [REP6a-069]; [REP7-018]; and [REP7a-016].
NR. SU (s127/ 138 PA 2008 apply).	28, 29, 71, 131 and 135.	[RR-011]; [AS-017]; [REP2-031]; [REP4-015]; [REP6-037]; [REP6a-071]; and [REP7a-020].
Messrs Strawson and Severn, via their agent Pollock Associates.		[REP5-057 to [REP5-060]; [REP6-038 to REP6-042]; and [AS-030].

AP	Plot Affected	Representation
Severn, Andrew Clive.	40, 40a, 40b, 41, 42, 43, 44, 45, 55, 55a, 55b, 56, 56a and 60.	
Strawson, Richard Henry.	40, 40a, 40b, 41, 42, 43, 44, 45, 55, 55a, 55b, 56, 56a, 57, 58, 59, 60 and 108.	

7.7. OBJECTIONS OUTSTANDING

MESSRS STRAWSON AND SEVERN, VIA THEIR AGENT POLLOCK ASSOCIATES

7.7.1. Messrs Strawson and Severn, via their agent Pollock Associates, first raised objections in the Examination at DL5 (Tuesday 5 April 2022) [REP5-057 to REP5-060].

7.7.2. The Applicant seeks CA/ TP powers over the plots identified in Table 3 of this report. As set out in the BoR [REP6a-038] and Land Plans [REP6a-043] permanent acquisition is being sought in relation to plot nos. 40 and 57. These documents also set out the plot nos over which new rights are being sought, with the dDCO [REP7a-006] at Schedule 6 (New Rights), also specifying the relevant plot nos and related Work No. they would be required for. In terms of Messer's Strawson and Severn these new rights would apply to:

- plot nos. 40a, 41, 42, 43, 44, 45, 55a, 55b, 56, 56a, 59, 60 and 108, for and in connection with the Work Nos. 3A and 3B infrastructure; and
- plot nos. 40, 40a, 41, 44, 45, 55a, 55b, 56, 56a, 57 and 60, for and in connection with the Work No. 8C infrastructure.

7.7.3. With regard to TP, the dDCO [REP7a-006] at Schedule 8 (Land of which TP may be taken) specifies which plots it applies to and in terms of this AP (Messrs Strawson and Severn). These are:

- plot nos. 40a, 43, 56, 58 and 59, in relation to Work No. 3B; and
- plot nos. 40b, 55, 56, 58 and 59, in relation to Work No. 8C.

The purpose for which TP is being sought on these plot nos. is given as in relation to the access and construction worksite.

7.7.4. In terms of Messrs Strawson and Severn's objection regarding CA/ TP, these can be summarised as follows:

- The cables that form part of the electrical connection works (Work No. 3B) are not necessary, alleging the applicant inferred at the CAH that the northern route was the only route when this is not the case.
- The Applicant had not allowed sufficient time for negotiations and disputes that the Applicant has been in negotiations for the rights described in the BoR since 10 December 2020.
- Insufficient regard has been given to the impact of the scheme on a proposed solar scheme.

7.7.5. From the evidence, submitted into the Examination, including:

- the Applicant's Response to DL5 Submissions [REP6-017];
- the response of Pollock Associates, on behalf of its client's (Messrs Strawson and Severn), submitted pursuant to my Rule 17 letter dated 25 April 2022 [REP6-038 to REP6-042];
- the response of North Lincolnshire Council submitted pursuant to my Rule 17 letter dated 25 April 2022 [REP6-031]; and
- the 'Applicant's response to DL6 Submissions, Rule 17 letter of 25 April…' [REP6a-028],

I am satisfied that sufficient time for negotiations was allowed by the Applicant and that, by the close of the Examination, no formal lodging of a Planning Application for the proposed solar farm referred to by this AP had been drawn to my attention.

7.7.6. Furthermore, in the absence of any evidence or documentation being entered into the Examination to the contrary, I consider there is significant uncertainty that the Proposed Development would interfere with the solar farm referred to by this AP.

7.7.7. Bearing the above in mind, I cannot agree, at this point in time, there would be any conflict with the route of cabling related to the prospective solar farm development referred to by the AP. Indeed, I note the Applicant's comments in regard to the future installation of power cables related to the solar farm and the fact that "…*the APs own significant land along the northern boundary of the dDCO and there is no reason… as to why the 33KV cable route(s) could not completely avoid the proposed 132KV cables."* I have no reason to disagree with the Applicant in this regard.

7.7.8. I consider the CA/ TP powers sought, including new rights, in respect of plot nos. 40, 40a, 40b; 41, 42, 43, 44, 45, 55, 55a, 55b, 56, 56a, 57, 58, 59, 60 and 108, as referred to in this report above, are required for the Proposed Development. They are either required for the specific works identified on the Works Plans or are necessary to facilitate or are incidental to those works. Similarly, the ability to lay, install, use and maintain the underground electrical cables and related infrastructure and the emergency access route is an integral part of the Proposed Development. I am therefore satisfied that the requirements of s122(2) of the PA2008 are met. The central question is therefore whether there is a compelling case in the public interest.

7.7.9. On 7 June 2022 this AP submitted a letter, which I accepted as an AS [AS-030], which clearly maintained its objection. However, that letter did not raise any other objections, other than those summarised above. Furthermore, no comments or concerns were raised by this AP in regard to any of the Requirements or PPs set out in the dDCO (current version [REP7a-006]). On balance, I consider the resultant loss in regard to this AP would be limited and clearly outweighed by:

- the public benefits of increased energy generation for all types of infrastructure and maintaining the need for security and flexibility of supply as set out in NPS EN-1; and
- the Proposed Development's inclusion of carbon capture technology, which will be a first of its kind in the UK, and the potential it would have to contributing towards meeting the UK's carbon commitment and supporting the transition to a low carbon economy.

7.7.10. Bearing all of the above in mind, I find that there is a compelling case in the public interest for including the CA/ TP powers sought in respect of the Proposed Development within the DCO and that the conditions set out in s122(3) of the PA2008 are satisfied.

ENVIRONMENT AGENCY

7.7.11. The EA objected in response to the Relevant Representation (RR) consultation [AS-002] advising, having reviewed the DCO application, the Environmental Statement and supporting documents submitted, it may pursue an objection in relation to the EA land interests the Applicant seeks to acquire.

7.7.12. In its subsequent Written Representation (WR) [REP2-022] the EA confirmed it has no objection in principle to the Proposed Development, as submitted, but maintained its holding objection in relation to the EA's land interests, which the Applicant is seeking to acquire. Expanding on its concerns in regard to the CA/ TP matters, it:

- sought clarification from the Applicant in respect of Article 8, (Application and modification of statutory provisions) of the dDCO (current version [REP7a-006]); and
- confirmed it had landholdings or holds an interest in several plots of land, which will be affected by the Proposed Development and advised it was in ongoing discussions/ negotiations in respect of these plots.

7.7.13. The EA advised that at that point in time it could not identify whether or not the proposed acquisitions would affect the EA's operations, in particular in relation to its flood risk management role.

7.7.14. I was kept updated throughout the Examination on how matters were progressing between the Applicant and EA by means of a CA Schedule.

7.7.15. At DL7 (Tuesday 24 May 2022) the EA confirmed [REP7-018] in relation to plot numbers:

- 27, 28 and 75, there was no issue to resolve as the EA will continue to carry out maintenance works under the Water Resources Act 1991;
- 76 and 77, the EA's issue was resolved as it will retain the right to pass along the track, to undertake flood defence maintenance;
- 80 and 81, the EA's issue was resolved as its interests were protected by an existing easement;
- 96, 156 and 157, the EA's issue was resolved as access will be maintained for it to undertake flood management activities; and
- 172, the introduction of (and activities proposed within) this plot will not impact the EA's flood management operations.

7.7.16. Additionally, at DL7a (Tuesday 6 June 2022) the EA advised [REP7a-016] since its original objection it had worked with the Applicant to gain clarity on its objections and in summary confirmed it had received and was considering:

- a draft Deed of Variation relating to plots 3, 10 and 26 (received 20 May 2022); and
- a draft Deed of Variation relating to plot 30 (received 26 April 2022).

7.7.17. It also advised the following outstanding matters were still to be drafted and/ or agreed:

- an easement/ options agreement in respect of plot 52, where the Applicant is seeking a new permanent right in relation to Work No. 4A and 4B;
- securing access around plot 80a, where the Applicant is seeking the freehold interest for this plot from the Canal and River Trust in relation to the construction of a new pumping station (Work No. 4A); and
- TP in relation to plots 31, 46, 47, 53 and 54, where the Applicant is seeking:
    - for plot nos. 31, 46, 53 and 54, TP in relation to (Work No. 10A) access and construction worksite, including temporary haul road and any ancillary works necessary to facilitate the use of that land as a temporary haul road and reinstatement of the land; and
    - plot no. 47, TP in relation to (Work Nos. 2A and 10A) access and construction worksite, including temporary haul road and any ancillary works necessary to facilitate the use of that land as a temporary haul road and reinstatement of the land.

7.7.18. Having considered all representations made in respect of CA/ TP, by both the EA and the Applicant, as well as the details set out in the Land Plans [REP6a-043] and BoR [REP6a-038], I am satisfied that the CA/ TP powers sought over plots 3, 10, 26, 30, 31, 46, 47, 52, 53, 54 and 80a are required to facilitate and/ or are incidental to the Proposed Development. I am therefore satisfied that the powers sought meet the conditions set out in s122(2) of the PA2008.

7.7.19. Irrespective of the above, the exercising of these rights has the potential to interfere with the EA's undertaking. However, it has not sought the inclusion of PPs in the DCO. The EA, in its response to the RR consultation [AS-002] and in its subsequent WR [REP2-022] confirmed it

reserved *"…the right to add or amend these representations, including requests for DCO Requirements and protective provisions should further information be forthcoming during the course of the examination on issues within our remit."* Bearing this in mind, in my Rule 17 letter [PD-022], dated 26 May 2022, I specifically sought a summary from the EA in regard to its position on PPs, amongst other matters. In its response [REP7a-016] the EA made no reference to PPs and as such I do not consider the imposition of PPs in the EA's interests to be necessary, as they would not be reasonable or warranted.

7.7.20. Whilst I accept there is some potential impact on the EA in terms of CA/ TP, the need for the development is already established by the NPS and has been accepted in this Examination. NPS EN-1 advises that this should be given substantial weight when considering applications for development consent under the PA2008.

7.7.21. In my view, this outweighs the potential impact on the EA's land interests and I therefore consider that there is a compelling case in the public interest for acquiring the rights sought compulsorily. Accordingly, I find the test set out in s122(3) is met.

7.7.22. Discussions between the EA and the Applicant in regard to CA/ TP matters continued throughout the Examination and I was kept updated on progress. However, at the close of the Examination, a number of matters remained outstanding, as detailed in this report above. Regardless of this, the EA, in its DL7 [REP7-018] and DL7a [REP7a-016] submissions, was of the view that all the outstanding issues were capable of resolution by agreement and that it would continue to work on finalising the required agreements during the decision period stating it would write directly to the SoS when it was in a position to withdraw its outstanding objection.

7.7.23. In my opinion, the parties' cases are sufficiently well set out that I am able to come to a view on these outstanding matters concerning CA/ TP, as highlighted by the EA. As such, I consider these matters are capable of resolution by agreement that will adequately address the remaining matters in dispute.

7.7.24. Overall, the agreements, once concluded, should provide the necessary confidence to ensure use of the CA/ TP powers are appropriately applied to those required to carry out the development, whilst not resulting in serious detriment to the EA's undertaking.

7.7.25. I am therefore satisfied that, subject to the completion of the necessary:

- Deeds of Variation in regard to plot numbers 3, 10, 26 and 30;
- TP agreement in regard to plot nos. 31, 46, 47, 53 and 54;
- easement and options agreement in regard to plot no. 52; and
- agreement to secure access for continued maintenance of the North Soak Syphon in regard to plot no. 80a,

the inclusion of CA/ TP powers in respect of the plots identified would not result in serious detriment to the carrying on of the EA's undertaking. Furthermore, I am also satisfied that the inclusion of powers in respect of the extinguishment of rights are necessary for the purpose of carrying out the development. As such, I consider the tests set out in s127 and s138 of the PA2008 are met.

NETWORK RAIL INFRASTRUCTURE LTD

7.7.26. The CA powers sought in relation to NR relate to new rights only.

7.7.27. NR's objection is set out in the representations listed in Table 3 of this report, but in summary NR objects in its RR [RR-011] and WR [REP2-031] to the CA/ TP powers sought, stating:

"NR does object to the powers contained in article 20 (statutory authority to override easements and other rights), 22 (compulsory acquisition of rights etc.), 23 (private rights), 28 (temporary use of land for carrying out the authorised development, 29 (temporary use of land for maintaining the authorised development) and 33 (statutory authority to override easements and other rights) of the draft DCO authorising the Promoter to compulsory acquire rights in or over land, or temporarily use land, which forms part of NR's operational railway land and which NR relies upon for the carrying out of its statutory undertaking. Furthermore any temporary use of or entry upon NR's operational railway can only be granted with NR's consent as any such use of the railway must be in accordance with the statutory requirements imposed on NR as operator of the railway network..."

7.7.28. In addition, the RR [RR-011] stated that any agreement would be subject to clearance. However, within the Applicant's document 'Update on the progress that has been made with APs in respect of CA and TP' [REP7a-011] it states clearance was requested by submission of the appropriate forms on 18 March 2021 and as such it understands that clearance has been obtained. NR has made no further comment in relation to the matter of clearance during the Examination.

7.7.29. It is clear that discussions and negotiations regarding CA/ TP continued to take place between the parties during the Examination. In response to my Rule 17 letter dated 26 May 2022, NR provided a position statement [REP7a-020] setting out its position in relation to:

- outstanding objection(s);
- PPs;
- CA/ TP; and
- the status of any side agreement, interface agreement or other relevant agreement they considered necessary to provide relevant protections or mitigations from the Proposed Development.

7.7.30. Within this document NR confirmed its outstanding objection centres on the Applicant's refusal to include a restriction within the PPs on the exercise of compulsory purchase powers over land and rights belonging to NR.

7.7.31. NR's position statement [REP7a-020] also:

- provided a copy of its requested PPs, stating the Applicant *"…cannot have unfettered power to compulsorily acquire rights over NR's land, airspace and subsoil which NR rely upon for the carrying out of their statutory functions"*; and
- pointed out that it is standard practice in DCOs for the PPs in favour of SUs to provide a restriction on the exercise of an Applicant's CA powers to ensure that such powers do not have a detrimental impact on the ability of the undertaker to carry out its statutory function. In this regard NR highlighted such provisions had been included in many recent DCOs, albeit in the interest of other SUs in their PPs, where NR's land and apparatus has been impacted including:
  - The Port of Tilbury (Expansion) Order 2019;
  - The Northampton Gateway Rail Freight Interchange Order 2019; and
  - The Triton Knoll Electrical System Order 2016.

7.7.32. In contrast in its 'Legal Submission – Response to Examiners Question 5', submitted at DL7a [REP7a-014], the Applicant confirmed plots 28 and 29 (of which NR is the freehold owner of this airspace) relates to an existing purpose-built bridge, with parapets, over the railway and advised it had *"…consistently questioned NR's position that this land is not operational land for the purpose of its undertaking…".*

7.7.33. The Applicant also pointed out that other SSE companies already enjoy existing rights over these plots and argued the new rights sought are consistent with those existing rights, and on that basis it is considered that by virtue of the existing rights, acquisition of the same cannot cause serious detriment to NR's undertaking (ie the same form of rights have been exercised in the real world without detriment to NR).

7.7.34. Furthermore, in terms of progress on voluntary agreement(s) being reached, the Applicant's document 'Update on the progress that has been made with APs in respect of CA and TP' [REP7a-011] indicated voluntary agreement has been reached, subject to legal completion, and states the terms have been agreed and that a Deed of Variation and license agreement is in circulation with completion anticipated imminently.

7.7.35. The above perception is not quite reflected in NR's position statement [REP7a-020], where NR indicates it is in the process of negotiating a Framework Agreement with the Applicant. NR indicates that it hopes that this will be concluded shortly, but advises it is clear that: *"NR must ensure that its undertaking is protected in the event that no agreement is concluded."* Furthermore, it stresses it does not agree that any such agreement should function to contract out of any CA powers. NR states *"…rather, through agreement NR will grant… the necessary rights of way required over its operational land"*.

7.7.36. As such NR's position remains that the PPs should include provision that CA powers over operation of the railway land cannot be exercised, except with NR's consent. NR also point out its PPs, which were included at

Appendix A of its position statement [REP7a-020], include a provision that NR's consent is not to be unreasonably withheld.

7.7.37. I have considered the parties submissions carefully. In my view, the rights sought, are necessary to construct and operate the Proposed Development. I am therefore satisfied that these rights are required to facilitate the development and, as such, the test in respect of s122(2) is met.

7.7.38. It is clear to me that there would be some risk to NR in having proposed new rights exercisable over plot nos. 28 and 29 (part of the North Pilfrey Bridge), as these would include the ability to maintain and undertake improvements. However, I also note there is an existing agreement between NR and SSE Plc (the Applicant's parent company), in relation to the North Pilfrey Bridge, used for:

- construction movements associated with development of the Keadby 2 Power Station; and
- prior to the above, the construction of the Keadby Wind Farm.

7.7.39. The Applicant in its response to WRs [REP3-021] stated *"It should be noted that the bridge was successfully used without any issue for the whole of the construction phase of Keadby 2 power station."* It also advised, in the same document, it considered *"…the current bridge structure is suitable for the proposed works..."* noting:

- the bridge is rated for SV196 loading in accordance with BS EN1991-2; and
- a full survey was undertaken last summer (2021) finding the bridge to be in excellent condition such that no structural (ie foundations, pillars etc) works are envisaged and improvement works are likely to be limited to surfacing, improved guard rails and any other protective measures considered to be appropriate.

7.7.40. I also note the Applicant's comments in regard to the existing agreement between its parent company and NR where it sets out that the grantee to the lease of easement is responsible for the maintenance of the bridge and meeting its responsibilities pursuant to that lease.

7.7.41. With the above in mind, it is clear that similar rights already exist and, subject to appropriate protections, there is no reason that the rights sought should materially affect NR's existing use of its land. However, I am concerned as to the Applicant's suggested PPs and the fact that NR does not consider they provide adequate protection, especially in regard to its statutory undertaking.

7.7.42. Having reviewed both versions of the PPs (the Applicant's current version as set out in its preferred version of the DCO [REP7a-006] and NR's PPs, attached at Appendix 1 of its position statement [REP7a-020]), and reflected on the position of both parties, as set out in submissions entered into the Examination on the matter, I consider NR's PPs provide a more appropriate level of protection in terms of its land, apparatus and statutory undertaking. In reaching this position, I am especially

persuaded by NR's reference to existing DCOs, where it has been standard practice for the PPs in favour of SUs to provide a restriction on the exercise of an Applicant's CA powers, so as to ensure that such powers do not have a detrimental impact on the ability of the undertaker to carry out its statutory function.

7.7.43. In terms of public benefits, I consider the Proposed Development would provide public benefits in the form of additional energy generating capacity, security and flexibility of supply, whilst also supplying a much new needed carbon capture technology. NPS EN-1 indicates that new energy generating capacity, security and flexibility should be given substantial weight. In addition, there would be increased employment opportunities and support for the local economy. While modest, in my view these benefits should be afforded moderate weight.

7.7.44. On balance, subject to PPs being included in the DCO in the form sought by NR, I consider the CA/ TP powers sought in respect of plot nos. 28 and 29 would not result in serious detriment to the carrying on of NR's undertaking. Furthermore, I am also satisfied that the inclusion of powers in respect of the extinguishment of rights would be necessary for the purpose of carrying out the development. As such, I consider the tests set out in s127 and s138 of the PA2008 are met.

7.7.45. I also consider the public benefits that would result from this additional energy generation outweighs any loss or detriment that may result from the creation of these rights compulsorily. Accordingly, I consider there is a compelling case in the public interest for CA powers to be included in respect of the identified plots and that the test set out in s122(3) is also met.

7.8. SPECIAL CONSIDERATIONS

7.8.1. None of the land included in the CA request is National Trust Land, Common Land or Open Space. However, there are Crown interests within the Order Limits, which are shown on the Crown Land Plans (Application Document Ref. 4.5 Revision 4) [REP6a-046]. This section addresses my consideration of the Applicant's case and matters raised during the Examination with respect to Crown Land.

CROWN LAND

7.8.2. Section 135(1) of the PA2008 precludes the CA of interests in Crown Land unless the land is held "*otherwise than by or on behalf of the Crown*", and the appropriate Crown authority consents to the acquisition.

7.8.3. Section 135(2) precludes a DCO from including any provision applying to Crown Land or Crown rights without consent from the appropriate Crown authority. This is not limited to CA provisions in a DCO.

7.8.4. The BoR [REP6a-038] identifies plots subject to Crown interests, held by:

- The Queen's Most Excellent Majesty In Right Of Her Crown at plot nos. 154; 156; 156a; 157; 158; 163; 172; and 172a; and

- The Crown Estate Commissioners (in respect of mines and minerals) at plot nos. 159; and 160.

7.8.5. The Work Nos. are set out below and show the plot numbers as they relate to each:

- Work No. 4B (Water Connection Corridors - River Water Abstraction Option) – plot nos. 157, 159 and 160.
- Work No. 5 (Water Discharge Corridor) – plot nos. 158 and 163.
- Work No. 10B (Waterborne Transport Offloading Area – Maintenance of existing jetty and placement of crane for offloading of waterborne transport) – plot nos. 154; 156; 172; and 172a.
- Work No. 10C (Waterborne Transport Offloading Area – For the mooring of vessels and craft at the waterborne transport offloading area at lower tide) – plot nos. 156a; and 172a.

7.8.6. The extent of the land owned by the Crown Estate, or in which there is a Crown interest, is shown on the Crown Land Plans [REP6a-046].

7.8.7. The Applicant at Appendix 2 of its document entitled 'Response to DL6 submissions, Rule 17 Request… and ExQ 1.16.32… 2.6.4 and 2.6.5' [REP6a-028] provided an email from the Crown's agent, dated 9 May 2022. The email stated, with regard to:

- Work No. 4B (Water Connection Corridors - River Water Abstraction Option) and Work No. 5 (Water Discharge Corridor) (plot nos. 157, 158, 159, 160 and 163):
  "Having reviewed existing documentation and rights, we can confirm that no further agreement is required for the purposes of the DCO for the outfall and river abstraction rights."
- Work No. 10B (Waterborne Transport Offloading Area – Maintenance of existing jetty and placement of crane for offloading of waterborne transport) (plot Nos. 154, 156, 172 and 172a) and Work No. 10C (Waterborne Transport Offloading Area – For the mooring of vessels and craft at the waterborne transport offloading area at lower tide) (plot nos. 156a and 172a):
  "The principle of the use of the Railway Wharf has been discussed and, subject to consideration being agreed, the Crown Estate has no concerns over the principle. The outline of a mechanism to allow this is being discussed, as legal advice will be required as to the documentary mechanism required, but a licence or similar, document is anticipated to suffice."

7.8.8. This position was reiterated by the Applicant in its 'update on the progress that has been made with APs in respect of CA and TP' [REP7a-011]. However, by the close of the Examination I had not been provided with any updated position in regard to this matter and no appropriate Crown authority had been obtained by the Applicant in relation to Crown Land and/ or Crown rights.

7.8.9. From the evidence submitted into the Examination I have no reason to doubt that Crown authority in relation to Crown Land or Crown rights in favour of the Applicant will be forthcoming. However, I recommend that

the powers sought in connection with Crown Land and/ or Crown rights should not be granted until it has been confirmed that the necessary Crown authority, consistent with the BoR [REP6a-038] and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.

7.9. HUMAN RIGHTS ACT 1998 AND EQUALITIES ACT 2010 CONSIDERATIONS

7.9.1. The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law. Schedule 1 of the Act sets out the Articles. Article 6 (right to a fair trial), Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property) are engaged.

7.9.2. In relation to Article 6 (right to a fair trial), the Applicant states that there has been opportunity to make representations during the preparation of the application and owners of land had been consulted. There has also been the opportunity to make representations during the course of the Examination.

7.9.3. Furthermore, I provided all APs who wished to be heard an opportunity to be heard fully, fairly and in public at the CAH, which was held in two sessions [EV-021 and EV-022]. I consider all of the above opportunities to make representations sufficient to meet the obligations set out in Article 6 of the Human Rights Act 1998.

7.9.4. In terms of Article 8 (right to respect for private and family life) the Applicant noted, in its SoR [REP6a-040], that this article protects private and family life, home and correspondence. It also recognises that no public authority can interfere with these rights except in accordance with the law, and so far as is necessary in the interest of national security, public safety or the economic well-being of the country. In this regard, the Applicant argues it has considered the potential infringement of these rights in consequence of the inclusion of CA powers within the Order and highlights there would be very significant public benefits arising from the grant of the Order.

7.9.5. In consideration of these public benefits, which include (but are not limited to):

- the increased energy generation for all types of infrastructure and maintaining the need for security and flexibility of supply as set out in NPS EN-1; and
- the Proposed Development's inclusion of carbon capture technology, which will be a first of its kind in the UK, and the potential it would have to contributing towards meeting the UK's carbon commitment and supporting the transition to a low carbon economy;

it is clear to me that these benefits will only be realised if the Order is accompanied by the grant of powers of CA/ TP and I consider, on balance, that the significant public benefits outweigh the effects on persons who own interests in relevant land or who may be affected by the Proposed Development.

7.9.6. In terms of Article 1 of the First Protocol (protection of property), the Applicant in its SoR [REP6a-040] stated it had sought to minimise the amount of land over which it required CA and TP powers. It also argues that, for the reasons as set out immediately above, any infringement of human rights as a result of the inclusion of CA and TP powers in the DCO is proportionate and legitimate and in accordance with national and European law. In the Applicant's view, it considers there would be a significant public benefit from the grant of the DCO, which would outweigh the effects on persons who own property within the Order land.

7.9.7. I agree. I have found above that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily, subject to resolution of the various outstanding matters identified above. Furthermore, I am satisfied that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest.

7.9.8. The Equalities Act 2010 establishes a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. I have had regard to this duty throughout the Examination and in my consideration of the issues raised in this report.

7.10. CONCLUSIONS

7.10.1. Having considered all of the material submitted to the Examination, I have reached the following conclusions:

- The application site has been appropriately selected.
- All reasonable alternatives to CA have been explored.
- The dDCO provides a clear mechanism for whereby the necessary funding can be guaranteed.
- There is a clear need for the CA of all of the land plots identified in the BoR [REP6a-038] and detailed on the Works Plans [REP6a-044] and, in terms of new rights sought as set out in Schedule 6 (New Rights) of the recommended DCO (see Appendix C of this report). This includes plot nos. 40, 40a, 41, 42, 43, 44, 45, 55a, 55b, 56, 56a, 59, 60 and 108, to be subject to CA in terms of new rights.
- There is a clear need for all of the land plots identified in Schedule 8 (Land of which TP may be taken) of the recommended DCO (see Appendix C of this report) and as detailed in the BoR [REP6a-038] and detailed on the Works Plans [REP6a-044], including plot nos. 40b, 43, 55, 56, 58 and 59, to be subject to TP.
- There is a need to secure the land and rights required 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 powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance.

- The CA powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.
- The powers sought in connection with Crown Land and/ or Crown rights should not be granted until it has been confirmed that the necessary Crown authority, consistent with the BoR [REP6a-038] and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.

8. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

8.1. INTRODUCTION

8.1.1. The application draft Development Consent Order (dDCO) [APP-005] and the Explanatory Memorandum (EM) [APP-006] were submitted by the Applicant as part of the application for development consent. Both the dDCO and EM were updated throughout the Examination with the latest version of the dDCO being [REP7a-006] and the EM being [REP7a-008]. The EM describes the purpose of the dDCO, with each of its articles and schedules.

8.1.2. The application dDCO [APP-005], and subsequent versions, are broadly based on the Model Provisions, as set out in the (now withdrawn) Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, but with differences. The original EM [APP-006] and subsequent versions note and explain variations made in the dDCO compared to the Model Provisions. These variations are drawn from the drafting used in other orders for similar developments made under the Planning Act 2008 (PA2008), the Transport and Works Act 1992 and other Acts authorising development. The original application dDCO [APP-005] and subsequent iterations (the most recent version of the dDCO being [REP7a-006]) are in the form of a statutory instrument as required by section (s) 117(4) of the PA2008.

8.1.3. During the Examination, several further drafts of the Development Consent Order (DCO) were submitted by the Applicant incorporating progressive changes arising from the Examining Authority's (ExA) written questions, points made by Interested Parties (IP), and from the proceedings at the DCO hearing, which was held virtually on 17 March 2022 and sat in three sessions [EV-025, EV-026 and EV-027].

8.1.4. This chapter provides an overview of the changes made to the dDCO during the Examination process, between the application dDCO [APP-005] and the final dDCO [REP7a-006] submitted at Deadline (DL) 7a. It then considers changes made to the final dDCO in order to arrive at the recommended DCO (rDCO) in Appendix C to this report.

8.1.5. I do not report on every change made in the updated versions of the dDCO, as some were the result of typographical or grammatical errors, were minor changes, reflected updated documents, or were changes in the interests of clarity or consistency following discussion between the Applicant and relevant IPs, or as a result of my written questions. Accordingly, and in the interest of conciseness, I have focussed on key changes made in the updated versions of the dDCO.

8.2. THE DCO AS APPLIED FOR

8.2.1. This section records the structure of the dDCO. It is based on the Applicant's final dDCO [REP7a-006] submitted at DL7a, and is as follows:

- Part 1, Article 1 sets out how the Order may be cited and when it comes into force, whilst Article 2 sets out the meaning of the various terms.

- Part 2, Articles 3 to 8 provides 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, whilst Article 8 confirms which statutory provisions are modified and their subsequent application in the context of exercising powers under the Order.

- Part 3, Articles 9 to 13 provide for the Applicant or a person who has the benefit of the Order to carry out street works to and within streets, to create or improve access; the ability to alter street layout; and the ability to enter into agreements with the Street Authority.

- Part 4, Articles 14 to 17 sets out supplemental powers relating to the discharge of water, authority to survey land, ability to temporarily interfere with the canal and public rights of navigation and the use of private roads for construction.

- Part 5, Articles 18 to 31 provide for the Applicant or a person who has the benefit of the Order 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 for compensation to be payable to affected persons in respect of affected persons (if not covered elsewhere) and also powers in relation to the equipment of statutory undertakers.

- Part 6, Articles 32 to 34 provide confirmation that Crown Rights are not affected by the compulsory acquisition powers provided for in the Order, powers in relation to trees which need to be removed or lopped in relation to the Proposed Development and any protective works to buildings.

- Part 7, Articles 35 to 45 are concerned with miscellaneous and various general matters/ provisions. Article 35 provides protection for Statutory Undertakers through the Protective Provisions (PP) set out in Schedule 10. Article 36 is a novel provision which makes provision for the restoration of certain works required as part of the consents granted in regard to the Keadby 2 Power Station, in the event that the Proposed Development is not implemented within the timescales for commencement. Articles 37 to 45 include provisions such as the application of statutes relating to leases, that the Order land will be operational land, a defence to proceedings for statutory nuisance, deemed Marine Management Organisation (MMO) licence provisions, procedure for approvals required under the Order, certification of

documents, arbitration in the case of dispute, notices served under the Order and guarantees in respect of payment of compensation.

8.2.2. There are thirteen schedules to the Order. Schedule 1 providing for the description of the authorised development, whilst Schedule 2 sets out the Requirements (R) which apply to it.

8.2.3. Schedules 3 to 5 are linked, as they relate to matters concerning streets, highway alterations and access alterations. Streets subject to street works are identified in Schedule 3, whilst Schedule 4 identifies streets subject to permanent alteration of layout and Schedule 5 relates to access and identifies who will be responsible for maintenance of the relevant parts of the access.

8.2.4. Schedules 6 to 8 are also linked insomuch as they concern the creation of new rights, temporary possession of land and compensation. Schedule 6 concerns land in which only new rights maybe acquired, whilst Schedule 7 relates to amendments to statutes to ensure appropriate compensation is payable where new rights in land are acquired. Schedule 8 concerns land which may be used temporarily for the Proposed Development.

8.2.5. Schedule 9 sets out the procedure for discharging requirements, whilst Schedule 10 provides PPs for Statutory Undertakers and their apparatus. Schedule 11 sets out the Proposed Developments design parameters, whilst Schedule 12 contains the list of documents and plans to be certified. Schedule 13 contains the Deemed Marine Licence (DML) pertaining to works resulting from the Proposed Development.

8.2.6. I find that the structure of the Applicant's final dDCO [REP7a-006], as outlined above, is fit for purpose and no changes to the structure are recommended. PPs, as set out below, have been agreed:

- Part 1 (For the Protection of National Grid as Electricity and Gas Undertaker), as electricity and gas undertaker's assets are as finally agreed between the parties.

- Part 2 (For the Protection of Canal and River Trust), as to the operation and management of the waterways and towpaths for public use and enjoyment and maintaining commercial and cruising waterways in a suitable condition for use, ensuring the protection of the undertaker's assets are as finally agreed between the parties.

- Part 3 (For the Protection of Electricity, Gas, Water and Sewage Undertakers), as generic PPs to cover those undertakers for whom there are no tailored PPs. These PPs take a form which is consistent with that contained in other DCO and Transport and Work Act Orders and no representations on them have been received throughout the Examination process.

- Part 4 (For the Protection of Operators of Electronic Communications Code Networks), as generic PPs to cover for electronic

communications code network operators where there are no tailored PPs. These PPs take a form which is consistent with that contained in other DCOs and Transport and Work Act Orders and no representations on them have been received throughout the Examination process.

- Part 6 (For the Protection of National Grid Carbon Limited (NGC)). NGC is not a Statutory Undertaker and has no apparatus within the Order Limits, however PPs have been agreed to facilitate collaboration and safeguarding for the proposed NGC Gathering Network. The PPs comprise two parts as detailed below:
  - Section A would take effect once the Order is made and imposes obligations on the undertaker to work with NGC in working up the detailed design relating to the interaction of the authorised development with the NGC Gathering Network and a coordinated approach to programme and land assembly. There are further provisions which seek to restrict the carrying out of the carbon dioxide export connection works, unless agreed with NGC, and for detailed plans for such connection works to be submitted to NGC for its approval. If the undertaker constructs these works paragraph 81 of the PPs contains protections for NGC to ensure it is built to the approved specification, with NGC having the right to seek remedial works, or step in to remediate if the undertaker fails to do so.
  - Section B applies in relation to installed and completed NGC infrastructure and contains the usual provisions to protect in-situ apparatus.
- Part 7 (For the Protection of Northern Powergrid (Yorkshire) Plc), as the electricity undertaker's assets are as finally agreed between the parties.

8.2.7. The following PPs remained outstanding at the close of the Examination and had not been agreed:

- Part 5 (For the Protection of Railway Interests). These are PPs for the benefit of Network Rail Infrastructure Limited (NR) and affording NR protection for any works to be carried out within 15 metres of railway property, which includes the North Pilfrey Bridge. These PPs do not include NR's standard requirement that certain elements of the DCO cannot be exercise, particularly the use of compulsory purchase powers in relation to NR property.

8.2.8. In relation to the above, the Applicant states in its EM [REP7a-008] that it has been in negotiations with NR to agree the necessary property documentation. It advises that the terms are agreed, and principal terms have been agreed such that there will be no need to rely on compulsory purchase powers once formally documented. This is not quite reflected in NR's position statement [REP7a-020], where NR indicates it is in the process of negotiating a Framework Agreement with the Applicant. NR indicates that it hopes that this will be concluded shortly, but advises it is clear that: *"NR must ensure that its undertaking is protected in the event*

that no agreement is concluded." Furthermore, it stresses it does not agree that any such agreement should function to contract out of any CA powers. NR states *"…rather, through agreement NR will grant… the necessary rights of way required over its operational land"*.

8.2.9. As such NR's position remains that the PPs should include provision that CA powers over operation of the railway land cannot be exercised, except with NR's consent. NR also point out its PPs, which were included at Appendix A of its position statement [REP7a-020], include a provision that NR's consent is not to be unreasonably withheld.

8.2.10. PPs and any side agreements with NR were not completed prior to the close of the Examination, but the Applicant considers it requires the ability to use its compulsory purchase powers in the event the property documentation is not entered into in a timely manner.

8.2.11. Having considered the position of both parties, as set out in submissions entered into the Examination on the matter, I am of the view that NR's PPs provide a more appropriate level of protection in terms of its land, apparatus and statutory undertaking. In reaching this position, I am especially persuaded by NR's reference to existing DCOs, where it has been standard practice for the PPs in favour of SUs to provide a restriction on the exercise of an Applicant's CA powers, so as to ensure that such powers do not have a detrimental impact on the ability of the undertaker to carry out its statutory function.

8.2.12. As such should the Secretary of State (SoS) be minded to make the DCO, the SoS will need to satisfy themselves that the above-mentioned PPs related to NR are as agreed with that SU or that the PPs sought by NR, as set out at Appendix 1 of its position statement [REP7a-020] and as set out in Schedule 10, Part 5 of the rDCO, are included within the DCO.

8.2.13. Finally, the absence of an Environmental Permit specific to the Proposed Development is noted, However, I am satisfied that the Proposed Development's gross electrical output of 910 megawatts is adequately controlled in the Applicant's final dDCO [REP7a-006] as this limit is specified in the description of the authorised development at Schedule 1 of the dDCO (also see Schedule 1 of the rDCO attached at Appendix C of this report.

8.3. CHANGES DURING EXAMINATION

8.3.1. The Applicant updated the dDCO several times during the Examination, responding to issues raised in questions, to Written Representations and as a consequence of the hearing process. With the exception of DL2, where the Applicant only submitted a tracked changes version, from the previous clean copy version, the Applicant at each revision submitted a clean copy and a copy showing tracked changes from the previous clean copy version. Additionally, the Applicant submitted a schedule of amendments documenting the changes to the dDCO at various DLs throughout the Examination and these are detailed further below. The

versions of the updated dDCO submitted by the Applicant were as follows:

- DL2 version [REP2-003] (tracked).
- DL3 version [REP3-003] (clean) and [REP3-004] (tracked).
- DL4 version [REP4-003] (clean) and [REP4-004] (tracked).
- DL5 version [REP5-003] (clean) and [REP5-004] (tracked).
- DL6a version [REP6a-034] (clean) and [REP6a-035] (tracked).
- DL7a version [REP7a-006] (clean) and [REP7a-005] (tracked).

8.3.2. As indicated in paragraph 8.3.1 of this report, the changes to various iterations of the dDCO can be followed as the Examination progressed through the submission of the Applicant's 'Schedule of Updates to the dDCO', which were submitted at DL2 [REP2-011], DL3 [REP3-019], DL4 [REP4-009], DL6a [REP6a-026] and DL7a [REP7a-012].

8.3.3. The various versions of the dDCO can be found at DL7a submission in the 'Applicant's Final Preferred Form of the DCO' [REP7a-006]; DL6a version [REP6a-034] of the 'Applicant's Final Preferred version of the DCO', that was submitted as part of the Proposed Development change request (subsequently superseded by the DL7a version); DL5 version [REP5-003]; DL4 version marked VP4.0 [REP4-003]; DL3 version no revision number provided [REP3-003]; DL2 version marked VP2.0 [REP2-003]; and application version marked VP1.0 [APP-005]. Progression through the versions of this documentation provides a clear explanation of the majority of changes made to the dDCO during the Examination.

8.3.4. It should be noted that the DL6 version of the dDCO was withdrawn by the Applicant's letter dated 12 May 2022 [REP6a-032] entitled 'Withdrawal of Previous Change Request and Submission of Single Change Request'. However, the changes made in the withdrawn DL6 version that were retained in subsequent versions of the dDCO are detailed in Table 4 (Key Changes to the dDCO made during the Examination) below, as part of the key changes listed against the DL6a, accepted change request, version.

8.3.5. The key changes to the dDCO during the Examination, and the reasons for these changes, are set out in Table 4 below:

Table 4: Key Changes to the dDCO made during the Examination

Provision	Key Changes
DL2 Version (Tracked Version)	Article 2(1) (Interpretation) – definition of: ▪ *"Electricity Acts"* (and associated footnotes – Reference to *"Electricity Lighting Act 1909"* and

Provision	Key Changes
[REP2-003]	*"Electricity (Supply) Act 1919)"* deleted together with relevant footnotes, at ExA's request as both Acts have been repealed and reference to them is redundant; ▪ *"Carbon Capture Plant"* amended in response to ExA's First Witten Questions (ExQ1) Q1.16.2. – updated to reference Work No.7 and reference to "carbon capture plant" within the dDCO have also been updated to "carbon capture and compression plant"; ▪ *"Haul Road"* definition added as haul road is referred to in Article 36 (restoration works) and the definition has been moved from Schedule 2 to Article 2(1). ▪ *"Haul Road Permission"* definition added and moved from Schedule 2 to Article 2(1) for the same reason as set out in "Haul Road" above; ▪ *"NGC"* has been moved at the request of the ExA so that it is in the correct order alphabetically; ▪ *"Pilfrey laydown plans"* amended to cross refer to the "Pilfrey planning permission" and confirms that the laydown plans form part of the Pilfrey planning permission (as defined); ▪ *"Pilfrey laydown planning permission"* definition added. The "Pilfrey planning permission" is referred to in the definition of *"Pilfrey laydown plans"* which is referred to in Article 2(1). The definition of the *"Pilfrey laydown planning permission"* has therefore been moved from Schedule 2 to Article 2(1); and ▪ *"Statutory Undertaker"* has been amended to remove reference to public communications provider in response to ExQ1 Q1.16.6. Article 2(4) amended, in response to ExQ1 Q1.16.7, to delete reference to Schedule 2 – This amendment to Article 2(4) confirms that definitions contained within Schedule 13 (DML) that in the event of any conflict or duplications, the definitions in Schedule 13 shall take precedence for the purposes of applying to/ interpreting Schedule 13 only. Article 2(5) amended to alter reference to "works 1A to 1D" to "works 1A to 1E" to ensure all works comprised in Works No.1 are referenced.

Provision	Key Changes
	Article (6) (Benefit of the Order) - new paragraph (c) added to allow Northern Powergrid to have the benefit of the Order in relation to Work No. 3B. This amendment was included to reflect the current position on discussions with Northern Powergrid. Article 16 (Removal of human remains) – the purpose of this article was questioned by me, as no evidence had been provided to demonstrate that human remains would need removal. In response the Applicant deleted this article in its entirety. Article 19 (Statutory Authority to Override Easements and Other Rights) – Article 19(6) deleted by the Applicant. Article 33 (Statutory Authority to Override Easements and Other Rights) – this article was a duplication of Article 19 and was deleted. Schedule 2 (Rs) R1 (Interpretation) - the definitions of *"haul road planning permission"*, *"haul road"* and *"Pilfrey laydown planning permission"* contained in this paragraph were deleted and moved to Article 2(1), for the reasons already identified above. Schedule 2 (Rs) R5(4)(a) – as requested by the Canal and River Trust, additional wording added to require the Canal and River Trust to be consulted in relation to details submitted insofar as they relate to Work No. 4A. Schedule 2 (Rs) R5(4)(c) – as requested by the Canal and River Trust was amended to include reference to the "angle of flow". Schedule 2 (Rs) R5(7) – amended to reflect the position agreed with NGC, and additional wording added to allow NGC to be consulted on details submitted. Schedule 2 (Rs) R5(11) – updated to include reference to Work No.8 and reference to Schedule 12 (design parameters) amended to refer to the correct reference (Schedule 11 (design parameters)).

Provision	Key Changes
	Schedule 2 (Rs) R14(2) – reference to 2.5m Above Ordnance Datum (AOD) amended to 2.8m AOD, as agreed with the Environment Agency (EA) that R14(2) and Schedule 11 of the dDCO [APP-005] required updating to reference the adjusted finished ground level for the Main Site (Work Nos. 1A and 1C) of 2.8m AOD to take account of the updated hydraulic modelling and flood risk assessment [AS-010] submitted at DL1. Schedule 2 (Rs) R17(1) – reference to consultation with Natural England on the Construction and Environmental Management Plan (CEMP) has been added to the condition, as requested by Natural England. Schedule 2 (Rs) R25(1) – reference to *"Highways England"* updated to refer to *"National Highways"*. Schedule 2 (Rs) R29(3) – reference to the British Standard updated to ensure the R reflects the current British Standard. Schedule 2 (Rs) R30(1) – reference to Work No. 4B added, as Work No. 4B will also need to be included as part of the written piling and penetrative foundation design method statement. Schedule 2 (Rs) R33 – title of R amended to *"Carbon capture and compression plant".* Schedule 2 (Rs) R33(1) – amended to reflect discussions with NGC and, to demonstrate ability to secure full chain, a new paragraph (d) added to reference any new pipeline works authorisations required by section 14 of the Petroleum Act 1998. Schedule 6 (New Rights) Table 4 – reference to plots 40a, 43, 45, 55a, 55b, 59 and 60 added in relation to new rights to be acquired in relation to Work Nos. 3A and 3B. These were added to reflect the amendments made to the deposited land plans, where these parcels were altered to allow for a change from temporary possession to the new right sought. Schedule 9 (Procedure for Discharge of Rs) paragraph 2(4)(b) – additional wording added to require the relevant planning authority to notify the undertaker if it considers an application made

Provision	Key Changes
	contains materially new or materially different environmental effects to those assessed and to give the Applicant 21 business days written notice following receipt of the relevant documentation. The Applicant considers this additional wording provides both parties with the opportunity to resolve any concerns the relevant planning authority may have prior to a formal determination being made on the submitted application. Schedule 9 (Procedure for Discharge of Rs) paragraph 5(1)(b) – amended so the cross reference is the correct cross reference. Schedule 10 (PPs) Part 2 paragraph 22(1) (for Canal and River Trust) – additional wording added to reference the Canal and River Trust's Code of Practice, as requested by the Canal and River Trust. Schedule 11 (Design Parameters) – Table 6, Column 4 updated to reflect the amendments agreed with the EA in regard to R14(2) and R17(1). The adjusted finished ground level for the main site (Work Nos. 1A and 1C) has been amended to take account of the updated hydraulic modelling and flood risk assessment [AS-010] submitted at DL1, by 2.8m AOD. Schedule 13 (DML) – amended at the request of the MMO, as follows: ▪ Paragraph 1(b) – address details for the MMO (Local Enforcement Office) updated. ▪ Paragraph 10 – wording added to confirm the CEMP details are to be submitted to the MMO and the Maritime and Coastguard Agency (MCA) for review. ▪ Paragraph 12 – reference to the MMO added. ▪ Paragraph 19 – reference to restriction on hours to piling works being carried out added. ▪ Paragraph 24 – reference to *"District Marine Office"* replaced with *"Local Enforcement Office".* ▪ Paragraph 28 – reference to the MMO added. Explanatory Note – first paragraph amended to include the words *"and compression"* so the paragraph reads *"…to construct, operate and*

Provision	Key Changes
	maintain a power generating station and carbon capture and compression plant."
DL3 Version [REP3-003]	Schedule 2 (Rs) R1 (Interpretation) – new definitions added for *"Development Consent"*, *"Carbon Dioxide Storage Licence"* and *"Environmental Permit"* added for the purposes of terms referenced in R33 (Carbon capture and compression plant), to reflect the position agreed with NGC, as set out in the Applicant's draft SoCG with NGC submitted at DL3 [REP3-012]. Schedule 2 (Rs) R5(4)(d) – wording added, in response to the Written Representations made by Canal and River Trust at DL2 [REP2-018], requiring the Canal and River Trust to be consulted on any details relating to the provision of cofferdams in the Stainforth and Keadby Canal. Schedule 2 (Rs) R5(11) – deletion of Work Nos. 7A and 7B from the R, as these works are not referred to in Schedule 11. Schedule 2 (Rs) R17 – amended as requested by the EA to require the submission of a fish management plan as part of the CEMP and add the EA as consultee to the details required to be submitted. Schedule 2 (Rs) R25(2) – amended as requested by the Canal and River Trust to add an additional requirement of the Construction Traffic Management Plan to include a Wharf Management Plan to manage deliveries. Schedule 2 (Rs) R33 – amended to reflect the new definitions incorporated in the Interpretation section (as explained above). Schedule 10- Part 2 – PPs for Canal and River Trust – Definition of Code of Practice updated to reflect the most up to date version. Schedule 11 – Table 7 – heights above ground level and AOD updated, as requested by the EA.
DL4 Version	Schedule 13 (DML) – amendments made at the request of the MMO, as detailed below:

Provision	Key Changes
[REP4-003]	▪ Part 1, paragraph 1: o Definition of *"2009 Act"* – moved to top of the definitions section. o *"English inshore region"* – definition deleted. o *"maintain"* – definition amended to be specific to Schedule 13 as opposed to being directed to Article 2 for the definition of *"maintain".* o *"river"*- definition added. o *"undertaker"* – definition amended by adding the reference to the company reference number. ▪ Part 1, paragraph 1(4) – new paragraph added specifying addressed to be used for electronic communication. ▪ Part 2, paragraph 2 – reference to *"(and any agent or contractor acting on their behalf)"* deleted, as wording is already included as part of the definition of *"undertaker"*. ▪ Part 2, Table 9 – deletion of erroneous *"0"* from Work No. 5. ▪ Part 3, paragraph 9(3)(c) – deletion of wording *"of any transport manager"*. ▪ Part 3, paragraph 9(6) – amendment from *"UKHO"* to read *"United Kingdom Hydrographic Office".* ▪ Part 3, paragraph 10 – amendment to include reference to approval in writing by the MMO. ▪ Part 3, paragraph 11 – amended to: o make Marine Method Statement a defined term *"MMS"*, and subsequent references updated in paragraphs 11, 12, and 13; and o include reference to approval in writing by the MMO. ▪ Part 3, paragraph 13 – amendment to include additional details to be included of the notification to the MMO of any agents, contractors or subcontractors carrying out any licenced activity specified in the DML, including any changes of previously notified contractors/ sub-contractors. ▪ Part 3, paragraph 17 – wording at former paragraph 20 has been moved and added to paragraph 17.

Provision	Key Changes
	▪ Part 3, paragraph 18 – reference to *"where drill or vibratory piling has been unsuccessful"* added. ▪ Part 3, paragraph 19 – change of word from *"shall"* to *"must"*. ▪ Part 3, paragraph 20 – deleted as referred to in Part 3, paragraph 17 above. ▪ Part 3, paragraph 23 – amendments added in the event of rock or stone being misplaced or lost below mean high water springs. ▪ Part 3, paragraph 24 – new wording added for paragraph 24 setting out the process to be followed for reporting dropped objects. ▪ Part 3, paragraph 25 – amended by replacing the word *"works"* with the words *"licenced activities"*. ▪ Part 3, paragraph 26 – amended by replacing the words *"local Office"* with *"Local Enforcement Office"* and the first use of the word *"works"* with the words *"licenced activities".* ▪ Part 3, paragraph 27 – amended by replacing the words *"construction works"* with the words *"the licenced activities"*.
DL5 Version [REP5-003]	Contents list – reference to Article 32 (Statutory Authority to override easements and other rights) deleted, as this article was deleted in the dDCO submitted at DL2 [REP2-003]. Subsequent articles renumbered accordingly. Article 2(1) (Interpretation) – definition of: ▪ *"Design Principles"* relocated to be in alphabetical order; and ▪ *"Northern Powergrid (Yorkshire) Plc"* added. Article 2(4) – following a request for clarification by the ExA during Issue Specific Hearing into the dDCO (ISH2) the wording *"(unless expressly stated otherwise in 13)"* amended to read *"(unless expressly stated otherwise in Schedule 13)".* Article 6(d) – following a request for clarification by the ExA during ISH2 wording *"(and any associated works described in Work No. 7(c))"* added after the words *"Work No. 7B".*

Provision	Key Changes
	Article 7(7)(b) - following a request for clarification by the ExA during ISH2 reference to *"paragraph (7)"* amended to *"paragraph (8)".* Article 16 – following a request for clarification by the ExA during ISH2 reference to *"temporarily close any part of the canal within the Order limits to navigation"* moved and inserted at Article 16(1)(c) and wording *"within the Order limits"* inserted at Article 16(1)(d) between the words *"materials"* and *"in".* Article 27(10)(a) – wording *"(land in which only new rights etc. may be required)"* amended to read *"(New Rights)".* Article 28(11) – wording *"of Schedule 2"* added after the wording *"Requirement 6".* Article 33(1) – following a request for clarification by the ExA during ISH2 the Applicant amended Article 33(1) by deleting sub-sections (a) and (b) and replacing the word *"construction"* with the wording *"abnormal indivisible load".* Article 34(6) – reference to Article 34(5)(b) added following a request for clarification by the ExA during ISH2. Article 36(1)(a) – the word *"temporary"* deleted. Article 38 – reference to *"s.264(3)(a) of the 1990 Act"* amended to refer to *"s.264(3) of the 1990 Act"*, following a request for clarification by the ExA during ISH2 as to why s.264(3)(b) of the 1990 Act had been omitted. Article 44(1) – refers to the appointment of an arbiter by the SoS and was amended by adding the wording *"or a person appointed by the Secretary of State"* after reference to the SoS. Articles 45(1)(a) and (b) – amended by adding the wording *"or a person appointed by the Secretary of State"* after reference to the SoS. Schedule 1 (Authorised Development) – Work No. 3 – wording *"and import"* added after the word *"export"* so the wording as revised reads *"electrical connection works for the export and*

Provision	Key Changes
	import of electricity to national electricity transmission networks…" Schedule 2 (Rs): ▪ R1 (Interpretation) – definition of the terms *"bank holiday"* and *"means of enclosure"* added. ▪ R5(3)(b) wording *"…or alternatively a statement confirming that the underground electrical cable running from Work No. 1A to the existing Northern Powergrid substation is not to be developed"* deleted. ▪ R5(4) after the wording *"relevant planning authority"* the words *"(and the Canal and River Trust shall be consulted in relation to any details submitted to the relevant planning authority in relation to Work No. 4A)"* have been inserted, as relocated, with minor rewording, from R5(4)(a). ▪ R5(4)(d) – reference to the Canal and River Trust deleted, as it is superfluous. ▪ R5(11) – reference to *"Work Nos. 2A and 2B"* deleted and reference to *"Work No. 8"* amended to read *"Work No. 8B".* ▪ R5(12) – reference to *"Work No. 8"* amended to read *"Work No. 8B".* ▪ R5(13) – amended by adding the wording *"and thereafter maintained"* after the wording *"must be carried out".* ▪ R6(5)(b) – amended to read *"measures to enhance biodiversity and habitats within Order Land or land within the Borough of North Lincolnshire that is under the control of the undertaker or other land within the Borough of North Lincolnshire provided it is accompanied by detailed implementation proposals incorporating an implementation timetable."* ▪ R6(6) – amended by adding the wording *"at least the size"* between the wording *"…of the same species and"* and *"size as that originally planted…".* ▪ R7(1) – wording *"…and shall thereafter be implemented upon commencement of development and maintained during construction and commissioning."* added after the wording *"relevant planning authority".*

Provision	Key Changes
	▪ R7(3) – word *"commissioning"* added between the wording *"…construction,"* and *"and operation…".* ▪ R7(4) – amended to read *"The scheme approved pursuant to paragraph (2) must be implemented prior to commercial use and thereafter maintained as approved unless otherwise agreed with the relevant planning authority.".* ▪ R8(3) – deleted. ▪ R9(2) – wording *"…and such temporary means of enclosure must thereafter be removed…"* added between the wording *"…commissioning of the authorised development"* and *"in accordance with…".* ▪ R9(4) – amended to read *"No part of the authorised development may be brought into commercial use until the permanent means of enclosure approved pursuant to sub-paragraph (3) have been implemented in full."* ▪ R9(5) – amended to read *"The permanent means of enclosure approved pursuant to sub-paragraph (3) must be maintained unless otherwise agreed with the relevant planning authority.".* ▪ R9(6) – deleted, as Applicant considers it superfluous to R. ▪ R10(2) – wording amended, after the ExA requested clarification in regard to implementation, to read *"The approved scheme must be implemented and maintained throughout the operation of authorised development.".* ▪ R10(4) – wording amended, after the ExA requested clarification in regard to implementation, to require the authorised development to be implemented and maintained in accordance with the approved scheme unless otherwise agreed with the relevant planning authority. ▪ R16(1) reference to *"relevant archaeologist"* amended to *"County archaeologist"* as agreed with North Lincolnshire Council. ▪ R17(1) – wording amended by adding *"for that part"* between the words *"…construction environmental management plan"* and *"has been submitted to…".* ▪ R17(2) amended by:

Provision	Key Changes
	○ adding the wording *"for that part"* between the words *"The plan submitted and approved"* and *"must be in accordance with…";* ○ subsection (f) subdivided to form a new subsection (g); ○ insertion of subsection (h) to require the construction management plan to include the contaminated land scheme containing the matters arising for the contaminated land and groundwater assessment identified by R15; and ○ the original subsection (h) retitled subsection (i). ▪ R19(1) – the words *"haul road plan"* capitalised (ie Haul Road Plan) to cross reference it with the definitions in Article 2(1). ▪ R22(1) – the wording *"the site"* replaced with *"Work No. 10A".* ▪ R24(1) – amended by deleting the words *"in writing"* as R39 specifies that where Rs required the approval or agreement of the relevant planning authority or another person, is required, that approval or agreement must be provided in writing. Therefore the wording *"in writing"* in this R is superfluous. ▪ R25(1) – amended by: ○ changing the wording after the words *"…consultation with National Highways"* to read *"…, the highway authority, (and in relation to paragraph 3(c) below the Canal and River Trust)"; and* ○ altering sub-paragraph (c) to read *"a wharf management plan which includes provision for advance notification to the Canal and River Trust of abnormal load deliveries and a procedure to minimise the risk of deliveries outside of the notified hours".* ▪ R25(5) – amended to specify a three month timescale within which the plan approved pursuant to R25 must be implemented and to ensure the plan approved and implemented is maintained throughout the construction of the authorised development. ▪ R29 – amended:

Provision	Key Changes
	○ at subsection (4) by adding the words *"…in an emergency or…"* to specify the scheme agreed pursuant to R29 *"…must be implemented as approved unless in an emergency or otherwise agreed with the relevant planning authority."*; and ○ inserting a new subsection (5) specifying the procedures and timescales to be followed in the event of the undertaker receiving a complaint concerning an alleged breach of the threshold specified in R29(3). ▪ R32 – amended: ○ at sub-section (3) by adding the word *"relevant"* before the words *"planning authority"* in the interests of consistency throughout the dDCO; and ○ the deletion of the wording *"(without material additional cost to the undertaker)"* from subsection (4)(b). ▪ R33 – amended: ○ at sub-section (1) by adding the words *"and Works No.9B and Works No.9C"* between the words *"…permitted preliminary works"* and *", until details of…"*; ○ at sub-section (1)(c) replacement of the wording *"the authorised development"* with the wording *"Work No. 1"*; and ○ at sub-section (1)(d) add the words *"evidence of"* added at the start of the sub-section. ▪ R36(1) – amended by adding the words *"and Works No.9B and Works No.9C"* between the words *"…permitted preliminary works"* and *", until the undertaker has…".* ▪ R37(1) – amended by adding the wording *"and monitor"* between the wording *"…a plan detailing arrangements to promote"* and *"employment, skills and training opportunities…"*. ▪ R38 – amended: ○ at subsection (3) by replacing the words *"noise and vibrations"* with the word *"environmental"*; ○ at subsection (4)(f) replacing the word *"scheme"* with the word *"plan"*; and

Provision	Key Changes
	○ at subsection (5) adding the words *"and maintained for the duration of the decommissioning of the authorised development"* between the words *"implemented"* and *"as approved unless…".* Schedule 9 (11) – following a request for clarification by the ExA, during the ISH2, reference to "…planning appeals and award of costs" updated to refer to the most recent guidance published on 20 December 2016. Schedule 10 (PPs) – Part 1 (For the Protection of National Grid as Electricity and Gas Undertaker) following discussions with National Grid Electricity Transmission Plc (NGET)/ National Grid Gas Plc (NGG): ▪ Paragraph 4 deleted. ▪ Paragraph 13(1) the word *"best"* replaced by the word *"reasonable".* Schedule 10 (PPs) – Part 2 (For the Protection of Canal and River Trust) following discussions with the Canal and River Trust: ▪ *"CRT"* deleted in the interpretation section and the abbreviation *"CRT"* replaced throughout Schedule 10, Part 2 with the wording *"Canal and River Trust".* ▪ *"Specification"* in the interpretation section amended by adding Work Nos. 9A, 9B, and 11A to the definition. ▪ Paragraph 25 – construction of specified works: ○ Paragraph 25(d) sub-divided to create a new paragraph 25(e). ○ New paragraph 25(f) added to ensure that the specified works or protective works must, when commenced, be constructed in accordance with the Code of Practice. ▪ Paragraph 31(6), which relates to the *"Making good of detriment; compensation and indemnity, etc."* amended by increasing the limit of the aggregate cap of the undertaker's gross liability for consequential losses from £2,000,000 (two million pounds) to £15,000,000 (fifteen million pounds).

Provision	Key Changes
	Schedule 12 (Documents and plans to be certified) – reference to *"combined power and heat"* amended to read *"combined heat and power".* Schedule 13 (DML): ▪ paragraph 1(1) definitions – *"Local enforcement office"* added. ▪ paragraph 1(5)(b) – phone number added. ▪ Paragraph 10 – the wording *"No later than 8 weeks ahead of commencement of works the undertaker…"* amended to read *"No later than 8 weeks prior to the proposed commencement of licences activities the undertaker…".* ▪ Paragraph 10 – after sub-paragraph (c) the wording *"All Activities…"* amended to read *"The authorised development…"* ▪ Paragraph 11 – after the wording *"MMO"* the wording *"at least"* replaced with the wording *"no later than"*.
DL6a Version (Accepted Change Request Version) [REP6a-034]	Article 2(1) (Interpretation): ▪ Definition of *"carbon capture and compression plant"* amended by the Applicant, with a view to addressing the concerns of ClientEarth, by adding the wording *"…and which are designed to capture, compress and export to the National Grid Carbon Gathering Network, a minimum rate of 90% of the carbon dioxide emissions of the generating station operating at full load"* at the end of the definition. ▪ Definition of *"commercial use"* amended by the Applicant, with a view to addressing the concerns of ClientEarth, by adding the wording *", and of captured compressed carbon dioxide emissions,"* between the wording *"export of electricity"* and *"from the authorised development on a commercial basis".* ▪ Definition of *"commissioning"* amended by the Applicant, with a view to addressing the concerns of ClientEarth, by adding the wording *"the carbon capture and compression plant and"* between the wording *"…authorised development (including"* and *"systems and components…".*

Provision	Key Changes
	▪ Definition of *"main river"* added and deletion of the definition *"river"* to differentiate between use of *"river".* Article 8(3) – deleted to reflect position agreed in the signed SoCG with Isle of Axholme and North Nottinghamshire Water Level Management Board and the Schedule of Other Consents and Licences [APP-033], as subsequently updated by [REP7a-010], identifying the consents to be applied for. Article 11(1) amended by the Applicant, following discussions with North Lincolnshire Council, by adding the words *"…(and following an inspection by the highway authority and it being satisfied with the standard of the highway works including for the avoidance of doubt any remedial works carried out by the undertaker)"* between the wording *"…the expiry of that period"* and *"by and at the expense of…".* Schedule 1 (Work No. 1) – new paragraph in Work No. 1C added at paragraph (iv) in response to the request by Natural England to specifically include ammonia emissions monitoring and control equipment and associated chemical storage within Work No. 1C. This activity was previously treated as falling within associated development pursuant to s115(2) of the PA2008. Schedule 1 (Work No. 3) - Additional wording *"and from"* added to provide clarity. Schedule 1 – (Work No. 10) – New Work No. 10C added, as a result of the accepted change request, to specify the use of riverbed of the River Trent for the mooring of vessels and craft at the waterborne transport offloading area at lower tide, as falling within associated development pursuant to s115(2) of the PA2008. Schedule 2, R1 (Interpretation) – definition of *"bank holiday"* - Additional wording *"28 December"* added for clarity in the event a bank holiday falls on the 28 December following the Christmas period.

Provision	Key Changes
	Schedule 2, R5(4)(b) – amended to read *"the route and method of construction of the work confirmed pursuant to sub-paragraph (a)"*. This was amended for clarity, to link back to the confirmation provided under sub-paragraph (a). Schedule 2, R6(1) – amended to include the Canal and River Trust as consultee on details relating to coir rolls habitat. This amendment was included by the Applicant at the request of the Canal and River Trust. Schedule 2, R6(7) – amended by the Applicant, with a view to addressing comments made by Keadby with Althorpe Parish Council, by adding the following wording at the end of the paragraph *"…and must be accompanied by a statement explaining how any planting proposed adjoining the Order limits has been subject to consultation with Keadby Parish Council along with the regard had to feedback received subject to the principles of the indicative landscaping and biodiversity management and enhancement plan."* Schedule 2 – R25(3)(c) - wording relating to the Wharf Management Plan Rs amended to accommodate further points raised by the Canal and River Trust, with the wording provided to the Canal and River Trust for comment in advance of final submission. Schedule 2 – R29(5) – amended to refine the revisions made at DL5 mentioned above, in the interests of providing clarity. Schedule 3 – Streets Subject to Street Works - updated plan references included, to reflect the updated access and rights of way plans. Schedule 6 – New Rights – Table 4 (Column (1)) – Amended as detailed below: ▪ In relation to Work Nos. 3A and 3B inclusion of plot numbers 43, 56 and 59. ▪ In relation to Work No. 8C inclusion of Plot number 56. ▪ Deletion of plot 157 as this plot is a Crown Land plot.

Provision	Key Changes
	Schedule 8 – Land of which temporary possession may be taken – Table 5 (Column (1)) – amended as detailed below: ▪ In relation to Work No. 3B inclusion of plot numbers 43, 56 and 59. ▪ In relation to Work No. 8C inclusion of plot numbers 56 and 59. Schedule 10, Part 1 – PPs for NGET/ NGG: ▪ Paragraph 5 – wording amended at (a) to read *"(a) appropriate or acquire any apparatus or…"* to clarify (a) does not prevent temporary possession of any land or apparatus. ▪ Paragraph 11 – indemnity wording amended to remove *"use"* of the authorised development from the scope of the indemnity and to permit either insurance or acceptable security to be put in place (rather than both) to the satisfaction of NGET/ NGG before commencing works where its land or apparatus is affected. The Applicant set out in its EM [REP6a-036], submitted at DL6a as part of the change request, it is not considered reasonable for the Applicant to provide unquantified, indefinite indemnities and that the PPs and paragraph 11, as amended, provide the undertaker with appropriate levels of protection for its apparatus. Schedule 10, Part 2 – For the Protection of Canal and River Trust - paragraph 17(3) amended to allow both parties to agree which parts of the Code of Practice apply and will be dis-applied in relation to the carrying out of the authorised development. This paragraph has been amended to respond to comments made by the Canal and River Trust submitted at DL5. Schedule 10, Part 4 – For the Protection of Operators of Electronic Communications Code Networks – paragraph 46 amended to confirm damages or loss incurred relate to the construction of the authorised works. This amendment has been made so as to be consistent with the Applicant's approach to indemnities (as explained in the Applicant's EM [REP6a-036] and as set out above).

Provision	Key Changes
	Schedule 10, Part 5 – For the Protection of Railway Interests - new PPs have been included for the benefit of NR, in response to NR's request for inclusion of PPs. They provide protections that the Applicant must adhere to when carrying out authorised works within 15 metres from railway property and the Applicant explains they are mainly consistent with NR's standard provisions. The Applicant's justification for these PPs is further detailed in its EM [REP6a-036], submitted at DL6a as part of the change request. Schedule 10, Part 6 – For the Protection of NGC - New PPs included for the benefit of NGC. The Applicant states the majority of this part is agreed between the parties, with the SoCG with NGC [REP6a-020] (updated at DL7 [REP7-006]) and the EM [REP6a-036] (updated at DL7a [REP7a-008]), providing further details on those parts which are not agreed. Schedule 10, Part 7 – For the Protection of Northern Powergrid – new PPs for the benefit of Northern Powergrid have been included in the form of PPs that are in an agreed form. Schedule 11 – Design parameters – Table 6, amended as a result of the change request submitted at DL6a to include: ▪ the potential for variations in the maximum heights of the twin absorbers (Work No. 1C), whichever option is used, should the use of twin absorbers be developed (differing maximum heights are proposed depending on which option is chosen); and ▪ a change to the maximum heights of the carbon dioxide stripper (Work No. 1C). Schedule 12 – Documents and Plans to be Certified – document references corrected. Schedule 13 – DML: ▪ Part 1 (Introduction), paragraph 1 – in response to representations made by the MMO the following amendments have been made by the Applicant. Definitions of: o *"ABP Humber"* added; o *"business day"* added; o *"CEMP"* added;

Provision	Key Changes
	○ *"office hours"* added; ○ *"maintain"* amended; ○ *"MCA"* amended; ○ *"river"* amended to provide reference to the River Trent, as definition deleted from Article 2(1); and ○ *"TH"* amended. ▪ Part 1 (Introduction), paragraph 1(4) – email address amended. ▪ Part 2 (Details of licenced marine activities): ○ Paragraph 5 amended by deleting (a) and (b) and amending the paragraph to read *"The undertaker may engage in the licensed activities in the area bounded by the coordinates set out in Table 1 in this paragraph to the extent that they fall below MHWS* [mean high water spring] *at the time the licensed activities are carried out.".* ○ Paragraph 7 deleted, with subsequent paragraphs renumbered. ▪ Part 3 (Conditions): ○ Paragraph 8(a)(ii) wording *"and transport managers"* deleted. ○ Paragraph 8(4) word *"authorised"* deleted. ○ Paragraph 8(7) abbreviation *"UK"* amended to read *"United Kingdom"* and the word *"both"* has been deleted. ○ Paragraph 9 the wording *"Marine and Coastguard Agency"* abbreviated to *"MCA"* and the wording *"Construction Environment Management Plan"* abbreviated to *"CEMP".* ○ Wording *"shall"* has been changed to *"must"* in paragraphs 10(e), 11, 12 and 26. ○ Paragraph 20 move to paragraph 17, with subsequent paragraphs after paragraph 20 renumbered. ○ Paragraph 19 within the hours specified in this paragraph (0700 and 1900 hours) the word *"and"* was amended to the word *"to".* ○ Paragraph 23(2) the wording *"at its own expense"* has been added after the wording *"The undertaker must carry out surveys".* ○ Paragraph 27(2) has been deleted, with paragraph 27 being amended to read *"The MMO must determine an application for*

Provision	Key Changes
	discharge of a condition as soon as reasonably practicable and in any event within a period of three months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker."
DL7a Version [REP7a-006]	Schedule 2 R6(7) – amended to refer to *"Keadby with Althorpe Parish Council"*, being the correct name of the Parish Council. Schedule 6 (New Rights) – Column (2) amended throughout to include *"and"* in the description of rights. Added for clarity. Schedule 10 – Part 1 (For the protection of National Grid as Electricity and Gas Undertaker): ▪ Paragraph 3 amended by adding *"Paragraph 4 (Apparatus of National Grid in stopped up streets)"* as an exception. ▪ Paragraph 4 re-instated and other minor amendments incorporated, including the renumbering of subsequent paragraphs. Amendments made at the request of NGET. ▪ Paragraph 10(11) the words *"(as may be updated from time to time)"* deleted. ▪ Paragraph 10(11) the words *"Save for difference or dispute arising under paragraph 7(2), 7(4), 8(1), 9 and 10 any..."* have been added to the start of the paragraph. In terms of the PPs, set out in Schedule 10 – Part 1 (For the protection of National Grid as Electricity and Gas Undertaker), the Applicant states that these PPs are now in an agreed form. Schedule 10 – Part 6 (For the protection of NGC) amendments incorporated to paragraphs 72, 87, 88, 95(4) and 95(5). The Applicant states that these amendments were made following agreement with NGC and that the PPs, as set out in Part 6, are now in an agreed form.

8.3.7. Objections raised to the Proposed Development, were withdrawn by the following parties by the close of the Examination:

- NGET/ NGG confirmed its agreement to the PPs in its representations submitted at DL7 [REP7-017] and DL7a [REP7a-019]. Additionally, in its Additional Submission [AS-031], dated 7 June 2022, NGET/ NGG confirmed the withdrawal of its objection to the Proposed Development.

- The Canal and River Trust confirmed in its DL7a submission [REP7a-015] it is satisfied with the contents of Part 2 of Schedule 10, which contains the PPs for the benefit of the Canal and River Trust and that it had no further comments on the PPs. In the same letter it also confirmed it had agreed terms for a side agreement that sets the framework for the future working relationship between the Canal and River Trust and the Applicant in respect of the development and that it withdrew its objection to the Proposed Development.
- NGC confirmed in its DL7a submission [REP7a-018] *"Discussions have continued with the Applicant in relation to protective provisions and an agreement on all remaining matters regarding protective provisions has now been reached. As such, NGC… can confirm it has no outstanding objections at the close of the examination."*.
- Northern Powergrid (Yorkshire) Plc confirmed in its e-mail dated 7 June 2022 [AS-032] it has *"…now reached agreement with the Applicant and forthwith withdraws their objection to the Order."*

8.3.8. The only Statutory Parties that maintained an objection at the close of the Examination were the EA and NR. This was due to the Applicant and both of these Statutory Parties failing to agree in terms of:

- Compulsory Acquisition/ Temporary Possession of land;
- the finalised wording of a related side agreement being negotiated between the Applicant and the EA; and
- the finalised wording of the PPs to the benefit of railway interests and related side agreement being negotiated between the Applicant and NR.

8.3.9. My Rule 17 letter dated 26 May 2022 [PD-022] sought a position statement from IPs whom, at that point in time, had outstanding:

- objection(s);
- discussions concerning PPs;
- objections concerning Compulsory Acquisition/ Temporary Possession; and
- on-going negotiations concerning side agreements, interface agreements or other relevant agreements that the IPs considered necessary to provide relevant protections or mitigations from the Proposed Development.

8.3.10. In response to the above-mentioned Rule 17 letter [PD-022] the EA was clear, in its DL7a submission [REP7a-016] dated 6 June 2022, as to its position on these outstanding matters advising it had received and *"…was currently considering:*

1. *a draft Deed of Variation relating to plots 3, 10 and 26 (received 20 May 2022);*
2. *a draft Deed of Variation relating to plot 30 (received 26 April 2022)."*

The EA also confirmed documents were *"still to be drafted/ agreed relating to:*

1. *an easement/options agreement in respect of plot 52;*
2. *securing access around plot 80a;*
3. *temporary possession in relation to plots 31, 46, 47, 53 and 54."*

8.3.11. Furthermore, the EA stated it *"…is of the view that all the outstanding issues are capable of resolution by agreement…"* and advised it *"…will continue to work on finalising the required agreements during the decision period and we will write directly to the Secretary of State when we are in a position to withdraw the outstanding objection."*

8.3.12. NR also responded to my Rule 17 letter of 26 May 2022 [PD-022] by submitting a position statement at DL7a [REP7a-020]. It confirmed its outstanding objection to the Proposed Development, which it advised *"…centres on the Promoter's refusal to include a restriction within the Protective Provisions on the exercise of compulsory purchase powers over land and rights belonging to NR."*

8.3.13. The NR position statement [REP7a-020] clearly set out its view that it requires the protection of its land and interests in land from Compulsory Acquisition, with such provisions being specified in its PPs. NR highlighted such provisions had been included in many recent DCOs, albeit in the interest of other Statutory Undertakers, in PPs where land and apparatus of those Statutory Undertakers had been impacted. The DCOs sighted include:

- The Port of Tilbury (Expansion) Order 2019;
- The Northampton Gateway Rail Freight Interchange Order 2019; and
- The Triton Knoll Electrical System Oder 2016.

8.3.14. NR in its position statement [REP7a-020] also confirmed that it is in the process of negotiating a framework agreement with the Applicant, which will agree the necessary rights required for the Proposed Development. NR states that it hopes that agreement will be concluded shortly. However, the position at the close of the Examination was that PPs had not been agreed and no agreements, framework or otherwise, had been reached.

8.3.15. As such NR's position remains that the PPs within the DCO should include provision that compulsory powers over operation of the railway land cannot be exercised, except with NR's consent (not to be unreasonably withheld).

8.3.16. For the reasons set out in paragraphs 7.7.42 and 8.2.11 of this report, I consider the PPs sought by NR, as set out at Appendix 1 of its position statement [REP7a-020], should be incorporated into the DCO and have therefore included them at Schedule 10, Part 5 of the rDCO, attached at Appendix C of this report, replacing those incorporated by the Applicant in its preferred DCO [REP7a-006].

8.3.17. In terms of the inclusion of any Crown Land and or Crown rights, the powers sought in this regard should not be granted until it has been confirmed that the necessary Crown authority, consistent with the BoR

[REP6a-038] and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.

8.3.18. Bearing all of the above in mind, should the SoS for Business, Energy and Industrial Strategy be minded to make the DCO they will need to satisfy themselves that:

- the inclusion of NRs PPs as set out in Schedule 10, Part 5 of the rDCO attached at Appendix C, or the wording of the PPs contained in Schedule 10, Part 5 (For the protection of railway interests) of the DCO, are as finally agreed between the Applicant and NR and workable in practice;
- the EA and NR are satisfied in relation to any side/ framework agreement(s) completed between these parties; and
- it has been confirmed that the necessary Crown authority, in regard to the powers sought related to Crown Land and/ or Crown rights, consistent with the BoR [REP6a-038] and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.

8.3.19. The provisions in respect of which I have recommended changes to the Applicant's final dDCO [REP7a-003] in the rDCO at Appendix C, and the reasons for this, are set out in Table 5 below:

Table 5: DCO Provisions Recommended to be Changed

Provision	Recommendation	Reason
Article 2 Interpretation.	Between the definitions of *"highway…"* and *"indicative landscape and biodiversity management and enhancement plan"* insert the following definition: ""*indicative landscaping and biodiversity plan" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative landscaping and biodiversity plan for the purposes of this Order;"*.	The *"indicative landscaping and biodiversity plan"* is different from the *"indicative landscape and biodiversity management and enhancement plan"*. Both documents are listed in Schedule 12 (Documents and Plans to be Certified) of the DCO and should also be listed in Article 2 (Interpretations) of the DCO. However, no definition of *"indicative landscaping and biodiversity plan"* appears in Article 2 of the Applicant's preferred version of the DCO [REP7a-006].

Provision	Recommendation	Reason
		Therefore it should be added.
Article 36(2).	Add the wording *"and thereafter retain,"* after the word *"approved"*.	In order to ensure the works implemented are retained.
Schedule 2, R5(3).	Delete the second occurrence of the wording *"may commence"*.	The second occurrence of these words is superfluous.
Schedule 2, R5(10)(d).	Add the word *"the"* before the wording *"River Trent"*.	Typographical error and in the interests of clarity.
Schedule 2, R6(4).	Add the wording *"that includes a landscape and biodiversity strategy, which specifies maintenance periods,"* after the wording *"landscaping and biodiversity management and enhancement plan"*.	Article 28(11) refers to the approval of such a document pursuant to R6 of Schedule 2, but no reference to that document appears in the R.
Schedule 2, R10(2).	Add the word *"the"* between the words *"of"* and *"authorised".*	Typographical error and in the interests of clarity.
Schedule 2, R14(8).	Amend reference to sub-paragraph (6) to sub-paragraph (7).	The incorrect sub-paragraph has been referenced.
Schedule 2, R28(3).	After the word "implemented" add the words "and maintained during the construction of that part of the authorised development"	The current wording of the R does not require the scheme approved pursuant to R28(1), being the monitoring and control of noise and vibration during the construction of that

Provision	Recommendation	Reason
		part of the authorised development, to be maintained for the duration of the construction of the development after it has been implemented.
Schedule 2, R29(4).	After the word "implemented" add the words "and maintained"	The current wording of the R does not require the scheme approved pursuant to R29(1), for management and monitoring of noise during operation of the authorised development, to be maintained after it has been implemented.
Schedule 2, R35.	Amend R35 to read R35—(1) and below the text of R35(1) add the following text "(2) The details approved pursuant to paragraph (1) must thereafter be implemented, operated and maintained in accordance with the approved details."	The current wording of the R does not require the scheme approved pursuant to R35 to be implemented, operated and maintained in accordance with the approved details.
Schedule 6, Table 4, Column 1 (Plot numbers related to Work Nos. 3A and 3B infrastructure).	Between plot numbers 109 and 110 place a space so the text reads *"…109, 110…"*.	Typographical error.
Schedule 6, Table 4, Column 1 (Plot numbers related to	Delete the repeat reference to plot no. 114.	Typographical error and second reference to this Plot No. is superfluous.

Provision	Recommendation	Reason
Work Nos. 4A and 4B infrastructure).		
Schedule 6, Table 4, Column 1 (Plot numbers related to Work No. 5 infrastructure).	Between plot numbers 143 and 147 place a space so the text reads *"…143, 147…".* Additionally re-order reference to plot nos: 103, 102; and 168, 166, so they appear in numerical sequence reading *"…102, 103…"* and *"166, 168"*.	Typographical errors and in the interests of clarity.
Schedule 6, Table 4, Column 1 (Plot numbers related to Work No. 6 infrastructure).	Between plot numbers 103 and 105 place a space so the text reads *"…103, 105…".*	Typographical error.
Schedule 6, Table 4, Column 1 (Plot numbers related to Work No. 8C infrastructure).	Add plot number 57 between Plot 56a and Plot 60.	Plot 57 has been missed, by the Applicant, from this list related to Work No. 8C in error. It is clearly included in the BoR [REP6a-038] and in the Applicant's 'Update on the progress that has been made with APs in respect of CA and TP' [REP7a-011].
Schedule 8, Table 5, Column 1 (Plot numbers related to Work No. 3B).	Re-order plot nos so plot no. 40b appears in numerical sequence.	Typographical error and in the interests of clarity.
Schedule 8, Table 5, Column 1 (Plot numbers related to Work No. 10A).	Delete the first reference to plot no. 50a.	Typographical error as it is repeated in the correct numerical position later in the column.

Provision	Recommendation	Reason
Schedule 9, paragraph 2(2).	After the wording *"Subject to paragraph 5…"* delete the comma *","* and add the wording *"and the exception set out in sub-paragraph 4 below,"*.	In the interests of clarity.
Schedule 10, Part 5 (For the Protection of Railway Interests).	Delete paragraphs 50 to 70 and replace with NR's requested PPs (Paragraphs 50 to 71) Renumber subsequent paragraphs and paragraph numbering within the subsequent paragraphs to reflect correct revised paragraph numbers.	Replaced with NR's requested PPs as set out in its DL7a representation [REP7a-020]. To ensure correct paragraph numbering and that paragraphs referred to within the main body of a paragraph reflects the correct revised paragraph numbers.
Schedule 10, Part 5 (For the Protection of Railway Interests) Paragraph 54(1)	Amend this sub-paragraph to read: "The undertaker must, before commencing construction of any specified work, supply to NR; (a) proper and sufficient plans of that work for the reasonable approval of the engineer and (b) the specified work must not be commenced, except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.	Punctuation added for clarity.

Provision	Recommendation	Reason
Schedule 13 (DML), Part 3, paragraph 9.	Replace the word *"licences"* with the word *"licenced"*.	Typographical error and in the interests of clarity.
Schedule 13 (DML), Part 3, paragraph 19.	Prior to the close of the Examination the MMO, in its DL7a submission [REP7a-017], made comments on Natural England's DL7 Submission 'Comments on the Report on the Implications for European Sites'. In response to the MMO's comment, the Applicant in its letter of the 7 June 2022 [AS-029] suggested an amendment to Schedule 13 (DML) paragraph 19, by adding the words *"and on wintering birds."* between the words *"…most sensitive migratory period"* and *"Piling will be restricted…"*.	The Applicant has suggested this amendment to address the comments of the MMO in its DL7a submission [REP7a-017]. The amendment adds clarity and precision to the DML.
Explanatory Note	First full paragraph delete the words "would permit" and replace with "permits".	In the interests of clarity.

8.4. CONCLUSIONS

8.4.1. I have considered all iterations of the dDCO, as provided by the Applicant, from the application version [APP-005] to the final version [REP7a-006] submitted at DL7a and I have considered the degree to which the Applicant's final version has addressed outstanding matters. A number of matters are the subject of recommendations in this chapter and are included in the rDCO in Appendix C of this report.

8.4.2. Taking all matters raised in this chapter and all matters relevant to the DCO raised in the remainder of this report fully into account, if the SoS for Business, Energy and Industrial Strategy is minded to make the DCO, it is recommended that, subject to:

- the SoS being satisfied as to the completion of any side agreement between the Applicant and NR;
- the inclusion of NRs PPs as set out in Schedule 10, Part 5 of the rDCO attached at Appendix C or the wording of the PPs contained in Schedule 10, Part 5 (For the protection of railway interests) of the DCO are as finally agreed between the Applicant and NR and workable in practice;
- the SoS being satisfied as to the completion of any side agreement between the Applicant and the EA; and
- confirmation that the necessary Crown authority, in regard to the powers sought related to Crown Land and/ or Crown rights, consistent with the BoR [REP6a-038] and in accordance with s135(1) and s135(2) of the PA2008, has been obtained,

the DCO should be made in the form set out in the rDCO, which can be located at Appendix C of this report.

9. SUMMARY OF FINDINGS AND CONCLUSIONS

9.1. CONSIDERATION OF FINDINGS AND CONCLUSIONS

9.1.1. In relation to section (s) 104 of the Planning Act 2008 (PA2008), I conclude that making the recommended Development Consent Order would be in accordance with National Policy Statement (NPS) EN-1, NPS EN-2, NPS EN-4 and NPS EN5. It would also accord with relevant development plans and other relevant policy, all of which have been taken into account in this report. I have also had regard to the Local Impact Report produced by North Lincolnshire Council in reaching my conclusion and in respect of which there are no matters of conflict.

9.1.2. Whilst the Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS) is the competent authority under the Conservation of Habitats and Species Regulations 2017, and will make the definitive assessment, I conclude that subject to the Development Consent Order (as recommended at Appendix C of this report) controlling the gross output capacity of the proposed power station, as secured by the description of Work No. 1 in Schedule 1 (Authorised Development) and imposing:

- the Deemed Marine Licence, as set out at Schedule 13 (Deemed Marine Licence…); and
- Requirements (R) within Schedule 2, especially:
    - R11 (Landscape and Biodiversity Protection Management and Enhancement);
    - R12 (Surface Water Drainage);
    - R17 (Construction Environmental Management Plan);
    - R27 (Construction Hours);
    - R28 (Control of Noise and Vibration - Construction);
    - R29 (Control of Noise); and
    - R30 (Piling and Penetrative Foundation Design),

adverse effect on the integrity of the European sites and their features assessed from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed. I have taken this finding into account in reaching my recommendation.

9.1.3. I have had regard to the Public Sector Equality Duty throughout the Examination and in producing this report. The Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the Public Sector Equality Duty.

9.1.4. I have further considered whether the determination of this application in accordance with the relevant NPSs would lead the United Kingdom to be

in breach of any of its international obligations where relevant, including the Climate Change Act 2008 and the Paris Agreement 2015. I conclude that, in all respects, this would not be the case.

9.1.5. With regard to designated and non-designated heritage assets and in consideration of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, I have found the Proposed Development would result in less than substantial harm to designated heritage assets and harm to non-designated heritage assets. However, those harms are outweighed by the substantial benefit from the provision of energy to meet the need identified in NPS EN-1, draft NPS EN-1 and by the other benefits of the application as summarised above.

9.1.6. In terms of biodiversity and bearing in mind Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I am satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and that the requirements of both NPS EN-1 and draft NPS EN-1 are met. Indeed, I consider biodiversity net gain arising from the Proposed Development will enhance biodiversity, as well as assist in enhancing ecological and nature conservation effects.

9.1.7. 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.

9.1.8. In relation to s104(7) of the PA2008, and with the mitigation proposed through the recommended Development Consent Order in Appendix C to this report, I consider that there are no adverse impacts arising from the Proposed Development that would outweigh its benefits. Furthermore, there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSs.

9.2. RECOMMENDATION

9.2.1. My findings and conclusions on important and relevant matters are set out in this report and my recommendation is subject to the SoS for BEIS satisfying themselves on the following matters:

- The completion of any side agreement between the Applicant and the Environment Agency.
- NR's PPs, as set out in Schedule 10, Part 5 (For the protection of railway interests) of the rDCO, as set out in Appendix C of the rDCO are incorporated into the DCO, if made; or the wording of the PPs contained in Schedule 10, Part 5 (For the protection of railway interests) of the DCO are as finally agreed between the Applicant and NR and workable in practice.
- The completion of any side agreement between the Applicant and NR.
- It has been confirmed that the necessary Crown authority, in regard to the powers sought related to Crown Land and/ or Crown rights, consistent with the BoR [REP6a-038] and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.

Subject to the above, I consider that the Proposed Development meets the tests in s104 of the PA2008. On that basis, I recommend that the SoS for BEIS makes the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order in the form attached at Appendix C to this report.

APPENDICES

APPENDIX A: EXAMINATION LIBRARY A:1
APPENDIX B: LIST OF ABBREVIATIONS B:1
APPENDIX C: THE RECOMMENDED DCO..... C:1

APPENDIX A: EXAMINATION LIBRARY

Keadby 3 Carbon Capture Power Station

Examination Library

Updated – 17 June 2022

This Examination Library relates to the Keadby 3 Low Carbon Gas Power Station 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.

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Category	**Reference**
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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 including responses to Rule 6 and Rule 8 letters	AS-xxx
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submissions about the use of virtual procedures; and • Requests to be heard orally at the Preliminary Meeting	
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Deadline 2: Deadline for receipt by the ExA of: - Comments on any information submitted for Deadline 1 - Written Representations (WRs) with summaries of all WRs exceeding 1500 words - Comments on LIR(s) - Responses to the ExA's Written Questions (ExQ1) - An updated Statement of Commonality of SoCG - Updated Guide to the Application - Updated Compulsory Acquisition Schedule - Updated Book of Reference; - Update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession - An updated version of the draft Development Consent Order (dDCO) in clean, tracked and word versions - Schedule of changes to the dDCO - Applicant's draft itinerary for the ASI - Any further information requested by the ExA	REP2-xxx
Deadline 3: Deadline for receipt by the ExA of: - Comments on Responses to ExQ1 - Comments on WRs; - Comments on Applicant's draft itinerary for	REP3-xxx

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the ASI - Comments on any information submitted for Deadline 2 - Any updated SoCG requested by the ExA - An updated Statement of Commonality of SoCG - Updated Guide to the Application - An updated Book of Reference - An update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession - An updated Compulsory Acquisition/ Temporary Possession Schedule, including s127 Statutory Undertakers' Land and Rights Schedule and s138 Statutory Undertakers' Apparatus Schedule - An updated version of the dDCO in clean, tracked and word versions - Any further information requested by the ExA	
Deadline 4: Deadline for receipt by the ExA of: - Comments on any information submitted for Deadline 3 - An updated version of the dDCO in clean, tracked and word versions - Schedule of changes to the dDCO - An updated Statement of Commonality of SoCG - Updated Guide to the Application - An updated Compulsory Acquisition Schedule - An updated Book of Reference - An update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession - Any further information requested by the ExA	REP4-xxx
Deadline 5: Deadline for receipt by the ExA of: - Written summaries of oral submissions made at any Hearings held during the week commencing 14 March 2022 and 21 March 2022 - Comments on any information submitted for Deadline 4 - An updated version of the dDCO in clean, tracked and word versions - Schedule of changes to the dDCO - An updated Statement of Commonality of SoCG - Updated Guide to the Application - An updated Compulsory Acquisition Schedule - An updated Book of Reference	REP5-xxx

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- An update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession	
Deadline 6: Deadline for receipt by the ExA of: - Responses to ExQ2 (if required) - Comments on the ExA's proposed schedule of changes to the dDCO (if required) - Final SoCG - Final Statement of Commonality of the SoCG - Updated Guide to the Application (if required) - Update regarding progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession - Comments on any information submitted for Deadline 5 - Responses to any further information requested by the ExA	REP6-xxx
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Deadline 7: Deadline for receipt by the ExA of: - The submission of final and completed (signed and dated) versions of the Statements of Common Ground (SoCG) between the Applicant and Natural England, Northern Powergrid, the United Kingdom Health Security Agency, the Canal and River Trust, Network Rail, and Keadby with Althorpe Parish Council; or submission of a detailed explanation from both the Applicant and relevant Interested Party(ies)	REP7-xxx

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as to why it has not been possible to submit the final and completed (signed and dated) versions of the relevant SoCG(s); - Comments on responses submitted for Deadline 6a; - Responses to any further information requested by the ExA; - Comments on the RIES (if required).	
Deadline 7a Deadline for receipt by the ExA of: - Comments on responses submitted for Deadline 7; - Response to any further information requested by the ExA; - A final update regarding progress that has been made with Affected Persons in respect of Compulsory Acquisition (CA) and Temporary Possession (TP) (or confirmation that no changes have been made since Deadline 6a); - The final Book of Reference (or confirmation that no changes have been made since Deadline 6a); - The final CA/ TP schedule (or confirmation that no changes have been made since Deadline 6a); - The final Guide to the Application (or confirmation that no changes have been made since Deadline 6a); - Final preferred version of the Applicant's DCO in the SI template validation report and validated copy of the DCO (or confirmation that no changes have been made since Deadline 6a); - Final preferred version of the Applicant's DCO in word format (or confirmation that no changes have been made since Deadline 6a).	REP7a-xxx
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PD-002	Section 51 advice to the Applicant
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PD-021	Report on the Implications for European Sites (RIES)Issued by the Examining Authority - 3 May 2022
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PD-023	Notification of completion of the Examining Authority's Examination
Additional Submissions	
AS-001	Canal & River Trust Additional Submission - Accepted at the discretion of the Examining Authority
AS-002	Environment Agency Additional Submission - Accepted at the discretion of the Examining Authority
AS-003	Ministry of Defence Additional Submission - Accepted at the discretion of the Examining Authority
AS-004	Keadby Generation Limited Additional Submission - Letter to the Examining Authority - Dated 27 September 2021 - Accepted at the discretion of the Examining Authority
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	Additional Submission from Non-IP - Accepted at the discretion of the Examining Authority
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AS-008	SSE Generation Ltd and Keadby Wind Farm Ltd Additional Submission - Statement of Representation - Accepted at the discretion of the Examining Authority
AS-009	SSE Plc Additional Submission - Statement of Representation - Accepted at the discretion of the Examining Authority
AS-010	Keadby Generation Limited Additional Submission - 6.3.20 Environmental Statement Appendix 12A Flood Risk Assessment - Accepted at the discretion of the Examining Authority
AS-011	Joint Nature Conservation Committee (JNCC) Additional Submission - Accepted at the discretion of the Examining Authority
AS-012	Cadent Gas Additional submission - Accepted at the discretion of the Examining Authority
AS-013	Northern Gas Networks Limited Additional Submission - Accepted at the discretion of the Examining Authority
AS-014	Cadent Gas Additional submission - Accepted at the discretion of the Examining Authority
AS-015	Cadent Gas and National Grid Additional Submission - Accepted at the discretion of the Examining Authority
AS-016	ESP Utilities Group Limited Additional Submission - Accepted at the discretion of the Examining Authority
AS-017	Network Rail Additional Submission - Accepted at the discretion of the Examining Authority
AS-018	Canal and River Trust Additional Submission - Accepted at the discretion of the Examining Authority
AS-019	Environment Agency Additional Submission - Accepted at the discretion of the Examining Authority
AS-020	BDB Pitmans LLP on behalf of National Grid Ventures Additional Submission - Accepted at the discretion of the Examining Authority
AS-021	Keadby Generation Limited Additional Submission - Carbon Capture Presentation for ISH1 - Accepted at the discretion of the Examining Authority

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AS-022	Keadby Generation Limited Additional Submission - Accompanied Site Inspection Locations March 2022 - Accepted at the discretion of the Examining Authority
AS-023	Keadby Generation Limited Additional Submission - Applicant's Suggested Updates to the Accompanied Site Inspection Itinerary - Accepted at the discretion of the Examining Authority
AS-024	Keadby Generation Limited Additional Submission - Accompanied Site Inspection (ASI) Plan and Photomontage Pack - Accepted at the discretion of the Examining Authority
AS-025	Keadby Generation Limited Additional Submission - 3.3 Funding Statement (Tracked) - Rev 2 - Accepted at the discretion of the Examining Authority **[This document corrects errors in and supersedes REP5-008]**
AS-026	Keadby Generation Limited Additional Submission - Letter dated 21 April 2022 - Accepted at the discretion of the Examining Authority
AS-027	John Carney Additional Submission - Accepted at the discretion of the Examining Authority
AS-028	Northern Gas Networks Additional Submission - Accepted at the discretion of the Examining Authority
AS-029	Keadby Generation Limited Additional Submission - Accepted at the discretion of the Examining Authority
AS-030	Pollock Associates on behalf of Mssrs Strawson and Strawson and Severn Additional Submission - Accepted at the discretion of the Examining Authority
AS-031	Eversheds Sutherland on behalf of National Grid Electricity Transmission Plc (NGET) and National Grid Gas Plc (NGG) Additional Submission - Accepted at the discretion of the Examining Authority
AS-032	Weightmans LLP on behalf of Northern Powergrid (Yorkshire) Plc Additional Submission - Accepted at the discretion of the Examining Authority
OD-003	Keadby Generation Limited Response to the s51 advice – Waste Technical Note – Originally published as an Other Document and subsequently accepted as an Additional Submission at the discretion of the Examining Authority
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EV-001	Note of Unaccompanied Site Inspection 1 (USI1) - 28 October 2021
EV-002	Note of Unaccompanied Site Inspection 2 (USI2) - 28 October 2021
EV-003	Accompanied Site Inspection Itinerary - 12 April 2022
Preliminary Meeting – 07 December 2021	
EV-004	Recording of Preliminary Meeting (PM) - 07 December 2021
EV-004a	Preliminary Meeting (PM) - Transcript - 07 December 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-005	Preliminary meeting note
EV-006	Agenda for Open Floor Hearing (OFH) - 14 March 2022
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EV-011	Recording of Open Floor Hearing (OFH) - 14 March 2022
EV-012	Open Floor Hearing (OFH) - Transcript - 14 March 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-013	Recording of Issue Specific Hearing 1 (ISH1) on Environmental Matters - Session 1 - 15 March 2022
EV-014	Recording of Issue Specific Hearing 1 (ISH1) on Environmental Matters - Session 2 - 15 March 2022
EV-015	Recording of Issue Specific Hearing 1 (ISH1) on Environmental Matters - Session 3 - 15 March 2022
EV-016	Recording of Issue Specific Hearing 1 (ISH1) on Environmental Matters - Session 4 - 15 March 2022
EV-017	Issue Specific Hearing 1 (ISH1) on Environmental Matters - Transcript - Session 1 - 15 March 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-018	Issue Specific Hearing 1 (ISH1) on Environmental Matters - Transcript - Session 2 - 15 March 2022

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	This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-019	Issue Specific Hearing 1 (ISH1) on Environmental Matters - Transcript - Session 3 - 15 March 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-020	Issue Specific Hearing 1 (ISH1) on Environmental Matters - Transcript - Session 4 - 15 March 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-021	Recording of Compulsory Acquisition Hearing (CAH) - Session 1 - 16 March 2022
EV-022	Recording of Compulsory Acquisition Hearing (CAH) - Session 2 - 16 March 2022
EV-023	Compulsory Acquisition Hearing (CAH) - Transcript - Session 1 - 16 March 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-024	Compulsory Acquisition Hearing (CAH) - Transcript - Session 2 - 16 March 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-025	Recording of Issue Specific Hearing 2 (ISH2) on the draft Development Consent Order (DCO) - Session 1 - 17 March 2022
EV-026	Recording of Issue Specific Hearing 2 (ISH2) on the draft Development Consent Order (DCO) - Session 2 - 17 March 2022
EV-027	Recording of Issue Specific Hearing 2 (ISH2) on the draft Development Consent Order (DCO) - Session 3 - 17 March 2022
EV-028	Issue Specific Hearing 2 (ISH2) on the draft Development Consent Order (DCO) - Transcript - Session 1 - 17 March 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-029	Issue Specific Hearing 2 (ISH2) on the draft Development Consent Order (DCO) - Transcript - Session 2 - 17 March 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice

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	to text and is unedited. The video recording remains as the primary record of the event.
EV-030	Issue Specific Hearing 2 (ISH2) on the draft Development Consent Order (DCO) - Transcript - Session 3 - 17 March 2022 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-031	Action Points from the Issue Specific and Compulsory Acquisition Hearings held between 15 and 17 March 2022
Representations	
Procedural Deadline A – 26 November 2021 • Written submissions on the Examination procedure including any submissions about the use of virtual procedures; and • Requests to be heard orally at the Preliminary Meeting	
PDA-001	Keadby Generation Limited Procedural Deadline A Submission - Cover Letter
Deadline 1 – 21 December 2021 • Local Impact Reports (LIRs) from the Local Authorities • Statements of Common Ground (SoCG) • Updated Guide to the Application • Notification of wish to speak at an Open Floor Hearing • Notification of wish to speak at a Compulsory Acquisition Hearing • Submission of suggested locations to be included in any Accompanied Site Inspection (ASI) • Notification of wish to attend ASI • Comments on Relevant Representations • Comments on Additional Submissions • Any further information requested by the ExA	
REP1-001	Keadby Generation Limited Deadline 1 Submission - Cover Letter
REP1-002	Keadby Generation Limited Deadline 1 Submission - 1.2 Application Guide - Rev 2
REP1-003	Keadby Generation Limited Deadline 1 Submission - 3.1 Book of Reference - Rev 2
REP1-004	Keadby Generation Limited Deadline 1 Submission - 4.2 Land Plans - Rev 2
REP1-005	Keadby Generation Limited Deadline 1 Submission - 4.5 Crown Land Plans - Rev 2
REP1-006	Keadby Generation Limited Deadline 1 Submission - 5.12 Habitats Regulations Assessment Appropriate Assessment Report - Rev 2
REP1-007	Keadby Generation Limited

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	Deadline 1 Submission - 8.1 Statement of Common Ground with North Lincolnshire Council
REP1-008	Keadby Generation Limited Deadline 1 Submission - 8.2 Draft Statement of Common Ground with Environment Agency
REP1-009	Keadby Generation Limited Deadline 1 Submission - 8.3 Statement of Common Ground with Natural England
REP1-010	Keadby Generation Limited Deadline 1 Submission - 8.4 Statement of Common Ground with Marine Management Organisation
REP1-011	Keadby Generation Limited Deadline 1 Submission - 8.5 Statement of Common Ground with Historic England
REP1-012	Keadby Generation Limited Deadline 1 Submission - 8.6 Statement of Common Ground with National Grid Carbon Limited (part of National Grid Ventures)
REP1-013	Keadby Generation Limited Deadline 1 Submission - 8.7 Statement of Common Ground with National Grid Electricity Transmission and National Grid Gas
REP1-014	Keadby Generation Limited Deadline 1 Submission - 8.8 Statement of Common Ground with Canal River Trust
REP1-015	Keadby Generation Limited Deadline 1 Submission - 8.9 Statement of Common Ground with Network Rail
REP1-016	Keadby Generation Limited Deadline 1 Submission - 8.10 Statement of Common Ground with Maritime and Coastguard Agency
REP1-017	Keadby Generation Limited Deadline 1 Submission - 8.11 Statement of Common Ground with Trinity House / Associated British Ports
REP1-018	Keadby Generation Limited Deadline 1 Submission - 8.12 Statement of Common Ground with Northern Powergrid
REP1-019	Keadby Generation Limited Deadline 1 Submission - 8.15 Statement of Common Ground with National Highways
REP1-020	Keadby Generation Limited Deadline 1 Submission - 8.16 Initial Draft Statement of Common Ground with Severn Trent Water
REP1-021	Keadby Generation Limited Deadline 1 Submission - 9.1 Applicant's Comments on Relevant Representations and Additional Submissions
REP1-022	North Lincolnshire Council Deadline 1 Submission - Local Impact Report (LIR)
REP1-023	Canal and River Trust Deadline 1 Submission

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REP1-024	Environment Agency Deadline 1 Submission - Notification of wish to speak at a Compulsory Acquisition Hearing
REP1-025	Marine Management Organisation Deadline 1 Submission - Comments on Relevant Representations and Additional Submissions
Deadline 2 – 01 February 2022 • Comments on any information submitted for Deadline 1 • Written Representations (WRs) with summaries of all WRs exceeding 1500 words • Comments on LIR(s) • Responses to the ExA's Written Questions (ExQ1) • An updated Statement of Commonality of SoCG • Updated Guide to the Application • Updated Compulsory Acquisition Schedule • Updated Book of Reference; • Update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession • An updated version of the draft Development Consent Order (dDCO) in clean, tracked and word versions • Schedule of changes to the dDCO • Applicant's draft itinerary for the ASI • Any further information requested by the ExA	
REP2-001	Keadby Generation Limited Deadline 2 Submission - Cover Letter
REP2-002	Keadby Generation Limited Deadline 2 Submission - 1.2 Application Guide - Rev 3
REP2-003	Keadby Generation Limited Deadline 2 Submission - 2.1 Draft Development Consent Order (Tracked) - Rev 2
REP2-004	Keadby Generation Limited Deadline 2 Submission - 8.13 Statement of Common Ground with UK Health Security Agency
REP2-005	Keadby Generation Limited Deadline 2 Submission - 8.14 Statement of Common Ground with Keadby with Althorpe Parish Council
REP2-006	Keadby Generation Limited Deadline 2 Submission - 9.2 Applicants Response to ExQ1 - Vol 1
REP2-007	Keadby Generation Limited Deadline 2 Submission - 9.3 Applicant's Response to the Examining Authority's First Written Questions - Vol 2 - Appendices
REP2-008	Keadby Generation Limited Deadline 2 Submission - 9.4 Applicant's Comments on Local Impact Report
REP2-009	Keadby Generation Limited Deadline 2 Submission - 9.5 Statement of Commonality of Statement of Common Grounds
REP2-010	Keadby Generation Limited

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	Deadline 2 Submission - 9.6 Update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession
REP2-011	Keadby Generation Limited Deadline 2 Submission - 9.7 Schedule of Updates to Draft DCO
REP2-012	Keadby Generation Limited Deadline 2 Submission - 9.8 Rule 17 (Archaeology) Questions of 17 January 2022
REP2-013	Keadby Generation Limited Deadline 2 Submission - Notification of a Proposed Application for a Change Cover Letter
REP2-014	Keadby Generation Limited Deadline 2 Submission - 10.1 Notification of Proposed Application for a Change
REP2-015	North Lincolnshire Council Deadline 2 Submission - Responses to the ExA's Written Questions (ExQ1)
REP2-016	Canal & River Trust Deadline 2 Submission - Cover Letter
REP2-017	Canal & River Trust Deadline 2 Submission - Responses to the ExA's Written Questions (ExQ1)
REP2-018	Canal & River Trust Deadline 2 Submission - Written Representation
REP2-019	Canal & River Trust Deadline 2 Submission - Written Representations - Appendix 1
REP2-020	ClientEarth Deadline 2 Submission - Response to Applicant's Deadline 1 Comments
REP2-021	Environment Agency Deadline 2 Submission - Responses to the ExA's Written Questions (ExQ1)
REP2-022	Environment Agency Deadline 2 Submission - Written Representation
REP2-023	Historic England Deadline 2 Submission - Rule 17 Response
REP2-024	Marine Management Organisation Deadline 2 Submission - Comments on any information submitted for Deadline 1 and Responses to the ExA's Written Questions (ExQ1)
REP2-025	Maritime and Coastguard Agency Deadline 2 Submission - Responses to the ExA's Written Questions (ExQ1)
REP2-026	Ministry of Defence Deadline 2 Submission - Responses to the ExA's Written Questions (ExQ1)
REP2-027	Eversheds Sutherland (International) LLP on behalf of National Grid Electricity Transmission and National Grid Gas

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	Deadline 2 Submission - Responses to the ExA's Written Questions (ExQ1)
REP2-028	Eversheds Sutherland (International) LLP on behalf of National Grid Electricity Transmission and National Grid Gas Deadline 2 Submission - Written Representation
REP2-029	National Grid Ventures (PDF, 200 KB) Deadline 2 Submission - Responses to the ExA's Written Questions (ExQ1)
REP2-030	Natural England (PDF, 118 KB) Deadline 2 Submission - Responses to the ExA's Written Questions (ExQ1)
REP2-031	Network Rail Deadline 2 Submission - Written Representation
REP2-032	Northern Powergrid Deadline 2 Submission - Responses to the ExA's Written Questions (ExQ1)
Deadline 3 – 15 February 2022 • Comments on Responses to ExQ1 • Comments on WRs; • Comments on Applicant's draft itinerary for the ASI • Comments on any information submitted for Deadline 2 • Any updated SoCG requested by the ExA • An updated Statement of Commonality of SoCG • Updated Guide to the Application • An updated Book of Reference • An update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession • An updated Compulsory Acquisition/ Temporary Possession Schedule, including s127 Statutory Undertakers' Land and Rights Schedule and s138 Statutory Undertakers' Apparatus Schedule • An updated version of the dDCO in clean, tracked and word versions • Any further information requested by the ExA	
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REP3-002	Keadby Generation Limited Deadline 3 Submission - 1.2 Application Guide - Revision 4
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REP3-005	Keadby Generation Limited Deadline 3 Submission - 3.1 Book of Reference - Revision 3
REP3-006	Keadby Generation Limited Deadline 3 Submission - 5.5 - Planning Statement - Clean - Revision 2
REP3-007	Keadby Generation Limited

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	Deadline 3 Submission - 5.5 - Planning Statement - Tracked - Revision 2
REP3-008	Keadby Generation Limited Deadline 3 Submission - 5.6 - Design and Access Statement - Clean - Revision 2
REP3-009	Keadby Generation Limited Deadline 3 Submission - 5.6 - Design and Access Statement - Tracked - Revision 2
REP3-010	Keadby Generation Limited Deadline 3 Submission - 7.1 - Framework Construction Environmental Management Plan - Revision 2
REP3-011	Keadby Generation Limited Deadline 3 Submission - 8.2 - Statement of Common Ground with Environment Agency - Revision 2
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REP3-014	Keadby Generation Limited Deadline 3 Submission - 8.8 - Statement of Common Ground with Canal and River Trust - Revision 2
REP3-015	Keadby Generation Limited Deadline 3 Submission - 8.16 - Draft Statement of Common Ground with Severn Trent Water - Revision 1.1
REP3-016	Keadby Generation Limited Deadline 3 Submission - 8.17 - Initial Draft Statement of Common Ground with Isle of Axholme and North Nottinghamshire Water Level Management Board - Revision 1
REP3-017	Keadby Generation Limited Deadline 3 Submission - 9.5 - Statement of Commonality of Statements of Common Ground - Revision 2
REP3-018	Keadby Generation Limited Deadline 3 Submission - 9.6 - Update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession - Revision 2
REP3-019	Keadby Generation Limited Deadline 3 Submission - 9.7 - Schedule of Updates to Draft DCO - Revision 2
REP3-020	Keadby Generation Limited Deadline 3 Submission - 9.9 - Applicant's Response to Examining Authority's Written Questions Responses
REP3-021	Keadby Generation Limited Deadline 3 Submission - 9.10 - Applicants Comments on Written Representations
REP3-022	Keadby Generation Limited

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	Deadline 3 Submission - 9.11 - Further Applicant Response to Rule 17 Letter
REP3-023	Keadby Generation Limited Deadline 3 Submission - 9.12 - Updated Compulsory Acquisition Schedule/Temporary Possession Schedule
REP3-024	**Not in use**
REP3-025	Environment Agency Deadline 3 Submission - Comments on Responses to Examining Authority's Written Questions (ExQ1)
REP3-026	Marine Management Organisation Deadline 3 Submission - Comments on any information submitted for Deadline 2
REP3-027	UK Health Security Agency Deadline 3 Submission - Statement of Common Ground with United Kingdom Health Security Agency (formerly Public Health England) - Tracked
Deadline 4 – 01 March 2022 • Comments on any information submitted for Deadline 3 • An updated version of the dDCO in clean, tracked and word versions • Schedule of changes to the dDCO • An updated Statement of Commonality of SoCG • Updated Guide to the Application • An updated Compulsory Acquisition Schedule • An updated Book of Reference • An update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession • Any further information requested by the ExA	
REP4-001	Keadby Generation Limited Deadline 4 Submission - Cover Letter
REP4-002	Keadby Generation Limited Deadline 4 Submission - 1.2 Application Guide
REP4-003	Keadby Generation Limited Deadline 4 Submission - 2.1 - Draft Development Consent Order - Clean
REP4-004	Keadby Generation Limited Deadline 4 Submission - 2.1 - Draft Development Consent Order - Tracked
REP4-005	Keadby Generation Limited Deadline 4 Submission - 3.1 - Book of Reference
REP4-006	Keadby Generation Limited Deadline 4 Submission - 8.13 Statement of Common Ground with United Kingdom Health Security Agency (formerly Public Health England)
REP4-007	Keadby Generation Limited Deadline 4 Submission - 9.5 Statement of Commonality of Statements of Common Ground (Deadline 4 Version)
REP4-008	Keadby Generation Limited

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	Deadline 4 Submission - 9.6 Update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession
REP4-009	Keadby Generation Limited Deadline 4 Submission - 9.7 Schedule of Updates to Draft DCO (Deadline 4)
REP4-010	Keadby Generation Limited Deadline 4 Submission - 9.13 Applicant Response to Environment Agency Deadline 3 Submission
REP4-011	North East Lincolnshire Council Deadline 4 Submission
REP4-012	Canal & River Trust Deadline 4 Submission - Comments on any information submitted for Deadline 3
REP4-013	Environment Agency Deadline 4 Submission - Comments on any information submitted for Deadline 3
REP4-014	Marine Management Organisation Deadline 4 Submission - Comments on any information submitted for Deadline 3
REP4-015	Network Rail Deadline 4 Submission
Deadline 5 - 5 April 2022 Deadline for receipt by the ExA of: • Written summaries of oral submissions made at any Hearings held during the week commencing 14 March 2022 and 21 March 2022 • Comments on any information submitted for Deadline 4 • An updated version of the dDCO in clean, tracked and word versions • Schedule of changes to the dDCO • An updated Statement of Commonality of SoCG • Updated Guide to the Application • An updated Compulsory Acquisition Schedule • An updated Book of Reference • An update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession • Any further information requested by the ExA	
REP5-001	Keadby Generation Limited Deadline 5 Submission - Cover Letter
REP5-002	Keadby Generation Limited Deadline 5 Submission - 1.2 Application Guide (Deadline 5, Excluding Proposed Development Changes) - Rev 6
REP5-003	Keadby Generation Limited Deadline 5 Submission - 2.1 Draft Development Consent Order (Deadline 5 Version) - Clean
REP5-004	Keadby Generation Limited Deadline 5 Submission - 2.1 Draft Development Consent Order (Deadline 5 Version) - Tracked
REP5-005	Keadby Generation Limited

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	Deadline 5 Submission - 3.1 Book of Reference - Clean - Rev 5
REP5-006	Keadby Generation Limited Deadline 5 Submission - 3.1 Book of Reference - Tracked - Rev 5
REP5-007	Keadby Generation Limited Deadline 5 Submission - 3.3 Funding Statement - Clean - Rev 2
REP5-008	Keadby Generation Limited Deadline 5 Submission - 3.3 Funding Statement - Tracked - Rev 2 **[This document has been superseded by AS-025]**
REP5-009	Keadby Generation Limited Deadline 5 Submission - 4.14 Indicative General Arrangement and Elevations A18 Gatehouse - Rev 2
REP5-010	Keadby Generation Limited Deadline 5 Submission - 5.2 Electricity Grid Connection Statement - Clean - Rev 2
REP5-011	Keadby Generation Limited Deadline 5 Submission - 5.2 Electricity Grid Connection Statement - Tracked - Rev 2
REP5-012	Keadby Generation Limited Deadline 5 Submission - 6.3.22 Environmental Statement Volume II - Appendix 12C: Navigational Risk Assessment - Clean - Rev 2
REP5-013	Keadby Generation Limited Deadline 5 Submission - 6.3.22 Environmental Statement Volume II - Appendix 12C: Navigational Risk Assessment - Tracked - Rev 2
REP5-014	Keadby Generation Limited Deadline 5 Submission - 8.2 Statement of Common Ground with the Environment Agency - Rev 2
REP5-015	Keadby Generation Limited Deadline 5 Submission - 9.14 Applicant's Response to Action Points arising from Hearings
REP5-016	Keadby Generation Limited Deadline 5 Submission - 9.15 Written summaries of oral submissions made at Hearings
REP5-017	Keadby Generation Limited Deadline 5 Submission - 9.16 Summary of Canal Water Abstraction Assessment - Rev 2
REP5-018	Keadby Generation Limited Deadline 5 Submission - 9.6 Update on progress with APs
REP5-019	Keadby Generation Limited Deadline 5 Submission - Change Request - Cover Letter **[This document has been withdrawn]**
REP5-020	Keadby Generation Limited Deadline 5 Submission - Change Request - 2.1 Draft Development Consent Order (Deadline 5 and Proposed Development Changes) – Clean **[This document has been withdrawn]**
REP5-021	Keadby Generation Limited

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	Deadline 5 Submission - Change Request - 2.1 Draft Development Consent Order (Deadline 5 and Proposed Development Changes) – Tracked **[This document has been withdrawn]**
REP5-022	Keadby Generation Limited Deadline 5 Submission - Change Request - 2.2 Explanatory Memorandum (Proposed Development Changes) **[This document has been withdrawn]**
REP5-023	Keadby Generation Limited Deadline 5 Submission - Change Request - 3.1 Book of Reference - Clean - Rev 5 **[This document has been withdrawn]**
REP5-024	Keadby Generation Limited Deadline 5 Submission - Change Request - 3.1 Book of Reference - Tracked - Rev 5 **[This document has been withdrawn]**
REP5-025	Keadby Generation Limited Deadline 5 Submission - Change Request - 4.1 Site Location Plan - Rev 2 **[This document has been withdrawn]**
REP5-026	Keadby Generation Limited Deadline 5 Submission - Change Request - 4.2 Land Plans - Rev 3 **[This document has been withdrawn]**
REP5-027	Keadby Generation Limited Deadline 5 Submission - Change Request - 4.3 Works Plans - Rev 2 **[This document has been withdrawn]**
REP5-028	Keadby Generation Limited Deadline 5 Submission - Change Request - 4.4 Access and Rights of Way Plans - Rev 2 **[This document has been withdrawn]**
REP5-029	Keadby Generation Limited Deadline 5 Submission - Change Request - 4.5 Crown Land Plans - Rev 3 **[This document has been withdrawn]**
REP5-030	Keadby Generation Limited Deadline 5 Submission - Change Request - 4.7 Indicative Proposed Power and Carbon Capture Layout, Elevations and Sections - Rev 2 **[This document has been withdrawn]**
REP5-031	Keadby Generation Limited Deadline 5 Submission - Change Request - 4.15 Indicative Landscape and Biodiversity Plan - Rev 2 **[This document has been withdrawn]**
REP5-032	Keadby Generation Limited Deadline 5 Submission - Change Request - 4.18 SSE Land Ownership Plans - Rev 2 **[This document has been withdrawn]**
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	Deadline 5 Submission - Change Request - 4.19 Haul Road Plans - Rev 2 **[This document has been withdrawn]**
REP5-034	Keadby Generation Limited Deadline 5 Submission - Change Request - 5.10 Landscaping and Biodiversity Management and Enhancement Plan – Clean **[This document has been withdrawn]**
REP5-035	Keadby Generation Limited Deadline 5 Submission - Change Request - 5.10 Landscaping and Biodiversity Management and Enhancement Plan – Tracked **[This document has been withdrawn]**
REP5-036	Keadby Generation Limited Deadline 5 Submission - Change Request - 5.12 Habitats Regulations Assessment Appropriate Assessment Report - Clean - Rev 3 **[This document has been withdrawn]**
REP5-037	Keadby Generation Limited Deadline 5 Submission - Change Request - 5.12 Habitats Regulations Assessment Appropriate Assessment Report - Tracked - Rev 3 **[This document has been withdrawn]**
REP5-038	Keadby Generation Limited Deadline 5 Submission - Change Request - 7.2 Framework Construction Traffic Management Plan - Clean - Rev 2 **[This document has been withdrawn]**
REP5-039	Keadby Generation Limited Deadline 5 Submission - Change Request - 7.2 Framework Construction Traffic Management Plan - Tracked - Rev 2 **[This document has been withdrawn]**
REP5-040	Keadby Generation Limited Deadline 5 Submission - Change Request - 9.16 Summary of Canal Water Abstraction Assessment - Rev 2 **[This document has been withdrawn]**
REP5-041	Keadby Generation Limited Deadline 5 Submission - Change Request - 10.2 Proposed Development Changes: Document Schedule **[This document has been withdrawn]**
REP5-042	Keadby Generation Limited Deadline 5 Submission - Change Request - 10.3 Proposed Development Changes: Consultation Statement **[This document has been withdrawn]**
REP5-043	Keadby Generation Limited Deadline 5 Submission - Change Request - 10.4 Proposed Development Changes: Consent to Provision Authorising Compulsory Acquisition (Keadby Developments Limited) **[This document has been withdrawn]**
REP5-044	Keadby Generation Limited Deadline 5 Submission - Change Request - 10.5 Proposed Development Changes: Rationale and Need Statement

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REP5-045	Keadby Generation Limited Deadline 5 Submission - Change Request - 10.6 Proposed Development Changes: Environmental Statement (ES) Addendum Non-Technical Summary - Rev 2 **[This document has been withdrawn]**
REP5-046	Keadby Generation Limited Deadline 5 Submission - Change Request - 10.7 Proposed Development Changes: Environmental Statement (ES) Addendum - Volume I (Main Volume) - Rev 2 **[This document has been withdrawn]**
REP5-047	Keadby Generation Limited Deadline 5 Submission - Change Request - 10.8 Proposed Development Changes: Environmental Statement (ES) Addendum - Volume II (Chapters and Appendices) - Rev 2 **[This document has been withdrawn]**
REP5-048	Keadby Generation Limited Deadline 5 Submission - Change Request - 10.9 Proposed Development Changes: Environmental Statement (ES) Addendum - Volume III (ES Figures) - Rev 2 **[This document has been withdrawn]**
REP5-049	North Lincolnshire Council Deadline 5 Submission - Response to the Action Points from the Issue Specific and Compulsory Acquisition Hearings held between 15 and 17 March 2022
REP5-050	Canal & River Trust Deadline 5 Submission - Post-Hearing submission
REP5-051	ClientEarth Deadline 5 Submission - Post-Hearing submission
REP5-052	Denise Steel Deadline 5 Submission - Written Representation
REP5-053	Marine Management Organisation Deadline 5 Submission - Comments on any information submitted for Deadline 4
REP5-054	National Grid Electricity Transmission Plc and National Grid Gas Plc Deadline 5 Submission - Any further information requested by the ExA
REP5-055	National Grid Carbon Limited (part of National Grid Ventures) Deadline 5 Submission - Draft Protective Provisions for the Protection of National Grid Carbon Limited, including a Briefing Note
REP5-056	National Grid Carbon Limited (part of National Grid Ventures) Deadline 5 Submission - Update on progress as regards protective provisions for the protection of National Grid Carbon Limited
REP5-057	Pollock Associates Ltd on behalf of Mssrs Strawson and Severn Deadline 5 Submission - An update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession
REP5-058	Pollock Associates Ltd on behalf of Mssrs Strawson and Severn

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	Deadline 5 Submission - An update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession - Email 1
REP5-059	Pollock Associates Ltd on behalf of Mssrs Strawson and Severn Deadline 5 Submission - An update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession - Email 2
REP5-060	Pollock Associates Ltd on behalf of Mssrs Strawson and Severn Deadline 5 Submission - An update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession - Email 3
Deadline 6 – 26 April 2022 Deadline for receipt by the ExA of: • Responses to ExQ2 (if required) • Comments on the ExA's proposed schedule of changes to the dDCO (if required) • Final SoCG • Final Statement of Commonality of the SoCG • Updated Guide to the Application (if required) • Update regarding progress that has been made with Affected • Persons in respect of Compulsory Acquisition and Temporary Possession • Comments on any information submitted for Deadline 5 • Responses to any further information requested by the ExA	
REP6-001	Keadby Generation Limited Deadline 6 Submission - Cover Letter
REP6-002	Keadby Generation Limited Deadline 6 Submission - 1.2 Application Guide - Rev 7
REP6-003	Keadby Generation Limited Deadline 6 Submission - 7.1 Framework Construction Environmental Management Plan Version - Rev 3 (Clean)
REP6-004	Keadby Generation Limited Deadline 6 Submission - 7.1 Framework Construction Environmental Management Plan Version - Rev 3 (Tracked)
REP6-005	Keadby Generation Limited Deadline 6 Submission - 8.1 Statement of Common Ground with North Lincolnshire Council - Rev 2
REP6-006	Keadby Generation Limited Deadline 6 Submission - 8.3 Statement of Common Ground with Natural England - Rev 2
REP6-007	Keadby Generation Limited Deadline 6 Submission - 8.4 Statement of Common Ground with the Marine Management Organisation - Rev 2
REP6-008	Keadby Generation Limited Deadline 6 Submission - 8.6 Statement of Common Ground with National Grid Carbon Limited (part of National Grid Ventures) - Rev 3

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REP6-009	Keadby Generation Limited Deadline 6 Submission - 8.7 Statement of Common Ground with National Grid Electricity Transmission and National Grid Gas - Rev 3
REP6-010	Keadby Generation Limited Deadline 6 Submission - 8.12 Statement of Common Ground with Northern Powergrid - Rev 1
REP6-011	Keadby Generation Limited Deadline 6 Submission - 8.13 Statement of Common Ground with United Kingdom Health Security Agency (formerly Public Health England) - Rev 3
REP6-012	Keadby Generation Limited Deadline 6 Submission - 8.16 Statement of Common Ground with Severn Trent Water - Rev 1.1
REP6-013	Keadby Generation Limited Deadline 6 Submission - 8.17 Initial Draft Statement of Common Ground with Isle of Axholme and North Nottinghamshire Water Level Management Board - Rev 2
REP6-014	Keadby Generation Limited Deadline 6 Submission - 9.5 Statement of Commonality of Statements of Common Ground - Rev 4
REP6-015	Keadby Generation Limited Deadline 6 Submission - 9.6 Update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession - Rev 5
REP6-016	Keadby Generation Limited Deadline 6 Submission - 9.17 Applicant's Response to the Examining Authority's Further Written Questions
REP6-017	Keadby Generation Limited Deadline 6 Submission - 9.18 Applicant's Response to Deadline 5 Submissions
REP6-018	Keadby Generation Limited Deadline 6 Submission - Change Request - Change Request Cover Letter **[This document has been withdrawn]**
REP6-019	Keadby Generation Limited Deadline 6 Submission - Change Request - 2.1 Draft Development Consent Order (Clean) **[This document has been withdrawn]**
REP6-020	Keadby Generation Limited Deadline 6 Submission - Change Request - 2.1 Draft Development Consent Order (Tracked) **[This document has been withdrawn]**
REP6-021	Keadby Generation Limited Deadline 6 Submission - Change Request - 3.1 Book of Reference (Clean) - Rev 6 **[This document has been withdrawn]**
REP6-022	Keadby Generation Limited

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	Deadline 6 Submission - Change Request - 3.1 Book of Reference (Tracked) - Rev 6 **[This document has been withdrawn]**
REP6-023	Keadby Generation Limited Deadline 6 Submission - Change Request - 4.1 Site Location Plan **[This document has been withdrawn]**
REP6-024	Keadby Generation Limited Deadline 6 Submission - Change Request - 4.2 Land Plans - Rev 4 **[This document has been withdrawn]**
REP6-025	Keadby Generation Limited Deadline 6 Submission - Change Request - 4.3 Works Plans - Rev 2 **[This document has been withdrawn]**
REP6-026	Keadby Generation Limited Deadline 6 Submission - Change Request - 4.4 Access and Rights of Way Plans - Rev 3 **[This document has been withdrawn]**
REP6-027	Keadby Generation Limited Deadline 6 Submission - Change Request - 4.5 Crown Land Plans - Rev 4 **[This document has been withdrawn]**
REP6-028	Keadby Generation Limited Deadline 6 Submission - Change Request - 4.18 SSE Land Ownership Plans - Rev 3 **[This document has been withdrawn]**
REP6-029	Keadby Generation Limited Deadline 6 Submission - Change Request - 10.2 Proposed Development Changes: Document Schedule - Rev 2 **[This document has been withdrawn]**
REP6-030	North Lincolnshire Council Deadline 6 Submission - Responses to ExQ2
REP6-031	North Lincolnshire Council Deadline 6 Submission - Responses to any further information requested by the ExA
REP6-032	Canal and River Trust Deadline 6 Submission - Responses to ExQ2, and Responses to any further information requested by the ExA
REP6-033	Environment Agency Deadline 6 Submission - Responses to ExQ2
REP6-034	Environment Agency Deadline 6 Submission - Comments on any information submitted for Deadline 5
REP6-035	Marine Management Organisation Deadline 6 Submission - Comments on any information submitted for Deadline 5
REP6-036	Natural England Deadline 6 Submission - Responses to ExQ2, and Responses to any further information requested by the ExA
REP6-037	Network Rail

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	Deadline 6 Submission - Responses to ExQ2
REP6-038	Pollock Associates on behalf of Messrs Strawson and Severn Deadline 6 Submission - Responses to ExQ2, and Responses to any further information requested by the ExA
REP6-039	Pollock Associates on behalf of Messrs Strawson and Severn Deadline 6 Submission - Responses to ExQ2, and Responses to any further information requested by the ExA - Ealand Solar Scheme Site Location Plan
REP6-040	Pollock Associates on behalf of Messrs Strawson and Severn Deadline 6 Submission - Responses to ExQ2, and Responses to any further information requested by the ExA - Keadby Solar Scheme Site Location Plan
REP6-041	Pollock Associates on behalf of Messrs Strawson and Severn Deadline 6 Submission - Responses to ExQ2, and Responses to any further information requested by the ExA - Option Keadby 20.08.21 Strawson Plan
REP6-042	Pollock Associates on behalf of Messrs Strawson and Severn Deadline 6 Submission - Responses to ExQ2, and Responses to any further information requested by the ExA - Signed Option Ealand 5.11.21 Plan
REP6-043	UK Health Security Agency (UKHSA) Deadline 6 Submission - Position Statement
Deadline 6a – 10 May 2022 Deadline for receipt by the ExA of: - Comments on Responses submitted at Deadline 6 - Final Guide to the Application - Final update regarding progress that has been made with Affected Persons in respect of Compulsory Acquisition (CA) and Temporary Possession (TP) - Final Book of Reference - Final CA/ TP schedule - Signed and dated s106 Agreement (if required) - Applicant's preferred DCO in the SI template validation report and a validated copy of the DCO - Applicant's preferred DCO in word format - Responses to any further information requested by the ExA	
REP6a-001	Keadby Generation Limited Deadline 6a Submission - Cover Letter - Late submission accepted at the discretion of the Examining Authority
REP6a-002	Keadby Generation Limited Deadline 6a Submission - 1.2 Application Guide (Absent Proposed Development Changes) - Rev 8 - Late submission accepted at the discretion of the Examining Authority
REP6a-003	Keadby Generation Limited Deadline 6a Submission - 2.1 Draft Development Consent Order (Non Scheme Changes - Not Preferred) - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-004	Keadby Generation Limited

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	Deadline 6a Submission - 2.1 Draft Development Consent Order (Non Scheme Changes - Not Preferred) - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-005	Keadby Generation Limited Deadline 6a Submission - 2.2 Explanatory Memorandum (Non-Scheme Change DCO) - Rev 2 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-006	Keadby Generation Limited Deadline 6a Submission - 2.2 Explanatory Memorandum (Non-Scheme Changes - Not Preferred) - Rev 2 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-007	Keadby Generation Limited Deadline 6a Submission - 3.1 Book of Reference - Rev 5 - Late submission accepted at the discretion of the Examining Authority
REP6a-008	Keadby Generation Limited Deadline 6a Submission - 3.2 Statement of Reasons (Non-Scheme Change) - Rev 2 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-009	Keadby Generation Limited Deadline 6a Submission - 3.2 Statement of Reasons (Non-Scheme Change) - Rev 2 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-010	Keadby Generation Limited Deadline 6a Submission - 5.9 Statutory Nuisance Statement - Rev 3 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-011	Keadby Generation Limited Deadline 6a Submission - 5.10 Landscaping and Biodiversity Management and Enhancement Plan - Rev 3 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-012	Keadby Generation Limited Deadline 6a Submission - 5.10 Landscaping and Biodiversity Management and Enhancement Plan - Rev 3 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-013	Keadby Generation Limited Deadline 6a Submission - 5.12 Habitats Regulations Assessment Appropriate Assessment Report (Non-Change Request Version) - Rev 3 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-014	Keadby Generation Limited Deadline 6a Submission - 5.12 Habitats Regulations Assessment Appropriate Assessment Report (Non-Change Request Version) - Rev 3 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-015	Keadby Generation Limited Deadline 6a Submission - 6.2.15 Chapter 15: Cultural Heritage of ES Addendum including Appendix 15D (Non-Change Request) - Rev 2 - Clean - Late submission accepted at the discretion of the Examining Authority

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REP6a-016	Keadby Generation Limited Deadline 6a Submission - 7.2 Framework Construction Traffic Management Plan - Rev 2 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-017	Keadby Generation Limited Deadline 6a Submission - 7.2 Framework Construction Traffic Management Plan - Rev 2 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-018	Keadby Generation Limited Deadline 6a Submission - 7.4 Outline Written Scheme of Investigation - Rev 2 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-019	Keadby Generation Limited Deadline 6a Submission - 7.4 Outline Written Scheme of Investigation - Rev 2 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-020	Keadby Generation Limited Deadline 6a Submission - 8.6 Statement of Common Ground with National Grid Carbon Limited (part of National Grid Ventures) - Rev 3 - Late submission accepted at the discretion of the Examining Authority
REP6a-021	Keadby Generation Limited Deadline 6a Submission - 8.12 Statement of Common Ground with Northern Powergrid - Rev 1 - Late submission accepted at the discretion of the Examining Authority
REP6a-022	Keadby Generation Limited Deadline 6a Submission - 8.17 Statement of Common Ground with Isle of Axholme and North Nottinghamshire Water Level Management Board - Rev 1.2 - Late submission accepted at the discretion of the Examining Authority
REP6a-023	Keadby Generation Limited Deadline 6a Submission - 9.5 Statement of Commonality of Statements of Common Ground (Deadline 6a Version) - Rev 5 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-024	Keadby Generation Limited Deadline 6a Submission - 9.5 Statement of Commonality of Statements of Common Ground (Deadline 6a Version) - Rev 5 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-025	Keadby Generation Limited Deadline 6a Submission - 9.6 Update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession - Rev 6 - Late submission accepted at the discretion of the Examining Authority
REP6a-026	Keadby Generation Limited Deadline 6a Submission - 9.7 Schedule of Updates to Draft Development Consent Order (Deadline 6a) - Rev 4 - Late submission accepted at the discretion of the Examining Authority

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REP6a-027	Keadby Generation Limited Deadline 6a Submission - 9.12 Updated Compulsory Acquisition / Temporary Possession Schedule - Rev 2 - Late submission accepted at the discretion of the Examining Authority
REP6a-028	Keadby Generation Limited Deadline 6a Submission - 9.19 Applicant's Responses to Deadline 6 Submissions, Rule 17 Request of 25 April 2022, and ExQ 1.16.32, 2.1.1, 2.6.4 and 2.6.5 - Rev 1 - Late submission accepted at the discretion of the Examining Authority
REP6a-029	Keadby Generation Limited Deadline 6a Submission - 9.20 Applicant Response to the ExA's Rule 17 Request for Further Information - Rev 1 - Late submission accepted at the discretion of the Examining Authority
REP6a-030	Keadby Generation Limited Deadline 6a Submission - 9.21 Applicant's Response to Rule 17 Questions of 17 January 2022 - Rev 2 - Late submission accepted at the discretion of the Examining Authority
REP6a-031	Keadby Generation Limited Deadline 6a Submission - Change Request - Cover Letter - Late submission accepted at the discretion of the Examining Authority **[This document has been superseded by REP6a-032]**
REP6a-032	Keadby Generation Limited Deadline 6a Submission - Change Request - Cover Letter (Including Clarification With Respect To Order Land) - Late submission accepted at the discretion of the Examining Authority **[This document supersedes REP6a-031]**
REP6a-033	Keadby Generation Limited Deadline 6a Submission - Change Request - 1.2 Application Guide (Proposed Development Changes Accepted Version) - Rev 9 - Late submission accepted at the discretion of the Examining Authority
REP6a-034	Keadby Generation Limited Deadline 6a Submission - Change Request - 2.1 Draft Development Consent Order (Applicant's Final Preferred, With Proposed Development Changes) - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-035	Keadby Generation Limited Deadline 6a Submission - Change Request - 2.1 Draft Development Consent Order (Applicant's Final Preferred, With Proposed Development Changes) - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-036	Keadby Generation Limited Deadline 6a Submission - Change Request - 2.2 Explanatory Memorandum (Preferred form of Development Consent Order) - Rev 3 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-037	Keadby Generation Limited Deadline 6a Submission - Change Request - 2.2 Explanatory Memorandum (Applicant's Final Preferred, With Proposed

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	Development Changes) - Rev 3 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-038	Keadby Generation Limited Deadline 6a Submission - Change Request - 3.1 Book of Reference - Rev 6 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-039	Keadby Generation Limited Deadline 6a Submission - Change Request - 3.1 Book of Reference - Rev 6 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-040	Keadby Generation Limited Deadline 6a Submission - Change Request - 3.2 Statement of Reasons (Preferred form of DCO) - Rev 3 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-041	Keadby Generation Limited Deadline 6a Submission - Change Request - 3.2 Statement of Reasons (Preferred form of DCO) - Rev 3 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-042	Keadby Generation Limited Deadline 6a Submission - Change Request - 4.1 Site Location Plan - Rev 3 - Late submission accepted at the discretion of the Examining Authority
REP6a-043	Keadby Generation Limited Deadline 6a Submission - Change Request - 4.2 Land Plans - Rev 4 - Late submission accepted at the discretion of the Examining Authority
REP6a-044	Keadby Generation Limited Deadline 6a Submission - Change Request - 4.3 Works Plans - Rev 3 - Late submission accepted at the discretion of the Examining Authority
REP6a-045	Keadby Generation Limited Deadline 6a Submission - Change Request - 4.4 Access and Rights of Way Plans - Rev 4 - Late submission accepted at the discretion of the Examining Authority
REP6a-046	Keadby Generation Limited Deadline 6a Submission - Change Request - 4.5 Crown Land Plans - Rev 4 - Late submission accepted at the discretion of the Examining Authority
REP6a-047	Keadby Generation Limited Deadline 6a Submission - Change Request - 4.7 Indicative Proposed Power and Carbon Capture Layout, Elevations and Sections - Rev 2 - Late submission accepted at the discretion of the Examining Authority
REP6a-048	Keadby Generation Limited Deadline 6a Submission - Change Request - 4.15 Indicative Landscape and Biodiversity Plan - Rev 3 - Late submission accepted at the discretion of the Examining Authority
REP6a-049	Keadby Generation Limited

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	Deadline 6a Submission - Change Request - 4.18 SSE Land Ownership Plans - Rev 3 - Late submission accepted at the discretion of the Examining Authority
REP6a-050	Keadby Generation Limited Deadline 6a Submission - Change Request - 4.19 Haul Road Plans - Rev 3 - Late submission accepted at the discretion of the Examining Authority
REP6a-051	Keadby Generation Limited Deadline 6a Submission - Change Request - 5.6 Design and Access Statement (Proposed Development Changes Version) - Rev 3 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-052	Keadby Generation Limited Deadline 6a Submission - Change Request - 5.6 Design and Access Statement (Proposed Development Changes Version) - Rev 3 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-053	Keadby Generation Limited Deadline 6a Submission - Change Request - 5.9 Statutory Nuisance Statement - Rev 2 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-054	Keadby Generation Limited Deadline 6a Submission - Change Request - 5.9 Statutory Nuisance Statement - Rev 2 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-055	Keadby Generation Limited Deadline 6a Submission - Change Request - 5.12 Habitats Regulations Assessment Appropriate Assessment Report - Rev 4 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-056	Keadby Generation Limited Deadline 6a Submission - Change Request - 5.12 Habitats Regulations Assessment Appropriate Assessment Report - Rev 4 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-057	Keadby Generation Limited Deadline 6a Submission - Change Request - 9.6 Update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession (With Proposed Development Changes) - Rev 7 - Late submission accepted at the discretion of the Examining Authority
REP6a-058	Keadby Generation Limited Deadline 6a Submission - Change Request - 9.16 Summary of Canal Water Abstraction Assessment - Rev 3 - Late submission accepted at the discretion of the Examining Authority
REP6a-059	Keadby Generation Limited Deadline 6a Submission - Change Request - 10.2 Proposed Development Changes: Document Schedule - Rev 3 - Late submission accepted at the discretion of the Examining Authority

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REP6a-060	Keadby Generation Limited Deadline 6a Submission - Change Request - 10.3 Proposed Development Changes: Consultation Statement - Rev 1 - Late submission accepted at the discretion of the Examining Authority
REP6a-061	Keadby Generation Limited Deadline 6a Submission - Change Request - 10.4 Proposed Development Changes: Consent to Provision Authorising Compulsory Acquisition (Keadby Developments Limited) - Rev 1 - Late submission accepted at the discretion of the Examining Authority
REP6a-062	Keadby Generation Limited Deadline 6a Submission - Change Request - 10.5 Proposed Development Changes: Rationale and Need Statement (Deadline 6a Version) - Rev 2 - Clean - Late submission accepted at the discretion of the Examining Authority
REP6a-063	Keadby Generation Limited Deadline 6a Submission - Change Request - 10.5 Proposed Development Changes: Rationale and Need Statement (Deadline 6a Version) - Rev 2 - Tracked - Late submission accepted at the discretion of the Examining Authority
REP6a-064	Keadby Generation Limited Deadline 6a Submission - Change Request - 10.6 Proposed Development Changes: Environmental Statement (ES) Addendum Non-Technical Summary - Rev 3 - Late submission accepted at the discretion of the Examining Authority
REP6a-065	Keadby Generation Limited Deadline 6a Submission - Change Request - 10.7 Proposed Development Changes: Environmental Statement (ES) Addendum - Volume I (Main Volume) - Rev 3 - Late submission accepted at the discretion of the Examining Authority
REP6a-066	Keadby Generation Limited Deadline 6a Submission - Change Request - 10.8 Proposed Development Changes: Environmental Statement (ES) Addendum - Volume II (Chapters and Appendices) - Rev 3 - Late submission accepted at the discretion of the Examining Authority
REP6a-067	Keadby Generation Limited Deadline 6a Submission - Change Request - 10.9 Proposed Development Changes: Environmental Statement (ES) Addendum - Volume III (ES Figures) - Rev 3 - Late submission accepted at the discretion of the Examining Authority
REP6a-068	ClientEarth Deadline 6a Submission - Comments on Responses submitted at Deadline 6
REP6a-069	Environment Agency Deadline 6a Submission - Final update regarding progress that has been made with Affected Persons in respect of Compulsory Acquisition (CA) and Temporary Possession (TP)
REP6a-070	National Grid Electricity Transmission Plc

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	Deadline 6a Submission - Responses to any further information requested by the ExA
REP6a-071	Network Rail Deadline 6a Submission - Position Statement
REP6a-072	Weightmans LLP on behalf of Northern Powergrid Deadline 6a Submission - Position Statement
Deadline 7 – 24 May 2022 Deadline for receipt by the ExA of: - The submission of final and completed (signed and dated) versions of the Statements of Common Ground (SoCG) between the Applicant and Natural England, Northern Powergrid, the United Kingdom Health Security Agency, the Canal and River Trust, Network Rail, and Keadby with Althorpe Parish Council; or submission of a detailed explanation from both the Applicant and relevant Interested Party(ies) as to why it has not been possible to submit the final and completed (signed and dated) versions of the relevant SoCG(s); - Comments on responses submitted for Deadline 6a; - Responses to any further information requested by the ExA; - Comments on the RIES (if required).	
REP7-001	Keadby Generation Limited Deadline 7 Submission - Cover Letter
REP7-002	Keadby Generation Limited Deadline 7 Submission - 1.2 Application Guide
REP7-003	Keadby Generation Limited Deadline 7 Submission - 5.10 Landscaping and Biodiversity Management and Enhancement Plan (Clean)
REP7-004	Keadby Generation Limited Deadline 7 Submission - 5.10 Landscaping and Biodiversity Management and Enhancement Plan (Tracked)
REP7-005	Keadby Generation Limited Deadline 7 Submission - 8.3 Statement of Common Ground with Natural England
REP7-006	Keadby Generation Limited Deadline 7 Submission - 8.6 Statement of Common Ground with National Grid Carbon Limited (part of National Grid Ventures) (Deadline 7)
REP7-007	Keadby Generation Limited Deadline 7 Submission - 8.8 Statement of Common Ground with Canal & River Trust
REP7-008	Keadby Generation Limited Deadline 7 Submission - 8.9 Statement of Common Ground with Network Rail
REP7-009	Keadby Generation Limited Deadline 7 Submission - 8.12 Statement of Common Ground with Northern Powergrid
REP7-010	Keadby Generation Limited Deadline 7 Submission - 8.13 Statement of Common Ground with United Kingdom Health Security Agency (formerly Public Health England)

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REP7-011	Keadby Generation Limited Deadline 7 Submission – 8.14 Draft Statement of Common Ground with Keadby with Althorpe Parish Council (Deadline 7)
REP7-012	Keadby Generation Limited Deadline 7 Submission - 9.5 Statement of Commonality of Statements of Common Ground (Deadline 7 Version)
REP7-013	Keadby Generation Limited Deadline 7 Submission - 9.22 Applicant's Response to Report on the Implications for European Sites(RIES) dated 3 May 2022
REP7-014	Keadby Generation Limited Deadline 7 Submission - 9.23 Response to Rule 17 Questions dated 12 May 2022 and Additional Submission published 16 May 2022
REP7-015	North Lincolnshire Council Deadline 7 Submission - Responses to any further information requested by the ExA
REP7-016	North Lincolnshire Council Deadline 7 Submission - Comments on the RIES (if required)
REP7-017	Eversheds Sutherland (International) LLP on behalf of National Grid Electricity Transmission Plc (NGET) Deadline 7 Submission - Responses to any further information requested by the ExA
REP7-018	Environment Agency Deadline 7 Submission - Responses to any further information requested by the ExA
REP7-019	UK Health Security Agency (UKHSA) Deadline 7 Submission - Responses to any further information requested by the ExA
REP7-020	Canal & River Trust Deadline 7 Submission - Responses to any further information requested by the ExA , and Position Statement
REP7-021	Natural England Deadline 7 Submission - Comments on the Report on the Implications for European Sites (RIES)

Deadline 7a – 06 June 2022

Deadline for receipt by the ExA of:
- Comments on responses submitted for Deadline 7;
- Response to any further information requested by the ExA;
- A final update regarding progress that has been made with Affected Persons in respect of Compulsory Acquisition (CA) and Temporary Possession (TP) (or confirmation that no changes have been made since Deadline 6a);
- The final Book of Reference (or confirmation that no changes have been made since Deadline 6a);
- The final CA/ TP schedule (or confirmation that no changes have been made since Deadline 6a);
- The final Guide to the Application (or confirmation that no changes have been made since Deadline 6a);
- Final preferred version of the Applicant's DCO in the SI template validation report and validated copy of the DCO (or confirmation that no changes have been made since

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Deadline 6a); - Final preferred version of the Applicant's DCO in word format (or confirmation that no changes have been made since Deadline 6a).	
REP7a-001	Keadby Generation Limited Deadline 7a Submission - Cover Letter
REP7a-002	Keadby Generation Limited Deadline 7a Submission -Response to the ExA's Rule 17 letter dated 26 May 2022 [PD-022]
REP7a-003	Keadby Generation Limited Deadline 7a Submission - 1.2 Application Guide
REP7a-004	Keadby Generation Limited Deadline 7a Submission - 2.1 Validation Report for Draft Development Consent Order
REP7a-005	Keadby Generation Limited Deadline 7a Submission - 2.1 Draft Development Consent Order (Tracked)
REP7a-006	Keadby Generation Limited Deadline 7a Submission - 2.1 Draft Development Consent Order (Clean)
REP7a-007	Keadby Generation Limited Deadline 7a Submission - 2.2 Explanatory Memorandum (Tracked)
REP7a-008	Keadby Generation Limited Deadline 7a Submission - 2.2 Explanatory Memorandum (Clean)
REP7a-009	Keadby Generation Limited Deadline 7a Submission - 5.4 Schedule of Other Consents and Licences (Tracked)
REP7a-010	Keadby Generation Limited Deadline 7a Submission - 5.4 Schedule of Other Consents and Licences (Clean)
REP7a-011	Keadby Generation Limited Deadline 7a Submission - 9.6 Update on the progress that has been made with Affected Persons in respect of Compulsory Acquisition and Temporary Possession
REP7a-012	Keadby Generation Limited Deadline 7a Submission - 9.7 Schedule of Updates to Draft Development Consent Order
REP7a-013	Keadby Generation Limited Deadline 7a Submission - 9.12 Updated Compulsory Acquisition/ Temporary Possession Schedule
REP7a-014	Keadby Generation Limited Deadline 7a Submission - 9.24 Legal Submission - Response to Examiner Question 5
REP7a-015	Canal and River Trust Deadline 7a Submission - Response to any further information requested by the ExA, and Position Statement
REP7a-016	Environment Agency

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	Deadline 7a Submission - Response to any further information requested by the ExA, and Position Statement
REP7a-017	Marine Management Organisation (MMO) Deadline 7a Submission - Comments on responses submitted for Deadline 7
REP7a-018	BDB Pitmans LLP on behalf of National Grid Carbon Limited Deadline 7a Submission - Response to any further information requested by the ExA, and Position Statement
REP7a-019	Eversheds Sutherland on behalf of National Grid Electricity Transmission Plc (NGET) and National Grid Gas Plc (NGG) Deadline 7a Submission - Response to any further information requested by the ExA, and Position Statement
REP7a-020	Eversheds Sutherland on behalf of Network Rail Infrastructure Limited Deadline 7a Submission - Response to any further information requested by the ExA, and Position Statement
Other Documents	
OD-001	KDB3 - Regulation 32 Transboundary Screening
OD-002	Keadby Generation Limited Section 56 Notice
OD-003	Keadby Generation Limited Response to the s51 advice – Waste Technical Note – Originally published as an Other Document and subsequently accepted as an Additional Submission at the discretion of the Examining Authority
OD-004	Keadby Generation Limited Regulation 16 Notice
OD-005	Keadby Generation Limited Section 56 Certificate
OD-006	Keadby Generation Limited Section 59 Certificate

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APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
µg	Microgram(s)
A2O	Application to Offer
AA	Appropriate Assessment
AADT	Annual Average Daily Traffic
ABP Humber	Associated British Ports Humber
AEoI	Adverse Effects on Integrity
AEP	Annual Exceedance Probability
AGI	Above Ground Installation
AIL	Abnormal Indivisible Load
Air Quality Directive	European Union (EU) Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe
AOD	Above Ordnance Datum
AP	Affected Person
Applicant	Keadby Generation Limited
AQAL	Air Quality Assessment Level
AQS	Air Quality Strategy
AS	Additional Submission
ASI	Accompanied Site Inspection
BAT	Best Available Technique
BAT-AEL	Best Available Technique associated emission levels
BEIS	Business, Energy and Industrial Strategy
Birds Directive	European Union (EU) Council Directive 2009/147/EC on the conservation of wild birds
BNG	Biodiversity net gain
BoR	Book of Reference
CA	Compulsory Acquisition
CA Guidance	Department for Communities and Local Government's guidance on compulsory acquisition
CAH	Compulsory Acquisition Hearing
Carbon Plan	2011 Carbon Plan
CCA2008	Climate Change Act 2008 (as amended)
CCGT	Combined Cycle Gas Turbine
CCP	Carbon Capture Plant
CCR	Carbon Capture Ready
CCS	Carbon Capture and Storage
CCUS	Carbon Capture, Utilisation and Storage
CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
CJEU	European Union Court of Justice
CO	Carbon monoxide
CO_2	Carbon dioxide
COMAH	Control of Major Accident Hazards
CTMP	Construction Traffic Management Plan
CWTP	Construction Workers Travel Plan
dB	Decibel(s)
DCO	Development Consent Order

Abbreviation or usage	Reference
dDCO	draft Development Consent Order
Decisions Regulations	The Infrastructure Planning (Decisions) Regulations 2010
DEFRA	Department for the Environment, Food and Rural Affairs
DEMP	Decommissioning Environmental Management Plan
DL	Deadline
DML	Deemed Marine Licence
EA	Environment Agency
EA1995	Environment Act 1995
EAL	Environmental Assessment Level
EIA	Environmental Impact Assessment
EIA Development	Development for which an Environmental Impact Assessment is required
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EM	Explanatory Memorandum
EMF	Electromagnetic field
EMP	East Inshore and East Offshore Marine Plans
EP	Environmental Permit
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EP Regulations	Environmental Permitting (England and Wales) Regulations 2016
ES	Environmental Statement
ETS	Emissions Trading Scheme
EU	European Union
EWP	Energy White Paper (HM Government, 2020)
ExA	Examining Authority
ExQ1	Examining Authority's First Written Questions
ExQ2	Examining Authority's Further Written Questions
FRA	Flood Risk Assessment
FZ	Flood Zone
GHG	Greenhouse gas
GVA	Gross Value Added
GWh	Gigawatt hour
ha	Hectare(s)
Habitats Regulations	Conservation of Habitats and Species Regulations 2017 (as amended)
Habitats Directive	European Union Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora
HE	Historic England
HEO	Historic Environment Officer
HER	Historic Environment Record
HEWL	Humber Extreme Water Level Study 2071
HGV	Heavy goods vehicle
HLCP	Humber Low Carbon Pipeline
HRA	Habitats Regulations Assessment

Abbreviation or usage	Reference
HRSG	Heat Recovery Steam Generator
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
IDB	Inland Drainage Board being the Isle of Axholme and North Nottinghamshire Water Level Management Board
IED	Industrial Emissions Directive – European Union Directive (2010/75/EU) committing member states to control and reduce the impact of industrial emissions on the environment
INNS	Invasive non-native species
IP	Interested Party
ISH	Issue Specific Hearing
ISH1	Issue Specific Hearing into Environmental Matters
ISH2	Issue Specific Hearing into the Development Consent Order
ISO	International Organization for Standardization
JNCC	Joint Nature Conservation Committee
K1	Keadby 1 Power Station
K2	Keadby 2 Power Station
kg	Kilogram(s)
kgN/ha/yr	Kilogram(s) of nitrogen per hectare per year (nitrogen yield)
km	Kilometre(s)
kV	Kilovolt(s)
LBMEP	Landscaping and Biodiversity Management and Enhancement Plan
LIR	Local Impact Report
LOAEL	Lowest Observable Adverse Effect Level
LSE	Likely significant effect
LSOA	Lower Super Output Area
LV	Legally binding concentration-based limit value
LWS	Local Wildlife Site
m	Metre(s)
m^3	Metre(s) cubed
MaCAA	Marine and Coastal Access Act 2009
MCA	Maritime and Coastguard Agency
mm	Millimetre(s)
MMO	Marine Management Organisation
MOC	Minimum Offtake Connection
MoD	Ministry of Defence
MPS	Marine Policy Statement
MW	Megawatt(s)
NE	Natural England
NG	National Grid
NGC	National Grid Carbon Ltd
NGET	National Grid Electricity Transmission plc
NGG	National Grid Gas plc
NH_3	Ammonia
NIC	National Infrastructure Commission

Abbreviation or usage	Reference
NLC	North Lincolnshire Council
NLCS	North Lincolnshire Core Strategy (2011)
NLLDF	North Lincolnshire Local Development Framework
NLLP	North Lincolnshire Local Plan (2003)
NO_2	Nitrogen dioxide
NOEL	No Observed Effect Level
NO_x	Oxides of nitrogen
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NPS EN-1	National Policy Statement - Overarching National Policy Statement for Energy
NPS EN-2	National Policy Statement for Fossil Fuel Electricity Generating Infrastructure
NPS EN-4	National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines
NPS EN-5	National Policy Statement for Electricity Network Infrastructure
NPSE	Noise Policy Statement for England
NR	Network Rail Infrastructure Ltd
NRMM	Non-Road Mechanical Machinery
NSIP	Nationally Significant Infrastructure Project
NSN	National Site Network
NSR	Noise Sensitive Receptor
NTS	National Transmission System
OFH	Open Floor Hearing
OMH	Open mosaic habitat
Omitted Companies	A group of SSE companies (SSE Plc; SSE Generation Limited; Keadby Wind Farm Limited and Keadby Developments Limited), who are persons within one or more categories set out in s57 (Categories for purposes of s56(2)(d)), that were omitted from the notifications and publicity undertaken pursuant to s56 of the Planning Act 2008 and Regulation 16 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 572) (as amended)
PA2008	Planning Act 2008
PARCA	Planning and Advanced Reservation of Capacity Agreement
PC	Process Contribution
PCC	Power and Carbon Capture
PEC	Predicted Environmental Concentration
PM	Preliminary Meeting
PM_{10}	Particulate matter of 10µg/m3 or less
$PM_{2.5}$	Particulate matter of 2.5µg/m3 or less
PM_x	Particulate matter
PP	Protective provision
Proposed Development	Keadby 3 Carbon Capture Power Station

Abbreviation or usage	Reference
PRoW	Public Right of Way
PS	Planning Statement
PSED	Public Sector Equality Duty
R	Requirement
Ramsar Convention	Ramsar Convention on Wetlands of International Importance 1971 (as amended)
RBMP	River Basin Management Plan
rDCO	recommended Development Consent Order
RIES	Report on Implications for European Sites
RR	Relevant Representation
s	Section(s)
SAC	Special Area of Conservation
Scoping Opinion	Opinion about the scope of an Environmental Statement to be prepared
SCR	Selective Catalytic Reduction
SFRA	Strategic Flood Risk Assessment
SO_2	Sulphur dioxide
SO_x	Sulphur oxides
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SRN	Strategic Road Network
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SU	Statutory Undertaker
SuDS	Sustainable Drainage Systems
TA	Transport Assessment
tCO_{2e}	Tonnes of carbon dioxide equivalent
TCPA1990	Town and Country Planning Act 1990 (as amended)
Technical Note	Waste Management Technical Note [OD-003]
TP	Temporary Possession
TTRO	Temporary Traffic Regulation Order
TTWA	Travel to Work Area
UK	United Kingdom
UKHSA	United Kingdom Health Security Agency
USI	Unaccompanied Site Inspection
VP	Viewpoint
Waste Directive	Waste Directive (Directive 2008/98/EC)
Water Environment Regulations	The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (as amended)
WCA81	Wildlife and Countryside Act 1981
WFD	Water Framework Directive (Council Directive 2000/60/EC)
WMPE	Waste Management Plan for England (DEFRA, 2013)

Abbreviation or usage	Reference
WR	Written Representation
WSI	Written Scheme of Investigation

APPENDIX C: THE RECOMMENDED DCO

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

202[X] No. ****

INFRASTRUCTURE PLANNING

The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X]

Made - - - - ***

Coming into force - - ***

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An application under section 37 of the Planning Act 2008(**a**) ("the 2008 Act") has been made to the Secretary of State for an order granting development consent.

[The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 2 of Part 6 of the 2008 Act. The examination was carried out in accordance with Chapter 4 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**b**). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 74 of the 2008 Act.]

[The Secretary of State has considered the report and recommendations of the Examining Authority, has considered the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**c**) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.]

(**a**) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20). Part 7 was amended by S.I. 2017/16.
(**b**) S.I. 2010/103 amended by S.I. 2012/635.
(**c**) S.I. 2017/572 amended by S.I. 2018/695, S.I. 2018/942.

[The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.]

[Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order—]

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X] and comes into force on [XXXX].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**b**);

"the 1980 Act" means the Highways Act 1980(**c**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**d**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**e**);

"the 1990 Act" means the Town and Country Planning Act 1990(**f**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**g**);

"the 2008 Act" means the Planning Act 2008(**h**);

"the 2009 Act" means the Marine and Coastal Access Act 2009(**i**)

"access and rights of way plans" means the plans of that name identified in the Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;

"address" includes any number or address used for the purposes of electronic transmission; "AOD" means above ordnance datum;

"AGL" means above ground level;

"apparatus" has the same meaning as in Part 3 of the 1991 Act except that it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

"application guide" means the document of that name identified in the Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the application guide for the purposes of this Order;

(**a**) 1961 c.33.
(**b**) 1965 c.56.
(**c**) 1980 c.66.
(**d**) 1981 c.66.
(**e**) 1984 c.27.
(**f**) 1990 c.8.
(**g**) 1991 c.22.
(**h**) 2008 c.29.
(**i**) 2009 c.23.

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

"book of reference" means the document of that name identified in the table in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"canal" means the Stainforth and Keadby Canal;

"Canal and River Trust" means the body of that name which is a company limited by guarantee (company no. 07807276) and a registered charity (charity commission No 146792) whose registered office is at First Floor, North Station House, 550 Elder Gate, Milton Keynes, MK9 1BB;

"carbon capture and compression plant" means the building and associated works comprised in Work No. 1C and Work No. 7 shown on the works plans and which are designed to capture, compress and export to the National Grid Carbon Gathering Network, a minimum rate of 90% of the carbon dioxide emissions of the generating station operating at full load;

"carriageway" has the same meaning as in the 1980 Act;

"combined heat and power assessment" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the combined heat and power assessment for the purposes of this Order;

"commence" means carry out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins) comprised in or for the purposes of the authorised development other than the permitted preliminary works (except where stated to the contrary) and "commencement", "commenced" and cognate expressions are to be construed accordingly;

"commercial use" means the export of electricity, and of captured compressed carbon dioxide emissions, from the authorised development on a commercial basis, following the completion of commissioning of the authorised development and the first occupation of the authorised development by the undertaker;

"commissioning" means the process of testing all systems and components of the authorised development (including the carbon capture and compression plant and systems and components which are not yet installed but the installation of which is near to completion) in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker and "commission" and other cognate expressions, in relation to the authorised development are to be construed accordingly;

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

"construction working site" means a construction site associated with the works including hard standings, lay down and storage areas for materials, equipment, areas for spoil, areas for vehicle parking, areas for welfare facilities including offices, canteen and washroom facilities, workshop facilities temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

"deemed marine licence" means a licence as set out in Schedule 13 and deemed by article 39 to have been granted under Part 4 of the 2009 Act by virtue of section 149A of the 2008 Act;

"design principles" means the document of that name (being Appendix 1 of the design and access statement) identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the design principles for the purposes of this Order;

"Electricity Act" means the Electricity Act 1989(**a**);

"electronic transmission" means a communication transmitted—

(**a**) 1989 c.29

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

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

"environmental statement" means the document of that name identified in Schedule 12 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

"flood risk assessment" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

"framework construction environmental management plan" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction environmental management plan for the purposes of this Order;

"framework construction traffic management plan" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction framework management plan for the purposes of this Order;

"framework construction workers travel plan" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction workers travel plan for the purposes of this Order;

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

"group company" means in relation to the undertaker company, that company and any company which is from time to time a holding company of that company or a subsidiary or subsidiary undertaking of that company or of such holding company;

"haul road plans" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the haul road plans for the purposes of this Order;

"haul road" means the temporary haul road constructed pursuant to the haul road planning permission (together with such alterations pursuant to Work No. 10a);

"haul road planning permission" means the conditional planning permission with North Lincolnshire Council reference PA/2019/1595, dated 15 November 2019 as varied by planning permission referenced PA/2021/188 dated 1 April 2021, and any other variations thereto (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act);

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

"indicative landscaping and biodiversity plan" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative landscaping and biodiversity plan for the purposes of this Order;

"indicative landscaping and biodiversity management and enhancement plan" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative landscaping and biodiversity management and enhancement plan for the purposes of this Order;

"indicative lighting strategy" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative lighting strategy for the purposes of this Order;

"indicative surface water drainage plan" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative surface water drainage plan for the purposes of this Order;

"land plans" means the plans of that name identified in the table in Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the land plans for the purposes of this Order;

"licence conditions" means the conditions set out in respect of the deemed marine licence in Schedule 13;

"limits of deviation" means the limits of deviation for each of the works as comprised in the works plans;

"main river" means a watercourse shown as such on the main river map for England and includes any structure or appliance for controlling or regulating the flow of water into or out of the channel which (a) is a structure or appliance situated in the channel or in any part of the bank of the channel; and (b) is not a structure of appliance vested in or controlled by an internal drainage board and "river" shall be construed accordingly;

"maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development provided that any such activities do not give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly;

"MMO" means the Marine Management Organisation;

"NGC" means National Grid Carbon Limited (Company Registration Number 03932833) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

"National Grid Carbon Gathering Network" means the proposed network of high pressure carbon dioxide pipelines to be developed by NGC to transport carbon dioxide from power and industrial carbon dioxide emitters to compression facilities for onwards geological storage;

"NGET" means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

"NGG" means National Grid Gas plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

"Northern Powergrid (Yorkshire) plc" means the company of the same name (Company Registration Number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF;

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

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

"outline written scheme of investigation" means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order;

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

"permitted preliminary works" means all or any of—

(c) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, and removal of plant, structures and machinery;

(d) above ground site preparation for temporary facilities for the use of contractors;

(e) the provision of temporary means of enclosure and site security for construction;

(f) the temporary display of site notices or advertisements;

(g) site clearance (including vegetation removal);

"Pilfrey laydown plans" means the document of that name identified in the Schedule 12 (documents and plans to be certified) approved as part of the Pilfrey laydown planning permission and which is certified by the Secretary of State as the Pilfrey laydown plans for the purposes of this Order;

(**a**) 1981 c.67. This Act was amended by the Planning and Compulsory Purchase Act 1991 (c.34).

"Pilfrey laydown planning permission" means the conditional planning permission with North Lincolnshire Council reference PA/2018/1950, dated 23 November 2018, and any other variations thereto (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act);

"Planning Acts" means the Town and Country Planning Act 1947(**a**), the Town and Country Planning Act 1962(**b**), the Town and Country Planning Act 1971(**c**), and the 1990 Act;

"plot(s)" means each of the plots listed in the book of reference and 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 (Requirements) and "Requirement" means any one of the Requirements;

"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 any part of a street;

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

"street works" means the works listed in article 9(1);

"Upper Tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means, subject to article 7(2) (consent to transfer the benefit of the Order), the person who has the benefit of this Order in accordance with article 6 being Keadby Generation Limited;

"watercourse" includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

"works plans" means the plans (which show limits of deviation for each numbered work) of that name identified in Schedule 12 and which are certified by the Secretary of State as the works plans 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 to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access rights of way plans are to be taken to be measured along that work.

(4) Where any definitions in paragraph (1) are duplicated or similar to definitions within the interpretation sections of Schedule 13 (deemed marine licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009/Deemed MMO provisions) then (unless expressly stated otherwise in Schedule 13) defined terms in this article 2 shall not apply to Schedule 13.

(5) 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 and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, "Work No. 1A" or "numbered work 1A"), is a reference to the work so designated in that Schedule and a reference to "Work No. 1" or "numbered work 1" means numbered works 1A to 1E inclusive and the same principle applies to such numbered works that contain letters.

(**a**) 1947 c.51. This Act was repealed by the Planning (Consequential Provision) Act 1990 (c.11).
(**b**) 1962 c.38. This Act was repealed by the Planning (Consequential Provision) Act 1990.
(**c**) 1971 c.78. This Act was repealed by the Planning (Consequential Provision) Act 1990.

(6) In this Order, the expression "includes" is to be construed without limitation.

(7) In this Order, references to any statutory body include that body's successor bodies.

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

(9) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the access and rights of way plans.

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 may be situated only within the corresponding numbered area shown on the works plans.

Maintenance of authorised development

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

Operation of authorised development

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

(2) This article does not relieve the undertaker of any other 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. Subject to article 7 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for:

(a) Work No. 2A in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGG;

(b) Work No. 3A in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGET;

(c) Work No 3B in relation to which the provisions of this Order have effect for the benefit of the undertaker or Northern Powergrid (Yorkshire) Plc; and

(d) Work No. 7B (and any associated works described in Work No. 7(c)) in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGC.

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 which resides for the time being in the undertaker (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 which resides for the time

being in the undertaker (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where a transfer or grant 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 Secretary of State must consult the MMO before giving consent to the transfer or grant to a transferee or lessee any or all of the benefit of the provisions of this Order and such release of statutory rights as may be so agreed.

(5) 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) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**b**);

(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

(iv) is a company within a group company.

(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 such claims that no compensation is payable.

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

(7) The notification referred to in paragraph (6) 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 (8), the date on which the transfer will take effect;

(c) the powers to be transferred or granted;

(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.

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

(9) The notice given under paragraph (7) 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.

(**a**) 1989 c.29. Section 6 was amended by Section 30 of the Utilities Act 2000 (c.27), Sections 89, 136, 145 of, and Schedules 19 and 23 to, the Energy Act 2004 (c.29), paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c.27), regulation 19 of S.I. 2011/2704 and articles 6 and 21 of S.I. 2012/2400.

(**b**) 1986 c.44 (as amended)

Application and modification of statutory provisions

8.—(1) The provisions of the Neighbourhood Planning Act 2017(**a**) insofar as they relate to temporary possession of land under articles 27 (temporary use of land for carrying out the authorised development) and 28 (temporary use of land for maintaining the authorised development) 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, operation or maintenance of any part of the authorised development.

(2) As from the date on which the authorised development (including the permitted preliminary works) is commenced any approval, grant, permission, authorisation or agreement made under the Planning Acts or Electricity Act prior to that date will cease to have effect but only insofar as such approval, grant, permission, authorisation or agreement is inconsistent with the authorised development or anything approved under the Requirements to be carried out within the Order limits.

PART 3

STREETS

Street works

9.—(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) as is within the Order limits and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) drill, tunnel or bore under the street;

(c) place and keep apparatus in the street;

(d) maintain apparatus in the street, change its position or remove it;

(e) construct a bridge over the street; and

(f) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d) and (e).

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

(3) Where the undertaker is not the street authority, sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc., of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Schedule 4 (streets subject to permanent 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 paragraph (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

(a) alter the level or increase the width of any kerb, footway, cycle track or verge; and

(b) make and maintain passing places.

(**a**) 2017 c.20.

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

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

(5) If within 28 days of receiving an application for approval under paragraph (3) a highway authority fails to notify the undertaker of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Construction and maintenance of new or altered means of access

11.—(1) Those parts of each means of access specified in 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 their completion and from the expiry of that period (and following an inspection by the highway authority and it being satisfied with the standard of the highway works including for the avoidance of doubt any remedial works carried out by the undertaker) by and at the expense of the highway authority.

(2) 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.

(3) For the purposes of a defence under paragraph (2), 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.

(4) 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 relation to that street for the purposes of Part 3 of that Act; or

(b) has effect in relation to street works with regard to which Part 3 of the 1991 Act apply.

Access to works

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

(a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 4 (streets subject to permanent alteration of layout);

(b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a highway authority fails to notify the undertaker of its decision within 28 days of receiving an application under paragraph (1) or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

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, prohibition, restriction, 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 11(1) (construction and maintenance of new or altered means of access); 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; 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 14(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

(**a**) 1991 c.56. This Section was amended by Sections 35 and 43(2) of, and paragraph 1 of Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43), Sections 36 and 99 of the Water Act 2003 (c.37) and paragraph 16 of Schedule 3 to the Flood and Water Management Act 2010 (c.29).

to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs but approval must not be unreasonably withheld; and

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

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

(6) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a consent granted by the Environment Agency.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016(**a**).

(8) If a person who receives an application for consent under paragraph (3) as approved under paragraph (4)(a) fails to notify the Undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval as the case may be.

(9) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(**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 or upon which entry is required in order to carry out monitoring or surveys in respect of 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

(**a**) S.I. 2016/1154
(**b**) 1964 c.40.
(**c**) 1991 c.57.

(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.

(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 of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Temporary interference with canal and public rights of navigation

16.—(1) The undertaker may in connection with the construction of the authorised development (and subject to Part 2 of Schedule 10 (protective provisions)—

(a) temporarily interfere with the waterway, by constructing or maintaining temporary works at any point within the Order limits as it considers necessary or expedient;

(b) temporarily moor or anchor barges or other vessels or craft in the River Trent or the canal;

(c) temporarily close any part of the canal within the Order limits to navigation; and

(d) load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials within the Order limits in connection with the construction of the authorised development.

(2) The power conferred by paragraph (1)(c) must be exercised in a way which secures—

(a) that no more of the canal is closed to navigation at any time than is necessary in the circumstances; and

(b) that if complete closure of a part of the canal to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use it.

(3) Any person who, as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private right of navigation is entitled to compensation to be paid by the undertaker to be determined, in case of dispute, under Part 1 of the 1961 Act.

Use of Private roads for construction

17.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with the construction of the authorised works.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1)

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(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 21 (compulsory acquisition of rights etc.), article 24 (acquisition of subsoil or airspace only), article 27 (temporary use of land for carrying out the authorised development), article 28 (temporary use of land for maintaining the authorised development) and article 32 (Crown rights).

(4) This article does not apply in relation to any right of apparatus to which section 138 of the 2008 Act (extinguishment of right, and removal, of apparatus of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

Statutory authority to override easements and other rights

19.—(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 any restrictions as to the use of land arising by virtue of a contract.

(4) Section 10(2) 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).

Time limit for exercise of authority to acquire land compulsorily

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

(a) no notice to treat is to be served under Part 1 of the 1965 Act; and

(b) no declaration is to be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981 and Part 1 of the Land Compensation Act 1961).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except 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 etc.

21.—(1) Subject to paragraphs (2) and (3), 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 18 (compulsory acquisition of land) by creating new rights as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 6 (land in which only new rights etc. may be acquired) the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights as are specified in column (2) of that Schedule.

(3) Following approval by the relevant planning authority of the details for Work No. 4 pursuant to Requirement 5(4) the undertaker shall:

(a) if Work No. 4A is to be developed, serve written notice on those plots (being plots falling within Work No. 4B) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots; or

(b) if Works No. 4B is to be developed, serve written notice on those plots (being plots falling within Work No. 4A) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots.

(4) Following approval by the relevant planning authority of the details for Work No. 3B pursuant to Requirement 5(3) the undertaker shall serve written notice on those with interests in plots not required for the approved Work No. 3B confirming the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots.

(5) Subject to section 8 of the 1965 Act (other provisions as to divided land), Schedule 2A to the 1965 Act (counter-notice requiring purchase of land not in notice to treat) as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights), and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires a right over land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(6) Schedule 7 (modification of compensation and compulsory purchase enactments 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.

(7) In any case where the acquisition of new rights under paragraph (1) or (2) 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 create and acquire such rights to the statutory undertaker in question.

(8) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (7) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(9) This article is subject to article 32 (Crown Rights).

Private rights

22.—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement;

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry); or

(c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights 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 earlier.

(3) Subject to the provisions of this article, all private rights and restrictions 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 or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 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 29 (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, the acquisition of rights over the land or the creation of rights over the 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; or

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested 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.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981 and Part 1 of the Land Compensation Act 1961

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

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of act) for subsection (2) substitute—

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

(4) In section 5(2) (earliest date for execution of declaration), omit the words from ", and this subsection" to the end.

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

(6) In section 5B (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute—

"section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X]."

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

"(b) 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 (notice of authorisation of compulsory acquisition) of the Planning Act 2008,"

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

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

"(2) But see article 24(3) (acquisition of subsoil or airspace only) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X] which excludes the acquisition of subsoil or airspace only from this Schedule."

(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 and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965).

(11) Part 1 of the 1961 Act shall apply where pursuant to this Order there arises a dispute as to compensation which is payable pursuant to this Order notwithstanding that such dispute may not relate to compensation for the acquisition of land authorised by this Order.

Acquisition of subsoil or airspace only

24.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) and paragraph (1) of article 21 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights over land may be created or acquired under those provisions instead of acquiring the whole of the land.

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

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Modification of Part 1 of the Compulsory Purchase Act 1965

25.—(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) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X]".

(3) In section 11A (powers of entry: further notices of entry)—

(a) in subsection (1)(a) after "land" insert "under that provision"; and

(b) in subsection (2) after "land" insert "under that provision".

(4) In section 20(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 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X]".

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

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see article 24(3) (acquisition of subsoil or airspace only) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule.";

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 27 (temporary use of land for carrying out the authorised development) or article 28 (temporary use of land for maintaining the authorised development) or article 34 (protective works to buildings) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X]."

Rights under or over streets

26.—(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) does not apply in relation to—

(a) any subway or underground building; or

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

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

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

(a) enter on and take temporary possession of—

(i) so much of the land specified in column (1) of the table in Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that table; and

(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) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

(b) remove any buildings, fences, debris 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 the table in Schedule 8 (land of which temporary possession may be taken), or any mitigation works.

(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 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.

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

(a) in the case of land specified in paragraph (1)(a)(i) after the 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 1981 Act in relation to the land or has otherwise acquired the land subject to temporary possession.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to the land 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 required to replace a building or debris removed under this article.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by 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 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Nothing in this article precludes the undertaker from—

(a) creating and acquiring new rights over any part of the Order land identified in Schedule 6 (New Rights) under article 21 (compulsory acquisition of rights etc.); or

(b) acquiring any right in the subsoil of or airspace over any part of the Order land under article 24 (acquisition of subsoil or airspace only) or article 26 (rights under or over streets).

(11) 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.

(12) 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).

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8 (land of which temporary possession may be taken).

Temporary use of land for maintaining the authorised development

28.—(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 land if such possession is reasonably required for the purpose of maintaining the authorised development;

(b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 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 section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the 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 five years beginning with the date which that part of the authorised development is first operational except in respect of any part of the authorised development which is comprised of landscaping where "the maintenance period" means such period as set out in the landscape and biodiversity strategy which is approved by the relevant planning authority pursuant to Requirement 6 of Schedule 2 beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

29. Subject to Schedule 10 (protective provisions), the undertaker may—

(a) acquire compulsorily the land belonging to statutory undertakers within the Order land;

(b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under or within the Order land; and

(c) create and acquire compulsorily the new rights over land belonging to statutory undertakers within the Order land.

Apparatus and rights of statutory undertakers in streets

30. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of new or altered means of access) or article 12 (access to works) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 10 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

31.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers), 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 30 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003(**a**); and

"public utility undertaker" has the same meaning as in the 1980 Act.

PART 6

OPERATIONS

Crown Rights

32.—(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 use, enter on or in any manner interfere with any land or rights of any description (including any part 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.

(b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in section 227 of the 2008 Act) that 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 that section).

(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.

Felling or lopping of trees and removal of hedgerows

33.—(1) The undertaker may fell or lop any tree or shrub adjoining 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 from obstructing or interfering with the passage of abnormal indivisible load vehicles to the extent necessary for the purposes of construction of the authorised development.

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

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

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

(5) The undertaker may not pursuant to paragraph (1) or (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(**a**) 2003 c.21.

(6) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(**a**).

Protective works to buildings

34.—(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 five years beginning with the day on which that part of the authorised development is first brought into operational 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)(b), (5)(c), (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 44 (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 five years beginning with the date of completion of the part of the authorised development carried out in the vicinity of the building 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.

(**a**) S.I. 1997/1160.

(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) must be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article "protective works" in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

PART 7

MISCELLANEOUS AND GENERAL

Protective provisions

35. Schedule 10 (protective provisions) has effect.

Restoration Works

36.—(1) If the authorised works have not been commenced within the period specified in Requirement 2 the undertaker will within 6 months from the expiry of such period—

(a) submit to the relevant planning authority for its written approval a scheme for the removal of the haul road, including its road bridges and associated infrastructure and restoration of the land, including the incorporation of biodiversity enhancements and a timetable for implementation; and

(b) submit to the relevant planning authority for its written approval a scheme for the restoration of the land described in the Pilfrey laydown plans to its former condition.

(2) Both schemes shall be implemented by the undertaker as approved and thereafter retained unless agreed otherwise with the relevant planning authority.

Application of landlord and tenant law

37.—(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

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

Deemed marine licence under the Marine and Coast Access Act 2009

39. The undertaker is deemed to have been granted the licence under Part 4 of the 2009 Act contained in Schedule 13 to this Order, to carry out the works and make deposits described in that licence, and subject to the licence conditions which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

Defence to proceedings in respect of statutory nuisance

40.—(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 (b), (c), (d), (e), (fb), (g) or (h) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(**b**); or

(b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(c) 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.

41.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table in Schedule 12 (documents and plans to be certified) 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. This Section was amended by Section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16).

(**b**) 1974 c.40. Words in this Section were repealed by Section 133(2) of, and Schedule 7 to, the Building Act 1984 (c.55) and by Section 120(3) of, and paragraph 1 of Schedule 24 to, the Environment Act 1995 (c.25) and inserted by Section 162(1) of, and paragraph 15(3) of Schedule 15 to, that Act.

Service of notices

42.—(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 a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at 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) the notice or document is 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.

43.—(1) Where an application is made to or request is made of any authority or body named in any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 9 (procedure for discharge) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

Arbitration

44.—(1) 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 or a person appointed by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State or the MMO is required under the provisions of this Order shall not be subject to arbitration pursuant to this article 44 (arbitration).

Guarantees in respect of payment of compensation

45.—(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, the form and amount of which has been approved by the Secretary of State (or a person appointed by the Secretary of State) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or

(b) an alternative form of security, the form and amount of which has been approved by the Secretary of State (or a person appointed by the Secretary of State) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph .

(2) The provisions are—

(a) article 18 (compulsory acquisition of land);

(b) article 21 (compulsory acquisition of rights etc.);

(c) article 22 (private rights);

(d) article 26 (rights under or over streets);

(e) article 27 (temporary use of land for carrying out the authorised development);

(f) article 28 (temporary use of land for maintaining the authorised development); and

(g) article 29 (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

Name
Address — Head of Infrastructure and Planning
Date — Department for Business Energy and Industrial Strategy

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the Borough of North Lincolnshire, 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 – a carbon capture enabled electricity generating station located on land at the Keadby Power Station site, west of Scunthorpe, gas fuelled, and with a gross output capacity of up to 910 megawatts (MWe) at ISO standard reference conditions comprising—

(a) **Work No. 1A** – a combined cycle gas turbine plant, comprising—

(i) a combined cycle gas turbine;

(ii) a steam turbine;

(iii) gas turbine hall and steam turbine hall;

(iv) heat recovery steam generator;

(v) gas turbine air intake filters;

(vi) emissions stack;

(vii) transformers;

(viii) deaerator and feed water pump house buildings;

(ix) nitrogen oxide emissions control equipment and chemical storage;

(x) chemical sampling / dosing plants; and

(xi) continuous emissions monitoring system.

(b) **Work No. 1B** – combined cycle gas turbine plant cooling infrastructure, comprising—

(i) hybrid cooling towers;

(ii) cooling water pumps, plant and buildings; and

(iii) cooling water dosing and sampling plant and buildings

(c) **Work No. 1C** – carbon dioxide capture plant, comprising—

(i) flue gas pre-treatment plant, including cooling and scrubbing plant and flue gas blower;

(ii) carbon dioxide absorber unit(s) and associated stack(s);

(iii) carbon dioxide stripper and solvent regenerator;

(iv) ammonia emissions monitoring and control equipment and associated chemical storage;

(v) carbon dioxide conditioning and compression plant; and

(vi) ancillary equipment, including air compressors, pumps, heat exchangers, water treatment plant and pipework.

(d) **Work No. 1D** – natural gas reception facility, comprising—

(i) above and below ground valves, flanges and pipework;

(ii) gas supply pipeline connection works;

(iii) gas receiving area;

(iv) gas de-compression equipment and maintenance building and pipeline internal gauge launcher;

(v) an above or below ground isolation valve;

(vi) gas vents;

(vii) gas metering, dehydration and pressure reduction equipment;

(viii) instrumentation and electrical kiosk(s);

(ix) telemetry equipment kiosk(s); and

(x) standby generator sockets.

(e) **Work No. 1E** - generating station supporting uses, comprising—

(i) administration and control buildings;

(ii) raw water storage tank(s);

(iii) demineralised water treatment plant, including storage tanks; and

(iv) permanent plant laydown area(s) for operation and maintenance activities

(f) In connection with and in addition to Work Nos. 1A, 1B, 1C, 1D and 1E—

(i) administration and control buildings;

(ii) auxiliary plant, buildings, enclosures and structures;

(iii) auxiliary boiler;

(iv) emergency diesel generators and bunded diesel storage tank(s);

(v) chemical storage facilities;

(vi) demineralised water treatment plant, including storage tank;

(vii) firefighting equipment and building;

(viii) fire storage tank(s);

(ix) fire water retention basin;

(x) gatehouses;

(xi) mechanical, electrical, gas, telecommunications and water networks, pipework, pipe runs, cables, racks, infrastructure, instrumentation and utilities including connections between Work Nos 2, 3, 4, 5, 6, 7 and 8, and parts of Work Nos. 1A, 1B, 1C, 1D and 1E;

(xii) permanent plant laydown area(s) for operation and maintenance activities;

(xiii) waste water treatment facilities; and

(xiv) workshop and stores building.

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 – a high pressure gas supply pipeline for the transport of natural gas to Work No. 1, comprising a high pressure steel pipeline of up to 800 millimetres (nominal bore) in diameter and approximately 0.3km in length, including cathodic protection posts and marker posts, running within the Keadby Power Station site between Work No. 1D and Work No. 2B, and above ground installation comprising—

(a) **Work No. 2A** – a compound for National Grid Gas'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 bridle;

(vi) instrumentation and electrical kiosks;

(vii) pipeline inspection gauge receiving facility; and

(viii) telemetry equipment kiosks and communications equipment,

(b) **Work No. 2B** – 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,

(c) in connection with Work Nos. 2A and 2B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, and closed circuit television cameras and columns.

Work No. 3 – electrical connection works for the export and import of electricity to and from national electricity transmission networks and the import of electricity from district electricity transmission networks, comprising—

(a) **Work No. 3A** – up to 400 kilovolt overground and/or underground electrical cables and control systems cables running from Work No. 1A to the existing National Grid Electricity Transmission substation located west of Chapel Lane, including works within the substation; and

(b) **Work No. 3B** – up to 132 kilovolt underground electrical cables running from Work No. 1A to the existing Northern Powergrid 132kV substation located at Chapel Lane, including above ground infrastructure works within the substation.

Work No. 4 – water supply connection works to provide cooling and make-up water to Work No. 1, comprising—

(a) either

(i) **Work No. 4A** – underground and/or overground water supply pipeline running between Work No. 1E and the canal including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipeline, plant, buildings, enclosures, intake structures screens and other structures, cable, temporary moorings, temporary repositioning of existing moorings, access works, vehicle parking, screening, lighting, and signage; or

(ii) **Work No. 4B** – works to the existing cooling water supply pipelines running between Works No. 1E and the existing intake structures within the River Trent, including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipelines, plant, enclosures, intake structures, cable placement of material, temporary moorings, installation and repositioning of existing hazard dolphins, access works, screening, lighting, and signage.

Work No. 5 – works to discharge used cooling water and treated wastewater comprising works to the existing cooling water discharge pipeline(s) running from Work No. 1B to the existing outfall structures within the River Trent including, as necessary new, upgraded or replacement pipelines, plant, enclosures, outfall structures and other structures and cable.

Work No. 6 – towns water connection to supply towns water to Work No.1 from the supply point east of Chapel Lane including works to the existing towns water pipelines, replacement and new pipelines, plant, enclosures and structures.

Work No. 7 – a high pressure carbon dioxide pipeline for the export of carbon dioxide from Work No. 1C to the National Grid Carbon Gathering Network and above ground carbon dioxide compression and export infrastructure on land at Keadby Power Station, comprising—

(a) **Work No. 7A** – compressor station comprising deoxygenation, dehydration, and staged compression facilities, and outlet metering and electrical connection; and

(b) **Work No. 7B** – National Grid above ground infrastructure compound, comprising export connection to the National Grid Carbon Gathering Network, above and below ground valves, flanges and pipework, above or below ground remotely operated valve, above or below ground remotely operated valve bypass, compression facilities, instrumentation and electrical kiosks, electrical connection, inlet metering and telemetry equipment kiosks and communications equipment;

(c) in connection with Work Nos. 7A and 7B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, and closed circuit television cameras and columns.

Work No. 8 – new permanent accesses to Work Nos. 1, 2 and 7 comprising—

(a) **Work No. 8A** – access route comprising the maintenance and improvement of an existing private track running between Work Nos. 1 and 2 including private bridge and the existing junction with the A18 nearby to the west of Pilfrey Farm, comprising surfacing works and signage, and creation of on and off-slips;

(b) **Work No. 8B** – installation of laybys and gatehouse building nearby to the north of the junction with the A18, barriers, enclosures, drainage and lighting;

(c) **Work No. 8C** - emergency access route comprising the installation of a bridge crossing of an existing drainage channel, the maintenance and improvement of an existing private track running between Work No. 1 and Chapel Lane, Keadby, surfacing and strengthening works, drainage, enclosures and lighting.

Work No. 9 – temporary construction and laydown areas and temporary and permanent accesses, comprising—

(a) **Work No. 9A** – temporary construction and laydown areas comprising hard standing, earthworks and levelling, laydown and open storage areas, contractor compounds and construction staff welfare facilities, surface water drainage and gatehouse and weighbridge.

(b) **Work No. 9B** – the maintenance and improvement of the existing private tracks connecting the existing junctions with the A18 to the west of Pilfrey Farm with Work No. 9A via two existing private bridge crossings of the Hatfield Waste Drain, including the replacement, widening, improvement and maintenance of the westernmost existing private bridge crossing, surfacing, drainage and strengthening works, barriers and enclosures.

(c) **Work No. 9C** - temporary construction and laydown area in association with the replacement of the private bridge in Work No. 9B , comprising laydown and open storage areas, hard standing, and the placement of mobile cranes.

Work No. 10 – temporary haulage route and waterborne transport offloading facilities on land east of the Keadby Power Station site and at the River Trent comprising—

(a) **Work No. 10A** – the maintenance and improvement of the existing temporary paved haulage route and ditch crossings and their subsequent removal;

(b) **Work No. 10B** – the inspection and repair of the existing jetty, and temporary placement of mobile cranes including the temporary oversailing of crane arms above the River Trent; and

(c) **Work No. 10C** – use of river bed of the River Trent for the mooring of vessels and craft at the waterborne transport offloading area at lower tide.

Work No. 11 – landscaping and planting and boundary treatment comprising—

(a) **Works 11A** -soft landscaping including planting and biodiversity enhancement measures; and

(b) **Works 11B -** security fencing, gates, boundary treatment and other means of enclosure;

In connection with and in addition to Works Nos. 1 to 11, further associated development including—

(a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;

(b) 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;

(c) hard standings and hard landscaping;

(d) soft landscaping, including bunds, embankments and planting;

(e) biodiversity enhancement measures;

(f) fencing, gates, boundary treatment and means of enclosure;

(g) external lighting, including lighting columns;

(h) gatehouses and weighbridges;

(i) closed circuit television cameras and columns and other security measures;

(j) 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 formation of embankments) 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;

(k) 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;

(l) vehicle parking and cycle storage facilities;

(m) accesses, roads and pedestrian and cycle routes;

(n) tunnelling, boring and drilling works;

(o) demolition;

(p) temporary works associated with the maintenance of the authorised development including laydown for outages, contractor facilities, offices and staff welfare facilities; security fencing and gates; external lighting; wheel wash facilities; and signage;

(q) 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

Article 3

REQUIREMENTS

Interpretation

1. In this schedule—

"bank holiday" means Easter Monday, the first and last Monday in May, 26 December if it is not a Sunday and 27 December or 28 December in a year in which 25 or 26 December is a Sunday.

"Development Consent" means a consent granted pursuant to Sections 114, 115 and 120 of the 2008 Act (as may be amended or replaced from time to time);

"Carbon Dioxide Storage Licence" means any carbon dioxide storage licence required by S17 of the Energy Act 2008 or such other licence, authorisation or consent as may replace it.

"Environment Agency" means the non-departmental public body of that name created by section 1 of the Environment Act 1995;

"Environmental Permit" means a permit granted pursuant to the Environmental Permitting (England and Wales) Regulations 2016 (or any such licence, authorisation or consent as may replace it);

"lead local flood authority" means the body designated as such, for the area in which the authorised development is located, pursuant to section 6(7) of the Flood and Water Management Act 2010;

"means of enclosure" means fencing, walls or other means of boundary treatment and enclosure;

"a part" of the authorised development means any part of Works Nos. 1-11;

"relevant internal drainage board" means the Isle of Axholme and North Nottinghamshire Water Level Management Board of Wellington House, Manby Park, Manby, Louth, Lincolnshire;

"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;

"start-up period" means a period prior to physical construction works starting for the day 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.

Commencement of the authorised development

2.—(1) The authorised development must not be commenced after the expiration of 7 (seven) 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 Work No. 1 must be given to the relevant planning authority where practicable prior to such start and in any event within fourteen 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

4. Notice of the intended start of commercial use of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within fourteen days from the date that commercial use is started.

Detailed design

5.—(1) In relation to any part of the authorised development comprised in Work No. 1 no part may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

(a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;

(b) finished floor levels;

(c) the height of any stack above ordnance datum which must be at a level at which the environmental effects will be no worse than those identified in chapter 8 of the environmental statement;

(d) hard standings; and

(e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(2) No part of the authorised development comprised in Work No. 2 (gas supply pipeline and above ground installation works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

(a) temporary construction laydown and open storage areas, including contractor compounds;

(b) temporary construction accesses;

(c) the route and method of installation of the high-pressure gas supply pipeline and any electrical supply, telemetry and other apparatus;

(d) the method of connecting the gas supply pipeline to the National Transmission System No. 7 Feeder Eastoft/Keadby Power Station pipeline;

(e) the approximate number and location of cathodic protection posts and marker posts;

(f) surface water drainage;

(g) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;

(h) hard standings; and

(i) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities.

(3) No part of the authorised development comprised in Work No. 3 (electricity grid connection works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

(a) the route and method of installation of the 400-kilovolt overground and/or underground electrical cables and control system cables running from Work No. 1A to the existing National Grid substation located adjacent to Keadby Power Station;

(b) the route and method of installation of the underground electrical cables and control system cables running from Work No. 1A to the existing Northern Powergrid substation located at Chapel Lane;

(c) the connections within the existing National Grid substation, including the overground and/or underground electrical cables, connections to the existing busbars and new, upgraded or replacement equipment; and

(d) the connections and above ground infrastructure within the existing Northern Powergrid substation, including the underground electrical cables, connections to the existing

busbars, step up transformer if required and new, upgraded or replacement equipment or alternatively a statement confirming that the works within the existing Northern Powergrid substation are not to be developed.

(4) No part of the authorised development comprised in Work No. 4 (cooling and make-up water supply connection works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (and the Canal and River Trust shall be consulted in relation to any details submitted to the relevant planning authority in relation to Works No.4A) —

(a) written confirmation of whether Work 4A (works to connect to Stainforth and Keadby Canal) or Work 4B (works to connect to River Trent) is to be developed;

(b) the route and method of construction of the work confirmed pursuant to sub-paragraph (a);

(c) the method of construction, siting, layout, scale and external appearance of any new, upgraded or replacement intake structures within the waterway, 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, angle of flow; and

(d) the method and timing of installation and removal of any cofferdams at the intake and outfall points, their phasing, and the extent to which each extends into the waterway and shall be consulted in relation to any such works which take place in the Stainforth and Keadby Canal.

(5) No part of the authorised development comprised in Work No. 5 (works to discharge used cooling water and treated wastewater) may commence, save for permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

(a) the route and method of construction; and

(b) the method of construction, siting, layout, scale and external appearance of any new, upgraded or replacement intake structures within the waterway, including the screens to be installed to those structures in accordance with the Eel (England and Wales) Regulations 2009 and any ancillary plant, buildings, enclosures or structures.

(6) No part of the authorised development comprised in Work No. 6 (towns water connection works) may commence, save for permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

(a) the route and method of installation of the new and replacement towns water connections; and

(b) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, enclosures and structures.

(7) No part of the authorised development comprised in Work No. 7 (above ground carbon dioxide compression and export infrastructure) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with National Grid Carbon Limited, 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, structures and above ground apparatus;

(b) the route and method of installation of the high-pressure carbon dioxide export pipeline and any electrical supply, telemetry and other apparatus;

(c) the method of connecting the carbon dioxide export pipeline to the National Grid Carbon Gathering Network pipeline;

(d) hard standings;

(**a**) S.I. 2009/3344.

(e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities;

(f) external lighting; and

(g) surface water drainage.

(8) No part of the authorised development comprised in Work No. 8 (new permanent access works to Work No. 1) may 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) visibility splays and construction specification of the improvement to the A18 junction including strengthening, surfacing, existing and proposed levels, culverts and crossings;

(b) on- and off- slips, and new and modified highways signage, markings, verges, islands and barriers at the A18;

(c) details of surfacing and signage works to the private track;

(d) construction specification, vertical and horizontal levels, and deck, parapet and foundation design of the proposed emergency access bridge crossing of the existing drainage channel;

(e) surface water drainage;

(f) means of enclosure, vehicle control barriers, and security; and

(g) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;

(h) finished floor levels;

(i) vehicle loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(9) No part of the authorised development comprised in Work No. 9 (temporary construction and laydown area works and temporary and permanent accesses) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

(a) hard standings, laydown and open storage areas;

(b) contractor compounds and construction staff welfare facilities;

(c) details of surfacing, existing and proposed levels, culverts and crossings, barriers and enclosures for the improvements to the private track;

(d) construction specification, vertical and horizontal levels, and deck, parapet and foundation design of any replacement or improvement of the existing private bridges over the Hatfield Waste Drain;

(e) gatehouse and weighbridge;

(f) lighting;

(g) means of enclosure and security; and

(h) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(10) No part of the authorised development comprised in Work No. 10 (temporary haulage route and waterborne transport offloading facility works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

(a) Construction specification of any maintenance, resurfacing, and improvement works to the temporary haulage route;

(b) laydown and open storage areas;

(c) means of enclosure, vehicle control barriers, and security;

(d) the siting, maximum vertical and horizontal dimensions, working radius, and maximum oversailing of river bed of the River Trent, of mobile crane(s) to be placed temporarily,

and the specifications of inspections and repairs to the jetty that may be carried out in connection with the placing of the cranes; and

(e) the internal vehicular access and circulation roads, loading and unloading, and vehicle parking and turning facilities.

(11) Work Nos. 1 and 8B must be carried out in accordance with the design parameters in Schedule 11 and the design parameters are the "relevant parameters" for the purposes of this Requirement.

(12) Work Nos 1 and 8B must be carried out in accordance with the design principles statement.

(13) Work Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 must be carried out and thereafter maintained 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 may commence until a landscaping and biodiversity protection plan for that part has been submitted to and approved by the relevant planning authority (and the Canal and River Trust shall be consulted in relation to any details submitted to the relevant planning authority in relation to coir rolls pursuant to sub-paragraph 2(c)).

(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of and a timetable for implementation of—

(a) further survey work carried out to establish whether any protected species are present on any of the land affected, or likely to be affected, by that part, and, where a protected species is shown to be present, a scheme of protection and mitigation measures;

(b) measures to protect existing shrub and tree planting that is to be retained; and

(c) biodiversity and habitat mitigation and impact avoidance including the location and species composition of any coir rolls habitat.

(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 may be commissioned until a landscaping and biodiversity management and enhancement plan that includes a landscape and biodiversity strategy, which specifies maintenance periods, for that part has been submitted to and 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 within Order Land or land within the Borough of North Lincolnshire that is under the control of the undertaker or other land within the Borough of North Lincolnshire provided it is accompanied by detailed implementation proposals incorporating an implementation timetable;

(d) an implementation timetable and responsibilities for implementation by third parties where appropriate; and

(e) annual landscaping and biodiversity management and maintenance.

(6) Any shrub or tree planted within Works Nos. 1-11 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 at least of the 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 management and enhancement plan and must be accompanied by a statement explaining how any planting proposed adjoining the

Order limits has been subject to consultation with Keadby with Althorpe Parish Council along with the regard had to feedback received subject to the principles of the indicative landscaping and biodiversity management and enhancement plan.

(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.

External lighting

7.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of Requirement 34) has been submitted to and approved by the relevant planning authority and shall thereafter be implemented upon commencement of development and maintained during construction and commissioning.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed (with the exception of the aviation warning lighting required by virtue of Requirement 34) 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, commissioning and operation of the authorised development.

(4) The scheme approved pursuant to paragraph (2) must be implemented prior to commercial use and thereafter maintained as approved unless otherwise agreed with the relevant planning authority.

Highway accesses

8.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays, culverts and crossings, and construction specification) of any new or modified temporary means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of 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 reinstated prior to the authorised development being brought into commercial use, unless otherwise agreed with the relevant planning authority.

Means of enclosure

9.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development have, for that part, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development and such temporary means of enclosure must thereafter be removed in accordance with the details approved pursuant to sub-paragraph (1).

(3) No part of the authorised development may 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 the permanent means of enclosure approved pursuant to sub-paragraph (3) have been implemented in full.

(5) The permanent means of enclosure approved pursuant to sub-paragraph (3) must be maintained unless otherwise agreed with the relevant planning authority.

Site security

10.—(1) No part of the authorised development may be brought into use until a written scheme detailing security measures to minimise the risk of crime has, for that part, been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be implemented and maintained throughout the operation of authorised development.

Fire prevention

11.—(1) No part of Work Nos. 1 or 8 may commence until details of the specification and location of accesses for the use of all fire appliances in all of the major building structures and storage areas within the authorised development 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 accesses must be maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the authorised development.

Surface water drainage

12.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface water drainage systems, including means of pollution control in accordance with the framework 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 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 water drainage systems, including a timetable for their implementation, must be submitted to, and after consultation with the lead local flood authority 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 sub-paragraph (3) of this Requirement must be in accordance with the indicative surface water drainage plan.

(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.

Foul water drainage

13.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary foul water drainage systems, including means of pollution control in accordance with the framework 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 Severn Trent Water, 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 foul water drainage systems, including a programme for their implementation, must be submitted to, and after consultation with the Environment Agency and Severn Trent Water, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) 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 may commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction and the creation of a suitable development platform for the generating station, has been submitted to, and after consultation with the lead local flood authority and approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must provide a minimum finished ground level for Works Nos. 1A and 1C of 2.8m AOD and must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency, Canal and River Trust, lead local flood authority, and the relevant internal drainage board, 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 flood risk assessment.

(5) The scheme submitted and approved under sub-paragraph (3) must provide for all critical operational infrastructure assets as defined in the flood risk assessment to be elevated to a minimum of 3.60m AOD, and must further provide for the same critical operational infrastructure assets to be elevated to 4.40m AOD where reasonably practicable to do so.

(6) 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.

(7) 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 lead local flood authority, approved by the relevant planning authority.

(8) The plan approved pursuant to sub-paragraph (7) 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 may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the environmental statement and must be included in the construction environmental management plan submitted pursuant to Requirement 17.

(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 which sets out long-term measures with respect to any contaminants remaining on the site.

(4) The authorised development, including any remediation, must be implemented and maintained in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

Archaeology

16.—(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and, after consultation with the County archaeologist, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the outline written scheme of investigation.

(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.

Construction environmental management plan

17.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan for that part has been submitted to and, after consultation with Natural England and the Environment Agency, approved by the relevant planning authority.

(2) The plan submitted and approved for that part must be in accordance with the framework construction environment management plan 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 site waste management plan;

(e) a sediment control plan;

(f) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions;

(g) 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;

(h) the contaminated land scheme for that part containing the matters under Requirement 15; and

(i) a fish management plan.

(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

18.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant highways which are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

Temporary haul road (traffic management and protection)

19.—(1) The authorised development comprised in Work No. 10A shall be retained and maintained in accordance with the haul road plans.

(2) No part of the authorised development comprised in Work No. 10A shall be brought into use for the purposes of transporting abnormal loads until:

(a) appropriate traffic management measures have been put in place to allow vehicles to safely access the existing jetty comprised in Work No. 10B and cross Trent Side; and

(b) appropriate protection measures have been put in place to the Trent Side access points adjacent to the road crossing.

(3) The traffic management and protection measures in (2) shall be in place at times when loads are utilising the haul road, unless otherwise agreed with the relevant planning authority.

Temporary haul road (biodiversity protection)

20.—(1) The authorised development comprised in Work No. 10A shall be carried out in accordance with the biodiversity measures contained in appendices C and D of the framework construction environmental management plan, unless otherwise agreed with the relevant planning authority.

(2) Prior to the completion of the authorised development comprised in Work No. 10A, a report must be submitted to the relevant planning authority by a suitably qualified ecologist confirming conformity with (1).

Temporary haul road (removal and restoration)

21.—(1) No later than 28 days following the completion of commissioning the authorised development comprised in Work No. 10A shall be excavated, dismantled and removed.

(2) No later than three months following the completion of the works authorised in (1) the site shall be restored in accordance with the restoration scheme approved under Requirement 22.

Temporary haul road (prior approval of restoration scheme)

22.—(1) No later than 36 months following commencement of the construction of Work No. 1, a scheme for the removal of the temporary haul road, road bridges and associated infrastructure and restoration of Work No. 10A including the incorporation of biodiversity enhancements and a timetable for implementation, shall be submitted to and approved in writing by the relevant planning authority.

(2) The scheme authorised under (1) must be implemented in full unless otherwise agreed with the relevant planning authority.

Pilfrey laydown (design)

23. The authorised development comprised in Work No. 9A and located within the area described in the Pilfrey laydown plans shall be retained and maintained in accordance with the Pilfrey laydown plans unless otherwise agreed with the relevant planning authority.

Pilfrey laydown (removal and restoration)

24.—(1) The authorised development comprised in Work No. 9A and located within the area described in the Pilfrey laydown plans shall be removed and the land restored to its former condition no later than 3 months following the completion of commissioning in accordance with a scheme of work submitted to and approved by the relevant planning authority.

(2) The scheme authorised under (1) must be implemented in full unless otherwise agreed with the relevant planning authority.

Construction traffic management plan

25.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan has been submitted to and, after consultation with National Highways, the highway authority (and in relation to paragraph (3)(c) below the Canal and River Trust), approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the framework construction traffic management plan.

(3) The plan submitted and approved must include—

(a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;

(b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including measures to be taken to use water transport where feasible, agreed routes, and anticipated numbers of abnormal loads to be delivered on each route;

(c) a wharf management plan. This shall include processes for agreeing in advance the general principles around scheduling of abnormal load deliveries that would temporarily obstruct the entrance to Keadby Lock and notifying the Canal and River Trust as to the timing of such deliveries, and measures that seek to avoid such deliveries occurring outside of the notified timings;

(d) the construction programme; 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 approved plan must be implemented within 3 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 worker travel plan

26.—(1) No part of the authorised development may 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 the framework construction workers travel plan.

(3) The plan submitted and approved must include—

(a) measures to promote the use of sustainable transport modes to and from the authorised development by construction staff;

(b) provision as to the responsibility for, and timescales of, the implementation of those measures;

(c) details of parking for construction personnel within the construction sites; 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

27.—(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) 0800 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 28(1);

(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

28.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the monitoring and control of noise 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 and maintained during the construction of that part of the authorise development as approved unless otherwise agreed with the relevant planning authority.

Control of noise - operation

29.—(1) No part of the authorised development may 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) The scheme submitted pursuant to sub-paragraph (1) must include the results of daytime and night time baseline noise monitoring that has been carried out by the undertaker for the purposes of this requirement as agreed with the relevant planning authority

(3) Noise (in terms of the BS4142:2014+A1:2019 rating level) from the operation of the authorised development must be no greater than +3dB higher than the defined representative background sound level during each of the daytime and the night time adjacent to the nearest residential properties at such locations as agreed with the relevant planning authority.

(4) The scheme must be implemented and maintained as approved unless in an emergency or otherwise agreed with the relevant planning authority.

(5) Any complaint to the undertaker in relation to operational noise must include contact details for the complainant and the date, time and nature of the noise and must then be:

(a) acknowledged by the undertaker within 3 working days of receipt of complaint;

(b) investigated within 7 working days of the date of acknowledgement referred to in sub-paragraph (a); and

(c) a response provided within 7 working days of the date of completion of period for the investigations referred to in sub-paragraph (b) by reference to the threshold in paragraph (3) above.

(6) In this Requirement—

(a) “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700; and

(b) “defined representative background sound level” means the sound level measured during the monitoring secured by sub-paragraph (2).

Piling and penetrative foundation design

30.—(1) No part of the authorised development comprised within Works Nos. 1, 2, 4A, 4B, 7, 8B or 9B may 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.

Restoration of land used temporarily for construction

31.—(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(1).

Combined heat and power

32.—(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 relevant 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 able to take 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 five 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).

Carbon capture and compression plant

33.—(1) No part of the authorised development may commence, save for the permitted preliminary works and Work No.9B and Work No.9C, until details of the following have been submitted to and approved by the relevant planning authority—

(a) evidence that Development Consent is in place for the construction of the National Grid Carbon Gathering Network;

(b) evidence that a Carbon Dioxide Storage Licence for the intended storage site for the National Grid Carbon Gathering Network is in place;

(c) evidence that an Environmental Permit is in place for Work No. 1; and

(d) evidence of any pipeline works authorisation required by section 14 of the Petroleum Act 1998 for offshore pipeline works.

(2) Prior to the start of commissioning of the authorised development, the undertaker must not (save where the benefit of the Order has been transferred pursuant to article 6) without the consent of the Secretary of State—

(a) dispose of any interest in the land required for Work No. 1C or Work No. 7; or

(b) do anything, or allow anything to be done or to occur, which may reasonably be expected to diminish the undertaker's ability, within two years of such action or occurrence, to prepare Work No. 1C and Work No. 7 for construction.

(3) Work No. 1A may not be brought into commercial use without Work No. 1C and Work No. 7A also being brought into commercial use.

Aviation warning lighting

34.—(1) No part of the authorised development comprised within Work No. 1 or Work No. 10B may commence, save for the permitted preliminary works, until details of the timetable for construction and retention of tall structures or the placement and retention of mobile cranes and the specification and installation timetable for aviation warning lighting for that part during construction and operation have been submitted to and, after consultation with the Civil Aviation Authority and Ministry of Defence Safeguarding, approved by the relevant planning authority.

(2) The aviation warning lighting approved pursuant to paragraph (1) must be installed, maintained and operated in accordance with the approved details.

Air safety

35.—(1) No part of the authorised development comprised within Work No. 1 or Work No. 10B may commence, save for the permitted preliminary works, until details of the heights of structures and temporary cranes and other information that is required by Civil Aviation Authority Airspace Regulation and 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.

(2) The details approved pursuant to paragraph (1) must thereafter be implemnented, operated and maintained in accordance with the approved details.

Local liaison committee

36.—(1) No part of the authorised development may commence, save for the permitted preliminary works and Works Nos. 9B and 9C, until the undertaker has established a committee to liaise with local residents and organisations to keep them informed on matters relating to the construction and commissioning of the authorised development (a 'local liaison committee').

(2) The undertaker must invite the relevant planning authority, all parish councils within close proximity to the authorised development, 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 (which may include online conferencing with telephone dial in) 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

37.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote and monitor employment, skills and training development opportunities for residents of the borough of North Lincolnshire during construction and employment opportunities during operation of the authorised development has been submitted to and 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.

Decommissioning

38.—(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 include measures to address any significant environmental 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 plan.

(5) The plan must be implemented and maintained for the duration of the decommissioning of the authorised development as approved unless otherwise agreed with the relevant planning authority.

Requirement for written approval

39. 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

40.—(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 41 (Certification of plans etc.).

(2) With respect to any Requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

Amendments agreed by the relevant planning authority

41.—(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.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

Table 1

(1) *Area*	*(2)* *Streets subject to street works*	*(3)* *Description of the street works*
In the Borough of North Lincolnshire	A18	Widening and improvement works to two accesses on the A18 marked at reference points A and C on the access and rights of way plan and re-grading and re-surfacing of carriageway between the points marked E and F on sheet 1 on the access and rights of way plan
	Chapel Lane	Works for installation and maintenance of Works No. 3B, 4A, 4B and 5 in those areas marked G, H, I, J, K, L and M on sheet 3 of the access and rights of way plans

SCHEDULE 4

Article 10 and 12

STREETS SUBJECT TO PERMANENT ALTERATIONS OF LAYOUT

Table 2

(1) *Area*	*(2)* *Streets subject to alternation of layout*	*(3)* *Description of alteration*
	A18	Widening and improvement works to two accesses on the A18 marked at reference points A and C on the access and rights of way plan and re-grading, re-surfacing and layout alterations of carriageway between the points marked E and F on sheet 1 on the access and rights of way plan

SCHEDULE 5

Article 13 and 11

ACCESS - THOSE PARTS OF THE ACCESS TO BE MAINTAINED AT THE PUBLIC EXPENSE

Table 3

(1) *Area*	*(2)* *Street*	*(3)* *Description of relevant part of access*
In the Borough of North Lincolnshire	A18	That part of each of the two accesses hatched blue and referenced at points marked A and C on sheet 1 of the access and rights of way plan

SCHEDULE 6

Article 21

NEW RIGHTS

Interpretation

1. In this Schedule—

"Work Nos. 3A and 3B infrastructure" means any work or development comprised within Work Nos. 3A and 3B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 3A and 3B on the works plans.

"Work Nos. 4A and 4B infrastructure" means any work or development comprised within Work Nos. 4A and 4B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 4A and 4B on the works plans.

"Work No. 5 infrastructure" means any work 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 work 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. 8C infrastructure" means any work or development comprised within Work No. 8C in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8C on the works plans."

"Work Nos. 8A and 8B infrastructure" means any work or development comprised within Work No. 8A and 8B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 8A and 8B on the works plans.

"Work No. 9B infrastructure" means any work or development comprised within Work No. 9B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 9B on the works plans.

"Work No. 11A infrastructure planting" means any work or development comprised within Work No. 11A in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 11A on the works plans.

Table 4

(1) *Number of plot shown on the land plans*	*(2)* *Rights etc. which may be acquired*
34a, 35, 40a, 41, 42, 43, 44, 45, 55a, 55b, 56, 56a, 59, 60, 64, 65, 66, 69, 70, 73, 86, 88, 94, 106, 107, 108, 109, 110, 166, 167, 168	For and in connection with the Work Nos. 3A and 3B 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 and the laying, installation, use and maintenance of Work Nos. 3A and 3B 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 Nos. 3A and 3B infrastructure, or interfere with or

	obstruct access from and to the Work Nos. 3A and 3B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.
16, 34a, 35, 36, 52, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, 84, 85, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 103, 105, 113, 114, 115, 116, 117, 118, 122, 123, 126, 137, 138, 139, 148, 150, 151, 159, 160, 164, 165, 166, 168, 169	For and in connection with the Work Nos. 4A and 4B 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 and the laying, installation, use and maintenance of Work Nos. 4A and 4B 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 Nos. 4A and 4B infrastructure, or interfere with or obstruct access from and to the Work Nos. 4A and 4B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.
34a, 35, 69, 70, 73, 82, 83, 84, 85, 87, 89, 90, 99, 102, 103, 105, 111, 112, 113, 114, 115, 120, 121, 122, 123, 124, 125, 127, 128, 129, 130, 132, 133, 134, 140, 141, 142, 143, 147, 152, 153, 158, 161, 162, 163, 166, 168, 169, 171	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 and the laying, installation, use and maintenance of 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 Nos. 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 movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.
34a, 35, 36, 64, 69, 70, 73, 74, 82, 99, 102, 103, 105, 113, 166, 168, 169, 171	For and in connection with the Work No. 6 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 and the laying, installation, use and maintenance of Work No. 6 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. 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 fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.
40, 40a, 41, 44, 45, 55a, 55b, 56, 56a, 57, 60	For and in connection with the Work No. 8C infrastructure the right to improve access roads and 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 and the laying, installation, use and maintenance of Work No. 8C 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. 8C infrastructure, or interfere with or obstruct access from and to the Work No. 8C infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.
3, 12, 18, 19, 20, 22, 24, 27, 28, 29, 30, 33, 37, 38, 39	For and in connection with the Work Nos. 8A and 8B 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 and the laying, installation, use and maintenance of Work Nos. 8A and 8B 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 Nos. 8A and 8B infrastructure, or interfere with or obstruct access from and to the Work Nos.8A and 8B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land. For and in connection with Work No. 8B planting, a right for the undertaker and all persons authorised on its behalf to enter, pass, and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with and improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 8B planting together with the

	right to protect, retain, maintain, inspect and replant Work No. 8B, 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. 8B planting or existing planting.
3, 19	For and in connection with the Work No 9B infrastructure 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 and the laying, installation, use and maintenance of Work No. 9B 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. 9B infrastructure, or interfere with or obstruct access from and to the Work No. 9B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.
18, 20, 21	For and in connection with Work No. 11A infrastructure planting, a right for the undertaker and all persons authorised on its behalf to enter, pass, and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with and improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 11A infrastructure planting together with the right to protect, retain, maintain, inspect and replant Work No. 11A 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. 11A infrastructure planting or existing planting.

SCHEDULE 7

Article 25

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 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date), omit the words after "if—" and 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 (as modified by paragraph 5(5) of Schedule 7 to the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X];

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 to the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[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 Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 18 (compulsory acquisition of land) and as modified by article 23 (modification of Part 1 of the 1965 Act), applies to the compulsory acquisition of a right by the creation of a new right under article 21 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(**a**) 1973 c.26.

(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.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) 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."

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

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (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.

(5) Section 11 of the 1965 Act (powers of entry) is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 8), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) 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.

(7) Section 22 of the 1965 Act (interests omitted from purchase) as modified by article 23(3) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

"SCHEDULE 2A

Ref

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 23 (application of the Compulsory Purchase (Vesting

Declarations) Act 1981) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X].

(2) But see article 24 (acquisition of subsoil or airspace only) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X] which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 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 8

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 5

(1) *Number of plots shown on the land plans*	*(2)* *Purpose for which temporary possession may be take*	*(3)* *Relevant part of the authorised development*
47	Access and construction worksite	Work No. 2A
40b, 43, 56, 58, 59	Access and construction worksite.	Work No. 3B
32a	Access and construction worksite	Work No. 6
1, 2, 4, 5, 6, 7, 8, 9, 10, 26	Access and construction worksite.	Work No. 8A
40b, 55, 56, 58, 59, 67	Access and construction worksite.	Work No. 8C
1, 2, 3, 4, 10, 11, 12, 16a, 17, 17a, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, 32a, 33, 34, 37, 38, 39, 49, 50a, 50, 51, 61, 62, 63, 72a	Access and construction worksite, use of the land for temporary laydown areas including any ancillary works necessary to facilitate the use of that land, storage, placing of temporary cranes and works associated with the re-instatement of the land. Works compound and welfare facilities, storage, laydown areas, and re-instatement of laydown areas.	Work Nos. 9A, 9B and 9C
13, 14, 16, 16a, 17a, 17b, 31, 32a, 46, 47, 48, 49a, 50, 50a, 51, 53, 54, 62, 63, 72, 72a, 73, 74, 78, 79, 93, 95, 101, 119, 131, 135, 136, 144, 145, 165, 165a 170	Access and construction worksite, including temporary haul road and any ancillary works necessary to facilitate the use of that land as a temporary haul road and re-instatement of the land.	Work No. 10A
136, 146, 149, 155	Access, inspection and repair, construction worksite and placing of temporary cranes.	Work No. 10B
68	Access and construction worksite.	Work No. 11A

SCHEDULE 9

Article 43

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

1. In this Schedule—

"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 (bank holidays) of the Banking and Financial Dealings Act 1971(**a**);

"requirement consultee" means any body named in a Requirement as a body to be consulted by the relevant planning authority in discharging that Requirement; and

"start date" means the date of the notification given by the Secretary of State under paragraph 5(2)(b).

Applications made under Requirements

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a Requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

(a) the day immediately following that on which the application is received by the authority; or

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3,

or such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5 and the exception set out in sub-paragraph 4 below, 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) 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 and has notified the undertaker of this in writing within 21 business days from receipt of such report,

then the application is deemed to have been refused by the relevant planning authority at the end of that period.

(**a**) 1971 c.80

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 21 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 21 days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Fees

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(**a**) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within nine weeks from the relevant date in paragraph 1 unless—

(i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or

(ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2 of this Schedule.

Appeals

5.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;

(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(4);

(c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional

(**a**) S.I. 2012/2920.

information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

(a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;

(b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

(c) the relevant planning authority and the requirement consultee (if applicable) 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 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 paragraph (c);

(e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and

(f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within five business days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the 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 the process and time limits set out in paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to 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 that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals and award costs published on 20 December 2016 by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

SCHEDULE 10

Article 35

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

1.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writhing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order) –

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid.

Interpretation

2. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £100,000,000 (one hundred million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an "acceptable credit provider", such policy shall include (but without limitation):

(a) National Grid Electricity Transmission Plc and National Grid Gas Plc as a Co-Insured;

(b) a cross liabilities clause; and

(c) contractors' pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either:

(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc and National Grid Gas Plc to a total liability cap of £100,000,000.00 hundred million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming

the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc and National Grid Gas Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £100,000,000.00 (one hundred million pounds) (in a form reasonably satisfactory to the National Grid);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means

(a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid;

(b) any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid" means:

(a) National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989; and

(b) National Grid Gas plc (Company Number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

"undertaker" means the undertaker as defined in article 2(1) of this Order;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22and/or activity that is referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

On Street Apparatus

3. Except for paragraphs 4 (*Apparatus of National Grid in stopped up streets*), 8 (*retained apparatus: protection*) and 9 (*retained apparatus: protection*), 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

4.—(1) Where any street is permanently stopped up under the Order, if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway pursuant to Article 13 (*Agreement with street authorities*), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to executed and so all such works and things in, upon, or under any such highway as may be reasonable necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 34 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of

those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

(a) pay compensation to National Grid for any loss sustained by it; and

(b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire any apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid or the undertaker unless otherwise agreed by National Grid and/or the undertaker (as applicable), and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 8 or 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed,

and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any authorised works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 16 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1, 2 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Retained apparatus: protection of gas undertaker

10.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (2)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (4) or (6); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (4), as approved or as

amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4) or (6) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (4) or (6) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1, 2 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (10) at all times;

(11) At all times when carrying out any works authorised under the Order National Grid must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 11.

Expenses

11.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 16 (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 National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any

service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid and including Network Code Claims other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 7 (consent to transfer benefit of the order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) The undertaker must not commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied:

(a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; or

(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement

of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(6) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

13. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

14.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 62) or National Grid makes requirements for the protection or alteration of apparatus under paragraph (9) or (10), the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

15. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Save for difference or dispute arising under paragraph 7(2), 7(4), 8(1), 9 and 10 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 44 (arbitration).

Notices

17. Notwithstanding article 42 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 2

FOR THE PROTECTION OF CANAL AND RIVER TRUST

Interpretation

18.—(1) For the protection of the Canal and River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal and River Trust.

(2) In this Part of this Schedule—

"Code of Practice" means the Code of Practice for Works Affecting the Canal and River Trust (April 2022) 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;

"Canal and River Trust's network" means the Canal and River Trust's network of waterways;

"detriment" means any damage to the waterway or any other property of the Canal and River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

(a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);

(b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;

(c) the deposit of materials or the siltation of the waterway so as to damage the waterway;

(d) the pollution of the waterway;

(e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;

(f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Canal and River Trust's network);

(g) any interference with the exercise by any person of rights over Canal and River Trust's network; "the engineer" means an engineer appointed by the Canal and River Trust 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 22(3)(a);

"specified work" means so much of Work Nos. 4A, 8A, 9A, 9B, 10B and 11A as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

"the waterway" means each and every part of the Stainforth and Keadby Canal within the order limits, and any works, lands or premises belonging to the Canal and River Trust, or under its management or control, and held or used by the Canal and River Trust in connection with that canal in connection with its statutory functions.

(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. The

undertaker will identify and agree with the Canal and River Trust those parts of the Code of Practice which are not applicable to the construction of the specified works and for the avoidance of doubt the undertaker will not be required to comply with those agreed parts of the Code of Practice.

Powers requiring the Canal and River Trust's consent

19.—(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 the Canal and River Trust.

(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 the Canal and River Trust, save as to surface water discharge which will not require the consent of the Canal and River Trust.

(3) The undertaker must not exercise the powers conferred by article 15 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal and River Trust.

(4) The undertaker must not exercise the powers conferred by this Order to temporarily interfere with the waterway under article 16 (temporary interference with canal and public rights of navigation) 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 the Canal and River Trust .

(5) The consent of the Canal and River Trust pursuant to sub-paragraphs (1) to (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

Fencing

20. Where so required by the Canal and River Trust's engineer ("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

21.—(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 the Canal and River Trust 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 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 the Canal and River Trust and the undertaker at no cost to the Canal and River Trust.

Approval of plans, protective works etc.

22.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal and River Trust proper and sufficient plans of that work, on the Canal and River Trust forms, having regard to the Canal and River Trust's Code of Practice and such further particulars available to it as the Canal and River Trust 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 the Canal and River Trust 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 the Canal and River Trust 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 the Canal and River Trust 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 the Canal and River Trust 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 the Canal and River Trust under this paragraph.

(5) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal and River Trust 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 sub-paragraph 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, the Canal and River Trust 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 the Canal and River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

23.—(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 the Canal and River Trust 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 the Canal and River Trust 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 the Canal and River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995(**a**) and to the interest of the Canal and River Trust in preserving and enhancing the environment of its waterways.

Notice of works

24. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works 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, the Canal and River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal and River Trust's network

Lighting

25. 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

26.—(1) Any specified works 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 specifications made under paragraph 22 and paragraph 23 of this Part;

(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 the Canal and River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal and River Trust;

(e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 14 (Discharge of water); and

(f) in compliance with the Code of Practice (where appropriate and where consistent with the exercise the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the Authorised Works)

(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 the Canal and River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(**b**) 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 the Canal and River Trust.

(**a**) 1995 c. i
(**b**) 1968 c.73. Sections 1 and 2 were amended by paragraph 39 of Schedule 2 to S.I. 2012/1659

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal and River Trust and the undertaker must take account of any survey issued pursuant to paragraph 21 and any other information agreed between them pursuant to this Part.

Prevention of pollution

27. 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

28.—(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) The Canal and River Trust on being given reasonable notice must—

(a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal and River Trust under this Part 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 the Canal and River Trust's reasonable costs in relation to the supply of such information.

Alterations to the waterway

29.—(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 the Canal and River Trust 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 the Canal and River Trust 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 the Canal and River Trust 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 the Canal and River Trust under this paragraph.

Maintenance of works

30. If at any time after the completion of a specified work or a protective work, not being a work vested in the Canal and River Trust, the Canal and River Trust 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 the Canal and River Trust's fees, etc.

31.—(1) The undertaker must repay to the Canal and River trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal and River Trust—

(a) in constructing any protective works under the provisions of paragraph 22(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 the Canal and River Trust's network.

(e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal and River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal and River Trust to construct and/or carry out any measures.

(2) If the Canal and River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal and River Trust 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 the Canal and River Trust that the estimate is agreed and pay to the Canal and River Trust, by the date stipulated, that fee, charge, cost or expense; or

(b) provide confirmation to the Canal and River Trust 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) The Canal and River Trust must take in to account any representations made by the undertaker in accordance with this paragraph 31 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) The Canal and River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph 31, do so with a view to being reasonably economic and acting as if the Canal and River Trust were itself to fund the relevant fee, charge, cost or expense.

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 the Canal and River Trust) must make good such detriment and must pay to the Canal and River Trust all reasonable expenses incurred by the Canal and River Trust, and compensation for any loss sustained by the Canal and River Trust , in making good or otherwise by reason of the detriment.

(2) The undertaker must be responsible for and make good to the Canal and River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal and River Trust —

(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 the Canal and River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b) (provided that the Canal and River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable).

(3) The fact that any act or thing may have been done by the Canal and River Trust 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 the Canal and River Trust 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 detriment, damage, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal and River Trust, its officers, servants, contractors or agents.

(5) The Canal and River Trust 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.

(6) The aggregate cap of the undertaker's gross liability for consequential losses shall be limited to £15,000,000 (fifteen million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

Arbitration

33. Any difference arising between the undertaker and the Canal and River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 44 (arbitration) of this Order.

Capitalised sums

34. Any capitalised sum which is required to be paid under this Part 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.

PART 3

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

35. 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.

36. In this Part—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that utility undertaker;

(**a**) 1989 c.29.

(b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a utility undertaker within paragraph (c) of the definition of that term—

(i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(**a**);

(d) in the case of a utility undertaker within paragraph (d) of the definition of that term—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; 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—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**b**);

(c) water undertaker within the meaning of the Water Industry Act 1991; and

(d) 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.

37. This Part does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

38. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

39.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of

(**a**) 1991 c.56.
(**b**) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45) and was further amended by the Utilities Act 2000 (c.27).

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 44 (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 44 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

40.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (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.

41.—(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 35 to 40 apply as if the removal of the apparatus had been required by the undertaker under paragraph 39(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.

42.—(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 39(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated after removal.

(3) If in accordance with the provisions of this Part—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 39(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.

43.—(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 39(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.

44. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 4

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

45.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part—

"the 2003 Act" means the Communications Act 2003(**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;

(**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)

46. The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

47.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the construction of authorised development, 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 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 44 (arbitration).

48. 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.

49. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 5

FOR THE PROTECTION OF RAILWAY INTERESTS

50. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 68 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

51. In this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is

(within the meaning of section 1159 of the Companies Act 2006 the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licencee of Network Rail for the purposes of such railway or works, apparatus or equipment

"regulatory consents" means any consent or approval required under:

(c) the Railways Act 1993;

(d) the network licence; and/or

(e) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the powers conferred by article 4 (maintenance of the authorised development);

"undertaker" has the same meaning as in article 2 (interpretation) of this Order;

52.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

53.—(1) The undertaker must not exercise the powers conferred by—

(a) Article 14 (discharge of water);

(b) Article 15 (authority to survey and investigate the land);

(c) Article 18 (compulsory acquisition of land);

(d) Article 19 (statutory authority to override easements and other rights);

(e) Article 21 (compulsory acquisition of rights);

(f) Article 22 (private rights);

(g) Article 24 (acquisition of subsoil or airspace only);

(h) Article 27 (temporary use of land for carrying out the authorised development);

(i) Article 28 (temporary use of land for maintaining the authorised development);

(j) Article 29 (statutory undertakers);

(k) Article 33 (felling or lopping of trees or shrubs);

(l) **Article x (trees subject to tree preservation orders);**

(m) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

(n) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(o) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

(p) the powers conferred by section 18 (power to take temporary possession of land) of the Neighbourhood Planning Act 2017. in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 29 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

54.—(1) The undertaker must, before commencing construction of any specified work, supply to Network Rail; (a) proper and sufficient plans of that work for the reasonable approval of the engineer and (b) the specified work must not be commenced, except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the

services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

55.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 54(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 54;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

56. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

57. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

58.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives the undertaker 56 days written notice.

(2) If during the construction of a specified work by the undertaker, Network Rail gives written notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 54(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 59(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

59. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 54(3) or in constructing any protective works under the provisions of paragraph 54(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

60. —(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 54(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) The undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 54(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 54(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

(a) The undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) The undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 55.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 64(1) applies to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.

(10) For the purpose of paragraph 59(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 44 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

61. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives written notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

62. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

63. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous written notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

64.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 31 (recovery of costs of new connections)) which may be occasioned to or reasonably incurred by Network Rail—

(a) By reason of the construction, maintenance or operation of a specified work or the failure thereof 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 a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development; and

the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

(a) give the undertaker reasonable written notice of any such claims or demands;

(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take all reasonable steps to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including

but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

65. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 64 and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

66. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

67. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

68. In Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

69. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) The nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

70. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article x (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

71. In relation to any dispute arising under this part of this Schedule (except for those disputes referred to in paragraph 60(11)) the provisions of article 44 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

PART 6

FOR THE PROTECTION OF NATIONAL GRID CARBON LIMITED

Application

72. For the protection of NGC the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGC.

73. The undertaker hereby agrees not to exercise its powers under the Order without fully complying with the provisions of this Part of this Schedule.

74. Section A and paragraph 88 of Section B of this Part 6 of Schedule 10 shall have effect from the date the Order is made and the remainder of Section B of this Part 6 of Schedule 10 shall have effect from the date that NGC apparatus is installed and completed in accordance with an agreed schedule of NGC apparatus between the undertaker and NGC.

Interpretation

75.—(1) In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991(**a**);

"affiliates" means any of NGC's parent or subsidiary undertakings together with any subsidiary undertakings of any such parent undertakings from time to time involved in promoting, constructing or operating the NGC Pipeline Network;

"alternative apparatus" means apparatus in the alternative to NGC apparatus adequate to enable NGC to operate and maintain its undertaking in a manner no less efficient than previously;

"carbon dioxide export connection work" means the infrastructure proposed to deliver the export of carbon dioxide arising from Work No.1C to the NGC Pipeline Network and comprising Work No.7B;

"construction" includes execution, placing, installation, altering, replacing, relaying and removal and excavation and "construct" and "constructed" will be construed accordingly;

"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;

"NGC" means National Grid Carbon Limited (Company Number 03932833) whose registered office is at 1-3 Strand, London, WC2N 5EH and includes all of its affiliates, transferees and assignees;

"NGC apparatus" means any mains, pipes, plant or other apparatus belonging to, operated or maintained by NGC whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for beneficial use by NGC;

"NGC Pipeline Network DCO" means a development consent order for the construction operation and maintenance of the NGC Pipeline Network;

"NGC Pipeline Network" means the proposed network of high pressure carbon dioxide and hydrogen pipelines to be developed by NGC for the transportation of carbon dioxide and hydrogen to and from industrial emitters in the Humber region and references to the NGC Pipeline Network in this Part of this Schedule include any part of that network;

"NGC Pipeline Network site" means land on which any NGC apparatus is situated;

"plan" includes all sections, designs, drawings, maps, specifications, method statements, soil reports and other survey data, programmes, calculations, risk assessments and other

(**a**) 1991 c. 22.

documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

"specified work" means so much of any work or operation authorised by this Order (other than an carbon dioxide export connection work) as—

(a) will or may be situated over, or within 15 metres measured in any direction of any NGC apparatus; and/or

(b) may in any way adversely affect any NGC apparatus the removal of which has not been required by the undertaker under paragraph 85 or otherwise.

(2) In paragraph (1), references to "subsidiary undertakings" and "parent undertakings" have the meaning given to them by section 1162 (parent and subsidiary undertakings) of the Companies Act 2006(**a**), except that references in that section to majority are to be read as references to "25 per cent or more" and provided further that a company will be treated, for the purposes only of the membership requirement contained in that section of that Act, as a member of another company even if its shares in that other company are registered in the name of—

(a) another person (or its nominee) by way of security or in connection with the taking of security; or

(b) its nominee.

SECTION A

Interaction with the NGC Pipeline Network

76.—(1) Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the NGC Pipeline Network. For the purposes of this sub-paragraph, "reasonable endeavours" means—

(a) undertaking consultation with NGC on detailed design of the carbon capture and compression plant, and all works associated with or ancillary to the carbon capture and compression plant, and ensuring the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the NGC Pipeline Network having regard to such information as NGC notifies to the undertaker;

(b) having regard to the proposed programme of works for the NGC Pipeline Network as may be made available to the undertaker by NGC and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the carbon capture and compression plant and the NGC Pipeline Network;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and

(d) keeping NGC informed on the programme of works for the authorised development.

Carbon dioxide export connections works

77. The undertaker must not except with the agreement of NGC carry out Work No.7B, or any part of it.

78. Without limiting any other provision of this Order, where NGC proceeds to carry out Work No.7B or any part of it, the undertaker must use its reasonable endeavours to facilitate the programming, execution, commissioning and future operation and maintenance of those works in a safe, efficient and economic manner alongside any other part of the authorised development.

79.—(1) Before beginning to construct any carbon dioxide export connection work, or any part of it, the undertaker must submit to NGC plans of the relevant carbon dioxide export connection

(**a**) 2006 c. 46.

work (or part of it) and such further particulars available to it as NGC may request within 28 days of receipt of the plans reasonably requested.

(2) Any carbon dioxide export connection work must not be constructed except in accordance with such plans as may be approved in writing by NGC.

80.—(1) Any approval of NGC required under this Schedule—

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and

(c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 92.

(2) NGC must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If NGC require further particulars, such particulars must be requested by NGC no later than 21 days from the submission of plans and thereafter NGC must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars .

81.—(1) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any carbon dioxide export connection work and notice in writing of its completion not later than 7 days after the date on which it is completed and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of a carbon dioxide export connection work is constructed otherwise than in accordance with paragraph 80(2) above NGC may by notice in writing identify the extent to which the carbon dioxide export connection works does not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 80(2) of this Part of this Schedule or such alternative works as may be agreed with NGC or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 92.

SECTION B

On street apparatus

82. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGC are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

83. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire or extinguish any NGC rights in relation to NGC apparatus, otherwise than by agreement.

Protective works to buildings

84. The undertaker, in the case of the powers conferred by article 34 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any NGC apparatus or any NGC Pipeline Network site.

Removal of NGC apparatus

85.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any NGC apparatus is placed or requires that any NGC apparatus is relocated or diverted, that NGC apparatus must not be removed under this Part of this Schedule, and any right of NGC to maintain that NGC apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of NGC in accordance with sub-paragraphs (2) to (4).

(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 NGC apparatus placed in that land, the undertaker must give to NGC 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGC reasonably needs to remove any NGC apparatus) the undertaker must, subject to sub-paragraph (3), afford to NGC 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) 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 NGC and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(4) NGC must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to NGC of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any NGC apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

86.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGC facilities and rights for the construction, commissioning, maintenance and operation of alternative apparatus in substitution for NGC apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and NGC or in default of agreement settled by arbitration in accordance with article 44 (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 NGC than the facilities and rights enjoyed by it in respect of the NGC 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 NGC as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Specified works plan approval

87.—(1) Before beginning to construct any specified work, the undertaker must submit to NGC plans of the specified work and such further particulars available to it as NGC may within 28 days of receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by NGC, or determined under paragraph 92.

(3) Any approval of NGC required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and

(c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

(4) NGC must use its reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans or receipt of further particulars if such particulars have been requested by NGC for approval.

(5) Without limiting sub-paragraph (3), the requirements which NGC may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works or other works as are reasonably considered by NGC to be necessary to safeguard the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

88.—(1) Subject to sub-paragraph (5), any specified work, and all protective or additional works required by NGC under sub-paragraph 87(5), must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and

(b) to the reasonable satisfaction of NGC,

and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective or additional work required by NGC is constructed otherwise than in accordance with the requirements of this Part of this Schedule, NGC may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and NGC in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as NGC reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 92.

Expenses and costs

89.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to NGC all expenses reasonably and properly incurred by NGC in, or in connection with, the inspection, removal, alteration or protection of any NGC apparatus or the construction of the

carbon dioxide export connection works or any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 86.

(2) Without prejudice to the generality of sub-paragraph (1), the undertaker must repay to NCG all reasonable costs, charges and expenses which NGC may reasonable incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the carbon dioxide export connection works, the specified works or any protective or additional works required by NGC under this Part of this Schedule;

(c) in carrying out any of the surveys or tests by NGC which are reasonably required in connection with the construction of the carbon dioxide export connections work or any specified works.

(3) This paragraph shall be subject to—

(a) any contrary provisions made in a charging methodology approved by the office of Gas and Electricity Markets from time to time (or successor body); or

(b) such alternative cost apportionment as may be agreed between NGC and the undertaker in a connection agreement (and for the avoidance of doubt the provisions of paragraphs 89(1) and 89(2) are not intended to set a precedent for such cost apportionment terms as may be agreed between the parties) whereupon the relevant parts of paragraph 89 shall be of no further effect insofar as such an agreement remains in force.

Indemnity

90.—(1) Subject to sub-paragraphs (5) to (6), if by reason or in consequence of the construction of the authorised development or in consequence of the construction, use or maintenance of any of the authorised works or of any subsidence resulting from any of those works, or the failure of any such work, any damage is caused to any NGC apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property belonging to NGC, or there is any interruption in the supply of the service provided by NGC, or the efficiency of that supply is impaired in each case directly or in consequence of such construction works, the undertaker must—

(a) bear and pay the cost reasonably incurred by NGC in making good such damage or restoring the supply or making good any impairment of the efficiency of that supply; and

(b) make reasonable compensation to NGC for any other expenses, loss, damages, liabilities, claims, demands, penalty or costs incurred by it, by reason or in consequence of, any such damage or interruption.

(2) NGC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 90 applies where it is within NGC's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGC's control and if reasonably requested to do so by the undertaker, NGC must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(3) If as a result of the authorised development NGC's access to the NGC Pipeline Network, or to any NGC Pipeline Network site, is materially obstructed, the undertaker must provide such alternative means of access that will allow NGC to maintain NGC apparatus or use NGC apparatus no less efficiently than was possible before the obstruction and such alternative means of access must be provided within 24 hours of the undertaker becoming aware of such obstruction.

(4) The fact that any act or thing may have been done by NGC on behalf of the undertaker or in accordance with a plan approved by NGC or in accordance with any requirement of NGC or under its supervision does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(5) 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 NGC, its officers, servants, contractors or agents.

(6) NGC must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(7) This paragraph shall be subject to any alternative indemnity provisions as may be agreed between NGC and the undertaker in a connection agreement or operating agreement (and for the avoidance of doubt the provisions of paragraph 90 are not intended to set a precedent for such indemnity terms as may be agreed between the parties) whereupon the relevant parts of this paragraph shall be of no further effect.

Co-operation

91. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NGC requires the removal of NGC apparatus under paragraph 85 or NGC specifies requirements for the protection or alteration of apparatus under paragraph 85 the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and the NGC Pipeline Network.

Disputes

92. Any dispute arising between the undertaker and NGC under this part of this Schedule will, if the parties agree, be determined by arbitration under article 44 (arbitration), but will otherwise be determined by the Secretary of State on a reference to it by the undertaker or NGC, after notice in writing by one to the other.

PART 7

FOR THE PROTECTION OF NORTHERN POWERGRID

93. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

94. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"authorised works" means so much of the works authorised by this Order which affect existing Northern Powergrid's apparatus within the Order limits;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid's undertaking; and

"Northern Powergrid" means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF.

95. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

96. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus, or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

97.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement for a tenure no less than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (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 Northern Powergrid 42 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end unless:

(a) the undertaker has first used reasonable endeavours to acquire the relevant land, rights and/or interests and provided reasonable evidence of the same to Northern Powergrid in accordance with the measures set out in the plan (in default of agreement, the reasonableness of any such measures to be determined through arbitration under article 44 (arbitration)); and

(b) the undertaker and Northern Powergrid agree (or in default of agreement, it is determined through arbitration under article 44 (arbitration)) that the promotion of compulsory purchase powers by the undertaker would be significantly more onerous than the exercise of Northern Powergrid's own compulsory powers.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration), and after the grant

to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

98.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 44 (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 Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

99.—(1) Not less than 48 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 (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 97(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 93 to 98 apply as if the removal of the apparatus had been required by the undertaker under paragraph (2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

100.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 97(2) including without limitation:

(i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 97(3) all costs reasonably incurred as a result of such action;

(ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(iv) the approval of plans;

(v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(vi) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule); and

(b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 97(1) having first decommissioned such apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) 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 44 (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 Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(3) For the purposes of sub-paragraph (2)—

(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 97(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.

101.—(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 in paragraph 97(2), or in consequence of the, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

(a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid,

by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 100 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 101 for claims reasonably incurred by Northern Powergrid.

102. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

103. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 97 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 99, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

104. If in consequence of an agreement reached in accordance with paragraph 96 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

105. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of the Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing

SCHEDULE 11

Requirement 5

DESIGN PARAMETERS

1. Maximum parameters for buildings and structures are set out at table 6.

2. The finished ground level in respect of Work No. 1A, Work No. 1C and Work No. 1E may be higher than 2.8 metres above ordinance datum (AOD) but in all cases the maximum heights measured AOD shall not exceed the measurement in column 5 of table 6.

3. Maximum parameters of the A18 Gatehouse building (Work No. 8B) are set out in table 7.

4. Maximum parameters for length (m), width (m) or diameter (m) exclude external support structures such as (but not limited to) ladders, platforms, external piping and structural supports.

Table 6

(1) *Component*	*(2)* *Length (m)*	*(3)* *Width (m) or diameter (m)*	*(4)* *Height (m) above ground level (AGL) (in the case that the finished ground level is 2.8m AOD)*	*(5)* *Height (M) AOD (in all cases)*
Gas Turbine Hall (Work No. 1A)	22	50	31.8	34.6
Steam Turbine Hall (Work No. 1A)	50	40	34.8	37.6
HRSG Building (Work No. 1A)	28	50	55.8	58.6
Absorber (Work No. 1C) (in the case that a single absorber is developed)	16 (Note 4)	43 (Note 4)	98.8	101.6
Absorber Stack (Work No. 1C) (in the case that a single absorber is developed)	-	6.7	104.8	107.6
Twin Absorbers (Work No. 1C) (in the case that two absorbers are developed)	-	19.0 (Note 4)	80	82.8
Twin Absorber Stacks (Work No. 1C) (in the case that two absorbers are developed)	-	6.7	95.5	98.3
HRSG Stack (Work No. 1A)	-	8.0	84.8	87.6

Carbon Dioxide stripper (Work No. 1C)	-	15.0 (Note 4)	63	65.8

Table 7

(1) *Component*	*(2)* *Length (m)*	*(3)* *Width (m)*	*(4)* *Height (m) above ground level (AGL)*	*(5)* *Height (m) AOD*
A18 Gatehouse (Work No. 8B)	6	7	4	5.5

SCHEDULE 12

Article 41

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 8

(1) Document Name	*(2) Document Reference*
Access and rights of way plans	4.4
Book of reference	3.1
Land plans	4.2
Works plans	4.3
Combined heat and power assessment	5.7
Environmental statement	6.0, 10.6-10.9
Design principles statement (appendix 1 of the design and access statement)	5.6 (appendix 1)
Flood risk assessment	6.3.20
Outline written scheme of investigation	7.4
Indicative landscape and biodiversity plan	4.15
Landscaping and Biodiversity Management and Enhancement plan	5.10
Indicative surface water drainage plan	4.13
Framework construction environmental management plan	7.1
Framework construction traffic management plan	7.2
Framework construction workers travel plan	7.3
Indicative lighting strategy	5.11
Haul road plans	4.19
Pilfrey laydown plans	4.20
Application guide	1.2

SCHEDULE 13

Article 39

DEEMED MARINE LICENCE UNDER PART 4 (MARINE LICENSING) OF THE MARINE AND COASTAL ACCESS ACT 2009 / DEEMED MMO LICENCE PROVISIONS

PART 1

INTRODUCTION

1.—(1) In this licence the definitions in article 2 must apply save where amended—

"2009 Act" means the Marine and Coastal Access Act 2009;

"ABP Humber" means Associated British Ports, Humber Estuary Services located at Port Office, Cleethorpe Road, Grimsby, North East Lincolnshire;

"authorised deposits" means the substances specified in paragraph 2(2)4 of Part 2 of this licence;

"the authorised development" has the meaning given in paragraph 2(2) of Part 2 of this licence;

"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 (bank holidays) of the Banking and Financial Dealings Act 1971;

"Cefas" means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

"CEMP" means the construction and environmental management plan;

"commence" for the purposes of this Schedule means the first carrying out of any licensed activities, save for pre-construction surveys approved under this licence and "commenced" and "commencement" shall be construed accordingly;

"condition" means a condition under Part 3 of this licence;

"enforcement officer" means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

"licensed activities" means the activities specified in Part 2 of this licence;

"licensable marine activities" means any activity licensable under section 66 of the 2009 Act;

"local enforcement office" means the Marine Management Office (Local Enforcement Office) as further detailed in paragraph 5(b) below;

"maintain" includes inspect, repair, alter, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of an existing structure or asset wholly within its existing three dimensional boundaries and "maintenance" and "maintaining" are to be construed accordingly;

"marine area" has the meaning given to 'UK marine area' in section 42 of the 2009 Act

"Marine Management Organisation" means the body created under the 2009 Act which is responsible for the regulation of this licence or any successor of that function and "MMO" shall be construed accordingly;

"MCA" means the Maritime and Coastguard Agency, the executive agency of the Department for Transport;

"mean high water springs" or "MHWS" means the average of high water heights occurring at the time of spring tides;

"office hours" means the period from 0900 until 1700 on any business day;

"Order limits" means the limits shown on the works plans within which the authorised development may be carried out, whose grid co-ordinates seaward of MHWS are set out in paragraph 6 of Part 2 of this licence;

"river" means the River Trent;

"TH" means the corporation of Trinity House of Deptford Strond;

"undertaker" means the undertaker Keadby Generation Limited (company registration number 02729513), and any agent, contractor or sub-contractor acting on its behalf or any person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order);

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on, under or over water and which is at the time in, on, under or over water, whether or not self-propelled;

(2) A reference to any statue, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT);

(b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purpose of this licence is marine.consents@marinemanagement.org.uk or where contact to the local MMO office is required is beverley@marinemanagement.org.uk.

(5) Unless otherwise stated or agreed with the MMO, all notifications must be sent by the undertaker to the MMO must be sent using the MMO's Marine Casement Management System (MCMS) web portal. Except where otherwise notified in writing by the relevant organisation, the addresses for postal correspondence for the purposes of this Schedule are—

(a) Marine Management Organisation (Marine Licensing Team)
Lancaster House,
Hampshire Court,
Newcastle Business Park,
Newcastle Upon Tyne
NE4 7YH
Tel: 0300 123 1032;

(b) Marine Management Organisation (Local Enforcement Office)
Beverley office
Room 13, Ground Floor
Crosskill House,
Mill Lane
Beverley
HU17 9JB
Tel: 0208 026 0519

(c) Trinity House
Tower Hill
London
EC3N 4DH

Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office
Admiralty Way,
Somerset
TA1 2DN
Tel: 01823 337 900;

(e) Maritime and Coastguard Agency (Navigation Safety Branch)
Bay 2/20, Spring Place,
105 Commercial Road,
Southampton
SO15 1EG
Tel: 020 3817 2418;

(f) Natural England
Sterling House,
Dix's Field,
Exeter
EX1 1QA
Tel: 0300 060 39000;

(g) Historic England
Cannon Bridge House,
25 Dowgate Hill,
London
EC4R 2YA
Tel: 020 7973 370;

(h) Centre for Environment, Fisheries and Aquaculture Science ('Cefas')
Pakefield Road,
Lowestoft,
Suffolk,
NR33 0HT,
Tel: 01502 562 244;

PART 2

DETAILS OF LICENSED MARINE ACTIVITIES

2. Subject to the conditions, this licence authorises the undertaker 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 development; and

(b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

3. Licensed activities are authorised in relation to the construction, maintenance and operation of—

(a) Work No. 4B – River Water Abstraction Option—

Works to the existing cooling water supply pipelines running from Work No. 1A to the existing intake structures within the River Trent, including, as necessary, a temporary

cofferdam structure, new, upgraded or replacement pipelines, plant, buildings, enclosures, structures and cable;

(b) Work No. 5 – Water Discharge Corridor—

Works to discharge used cooling water and treated wastewater comprising works to the existing cooling water discharge pipeline(s) running from Work No. 1B to the existing outfall structures within the River Trent, including, as necessary, new, upgraded or replacement pipelines, plant, buildings, enclosures, outfall structure, screens and other structures, and cable; and

(c) any such work, further associated development listed in Schedule 1 ancillary to Work Nos. 4B and 5.

4. The substances or articles authorised for deposit associated with the completion of the construction, maintenance and operational activities described in item 3, sub paragraph (1) (a) and (b) above include—

(a) Silt, algal growth and biota;

(b) Stone, rock and concrete;

(c) Grout and sealant material; and

(d) any other material of substance to the extent its effects have been considered within the environmental statement.

5. The undertaker may engage in the licensed activities in the area bounded by the coordinates set out in Table 1 in this paragraph to the extent that they fall below MHWS at the time the licensed activities are carried out.

6. The coordinates in Table 9 are defined in accordance with reference system WGS84 - World Geodetic System 1984.

Table 9

Works No.	*Description*	*Longitude*	*Latitude*
Works No. 4B	River Water Abstraction Option – Intake Works	-0.73879	53.59523
		-0.73893	53.5941
		-0.73952	53.59412
		-0.73936	53.59525
		-0.73891	53.59432
		-0.73886	53.59492
		-0.73891	53.59457
Works No. 5	Water Discharge Corridor – Existing Outfall Option	-0.73769	53.59966
		-0.73732	53.60015
		-0.73702	53.60006
		-0.73709	53.6
		-0.73736	53.59997
		-0.73742	53.59989
		-0.73735	53.59978
		-0.73739	53.59973
		-0.73731	53.59968
		-0.73731	53.59964
		-0.73737	53.59957

PART 3

CONDITIONS

General

7. 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

Notifications and Inspections

8.—(1) The undertaker must ensure that—

(a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 12 and

(ii) the masters responsible for the vessels notified to the MMO in accordance with condition 13;

(2) Only those persons and vessels notified to the MMO in accordance with condition 12 and 13 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

(a) the undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the licence holder or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and

(c) on board each vessel or at the office with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.

(6) A notice to mariners must be issued at least 14 days prior to the commencement of the licensed activities or any part of them advising of the start date of those activities and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, TH, MCA and United Kingdom Hydrographic Office within 24 hours of issue.

(7) The undertaker must notify the United Kingdom Hydrographic Office of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO within 24 hours of issue.

Pre-construction

9. Not later than 8 weeks prior to the proposed commencement of licences activities the undertaker must submit to the MCA and the MMO for review and approval in writing by the MMO the CEMP covering the period of construction to include details of—

(a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;

(b) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised; and

(c) waste management and disposal arrangements.

The authorised development must be undertaken in accordance with the CEMP, unless otherwise agreed in writing by the MMO.

10.—(1) The undertaker must submit a marine method statement (MMS) to the MMO no later than 8 weeks prior to the proposed commencement of the licensed activities for its written approval. The MMS is to include details of—

(a) any proposed refurbishment and/or construction activities;

(b) if a cofferdam is proposed to be constructed as part of Work No. 4B, the cofferdam installation technique and piling methodology;

(c) any construction works at the intake, including the level or refurbishment or replacement works required;

(d) an indicative programme for the completion of the licensed activities; and

(e) the details of engagement undertaken with ABP Humber, as the appropriate navigational authority. This must include the design of the cofferdam and any measures which will be installed around the toe of the cofferdam to manage risk of shoaling, if necessary. It must also include details of any specification demarcation or lighting requests, as directed by ABP Humber.

(2) The licensed activities must not commence until written approval of the MMS is provided by the MMO.

(3) All licensed activities must be undertaken in accordance with the approved MMS.

(4) The MMS may be amended from time to time subject to the approval in writing of the MMO.

11. The undertaker must complete pre-works bathymetry of the areas specified in Part 2, paragraph 5, before the commencement of works. The results of pre-works bathymetry must be shared with ABP Humber, as the appropriate navigational authority and the MMO.

12. The undertaker 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 undertaker this must include the name, address, company number (if applicable) and role. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity and any change to a notified agent, contractor or subcontractors must be updated and notified to the MMO accordingly.

13. The undertaker 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 undertaker. 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.

During Construction, Operation and Maintenance

14. The undertaker must ensure that any coatings and treatments used are suitable for use in the marine area and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency Pollution prevention for businesses guidelines.

15. 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.

16. The undertaker must not discharge waste concrete slurry or wash water from concrete or cement into the river. The undertaker 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. If concrete is to be sprayed, suitable protective sheeting must be provided to prevent rebounded or windblown concrete from entering the marine 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.

18. —(1) Vibratory piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth and where drill or vibratory piling has been unsuccessful. 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.

19. Piling must not be undertaken between 01 September and 31 November, inclusive, in order to minimize any potential effects on the upstream migration of adult Salmon during their most sensitive migratory period and on wintering birds. Piling will be restricted between 0700 and 1900 hours.

20. The undertaker must comply with the lighting, hazard marking and demarcation requirements of ABP Humber, as the appropriate navigational authority.

21. The undertaker must ensure any rock material used in the construction of the authorised development is from a recognised source, free from contaminants and containing minimal fines.

22. In the event that any rock or stone material is misplaced or lost below MHWS, the undertaker must report the loss to the Local Enforcement Office within 48 hours of becoming aware and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the MMO must notify the undertaker and the undertaker must use reasonable endeavours to locate the material and recover it. In that event, the undertaker must demonstrate to the MMO that reasonable attempts have been made to locate, remove or move any such material.

23. —(1) The undertaker must report all dropped objects to the MMO using the Marine Licence Dropped Incident Report (MLDIR) as soon as reasonably practicable and in any event within 24 hours of becoming aware of an incident.

(2) On receipt of the MLDIR, the MMO may require, acting reasonably, the undertaker to carry out relevant surveys directly related to such MLDIR and where there is a need to remedy any effect related to the MLDIR. The undertaker must carry out surveys at its own expense in accordance with the MMO's reasonable requirements and must report the results of such survey results to the MMO.

(3) On receipt of such survey results the MMO may, acting reasonably, require the undertaker to remove specific obstructions from the riverbed. The undertaker must carry out removal of specific obstructions from the riverbed in accordance with the MMO's reasonable requirements and at its own expense.

Post Construction

24. The undertaker must ensure that any equipment, temporary structures, waste and debris associated with the licensed activities are removed within six weeks of completion of the licensed activity.

25. The undertaker must ensure that the MMO Local Enforcement Office is notified of the completion of the licensed activities and operations within ten days following the completion of the works.

26. The undertaker must complete post-works bathymetry of the areas specified in paragraph 2 (5) of Part 2 of this licence, following the completion of the licensed activities. The results of post-works bathymetry must be shared with ABP Humber, as the appropriate navigational authority and with the MMO.

Conditions Discharge

27. The MMO must determine an application for discharge of a condition as soon as reasonably practicable and in any event within a period of three months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the undertaker (referred to in this Order as the undertaker) to construct, operate and maintain a power generating station and carbon capture and compression plant. The Order permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also grants a deemed marine licence under Part 4 of the Marine and Coast Access Act 2009.

A copy of the Order plans and the book of referenced mentioned in this Order and certified in accordance with Article 41 (certification of plans, etc.) may be inspected free of charge during working hours at [*address*].