



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

North Lincolnshire Green Energy Park

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Energy Security and Net Zero

Examining Authority

Edwin Maund MSc, BA (Hons), Dip UP, MRTPI ExA Lead

Philip Brewer PhD, BSc (Hons), MIOA

15 August 2023

This page is intentionally blank

OVERVIEW

File Ref: EN010116

The application, dated 31 May 2022, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 31 May 2022.

The Applicant is North Lincolnshire Green Energy Park Limited.

The application was accepted for examination on 27 June 2022.

The examination of the application began on 15 November 2022 and was completed on 15 May 2023.

The development proposed comprises an electricity generating station, with a capacity to process up to 760,000 tonnes of refuse derived fuel per annum, with a gross generation capacity of up to 95 megawatts at International Organisation of Standardisation (ISO) conditions.

In addition to this principal development a series of associated elements are proposed in support of the project, the main elements of which comprise:

- Carbon capture utilisation and storage facility;
- Concrete block manufacturing facility;
- Plastic Recycling Facility (PRF);
- Battery storage facility capable of peak discharge of 30Mwe;
- Bottom ash and flue gas residue handling and treatment facility;
- Reinstatement of the railway line between Flixborough Wharf and the Dragonby sidings;
- New railhead and sidings;
- New access road linking the B1216 and Stather Road;
- Electric vehicle charging and hydrogen vehicle refuelling station; and
- Private wire and district heating networks providing heating and/or cooling, pipes carrying hydrogen gas and pipes carrying carbon dioxide to end users inside and outside of the Order Limits.

Summary of Recommendation: The Examining Authority recommends that the Secretary of State should withhold consent for the Order. If, however the Secretary of State decides to give consent then the Examining Authority recommends that the Order should be in the form attached at Appendix C.

REPORT TABLE OF CONTENTS

1.	INTRODUCTION	1
1.1.	INTRODUCTION TO THE EXAMINATION.....	1
1.2.	APPOINTMENT OF THE EXAMINING AUTHORITY	9
1.3.	THE PERSONS INVOLVED IN THE EXAMINATION	9
1.4.	THE EXAMINATION AND PROCEDURAL DECISIONS.....	9
1.5.	REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES (RIES).....	17
1.6.	ENVIRONMENTAL IMPACT ASSESSMENT	17
1.7.	HABITATS REGULATIONS ASSESSMENT.....	18
1.8.	UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS.....	18
1.9.	OTHER CONSENTS.....	19
1.10.	STRUCTURE OF THIS REPORT	20
2.	THE PROPOSAL AND THE SITE	22
2.1.	THE APPLICATION AS MADE.....	22
2.2.	RELEVANT PLANNING HISTORY	30
3.	LEGAL AND POLICY CONTEXT	31
3.1.	INTRODUCTION	31
3.2.	THE PLANNING ACT 2008	31
3.3.	NATIONAL POLICY STATEMENTS.....	32
3.4.	UK REGULATIONS DERIVING FROM EUROPEAN LAW.....	34
3.5.	OTHER LEGAL PROVISIONS	39
3.6.	MADE DEVELOPMENT CONSENT ORDERS	41
3.7.	TRANSBOUNDARY EFFECTS	41
3.8.	OTHER RELEVANT POLICY STATEMENTS	42
3.9.	THE NATIONAL PLANNING POLICY FRAMEWORK	43
3.10.	LOCAL IMPACT REPORTS	43
3.11.	THE DEVELOPMENT PLAN.....	43
4.	THE PLANNING ISSUES.....	46
4.1.	MAIN ISSUES IN THE EXAMINATION	46
4.2.	ISSUES ARISING IN WRITTEN SUBMISSIONS	46
4.3.	ISSUES ARISING IN LOCAL IMPACT REPORT	48
4.4.	CONFORMITY WITH THE NATIONAL POLICY STATEMENTS	51
4.5.	CONFORMITY WITH THE DEVELOPMENT PLAN.....	51
4.6.	APPLICATION OF OTHER POLICIES.....	53
4.7.	THE PRINCIPLE OF THE DEVELOPMENT	54
4.8.	ENVIRONMENTAL IMPACT ASSESSMENT	60
4.9.	HABITATS REGULATIONS ASSESSMENT.....	61
5.	FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES	62
5.1.	INTRODUCTION	62
5.2.	AIR QUALITY.....	63
5.3.	CLIMATE CHANGE.....	70

North Lincolnshire Green Energy Park EN010116

REPORT: TO THE SECRETARY OF STATE: 15 August 2023

5.4.	CULTURAL HERITAGE	78
5.5.	DESIGN AND LAYOUT.....	99
5.6.	ECOLOGY and BIODIVERSITY	106
5.7.	FLOOD RISK, HYDROLOGY AND WATER RESOURCES	126
5.8.	HEALTH.....	142
5.9.	LANDSCAPE AND VISUAL AMENITY	146
5.10.	MAJOR ACCIDENTS AND HAZARDS	154
5.11.	NOISE AND VIBRATION	158
5.12.	SOCIO-ECONOMICS.....	171
5.13.	TRAFFIC AND TRANSPORT	180
5.14.	WASTE.....	189
6.	FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT	207
6.1.	INTRODUCTION	207
6.2.	FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS.....	210
6.3.	CONSERVATION OBJECTIVES	232
6.4.	FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY.....	232
6.5.	HRA CONCLUSIONS	243
7.	CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT	245
7.1.	INTRODUCTION	245
7.2.	THE PLANNING BALANCE.....	254
8.	COMPULSORY ACQUISITION AND RELATED MATTERS	258
8.1.	INTRODUCTION	258
8.2.	THE REQUEST FOR CA AND TP POWERS	259
8.3.	THE PURPOSES FOR WHICH LAND IS REQUIRED	262
8.4.	LEGISLATIVE REQUIREMENTS	262
8.5.	EXAMINATION OF THE CA AND TP CASE	263
8.6.	CONCLUSIONS	285
9.	DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS.....	287
9.1.	INTRODUCTION	287
9.2.	THE STRUCTURE OF THE DCO	287
9.3.	EXAMINATION OF THE DCO	287
10.	SUMMARY OF FINDINGS AND CONCLUSIONS.....	303
10.1.	INTRODUCTION	303
10.2.	RECOMMENDATION	307

APPENDIX A: EXAMINATION LIBRARY	II

APPENDIX B: LIST OF ABBREVIATIONS AND DEFINITIONS	III

APPENDIX C: THE RECOMMENDED DCO	IV

APPENDIX D: CONSIDERATIONS FOR THE SECRETARY OF STATE	V

North Lincolnshire Green Energy Park EN010116

REPORT: TO THE SECRETARY OF STATE: 15 August 2023

List of Figures

Figure 1 ES Figure 1-1 Site Location	1
Figure 2 Areas Within the Order Limits	2
Figure 3 Option A for the Northern District Heat and Private Wire Network	4
Figure 4 Option B for the Northern District Heat and Private Wire Network	5
Figure 5 Relationship between the Waste Management Plan for England and other policy documents	43
Figure 6 Project Principles	102

List of Tables

Table 1 Statements of Common Ground and their status.....	14
Table 2 Examination Library References for the Application Guide	24
Table 3 Outstanding Issues Identified in SoCG with NLC	49
Table 4 Listed Buildings within 1km of the application site.....	85
Table 5 Likely Significant Effects on Nationally Designated Sites.....	113
Table 6 Summary of landscape effects	149
Table 7 Summary of visual effects	149
Table 8: DCO Provisions Recommended to be Changed	296



The Planning
Inspectorate

**ERRATA SHEET – North Lincolnshire Green Energy Park
Ref. EN010116**

**Examining authority's Report of Findings and Conclusions and
Recommendation to the Secretary of State for the Department of
Energy Security and Net Zero, dated 15 August 2023**

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

Vol	PDF Page No.	Para	Error	Correction
1	121	5.6.99	'In the original modelling the Applicant concluded a significant adverse effect to the Humber Estuary, Messingham Heath, Thorne Crowle and Goole Moors and Risby Warren SSSIs'	'In the original modelling the Applicant concluded a significant adverse effect to the Risby Warren SSSI only.'

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

- 1.1.1. The application for the North Lincolnshire Green Energy Park (the Proposed Development) EN010116 was submitted by North Lincolnshire Green Energy Park Limited (the Applicant) to the Planning Inspectorate on 31 May 2022 under section 37 of the Planning Act 2008 (PA 2008) and accepted for Examination under section 55 of the PA 2008 on 27 June 2022 [PD-001].
- 1.1.2. The land within the Order Limits has been separated out into four distinct areas, each of which corresponds to a different element of the scheme. These are listed below and identified in Figure 2.

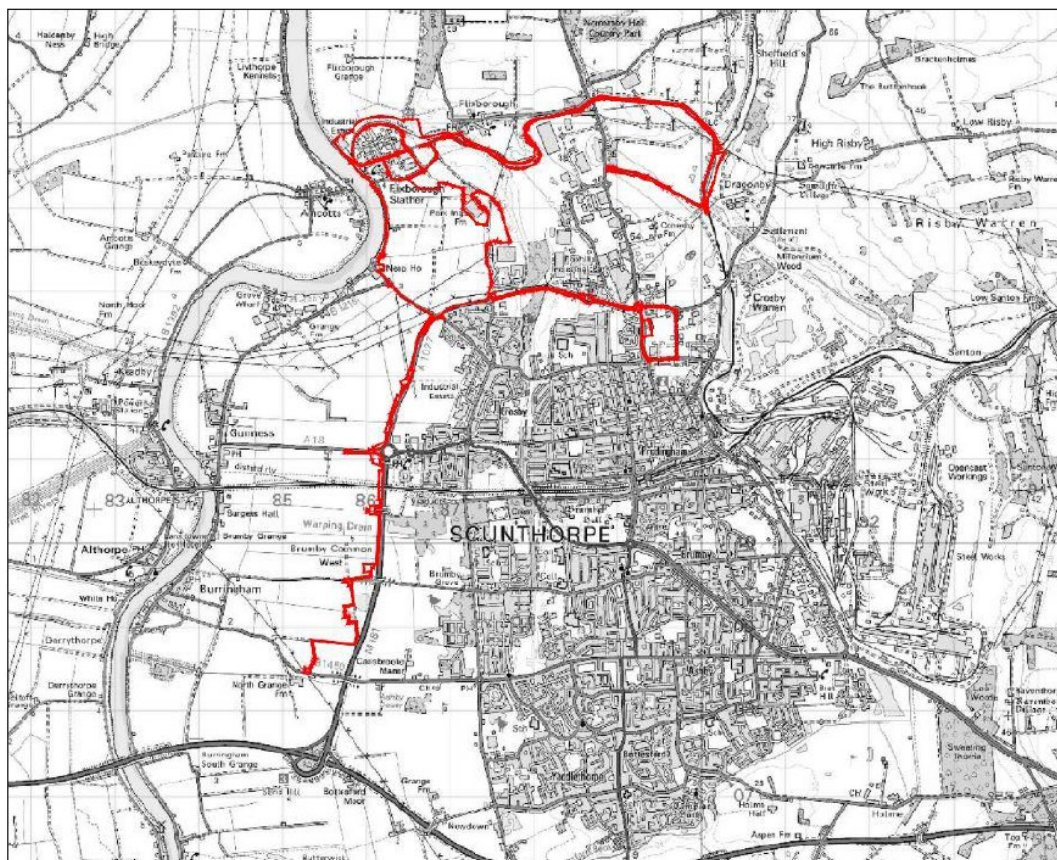


Figure 1 ES Figure 1-1 Site Location

- 1.1.3. The Proposed Development is located at Flixborough Industrial Estate, situated at Stather Rd, Flixborough, Scunthorpe and would be located on a 460-hectare site between Flixborough Wharf on the east bank of the River Trent and north of the B1216 Ferry Road West. The Proposed Development is laid out over four distinct areas as detailed in Figure 2 below:



Figure 2 Areas Within the Order Limits

The Energy Park Land

- 1.1.4. Land within and to the south of Flixborough Industrial Estate, to the west of Scunthorpe. The Energy Park Land encompasses an area within and adjacent to Flixborough Wharf on the east bank of the river Trent.

The Northern District Heat and Private Wire Network (NDHPWN) Land

- 1.1.5. The route of the NDHPWN would run from the Energy Recovery Facility (ERF) following the route of the proposed new access road to the southern end of the Energy Park Land where the B1216 (Ferry Road West) meets the A1077 (Phoenix Parkway).

- 1.1.6. The route then would follow the A1077 towards the east, passing the Skippingdale Retail Park on its south site and crossing the common land at Atkinsons' Warren/Foxhills Plantation.
- 1.1.7. East of the common land, the route passes south of the Foxhills Industrial Park where the NDHPWN land incorporates rough grassland with hedges to the north of the A1077 and agricultural land and highways land.
- 1.1.8. Following this route two options have been proposed continuing from the roundabout junction with the A1430 (Normanby Road):
- Option A -the route passes south towards the built-up urban centre of Scunthorpe via Normanby Road, where the route remains lined on both sides by residential and industrial areas; or
 - Option B –the route continues on the A1077 until the junction with Bessemer Way to the south. The route would follow Bessemer Way until the junction with Warren Road turning due west to meet the Normanby Road.
- 1.1.9. Figures 3 and 4 below show the distinction between these two alternatives. The dDCO as drafted only allows compulsory acquisition powers to be utilised for one of the options.

The Southern District Heat and Private Wire Network (SDHPWN) Land

- 1.1.10. The route of the SDHPWN runs from the southern end of the Energy Park Land where the B1216 (Ferry Road West) joins and A1077, and then heads south through the agricultural land on the west side of the A1077.
- 1.1.11. At Doncaster Road, the SDHPWN would pass under the carriageway and continue south across the agricultural land, where it would pass under the Crowle to Scunthorpe railway line and terminate in the field to the north of the B1450 (Burringham Road).

The Railway Reinstatement Land

- 1.1.12. The disused railway line between the main Network Rail line at Dragonby and the Wharf at Flixborough.
- 1.1.13. These areas are illustrated in the Figure below extracted from Figure 3 of [APP-048].
- 1.1.14. The generating capacity would be in excess of 50MW and constitutes a Nationally Significant Infrastructure Project under s14 and s15 of the Planning Act 2008.



Figure 3 Option A for the Northern District Heat and Private Wire Network



Figure 4 Option B for the Northern District Heat and Private Wire Network

1.1.15. The Proposed Development comprises:

1.1.16. **Work No. 1** — an electricity generating station fuelled by refuse derived fuels, with a capacity to process up to 760,000 tonnes of refuse derived fuel per annum, with a gross generation capacity of up to 95 megawatts at ISO conditions and includes:

- a. fuel reception and storage facilities, consisting of vehicle ramps, a tipping hall, shredder, bunker hall and cranes;
- b. a combustion system housed within a boiler hall, consisting of three combustion lines and associated boilers;
- c. a steam turbine and generator housed within a turbine hall with a cooling system;
- d. a bottom ash handling system, including an ash conveyor housed within a bottom ash hall connecting to Work No. 2;

- e. a flue gas treatment system, including residue and reagent silos housed within a flue gas treatment hall;
- f. a silo or tank for the storage of ammonia reagents;
- g. district heating equipment;
- h. a tank for the storage of fuel oil;
- i. a compressed air system;
- j. a process effluent storage tank;
- k. a switchyard including a sub-station and battery storage;
- l. a transformer compound containing the generator transformer;
- m. utility connections within the works limits;
- n. pipe racks, pipe runs and cabling;
- o. fire water pump house and fire water tank;
- p. internal vehicle access roads, crossings and pedestrian and cycle facilities and routes;
- q. administration offices and control room, security gatehouse, barriers and enclosures;
- r. elevated walkway connected to Work Nos. 1C, 2 and 6;
- s. weighbridges;
- t. car parking;
- u. a demineralised water treatment plant and demineralised water storage tanks;
- v. indoor storage tanks for boiler water treatment chemicals;
- w. a back-up generator;
- x. trade effluent treatment plant; and
- y. two visual barriers.

1.1.17. **Work No. 1A** — three emissions stacks, consisting of ERF stack windshield, back up boilers stack windshield and back-up generator stack, and associated emissions monitoring system.

1.1.18. **Work No. 1B** — carbon capture utilisation and storage facility capable of capturing at least 54,387 tonnes of Carbon Dioxide (CO₂) per annum including carbon dioxide storage tanks.

1.1.19. **Work No. 1C** — Associated Development being a visitors centre containing offices, exhibition space and visitor accommodation with elevated walkway connected to Work Nos. 1, 2 and 6.

1.1.20. **Work No. 1D** — a cooling system consisting of air-cooled condensers or air blast chillers.

Associated Development, Work No. 2 to Work No. 15B

1.1.21. **Work No. 2**

- a. a bottom ash and flue gas residue handling and treatment facility;
- b. a concrete block manufacturing facility; and
- c. offices and elevated walkway connected to Work Nos 1, 1C and 6.

Rail infrastructure

1.1.22. **Work No. 3** — Associated Development being reinstatement of the railway line between Flixborough Wharf and the Dragonby sidings

including new sidings and two footbridges across the railway line and three user worked crossings.

- 1.1.23. **Work No. 4** — Associated Development being a railhead, sidings and associated equipment to allow loading and unloading.

Energy Park: supporting infrastructure

- 1.1.24. **Work No. 5** — Associated Development being a new access road linking the B1216 and Stather Road, stopping up of the section of Stather Road between Neap House and Bellwin Drive, improvements to footpaths and the junction between the B1216 and A1077 and section of elevated walkway that connects to Work Nos. 1, 1C, 2 and 6.
- 1.1.25. **Work No. 6** — Associated Development being a plastic recycling facility and associated infrastructure including gatehouses, weighbridges, electrical equipment, heat exchange equipment, office and welfare facilities, pre-processed material storage and post processed material storage, and section of elevated walkway connected to Work Nos. 1, 1C and 2.
- 1.1.26. **Work No. 7** — Associated Development being a hydrogen electrolyser, associated infrastructure, equipment required to inject hydrogen into the gas grid.
- 1.1.27. **Work No. 8** — Associated Development being an electric and hydrogen vehicle refuelling station, with hydrogen production and equipment required to inject hydrogen into the gas grid and offices.
- 1.1.28. **Work No. 9** — Associated Development being a battery storage facility capable of peak discharge of 30 Megawatts electric (MWe), with associated infrastructure including site roads, offices, control equipment, transformers, and rectifiers.

District Heating Private Wire Network (DHPWN)

- 1.1.29. **Work No. 10** — Associated Development being private wire networks linking Work No. 1 with Work No. 2, Work No. 6, Work No. 7, Work No. 8, Work No. 9 and to end users outside of the Order Limits.
- 1.1.30. **Work No. 11** — Associated Development being a district heating network providing heating and cooling and pipes carrying hydrogen gas, linking Work No. 1 with Work No. 6, and to end users outside of the Order Limits.

Landscaping, mitigation, and utility works

- 1.1.31. **Work No. 12** — Associated Development being hard and soft landscaping and the construction of landscape features including a wetland area and ecological mitigation works.
- 1.1.32. **Work No. 12A** - Associated Development being habitat creation measures incorporating biodiversity enhancements.

- 1.1.33. **Work No. 13** — Associated Development comprising flood defences and sustainable drainage systems, including swales, attenuation ponds and below ground tanks and the diversion of ditches.
- 1.1.34. **Work No. 14** — Associated Development comprising new cables diversions of existing utilities which conflict with the construction of Work No. 1, Work No. 2, Work No. 5, Work No. 6, Work No. 10 and Work No. 11.
- 1.1.35. **Work No. 15A** — Associated Development being temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas, generators, concrete batching facilities, vehicle and cycle parking facilities, security fencing and gates, external lighting, roadways and haul routes, wheel wash facilities, and signage in connection with Work Nos 1-14.
- 1.1.36. **Work No. 15B** — Associated Development being construction access, temporary laydown areas to allow for storage of materials and working areas in connection with Work Nos. 1-14.

Other Associated Development

- a. Including temporary lighting, including lighting columns;
 - b. security fencing, gates, boundary treatment and other means of enclosure;
 - c. closed circuit television cameras and columns and other security measures;
 - d. surface and foul water drainage systems, oil-water separators, including channelling, culverting, crossings and works to existing drainage ditches and systems;
 - e. electric, gas, water, telecommunication and other infrastructure connections and works, and works to alter such services and utilities connections;
 - f. hard and soft landscaping;
 - g. biodiversity mitigation and enhancement measures;
 - h. site establishment and preparation works, including site clearance (including vegetation removal); earthworks (including soil stripping and storage and site levelling) and excavations; temporary fencing; the creation of temporary construction access points; and the temporary alteration of the position of services and utilities apparatus and connections; and
 - i. vehicle access roads, crossings, parking, and pedestrian and cycle facilities and routes.
- 1.1.37. The location of the Proposed Development is shown on the Location and Order Limits Plan of the Environmental Statement (ES) [APP-013] and Land Plans [APP-014], final updated versions of which were received shortly after Deadline 9 but accepted as Additional Submissions [AS-022]. The site lies within the administrative area of North Lincolnshire Council and is wholly in England.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 19 August 2022, Edwin Maund (lead member) and Philip Brewer (member) were appointed as the Examining Authority (ExA) for the application under s61 and s65 of the PA2008 [PD-005].

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 because they had made a relevant representation (RR), were a statutory party who requested to become an IP, or were Affected Persons (APs) by virtue of being affected by compulsory acquisition (CA) proposals made as part of the application; and
 - other persons, who we invited to participate in the Examination because they were either affected by it in some other relevant way or because they had expertise or evidence that we considered necessary to inform the Examination.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.4.1. The Examination began on 15 November 2022 and concluded at 11.59pm on 15 May 2023.
- 1.4.2. The principal components of and events around the Examination are summarised below, a full list of the documents received during the Examination, the Examination Library (EL) is set out at the end of this Report, in Appendix A.

The Preliminary Meeting

- 1.4.3. On 18 October 2022, we wrote to all Interested Parties (IPs), Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (The Rule 6 Letter) notifying them of and inviting them to the Preliminary Meeting (PM) [PD-004], outlining:
- the arrangements and agenda for the PM;
 - an Initial Assessment of the Principal Issues (IAPI);
 - the draft Examination Timetable;
 - availability of RRs and application documents; and
 - of our procedural decisions.
- 1.4.4. The PM took place on 15 November 2022 at Forest Pines Spa and Golf Resort, Ermine Street, Broughton, Brigg, DN20 0AQ and by virtual means through Microsoft Teams. An audio recording [EV-002] and a note of the meeting [EV-003a] were published on the Planning Inspectorate National Infrastructure website¹.

¹ [North Lincolnshire Green Energy Park | National Infrastructure Planning \(planninginspectorate.gov.uk\)](https://planninginspectorate.gov.uk/north-lincolnshire-green-energy-park/)

- 1.4.5. Our procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-006], dated 23 November 2022.

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 our 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-006] and so there is no need to reiterate them here.
- 1.4.7. We did not need to make any changes to the Examination Timetable, nor did we receive any request for material changes to the DCO during the Examination.

Site Inspections

- 1.4.8. Site Inspections are held in PA2008 Examinations to ensure that we have an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.
- 1.4.9. 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 and Accompanied Site Inspection (ASI) is held.
- 1.4.10. We held the following USIs:
- USI1, 21 and 22 September 2022 took place to enable us to become familiar with the application site, and its surroundings [EV-001];
 - USI2, 23 January 2023 took place to further develop our understanding of the relationship of the application site, and its surroundings [EV-022b];
- A site note providing a procedural record of each of the USI can be found in the Examination Library under the above references.
- 1.4.11. We sought views from the Applicant and IPs as to where site visits should be undertaken, [PD-006] and received responses back from the Applicant [REP2-001], AB Agri Limited [REP1-034, REP1-035], Amy Louise Ogman [REP3-042] and Brian Oliver [REP3-046].
- 1.4.12. We held the following ASI:

An ASI took place on 27 January 2023 which enabled us to view those parts of the site not accessible from public locations including Flixborough Wharf, and the rail sidings at Dragonby [EV-017].

- 1.4.13. The itinerary for the ASI can be found in the Examination Library under the above reference.
- 1.4.14. We have had regard to the information and impressions obtained during its site inspections in all relevant sections of this report.

Hearing Processes

- 1.4.15. We held hearings to responded to specific requests from persons who had a right to be heard and to address matters where we considered that a hearing was necessary for us to enquire orally into matters. Issue Specific Hearings (ISHs) under s91 of PA2008 were held using Microsoft Teams and in person at Forest Pines Spa and Golf Resort, Ermine Street, Broughton, Brigg, DN20 0AQ, a location in close proximity with good access to the application site and within a reasonable distance for the majority of IPs.
- 1.4.16. ISHs were held on the dDCO on:
- ISH2, 17 November 2022 [EV-010 and EV-012];
 - ISH4, 7 March 2023 [EV-036]
- 1.4.17. ISH1 was held on the Scope of the Proposed Development on 16 November 2022 [EV-004 and EV-006]; and a further ISH3 [EV-022a, EV-024, EV-026, EV-028, EV-030, EV-032] was held on environmental matters which addressed the following subjects:
- Waste;
 - Flood management and risk, control of surface water and water quality;
 - Design;
 - Biodiversity, Ecology and Habitat Regulations Assessment; and
 - Cultural Heritage.

A Compulsory Acquisition Hearing (CAH1) was held under s92 of PA2008 using Microsoft Teams and in person at Forest Pines Spa and Golf Resort, Ermine Street, Broughton, Brigg, DN20 0AQ on, 7 March 2023 [EV-044 to EV-046].

- 1.4.18. All persons affected by Compulsory Acquisition (CA) and temporary possession (TP) proposals (Affected Persons or APs) were provided with an opportunity to be heard. We also used these hearings to examine the Applicants case for CA and TP in the round.
- 1.4.19. An Open Floor Hearing (OFH) was held under s93 of PA2008 using Microsoft Teams and in person at Forest Pines Spa and Golf Resort, Ermine Street, Broughton, Brigg, DN20 0AQ during the day and on the evening of 24 January 2023 [EV-018 and EV-020]. All IPs were provided with an opportunity to be heard on any important and relevant subject matter that they wished to raise.

Written Processes

1.4.20. Examination under PA2008 is primarily a written process, in which we have 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 []. For this reason, this Report does not contain extensive summaries of all documents and representations, although full regard has been had to them in our conclusions. We have considered all important and relevant matters arising from them.

1.4.21. Key written sources are set out further below.

Relevant Representations

1.4.22. 97 Relevant Representations (RRs) were received by the Planning Inspectorate [RR-001 to RR-097]. Two additional late RRs were received from Network Rail Infrastructure Limited [AS-001] and National Highways [AS-012] which we decided to accept into the Examination. 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 us. The issues that they raise are considered throughout this report.

Written Representations and Other Examination Documents

1.4.23. The Applicant, IPs and Other Persons were provided with opportunities to:

- make written representations (WRs) (Deadline 2 (D2);
- comment on WRs made by the Applicant and other IPs (D3 and D4);
- summarise their oral submissions at hearings in writing (D1 and D6);
- make other written submissions requested or accepted by us; and
- comment on documents issued for consultation by us including:
 - A Report on Implications for European Sites (RIES) [PD-014] published on 6 April 2023 by D8; and
 - A Schedule of our recommended amendments to the Applicant's draft DCO (dDCO) [PD-013] published on 6 April 2023 by D8.

1.4.24. All WRs and other Examination documents have been fully considered by us. The issues that they raise are considered in throughout this report.

Local Impact Report

1.4.25. 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 us under s60 PA2008.

1.4.26. One LIR was received by us from North Lincolnshire Council (NLC) [REP1-019].

1.4.27. We have taken fully into account the LIR throughout this report.

Statements of Common Ground

- 1.4.28. A series of Statements of Common Ground (SoCG) ie. a statement agreed between the Applicant and one or more IPs, recording matters that are agreed between them were requested by us. By the end of the Examination, the following bodies had completed SoCGs with the Applicant:
- AB Agri Limited [REP10-009]
 - Anglian Water Services Limited [REP9-024]
 - Associated British Ports (Humber) [REP7-027]
 - Bagmoor Wind Limited [REP10-011]
 - Jotun Paints (Europe) Limited [REP9-028]
 - Lincolnshire Wildlife Trust [REP9-022]
 - National Highways [REP9-031]
 - Natural England (NE) [REP10-010]
 - Network Rail Infrastructure Limited [REP10-008]
 - North Lincolnshire Council [REP9-025]
 - Rainham Steel Company Limited [REP9-032]
 - Scunthorpe and Gainsborough Water Management Board [REP7-026]
 - Severn Trent Water Limited [REP7-024]
 - The Environment Agency (EA) [REP9-027]
 - United Kingdom Without Incineration Network (UKWIN) [REP9-029]
- 1.4.29. In addition to the SoCG above, which were finalised the following organisations commenced but did not conclude SoCG by the end of the Examination
- Historic England [REP9-030]
 - National Grid Carbon Ltd [REP5-025]
- 1.4.30. Within the Rule 6 [PD-006] we requested SoCG to be prepared by the Applicant with the following additional IPs, however these were not commenced or concluded by the end of the Examination. The Applicant provided an explanation for the approach and the reasons why progress had not been made in respect of each party in their Statement of Commonality [REP10-006] These are summarised below:
- Enfinium Limited - Enfinium Ltd did not engage with the Examination beyond submitting a RR.
 - Humberside Fire and Rescue Authority - The Applicant met with Humberside Fire and Rescue Authority in February 2023 to discuss the Project and the need for a SoCG, while the Authority wished to have continued engagement which the Applicant indicated they were committed to, a SoCG was not progressed.
 - British Steel Limited confirmed that there were no outstanding issues at the Compulsory Acquisition hearing on 8th March 2023, a SoCG was not subsequently progressed.
 - British Telecommunications Plc and Openreach Limited - The Applicant confirmed in REP4-001 they had been engaging with Openreach Limited who had confirmed that the Protective Provisions included within the draft Order were acceptable and that they had no further

concerns with the Project. As such, both parties are content that a SoCG is not required. Copies of the correspondence with Openreach were provided and are included in Appendix C to [REP6-032].

- Cadent Gas Limited - matters have mainly been agreed via Protective Provisions, although outstanding matters in this respect are considered later in the report.
- Northern Powergrid Yorkshire Plc - matters have been agreed via Protective Provisions.

1.4.31. A summary table of the SoCG identifying the outstanding issues where an area of disagreement remains is set out below.

Table 1 Statements of Common Ground and their status

Applicant's Description	SoCG Party	Examination Library Reference	Outstanding Issue(s)/Area of disagreement
Final	AB Agri Limited	REP10-009	• Biosecurity • Flood Risk • Temporary Acquisition • Access
Final	Anglian Water Services Limited	REP9-024	• Impact on existing infrastructure • Water environment effects • Impact on water quality • Availability of water in the water resource zone
Final	Associated British Ports (Humber)	REP7-027	No matters outstanding.
Final	Bagmoor Wind Limited	REP10-011	• Railway Crossing works • Potential impact on local windfarm
Draft	Jotun Paints (Europe) Limited	REP9-028	• Details of the land rights required (Heads of Term)

Final	Lincolnshire Wildlife Trust	REP9-022	No matters outstanding.
Final	National Highways	REP9-031	No matters outstanding.
Final	Natural England	REP10-010	• Soils
Final	Network Rail Infrastructure Limited	REP10-008	No matters outstanding.
Final	North Lincolnshire Council	REP9-025	• Archaeology • Impact on surrounding listed buildings • Noise • Articles and Requirements included in the DCO
Final	Rainham Steel	REP9-032	No matters outstanding.
Final	Scunthorpe and Gainsborough Water Management Board	REP7-026	No matters outstanding.
Final	Severn Trent Water Limited	REP7-024	No matters outstanding.
Final	The Environment Agency	REP9-027	No matters outstanding.
Final	United Kingdom Without Incineration (UKWIN)	REP9-029	• Approach to projecting waste as a fuel (WaF) • WaF projections • Closures • Achieved capacity factor • Non-R1 projects • Projections of future cement kiln use • Refuse Derived Fuel (RDF)

			exports for 2024-2026 • Feedstock composition • Supply/capacity match modelling • Draft DCO
Final	Economic Benefits Group	REP10-012	No matters outstanding.

1.4.32. The SoCG(s) set out above have been taken fully into account by us in all relevant Chapters of this Report.

1.4.33. The Applicant also commenced SoCG with Historic England [REP9-030] and National Grid Carbon [REP5-025]. In neither case were they signed by the IPs or had progressed to a point where there was a clear set of agreed principles, or matters outstanding that we could reasonably take into account as a final position. In this respect in the case of both these draft SoCG we have not given them weight in our consideration of the matters before us.

Written Questions

1.4.34. We asked 3 round(s) of written questions.

- First written questions (ExQ1) [PD-007] and procedural decisions were set out in the Rule 8 letter [PD-006], dated 23 November 2022.
- Second written questions (ExQ2) [PD-012] were issued on 2 March 2023.
- Third written questions (ExQ3) [PD-015] were issued on 17 April 2023.

1.4.35. The following request(s) for further information and comments under Rule 17 of the EPR were issued on:

- 8 December 2022 [PD-008] seeking clarification of the Applicant's R1 Assessment; and
- 14 February 2023 [PD-010] seeking clarification on a number of Articles within the dDCO from both NLC and the Applicant, and further details on the assessment of a sewage package treatment works which had at that point been added to the dDCO. This was subsequently withdrawn following further responses from the EA and Severn Trent Water.
- 4 May 2023 [PD-016] requested a revised HRA to assess the suitability of soft start mechanisms to control noise and vibration and clarification on the control measures for percussive piling. Additionally, views were sought from Anglian Water in light of their late submission identifying a shortage of water supply.

1.4.36. All responses to our written questions have been fully considered and taken into account in all relevant Chapters of this Report.

Requests to Join and Leave the Examination

- 1.4.37. The following persons who were not already IPs wrote to us requesting we should enable them to join the Examination after the PM:
- Alex Zimmerman [REP4-054], Deborah Zimmerman [REP4-055], Eleanor Zimmerman [REP4-056], Scott Zimmerman [REP4-057], Trevor Zimmerman [REP4-058], Kevin Scales [REP5-046] Each of these individuals were accepted into the Examination as Other Persons and their comments are recorded in the EL with the above references.
- 1.4.38. During the Examination, as a consequence of discussion at hearings and/or discussions between relevant IPs/APs/Other Persons and the Applicant, the following persons wrote to us to inform it that their issues were settled, and their representations were withdrawn:
- National Highways [REP9-056] confirmed in correspondence dated 11 May 2023 that they had reached agreement with the Applicant in respect of all outstanding concerns and withdrew its objection to the application.
 - Network Rail Infrastructure Limited [REP10-016] confirmed in correspondence dated 15 May 2023 that they had reached agreement with the Applicant with regard to the Protective Provisions to be included in the dDCO and consequently we could treat their objections as withdrawn.
 - Northern Powergrid (Yorkshire) Limited [REP9-054] confirmed in correspondence dated 30 April 2023 that they had reached agreement with the Applicant and withdrew their objection to the application.

1.5. REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES (RIES)

- 1.5.1. We published a RIES on 6 April 2023 [PD-014] with comments on it requested by D8 (28 April 202). The Applicant [REP8-021], EA [REP8-034], NE [REP8-036] and one IP [REP8-028] provided comments on the RIES.

1.6. ENVIRONMENTAL IMPACT ASSESSMENT

- 1.6.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).
- 1.6.2. The Applicants provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) of their intention to provide an Environmental Statement (ES). In accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development.
- 1.6.3. On 27 October 2020, the Applicant submitted a Scoping Report [APP-068] to the SoS (received on the 30 October 2020), under Regulation 10

of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (the EIA Regulations) in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion) [APP-069].

- 1.6.4. On 9 December 2020 the Planning Inspectorate provided a Scoping Opinion [APP-069].
- 1.6.5. On 28 September 2022 the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 13 of the EIA Regulations had been complied with [OD-001, OD-002, OD-003, OD-004].
- 1.6.6. The ES in the original application submission comprises, the Non-Technical Summary (NTS) [APP-048], Main Chapters [APP-049 to APP-067, APP-097] and Annexes [APP-068 to APP-075].
- 1.6.7. We are satisfied that the submitted ES meets the requirements of Schedule 4 of the EIA Regs and, together with environmental information provided during the Examination, forms an adequate basis for decision making. Issues raised by the ES and matters arising from it are addressed in Chapter five of this Report.

1.7. HABITATS REGULATIONS ASSESSMENT

- 1.7.1. The Proposed Development is development for which a Habitats Regulations Assessment (HRA) Reports has been provided. The latest version can be found in the Examination Library (EL) at [AS-023].
- 1.7.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter six of this Report.

1.8. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

- 1.8.1. At Deadline 9 the Applicant provided a completed Deed of Development Consent Obligation [AS-025] (under section 111 of the Local Government Act) entered into with North Lincolnshire Council. This is in relation to a financial contribution for improvements to the road junction in the vicinity of Neap House.
- 1.8.2. The Applicant in providing closing submissions [AS-031] at paragraph 4.11 also refers to the potential for an agreement being reached with a neighbouring landowner to facilitate a land management agreement in order to provide mitigation for Significant residual adverse effects from atmospheric pollution during operation to Risby Warren Site of Special Scientific Interest (SSSI). No such agreement was provided into the Examination.
- 1.8.3. The SoS may wish to check with the Applicant and Natural England if this matter has now been resolved following the conclusion of the Examination.

1.9. OTHER CONSENTS

1.9.1. The application documentation 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. These are set out by the Applicant in [REP6-012] The latest position covering the main issues is summarised below.

- **Connection Agreement** details of the proposed connection to the 132kV electricity distribution network from Northern Powergrid via the Scunthorpe North substation on Normanby Road is set out in the Grid Connection Statement [APP-039] supported by a copy of the correspondence from Northern Powergrid setting out the details of the connection offer made to the Applicant [AS-032]. This supersedes the initial offer received and included at the outset of the Examination [APP-039].
- **Connection Agreement** for the local gas distribution network would be required via an underground pipeline connection. This relies upon Cadent Gas Limited using their regulatory powers or a subsequent planning approval. The Applicant remained in negotiation with Cadent Gas Limited at the end of the Examination.
- **Pipeline Safety Notification** – (The Pipeline Safety Regulations 1996) Notice a minimum of six months in advance of the proposed commencement of construction of the proposed gas connection would be required to be sent to the Health and Safety Executive (HSE).
- **Gas Safety Case** – The Gas Safety Management regulations 1996, required in connection with proposed gas connection. A safety case must be prepared for the HSE for approval prior to gas being conveyed.
- **Environmental Permits** under the Environmental Permitting (England and Wales) Regulations 2016 from the Environment Agency (EA) By the end of the Examination no permit application had been submitted.
- **Electricity Generating Licence** under Section 6 of the Electricity Act 1989 from the Office of Gas and Electricity Markets (OFGEM).
- **Protected Species Licence** under the Conservation of Habitats and Species regulations 2017 from Natural England.
- **Class Protected Species Licence** under the Wildlife and Countryside Act 1981 from Natural England.
- **Badger Licence** under the protection of Badgers Act 1992 from Natural England.
- **Building Regulations** from North Lincolnshire Council.
- **Permit to discharge water** from the Environment Agency.
- **Land Drainage Consent** from the Scunthorpe and Gainsborough Water Management Board.
- **Hazardous Substances Consent** under Sections 4 and 6 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. A Hazardous Substances Consent application would need to be prepared at the detailed design stage if required.

- **Safety Certificate for the Rail Line** – from the Office for Road and Rail (ORR) The ORR would be expected to approve any new or reinstated rail infrastructure for operation prior to the start of rail services, in line with the provisions of the Railways Act 1993 and the Railways and Other Guided Transport Systems (Safety) Regulations 2006.
- **Greenhouse Gas Permit** - Greenhouse Gas Emissions Trading Scheme Regulations 2012.

- 1.9.2. Without prejudice to the exercise of discretion by other decision makers, we find no obvious impediments to the delivery of the Proposed Development arising from these consents. If a DCO is made, we consider that there is a reasonable likelihood of outstanding consents being granted. However, noting the limited progress regarding a number of consents, we recommend that SoS satisfy themselves of progress and give this relevant consideration in the final decision.
- 1.9.3. We believe particular attention should be paid to the outstanding position of Anglian Water and their submission at Deadline 8 that they could not provide assurance that a water supply would be available at the time the Applicant has indicated they intend to commence works.
- 1.9.4. It is also worth noting that during the Examination, the Department for Energy Security and Net Zero (DESNZ) published a consultation document 'Decarbonisation Readiness.' A consultation on updates to the 2009 Carbon Capture Readiness requirements. The consultation period concluded on 24 April 2023 prior to the end of the Examination, however the results of the consultation or the Governments conclusions were not available at the point the Examination closed.
- 1.9.5. The consultation proposed removing the 300MW minimum capacity threshold at which requirements for carbon capture are required to be installed and moving these requirements to the Environmental Permitting process. In addition, it made clear this was to include Energy for Waste plants such as the one proposed as part of this application.
- 1.9.6. At the time the consultation document was published it was anticipated that the Government would issue a response and then amend the relevant legislation. (The Carbon Capture Readiness Regulation 2013 and the Environmental Permitting Regulations 2016) With an expectation that the revised requirements would come into force for newly built plants from 1 July 2024. It may therefore be appropriate for the SoS to consider if at the time the decision is made whether the implications of such changes have an effect on the potential for an environmental permit to be issued.

1.10. STRUCTURE OF THIS REPORT

- 1.10.1. 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** sets out our main findings and conclusions in respect of each of the planning issues taking into account the information provided in the ES and raised during the Examination. Where appropriate to do so reference is made to the optionality included for the Northern District Heat and Private Wire Network.
- **Chapter 6** Provides findings and conclusions in relation to European Sites and HRA.
- **Chapter 7** sets out the balance of planning considerations arising from Chapters 4, 5 and 6, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 8** sets out our examination of Compulsory Acquisition (CA) and Temporary Possession (TP) proposals.
- **Chapter 9** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- **Chapter 10** summarises all relevant considerations and sets out our recommendation to the SoS.

1.10.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Library.
- **Appendix B** – List of Abbreviations.
- **Appendix C** – the Recommended DCO
- **Appendix D** – Considerations for the Secretary of State

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

2.1.1. The Applicant submitted the application for an Order granting development consent for what is described as the 'North Lincolnshire Green Energy Park Scheme' [APP-004].

2.1.2. Chapter 3 of the ES [APP-051] provides a full description of the Proposed Development, which in summary comprises:

An Energy Recovery Facility (ERF)

- an electricity generating station fuelled by refuse derived fuels with a gross generation capacity of up to 95 megawatts at ISO conditions.
- three emissions stacks, consisting of ERF stack windshield, back up boilers stack windshield and back-up generator stack, and associated emissions monitoring system.
- carbon capture utilisation and storage facility capable of capturing at least 54,387 tonnes of CO₂ per annum including carbon dioxide storage tanks.
- Associated Development being a visitors' centre containing offices, exhibition space and visitor accommodation with elevated walkway.
- a cooling system consisting of air-cooled condensers or air blast chillers.

Associated Development, consisting of

- a bottom ash and flue gas residue handling and treatment facility.
- a concrete block manufacturing facility.
- Offices.
- reinstatement of the railway line between Flixborough Wharf and the Dragonby sidings including new sidings.
- a railhead, sidings and associated equipment to allow loading and unloading.
- a new access road linking the B1216 and Stather Road, stopping up of the section of Stather Road between Neap House and Bellwin Drive and improvements to footpaths and the junction between the B1216 and A1077.
- a plastic recycling facility and associated infrastructure including gatehouses, weighbridges, electrical equipment, heat exchange equipment, office and welfare facilities, pre-processed material storage and post processed material storage.
- a hydrogen electrolyser, associated infrastructure and equipment required to inject hydrogen into the national gas grid.
- an electric and hydrogen vehicle refuelling station, with hydrogen production and a gas grid injection above ground installation and offices.
- Work No. 9 — Associated Development being a battery storage facility capable of peak discharge of 30MWe, with associated infrastructure including site roads, offices, control equipment, transformers and rectifiers.

DHPWN

- Work No. 10 — Associated Development being private wire networks linking Work No. 1 with Work No. 2, Work No. 6, Work No. 7, Work No. 8, Work No. 9 and to end users outside of the Order Limits.
- Work No. 11 — Associated Development being a district heating network providing heating and cooling and pipes carrying hydrogen gas, linking Work No. 1 with Work No. 6, and to end users outside of the Order Limits.

Landscaping, mitigation and utility works

- Work No. 12 — Associated Development being hard and soft landscaping and the construction of landscape features including a wetland area and ecological mitigation works.
- Work No. 12A - Associated Development being habitat creation measures incorporating biodiversity enhancements.
- Work No. 13 — Associated Development comprising flood defences and sustainable drainage systems, including swales, attenuation ponds and below ground tanks and the diversion of ditches.
- Work No. 14 — Associated Development comprising diversions of existing utilities which conflict with the construction of Work No. 1, Work No. 2, Work No. 5, Work No. 6, Work No. 10 and Work No. 11.
- Work No. 15 — Associated Development being laydown areas to allow for storage of materials and construction activities in connection with Work Nos 1-14.

The Electrical Connection

- 2.1.3. The Proposed Development includes a new connection to the electricity grid to enable the export of electricity from the energy from waste (EfW) power station. This is included as part of Work No 14 and is shown on plans included within [REP5-014].
- 2.1.4. The application included a Grid Connection Letter [REP1-017], and Grid Connection Statement [APP-039] to facilitate a total site import of 50 Mega Volt Amp (MVA) and export of 95MW.
- 2.1.5. The Applicant states it has accepted a Bilateral Connection Agreement and a Construction agreement from Northern Powergrid for connection to the North Scunthorpe substation. This was revised to allow for both the import and export of electricity up to the capacity generated from the ERF.
- 2.1.6. The Indicative Electrical Connection Plan [APP-019] show the route for the cables (Work No. 14) and the connection locations. Further details can also be found in the Grid Connection Statement submitted with the application [APP-039].

Alternatives for consideration

- 2.1.7. The Applicant included two alternatives, Options A and B for the routing of the Northern District Heat and Private Wire Network (NDHPWN), the alternate routes are shown in Figures 1 and 2 earlier in the report. The Applicant indicated that the final route would be chosen at the detailed design stage.

THE APPLICATION AS EXAMINED

- 2.1.8. Changes were made to some of the application documents during the Examination, including the wording of the dDCO. These changes sought to address our Written Questions (ExQs), as well as points raised by Interested Parties (IPs). They aim to improve the clarity of the drafting of the DCO and address any omissions, discrepancies and other matters which were raised during the Examination.
- 2.1.9. The Applicant's changes to the application documents, together with any additional information submitted, are detailed in the application Guide submitted at D10 [REP10-002]. This provides a guide to all documents submitted as part of the application and was updated at each deadline when new or revised documents were submitted. It provides a record of the Applicant's documentation submitted into the Examination. As this was submitted prior to the allocation of all the Examination Library Reference Numbers, to aid the reader the Table below when read in conjunction with this document provides a full list with the final EL reference numbers.

Table 2 Examination Library References for the Application Guide

Application Document reference	Examination Library Reference	Application Document Name	Latest Revision Number	Date Submitted
1.2	REP10-002	Application Guide	12	15 May 2023
2.1	REP10-004	Draft DCO	8	15 May 2023
2.2	REP9-007	Explanatory Memorandum	3	10 May 2023
3.1	AS-020	Book of Reference	4	12 May 2023
4.3	REP7-006	Rights of Way and Access Plans	2	14 April 2023
5.3	REP6-009	Design and Access Statement	2	20 March 2023
5.4	REP9-009	Combined Heat and Power Assessment	1	10 May 2023

5.8	REP6-012	Consents and Licenses Document	1	20 March 2023
5.9	AS-023	Report to Inform Habitat Regulations Assessment	3	12 May 2023
5.13	AS-025	Deed of Development Consent Obligations	1	12 May 2023
6.2.5	REP9-011	Chapter 5 – Air Quality	3	10 May 2023
6.2.10	AS-026	Chapter 10 – Ecology and Nature Conservation	1	12 May 2023
6.2.14	REP9-012	Chapter 14 – Economic, Community and Land Use Impacts	2	10 May 2023
6.2.16	REP9-014	Chapter 16 – Major Accidents and Hazards	1	10 May 2023
6.2.18	REP9-016	Chapter 18 – Cumulative and Indirect Effects Assessment	1	10 May 2023
6.3.7	AS-028	Annex 7 – Code of Construction Practice	7	12 May 2023
8.1	REP10-006	Statement of Commonality for SoCG	8	15 May 2023
8.2.2	REP9-022	Final Statement of	1	10 May 2023

		Common Ground with Lincolnshire Wildlife Trust		
8.2.3	REP10-008	Final Statement of Common Ground with Network Rail	2	15 May 2023
8.2.4	REP9-024	Final Statement of Common Ground with Anglian Water	2	10 May 2023
8.2.5	REP9-025	Final Statement of Common Ground with North Lincolnshire Council	6	10 May 2023
8.2.6	REP10-009	Final Statement of Common Ground with AB Agri	3	15 May 2023
8.2.8	REP9-027	Final Statement of Common Ground with the Environment Agency	2	10 May 2023
8.2.10	REP9-028	Final Statement of Common Ground with Jotun Paints (Europe) Ltd	2	10 May 2023
8.2.11	REP9-029	Final Statement of Common	1	10 May 2023

		Ground with UKWIN		
8.2.12	REP10-010	Final Statement of Common Ground with Natural England	1	15 May 2023
8.2.14	REP9-030	Initial Statement of Common Ground with Historic England	1	10 May 2023
8.2.15	REP9-031	Final Statement of Common Ground with National Highways	1	10 May 2023
8.2.16	REP9-032	Final Statement of Common Ground with Rainham Steel	1	10 May 2023
8.2.17	REP10-011	Final Statement of Common Ground with Bagmoor Wind Limited	2	15 May 2023
8.2.18	REP10-012	Statement of Common Ground with Economic Benefits Group	1	15 May 2023
9.2	REP9-034	National Policy Statement Tracker	2	10 May 2023

9.3	REP9-036	Compulsory Acquisition Schedule	8	10 May 2023
9.7	AS-030	Schedule of Changes to Book of Reference and Land Plans	3	12 May 2023
9.10	REP9-038	Status of Negotiations with Statutory Undertakers	7	10 May 2023
9.12	REP10-013	Draft DCO Schedule of Changes	6	15 May 2023
9.36	REP9-042	Applicant's Comments on responses to our ExQ3 and submissions received at Deadline 8	0	10 May 2023
9.37	AS-031	Closing Submissions		12 May 2023
9.38	REP9-043	Updated Archaeological Impact Assessment	0	10 May 2023
9.39	REP9-044	Overarching Archaeological Mitigation Strategy	0	10 May 2023
9.40	REP9-058	Response to Rule 17 request issued 4 May 2023	0	10 May 2023
9.41	AS-032	Updated Grid Connection letter	0	12 May 2023

9.42	AS-033	Comments on Anglian Waters response to Rule 17 request	0	12 May 2023
9.43	REP10-015	Comments on Cadent Gas Limited submission received at Deadline 9	0	15 May 2023

- 2.1.10. We 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 (SoS) would have power therefore under s114 of the PA2008 to make a Development Consent Order (DCO) having regard to the development consent applied for.
- 2.1.11. During ISH3 in examining environmental matters, we asked the Applicant for information on where within the Environmental Statement (ES) the assessment of a package treatment plant as an alternative to a mains connection for dealing with foul water could be found. In response the Applicant proposed changes to Schedule 1 of the dDCO to include:
- Work No 1 (x) trade effluent treatment plant, and
 - Work No 2 (c) domestic flow treatment plant.
- 2.1.12. Consequently, we issued a Rule 17 letter [PD-010] on 14 February seeking views of IPs, and whether these changes should be regarded as material.
- 2.1.13. At the subsequent Deadline 5 following further discussions with Severn Trent Water the Applicant removed the addition of the domestic flow treatment plant from the dDCO [REP5-006]. The EA confirmed in [REP5-039] and NLC in [REP5-038] that in their view the changes ultimately arrived at were not to a degree that would warrant a change request. No other responses were received.
- 2.1.14. 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.
- 2.1.15. Having considered this context throughout the Examination, it is clear that the changes to the application (primarily consisting of document

updating) have not resulted in material change to that which was applied for. The changes taken into account in reaching this conclusion are documented in the following chapters of this report. It follows that the SoS for the department of Energy Security and Net Zero (ESNZ) has the power to make the DCO as discussed in Chapter 9 and provided in Appendix C to this report.

2.2. RELEVANT PLANNING HISTORY

- 2.2.1. Table 2.1 of [APP-035] contains a comprehensive list of previous planning applications and permissions relating the land included within the DCO land. This has been divided into the various land parcels to follow the ES Assessment of the Energy Park Land, the Northern District Heat and Private Wire Network Land, the Southern District Heat and Private Wire Network Land, and the Railway Reinstatement Land.
- 2.2.2. Flixborough Industrial Estate which forms part of the DCO land has been subject to a large number of planning applications for the redevelopment of this part of the site following the Flixborough disaster in 1974, these include a range of general and mixed industrial uses.
- 2.2.3. The other land included within the DCO is a mixture of agricultural land, the Flixborough Wharf and a rail line connecting the wharf to Dragonby to the east.
- 2.2.4. NLC in their local impact report (LIR) [REP1-019] confirmed the Applicant's Planning Statement [REP2-017] accurately outlines the planning history of the site.

3. LEGAL AND POLICY CONTEXT

3.1. INTRODUCTION

- 3.1.1. This chapter sets out the relevant legal and policy context for the application. We have taken this into account in the Examination of the Proposed Development and in presenting findings and making recommendations to the Secretary of State (SoS).
- 3.1.2. The legal and policy context, as understood by the Applicant, is described in its Planning Statement [APP-035] and Updated Planning Statement [REP2-017] which sets out the Applicant's view of the policy context for the Proposed Development.
- 3.1.3. The Local Impact Report (LIR) from North Lincolnshire Council [REP1-019] sets out the local authority's position regarding its development plan policies.
- 3.1.4. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Department for Housing Communities and Local Government (DCLG) in its decision to accept the application for Examination in accordance with s55 of Planning Act 2008 (PA2008) [PD-001].
- 3.1.5. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [APP-004] that the Proposed Development is an NSIP. The Proposed Development is an NSIP in accordance with sections 14(1a) and 15(2) of the Planning Act 2008 (PA2008) as it involves the construction of a generating station in England that does not generate electricity from wind, is not offshore, and has a capacity of more than 50 megawatts. It therefore requires development consent in accordance with s31 of the PA2008.

3.2. THE PLANNING ACT 2008

- 3.2.1. The application is for a Development Consent Order (DCO) under the Planning Act 2008 (PA2008). It is for an Energy from Waste (EfW) power station with a gross electrical generation capacity of up to 95 megawatts (MW) and is defined as a Nationally Significant Infrastructure Project (NSIP) within section (s) 14(1)(a), s15(1) and s15(2) of PA2008, as the DCO seeks an onshore generating station in England having a capacity of more than 50MW, which does not generate electricity from wind. The components of the Proposed Development are set out in Chapter 2 of this report.
- 3.2.2. National Policy Statements (NPSs) in respect of this type of development have been designated and the SoS must therefore, subject to certain exceptions, decide the application in accordance with the relevant NPS as specified in s104(3) of PA2008. Under s104(2) of PA2008, the SoS must have regard to any relevant NPS, any LIRs, any matters prescribed in

relation to the development, and any other matters the SoS thinks are both important and relevant to the decision.

- 3.2.3. In publishing the Energy White Paper: 'Powering our Net Zero Future' in 2020, the Government announced a review of the suite of Energy NPS EN-1 to NPS EN-5. This was followed by a period of public consultation on the draft NPS documents in 2021.
- 3.2.4. The Government published its response to consultation in March 2023 during the Examination. In doing so the Government confirmed that the current suite of energy NPS remain relevant government policy and NPS EN-1 to NPS EN-5 have effect for the purposes of the 2008 Act.

3.3. NATIONAL POLICY STATEMENTS

- 3.3.1. The Overarching NPS for Energy (NPS EN-1)² published in July 2011 sets out the Government's policy for delivery of major energy infrastructure. It was accompanied by additional technology specific NPSs for the energy sector. The NPS for Renewable Energy Infrastructure (NPS EN-3)³ and Electricity Networks Infrastructure (NPS EN-5)⁴ are relevant to this application.
- 3.3.2. NPS EN-1 states at paragraph 3.1.1 that "*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.*" This includes energy from waste plants such as the Proposed Development. It also states at paragraph 3.1.3 that all 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.*"
- 3.3.3. NPS EN-1 sets out assessment principles and generic impacts to be taken into account in considering applications for energy NSIPs. Applicants should have taken into account the potential impacts of climate change using the latest United Kingdom (UK) Climate Projections available at the time the ES was prepared to ensure that they have identified appropriate mitigation or adaptation measures over the lifetime of the Proposed Development.

² Overarching National Policy Statement for Energy (EN-1) (Department of Energy & Climate Change 2011). Retrieved from: [1938-overarching-nps-for-energy-en1.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1938/overarching-nps-for-energy-en1.pdf)

³ National Policy Statement for Renewable Energy Infrastructure (EN-3) (Department of Energy & Climate Change 2011) Retrieved from: [1940-nps-renewable-energy-en3.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1940/nps-renewable-energy-en3.pdf)

⁴ National Policy Statement for Electricity Network Infrastructure (EN-5) (Department of Energy & Climate Change 2011). Retrieved from: [1942-national-policy-statement-electricity-networks.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1942/national-policy-statement-electricity-networks.pdf)

- 3.3.4. Generic impacts of particular relevance to this application include impacts, on the landscape and visual receptors, agricultural land, and cultural heritage. Environmental, social and economic benefits and adverse impacts at national, regional and local levels should be considered. In considering the Proposed Development account should be taken of:
- its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long term or wider benefits; and
 - its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as measures to avoid, reduce or compensate for any adverse impacts.
- 3.3.5. NPS EN-3 states that the recovery of energy from waste, where in accordance with the waste hierarchy, (as set out in Article 16 of the Waste Framework Directive 2008), will play an increasingly important role in meeting the UK's energy needs. NPS EN-3 covers generating stations using waste (possibly including non-renewable sources of waste) and/or biomass as a fuel and which generate more than 50MW of electricity.
- 3.3.6. NPS EN-3 notes that a range of combustion technologies can be used for waste combustion and advises that the type of technology should not be a consideration in considering an application. Throughput volumes are a matter for the Applicant and not a consideration in decision taking. However, impacts on traffic volumes, air quality and other impacts resulting from an increase in throughput should be taken into account.
- 3.3.7. NPS EN-1 and NPS EN-3 both recognise the contribution that combined heat and power (CHP) can make to reducing emissions. NPS EN-3 states that development consent should not be given unless the Applicant has provided appropriate evidence that CHP is included or that the opportunities for CHP have been fully explored.
- 3.3.8. The NPSs also identify the contribution that good design can make to producing sustainable infrastructure and to mitigating adverse impacts of projects.
- 3.3.9. 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 Scunthorpe North substation, which will be connected into the transmission system by the Statutory Undertaker (SU) under the SU provisions.
- 3.3.10. The application site includes the existing wharf at Flixborough. We sought views of IPs in First Written Questions (ExQ1) Q14.0.5 whether there should also be regard paid to the NPS for Ports. Neither the Applicant [REP2-033], or NLC [REP2-042] considered it relevant as the proposal is not for new port development nor is there any proposal for the extension or alteration of the port. Having considered the responses, and the legislation set out in s24 of the PA2008, we agree with this conclusion.

Draft National Policy Statements

- 3.3.11. On 30 March 2023 the Department for Energy Security and Net Zero commenced further consultation into the draft NPS EN-1 to NPS EN-5. The consultation period concluded on 25 May 2023 after the Examination had closed.
- 3.3.12. We sought views of the Applicant and IPs on the status of these consultation documents in third written question [PD-015]. In line with the advice in the consultation documentation which states with regard to transitional arrangements that:
- "any emerging draft energy NPSs (or those designated but not having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the Planning Act and with regard to the specific circumstances of each development consent order application."*
- 3.3.13. The Applicant's response sets out their position in [REP8-020] and UKWIN replied in [REP9-051] questioning this approach.
- 3.3.14. We have considered the application in light of the adopted NPS and considered the consultation draft NPS as important and relevant in line with the advice set out above incoming to our recommendations. The individual sections of Chapter 5 set out the conclusions relative to the current and emerging policy as appropriate.

3.4. UK REGULATIONS DERIVING FROM EUROPEAN LAW

- 3.4.1. The UK left the European Union (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 with certain specific exceptions.
- 3.4.2. This report has been prepared on the basis of the retained law and references in it to European terms such as 'Habitats' have also generally been retained for consistency with the Examination documents.
- 3.4.3. 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.

The Air Quality Regulations

- 3.4.4. The Air Quality Standards Regulations 2010 (as amended) (the Air Quality Regulations) transposed the Ambient Air Quality and Cleaner Air for Europe Directive (Directive 2008/50/EC) into, principally, English domestic legislation, although some provisions have UK extent.
- 3.4.5. The Air Quality Regulations sets limit values (LV) for compliance and establishes control actions where the LVs are exceeded for ambient air quality with respect to sulphur dioxide (SO₂), nitrogen dioxide (NO₂) and

mono-nitrogen oxides (NO_x), particulate matter (PM¹⁰ and PM^{2.5}), lead, benzene and carbon monoxide (CO).

The Air Quality Strategy

- 3.4.6. The Air Quality Strategy for England, Scotland, Wales and Northern Ireland (the UK Air Quality Strategy) sets out air quality objectives and policy options to further improve air quality in the UK into the long term. As well as direct benefits to public health, these options are intended to provide important benefits to quality of life and help to protect the environment.
- 3.4.7. Individual plans are prepared beneath this framework to 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 (CAZs) and more localised Air Quality Management Areas (AQMAs), where Air Quality Management Plans are prepared by local authorities.
- 3.4.8. The Clean Air Strategy 2019 was published by the Department for Environment Food and Rural Affairs (Defra). It sets out how all sources of air pollution would be tackled, and action plans undertaken at the local authority level continue to be produced in accordance with the Strategy.
- 3.4.9. There are no AQMAs within the application site.

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

- 3.4.10. The EIA Regulations give effect to Council Directive 2011/92/EU which defines the procedure by which information about the environmental effects of a project is collected and taken into account by the relevant decision-making body before consent is granted for a development. It sets thresholds for projects that require an EIA and outlines the impacts on the environment that need to be assessed.
- 3.4.11. The Proposed Development is a 'Schedule 1 development' as set out in the EIA Regulations and is therefore EIA development. As such the Applicant undertook an EIA and provided an ES with the application [APP-048 to APP-075] and [APP-097]. The ES is addressed in Section 1.6 and Chapters 4 and 5 of the Report.

The Habitats Regulations 2017

- 3.4.12. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) transposed the Habitats Directive (Council Directive 92/43/EEC) and the Birds Directive (Council Directive 2009/147/EC) into English and Welsh domestic legislation.
- 3.4.13. Following the UK's departure from the EU, these were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 in order to ensure they continue to operate effectively. Most of these changes involve transferring functions from the European

Commission to the appropriate authorities in England and Wales. At the time of writing, all other processes or terms in the Habitats Regulations remain unchanged.

- 3.4.14. The Habitats Regulations are built around two pillars, a network of protected sites (the NSN) and a system of species protection. This protects over 1000 animals and plant species and over 200 habitat types (for example: species types of forests; meadow; wetland etc.) which are of international importance. It requires designation of such areas as Special Areas of Conservation (SACs).
- 3.4.15. The Habitats Regulations are also a comprehensive scheme of protection for all wild bird species naturally occurring in England and Wales and places great emphasis on the protection of habitats for endangered as well as migratory species. The most suitable territories for these species are classified as Special Protection Areas (SPAs) and along with SACs are an integral part of the NSN.
- 3.4.16. The Habitats Directive, Birds Directive and Habitats Regulations are relevant to this application by virtue of potential effects on European sites as described in Chapter 6.
- 3.4.17. The assessment process taking place pursuant to the Habitats Regulations are referred to as HRA. When determining this application, the SoS must consider whether the Proposed Development would have a significant effect on a European site of nature conservation importance alone or in combination with other plans or projects.
- 3.4.18. The Applicant provided a report under the 2010 Habitats Regulations [APP-043], which was updated at Deadline 3 [REP2-019] and subsequently at Deadline 6 [AS-016]. This is required to allow the SoS as competent authority to undertake the HRA assessment. The reports concluded that there would be no adverse effects on integrity from the Proposed Development. This is considered further in Chapter 6 of this Report.

Ramsar Convention

- 3.4.19. The Convention on Wetlands of International Importance (Ramsar Convention), a global treaty adopted in 1971, protects wetlands of international importance especially as waterfowl habitat.
- 3.4.20. Other legislation referred to during the course of the Examination included:
- The Waste Framework Directive (2008/98/EC).
 - The Water Environment (Water Framework Directive) (England and Wales) Regulations 2016 (as amended).

The Waste (England and Wales) Regulations 2011

- 3.4.21. The Waste (England and Wales) Regulations 2011 (2011 Regulations), originated from the revised Waste Framework Directive (the Waste Directive), which when it came into force established the overarching

framework for the management of waste across the EU. Article 4 of the Waste Directive (Directive 2008/98/EC) sets out five steps for dealing with waste, ranked according to environmental impact - the 'waste hierarchy'.

- 3.4.22. The definitions of each of the stages can be found in Article 3. It gives top priority to preventing waste. When waste is created, it gives priority to preparing it for re-use, then recycling, then recovery, and last of all disposal (eg landfill). A key principle in the backdrop to the hierarchy is to pursue efficient use of resource.
- 3.4.23. Responsibility for compliance with the waste hierarchy lies with processors of waste whose compliance therewith is regulated and monitored by the Environment Agency (EA) (or other permitting authority if located elsewhere in the UK).
- 3.4.24. Any entity which imports, produces, collects, transports, recovers or disposes of waste, or which as a dealer or broker has control of waste is obliged to take "all such measures available to it as are reasonable in the circumstances to apply the ...waste hierarchy as a priority order". They may depart from the priority order where this is justified by life cycle thinking on the overall impacts of the generation and management of the waste so as to achieve the best overall environmental outcome.
- 3.4.25. The revised hierarchy inherent in the Waste Directive points up the preference for waste prevention. It also confirms that waste treatment involving energy generation is a recovery operation provided it achieves energy recovery efficiency expressed as R1 of 0.65 or more. The way in which the R1 criterion is calculated is set out in the Waste Directive. The Government has published guidance "Waste incinerator plant: apply for R1 status" on 4 October 2016.
- 3.4.26. To provide a consistent approach to report recycling rates at UK level, under the Waste Directive, 'Waste from Households' was first published by the Department for Environment, Food and Rural Affairs (DEFRA) in May 2014, and includes waste from: Regular household collection, Civic amenity sites, 'Bulky waste' and 'Other household waste'. It does not include street cleaning/sweeping, gully emptying, separately collected healthcare waste, or asbestos waste. It is a narrower measure than 'municipal waste' and 'council collected waste'.
- 3.4.27. Ratification of the Circular Economy Package (CEP) across the Member States meant that a revised legislative framework on waste came into force on 4 July 2018, including changes to the Waste Directive, as set out in Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste. The objectives of CEP measures are among other matters to reduce the adverse impacts of waste generation and the overall impacts of resource use by ensuring appropriate application of waste hierarchy by placing restrictions for landfilling and incineration, specifically:

- waste separately collected for preparing for re-use and recycling should not be landfilled or incinerated, with the exception of waste resulting from subsequent treatment operations of the separately collected waste for which incineration or landfill is the best environmental outcome.
- 3.4.28. Member States had two years in which to transpose the agreed amendments. The UK Government indicated that it would implement the changes in full. On 30 July 2020 it published its statement setting out the approach the UK will take to transposing the EU's 2020 Circular Economy Package (EU CEP) measures.
- 3.4.29. On 30 July 2020 the government re-affirmed its commitment to recycling 65% of municipal waste by 2035 and set out its approach to transposing the EU CEP into domestic law. It would be mainly the same as the EU CEP, including targets such as sending no more than 10% municipal waste to landfill by 2035. The EU CEP was approved in April 2018 but no longer applies in the UK after 30 December 2020.
- 3.4.30. Notwithstanding that the Government has in effect published its own CEP, as there is still a legal obligation to transpose the Waste Directive because the measures became EU law before the UK left the EU. On 25 August 2020 the Waste (Circular Economy) (Amendment) Regulations 2020 were made which are intended in effect to transpose the 2020 CEP in England and Wales.
- 3.4.31. Specifically, regarding the waste hierarchy, the Waste Directive added a paragraph requiring Member States to make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy (the Waste Directive Annex IVa). In responding to this requirement, the Government asserted in its Circular Economy Package Statement (Annex I – Summary of 2020 CEP measures and proposed approaches to transposition) that “this will be delivered through existing provisions and, where relevant, measures will be included in Waste Prevention Programmes”, therefore “no new measures are proposed”.
- 3.4.32. Article 6 of the Waste Directive specifies when and how end of waste is achieved, as amended under the CEP set out in Our Waste, Our Resources: A Strategy for England 2018. A condition found in the Waste Directive is that Municipal Waste must be collected separately unless it is not “technically, environmentally and economically practicable” to do so.
- 3.4.33. This is transposed by the 2011 Regulations, in particular Regulation 13. Article 10(4) of the Waste Directive requires Member States to ensure that waste materials collected separately for preparing for re-use or recycling must not be incinerated, except for waste resulting from subsequent treatment operations of the separately collected waste for which incineration delivers the best environmental outcome. Measures were required to be taken to achieve this.

- 3.4.34. The precise proposed approach to meet this requirement is unclear but CEP Policy Statement 30 July 2020, Annex I – Summary of 2020 CEP measures and proposed approaches to transposition states that it:

"Includes legislative changes to prevent waste separately collected for preparing for reuse or recycling from being accepted at waste incinerators", whilst noting that "This approach will have a positive impact on recycling rates and help to deliver on ambitions ranging from the 25 YEP to climate change commitments."

- 3.4.35. The Environmental Targets (Residual Waste) (England) Regulations 2023 came into force on 30 January 2023, they introduced a residual waste long term target, that by the end of 31 December 2042 the total mass of residual waste for the calendar year does not exceed 287 Kilograms (Kg) per head of population.

3.5. OTHER LEGAL PROVISIONS

Natural Environment and Rural Communities Act 2006

- 3.5.1. The Natural Environment and Rural Communities Act 2006 (NERCA) makes provisions for bodies concerned with the natural environment and rural communities 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 it is consistent with the proper exercise of those functions, to the conservation of biodiversity (the biodiversity duty). In complying with the biodiversity duty regard must be had to the Biodiversity Convention. NERCA also requires that the SoS must publish a list of the living organisms and types of habitat that in the SoS's opinion are of principal importance for conserving biodiversity. We have had regard to the NERCA and biodiversity duty in all relevant sections of this report.

Countryside and Rights of Way Act 2000

- 3.5.2. The Countryside and Rights of Way Act 2000 (as amended) includes provisions in respect of Public Rights of Way (PRoW). There was also a new duty for all public bodies, including the ExA and the SoS to have regard to the purposes of Areas of Outstanding Natural Beauty (AONBs) and improved provisions for the protection and management of SSSIs and other designations under the Wildlife and Countryside Act 1981..

The Wildlife and Countryside Act 1981

- 3.5.3. The Wildlife and Countryside Act 1981 (W&CA) protects animals, plants and certain habitats in the UK. It provides for the notification and confirmation of SSSIs. In England the sites are identified for their flora, fauna, geological or physiographical interest by NE. The W&CA contains measures for the protection and management of SSSIs.
- 3.5.4. The W&CA has relevance to consideration of impacts on SSSIs and on protected species and habitats including European sites. These are considered in Chapter 5 of this Report while effects on European sites are addressed in Chapter 6.

- 3.5.5. Great crested newts protected under Part I of this Act are likely to be affected by the proposed development, a protected species licence would be required from Natural England (NE) in addition to any consent that may be granted by the SoS through a DCO.

Equality Act 2010

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

Climate Change Act 2008

- 3.5.7. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets. Where relevant these have been taken into account within this report.
- 3.5.8. There have been a series of Statutory Instruments setting out the various 'Carbon Budgets' in different periods. The latest carbon budget deals with the period 2033-2037 and this is known as the Sixth Carbon Budget. Carbon budgets have yet to be set beyond 2037.
- 3.5.9. The Carbon Budget Order 2021 was made on 23 June 2021 and came into force the following day. This set a carbon budget for the 2033-2037 budgetary period of 965,000,000 tonnes of carbon dioxide equivalent. This requires the cutting of emissions by 78% by 2035 compared to 1990 levels, this will bring the UK to more than three-quarters of the way to net zero by 2050.

The Ancient Monuments and Archaeological Areas Act 1979.

- 3.5.10. The Ancient Monuments and Archaeological Areas Act provides for Scheduled Monuments to be protected and for the maintenance of a list of Scheduled Monuments. It also imposes a requirement for Scheduled Monument Consent for any works of demolition, repair, and alteration that might affect a designated Scheduled Monument. The Act is relevant due to the proximity of the scheduled monuments and other non-designated archaeological assets identified in the ES [REP4-011].

The Planning (Listed Buildings and Conservation Areas) Act 1990

- 3.5.11. The Planning (Listed Buildings and Conservation Areas) Act 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. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the desirability of preserving any listed buildings or their settings or any features of special architectural or historic interest which they possess. The historic environment is discussed in section 5.4 of Chapter 5 of this Report.

The Environment Act 2021

- 3.5.12. The Environment Act 2021 gained Royal Ascent on 9 November 2020. It provides targets, plans and policies for improving the natural environment.
- 3.5.13. The Environment Act 2021 makes provision for long term, legally binding targets, plans and policies with the intention of improving the natural environment, for statements and reports about environmental protection, for establishing the Office for Environmental Protection, about waste and resource efficiency, about air quality, for the recall of products that fail to meet environmental standards, about water management, about nature and biodiversity, for conservation covenants, about the regulation of chemicals, and for environmental connected purposes.
- 3.5.14. The Environment Act 2021 makes provision for biodiversity gain, including in respect of NSIPs. However, the biodiversity gain statement for NSIPs is expected to be published in 2023, after consultation, with the implementation of mandatory biodiversity gain for NSIPs in 2025.

3.6. MADE DEVELOPMENT CONSENT ORDERS

- 3.6.1. The Applicant in its Explanatory Memorandum [APP-009] and subsequent Revisions [REP2-006] [REP5-007] and response to our first written questions [REP2-033] has made reference to the following made Orders to support its position:
- The Riverside Energy Park Order 2020;
 - South Humber Bank Energy Centre Order 2021;
 - Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022;
 - Daventry International Rail Freight Interchange Alteration Order 2014;
 - The East Midlands Gateway Rail Freight Interchange and Highways Order 2016;
 - Northampton Gateway Rail Freight Interchange Order 2019; and
 - West Midlands Interchange Order 2020
- 3.6.2. UKWIN in their WR [REP2-105] para 48-51 refer to the SoS decision of February 2021 to reject the Wheelabrator Kemsley North (WKN) incinerator [PINS Ref EN010083] setting out their position that this approach provides a precedent to reject this proposal.

3.7. TRANSBOUNDARY EFFECTS

- 3.7.1. In December 2020, during the pre-application stage, following the Applicant's request for a Scoping Opinion and under the EIA Regulation 32 process, the Inspectorate undertook transboundary screening of the Proposed Development on behalf of the SoS [OD-006] and found that the Proposed Development was unlikely to have a significant effect either alone or cumulatively on the environment in another European Economic Area (EEA) State.

- 3.7.2. In reaching this conclusion 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.
- 3.7.3. Changes were subsequently made to the Proposed Development and a second screening was published on 6 July 2022 following submission of the application documents. [OD-006] sets out the outcome of both transboundary screenings. Again, no EEA states were identified as being likely to have significant effects.
- 3.7.4. No correspondence was received in relation to transboundary issues during the Examination.
- 3.7.5. The UK left the EU prior to the Examination commencing. Following the end of the transition period following the leaving of the EU by the UK, the relevant legislation has changed, but the effect has not altered substantively.
- 3.7.6. The Regulation 32 duty is an ongoing duty, and on that basis, we have considered whether any facts have emerged to change the screening conclusions, up to the point of the closure of the Examination. No information has emerged, which would lead to a different conclusion being reached.
- 3.7.7. The SoS's duty under Regulation 32 of the 2017 EIA Regulations continues throughout the application process.

3.8. OTHER RELEVANT POLICY STATEMENTS

- 3.8.1. Waste Management Plan for England (2021) published by Department for Environment Food and Rural Affairs (DEFRA) provides an analysis of the current waste management situation in England with an aim to fulfill the requirements of the Waste (England and Wales) Regulations 2011.
- 3.8.2. National Planning Policy for Waste (2014) provides the planning framework to enable local authorities to put forward, through waste local plans, strategies that identify sites and areas suitable for new or enhanced facilities to meet the waste management needs of their areas.
- 3.8.3. Helpfully it provides a diagram showing the relationship between the Environment Plan, Resource and Waste Strategy, Waste Prevention Programme for England. This is included below.

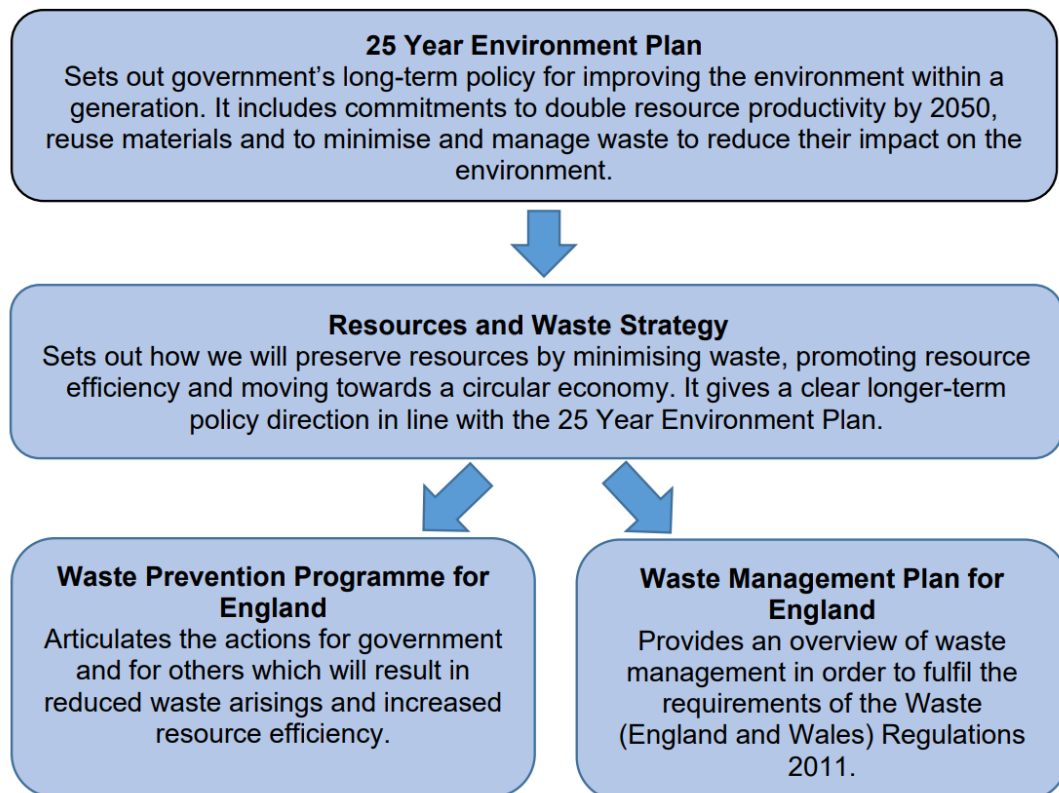


Figure 5 Relationship between the Waste Management Plan for England and other policy documents

3.9. THE NATIONAL PLANNING POLICY FRAMEWORK

- 3.9.1. The National Planning Policy Framework (2018) (NPPF) does not contain specific policies for NSIPs or waste management but emphasises the importance of the NPSs while recognising that the NPPF may be a relevant matter to be considered by the SoS in decision taking. Planning Practice Guidance (PPG) provides detailed guidance on implementing the NPPF.

3.10. LOCAL IMPACT REPORTS

- 3.10.1. Section 104 and s105 of the PA2008 state that in deciding an application the SoS must have regard to any Local Impact Report (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 us under s60 of the PA2008.
- 3.10.2. Our Rule 6 letter [PD-004] contained a formal request under s60(2) of the PA2008 to eligible local authorities to submit LIRs. North Lincolnshire Council (NLC) submitted a Local Impact report (LIR) [REP1-019]

3.11. THE DEVELOPMENT PLAN

- 3.11.1. 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.

- 3.11.2. The current Development Plan is made up of the North Lincolnshire Local Plan (2003), Saved Policies (2007), the Core Strategy (2011) and the Housing and Employment Land Allocations Development Plan Documents (2016) (DPDs).
- 3.11.3. There are no Neighbourhood Plans which NLC considered relevant to the Proposed Development.
- 3.11.4. NLC listed an extensive range of policies from each of the Development Plan documents which it regards as important and relevant to the consideration of this application. These can be found in the LIR [REP1-019] and generally cover topics under the headings of, Employment, Renewable energy, Waste and Development in the Countryside. The policies can be found in the following sections of the LIR:
- North Lincolnshire Local Plan 2003 paragraph 4.4.3.
 - North Lincolnshire Core Strategy 2011 paragraph 4.4.4.
 - North Lincolnshire Housing and Employment Land Allocations Development Plan Document paragraph 3.4.5.
- 3.11.5. The emerging North Lincolnshire Local Plan and supporting evidence was submitted to the Planning Inspectorate for Examination on 11 November 2022. The LIR cites the policies the Council considers relevant from this document at paragraph 4.5.3.
- 3.11.6. Additionally, a series of Supplementary Planning Documents are also referenced as relevant:
- Lincolnshire Lakes Area Action Plan (AAP) (2016);
 - North Lincolnshire Planning for Renewable Energy Development Supplementary Planning Document (2011);
 - Sustainable Drainage Systems (SuDS) and Flood Risk Guidance (2017); and
 - Landscape Character Assessment & Guidelines (1999).
- 3.11.7. In summary the LIR concludes that:

"Overall it is considered that the Proposed Development generally accords with the aims of the Development Plan in respect of sustainable economic development, the generation of renewable energy (incorporating CHP & CCU technologies) and sustainable waste management in accordance with the waste hierarchy and the need to divert waste from landfill. These matters weigh in favour of the development and the principle of development is considered to be merited subject to conformity with the relevant policies of the plan, including those that seek to protect the environment and amenity of the area.

Notwithstanding this, some potential for policy conflict has also been identified in relation to the siting of new waste management facilities on best and most versatile agricultural land and within an area of high flood

risk; also due to some significant adverse impacts being identified in the Environmental Statement. These matters need to be fully considered and weighed in the planning balance when a decision is made.”

- 3.11.8. NPS EN-1 states at paragraph 4.1.5 if there is any conflict between the above documents and an NPS, the NPS takes precedence due to the national significance of the proposed infrastructure.

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) our Initial Assessment of the Principal Issues (IAPI) arising from the application documents and Relevant Representations (RRs) received was published in advance of the Preliminary Meeting (PM) [PD-004].

4.1.2. The principal headings covering our IAPI are summarised in alphabetical order below, the full range of issues they raised are set out in the Rule 8 letter [PD-006]:

- 1) Air Quality
- 2) Climate Change
- 3) Compulsory Acquisition (CA) and Temporary Possession (TP)
- 4) Cultural Heritage
- 5) Design and Layout
- 6) Draft Development Consent Order
- 7) Ecology and Biodiversity
- 8) Environmental Impact Assessment and Environmental Statement
- 9) Flood Risk, Hydrology and Water Resources
- 10) Geology and Land Contamination
- 11) Habitats Regulations Assessment
- 12) Health
- 13) Landscape and Visual Amenity
- 14) Major Accidents and Hazards
- 15) Noise and Vibration
- 16) Planning Policy
- 17) Socio-Economics
- 18) Traffic and Transport
- 19) Waste

4.1.3. At the PM [EV-002] no party questioned our IAPI, and these issues have subsequently formed the basis of our final assessment.

4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

4.2.1. During the PM no party raised concern over the issues identified by us in our IAPI which had been derived from an assessment of the application documents and the RRs received in response to the application. The subsequent Written Representations (WR) at Deadline 2 (D2) did not increase the range of issues already identified, beyond those raised at the PM and referred to earlier.

4.2.2. It is not intended that the following section of the Report goes through all the issues raised by the RRs here but for them to be covered within the individual chapters. The following provides an indication of the planning issues which arose from submissions and during the Examination process.

Waste Supply and Capacity for Processing

- 4.2.3. The availability of waste for fuel both locally and nationally and the consequential effect this may have on the ability of the scheme to operate within and support the waste hierarchy.

Flood Risk and Surface Water Management

- 4.2.4. The suitability of the site for the development in light of the site being within an area of flood risk, and which had historically been the subject of flooding at times of flood events in the past.

Air Quality and the effect on human health

- 4.2.5. Due to the history of the site and the proximity of large-scale industrial developments both at Keadby power station to the southwest and the Steel Works to the southeast air quality impacts of the Proposed Development on those living and working nearby, which in combination with the topography of the local area due to the raised height of neighbouring villages to the north and northeast.

Air Quality and the effect on ecological sites

- 4.2.6. The levels of oxides of nitrogen (NO_x) and ammonia (NH₃) generated from the site, the ability to mitigate the effects from these emissions both from the scheme itself but also cumulatively taking into account other projected emissions from the Keadby 2 and Keadby 3 power stations.

Noise effects on local amenity and living conditions

- 4.2.7. Noise effects due to the current noise environment, and whether existing businesses were operating within controls that were already in place, the implications this had for the suitability of the Applicant's noise assessment and the potential affects during construction and subsequent operation on nearby receptors.

Water Supply

- 4.2.8. The adequacy of a water supply for the development during construction and subsequent operation.

Socioeconomics

- 4.2.9. The relationship of the Proposed Development to a neighbouring site which operates as an animal feed producer was identified as a significant risk to the ongoing operation of this business by the IP although this was disputed by the Applicant. The need to retain biosecurity and minimise the risk of contamination particularly from salmonella transmitted into the neighbouring site either by vermin or other means.

Consultation

- 4.2.10. A number of IPs questioned whether the Applicant had met their legal obligations in undertaking sufficient consultation [RR-035, RR-056, RR-050, RR-051, RR-052].

- 4.2.11. In responding to the Planning Inspectorate request for confirmation that the Applicant's duties to consult and publicise the application had been met each of the local authorities Bassetlaw District Council [AoC-002], East Riding of Yorkshire Council [AoC-003], North Lincolnshire Council [AoC-005], Lincolnshire County Council [AoC-004], Nottinghamshire County Council [AoC-006] and West Lindsey District Council [AoC-007] confirmed their position that the consultation undertaken was appropriate and met the legal tests set out in s42, s47 and s48 of the Planning Act.

Associated Development

- 4.2.12. The extent of the Proposed Development and the number of component parts that the Applicant chose to include as both associated development and other associated development.
- 4.2.13. We were mindful throughout the Examination of the importance of good design, the potential effect on human rights, equalities and the achievement of sustainable development including the mitigation of, and adaption to climate change.

4.3. ISSUES ARISING IN LOCAL IMPACT REPORT

- 4.3.1. Only North Lincolnshire Council (NLC) submitted an LIR [REP1-019]. S104(2) of the PA2008 requires the Secretary of State (SoS) to consider the contents of the LIR when making a decision on an application.
- 4.3.2. NLC's LIR [REP1-019] provided information on the following matters:
- Planning Policy;
 - Landscape and Visual Impact;
 - Traffic and Transport;
 - Biodiversity and Ecology;
 - Cultural Heritage;
 - Noise;
 - Air Quality;
 - Land Contamination;
 - Light;
 - Hydrology and Flood Risk; and
 - Socio Economic Impact.
- 4.3.3. The Applicant sought to demonstrate through the Examination and its continuing dialogue with NLC that the issues identified within the LIR could be addressed. This would be by way of amendments to the dDCO, the changes to the application and the safeguards provided through amongst other things the delivery mechanisms set out in the Code of Construction Practice (CoCP), which would be secured through the dDCO.
- 4.3.4. The submissions in the final round of deadlines from the Applicant confirmed agreement in the majority of areas overcoming the majority of the issues presented by the council at the outset.

- 4.3.5. Nevertheless, by the conclusion of the Examination a number of issues remained:

Table 3 Outstanding Issues Identified in SoCG with NLC

Issue	NLC position	Applicant position
Draft DCO	NLC suggest they would wish to see a noise limit for the evening period similar to our suggested noise requirement 5 decibels (dB) lower than during the daytime limit, based on World health Organisation (WHO) 1999.	The noise limits in our suggested noise requirement are based on the recommended noise levels from BS 8233:2014, which is the appropriate UK standard referred to by BS 4142. BS 8233 does not recommend a lower evening limit for external amenity.
Article 43 of the Draft DCO – operational land	NLC are of the view that Article 43 should be amended in accordance with our recommendation so that those areas of the site defined as 'operational land' are restricted to the generating station facility.	The Applicant did not agree with the our proposed change to remove Work No. 1B, on the basis this forms part of the main NSIP and so considers it reasonable that this should benefit from permitted development rights in the same way as Work Nos. 1, 1A and 1D.
Assessment of the setting of listed buildings	NLC are of the view that a settings assessment should have been undertaken to confirm and evidence the assumed conclusion that there will be no impact upon the significance of the listed buildings.	Six Grade II listed buildings are situated within 1km of the main North Lincolnshire Green Energy Park (NLGEP) infrastructure. The impacts of the proposals on the setting of these assets is provided in Section 8.2 of Chapter 12 of the ES [APP-060]. The remainder referred to by NLC lie within 1km of the proposed DHPWN only, the

		effect of which will be limited to localized impacts during construction. These have not been directly addressed in the ES because there will be no impact on their significance.
Noise effect on residents	Cumulative operational rating levels should not exceed background levels. BS4142 noise assessment has not been carried out adequately. The noise mitigation plan is not sufficiently comprehensive. The updated noise chapter [REP8-006] remained to be reviewed by NLC at the close of the Examination. Low frequency noise should be assessed and considered. Predicted Rating Levels are above WHO guidelines, and significantly above existing background in the area with an increase of +15 dB above background.	Predicted noise from the Project will be reduced to as low a level relative to background as is reasonably practical. It is noted that BS4142 states that the lower the rating level is relative to the measured background sound level, the less likely it is that the specific sound source will have an adverse impact or a significant adverse impact. The Noise Chapter of the ES was updated to address issues raised by IPs including concerns identified by NLC. Requirement 4 in Schedule 2 of the draft DCO (Document Reference 2.1) requires a noise management plan in relation to operational noise to be developed and agreed with NLC. Requirement 3 requires design details to be submitted to NLC for approval.

4.3.6. We have fully considered the LIR, and any related issues that are either agreed or not agreed between NLC and the Applicant, in all relevant chapters of this report..

4.4. CONFORMITY WITH THE NATIONAL POLICY STATEMENTS

- 4.4.1. 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.
- 4.4.2. The Overarching National Policy Statement for Energy (NPS EN-1) and National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) and Electricity Network Infrastructure (NPS EN-5) together provide the framework for development consent decisions on applications for energy generating stations such as that proposed in this scheme.

National Policy Statement Energy Consultation

- 4.4.3. On the 6 September 2021 the Government published 'Planning for New Energy Infrastructure Draft National Policy Statements for energy infrastructure', a consultation on the suite of energy NPS EN-1 to NPS EN-5 which ran until 29 November 2021. This reaffirmed that the current NPS remain relevant government policy and NPS EN-1 to NPS EN-5 have effect for the purposes of the Planning Act 2008.
- 4.4.4. The Draft NPS EN-1 directs that the current suite of NPSs should have effect for any application accepted for Examination before the designation of the 2021 amendments, but that any emerging draft NPSs *"are potentially capable of being important and relevant considerations in the decision-making process"*.
- 4.4.5. The Draft NPS EN-3 maintains a similar approach to the adopted NPS with regard to the potential impacts from biomass and waste combustion.
- 4.4.6. As stated earlier further consultation commenced on 30 March 2023 and did not conclude prior to the close of the Examination. We have had regard to the consultation on the draft NPS and where appropriate we have set out where we consider important and relevant considerations apply in coming to our overall conclusions. The SoS may wish to consider whether there are any new implications that should be regarded as important and relevant considerations which have arisen out of the consultation responses received at the time of consideration of the decision.

4.5. CONFORMITY WITH THE DEVELOPMENT PLAN

- 4.5.1. The application site lies wholly within the administrative district of NLC where the current development plan is formed up of a series of documents, comprising the saved policies of the North Lincolnshire Local Plan (NLLP) (2003); the North Lincolnshire Core Strategy (NLCS) (2011); and the North Lincolnshire Housing and Employment Land Allocations Development Plan Document (HELADPD) (2016).

- 4.5.2. NLC are currently in the process of preparing a new Local Plan for the period to 2038. This was submitted to the Planning Inspectorate for examination on 11 November 2022.
- 4.5.3. NPS EN-1 (para 4.1.5) states that policies contained within Development Plan documents and other Local Development Framework documents may be considered important and relevant in decision making.
- 4.5.4. We have considered whether the Proposed Development gives rise to important and relevant impacts arising in neighbouring local government areas. However, having taken into account the absence of LIRs from any neighbouring authorities and our own inspections of the setting of the application site, we have concluded that it is not necessary to consider policies from any neighbouring authority development plans.
- 4.5.5. As stated in paragraph 4.1.5 of NPS EN-1, if there is any conflict between the above documents and a NPS then the NPS takes precedence because of the national significance of the infrastructure. The Statement of Common Ground signed between the Applicant and NLC [REP9-025] agrees that there would be no conflict with the Development Plan.
- 4.5.6. In referencing the Development Plan policies NLC did not suggest there was a dispute over the interpretation of the policy, or a suggestion there was a conflict with it. Moreover, NLC in referencing policies within the LIR confirm their position as to the relative position of the Development Plan in the hierarchy of policy as set out in the NPS.
- 4.5.7. Policy other than that arising from NPSs is capable of being important and relevant. The compliance or otherwise of the Proposed Development with the relevant development plan policies is identified and analysed further in relation to the individual topics in the following chapters.

THE NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 4.5.8. The NPPF sets out the Government's planning policies for England and how these are expected to be applied. It provides a framework upon which local planning authorities make development plans and is also a material consideration for local planning authorities when making planning decisions for development under the Town and Country Planning Act (1990).
- 4.5.9. The policies in the NPPF are supported by National Planning Practice Guidance (the Guidance). Both the NPPF and the Guidance are likely to be important and relevant considerations in decisions on NSIPs, but only to the extent relevant to that project.
- 4.5.10. Paragraph 5 of the NPPF makes it clear that the document does not contain specific policies for NSIPs, where particular considerations can apply. It also states that matters considered to be both important and relevant to NSIPs may include the NPPF and the policies within it.

- 4.5.11. Chapter 2, paragraphs 7 and 8, states that the Government's approach to achieving sustainable development means that the planning system has three overarching objectives, these being economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
- 4.5.12. As such, we have considered some parts of the NPPF to be relevant to this application and have considered appropriate matters in our Examination.
- 4.5.13. Paragraphs 148 to 165 of the NPPF outline the development requirements in terms of climate change and flood risk confirming the requirement for a site-specific Flood Risk Assessment (FRA). Paragraph 155 confirms that inappropriate development should be avoided in areas at the highest risk of flooding and where development is necessary in those areas it should be made safe without increasing flood risk elsewhere.
- 4.5.14. The NPPF establishes that heritage assets should be conserved in a manner appropriate to their significance. Much the same approach in respect of the historic environment as detailed in NPS EN-1 is shared by the NPPF, with an emphasis on assessing the significance of any historic assets and the likely impacts on them.
- 4.5.15. There is a requirement to weigh any harm against the wider benefits associated with Proposed Development, with greater relative weight given to any harm to the most significant assets. Section 16 of the NPPF deals with the conservation and enhancement of the historic environment.
- 4.5.16. Paragraph 202 notes that where development would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 4.5.17. Paragraph 203 notes that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

4.6. APPLICATION OF OTHER POLICIES

- 4.6.1. The Lincolnshire Lakes Area Action Plan (AAP) (2016) sets out the planning policy framework to deliver the Lincolnshire Lakes development. The Lincolnshire Lakes boundary extends across part of the Order Limits to the south of Flixborough Industrial Estate and over much of the land across which the Southern DHPWN follows as this tracks the alignment of the A1077 to the south.
- 4.6.2. North Lincolnshire Planning for Renewable Energy Development Supplementary Planning Document (2011) supports renewable energy and views this as being a key part of the transformation of North

Lincolnshire's economy. This document sets out a number of policy considerations specific to proposals for renewable energy development.

4.6.3. The LIR from NLC [REP1-019] also makes reference to the following guidance documents adopted by the Council:

- North Lincolnshire Council Sustainable Drainage Systems (SuDS) and Flood Risk Guidance (2017); and
- North Lincolnshire Council Landscape Character Assessment & Guidelines (1999).

4.7. THE PRINCIPLE OF THE DEVELOPMENT

NPS EN-1

4.7.1. EN-1 paragraph 1.6.1 notes that the NPS will remain in force unless withdrawn or suspended in whole or in part by the Secretary of State.

4.7.2. Paragraphs 3.1.1 to 3.1.4 of EN-1 set out the approach to decision-making for energy infrastructure covered by the NPS. Paragraph 3.1.1 states that: *"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."*

4.7.3. EN-1 paragraph 3.1.3 states that: *"...all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this Part."*

4.7.4. EN-1 paragraph 3.1.4 confirms that: *"The IPC 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."*

4.7.5. EN-1 paragraph 4.1.2 explains that the reason the decision maker should start with a presumption in favour of granting consent to applications for energy NSIPs is *"the level and urgency of need for infrastructure of the types covered in the energy NPSs"*.

4.7.6. EN-1 paragraph 3.4.3 recognises that large scale renewable energy generation is likely to come from onshore wind, offshore wind, biomass, wave and tidal and as in this case energy from waste where the NPS states *"the principal purpose of the combustion of waste, or similar processes (for example pyrolysis or gasification) is to reduce the amount of waste going to landfill in accordance with the Waste Hierarchy and to recover energy from that waste as electricity or heat. Only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be used for energy recovery."*

4.7.7. Energy from waste plants the NPS recognises can provide 'dispatchable power' to provide peak load and base load electricity on demand and as such the ability of such plants *"to deliver predictable, controllable*

electricity is increasingly important in ensuring the security of UK supplies."

- 4.7.8. Paragraph 3.4.5 makes clear *"The need for new renewable electricity generation projects is therefore urgent."*
- 4.7.9. NPS EN-1 sets out a series of assessment principles which make clear that there should be a presumption in favour of granting consent to applications for energy NSIPs. It then advises that in considering any proposed development any adverse impacts need to be weighed against any benefits.
- 4.7.10. Guidance is also given on the importance of a grid connection noting that while it is for an Applicant to ensure that there will be the necessary infrastructure and capacity within a transmission or distribution network to accommodate the electricity generated, the SoS will need to be satisfied that there is no obvious reason why a grid connection would not be possible.

Draft NPS EN-1

- 4.7.11. Draft NPS-EN-1 reiterates the general principles established in the current version of national policy. The urgent need for energy generation capacity continues, the role of energy storage is recognised as having a key role to play. EfW plants are considered partially renewable, or if the waste is pre-treated to separate out the biogenic fraction, then this can be considered wholly renewable.
- 4.7.12. The role of hydrogen is also recognised as having the potential to replicate the role of natural gas in the electricity system.

NPS – EN3

- 4.7.13. Paragraph 1.3.1 of EN-3 states:
- *"the need and urgency for new energy infrastructure to be consented and built with the objective of contributing to a secure, diverse and affordable energy supply and supporting the Government's policies on sustainable development, in particular by mitigating and adapting to climate change;*
 - *the need for specific technologies, including the infrastructure covered by this NPS"*
- 4.7.14. Paragraph 2.1.2 goes on to say *"The IPC should consider this NPS and EN-1 together. In particular, EN-1 sets out the Government's conclusion that there is a significant need for new major energy infrastructure (see Section 3.3 of EN-1). EN-1 Section 3.4 includes assessments of the need for new major renewable energy infrastructure. In the light of this, the IPC should act on the basis that the need for infrastructure covered by this NPS has been demonstrated."*
- 4.7.15. Paragraph 2.5.2 clarifies the policy position in respect of what proportion of energy from waste can reasonably be regarded as renewable *"The recovery of energy from the combustion of waste, where in accordance*

with the waste hierarchy, will play an increasingly important role in meeting the UK's energy needs. Where the waste burned is deemed renewable, this can also contribute to meeting the UK's renewable energy targets. Further, the recovery of energy from the combustion of waste forms an important element of waste management strategies in both England and Wales. "EN-3 recognises that the combustion of waste will play an increasingly important role to meet the UK's energy needs. Where the waste to be used as fuel is deemed renewable this can also contribute towards renewable energy targets.

- 4.7.16. Increase in traffic volumes, changes to air quality, and other adverse impacts should be considered by the IPC and balanced against the benefits of the combustion of waste as set out in Section 3.4 of EN-1 and paragraph 2.5.2 of EN-3. Section 3.4 of EN-1 deals with renewable generation, and the proportion of which can be regarded as renewable is set out in the preceding paragraph 4.7.6 of this report.

Draft NPS EN-3

- 4.7.17. Draft NPS EN-3 requires Applicant's to demonstrate that the proposed EfW plant is in line with Defra's policy on the role of energy from waste in treating waste from municipal or commercial and industrial sources.

NPS EN-5

- 4.7.18. NPS EN-5 supports EN-1 relating to electricity network infrastructure, relevant to this scheme is the lower voltage distribution system (132kV to 230kV lines from transmission stations to the end user) and associated infrastructure.
- 4.7.19. The connection to the Scunthorpe North substation would provide the electrical connection point to the National Grid and facilitate the import and export of electricity to and from the proposed ERF (Work No.1) and battery storage (Work No.9).
- 4.7.20. These elements of the Proposed Development, as associated development forming part of the Proposed Development, would come within the scope of NPS EN-5.

Draft NPS EN-5

- 4.7.21. The draft NPS EN-5 makes similar provisions.
- 4.7.22. The Applicant has provided an ES [APP-048 to APP-67 and APP-097] which we are satisfied meets the requirements of PA2008 and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 572) (EIA Regulations) in terms both of scope and methodology. It also covers specific issues and mitigation measures to address adverse effects as identified in the NPS.
- 4.7.23. The Applicant provided a Planning Statement [APP-035] updated with [REP2-017] and a Closing Submissions Statement [AS-031] which outlines the benefits and harms they consider that would arise in the

event that the DCO were to be granted and the Proposed Development were to proceed.

Alternatives

- 4.7.24. EN-1 and EN-3 do not include any specific requirement to consider alternatives or to establish whether the proposed development represents the best option. Applicants are, nevertheless, required to include in their ES information about the main alternatives they have studied.
- 4.7.25. In the ES [APP-051] the Applicant sets out the reasoning why the application site could meet the identified urgent need for energy generation. In summary these are:
- The region within which the site is located has the highest proportion of waste going to landfill in the UK;
 - A large proportion of the site sits within an existing industrial estate;
 - The site had been identified following an extensive commercial site finding exercise;
 - The site benefits from the opportunity to use sustainable methods of transport via the wharf on the River Trent and the rail connection via Dragonby;
 - Has a suitable capacity for an electrical connection;
 - The potential for a Combined Heat and Power connection for a large scale housing scheme – the Lincolnshire Lakes Development and potentially the new Scunthorpe Hospital.
- 4.7.26. Alternative layouts and locations within the site to address the potential effects from flooding, as well as considering the design implications for the area were also addressed. Alternative routes had also been considered for the electrical connection, with two alternative options proposed for the Northern District Heat and Private Wire Network.

Good Design

- 4.7.27. The Applicant provided a Design and Access Statement (DAS) [REP3-012] revised by [REP6-009]. This explains how the design of the project has evolved. It also gives detail on the approach to design throughout the life of the project. These principles are then set out in the Design Principles and Codes document [REP7-008]. The codes and principles set out within this document are then secured in requirements 3 and 6 of the dDCO.

Combined Heat and Power (CHP)

- 4.7.28. NPS EN-1 sets out the requirements for the consideration of CHP. The Proposed Development includes for CHP and delivery of the infrastructure for it along the new access road. Requirement 17 of the dDCO provides that no part of the Energy Park works may be commissioned until a scheme for the provision of steam or hot water pass-outs has been submitted to and approved by the planning authority. The scheme submitted must comply with conditions relating to steam and hot water pass-outs within any environmental permit granted.

- 4.7.29. The scheme must be implemented as approved prior to operation of the authorised development and maintained throughout the operation of the authorised development. We are of the view that this goes beyond what the policy currently requires as drafted in both NPS EN-1 and EN-3, as the Applicant has not only considered the suitability of CHP, they are committing to providing the infrastructure along the new access road.
- 4.7.30. This represents a positive element of the proposal, which goes beyond what the policy currently requires. We were however not provided with any detailed arrangements being in place for how the CHP could ultimately be used or provided with any evidence of contracts for receiving the heat or power being in place.

Carbon Capture and Storage (CCS) and Carbon Capture Readiness (CCR)

- 4.7.31. NPS EN-1 places conditions on the consenting of fossil fuelled power stations in respect of CCR and on all combustion generating stations with a generating capacity at or over 300MW to be CCS.
- 4.7.32. This scheme does not trigger either of these criteria, however the Applicant has chosen to include a carbon capture plant as part of their proposal. This is secured within the DCO and would facilitate the capture of up to 54,387 tonnes of CO₂ per annum or approximately 8.37% of the weight of the ERF waste throughput per annum. This goes beyond what the policy requires as currently drafted in NPS EN-1 or EN-3.
- 4.7.33. During the Examination the Government published two consultation documents. One on the latest iteration of the draft NPS Energy policies and the second on decarbonisation readiness. Within the latter it makes clear that the threshold of 300MW is under review. While we consider this to be an important and relevant consideration and indicative of the likely direction of travel. We have considered the proposal against the current NPS and conclude in respect of carbon capture the Proposed Development exceeds what is currently required.
- 4.7.34. We also sought clarification from the Applicant of the potential to accommodate greater capacity, to understand if there was the space available within the DCO land to facilitate the capture of the total carbon generated from the development. The Applicant provided their response in reply to Q6.0.1 of EXQ3 [REP6-032] setting out how it considered the Proposed Development DCO boundary had the potential to facilitate this in the future. Again, while this is not a requirement for this development, we regard this as an important and relevant consideration.

Conclusions on the principle of the development

- 4.7.35. We are satisfied that the Proposed Development of the EfW plant with the electrical connection to the Scunthorpe North substation would contribute to meeting the need for new generation capacity identified in NPS EN-1.

- 4.7.36. The capacity of the Proposed Development as defined in the draft DCO is below the threshold at which it should be designed to be Carbon Capture Ready. We are also satisfied that consideration has been given to design and to alternatives to the development as required by EN-1. The requirements in EN-1 and EN-3 for compliance with the waste hierarchy are considered in the following chapter.
- 4.7.37. The generic impacts of the Proposed Development are considered in the light of the relevant NPS EN-1, NPS EN-3 and NPS EN-5 policies in Chapter 5 of this Report. Subject to that detailed consideration and in relation to weighing the balance of any adverse effects against benefits in Chapter 7 of this Report, we are satisfied that the Proposed Development is consistent with the broad policy objectives set out in the NPS EN-1, NPS EN-3 and NPS EN-5.
- 4.7.38. As such in our view the generation of up to 95MW of energy can be regarded as contributing towards the need identified in national policy and would assist in responding to a number of the challenges identified within NPS-EN-1 by:
- Contributing towards meeting energy security and carbon reduction objectives;
 - Assisting in responding to the need to replace closing electricity generating capacity;
 - Responding to the need for more electricity capacity to support an increased supply from renewables;
 - Contributing to providing for future increases in electricity demand; and
 - Providing an alternative to new large scale electricity generation capacity.

Associated Development

- 4.7.39. In light of the extent of the elements included within the application as associated and other associated development. We pursued a series of questions with the Applicant and other IPs to satisfy ourselves that each of the additional elements the Applicant had included with the DCO application could be safely regarded as associated development and met with the terms of the legislation.
- 4.7.40. Section 115 of the Planning Act 2008 provides that, in addition to the development for which development consent is required under Part 3 of the Act ("the principal development"), consent may also be granted for associated development. Associated development is defined in the Planning Act as development which is associated with development that requires development consent (the principal development).
- 4.7.41. Additionally, the Department for Communities and Local Government published Guidance on Associated Development (2013)⁵ to assist the SoS

⁵ [Planning Act 2008: Guidance on associated development applications for major infrastructure projects \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/261261/Planning_Act_2008_Guidance_on_associated_development_applications_for_major_infrastructure_projects.pdf)

in making a determination on whether a development can be associated development.

4.7.42. This sets out a series of principles:

- Requires a direct relationship between associated development and the principal development;
- Associated development should not be an aim in itself but should be subordinate to the principal development;
- Development should not be treated as associated development if it is only necessary as a source of additional revenue for the Applicant, in order to cross-subsidise the cost of the principal development; and
- Associated development should be proportionate to the nature and scale of the principal development

4.7.43. As such there should be a direct relationship between the associated development and the principal development. The associated development should therefore either support the construction or operation of the principal development or help address its impacts.

4.7.44. The Applicant provided their explanation and justification for the approach taken in the Explanatory Memorandum [APP-009] updated by [REP9-007] the response to ExQ 14.0.12 [REP2-033]. The Applicant also set out in more detail their arguments why each component included in the DCO could reasonably be considered Associated Development following the Compulsory Acquisition Hearing (CAH1) [REP6-035] and in their Closing Submissions [AS-031].

4.7.45. In considering the tests set out in the guidance and the broad definition in the legislation, we are satisfied that each of the listed work Nos 2-15B can safely be regarded as associated development and would either support the construction or operation of the principal development or address its impacts.

4.8. ENVIRONMENTAL IMPACT ASSESSMENT

4.8.1. The Overarching National Policy Statement for Energy, NPS EN-1, Section 4.2 Environmental Statement states: *"All proposals for projects that are subject to the European Environmental Impact Assessment Directive must be accompanied by an Environmental Statement (ES) describing the aspects of the environment likely to be significantly affected by the project. The Directive specifically refers to effects on human beings, fauna and flora, soil, water, air, climate, the landscape, material assets and cultural heritage, and the interaction between them".*

4.8.2. NPS EN-1 goes on to state "The SoS (IPC) *should satisfy itself that likely significant effects, including any significant residual effects taking account of any proposed mitigation measures or any adverse effects of those measures, have been adequately assessed*".

4.8.3. The Proposed Development is EIA development.

- 4.8.4. The ES for the North Lincolnshire Green Energy Park Project was assessed against the Infrastructure Planning EIA Regulations. The approach taken by the Applicant is explained in [APP-052].

4.9. HABITATS REGULATIONS ASSESSMENT

- 4.9.1. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have Likely Significant Effects (LSE) on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an Appropriate Assessment (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.

The Competent Authority

- 4.9.2. The Secretary of State (SoS) is the Competent Authority for the purposes of the Habitats Directive, the Habitats Regulations and the Offshore Habitats Regulations for applications submitted under PA2008.
- 4.9.3. Chapter 6 sets out our findings and conclusions in relation to effects on European sites and is intended to assist the SoS in performing their duty under the Habitats Regulations and the Offshore Habitats Regulations.
- 4.9.4. The application was accompanied by a Report to Inform Habitats Regulations Assessment [APP-043], which was updated by [REP2-019, AS-016, AS-023] through the Examination. We published a Report on the Implications for European Sites (RIES) [PD-014]. The RIES identifies all other relevant documentation. The Applicant's approach to HRA, the matters raised during the Examination and our findings and conclusions are reported on in Chapter 6.

5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

5.1. INTRODUCTION

5.1.1. This Chapter addresses potential effects and benefits of the Proposed Development which were raised our identification of issues and in submissions to the Examination. Each section of this Chapter generally consists of the following parts:

- Introduction including policy background;
- Applicant's approach in the Environmental Statement (ES) and later submissions, including baseline conditions, impacts (as assessed in the ES) and mitigation where relevant;
- issues arising; and
- our reasoning and conclusions including any further mitigation it is proposing in its recommended Development Consent Order (rDCO), found at Appendix C.

5.1.2. Matters relating to the overarching legal and policy context and our findings in relation to these matters are considered in Chapters 3 and 4 respectively and will not be repeated in this Chapter.

5.1.3. The term 'impact' is used throughout this Chapter. However, to clarify, environmental 'impacts' and 'effects' are both considered in this Report to be 'environmental effects'.

5.1.4. The findings and conclusions in relation to the planning issues are considered under generic topic headings which are arranged in alphabetical order. The order in which all these section headings are presented should not be taken to imply any order of merit.

5.1.5. In addition to aid the reader and to aid consistency we have set out the following regime for applying/assessing the weight to be attached to the different aspects of the proposal in the following manner.

- 1. Where there's no weight: We consider that there are no matters relating to that issue which would weigh for or against the making of the Order.
- 2. First level: We ascribe little weight to matters relating to the issue for/ against the making of the Order.
- 3. Second level: We ascribe moderate weight to matters relating to the issue for/ against the making of the Order.
- 4. Third level: We ascribe substantial weight to matters relating to the issue for/ against the making of the Order.
- 5. Fourth level: We ascribe very substantial weight to matters relating to the issue for/ against the making of the Order.

5.1.6. On occasion when we have made reference to application documents, we have specified an 'e page' this is the electronic page number within the document when viewed digitally.

5.2. AIR QUALITY

- 5.2.1. This section considers the effects of the Proposed Development in relation to air quality during its construction and operation. This section provides details regarding the effects on people. In relation to effects on ecology see Section 5.6 of this report.

Policy Considerations

National Policy Statement for Energy (EN-1)

- 5.2.2. Within EN-1 air quality is introduced in section 4.10 Pollution control and other environmental regulatory regimes of Part 4 Assessment Principles. In the context of the Proposed Development relevant paragraphs include 4.10.1 to 4.10.8. In summary these describe:

- how the planning and pollution control systems are *"separate but complementary"*;
- that energy infrastructure may be subject to environmental permitting regulated by the EA;
- that the Applicant should consult sufficiently early with the EA (paragraph 4.10.6); and
- that the Secretary of State (SoS) *"should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted."*

- 5.2.3. In EN-1 part 5 air quality and emissions are covered in section 5.2. In the context of the Proposed Development the relevant paragraphs include 5.2.6 to 5.2.10. Paragraphs 5.2.6 and 5.2.7 state that the Applicant should undertake an assessment of the impacts of the proposed project as part of the Environmental Statement (ES) and that this should describe air quality impacts in absolute and relative terms during its construction and operation, including emissions from transport and fixed plant, having accounted for mitigation.

- 5.2.4. Paragraphs 5.2.9 and 5.2.10 explain that if the proposals would lead to a breach of statutory air quality limits, then the SoS should refuse consent and it will also be important for the SoS to consider substantial changes in air quality that would not lead to such a breach.

National Policy Statement for Renewable Energy (EN-3)

- 5.2.5. The relevant additional considerations regarding air quality and the emissions from energy from waste (EfW) facilities are included in paragraphs 2.5.41 to 2.5.45. Paragraph 2.5.42 considers that the pollutants of concern arising from the combustion of waste include oxides of nitrogen (NO_x), sulphur oxides (SO_x), particulates and carbon dioxide (CO₂). In addition, emissions of heavy metals, dioxins and furans are also

a consideration but are limited by the waste incineration directive (WID) and regulated by the EA.

- 5.2.6. Paragraph 2.5.43 states that *"Where a proposed waste combustion generating station meets the requirements of WID and will not exceed the local air quality standards, the" SoS "should not regard the proposed waste generating station as having adverse impacts on health."* Paragraph 2.5.44 says the same in relation to the large combustion plant directive (LCPD).

- 5.2.7. Paragraph 2.5.45 indicates that abatement technologies should be those set out in the relevant sector guidance notes as produced by the EA and it will be for the EA to consider whether the technology selected is consistent with Best Available Technique (BAT) as part of the environmental permitting process.

Draft National Policy Statement for Energy (draft EN-1)

- 5.2.8. We consider that the corresponding paragraphs under sections 5.2 do add to the EN-1 position in relation to air quality. but consideration of them for the Proposed Development does not affect our conclusions.

Draft National Policy Statement for Energy (draft EN-3)

- 5.2.9. We consider that this does not affect EN-3 in relation to air quality.

Local Development Plan

- 5.2.10. Regarding air quality, the North Lincolnshire Council (NLC) local plan (2003) saved policies (2007) [REP9-025] include: DS11 which seeks to prevent adverse or dangerous polluting effects from development proposals.
- 5.2.11. Emerging NLC local plan publication draft policies (2021) [REP9-025] include: DM3 which requires development proposals to demonstrate that environmental impacts on receptors have been evaluated and appropriate measures have been taken to minimise the risks of adverse impacts to air, land and water quality, whilst assessing vibration, heat, energy, light and noise pollution.

The Applicant's Case

- 5.2.12. The Applicant sets out in the Environmental Statement (ES) - Chapter 5 - Air Quality Revision 3 [REP9-011] the Air Quality Impact Assessment (AQIA) for the Proposed Development. The Applicant identifies the type, source and significance of potential effects and describes the measures that would be employed to mitigate them.

Assessment methodology and baseline

- 5.2.13. The Applicant considers that the protection of human receptors is regulated through the Air Quality Standards (AQS), which are a combination of legally binding standards and environmental assessment

levels set out by the EA. The Applicant sets out those AQS that are relevant to the AQIA in Table 1[REP9-011].

- 5.2.14. The Applicant considers that the pollutants of interest for the Proposed Development are primarily those set out in the Industrial Emissions Directive 2010/75/EU (IED).
- 5.2.15. In addition, the Applicant considers emissions of ammonia (NH₃) in relation to effects on habitats and polycyclic aromatic hydrocarbons (PAH) as benzo[a]pyrene, is subject to a statutory air quality standard.
- 5.2.16. As the Proposed Development would include carbon capture plant the Applicant considers emissions of amines, nitramines and nitrosamines (N-amines).
- 5.2.17. The Applicant adopts a study area of 15km radius, which it considers is consistent with EA guidelines and the Natural England Preliminary Environmental Impact Report (PEIR) response. The Applicant's cumulative effects assessment considers emissions from other developments within 15 km if they are likely to include a significant combustion process.
- 5.2.18. The Applicant states that an Air Quality Management Area (AQMA) has been declared in Scunthorpe, but the Applicant considers that it is far enough away and has been declared for PM₁₀. The Applicant considers that the effect of the Proposed Development on the existing AQMA would therefore be negligible.

Construction

- 5.2.19. Regarding the likely adverse effects on humans during construction of the Proposed Development the Applicant considers that using the IAQM and Defra Technical Guidance (16) (TG(16)) screening criteria for road traffic predicts that construction traffic is unlikely to cause significant adverse effects on human receptors caused by air quality impacts.
- 5.2.20. Regarding the adverse effects of dust, the Applicant considers that application of mitigation detailed in a dust management plan would result in these effects being not significant. The Applicant considers that the control of dust during construction would be secured by the Code of Construction Practice (CoCP) [REP9-018], which is certified under Article 46 the draft DCO revision 8 [REP10-004], and its use is secured through the environmental management Requirement 4 of the draft DCO revision 8 [REP10-004].

Operation

- 5.2.21. For operational air quality impacts the Applicant's AQIA [REP9-011] references applicable guidance documents, including from the EA and the Institute of Air Quality Management (IAQM) and uses dispersion modelling to predict air quality impacts caused by the Proposed Development combining emissions from fixed plant and transport

accounting for operating hours and numbers of vehicle movements respectively.

- 5.2.22. The Applicant uses source terms for emission sources based upon design information, vendor specifications and derived from relevant emission limits, and the dispersion modelling accounts for effects on dispersion, including buildings close to emission sources, meteorological data, and the six local wind turbines.
- 5.2.23. For the EfW main stack model, the Applicant uses using a stack height of 120m. Emission concentrations are based upon the emission limits set out in the Waste Incineration EU Best Available Techniques Reference Note (BREF Note). For metals, the Applicant factors in the BREF Note emission limits using the 'mean' factor from the EA metals guidance to obtain representative emissions. The Applicant states that emissions of amines from the flues are based upon predicted emissions utilising data from other existing Carbon Capture and Storage (CCS) plants where direct measurements have been obtained.
- 5.2.24. The impacts on air quality of the emissions from the Proposed Development are assessed by the Applicant taking into consideration the contribution from the Proposed Development only, the existing baseline and the total.
- 5.2.25. The Applicant applies the guidance to evaluate a predicted impact at individual receptor locations. The Applicant takes into account the air quality impact at individual receptors and other factors, such as the number of people or properties that will be exposed to a change in air quality, to determine significance of the effects of the Proposed Development.
- 5.2.26. In terms of operational mitigation, the Applicant considers this would be designed into the Proposed Development in the form of:
- Abatement - the ERF is designed with Best Available Technique abatement systems for reducing emissions to air. Flue gases are further scrubbed before CO₂ removal and the final emissions misted which will further reduce emissions and particulates; and
 - Stack heights - the stack heights for the ERF, backup generator and backup boilers are designed to disperse emissions sufficiently to avoid unacceptable impacts on air quality at sensitive human receptors.
- 5.2.27. The Applicant explains that the detailed abatement and dispersion design will be submitted as part of the process of obtaining an environmental permit from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016. The height of 120 m above ground level for the three ERF stacks is considered by the Applicant a worst case for the purposes of undertaking its landscape and visual impact assessment.

- 5.2.28. The Applicant concludes that on the basis of the results set out in Tables 13 and 14 of the ES - Chapter 5 - Air Quality Revision 3 [REP9-011] there are predicted to be negligible impacts on air quality associated with emissions to air and no significant effects on sensitive human receptors from the Proposed Development.
- 5.2.29. The Applicant sets out an assessment of odour in Table 10 of the ES - Chapter 5 - Air Quality Revision 3 [REP9-011] concluding that "*As such, it is reasonable to conclude that the risk of odour nuisance is low to negligible*".
- 5.2.30. The Applicant considers that any odour related issues not covered by the environmental permit issued by the EA, under the Environmental Permitting (England and Wales) Regulations 2016, would be addressed by the Operational Environmental Management Plan (OEMP) [REP8-010] secured through requirement 4 of the draft DCO revision 8 [REP10-004].

Issues considered in the Examination

Local Impact Reports

- 5.2.31. North Lincolnshire Council (NLC) provided a Local Impact Report (LIR) [REP1-019]. NLC made several comments on the AQIA. With reference to guidance LAQM TG (16) these included how the results of the assessment were presented the use of data from remote locations to determine the baseline in the area and detailed aspects of measurement using diffusion tubes.
- 5.2.32. The Applicant responded [REP2-034] and prepared a draft SoCG [REP2-025] to progress any unresolved matters, including consideration of an odour assessment. The final SoCG [REP9-025] showed all matters relating to air quality had been resolved between the Applicant and NLC including the provision of an odour assessment in the Applicant's final version of its AQIA [REP9-011].

Representations from other interested parties

- 5.2.33. Concerns were raised about the effect of different meteorological conditions, the presence of particular pollutants, stack height, topography, existing air quality and odour in several relevant representations including: [RR-004], [RR-007], [RR-008], [RR-011], [RR-016], [RR-020], [RR-021], [RR-027], [RR-038], [RR-039], [RR-041], [RR-042], [RR-049], [RR-052], [RR-059], [RR-061], [RR-067], [RR-068], [RR-070], [RR-071], [RR-082], [RR-083], [RR-088], [RR-096], [RR-097]. The pollutants over which concerns were raised included dioxins, furans, and particulates from the incinerator, particularly due to the height of the chimney in relation to the villages of Flixborough and Burton upon Stather.
- 5.2.34. In its response [REP1-012] the Applicant explained that Public Health England (PHE) and the Environment Agency jointly state that "PHE's risk assessment remains that modern, well run and regulated municipal waste incinerators are not a significant risk to public health. While it is

not possible to rule out adverse health effects from these incinerators completely, any potential effect for people living close by is likely to be very small.”

- 5.2.35. The Applicant went on to say that the Proposed Development would be one of the most stringently regulated industrial facilities in terms of the emissions to air and referred to the content of its AQIA presented in the ES [REP9-011]. It considered that the Proposed Development would require an Environmental Permit under the Environmental Permitting (England and Wales) Regulations 2016.
- 5.2.36. Concerns were raised particularly about odour in relevant representations including: [RR-007], [RR-013], [RR-029], [RR-037], [RR-043], [RR-045], [RR-081].
- 5.2.37. In its response [REP1-012] the Applicant explained that waste arriving at the Proposed Development would be pre-baled and sealed in containers on the trucks, ships and trains. These bales would only be opened once inside the reception hall which would, itself, be under negative pressure to avoid odours escaping. The Applicant contrasted this to the composting and waste transfer station that previously occupied the site where wastes were handled in the open and in an uncontained manner.
- 5.2.38. The Applicant considered that regardless of the environmental permitting process an odour management plan would be included in the OEMP [REP8-010].
- 5.2.39. In the written representations of the parish councils of Flixborough [REP2-094] and Burton upon Stather [REP2-089] concerns were raised that even a negligible difference in air quality as stated by the Applicant in the ES – Chapter 5 – Air Quality Revision 0 [APP-053] could affect human health and the Applicant had not confirmed that PM2.5 to PM1 particulates which can be emitted would have no detrimental effect on human health.
- 5.2.40. The Applicant’s response [REP3-022] repeated the statement previously provided in [REP1-012] by PHE.
- 5.2.41. Mr Nicholson made a submission [REP5-044] in which he considered that the effect of traffic on air quality had not been adequately assessed and that the assessment had not included PM10, PM2.5 and PM1. The Applicant provided a detailed response [REP6-033] explaining that the screening out of an assessment for the Proposed Development was consistent with IAQM and Defra guidance. The Applicant also confirmed that PM10, PM2.5 had been included and that as PM1 was a subset of PM2.5 no separate assessment was necessary.
- 5.2.42. Mr Nicholson made an additional submission [REP5-045] which showed dispersion of stack emissions from the ERF in the form of a contour plot. The Applicant responded [REP6-033] and considered that assuming the modelling provided had been done correctly that the assessment would be regarded as negligible impact, consistent with the assessment published by the Applicant [REP4-009].

- 5.2.43. The Environment Agency's (EA) written representation [REP2-092] *confirmed that:*
- 5.2.44. *"A permit to operate the plant(s) will be required from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016. The Applicant met with representatives of our National Permitting Service on 17 October 2022 to commence pre-application discussions."*
- 5.2.45. The EA considered that given that the Applicant may submit a permit application during the examination and their estimated determination period is 8-12 months it was unlikely that they would be able to provide any further information on this issue during the examination period.

Our written questions

- 5.2.46. In our first round of written questions [PD-007] we asked about the sealing and wrapping of RDF when delivered in curtain sided lorries, how odour would be controlled and how this be secured in the draft DCO.
- 5.2.47. The Applicant responded [REP2-033] and considered that the OEMP [REP8-010] at Section 4 sets out a table of the environmental commitments that relate to the operation of the Proposed Development which included the commitment that RDF deliveries would be containerised, wrapped or baled, and considered that the OEMP is secured through Requirement 4 (5) through to 4 (7) of the draft DCO.
- 5.2.48. We also asked questions [PD-007] about the AQIA regarding the updating of guidance, operational traffic impacts, reliability of the baseline and ERF emissions modelling. In its response [REP2-033] the Applicant detailed how the relevant guidance had been used and confirmed the reliability of the results of the AQIA with respect to the effects on human receptors. The Applicant also confirmed that it had taken account of the local topography and the elevated location of Flixborough village relative to the Proposed Development.

Our Considerations and Conclusions

- 5.2.49. In the absence of any disagreement between the Applicant and NLC and any indication from the EA that there are reasons why it would not be able to issue an environmental permit based on the information so far provided by the Applicant we see no reason to disagree with the Applicant's approach and its conclusions.
- 5.2.50. Whilst various concerns have been raised by interested parties, we consider that the Applicant has responded satisfactorily to these with reference to details of the modelling and assessment it has undertaken [REP9-011].
- 5.2.51. We consider that the Applicant has demonstrated that the Proposed Development would be consistent with EN-1 4.10.6 and 5.2.6 to 5.2.10.

- 5.2.52. We consider that confirmation from the EA that relevant components of the Proposed Development would require a permit to operate under the Environmental Permitting (England and Wales) Regulations 2016 means that the mitigation to avoid any significant effects on air quality in relation to human receptors is secured through that process, including the use of emissions abatement technology that represents BAT.
- 5.2.53. We consider that the environmental permitting process will ensure that the Proposed Development would be consistent with EN-3 2.5.41 to 2.5.45.
- 5.2.54. Regarding mitigation during construction, we consider that the control of dust would be secured by the Code of Construction Practice (CoCP) [REP9-018], which is certified under Article 46 the draft DCO revision 8 [REP10-004], and its use is secured through the environmental management Requirement 4 of the draft DCO revision 8 [REP10-004].
- 5.2.55. We consider that any odour related issues, to the extent they would not be included in any environmental permits issued by the EA, would be addressed by the OEMP [REP8-010] which is certified under Article 46 the draft DCO [REP10-004] and its use is secured through requirement 4 of the draft DCO [REP10-004].
- 5.2.56. In conclusion, when considered against EN-1 paragraphs 4.10.6 and 5.2.6 to 5.2.10 and EN-3 paragraphs 2.5.41 to 2.5.45, having had due regard for draft EN-1, draft EN-3 the LIR and other important and relevant matters, we ascribe no weight to the issue for or against the making of the Order.

5.3. CLIMATE CHANGE

- 5.3.1. This section considers the effects of the construction and operation of the Proposed Development on climate change and the mitigation measures proposed, including the approach to carbon capture. Climate change adaptation is considered in Section 5.7 on flood risk hydrology and water resources and major accidents and hazards in Section 5.11.

Policy Considerations

National Policy Statement for Energy (EN-1)

- 5.3.2. Carbon Capture and Storage (CCS) and Carbon Capture Readiness (CCR) are covered in Section 4.7 of Part 4 Assessment Principles.
- 5.3.3. Paragraph 4.7.10 states: *"To ensure that no foreseeable barriers exist to retrofitting carbon capture and storage (CCS) equipment on combustion generating stations, all applications for new combustion plant which are of generating capacity at or over 300 MW and of a type covered by the EU's Large Combustion Plant Directive (LCPD) should demonstrate that the plant is "Carbon Capture Ready" (CCR) before consent may be given."*

National Policy Statement for Renewable Energy (EN-3)

- 5.3.4. We consider that this adds nothing further to EN-1.

Draft National Policy Statement for Energy (draft EN-1)

- 5.3.5. This has a new section 5.3 on Greenhouse gas emissions (GHG). Paragraphs 5.3.4 to 5.3.12 describe the GHG assessment that the Applicant should include in the ES, mitigation, and factors to be considered in Secretary of State decision making. Paragraph 5.3.11 states that *"operational GHG emissions are not reasons to prohibit the consenting of energy projects or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR requirements)"*

Draft National Policy Statement for Renewable Energy (draft EN-3)

- 5.3.6. Paragraph 3.4.6 indicates some of the climate change adaptation issues relevant to energy from waste (EfW) facilities, but we do not consider this materially affects the policy position set out in EN-3.

National Planning Policy Framework

- 5.3.7. Section 14 deals with meeting the challenge of climate change, flooding and coastal change. Paragraph 152 states: *"The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions; minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure."*

Local Development Plan

- 5.3.8. North Lincolnshire Council Local Plan (2003), Saved Policies (2007) and North Lincolnshire Core Strategy (2011) include plans, policies and strategies related to climate change that are relevant to the Proposed Development [REP9-025]. These include:
- 5.3.9. Policy DS21: Renewable energy which supports proposals for the generation of energy from renewable resources where any detrimental impacts are outweighed by environmental benefits and proposals include details of associated developments; and
- 5.3.10. Core Strategy CS18: Sustainable resource use and climate change which seeks to actively promote development that utilises natural resources as efficiently and sustainably as possible.
- 5.3.11. Relevant emerging policies include [REP9-025]:
- 5.3.12. SS3: Development Principles, which aims to minimise the impacts arising from climate change and mitigate against its effect, including, reducing flood risk;

- 5.3.13. DQE7: Climate Change & Low Carbon Living, which specifies how developments should facilitate climate change and low carbon living, including stating that proposals for 'large-scale schemes that would generate a significant source or demand for heat should be supported by evidence considering the feasibility of serving the development by means of a district heating system'; and
- 5.3.14. DQE8: Renewable Energy Proposals, which aims to provide a positive framework for delivering sustainable energy supplies to ensure that North Lincolnshire contributes to achieving national renewable energy generation.

The Applicant's Case

- 5.3.15. The Applicant sets out in ES Chapter 6 – Climate [APP-054] its approach to the consideration of the effects of the Proposed Development on climate. Climate change adaptation is considered in the ES chapters on Water Resources and Flood Risk (Revision 1) [REP6-020] and Major Accidents and Disasters (Revision 1) [REP9-014].
- 5.3.16. By comparing GHG emissions calculations during construction and decommissioning with those during operation, the Applicant scopes out a detailed climate assessment for the construction and decommissioning stages of the Proposed Development.
- 5.3.17. The Applicant considers that an operational GHG assessment determines the extent to which the Proposed Development would affect the climate by quantifying the emissions of GHGs from the Proposed Development compared with the baseline.
- 5.3.18. The Applicant considers that the baseline is represented by the alternative of landfill waste disposal, which assumes the refuse derived fuel (RDF) would be landfilled, and the alternative power generation, is provided by an unabated combined cycle gas turbine (CCGT) power station.
- 5.3.19. The Applicant carries out an assessment of significance that it considers to be in accordance with Institute of Environmental Management and Assessment (IEMA) guidance combined the application of professional judgement. The Applicant accepts that the assessment of significance is subjective.
- 5.3.20. The Applicant considers that the key factor in determining the GHG emissions from the Proposed Development and the alternative of landfill waste disposal is the composition of the RDF. The Applicant defines the RDF composition in terms of carbon content and proportion of biogenic carbon, proportion of biogenic carbon which would degrade anaerobically in landfill, net calorific value (NCV) and total tonnage.
- 5.3.21. The Applicant states that policies in place that aim to increase recycling rates for both municipal and commercial/industrial wastes will lead to the replacement of fossil-based single use plastic materials with alternatives

which can be more easily recycled or are made of biogenic materials, such as paper, card, or bioplastics.

- 5.3.22. Having set out an average composition for the RDF, the Applicant assumes operating parameter values, including transportation, for the Proposed Development, and the landfill disposal and unabated CCGT power generation alternative.
- 5.3.23. The Applicant states that the Proposed Development will operate with climate change mitigation in the form of partial carbon capture utilisation and storage (CCUS). This is the subject of requirements 18 and 19 in the draft DCO [REP10-004].
- 5.3.24. The Applicant's calculations and sensitivity analysis forecasts GHG emissions values in tonnes per annum (tpa) carbon dioxide equivalent (CO₂e) for the Proposed Development minus equivalent unabated CCGT power generation and RDF landfill disposal (referred to variously as baseline, counterfactual or alternative) as:
- 5.3.25. Worst case 135,062 Average case -6,066 Best case -248,458
- 5.3.26. The Applicant reports the GHG emission of the Proposed Development in its average case as 76,008 tpa CO₂e. All the Applicant's calculations include GHG mitigation in the form of partial CCUS.

Issues considered in the Examination

Local Impact Reports

- 5.3.27. North Lincolnshire Council (NLC) provided a Local Impact Report (LIR) [REP1-019]. This considered that the Proposed Development benefits from policy support under CS18, for example by supporting the development of carbon capture and best available clean and efficient energy technology to help reduce CO₂ emissions.
- 5.3.28. In its conclusion to the LIR [REP1-019], NLC stated that: "the Proposed Development could provide a positive impact in terms of low carbon electricity generation, which could 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 North Lincolnshire Core Strategy. The development might contribute to a reduction in the carbon emissions of the energy supply in the UK."

Representations from other interested parties

- 5.3.29. Concerns were raised about GHG emissions, the poor efficiency and deliverability of carbon capture and the carbon intensity of electricity produced in relevant representations from individuals and communities including: [RR-029], [RR-039], [RR-042], [RR-056], [RR-059], [RR-067], [RR-071], [RR-079], [RR-096].
- 5.3.30. In its response [REP1-012], the Applicant included that the GHG assessment shows that the facility presents a net carbon benefit by

diverting waste away from landfill and displacing fossil fuels from the electricity grid. The Applicant added that the carbon capture facility is to be delivered with the EfW facility, ensuring a minimum level of carbon capture.

- 5.3.31. United Kingdom Without Incineration Network (UKWIN) a network of anti-incineration campaigners coordinated through a not-for-profit company submitted a relevant representation [RR-002] that set out a wide range of concerns. In the summary of their written representation [REP2-110] UKWIN questioned several of the Applicant's assumptions including the:
- landfill gas recovery rate;
 - proportion of metals in the RDF;
 - alternative waste treatment route for RDF; and
 - scoping out of construction and decommissioning, which they estimated as 340,952 tonnes CO₂e over these two phases.
- 5.3.32. UKWIN considered that the Proposed Development could generate electricity with a fossil carbon intensity of 548g CO₂e /kWh, which is higher than unabated CCGT and significantly higher than the BEIS marginal electricity mix. UKWIN considered that this was contrary to the NPPF Glossary which says that "Low Carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels)". UKWIN considered that the Applicant has failed to demonstrate that the electricity that would be exported from their Proposed Development would be genuinely low carbon energy.
- 5.3.33. UKWIN detailed its concerns regarding the Applicant's GHG assessment in paragraphs 115 to 263 of its written representation [REP2-110] and included a quote from the ExA report for Wheelabrator Kemsley North (WKN) in which it states: *"The netting off of a proportion of GHG is not an unreasonable approach where there is a clear baseline alternative from which like can be compared with like with a high degree of confidence. However, the levels of carbon benefit impact relating to the Proposed Development, as the Applicant accepts, is subject to several key uncertainties and limitations, such as the estimate of GHG emissions from landfill, the carbon intensity of marginal electricity generation and the proportions of waste types to be managed. All the available evidence casts considerable doubt on whether the 'net benefit' can be ascertained with any great certainty, given it is highly sensitive to the assumptions applied" and "the matter should carry little weight in the assessment".*
- 5.3.34. The Applicant responded in its Comments on Written Representations [REP3-022] and considered that the NPS-EN3 specifically acknowledges the role of EfW in generating electricity and states that: *"the recovery of energy from the combustion of waste, where in accordance with the waste hierarchy, will play an increasingly important role in meeting the UK's energy needs"* (paragraph 2.5.2).
- 5.3.35. The Applicant also considered [REP3-022] that it had undertaken a very robust approach to the assessment of GHG emissions, which had demonstrated that there would be a net reduction in GHG emissions from

the Proposed Development compared to the alternative. The Applicant considered that this was expected given Government support of EfW over landfill in the waste hierarchy.

- 5.3.36. The Applicant and UKWIN submitted information in support of their respective positions in the form of 'Good Practice Guidance for Assessing the Greenhouse Gas (GHG) Impacts of Waste Incineration' from UKWIN [REP2-109] and 'Carbon Balances and Energy Impacts of the Management of UK Wastes' from the Applicant [REP3-030].

ExA's Written Questions and Hearings

- 5.3.37. We asked about the RDF composition at Issue Specific Hearing (ISH) 1 seeking:
- an overview regarding the composition of the waste to be used as fuel;
 - where it would be sourced from;
 - what control will be in place to manage the content of the fuel; and
 - how the composition and sources might be expected to change over time.
- 5.3.38. The Applicant's written summaries of oral submissions made at ISH 1 [REP1-015] included an Appendix entitled 'Waste Composition Assumptions Made to Enable Carbon Balance Assessment'. The Applicant arrived at the final composition by using what it considered reliable sources of information on the composition of household and commercial & industrial (C&I) waste. The Applicant stated that to achieve the design target NCV of 14MJ/kg it had assumed:
- a 50/50 mix of household and C&I waste;
 - 40% paper and cardboard;
 - 23% plastics; and
 - 12 other waste types accounting for the remaining 37% by weight
- 5.3.39. As a merchant EfW facility, the Applicant considered that it would be able to source RDF in such a way as to be consistent with the composition used in the GHG assessment when combusted.
- 5.3.40. UKWIN submitted written summaries of oral submissions put at ISH1 [REP1-023]. This included a detailed analysis of metal recovery that compared the Applicant's assumptions with information from the Ferrybridge EfW facility. UKWIN considered that this changed the small benefit claimed by the Applicant into a similar or larger disbenefit.
- 5.3.41. In our first round of written questions [PD-007] we asked the Applicant:
- how their assumed composition compared with currently available composition of RDF;
 - what would be a maximum-adverse case composition;
 - what would be the effect if all RDF was delivered by road rather than a 50/50 road/rail modal split;
 - how would all these reasonable worst-case factors affect the assessment; and

- what controls could be put in place to ensure the RDF combusted would be to the specification assumed in the assessment and hence the small GHG benefit claimed would be realised.
- 5.3.42. Regarding the RDF composition the Applicant considered [REP2-033] that this would be controlled by fuel specifications negotiated with suppliers. The Applicant considered that a degree of processing would be undertaken by the RDF supplier, for example, to remove recyclables, particularly plastics.
- 5.3.43. The Applicant concluded [REP2-033] that if more fossil carbon plastic waste was used as RDF, the benefit of the Proposed Development would decrease. However, if more biomass was in the RDF the benefit of the Proposed Development would increase. The Applicant considered that in the future, the use of fossil carbon plastic would likely reduce, and the use of biogenic carbon plastic would likely increase, leading to an increase in the carbon benefit of the Proposed Development compared with the baseline.
- 5.3.44. At ISH3 we included 'the carbon intensity of incineration versus landfill and incineration versus displaced power generation' as an agenda item.
- 5.3.45. Written summaries of oral submissions put at ISH 3 (Day two – 26 January 2023) were provided by the Applicant [REP4-029]. In these summaries the Applicant considered that despite adjusting the modelling to be more conservative, the Proposed Development would still be predicted to have a beneficial effect on GHG emissions.
- 5.3.46. In their post ISH3 submission [REP4-045], UKWIN considered after having reviewed the marginal emissions factor they had used for power generation, as suggested by the Applicant at the hearing, that they were appropriate and in line with BEIS guidance and previous statements from Defra. UKWIN also considered that with the RDF specification being assumed by the Applicant it would have to travel further and that this had not been taken into consideration in the assessment.
- 5.3.47. As requested by us, the Applicant and UKWIN produced a draft SoCG [REP4-020]. The Applicant submitted a Final SoCG with UKWIN [REP9-029] where areas of disagreement remained.
- 5.3.48. In our second round of written questions [PD-012] we asked the Applicant to confirm its understanding of the position in respect of how the Proposed Development complies with the latest climate change obligations in light of the Keadby 3 decision, which requires that the gas fired power station becomes commercially operational only when the carbon capture and compression plant was commercially operational.
- 5.3.49. We asked the Applicant and the EA to advise whether they consider that there is sufficient land available within the DCO to accommodate additional carbon capture facilities to meet the outputs from the Proposed Development should they be deemed necessary in the future, and whether they were aware of any barriers that would prevent such future installation.

- 5.3.50. The Applicant responded [REP6-032] confirming that it's position regarding CCS had not changed because of the Keadby 3 DCO and its requirements. Regarding full carbon capture, the Applicant considered that whilst there was a degree of uncertainty it would be feasible to do this using amine-based carbon capture within the parameters of the Proposed Development.
- 5.3.51. In its response [REP7-034], the EA considered that as CCR does not apply to energy from waste plants, the guidance they use does not include it, hence they were unable to offer any assistance.

ExA's Considerations and Conclusions

EN-1

- 5.3.52. The Proposed Development includes a power station with a maximum capacity of 95MWe. EN-1 paragraph 4.7.10 considers that all applications for new combustion plant with a generating capacity at or over 300 MW should demonstrate CCR before consent may be given. Therefore, there is no requirement on the Applicant to consider CCR and the Applicant has demonstrated that the Proposed Development would be consistent with EN-1 paragraph 4.7.10, with or without the CCUS component of the Proposed Development.

Draft EN-1

- 5.3.53. Both the Applicant and UKWIN made detailed submissions regarding GHG emissions caused by the Proposed Development compared with the alternatives for waste treatment and power generation. There remained areas of disagreement, for example over the scoping out of construction and decommissioning, but they did agree that the composition of the RDF underpins the GHG assessment in the ES [APP-054].
- 5.3.54. We consider the scoping out of construction and decommissioning GHG emissions to be inconsistent with draft EN-1 paragraph 5.3.4. and consider that the UKWIN total estimate of 340,952 considered over the operational lifetime of the Proposed Development would add around 10,000 tpa CO₂e.
- 5.3.55. We agree with the Applicant that the only way to achieve the RDF composition assumed in their GHG assessment would be to have agreements with its RDF suppliers that it would enforce. However, the Applicant did not provide examples of such agreements. The Applicant relied on its view of future trends in waste production to support its argument, for example that there would be a move away from conventional plastic to bio-plastics and an increased proportion of paper and cardboard in the RDF.
- 5.3.56. Despite the evidence submitted by IPs, principally the Applicant and UKWIN, we consider there remains considerable doubt as to whether any 'net benefit' or 'net disbenefit' can be ascertained with any certainty. The draft EN-1 would not require the Applicant to compare the Proposed Development with the alternative and demonstrate that it would be a net

benefit and paragraph 5.3.11 accepts there are likely to be operational GHG emissions, which may be significant.

- 5.3.57. We are though concerned regarding the extent to which GHG mitigation that would be provided by CCUS is secured by the corresponding Requirement 18 which specifies the commissioning timescales in the draft DCO [REP10-004]. We consider that this allows for a reasonable argument to be made that would delay indefinitely the commissioning of the CCUS facilities.
- 5.3.58. In conclusion, when considered against EN-1 paragraph 4.7.10, having had due regard for draft EN-1, draft EN-3, the LIR and other important and relevant matters, we ascribe no weight to the issue for or against the making of the Order.

5.4. CULTURAL HERITAGE

- 5.4.1. Cultural heritage was identified as a principal issue in our Initial Assessment of Principal Issues [PD-004]. This section of Chapter 5 addresses the effects of the Proposed Development on cultural heritage.

Policy Considerations

National Policy Statement for Energy (NPS-EN1)

- 5.4.2. The overarching NPS EN-1 requires the Applicant to provide a description of the significance of the heritage assets affected by the Proposed Development and the contribution of their setting to that significance. The Applicant should carry out appropriate desk-based assessments, supplemented by field evaluation if the former is insufficient to assess archaeological interest (NPS EN-1, para 5.8.9).
- 5.4.3. The Applicant should ensure that the extent of the impact of the Proposed Development can be adequately understood from the application with supporting documents and that the level of detail is proportionate to the importance of the heritage asset (NPS EN-1, para 5.8.8 to 5.8.10).
- 5.4.4. In circumstances where an application does not preserve those elements of setting which make a positive contribution to the significance of an asset, any negative effects should be weighed against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval (NPS EN-1, para 5.8.18).
- 5.4.5. In reaching a decision the Secretary of State (SoS) should:
- seek to identify and assess the particular significance of any heritage asset that may be affected, including the setting of the heritage asset (NPS EN-1, para 5.8.11);
 - take account of the particular significance of heritage assets affected by the Proposed Development and the value that they hold for future generations (NPS EN-1, para 5.8.12);

- take into account the desirability of sustaining and enhancing the significance of heritage assets (NPS EN-1, para 5.8.13); and
- presume in favour of conserving designated heritage assets, with the greater the significance of the designated asset, the greater the presumption in favour of its conservation (NPS EN-1, para 5.8.14).

5.4.6. 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.

National Policy Statement for Renewable Energy Infrastructure (NPS-EN3)

5.4.7. NPS-EN3 at paragraphs 2.5.33 and 2.5.34 under the heading of 'National designations' states:

"consent for renewable energy projects should only be granted where it can be demonstrated that the objectives of designation of the area will not be compromised by the development, and any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by the environmental, social and economic benefits"

"In considering the impact on the historic environment as set out in Section 5.8 of EN-1 and whether it is satisfied that the substantial public benefits would outweigh any loss or harm to the significance of a designated heritage asset, the IPC should take into account the positive role that large-scale renewable projects play in the mitigation of climate change, the delivery of energy security and the urgency of meeting the national targets for renewable energy supply and emissions reductions."

National Policy Statement for Electricity Networks Infrastructure (NPS-EN5)

5.4.8. NPS-EN5 at paragraph 2.2.6 reiterates the duties under section 9 of the Electricity Act 1989. Schedule 9 of the Electricity Act places a duty on transmission and distribution licence holders to have regard to

"the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and ... do what [they] reasonably can to mitigate any effect."

Draft NPS

5.4.9. In September 2021 a suite of Energy National Policy Statements was published for consultation by The Department for Business, Energy and Industrial Strategy (BEIS). Following the consultation period which concluded in November 2021 the House of Commons BEIS Committee published a report on the NPS for Energy in February 2022. This was followed by a further round of consultation which commenced in March this year but was not concluded prior to the end of the Examination period.

- 5.4.10. In the initial consultation, draft NPS EN-1 added requirements to assess the effect on heritage assets from noise, vibration, light and indirect impacts. With the expectation the assessments would be proportionate to the significance of the heritage assets which may be affected. Additionally, it sought to encourage Applicant's to take positive steps to contribute to the historic environment where there was the opportunity to do so.

Draft NPS EN-1

- 5.4.11. In the subsequent publication draft of March 2023 this identifies that the SoS should also consider the impacts on other non-designated heritage assets. Additionally, it identifies that an Applicant should undertake an assessment of any likely significant heritage impacts of the Proposed Development as part of the Environmental Impact Assessment (EIA) and describe these in the Environmental Statement (ES). This should include consideration of heritage assets above, at, and below the surface of the ground. Consideration will also need to be given to the possible impacts, including cumulative, on the wider historic environment. The assessment should include reference to any historic landscape or seascape character assessment and associated studies as a means of assessing impacts relevant to the Proposed Development.

This reflects the advice already within the NPPF.

Draft NPS EN-3

- 5.4.12. Paragraph 3.3.8 of the draft NPS EN-3 advises that in considering the impact on the historic environment. The SoS in deciding "*whether it is satisfied that the substantial public benefits would outweigh any loss or harm to the significance of a designated heritage asset*" the SoS "*should take into account the positive role that large-scale renewable projects play in the mitigation of climate change, the delivery of energy security and the urgency of meeting the net zero target.*"

The National Planning Policy Framework (NPPF)

- 5.4.13. The NPPF establishes that heritage assets should be conserved in a manner appropriate to their significance. Much the same approach in respect of the historic environment as detailed in NPS EN-1 is shared by the NPPF.
- 5.4.14. There is a requirement to weigh any harm against the wider benefits associated with the Proposed Development, with greater relative weight given to any harm to the most significant assets. Section 16 of the NPPF deals with the conservation and enhancement of the historic environment.
- 5.4.15. Paragraph 194 seeks to ensure that an Applicant describes the significance of any heritage asset affected including any contribution made to their setting with the level of detail being proportionate to the importance of the asset and the information is of sufficient detail to understand the potential impact of the proposal on the significance.

- 5.4.16. Paragraph 202 notes that where development would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 5.4.17. Paragraph 203 notes that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Planning Practice Guide (PPG)

- 5.4.18. The NPPF and the supporting PPG on the Historic Environment provide a more recent policy than NPS EN-1 with regard to assessing harm. This sets out a concept of harm to heritage assets ranging from less than substantial to substantial. The NPPF reiterates the policy approach within the NPS that consent should be refused where a development proposed would lead to substantial harm to, or total loss of a designated heritage asset unless it can be demonstrated that the substantial harm to or loss of significance is necessary to deliver substantial public benefits.
- 5.4.19. The PPG at paragraph 9 reinforces the advice in the NPPF in stating that an assessment of the impact of a proposal on the significance of an affected heritage asset should be included.

"In doing so, Applicants should include analysis of the significance of the asset and its setting, and, where relevant, how this has informed the development of the proposals. The level of detail 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."

Development Plan

- 5.4.20. Policy HE9 of the North Lincolnshire Council Local Plan (NLLP)(2003) saved policies (2007) in dealing with archaeological evaluation requires that where development proposals affect sites of known or suspected archaeological importance, an archaeological assessment should be submitted prior to determination. Planning permission will not be granted without adequate assessment of the nature, extent and significance of the remains present and the degree to which the Proposed Development is likely to affect them.
- 5.4.21. Policy HE8 (NLLP) seeks to resist proposals which are considered to have an adverse effect on Scheduled Ancient Monuments and other nationally important monuments, or their settings.
- 5.4.22. Policy CS6 of the North Lincolnshire Core Strategy (NLCS)(2011) seeks to ensure that areas of historic and built heritage value are protected, conserved and enhanced and where appropriate should provide archaeological assessment.
- 5.4.23. Emerging policy HE1 of the draft North Lincolnshire Local Plan (2021) advises that development proposals should be informed by a consultation

with the Historic Environment Record and that proposals value, protect, conserve and seek opportunities to enhance the historic environment.

- 5.4.24. Planning for Renewable Energy Development Supplementary Planning Document (2011), Policy 4 requires developers to consider the impact of their proposal for renewable energy development, both during and after construction on heritage and the historic environment.

The Applicant's Case

- 5.4.25. The ES contains an assessment of effects on cultural heritage in Chapter 12 [APP-060] which was updated [REP4-011]. This is supported by the plans showing the statutory and non-statutory historic and scheduled monument sites and features of the historic environment [APP-021] which was updated by [AS-010]. During the Examination the Applicant also provided an updated Archaeological Impact Assessment [REP9-043].

- 5.4.26. Data sources identifying heritage assets include:

- the National Heritage List for England (NHLE) for details of designated sites (dataset acquired Jan 2021);
- North Lincolnshire Council (NLC) for local conservation area appraisal and management documents and their mapping (website accessed April 2021);
- NLC for information on the historic landscape (reporting acquired April 2021);
- NLC for details of non-designated and designated heritage assets held in the Historic Environment Record (HER) data (dataset acquired Feb 2021);
- British Geological Survey for information on geological mapping and borehole information (website accessed April 2021);
- National Library of Scotland for historic Ordnance Survey mapping;
- NLC archives for documentary, cartographic and other resources including historic Ordnance Survey maps, tithe, estate and other maps, and other relevant primary sources;
- readily available published and unpublished sources, building surveys and gazetteers;
- freely available aerial imagery (including Google Earth satellite imagery, National Collection for Aerial Photography and oblique images from Britain from the Air);
- freely available Lidar imagery collected by the Environment Agency;
- local authority or ecclesiastic sources such as faculties, historic maps and documentary sources for burial grounds;
- data from previous non-invasive and invasive studies, i.e. geophysical survey, coring, trial trenching and building survey;
- a desk based assessment of cultural heritage assets set out in Appendix B to [APP-060]; and
- a site visit carried out on October 26th 2021.

- 5.4.27. Surveys were also undertaken:

- Geoarchaeological monitoring of ground investigations carried out in September 2021 (Appendix C) of [APP-060]; and

- Geophysical surveys (Appendix D) of [APP-060].
- 5.4.28. Later iterations of the Geoarchaeological monitoring of ground investigations report were submitted, which included further borehole evaluation and an updated deposit model. The final version was Appendix C to [REP9-043]. An interim update was submitted as Appendix 1 to [REP1-016]
- 5.4.29. Appendix D was updated by the version in Appendix B of [REP9-043], which included the results of the Electrical Resistivity Tomography (ERT) survey. There is a written scheme of investigation for this survey, which is Appendix E to ES Chapter 12 [APP-060].
- 5.4.30. At the beginning of the Examination a programme of further surveys was in the process of being undertaken, which continued throughout the process. The findings and conclusions reached following this additional work are set out below.
- 5.4.31. The area covered in undertaking the assessment on cultural heritage extended to the effects of the Proposed Development on all heritage assets within the Order Land and a study area extending 1 kilometre (km) from it in all directions.
- 5.4.32. In addition, the effects of the Proposed Development on designated heritage assets within an area extending 1.5 km in all directions from the boundary of the 1 km study area, and the effects of the Project on designated assets beyond the 2.5 km study area where it was determined, through professional judgement, that potential existed for an effect to occur. This judgement was guided by the zone of theoretical visibility (ZTV) (Chapter 11: Landscape and Visual Impact) [APP-059].
- 5.4.33. The Applicant divided the study area into four geoarchaeological zones and a further six impact areas which are illustrated in Figures 3 and 5 of Appendix A of [APP-060] in order to assist in reporting on the different parts of the baseline for reference in its archaeological reporting.
- 5.4.34. In summary the methodology used the following approach:
- identify baseline heritage assets defined as a result of data collection, collation and analysis from desk-based sources;
 - assess the value/significance of baseline heritage assets and the contribution made by their settings to their value/significance;
 - identify and define the magnitude of impact and the significance of the effects resulting from construction and operation of the Project; and
 - if possible, identify the spatial extent and techniques to be employed for mitigation measures to reduce the significance of the effects.
- 5.4.35. The Planning Statement [REP2-017] and Section 9 of Chapter 12 [APP-060] conclude that there would be moderate adverse (significant) residual effects on the following heritage assets:

- deep sequences of organic deposits of probable prehistoric date (with potential to contain associated archaeology) on the site of the Energy Recovery Facility (ERF) deep fuel bunker, as well as the footprints of the concrete block and plastic recycling facilities;
 - buried structural remains at Flixborough Staithe associated with the medieval and post-medieval river port;
 - the setting of the 'Flixborough Nunnery' scheduled monument; and
 - the Axholme Fens Historic Landscape Character Area (HLCA).
- 5.4.36. The Applicant concludes that there would be less than substantial harm in respect of each heritage asset.
- 5.4.37. Following further trial trench evaluation undertaken prior to and during the Examination and detailed in Appendix D to [REP9-043] the Applicant concludes that this has demonstrated that there would be no adverse effects on the following heritage assets:
- the site of a World War 2 searchlight near Neap House; and
 - archaeological features identified by desk-based analysis and geophysical survey on the site of the proposed Gas above ground infrastructure (AGI)/substation site to the east of Flixborough Industrial Estate.
- 5.4.38. The trial trench evaluation did however confirm that there would be significant adverse residual effects on buried archaeological features located to the north west of Skippingdale Industrial Park on the site of the proposed flood bund.
- 5.4.39. Additionally, the trial trench evaluation has also identified potential significant adverse residual effects on the following four heritage assets:
- buried archaeological features to the west of Skippingdale Roundabout on the site of the proposed District Heat Private Wire Network (DHPWN);
 - buried archaeological features to the north of the Ferry Road West and the A1077 junction on the site of the proposed DHPWN;
 - buried archaeological features to the north of the Frodingham Grange Roundabout on the site of the proposed DHPWN; and
 - buried archaeological features to the west of Nuddock Wood Lakes on the site of the proposed DHPWN.
- 5.4.40. The Applicant concluded that these four assets would require further investigation before the effects could be appropriately assessed. This is secured by Requirement 11 of the draft Development Consent Order (dDCO) and is set out in the Overarching Archaeological Mitigation Strategy [REP9-044].
- 5.4.41. The trial trenching carried out to inform the archaeological assessment set out above, in the preceding paragraphs, followed a Written Scheme of Investigation (WSI) which the Applicant advised in paragraph 9.0.2 of [REP2-033] was agreed with NLC.

Listed Buildings

- 5.4.42. There are no listed buildings within the Order Land. As shown on Figure 2a of [APP-060], the nearest Grade I listed building, Normanby Hall is located approximately 1.2 km outside the Order Land.
- 5.4.43. There is a single Grade II* listed building within 1 km of the application site, the former Church of St John, located within approximately 100 m of the Order Land.
- 5.4.44. There are a further eleven Grade II listed buildings within 1 km of the Order Land, the nearest of which is The Smithy, in Flixborough village. It is located approximately 30 m beyond the Order Land. A full list is set out below.

Table 4 Listed Buildings within 1km of the application site

Reference Number in ES [REP4-011, REP9-043]-	Description	Grade
17	The Berkeley Hotel	II
31	Former Church of St John	II*
63	Sawcliffe Farmhouse	II
125	The Smithy Flixborough	II
126	Dovecote Flixborough	II
127	Church of All Saints Flixborough	II
128	Lilac Cottage Flixborough	II
129	Church of St Marks Amcotts	II
130	The Rectory Amcotts	II
135	Angel War Memorial Frodingham Road Scunthorpe	II
136	45 and 47 Old Crosby Scunthorpe	II

- 5.4.45. The Applicant considers that the most prominent feature of the Proposed Development to be the stack at the Energy Recovery Facility (ERF), which would be up to 120m high. The Zone of Theoretical View (ZTV) (Figure 2b of [APP-060]) indicates that the stack will be very largely shielded from views to the east of the ridgeline. Consequently, the listed buildings in Normanby, Flixborough and Scunthorpe would not be affected by the project.

- 5.4.46. The Applicant also considers the same applies to the two listed buildings in Amcotts which are both well screened by trees from views to the east.
- 5.4.47. The Applicant concludes that the Proposed Development would have no direct effect on any listed building, nor do they consider there would be any impact on the setting of any listed building.

Scheduled Monuments

- 5.4.48. The ES states that there are no scheduled monuments within the application site, however there are three within 1 km. The nearest is Flixborough Saxon Nunnery and site of All Saints medieval church and burial ground. The other two scheduled monuments within the 1km buffer (as shown on Figure 1a/ Appendix A to [APP-060] are no. 58 Money Field Roman site, Dragonby and no. 62 Sawcliffe Medieval village and moated site).
- 5.4.49. The monuments within the 1 km study area, which is extensive due to the extent of the proposed rail works and route of the DHPWN. The site of the Flixborough Saxon Nunnery is 1.5 km from the site of the ERF and North Conesby substantially further away.
- 5.4.50. The Applicant concludes that the Proposed Development would have no direct effect on any scheduled monument, however the construction of the stack would have a moderate adverse effect on the setting of the monument known as Flixborough Saxon Nunnery.

Conservation Areas

- 5.4.51. The Applicant identifies three conservation areas Crosby within 1 km and Normanby and New Frodingham within 2.5 km. The ZTV at Figure 2b indicates the stack is unlikely to be visible from each of these locations and the Applicant has screened them out from the baseline.

Historic Landscape Areas

- 5.4.52. The Lincolnshire Historic Landscape Characterisation (2011) [REP2-057], identifies two Historic Landscape Character Areas (HLCA's) in the vicinity of the Order Limits:
- The greater part of the Energy Park Land (as shown in Figure 2 of this report) falls within 'The Axholme Fens'. The HLCA emphasises the open nature of the landscape in this area with long vistas and only occasional settlements. The many straight drainage ditches and other watercourses are also an important feature; and
 - The eastern part of the Application Land falls largely within 'The Normanby Scarp', which is defined largely by the two parallel scarps that run north-south across it: the mudstone scarp to the west along which Flixborough stands and which is characterised by surface geology of late glacial blown sands, and the ironstone scarp to the east, which was exploited from the mid-nineteenth century onwards as the source of iron ore for the steelworks at Normanby.

- 5.4.53. The Applicant concludes that the substantial massing of the Proposed Development will be a significantly greater presence in the broader agricultural landscape of the Axholme fenslands. If the Axholme Fens HLCA is considered to be of moderate value, the magnitude of impact of the Proposed Development is considered as medium leading to an overall moderate effect that would be significant.
- 5.4.54. The ZTV Figure 4 [APP-059] shows that the Proposed Development will largely be masked from the majority of Normanby Scarp HLCA. If the HLCA is considered to be of moderate value, the magnitude of impact from the Project will be low, leading to a minor effect (not significant).
- 5.4.55. The Applicant's overall conclusion in line with NPS EN-1 paragraph 5.8.14 and paragraph 202 of the NPPF is that the adverse effects identified on heritage assets are considered to constitute less than substantial harm.

Mitigation of Effects

- 5.4.56. The mitigation of effects is proposed to be controlled through the Code of Construction Practice [AS-028], Construction Environmental Management Plan (CEMP) for that part of the development and secured in Requirement 4 (2) of the dDCO [REP10-004] which must be submitted in advance and approved by NLC.
- 5.4.57. Requirement 11 of the dDCO requires archaeological works to be undertaken in accordance with the Overarching Archaeological Mitigation Strategy (OAMS) [REP9-044] and a WSI to be submitted to and approved by NLC.
- 5.4.58. In addition, to the mitigation identified to be provided, the Applicant also proposed to undertake enhancement through working with local communities and other interested stakeholders to provide a way of enhancing the knowledge, appreciation and access to cultural heritage. Requirement 11 (2) (i) requires that the provision of 'measures to enhance the interpretation and public appreciation of heritage assets' is to be included within the WSI.

Issues considered in the examination

Archaeology

- 5.4.59. NLC [REP1-019] had a series of concerns about the effects on heritage assets, including the absence of a full evaluation of the archaeological assets in line with the advice that NLC had given at the pre application stage.
- 5.4.60. Consequently, NLC was not convinced that the Applicant could properly justify the significance that they had attributed to these below ground assets which at the time of the submission of the ES had not been subject to a full series of archaeological evaluations.
- 5.4.61. NLC set out in detail their concerns and criticisms within the LIR under the following headings:

- archaeological assessment;
- archaeological evaluation;
- assessment parameters and methodology;
- impact areas and assessment; and
- mitigation.

5.4.62. The Council also expressed concern over the assessment of the impact on setting, as this had only been considered on the basis of individual designations. As such did not fully consider the implications of what the Council described as

"The very considerable impacts of the siting and scale of the proposed development on the character and settings of the historic villages of Flixborough and Amcotts, with their collection of designated and non-designated historic buildings and monuments, and their respective relationships with the river do not appear to have been assessed from a cultural heritage perspective."

5.4.63. Historic England (HE) [REP2-096] agreed with NLC that the assessments of effects on archaeological remains was not adequate and consequently the necessary mitigation could not be properly identified.

5.4.64. During Issue Specific Hearing 3 (ISH3) we sought the views of the Applicant, NLC and HE to clarify their respective positions. The Applicant emphasised their commitment to controlled excavation as set out in section 7.1.1.2 – 7.1.1.3 of [APP-060]. That the ongoing investigations were an iterative process which was intended to allow the mitigation to be designed following the evaluation process.

5.4.65. NLC and HE remained of the view that an Overarching Archaeological Mitigation Strategy (OAMS) needed to be in place prior to the grant of any Development Consent Order (DCO). This should set the framework for any detailed Written Scheme of Investigation (WSI). The WSI would need to be prepared by archaeological contractors as part of individual work projects and informed by the OAMS.

5.4.66. Throughout the examination the Applicant continued to liaise with NLC to better understand and determine the consequences of their proposals and any harm that might arise to the historic environment. As such by the end of the examination the Applicant had prepared an additional series of submissions including an updated archaeological impact assessment [REP9-043], and an OAMS [REP9-044].

5.4.67. Additionally, updates were made to the Code of Construction Practice (CoCP) [REP9-018] which were agreed with NLC which facilitates a stop working procedure and management of piling impacts to safeguard archaeological assets.

5.4.68. A Relevant Representation received from an Interested Party (IP) [RR-051] expressed concern over the potential damage to the Amcotts Ferry site. This was followed up with a written representation [REP2-104] referencing several sections of the Council's LIR, which are addressed above.

- 5.4.69. The site of the former ferry is identified as Asset Number 132 in the Gazetteer of Heritage Assets [REP4-011 page 99]. This notes that the remains of the wooden wharf survive on the riverbank.
- 5.4.70. The Applicant addressed these concerns through the ongoing archaeological assessments that continued through the examination. NLC had confirmed at the end of the examination in the Statement of Common Ground (SoCG) [REP9-025] that they were content with the final position and that the requirements within the dDCO would ensure appropriate safeguards for these designated assets of which the remains of the ferry were a part.
- 5.4.71. NLC and the Applicant confirmed in their SoCG [REP9-025] that any areas of dispute had been resolved with regard to the assessment, conclusions, mitigation, and wording of requirement in dDCO in respect of archaeological matters.
- 5.4.72. As such NLC were content that the wording of R11 would allow submission of further programme of archaeological mitigation in accordance with the OAMS.
- 5.4.73. That additional work at Flixborough Industrial Estate and the port area would require further intrusive investigation, as would the area of the proposed wetland, but NLC were content that these matters were now adequately addressed through the combination of measures outlined in the OAMS and secured in the dDCO.

Listed Buildings and their setting

- 5.4.74. The LIR [REP1-019] also identified concerns in respect of the assessment of the effect on listed buildings. Having identified one Grade II* and 11 Grade II listed buildings within 1 km of the application site the ES merely states that there is no impact upon the settings without providing any evidence to support this position.
- 5.4.75. Both the Applicant and NLC consider the guidance published by Historic England (Good Practice Advice 3 (GPA3)) (a copy of which was provided to the Examination) [REP4-032] on assessing setting to be pertinent and representative of good practise. NLC do not agree however with the Applicant's statement that it is appropriate to screen out the assessment of setting of listed buildings purely on the basis of separation distance between the application site and those listed buildings.
- 5.4.76. NLC consider advice within the guidance makes clear that a series of steps need to be taken to fully understand the consequences of any development. Without which NLC do not consider the assessor can make an informed decision when progressing on to consider the subsequent steps in the process promoted within the good practise guide.
- 5.4.77. During Issue Specific Hearing (ISH3) the parties retained their respective positions with regard to the identified listed buildings within 1 km of the application site. The Applicant having screened them out due to either

the separation distance, the temporary nature of the works, the intervening screening that was in place or a combination of these factors.

- 5.4.78. The Applicant (9.51 in [REP2-034]) stated it did provide an assessment of setting impacts to the six Grade II Listed Buildings (LBs) within 1km of the main infrastructure, referencing the Grade II Church of St Mark and adjacent Grade II Rectory, in section 8.2 of ES Chapter 12 [APP-060] and concluded there would be no change.
- 5.4.79. The Applicant (Q2.9.0.3 in [REP6-032]) also explained how its approach was consistent with GPA3 – by undertaking the first stage of identifying assets and settings affected and discounting any potential for impact there was no need to further undertake any form of assessment.
- 5.4.80. The Applicant stated in [REP4-028] they had "*considered the other listed buildings which fall within the proximity of the ERF project, the two listed buildings at Amcotts and the four at Flixborough, visited those sites and considered those factors. The screening and the relative relationship of those buildings to the development meant there isn't going to be an impact and no change in significance.*"
- 5.4.81. NLC remained of the view that to comply with the guidance being quoted an assessment needed to be undertaken to understand the contribution the setting made to the listed building, without which any effect could not be properly understood. HE deferred to NLC with regard to the assessment of Grade II listed buildings.
- 5.4.82. The Applicant in response to questions and submissions at ISH3 [REP4-028] reiterated their position that of the 12 listed buildings identified within the 1 km study area six were on the route of the DHPWN. These works were temporary and at least 100 metres (m) from the nearest listed buildings (45-47 Old Crosby).
- 5.4.83. The Applicant provided further clarification in their post hearing submission [REP4-028] that the works in the area of Old Crosby for the construction of the DHPWN would only take in the region of four - six weeks, and they maintained that in these circumstances it was reasonable to conclude there would be no impact upon the listed building.
- 5.4.84. The other LBs identified four in Flixborough and 2 in Amcotts were screened either by the topography or in the case of Amcotts a substantial belt of trees. This in combination with the separation distances in the Applicant's view meant that it was reasonable to screen these out from further assessment as there would be no effect.
- 5.4.85. Neither the council nor HE have sought to argue that the listed buildings within one kilometre of the application site would be harmed, however in failing to assess how the setting of the assets may be affected the degree to which the setting makes a contribution to the significance of each asset has not been set out.

- 5.4.86. The Applicant on the other hand reiterated their arguments that due to the physical separation between the Proposed Development and each of the listed buildings as well as the physical features which intervene the settings of these listed buildings has been screened out of the assessment and as such it is not necessary to do further assessment works.
- 5.4.87. In their final SoCG [REP9-025] the Applicant and NLC concluded that following revisions, additional investigations and amendments to the dDCO, this was the only matter which remained as an area of dispute.
- 5.4.88. NLC asks for evidence to be provided which confirms that there is no impact on the setting of the grade II* listed building within 1km of the application site and 11 grade II buildings within 1km of the application site. NLC are of the view that a settings assessment should have been undertaken to confirm and evidence the assumed conclusion that there will be no impact upon the significance of the listed buildings.

Scheduled Monuments

- 5.4.89. The presence of the three scheduled monuments within 1km of the application site was recognised by all parties. NLC initially expressed concern that without the full archaeological assessments being undertaken the understanding of the relationship between Flixborough Saxon Nunnery, Flixborough Staithe and the River Trent could not be fully understood.
- 5.4.90. Both NLC and Historic England considered that there could be substantial harm to the Flixborough Saxon Nunnery from impacts to or loss of buried remains that may contribute towards its setting and subsequently the archaeological significance, because insufficient intrusive investigation had been carried out.
- 5.4.91. This Applicant summarised the position in [REP4-028, #18] following the ISH. While HE did not provide a final position on this, the final SoCG [REP9-025] with NLC does not show the Applicant's position as being in dispute, and the further site investigation is secured.
- 5.4.92. NLC [as recorded in REP4-028] and HE [Q9.0.11 in REP2-096] were in agreement that there would be less than substantial harm to the visual setting. By the end of the Examination this matter had been resolved by the additional works that had been undertaken.
- 5.4.93. NLC welcomed the potential for enhancement secured through Requirement 11 of the dDCO which could realise an improved understanding of North Conesby medieval settlement and the origins of Flixborough Staithe.
- 5.4.94. The other scheduled monuments identified within the study area did not feature as areas of concern between the parties.

Conservation Areas

- 5.4.95. The Applicant had identified in Appendix A Figure 1a of [REP4-011] four conservation areas at Burton Upon Stather, Normanby, Crosby and New Frodingham. Further afield, within the 2.5 km study area and shown on Figure 2b of the same document there are a further three conservation areas at Alkborough, Winterton, and Appleby.
- 5.4.96. NLC provided copies of the Conservation Area Maps and Appraisals as part of their response to First Written Question (ExQ1) 9.0.12 [REP2-066 to REP2-079].
- 5.4.97. The Applicant advised that in their judgement there would be no significant impact upon any of the Conservation Areas as there were no impact pathways owing in part to the distance from the Proposed Development.
- 5.4.98. As they concluded no Conservation Areas would be affected, no specific descriptions of Conservation Areas have been provided, and no conservation areas were appraised within the assessment.
- 5.4.99. NLC did not raise a concern in this respect within its LIR.

Historic Landscape Character Areas (HLCAs)

- 5.4.100. The greater part of the Energy Park Land falls within the Axholme Fens (HLCA) which NLC confirmed in [REP2-042] they regard as having the highest-level category of the Lincolnshire Historic Landscape Characterisation survey data and covers an extensive area to the east and west of the River Trent.
- 5.4.101. The Applicant in [REP2-033] clarified the approach they had taken in assessing the effects on the HLCA. They confirmed they regarded both HLCA areas to be of moderate value, but that only significant effects at Axholme Fens HLCA would occur and these effects would need to be assessed in the planning balance in light of the overall benefits of the scheme.
- 5.4.102. At the Open Floor Hearing, Councillor Marper invited us to give weight to NLC's recent review of the landscape character assessments.
- 5.4.103. NLC confirmed that it had been reviewing the HLCAs when preparing for the new local plan, which was at an early stage of consideration. The updated HLCA had not been adopted by NLC and the Council were continuing to use the existing character assessments in their decision making. NLC therefore advised that the recent HLCAs should only be given limited weight.
- 5.4.104. NLC stated [REP2-042]- *"The Applicant has not assessed the significance of or the effects of the Proposed Development on the Historic Landscape Character at the more local level within the development area. The available datasets include the Broad Type, the Historic Landscape Character Type and the Previous Type, each type being recorded to the level of individual fields or groups of fields."*

- 5.4.105. NLC were also of the view that a more detailed assessment of the Historic Landscape Character at this finer grain would allow a more nuanced understanding of the character and survival of the historic landscape and the effects of the Proposed Development on that character. Furthermore, the assessment should refer to The Isle of Axholme, Historic Landscape Characterisation Project (1997) undertaken by the Countryside Commission.
- 5.4.106. This was an earlier, highly detailed characterisation study of the Axholme area to the west of the Trent. NLC were of the view that the Proposed Development has the potential to affect the setting of the historic landscape character of the Isle including areas of Riverside Ancient Open Strip Field landscape of potential high sensitivity on the opposite bank of the Trent to the main development area, at and around Amcotts.
- 5.4.107. Further assessment of the significance of the historic landscape character within the development site should be carried out to confirm the Applicant's assessment of significance of moderate value.
- 5.4.108. In addition, NLC considered the contribution of the historic landscape character to the significance of other heritage assets that the development has the potential to affect, including Flixborough Saxon Nunnery scheduled monument should be carried out and described, as well as how the historic landscape character may illustrate the evidence and historic value of the drainage and warping of this part of the Trent valley.

In response to our ExQ1 9.0.13 NLC stated: "The landscape heritage asset is a non-designated heritage asset and as such, should be considered in the planning balance in accordance with NPPF para 203" which states

'The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.'

- 5.4.109. HE commented at Deadline 2 that although it deferred to NLC with regard to the value of the HLCA, it stated that identification of a significant effect appeared reasonable and suggested that great weight should be assigned to the effect given the contribution of the non-designated asset to Flixborough Saxon Nunnery, a designated asset of national importance.
- 5.4.110. The Applicant responded in [REP3-021] stating that they considered the assessment to be appropriate and does not think that assessing the landscape character at a finer scale would change the impact assessment and does not think that it is necessary to revisit this.
- 5.4.111. The Applicant maintained that its assessment of moderate value for the HLCA and effect regarded as less than substantial harm, this was

consistent with the SoS conclusions in the Keadby 3 Case in December 2022.

- 5.4.112. The Applicant considered that the weight of this assessment should be proportionate to the level of harm to the significance. The Applicant would therefore suggest that less than substantial harm to a heritage asset of moderate value should be given limited to moderate weight in the planning balance. In the Applicant's view, when applying the planning balance, it is considered that the significant public benefits of the Project outweigh the significant effects identified to the Axholme Fens HLCA during the stages of the Project's limited lifetime.
- 5.4.113. The Applicant confirmed in the post hearing submission [REP4-028] the information referred to by NLC at the hearing and in written questions was reviewed when preparing the assessment and doesn't think it changes the assessment as set out in [APP-060]. The earlier characterisation report only covers Axholme Island itself and distinguishes two different character types within the area of Axholme fen. One is recently enclosed land, and one is an older settlement around the area of Amcotts. The Applicant believes it was reasonable to group those together as part of a single landscape and assess an overall moderate effect as set out in the assessment presented in [APP-060].

ExA's Conclusions

Archaeology

- 5.4.114. We are satisfied that by the end of the Examination the Applicant had provided a reasonable worst-case assessment of the likely adverse effects on archaeological assets that have been fully investigated and they could be regarded as significant in line with the conclusions set out above. The remaining assets which would be subject to further investigation in line with the OAMS and WSI are not predicted to be subject to any worse effect. These adverse effects would in our view result in less than substantial harm.
- 5.4.115. We are content that Requirement 11 of the recommended DCO (rDCO) contains the necessary mitigation measures to ensure that substantial harm to archaeological assets would be avoided. The OAMS and WSI would in combination provide appropriate means to ensure recording would be secured and published in line with advice in NPS EN-1 paragraphs 5.8.19 to 5.8.21.
- 5.4.116. Therefore, we attribute moderate weight relating to archaeological assets against the Order being made.

Listed Buildings (LB)

- 5.4.117. With regard to the effect on LBs the parties agreed there would not be any direct effect on any listed building and we have no reason to disagree with this finding.

5.4.118. In respect of setting however, we are of the view that it would have been helpful to have had an assessment of setting carried out for those listed buildings in Amcotts where the Applicant identified within their own landscape assessment there would be a visual effect of their Proposed Development to the west of the River Trent [APP-059].

5.4.119. While the Applicant sought to justify their approach, they did not seek to distinguish the approach for specific individual buildings but groups in each location. They did not provide examples of any other cases where a similar approach had been taken.

5.4.120. We are however of the view that despite this in respect of the LBs in close proximity to the routes of the DHPWN,

- 17, The Berkely Hotel;
- 31, Former Church of St. John;
- 63, Sawcliffe Farmhouse;
- 100, South Lodge Gateway;
- 135, Angel War Memorial; and
- 136, 45 and 47, Old Crosby

the works proposed were in effect the equivalent of works to provide utilities within the highway. Consequently, any effect, was of limited degree and certainly not one which could count against the development taking place.

5.4.121. The nature of these works would be temporary and following construction would all be below ground. In these circumstances we consider the approach taken by the Applicant to be a reasonable one.

5.4.122. We also agree with the approach the Applicant has taken in respect of the four LBs in Flixborough and The Rectory in Amcotts. We conclude that the separation distances involved and lack of identified intervisibility between the listed buildings and the Proposed Development, it is reasonable to conclude there would be no material effect on each of these LBs or their settings.

5.4.123. Where we do differ, however is in respect of the assessment of setting of the listed church in Amcotts. The Applicant states in [APP-060] at paragraph 8.2.1.1.

"The most prominent feature of the Project will be the stack at the ERF, which will be up to 120 m high (126.6 m AOD). The ZTV indicates the degree to which the landscape position of the stack will be very largely masked in views to the east of the mudstone ridge on or behind which most of the historic settlements to the east of the Trent are situated. As a result of this, views from or towards designated listed buildings in many of the closest settlements, Normanby, Flixborough and Scunthorpe, will not be affected by the Project. The same applies to the two listed buildings in Amcotts to the west of the Trent, where the Grade II Church of St Mark and the adjacent Grade II rectory are both well screened by trees from views to the east."

- 5.4.124. We agree this is a reasonable statement, however it does not reflect the broader position that recognises the importance of the church when approaching Amcotts from the south along the B1234.



Amcotts Church viewed from the south on the B1234 – source Google Maps

- 5.4.125. The church spire, its supporting tower and parts of the main elevation are clearly visible on the approach to the village and while it is within trees, the spire stands above them on the skyline. Historically, the church would have been the tallest building in the area, and its continued prominence in this aspect in our view contributes to the appreciation of this asset and its setting.
- 5.4.126. The current position has changed over time, as is to be expected. With the more distant wind turbine blades to the north being visible with the church in the foreground.
- 5.4.127. The addition of the stack at 120m in height will change the setting by introducing this new substantial structure. This is acknowledged by the Applicant as clearly visible from this approach and detailed in the visualisation of the ZTV (Figure 2b) of [REP4-011].
- 5.4.128. This will change the setting by introducing this new substantial structure, all be it some distance away and shielded, particularly in summer, nearer to ground level by the trees that are in close proximity to the church.

- 5.4.129. Neither the Council nor HE sought to suggest the Proposed Development would harm these LBs. However, NLC did not consider the assessment to be adequate. HE deferred to NLC on this point.
- 5.4.130. We take the view that the setting of the church in Amcotts would be adversely affected by the introduction of the stack and associated buildings. We consider that the magnitude of impact would be low and the value of the buildings as Grade II is moderate. Using a similar method as set out in the ES we are of the view that the effect would be minor adverse and not significant, and consequently the harm would be less than substantial.
- 5.4.131. We therefore conclude that the adverse effect on the setting of the Church in Amcotts should be ascribed moderate weight against the making of the Order.
- 5.4.132. We conclude that the other listed buildings identified within the study area would be unlikely to be adversely affected either during construction or operation of the Proposed Development and this can be ascribed as being neutral in the planning balance.

Scheduled Monuments

- 5.4.133. NLC and HE identified at the outset of the examination the potential for substantial harm to the setting of the Flixborough Saxon Nunnery monument, from the potential impacts to buried remains/ archaeological significance, due in part to the lack of sufficient investigation at that point in time.
- 5.4.134. We agree however, with the final conclusions of the Applicant and NLC in respect of the assessment and effects on the scheduled monuments assessed as part of the ES and set out in the updated ES Chapter 12 [REP4-011], that there would be a moderate adverse effect which would be significant on the setting of the scheduled monument known as Flixborough Saxon Nunnery.
- 5.4.135. Therefore, we attribute moderate weight relating to effects on the scheduled monument against the Order being made.
- 5.4.136. In addition, in respect of the scheduled monuments within the study area the Applicant has committed to providing opportunities to enhance the understanding and appreciation of these sites. These commitments are secured within the dDCO. While we welcome these benefits, the full detail of what is to be provided is not before us and we therefore consider these to be neutral in the overall planning balance.

Historic Landscapes Impacts

- 5.4.137. The Applicant concludes there would be adverse effects on both the Axholme Fens and Normanby Scarp Historic Landscape Character Areas. With the effect being significant for the former and not significant for the latter.

- 5.4.138. Having considered the representations and the conclusions of the Applicant with regard to the effects on the non-designated heritage assets of the HLCA. We can find no reason to disagree with the overall findings of the Applicant and the conclusion they draw to the significance of effect on both HLCA.
- 5.4.139. We therefore ascribe less than substantial harm to these heritage assets which both are of moderate value in our view and we consider therefore this should be given limited to moderate weight in the planning balance against the Order being made.

Conservation Areas

- 5.4.140. We are mindful of the duties under s72(1) *"In the exercise, with respect to any buildings or other land in a conservation area, of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."*
- 5.4.141. No works associated with the DCO would take place within a conservation area, however the works for the installation of the DHPWN would come very close to the boundary of the Crosby Conservation Area at the junction between Old Crosby and Normanby Road. These works are; however, temporary construction works and would on completion be below ground. Under these circumstances, while the Applicant has screened this out from their assessment, we are of the view that there would be no harm to this heritage asset and the character and appearance of the area would be preserved post construction. We consider the temporary effects during construction to be neutral in the overall planning balance.

Conclusions

- 5.4.142. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, we have given specific consideration to the desirability of preserving listed buildings and scheduled monuments or their setting or any features of special architectural or historic interest which they possess, and the desirability of preserving or enhancing the character or appearance of conservation areas.
- 5.4.143. We find that policy on the historic environment within NPS EN-1 has been followed by the Applicant. This policy is consistent with the aims of Section 16 of the NPPF and with the aims of the relevant policies of the local authorities' development plans.
- 5.4.144. We also consider that despite the shortcomings identified in respect the lack of an assessment on the setting of the listed buildings in Amcotts, we are confident that we have been able to reach an informed conclusion on the significance of effect on the historic environment for the construction, and operation phases of the Proposed Development.
- 5.4.145. Despite our findings of some shortcomings in the overall assessment of the setting of listed buildings, we are satisfied there was sufficient

information before the Examination that we have been able to come to a properly informed recommendation.

- 5.4.146. The safeguards secured through the dDCO and the supporting documentation in the OAMS and WSI should ensure that archaeology is properly respected, and where appropriate safeguarded, protected or recorded.
- 5.4.147. No Listed buildings will be directly affected by the proposals, and we have concluded that the adverse effect on setting on the church in Amcotts would result in less than substantial harm.
- 5.4.148. The HLCA will be adversely affected by the introduction of this range of large industrial buildings and the degree of harm is moderate adverse (significant) in EIA terms, in respect of the Axholme Fens. We recognise that even with the mitigation offered through the landscape planting secured through the dDCO an adverse effect would remain. This in our view would result in less than substantial harm to a non-designated heritage asset, to which we ascribe little to moderate weight against the Order being made.
- 5.4.149. We also recognise there is the potential for some benefit through the identified enhancement to interpretation of Flixborough Saxon Nunnery secured in Requirement 11 of the dDCO to which we ascribe limited weight in favour of the Order being made.
- 5.4.150. We are content that with the controls in place through Requirement 11 Archaeology in the dDCO and the supporting documents (OAMS) and (WSI) that the undertaking of the Proposed Development would be done in accordance with the policies set out in NPS EN-1 and NPS EN-3.
- 5.4.151. In conclusion we consider that overall, there would be moderate adverse effects and we ascribe moderate weight to matters relating to cultural heritage against the making of the Order.

5.5. DESIGN AND LAYOUT

- 5.5.1. This section of chapter 5 addresses the issues raised in respect of design and layout of the Proposed Development which were identified as principal issues in our initial assessment [PD-004].

Policy Considerations

National Policy Statement for Energy (NPS-EN1)

- 5.5.2. Paragraph 4.5.1 of NPS EN-1 acknowledges that whilst the visual appearance of a building is sometimes considered to be the most important factor in good design, high quality and inclusive design goes far beyond aesthetic considerations. However, it is further acknowledged that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.

- 5.5.3. It also recognises that good design can help to mitigate other impacts such as noise and thus help to meet many of the NPS's policy objectives (para 4.5.2).
- 5.5.4. In reaching a decision on good design, the SoS needs to judge whether:
- the Applicant has taken into account both functionality (including fitness for purpose and sustainability and aesthetics (including the contribution to the quality of the area in which it would be located) as far as possible (NPS EN-1, para 4.5.3);
 - the Applicant has taken opportunities to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation (NPS EN-1, para 4.5.3); and
 - the Applicant has demonstrated how the design process was conducted and how the proposed design evolved (NPS EN-1, para 4.5.4).
- 5.5.5. The NPS also recognises that NSIP proposals through good design can benefit biodiversity or geological features and these opportunities should be maximised.

- 5.5.6. The NPS goes on to state in paragraph 5.10.19 that:

"Although 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."

National Policy Statement for Renewable Energy Infrastructure (NPS-EN3)

- 5.5.7. NPS EN-3 reiterates the requirement for the SoS to have regard to the desirability of good design in designating NPS and that (NPS EN-3 para 2.4.2)

"Proposals for renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity, and in the design of the project to mitigate impacts such as noise and effects on ecology."

- 5.5.8. Good design will aide the mitigation of any adverse landscape or visual effect if it contributes positively to the character and quality of the area. The mitigation of adverse effects can be achieved through a variety of tools including, building size, layout, colour and external finish (NPS EN-3 para 2.5.50).

Draft NPS EN-1

- 5.5.9. Section 4.6 of draft NPS EN-1 sets out the criteria for good design that should be applied to energy infrastructure. This seeks to ensure that it should demonstrate good design particularly in respect of landscape and amenity, opportunities for co-existence and in the design to mitigate impacts such as noise and effects on ecology and heritage.

Draft NPS EN-3

- 5.5.10. Section 3.5 of draft NPS EN-3 reiterates the approach set out in the draft NPS EN-1.

The National Planning Policy Framework

- 5.5.11. Chapter 12 of the NPPF contains overarching policies for design. The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.

The Applicant's Case

- 5.5.12. The Applicant set out the approach to good design in the Design and Access Statement (DAS) [APP-037] which was updated during the examination [REP3-012] and [REP6-009].
- 5.5.13. The DAS set out the project vision supported by a set of design principles. These principles provide a set of design statements which underpin the approach to design and have guided design decisions to realise the Project vision.
- 5.5.14. The Design Principles and Codes (APP-046 updated by REP3-013, REP5-017, REP6-016, and final revision 4 REP7-008] provide clarity over what constitutes acceptable design quality and where there have been important design decisions that shape the application, and thereby they provide a level of insight for designers, and control for the planning authority and other stakeholders.
- 5.5.15. The layout, scale and external appearance of the buildings will be designed in accordance with the Works Plans [APP-016, APP-017, APP-018] updated by[AS-009], and final revisions [REP5-013, REP5-014, REP5-015] and the written parameters in the Parameters Table of Part 3 of the dDCO [REP10-004]. They will be designed in general accordance with the Design Principles and Codes.
- 5.5.16. A context analysis of the site was undertaken looking at:
- the geoarchaeological context and the distribution of known and/or suspected archaeological sites;
 - topography and geology;
 - watercourses and drainage ditches;
 - transport and access arrangements;
 - landscape and ecology; and
 - the visual context.
- 5.5.17. The Applicant considered their approach had recognised the importance of good design from the outset and was implemented by the Design Team who were selected for their track record in delivering good design in new energy projects.
- 5.5.18. The key aim of the Proposed Development was to ensure good design as set out in:

- NPS EN-1 paragraph 4.5;
- National Infrastructure Commission (NIC) guidance on design principles 'Design Principles for National Infrastructure', published by the NIC (February 2020); and
- In accordance with references to good design in the NPPF, National Design Guide (NGD), and new National Model Design Code (NMDC).

5.5.19. The NPPF sets out what is expected for well-designed places, with the NDG providing guidance on how well-designed places that benefit people and communities are recognised.

5.5.20. In light of this, and recognising the importance of good design, at an early stage of the Project the Applicant established suitable governance to aid in the delivery of good design. This was achieved through the establishment of project principles. These project principles set out the aspiration and helped guide the project throughout the design, planning and consultation stages.

5.5.21. The Project Principles are based upon the NIC 'Design Principles for National Infrastructure'. The document also recognises that design is about how something works and how it looks, and how design can be used to solve problems and maximise different types of benefits. Figure 5.1 from the DAS is included below.

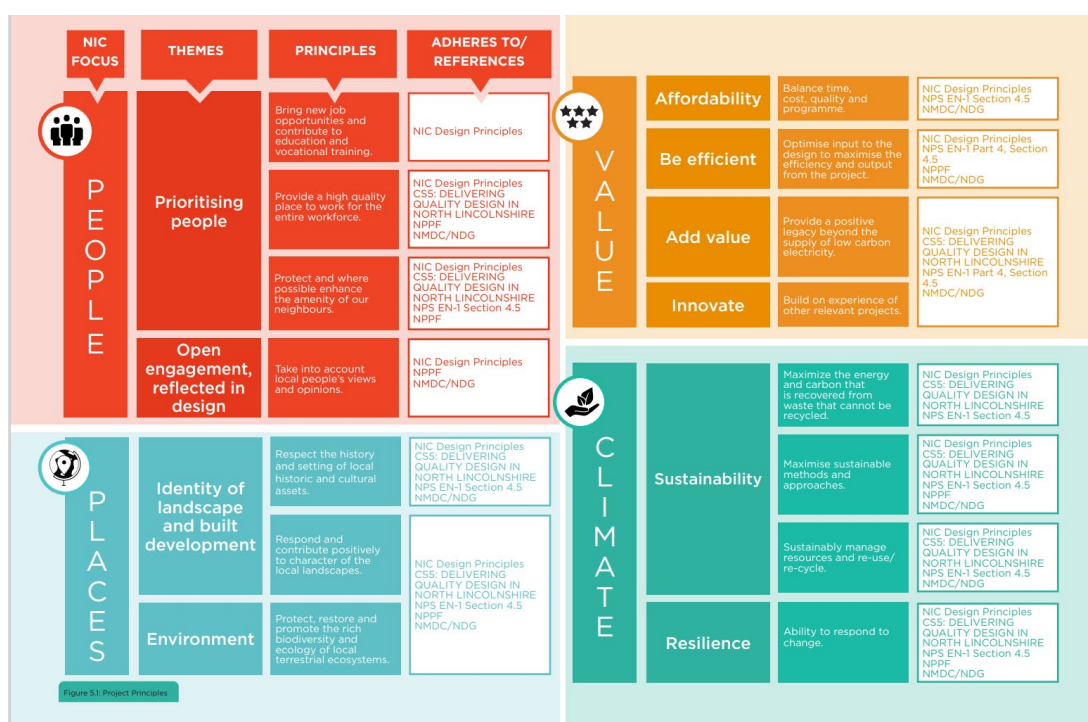


Figure 6 Project Principles

5.5.22. The DAS then refines the approach taken to support the consideration of the final outcome as presented in the Proposed Development and set out within the dDCO and other supporting documentation.

Issues considered in the examination

- 5.5.23. The LIR provided by NLC identified the importance of achieving good design in respect of both design and landscape issues in sections 6 and 8 of [REP1-019]. NLC considered that securing high quality design at the detailed design stage would be essential to minimise the visual impacts of the Proposed Development as much as possible.
- 5.5.24. NLC [REP1-019] concluded that given the scale and mass of the Proposed Development it will not be feasible to eliminate all the visual impacts, consequently, there would be residual adverse effects which should weigh against the proposal.
- 5.5.25. NLC do acknowledge however, that the largest structures proposed are located within or directly adjacent to the existing industrial estate which in part contributes to the character of this area.
- 5.5.26. NLC also make reference to Policy W1 of the North Lincolnshire Local Plan (NLLP) which is permissive of waste management facilities subject to a number of criteria including securing good design.
- 5.5.27. Additionally, the following RRs expressed concern with regard to design and landscape matters which can be summarised under the following headings:
- [RR-074] – Large scale buildings in a rural environment
 - [RR-075, RR-084] – The scale and appearance would adversely affect the character of the area;
 - [RR-059, RR-067, RR-079, RR-083] the development would have an adverse visual impact on rural communities in Flixborough and Amcotts.
- 5.5.28. In light of the emphasis on good design throughout the NPS we sought clarification of the approach from the Applicant at ISH 2 and through written questions [PD-007] ExQ10.0.1 to 10.0.9.
- 5.5.29. We also sought the views of NLC to assess the suitability of the design approach, the methods proposed to secure mitigation and the tools to assess the quality of design through the potential for a Design Champion, a Design Review Panel and the quality of the Design Principles and Codes (DP&C) document in delivering the quality the Applicant said they aimed to deliver.
- 5.5.30. The Applicant responded explaining that the design process aims to bring together technical and creative expertise that provides good value and works well for climate, people and places.
- 5.5.31. The Applicant considers that good design is as much about the process as it is the product and principles ensure a good process leads to good design outcomes. The DAS sets out how the design process was conducted across 6 stages, that have culminated with the submission of the DCO.
- 5.5.32. The Applicant explains that the 6 design stages illustrate how the design of the project evolved with explanation provided regarding the position of

the project within its wider and immediate context, and the layout of the individual elements in order to minimise effects on its neighbours.

- 5.5.33. The DAS also provides illustrative material that tests elements of the detailed design that build in beneficial biodiversity and recreational features as recognised within NPS EN1 and EN3.
- 5.5.34. This design process also reflects the components of good design as set out within the NMDC. This recognises the importance of careful attention to the components of places that includes the context for places and buildings, hard and soft landscapes, technical infrastructure and social infrastructure. All of which have been considered during the design process along with the careful consideration of the masterplan, form and scale of buildings, their appearance, landscape, materials and detailing as explained within the DAS and with the design principles secured within the Design Principles and Codes (DP&C) document.
- 5.5.35. The development of the illustrative detail design within the DAS demonstrates how the parameters have been tested and also provide a context and understanding of the project which provides assurance that the project can deliver the Applicant's vision and good design.
- 5.5.36. This illustrative detailed design has been used to set the Design Codes set out within the DP&C document.
- 5.5.37. The role of the Design Codes is to provide a series of rules to be applied to the ongoing design of the project and steer some aspects of the detailed design. They help provide the next level of detail and control beyond the those set out in the project parameters and have been informed by the mitigation measures identified within the Environmental Statement.
- 5.5.38. The illustrative material within the DAS is therefore an expression of how the project could be implemented, when applying the Design Principles and Codes and the mitigation identified in the Environmental Statement.
- 5.5.39. The DAS therefore helps to articulate and illustrate the Applicants vision for a hub of low-carbon and renewable energy generation, set within a sustainable landscape of wetlands and woodland corridors and explains the design process of how good design has been applied in delivering this vision.
- 5.5.40. NLC confirmed that subject to revisions to the DP&C, the introduction of an appropriate design review process and the inclusion of a Design Champion they were content that appropriate mechanisms were in place which would ensure good design would be achieved.
- 5.5.41. We also sought clarification from the Applicant over the level of detail provided within the DAS, and whether the DAS should be certified as a control document within the DCO.
- 5.5.42. The Applicant confirmed that the DAS was not intended to be a control document but wished to rely upon the DP&C document to ensure that

good design was achieved, and the vision of the project delivered in line with the policy requirement of the NPS EN-1 and EN-3.

5.5.43. NLC confirmed in response to EXQ2.10.0.1 that they were content that the design and landscape matters had now been addressed. The revised framework for the delivery of the Design Review Panel has been agreed with the Applicant. NLC accept that there would be adverse landscape and visual affects which would result from the development but that these have been both adequately assessed and identified by the Applicant and the mitigation has been secured.

5.5.44. This position was confirmed in the final SoCG with NLC [REP9-025]

ExA's Consideration and conclusion

5.5.45. We are content with the revisions to the DP&C document [REP7-008] which now provides greater precision in the principles and codes set out to deliver a good design. We believe that this would give NLC greater certainty that the quality of the end design can be achieved and NLC the appropriate mechanisms to ensure this would occur if applied consistently.

5.5.46. This in conjunction with the incorporation of a role for a Design Champion and an independent Design Review Panel should provide the appropriate tools to support NLC when considering future submissions for approval of the detailed design elements yet to be finalised. Both of these elements are secured by way of Requirement 3 of the dDCO which relies upon the DP&C, a document to be certified in Schedule 15 of the dDCO.

5.5.47. We remain of the view that irrespective of the quality of the end design, the scale, height and mass of the complex of buildings included in the Proposed Development will change the local context, and this could be regarded as an adverse effect on the locality which would weigh negatively in the planning balance against the scheme.

5.5.48. We recognise therefore that some IPs, particularly in the nearby settlements of Amcotts and Flixborough will be affected by the visual changes that would result in the event the DCO were to be granted and subsequently implemented. We are however not of the view that these changes would be so harmful as to affect individual amenity of properties that this should count against the development in the planning balance.

5.5.49. The development of the DP&C document in conjunction with the methods used to monitor and manage future submissions will give NLC sufficient control in our view that a good design solution can be achieved.

5.5.50. The establishment of a project specific Design Review Panel, secured by way of Requirement 3 of the dDCO 'Detailed Design' and the role of a Design Champion both agreed by the Applicant and NLC as confirmed in the final SoCG [REP9-025] provides significant assurance in this respect.

- 5.5.51. We are therefore of the view that the Proposed Development would accord with the principles of securing good design as expected by both NPS EN-1 and EN-3.
- 5.5.52. That the Applicant has taken account of the functionality and opportunities to demonstrate good design both in terms of siting relative to existing landscape character and landform and vegetation.
- 5.5.53. We are also content the Applicant has appropriately demonstrated how the design process has been conducted and how the design evolved, as such the Proposed Development has demonstrated good design principles in respect of landscape and visual amenity.
- 5.5.54. Overall, the changes to the area and the introduction of this complex of buildings will change the appearance of the locality, particularly in the short term, however we do not consider that these elements should weigh against the scheme in the overall planning balance.

5.6. ECOLOGY and BIODIVERSITY

- 5.6.1. This section of Chapter 5 addresses the effects of the Proposed Development on ecology and biodiversity.

Policy Considerations

National Policy Statement for Energy (NPS-EN1)

- 5.6.2. NPS EN-1 section 5.3 sets out national policy for Nationally Significant Infrastructure Projects (NSIPs) on biodiversity and geological conservation.
- 5.6.3. Paragraph 5.3.8 of NPS EN-1 makes clear that appropriate weight should be attached to designated sites of international, national and local importance, protected species, habitats and other species of principal importance for the conservation of biodiversity in decision making.
- 5.6.4. Paragraph 5.3.11 states:

"Where a proposed development on land within or outside an SSSI is likely to have an adverse effect on an SSSI (either individually or in combination with other developments), development consent should not normally be granted."
- 5.6.5. In addition, paragraph 5.3.15 seeks to ensure that opportunities to maximise beneficial biodiversity or geological features as part of good design.
- 5.6.6. International sites are protected under the Habitats Regulations. Many Sites of Special Scientific Interest (SSSIs) are also designated as sites of international importance but those which are not, or those features of SSSIs not covered by an international designation should be given a high degree of protection. Development within or outside a SSSI which is likely to have an adverse effect on a SSSI, individually or in combination with other developments, should not normally be granted development

consent. If after mitigation there is still a likely adverse effect on the site's notified scientific features, an exception is only to be made if the benefits (including need) outweigh the likely impacts on the site and on the national network of SSSIs.

5.6.7. Protection of habitats and other species occurs under a range of legislative provisions, for example the Wildlife and Countryside Act 1981, the Habitats Regulations and the Protection of Badgers Act 1992.

5.6.8. Paragraph 5.3.17 of NPS EN-1 requires species and habitats that are of principal importance to the conservation of biodiversity to be protected from the adverse effects of development. Consents should be refused where harm to the habitats or species and their habitats would result, unless the benefits of the development outweigh that harm. Substantial weight is to be given to detriment to biodiversity features of national or regional importance.

National Policy Statement for Renewable Energy (NPS EN-3)

5.6.9. Paragraph 2.4.2 of NPS-EN3 makes a similar statement in seeking to ensure mitigation of adverse effects on biodiversity and ecology are achieved through good design.

Draft NPS EN-1 and draft NPS EN-3 (dNPS)

5.6.10. Similar advice can be found in dNPS EN-1 (paragraphs 4.1.5, 4.5.4) while dNPS EN-3 (section 3.5) highlights the importance of good design in mitigating the impacts and effects on ecology. It also advises that Applicants should consider how security and lighting installations may impact on local ecology, with the location of pole mounted Closed Circuit Television (CCTV) and lighting carefully considered so as to minimise impacts.

The National Planning Policy Framework 2021 (NPPF)

5.6.11. Section 15 of the NPPF sets out requirements for conserving and enhancing the natural environment through planning so as to minimise impacts on habitats and biodiversity. Planning Practice Guidance 2019 explains key issues in implementing the NPPF to protect and enhance the natural environment.

Applicant's Case

5.6.12. The Applicant set out the assessment on ecology and biodiversity within Chapter 10 of the ES [APP-058] which was updated by [AS-026] following a reassessment of effects utilising what the Applicant described as a Reasonable Operating Case (ROC). This chapter of the ES includes a series of supporting appendices part of which incorporates a Phase 1 Habitat and Species survey.

5.6.13. Paragraph 5.1.1.4 of [APP-058] sets out that the approach taken follows The Chartered Institute of Ecology and Environmental Management (CIEEM) (so rather than a scale of significance, the effect is either significant or not, and it is assigned a geographic scale)

- 5.6.14. The assessment is set out geographically looking at the:
- Energy Park land;
 - Reinstated railway line;
 - Northern District Heat and Private Wire Network (DHPWN); and
 - Southern DHPWN.
- These areas are shown in Figure 3 set out earlier in the report.
- 5.6.15. The effects on the six sites of international importance within 15km of the Order Limits are considered in Chapter 6 of this report.
- 5.6.16. *National and Regional Sites*
- 5.6.17. A further 13 nationally and regionally important designated sites, including SSSI and Local Nature Reserves (LNR) are identified within 2 km of the Order Limits. The LNRs are shown on Sheet 2 of the Plans of statutory or non-statutory sites or features of nature conservation [REP2-015]. SSSIs shown on Sheet 1 of the same document.
- 5.6.18. Four of these sites partially overlap with the Order Limits of the Proposed Development. These are:
- Conesby Quarry SSSI;
 - Phoenix Parkway LNR;
 - Atkinson's Warren LNR; and
 - Phoenix LNR.
- 5.6.19. A further 15 SSSIs designated for biology are within 15km of the main stack, and these were assessed by the Applicant for air quality effects alone.
- 5.6.20. *Non-statutory sites*
- 5.6.21. In addition, a further 30 non-statutory sites were identified as being within 2km of the Order Limits. Table 3 of [AS-026] identifies each of these. The location of these sites is shown on sheet 2 of [REP2-015] which shows that some overlap with the DCO Order Limits.
- 5.6.22. *Habitats of Principal Importance (HPI)*
- 5.6.23. A summary of the extensive range of HPI identified within the search area can be found in paragraph 6.1.2.8 of [APP-058]. This confirms no HPI were recorded within the Energy Park Land or Southern DHPWN.
- 5.6.24. As part of the survey work within the Burton Wood LWS 0.38 km north of the railway reinstatement land five records of Ancient Woodland were recorded, with a further four within the Brumby Wood LWS approximately 1.4 km east of the southern DHPWN land.
- 5.6.25. Lowland Dry Acid Grassland HPI was identified immediately adjacent to the eastern Energy Park Land, and along the perimeter and overlapping the Railway Reinstatement land.

- 5.6.26. In addition, a small area of woodland falling within Phoenix LNR is located within the Railway Reinstatement Land, to the south of the tracks.
- 5.6.27. *Protected Species*
- 5.6.28. The desk study identified a range of protected species within the search area, including amphibians, bats, birds, reptiles, otter and water vole, badger, other mammals, marine mammals, fish and invertebrates.
- 5.6.29. The Environmental Statement (ES) then assess the effects during construction, subsequent operation and decommissioning in each of these geographic areas, before setting out its overall conclusions, which are summarised in Table 13: Summary of Likely Significant Effects, Mitigation and Residual Effects on Electronic (e) page 158 of [APP-058].
- 5.6.30. Decommissioning is assumed to have no greater effect than the original construction consequently the same conclusions would be applicable.
- Effect of air quality on national and locally designated sites*
- 5.6.31. Appendix A of [APP-058] (located at e page 168) provides an assessment of the effect on air quality on nationally and locally designated sites which fully sets out the conclusions included within the ES set out below but giving fuller explanation of and detail in respect of the broader effects of emissions to air from the Proposed Development.
- 5.6.32. The air quality assessment in Appendix A of [APP-058] concludes that in respect of national sites (SSSIs):
- 5.6.33. Due to exceedance of the 1% PC and 70% PEC targets, further assessment is required for:
- Humber Estuary SSSI, for 24hr NO_x, ammonia and deposited nitrogen (at saltmarsh, neutral grassland and fen, marsh and swamp habitats);
 - Risby Warren SSSI for ammonia, deposited nitrogen and acid (for acid grassland habitats): and
 - Messingham Heath SSSI for acid deposition (for acid grassland habitats).
- There will be no likely significant effects on any of the remaining SSSIs as a result of emissions to air.
- 5.6.34. In respect of locally designated sites (Local Wildlife Sites, Local Nature Reserves and Ancient Woodland) within 2 km of the Proposed Development the predicted short and long term PCs are less than 100% of the critical levels, therefore emissions are considered to be insignificant and no likely significant effects on the local sites are predicted.
- 5.6.35. Having concluded there was the potential for significant adverse effects at three SSSI further assessment was undertaken, to understand

whether adverse effects on the integrity of the designated sites were likely.

- 5.6.36. Further work included a drone survey, the condition recorded by NE of the status of each SSSI, in addition to the further assessment of 24hr NO_x, ammonia and deposited nitrogen.
- 5.6.37. This further work ruled out the potential for significant effect on the Humber Estuary SAC, Ramsar or SSSI as a result of 24hr NO_x, ammonia and nitrogen deposition.
- 5.6.38. In respect of Risby Warren SSSI, however, the PCs for ammonia, nitrogen and acid deposition all exceeded the 1% of CL threshold. The predicted emissions from each source will combine to impact on a site already negatively affected by the high background levels of nitrogen deposition. The assessment concluded that ammonia, nitrogen and acid deposition are predicted to have a significant effect.
- 5.6.39. At Messingham Heath SSSI the PC the prediction for acid deposition was very close to the 1% threshold (1.1% for acid grassland habitats), as the PC is so close to the exceedance level it is not expected that there will be significant effects.
- 5.6.40. The key findings of the ES assessment are that after mitigation the following residual effects/benefits remain/or could arise:

Significant Adverse Effect at site level

- Risby Warren SSSI could be adversely affected due to changes in air quality from air emissions within the Energy Park Land. The pollution of terrestrial habitats due to increased nitrogen deposition, resulting in degraded habitats resulting in a significant adverse effect at a site level. Mitigation measures incorporated into the Construction Environmental Management Plan (CEMP) to include measures to limit air pollution would still leave the potential for adverse significant effect at a site level.
- significant adverse cumulative effects (with Keadby 2 and 3) to Risby Warren SSSI from ammonia (NH₃),
- significant adverse effects from nitrogen and acid deposition to Risby Warren SSSI;
- Habitats of Principal Importance (HPI) in respect of both:
 - lowland dry acid grassland – could be adversely affected from nitrogen deposition; and
 - lowland calcareous grassland could be adversely affected due to the reduction in extent, disturbance of adjacent habitat and habitat degradation due to pollution, there is the potential for significant adverse effects at a site level.
- breeding birds –significant adverse effect at a site level due to loss of habitat and reduction in breeding potential/population viability
- wintering and migratory birds –significant adverse effect at a site level due to loss of habitat and reduction in breeding potential/population viability

- badger –significant adverse effect at a site level due to fragmentation of sett building and foraging habitat, reduction in breeding success
- *No Significant Effect Overall*
- Humber Estuary SSSI
- in respect of Phoenix LNR, Phoenix Parkway LNR/Local Wildlife Site (LWS), Atkinson's Warren LNR/LWS, Conesbury Quarry SSSI/LNR/LWS, Slag Banks LWS, Yorkshire East Gullet LWS, Bessemer Way Brownfield Site LWS.
- hedgerows HPI
- other habitats identified.
- invasive non-native species
- amphibians including Great Crested Newt (GCN), bats, reptiles, otter and water vole, and other mammals.
- fish, terrestrial invertebrates, aquatic invertebrates.
- no significant effects to the European sites during construction/ no adverse effect on mallard of Humber Estuary SPA and Ramsar during operation all those aspects are HRA matters covered in Chapter 6.

Beneficial Effect at a site level

- Watercourses
- Ponds

5.6.41. The residual effects identified take into account the Applicant's proposed mitigation measures which are intended to prevent or reduce adverse impacts on ecological receptors. These include:

- the Code of Construction Practice (CoCP) [AS-028] includes an outline Invasive Non-native Species Management Plan (INNS) and an outline Protected Species Management Plan these provide the basis for a future CEMP;
- the appointment of an ecological Clerk of Works (ECoW);
- areas proposed for compensatory habitat creation are shown on the indicative Landscape and Biodiversity Plans [REP3-007];
- the Design Principles and Codes Document [REP7-008];
- Landscape and Biodiversity Management and Monitoring Plan (LBMMP) will also be prepared, detailing the creation and ongoing management of compensatory habitats, together with the techniques to enhance existing habitats during the operational phase [REP6-010];
- Lighting Strategy [APP-071] secured through Requirement 5 of the dDCO; and
- design incorporates a range of habitats offering nesting, foraging and resting opportunities for a variety of bird species and the installation and monitoring of a badger tunnel beneath the new access road.

5.6.42. The Applicant also proposes as part of the Proposed Development a biodiversity net gain (BNG) of at least 10% through a mixture of land management and repurposing. Incorporating ponds, planting and appropriate management to facilitate an enhancement in this respect.

The Applicant's BNG report can be found at Appendix I of [APP-058]. This habitat creation is incorporated into the Proposed Development and are shown on the Indicative Landscape and Biodiversity Plans [REP3-007], and LBMMP [REP6-010].

5.6.43. This includes:

- 14ha of new native woodland on arable farmland within the Railway Reinstatement Land, to the north of Flixborough Industrial Estate and extending east along the reinstated railway;
- A large area of wetland is to be created to the west of the new access road within the Energy Park Land, to serve as basins for surface water run off but will be designed to maximise ecological value;
- Creation of areas of lowland meadow and lowland calcareous grassland; and
- Creation of areas of mixed native species scrub.

Issues considered in the examination

5.6.44. The principal points that were focused on during the Examination were those which the Applicant had identified as having the potential for significant adverse effects.

NLC response within their LIR

5.6.45. NLC in their Local Impact report (LIR) [REP1-019] agreed that Table 13 of [APP-058] provided a reasonable summary of the ecological baseline interest features and likely significant effects, mitigation, and residual effects.

SSSI

5.6.46. In respect of SSSI, NLC went on to state the submitted air quality assessment concludes that NH₃, nitrogen and acid deposition are predicted to have a significant effect on Risby Warren SSSI, a nationally important site for lowland dry acid grassland, which is already significantly affected by emissions to air.

5.6.47. While NLC understand this is only one contributory factor, it is important that all available measures are taken to avoid further pollution of this site, so that recovery of lichen heath communities can be encouraged.

Protected and Priority Species

5.6.48. With regard to protected species, as the report has concluded Great Crested Newt are present, NLC consider the works will require either a conventional or district level license.

5.6.49. In respect of existing biodiversity value and other species NLC confirmed they were content with the assessment and the combination of mitigation, habitat creation and potential enhancement measures.

5.6.50. The Invasive Non-native species management plan (INNS) was welcomed by NLC.

- 5.6.51. In respect of HPI, NLC considered where lowland dry acid grassland or species rich neutral grassland was present this could be improved by avoiding replanting scrub and use of habitat piles.
- 5.6.52. At the outset of the Examination NLC did not consider Requirement 4 of the dDCO was sufficient as the CEMP should also refer to habitats and designated sites as well as protected species, invasive species and soils.
- 5.6.53. NLC confirmed they considered the proposal to be in accord with the Local Plan Policy CS17 of the North Lincolnshire Core Strategy (NLCS) subject to implementing the measures as set out in [APP-058] and the LBMMP [APP-041].
- 5.6.54. With regard to BNG the Council acknowledged that the requirement through the Environment Act for 10% BNG has not yet come into force, but generally they considered the approach to be appropriate and acceptable in terms of their local policy CS17.

Natural England (NE) response in their RR

- 5.6.55. NE in their RR [RR-090] concluded that a number of matters had not been resolved satisfactorily as part of the pre-application process and must be addressed by the Applicant and the ExA as part of the examination and consenting process before development consent could be granted. In summary these findings related to likely significant effects at nationally designated sites, and on protected species and soils.
- 5.6.56. The Table below identifies the main concerns of NE in respect of the nationally designated sites.

Table 5 Likely Significant Effects on Nationally Designated Sites

Nationally Designated Site	Period of Effect	
	Construction	Operation
Humber Estuary SSSI	1 Ammonia emissions, and nutrient nitrogen deposition.	
	2 Dust emissions	
	3 Impact of potential disturbance to the migration route of river lamprey and sea lamprey	
	4 Impacts from noise, vibration and visual disturbance	
	5 Impacts from potential loss of functionally linked land	

	6 Impacts from noise, vibration and visual disturbance on functionally linked land associated with Humber Estuary SSSI	
	7. Construction traffic	
Thorne Crowle and Goole Moors SSSI		ammonia emissions, nutrient nitrogen deposition, and acid deposition
Risby Warren SSSI		ammonia emissions, nutrient nitrogen deposition, and acid deposition
Messingham Heath SSSI		acid deposition

5.6.57. NE concluded that some of these matters are important enough to mean that if they are not satisfactorily addressed it would not be lawful to permit the project due to its impacts on the SAC, SPA, Ramsar and SSSI interests. However, NE was of the view that all of these matters are capable of being overcome.

5.6.58. NE's advice in relation to identified nature conservation issues within its remit is that there is no fundamental reason of principle why the project should not be permitted but that:

- The Applicant has provided insufficient evidence to establish that there will be no adverse impacts on the following internationally designated sites: Thorne and Hatfield Moors SPA. Thorne Moor SAC and Humber Estuary SAC/SPA/Ramsar. (We deal with the HRA matters in Chapter 6).
- The Applicant has provided insufficient evidence to establish that the project is not likely to damage features of interest of the following nationally designated sites: Humber Estuary SSSI, Thorne Crowle and Goole Moors SSSI, Risby Warren SSSI and Messingham Heath SSSI.

5.6.59. In addition to the concerns about the potential significant adverse effects on the SSSIs, NE also advised of inadequacies, in their view, of the protection and classification of soils and Best and Most Versatile (BMV) agricultural land within the ES.

Other Matters raised by NE

Proximity of the Access Road

5.6.60. Based on the information provided by the Applicant [REP6-014] that the existing access road to the development site will be closed and replaced with an access road which is not within 200m of a designated site, NE would agree that road traffic impacts during construction and operation can be screened out of further assessment.

Dust Impacts

- 5.6.61. In respect of dust impacts during construction, NE [REP10-010] agree that the matter is resolved and the mitigation measures secured via a CEMP, which is secured under R4 of the dDCO [REP10-004] and must be in line with the CoCP [AS-028] would be suitable to prevent a significant adverse effect.

Noise Impacts

- 5.6.62. With regard to noise impacts during construction NE [REP10-010] conclude that the adverse effects would be controlled to a satisfactory level with the control measures secured through the CEMP, CoCP and Construction Ornithology Monitoring Plan (COMP), with the implementation of acoustic barriers. We have explained our approach to the controls secured in the CoCP in paragraph 6.4.52 of this Report which will require consultation with NE prior to approval, on this basis the absence of a requirement specifying the provision of acoustic barriers is not something we consider is necessary.

Protected and Priority Species

Great Crested Newt (GCN)

- 5.6.63. The Applicant confirmed they will assume the presence of GCN in ponds where no negative survey result could be determined. NE did not express further concern beyond that set out in their RR [RR-090] that the additional ponds not surveyed, should be.
- 5.6.64. The Applicant's response to Q5.0.4 in [REP2-033] confirmed that access requests to survey the ponds of concern were denied, however assuming the ponds did support GCN the worst-case effects arising would be not significant due to distance and unsuitable intervening habitat/presence of favourable habitat closer to the ponds. The Applicant also committed to mitigation through the LBMMP [REP6-010].
- 5.6.65. In Addition the Applicant confirmed that GCN are assumed to be present and in such circumstances would require either conventional or District Level Licensing from NE. NE confirmed in the SoCG [REP4-021] that the matter was considered resolved it however was not raised further in the final SoCG [REP10-010].

Bats

- 5.6.66. Simon Nicholson [REP7-045] and other IPs raised concerns that bat roosts under the existing road bridges which cross the rail link situated in Flixborough village and at Bagmoor, would be adversely affected.
- 5.6.67. The Applicant briefly responded in [REP8-023] reaffirming the results of the survey undertaken and reported in ES Chapter 10 [APP-058] which includes a bat survey report at Appendix F. This covers the Railway Reinstatement Land, including the disused railway spur running from Flixborough Industrial Estate to Dragonby Rail Sidings (Zone A) and arable farmland north of the Railway Reinstatement (Zone B).

- 5.6.68. The results mapped at Appendix D of the survey report – and confirmed at paragraph 7.2.3.8 of [APP-058] that no bat roosts are recorded within the Order Limits although there are some trees with the potential to support roosting bats. These trees are to be retained.
- 5.6.69. NE did raise a minor concern in [RR-090] about the survey approach to some of the existing buildings, and lack of information about which buildings had been surveyed. This was resolved in the draft SoCG at D4 [REP4-021] with confirmation from the Applicant that the information was in Appendix F to [APP-058]. The Applicant also confirmed that two other low potential buildings would not be affected by the development and were therefore scoped out of surveys.
- 5.6.70. NLC in their LIR [REP1-019] confirmed that the Applicant's assessment had appropriately dealt with bats and other protected species in terms of "Impact avoidance, Construction Phase Mitigation, Habitat Creation, Likely Impacts and Effects, and Mitigation and Enhancement Measures".
- 5.6.71. Additionally, Lincolnshire Wildlife Trust (LWT) in their SoCG with the Applicant [REP9-022] confirmed they agreed that the ecology surveys and methodology for protected and priority species including for bat activity and tree assessments are appropriate. That where species were identified *"Appropriate mitigation measures and sensitive working methods have been proposed for the species concerned. Where necessary, the appropriate licences are specified."*

Badger, breeding and migratory/wintering birds

- 5.6.72. ES Chapter 10 [AS-026] concludes that there are significant residual adverse effects at a site level due to the construction and potentially into operation due to the increased traffic and human presence on badger, breeding birds and migratory/wintering birds (although no adverse effects were reported on the designated sites), due to the range of bird species present across the site and the presence of two main badger setts close to construction areas within the Energy Park Land and Railway Reinstatement Land, as set out in paragraph 5.8.15 of the Planning Statement [REP2-017] and section 8.2 of Chapter 10 [AS-026].

Water Vole

- 5.6.73. Within [RR-090] NE also initially raised concerns about water vole, related to the potential fragmentation of habitat at the eastern end of Lysaght's drain. This was resolved in the draft SoCG with NE at D4 [REP4-021] on the basis of evidence from the Applicant that no water voles were using the land between the eastern section of Lysaght's drain where the species was recorded and the western end where works would be.

Habitats of Principal Importance (HPI) Grasslands

- 5.6.74. At Deadline 1, NLC [REP1-019] stated *"where lowland dry acid grassland or species-rich neutral grassland is present, it may be better to avoid the*

use of habitat piles, and perhaps avoid replanting scrub, in order to enhance the spatial extent of grassland swards.”

- 5.6.75. At Deadline 2 in response [REP2-034 para 8.14] the Applicant committed to working towards NLC preference through discussion with NE and LWT.
- 5.6.76. At D6, in response to our ExQ2.5.0.1 [PD-007], NLC [REP6-037] stated that it would be happy to clarify the matter through the SoCG and that it would welcome the detail being firmed up through management plans. The Applicant [REP6-032] confirmed that the Outline LBMMP [REP2-018] aimed to enhance and extend grassland areas, with priority areas including lowland dry acid grassland and lowland calcareous grassland. The Applicant stated that no replanting is proposed in these areas, and any habitat piles would be placed over suitably shaded ground so as not to encroach on grassland. Although not specifically referenced in the SoCG, [REP7-025, REP9-025] show all ecology matters as agreed with NLC.

Soils

- 5.6.77. Soils are a finite resource, NE [RR-090] advised that the ES should include an assessment of disturbance and the degree to which Best and Most Versatile (BMV) agricultural land is involved. NE calculated that approximately 235ha of agricultural land is included within the Order Limits of which approximately 101ha are required for construction. Of this 36ha would be permanently lost and a further 103ha is set aside for replacement floodplain storage.
- 5.6.78. NE considered that the initial ES did not adequately survey the site to properly assess the land quality or inform soil handling. NE did not feel the Applicant's assessment as part of ES Chapter 14 Economic, Community and Land Use Impacts [APP-062] was supported by sufficient evidence to support the Applicant's conclusions, particularly around the need for site level ALC data rather than reliance on Provisional ALC data, and that a standalone chapter should be prepared.
- 5.6.79. NE disagreed with the Applicant's conclusions, considering that a more detailed assessment is required and once undertaken a revised evaluation of the potential effects prepared. The loss of BMV should not be regarded as a low sensitivity receptor purely based upon the relative high quantity of BMV in the locality without proper justification.
- 5.6.80. The Applicant in response to ExQ1 [PD-007] confirmed that [Q2.0.2 and 2.0.3 in REP2-033] it was undertaking additional work on BMV and updating its figures to show areas by ALC Grade and project use and that it would also revisit its assessment taking account of new IEMA guidance.
- 5.6.81. The Applicant sought to explain the approach in more detail in [REP6-022] and subsequently in section 8.3 of Chapter 14 of the ES [REP9-012]. Flood risk was the predominant consideration in the siting of the Proposed Development, and one of the reasons the southern option was rejected was the greater loss of agricultural land that would result.

- 5.6.82. The Applicant undertook and updated the assessment of effects on soils and agricultural land. This is included in Appendix B to [REP9-12]. The Applicant maintains that the commitment to the delivery of BNG inevitably results in the use of more agricultural land the majority of which is BMV. In Lincolnshire in the region of 94% of agricultural land is BMV compared to the average across England of 42%.
- 5.6.83. The Proposed Development would result in the permanent loss of 12.2ha of BMV land, the area retained in agricultural production would be 93.6ha. A further 82.5ha including 47.2ha of BMV would be changed to facilitate landscaping and planting. The Applicant considers the soil resource would be retained in these areas.
- 5.6.84. As part of the construction programme a Soil Management Plan (SMP) will be prepared as part of the CEMP pursuant to Requirement 4 of the draft DCO [REP10-004]. This is required to accord with the principles set out in the outline SMP included as part of Appendix J to the CoCP [AS-028].
- 5.6.85. NE's position at the close of the Examination set out in [REP10-010] identified this issue as Not resolved. NE listed several matters as amber (not agreed) including timing of outstanding soil surveys, approach to re-use of soil on site, information about use of the land following decommissioning and detailed comments about the outline SMP. The Applicant has provided information in response in [REP10-010] explaining where commitments are secured in the dDCO [REP10-004].

IPs

- 5.6.86. IPs also expressed concern with regard to the following ecological matters:
- RR-010, RR-023, RR-048, RR-063, RR-096 The potential adverse effects on ecology along the railway line, including effects on bats and bat roosts, native flora and fauna including numerous invertebrates, butterflies, deer as well as badger
 - RR-051 – effect on lapwing a category red bird; and
 - RR-082 – adverse effect on local wildlife.

Reasonable Operating Case

- 5.6.87. Following the receipt of the initial RR from NE, the Applicant engaged in a series of discussions with NE to seek to resolve the identified concerns. This resulted in a revised assessment being carried out by the Applicant based on what was described as a Reasonable Operating Case (ROC).
- 5.6.88. The modelling approach used originally within the ES and based on the Rochdale Envelope as defined by the Applicant, included several worst-case scenarios (e.g. use of emission limits, minimum end of critical load ranges only, no modal split, worst case meteorology) and hence the effects the Applicant considers were overstated.

- 5.6.89. Since the original submission of the application and in discussion with NE during the Examination, the air dispersion modelling has been re-run based on a Reasonable Operating Case (ROC), which the Applicant considers more realistically represents the emissions that would arise from the operation of the Proposed Development.
- 5.6.90. The results of the ROC can be found in the revised ES Chapters [AS-026, REP9-011]. The effects on the SSSI can be summarised as:

Humber Estuary SSSI

Impacts from Ammonia and Nitrogen Deposition (Operation)

- For the Project alone, the ROC resulted in the PCs being <1% of the CLs for ammonia (SAC 0.65% / SPA 0.28%) and deposited nitrogen (SAC 0.96% (min)-0.64% (max) / SPA 0.35 or 0.47% (min) – 0.24%(max)) and hence they have now been screened out.
- In-combination (with Keadby 2 and Keadby 3), levels >1% of the CL remain at the Humber Estuary SAC/Ramsar. It is likely that loads for K2 will be around or less than 1% of the CL where they overlap with Project (based on a likely operating scenario for that project). Adverse effects are not envisaged, however, as effects are expected to be largely on reedbed habitat, which although part of the Atlantic salt meadows habitat, is known to be more resilient to the effects of ammonia and nitrogen. The reedbed may on occasions be inundation by nutrient laden tidal water. Effects are not expected to undermine the conservation objectives of the SAC/Ramsar.
- The predicted levels of ammonia and loads of deposition nitrogen reported in the ES both exceeded 1% of the CL at the SSSI (1.61% for ammonia) and 2.3% (min) for deposited nitrogen).
- The modelling based on the ROC predicted 0.65% for ammonia and 0.96% (min) – 0.64% (max) for two of the saltmarsh and neutral grassland habitats for deposited nitrogen. For fen, marsh and swamp, the deposited nitrogen slightly exceeded 1% for the minimum end of the CL range (1.28%), but was well under 1% for the maximum end (0.64%) and significant effects are considered unlikely.
- Cumulatively, levels >1% are predicted, however, the effects are likely to be on similar areas of reedbed which are more resilient, as described above).

Thorne Crowle and Goole Moors SSSI

Impacts from Ammonia and Nitrogen Deposition (Operation)

- The ROC modelling generated levels/loads that were <<1% for the Project alone for both ammonia (SAC 0.08% / SPA 0.03%) and deposited nitrogen (SAC 0.13%(min)-0.07%9max)/SPA (0.07% (min) – 0.03% (max)). Hence in-combination the PC levels and loads were <1% and both the SPA and the SAC have been screened out now in-combination as well as for the Project alone.

Risby Warren SSSI (Alone)

Impacts from ammonia, nitrogen and acid deposition (operation)

- 5.6.91. The application of the ROC at the Risby Warren SSSI reduced the PC however it is still predicted to be greater than 1% against the minimum end of the CL range (1.5%). Whilst the PC is less than the 1% compared with the maximum end of the range, the Applicant concludes that it is not possible to screen it out as working with NE the site must be assessed against the CL Min due to the sensitivity of the qualifying features, their extensive loss and hence the Unfavourable-Declining Status across most of the site.
- 5.6.92. The PEC was also exceeded because of high background levels of sulphur and nitrogen.
- 5.6.93. Natural England advised that management work on the site to help restore the habitat type lost is ongoing and there are no on-site management options available for the Applicant to help mitigate the effects further. Significant residual effects from acid deposition are predicted to remain on the Risby Warren SSSI.

Messingham Heath SSSI (Alone)

Impacts from Acid Deposition (Operation)

- 5.6.94. For the Project alone the ROC resulted in the PC for acid deposition being <1% of the CL (0.64%) and hence it has now been screened out.
- 5.6.95. In-combination it is likely that the acid deposition load will remain just above 1% of the CL (1.24%), however, given the current favourable condition of the main habitats and the continued presence of lichens, significant effects are not predicted.
- 5.6.96. Following the receipt of the revised information relying upon the revised outputs from the ROC and the revised chapters of the ES, NE set out their position in the Final SoCG [REP10-010]. These views are set out below.

ExAs Considerations and Conclusions

- 5.6.97. We have carefully considered the views of all IPs, the evidence presented and the responses received. We have considered and taken into account the views of Natural England and NLC.

Loss of Best and Most Versatile (BMV) land

- 5.6.98. We are satisfied that the Applicant has, through consultation and design iterations, sought to minimise impacts on BMV land where possible and that while there are areas of BMV within the application site the retention of agricultural use for large swathes of the site remain. As per the test in NPS-EN-1. We therefore attribute little weight to matters relating to the effect on BMV land in the overall planning balance.

SSSI

- 5.6.99. The Applicant in setting out their conclusions with regard to potential ecological effects at each of the four SSSI, rely on the ROC to minimise

the adverse effects from air emissions. In the original modelling the Applicant concluded a significant adverse effect to the Humber Estuary, Messingham Heath, Thorne Crowle and Goole Moors and Risby Warren SSSIs, but in the ROC modelling the effect was reduced in terms of lower process contribution (still significant for acid, but not for ammonia and nitrogen deposition).

- 5.6.100. This, however, is not secured within the dDCO. Despite being examined on this through questions both in hearings and through written questions the Applicant reaffirmed its position in [REP8-021] that in its judgement this is a matter that would be dealt with through the environmental permit and not something that it would wish to have to adhere to through controls which might be imposed through the DCO process.
- 5.6.101. In response to ExQ2.5.4 and Q2.5.6 [REP8-020] it went beyond this to confirm that the thresholds set out in the ROC could not all necessarily be met at the same time, and in these circumstances could not form the basis of thresholds to be imposed through Requirements in the DCO.
- 5.6.102. As such we conclude we are unable to recommend a revised Requirement as indicated as an appropriate alternative in NPS EN-1 paragraph 5.3.11 to addressing the *"harmful aspects of the development and, where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest."*
- 5.6.103. NE confirmed in Q2.5.7 [REP8-036] that it was satisfied that the use of the ROC modelling parameters was an acceptable basis for assessment and identification of effects from operational emissions to air (in the context of the Applicant's HRA). In its judgement the DCO would secure the ERF technology, the use of which has been used to inform the ROC modelling.
- 5.6.104. NE goes on to acknowledge however, that the operating hours are not secured within the DCO however these controls could be secured through the Environmental Permit process, which would also require a further HRA assessment.
- 5.6.105. We pursued this further in our ExQ3 [PD-015] and the Applicant maintained that *"the ROC was always intended to be presented for information only for Natural England, and not to secure any conditions. In practice, the project will require a degree of headroom in emissions limits to avoid exceeding these within the normal fluctuations of plant operations. The project also needs to maintain flexibility around the modal split for material transport."*
- "Securing the emissions from the ERF and/or modal split would unduly constrain the operation of the project, and risk non-compliance with emission limits, should these be set at the expected level of emissions."*
- 5.6.106. The ROC is not secured, and in our view, this leaves the conclusions open to question in so far as whether the significant adverse effects identified in the original assessment can be appropriately avoided. The Applicant in

confirming that they may not be able to meet all of the limits used in the ROC modelling brings forward a further degree of uncertainty, which in our view means that the ROC modelling cannot be relied upon as a predictor of effects that could give scientific certainty in support of the revised conclusions reached and set out in [AS-026].

- 5.6.107. We are therefore obliged to consider the worst-case scenario which is the basis of the Rochdale envelope assessment the Applicant undertook at the outset and set out in their original ES Chapter 10 [APP-058] on ecology and biodiversity. Under this scenario adverse effects on the SSSI were identified, and this must therefore be regarded as a negative effect of the Proposed Development which would weigh against any benefits.
- 5.6.108. By the end of the Examination, even if the ROC case were to be relied upon, the Applicant had not resolved the issue in respect of the significant adverse effect on the Risby Warren SSSI and the harm that this could have on the features for which it was designated.
- 5.6.109. NPS EN-1 makes clear in paragraph 5.3.11 that:
- "Where a proposed development on land within or outside an SSSI is likely to have an adverse effect on an SSSI (either individually or in combination with other developments), development consent should not normally be granted."*
- 5.6.110. Para 5.3.11 however, has two parts and goes on to say:
- "Where an adverse effect, after mitigation, on the site's notified special interest features is likely, an exception should only be made where the benefits (including need) of the development at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs."*
- 5.6.111. The Applicant in addition to promoting the ROC which they argue could be delivered through the EP process, are also in the process of trying to reach agreement with a neighbouring landowner to cease using the neighbouring land for farming pigs. This in combination with a habitat management plan, NE confirmed could bring significant benefit to the condition of the Risby Warren SSSI.
- 5.6.112. The Applicant confirmed in [REP8-021] "The outputs of the modelling of the ROC have identified ecological sites where it is likely that significant residual effects may remain still (i.e. Risby Warren SSSI). Discussions are ongoing with Natural England to define suitable compensation for the effects on Risby Warren SSSI."
- 5.6.113. Neither the agreement with the neighbouring landowner or the habitat management plan had been secured by the close of the Examination, nor were they submitted to the Examination and we cannot therefore take these into consideration.

- 5.6.114. These significant adverse effects may be able to be reduced if the Applicant is able to secure the agreement of the neighbouring land owner to cease farming pigs, and that land is subsequently managed to promote improvements to the neighbouring SSSI. From the limited information available, NE indicated that this could achieve a positive benefit to the condition of the SSSI, above and beyond that created by the emissions from the Proposed Development. [REP10-010].
- 5.6.115. The signed letter of intent referred to in the SoCG with NE [REP10-010], was not attached as indicated and we therefore have a limited understanding on what it might achieve. The SoS may wish to see if this matter has now been concluded as the Applicant indicates they were working towards this position in their closing submissions [AS-031]. Our recommendation is however based upon the evidence presented during the Examination and we therefore do not rely upon this possible agreement.
- 5.6.116. The Applicant accepts in their closing submission this matter has not been resolved and that Risby Warren SSSI would be subject to significant adverse effects.

Messingham Heaths SSSI

- 5.6.117. On the basis of the original modelling, the Applicant concluded that there was no significant effect because the exceedance of the 1% threshold was so marginal, but NE did not agree with this.
- 5.6.118. This matter was resolved with NE by Deadline 10 but on the basis of the ROC modelling showing that the 1% threshold for significance was not exceeded, and there also remained a slight exceedance in the cumulative assessment, but NE agreed it would not damage or destroy interest features as the relevant habitats are in favourable condition.
- 5.6.119. Again while we accept that NE had withdrawn their objection by the end of the Examination, this was based on the ROC modelling which has not been secured. In these circumstances the adverse effects to this SSSI identified by the Applicant in [APP-058] should also be weighed against the Proposed Development in the planning balance.

Humber Estuary SSSI

- 5.6.120. For the Humber Estuary SSSI ammonia and nitrogen deposition were shown to result in a slight exceedance on the original modelling, but below 1% in the ROC, except from nitrogen to deposition to fen, marsh and swamp when considered against the minimum critical level, where it still exceeds 1% (1.28%) this was however not considered to be significant by the Applicant and NE agreed.
- 5.6.121. The adverse effects on this SSSI as set out in the ES by the Applicant in [APP-058] we consider remain, as the reliance on the ROC to resolve the harms identified is not secured and again this weighs against the Proposed Development in the planning balance.

Species

- 5.6.122. The Applicant acknowledges that there are significant residual adverse effects at a site level on badger, breeding birds and migratory/wintering birds.

Biodiversity Net Gain

- 5.6.123. The Applicant does not rely on the provision of BNG to justify the application. We recognise that there is no legal basis for doing a BNG assessment and the Applicant has gone over and above what is required in this regard.
- 5.6.124. The Applicant sets out their BNG Assessment in Appendix I of [APP-058]. The assessment methodology and the results it produced were not disputed during the Examination. NE did however recommend that BNG of at least 10% should be achieved. The report indicates that a total positive net change in respect of habitats would be +13.74%, for hedgerows, it would +34.08% and for watercourses it would be +66.49%.
- 5.6.125. We give weight to the benefits that would arise from the BNG contribution to the making of the Order as we consider that the overall concept promoted through the Proposed Development, incorporating new woodland planting, additional water bodies and the other improvements referred to should be seen as a positive response to supporting ecological diversity, which even if it is not currently a policy requirement is a positive response to achieving a development that has the opportunity to provide positive ecological benefits in this respect.

Soils

- 5.6.126. NE identified at the outset concerns with regard to the effect of the Proposed Development on soils and the Applicant responded by preparing a further assessment included at Appendix B to [REP9-012].
- 5.6.127. Safeguards are in place to protect this valuable resource through the principles set out in the outline SMP and the requirement within the dDCO to have an SMP prepared as part of the Construction Environmental Management Plan (CEMP) pursuant to Requirement 4 of the dDCO.
- 5.6.128. While this matter remained unresolved between NE and the Applicant at the end of the examination as set out in the SoCG between the parties, we are content that the arrangements in place would provide for suitable soil management arrangements both during construction and any potential future decommissioning.
- 5.6.129. The permanent loss of 12.2 ha of BMV we consider to be minor adverse and to only have little weight against the making of the order.

ExA's Conclusions

- 5.6.130. We are satisfied that the Applicant has carried out a suitable ES as required by paragraphs 5.3.3 and 5.3.4 of NPS-EN1.
- 5.6.131. The harm that would arise to species and habitats of principal importance we consider would be outweighed by the benefits of the Proposed Development and conclude therefore that paragraph 5.3.17 of NPS EN-1 has been satisfied.
- 5.6.132. The Applicant has designed the Proposed Development to create a biodiverse mixture of habitats, which exceeds the minimum future planned 10% threshold of BNG. This goes beyond what policy currently requires and we consider this should be given moderate weight in favour of the order being granted.
- 5.6.133. This BNG is not presented as a form of compensation for the adverse effects created at the SSSI, it provides for a different range of ecological benefits, which are in themselves welcome, but they do not address directly the harms to the SSSI.
- 5.6.134. In light of the harm that has been identified to the Messingham Heath SSSI, Humber Estuary SSSI and Risby Warren SSSI both alone and cumulatively with the emissions from Keadby 2 and 3 and the strong policy argument that substantial weight should be afforded to the protection of such nationally important sites we find that this must be given substantial weight against the order being made.
- 5.6.135. The SoS will be aware that that our conclusions are based on the original assessment undertaken by the Applicant, and the original comments received by NE in their original RR [RR-090]. We, understand that our views do not correspond with NE in this instance, as we do not agree that the ROC case which NE have relied upon to inform their final conclusions as set out in the final SoCG [REP10-010] can be relied on to predict future emissions from the Proposed Development as the ROC is not secured.
- 5.6.136. We are also aware of the advice in the NPS EN-1 which states at paragraph 4.10.3
- "In considering an application for development consent, the IPC should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The IPC should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced by the relevant regulator. It should act to complement but not seek to duplicate them."*
- 5.6.137. From the evidence presented to the Examination, and in the absence of any progress being made on the Environmental Permit by the Applicant while we accept the evidence presented by NE that the ROC could provide one way to avoid these harms, the limits informing the outputs in the ROC are not secured within the DCO.

- 5.6.138. As such we conclude that the harm to biodiversity and ecology assets weighs against the Order being made and we give them substantial weight. Therefore, development consent should not be granted unless the need for, and benefits of, the Proposed Development would clearly outweigh the harm. We consider this element within the planning balance at Chapter 7 of this report.

5.7. FLOOD RISK, HYDROLOGY AND WATER RESOURCES

- 5.7.1. This section of Chapter 5 sets out the flood risk, hydrology and water resource effects of the Proposed Development.

Policy Considerations

National Policy Statement for Energy (NPS-EN1)

- 5.7.2. The majority of the land within the Order Limits is located within Flood Zone 3. Section 5.7 of NPS EN-1 indicates that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. Where new energy infrastructure is, exceptionally, necessary in such areas, policy aims to make it safe without increasing flood risk elsewhere and, where possible, by reducing flood risk overall.
- 5.7.3. Paragraph 5.7.4 of NPS EN-1 states that all proposals for energy projects located in Flood Zones 2 and 3 in England should be accompanied by a Flood Risk Assessment (FRA), which should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account.
- 5.7.4. Paragraphs 5.7.13 to 5.7.16 of NPS EN-1 set out the need for development to pass a Sequential Test, then an Exception Test if development is to be considered permissible in a high-risk Flood Zone area. Paragraph 5.7.12 of NPS EN-1 states that the Secretary of State (SoS) should not consent development in Flood Zone 3 unless they are satisfied that the Sequential and Exception Test requirements have been met.
- 5.7.5. Section 5.15 of NPS EN-1 addresses water quality and resources recognising that infrastructure development can have adverse effects on groundwater, inland surface water, transitional waters and coastal waters. The possibility of adverse impacts on health or on protected species and habitats could arise and result in a failure to meet environmental objectives established under the Water Framework Directive (WFD).
- 5.7.6. Where the project is likely to have effects on the water environment Applicants should undertake an assessment addressing water quality, water resources and physical characteristics of the water environment according to paragraph 5.15.2 of NPS EN-1.

- 5.7.7. In respect of geology and ground conditions NPS-EN1 advises that the consideration undertaken of the Proposed Development should be on whether the use of the land is appropriate and should work on the basis that relevant pollution control regimes will be properly applied and enforced by the relevant regulator.
- 5.7.8. Paragraph 5.10.8. states *"Applicants should also identify any effects and seek to minimise impacts on soil quality taking into account any mitigation measures proposed. For developments on previously developed land, Applicants should ensure that they have considered the risk posed by land contamination."*

The National Planning Policy Framework (NPPF)

- 5.7.9. Paragraphs 152 to 169 of the NPPF outline the development requirements in terms of climate change and 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.
- 5.7.10. The Framework establishes five classes of flood risk vulnerability, set out in Annex 3.
- Essential Infrastructure;
 - Highly vulnerable;
 - More vulnerable;
 - Less vulnerable; and
 - Water compatible development.
- 5.7.11. In dealing with land contamination the NPPF at paragraph 183 states that 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 such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);*
 - *b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and*
 - *c) adequate site investigation information, prepared by a competent person, is presented."*
- 5.7.12. Paragraph 184 makes clear it is the Applicants and landowners responsibility to secure safe development where a site is affected by contamination.
- ### **Practice Guidance (PPG) (Flood Risk and Coastal Change)**
- 5.7.13. The general approach to decision-taking is explained in the PPG:

- Assess flood risk (including through a site-specific flood risk assessment);
- Avoid flood risk (by applying the sequential and exception tests as appropriate);
- Manage and mitigate risk (including by ensuring development is flood resilient and resistant, safe and will not increase flood risk overall).

5.7.14. At paragraph 23 of the PPG it makes clear that the sequential test *"means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding"*, and secondly, that *"Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied."*

Local Development Plan

- 5.7.15. Relevant policies from the North Lincolnshire Local Plan (NLLP) include policies W3 and DS16– Flood Risk Areas, which seek to direct new facilities away from areas of flood risk. The North Lincolnshire Core Strategy (NLCS) Policy CS19 Flood Risk and emerging Local Plan policy DQE5 Managing Flood Risk.
- 5.7.16. NLC have also developed a Supplementary Planning Document (SPD) - Sustainable Drainage Systems (SuDS) and Flood Risk Guidance (2017).

The Applicant's Case

- 5.7.17. Water Resources and Flood Risk were assessed within Chapter 9 of the ES [APP-057]. This was updated by [REP6-020] which in combination with Ground Conditions, Contamination and Hydrology assessed within Chapter 8 of the ES [APP-097] formed the Applicant's assessment on the water environment.
- 5.7.18. The assessment includes the potential effects on water courses, water resources and flooding. The study area was defined to include all water courses and bodies that are in hydraulic connection with the land within the Order Limits. While the study area for flood risk is based upon an area of detailed hydraulic modelling undertaken in conjunction with the Environment Agency (EA) and North Lincolnshire Council (NLC) as Lead Local Flood Authority (LLFA).
- 5.7.19. Demand for potable water and the treatment of foul water for the Proposed Development are also considered.

Water Courses

- 5.7.20. The Order Limits includes three sub catchments of the River Trent and Humber estuary, Bottlesford Beck, Winterton Beck and River Trent catchment, although the Winterton Beck is the only WFD water body to be in direct hydraulic connection.
- 5.7.21. The main effects identified during construction is considered to be the crossing of the larger drains and ditches such as Lysaght's Drain and

Ferry Road West Drain by the new access roads and utility connections. Mitigation is proposed to be secured through the Construction Environmental Management Plan (CEMP) to ensure industry best practice is followed.

Water Resources

- 5.7.22. During construction with the exception of mixing concrete only a limited amount of water would be required each day. No abstractions of surface or ground water are proposed. During operation the water demand for the Proposed Development would require 20.95 m³/hour, to be provided via the Anglian Water mains supply.
- 5.7.23. The Applicant stated in paragraph 8.2.3.5 of [APP-057] *"Assurances have been received from Anglian Water that the increased demand on their network could be catered for, and as such, no effects on the supply of water to other users is envisaged."*

Flood Risk

- 5.7.24. The land within the Order Limits is identified by the EA as within Flood Zone 3, with the north western edge of the Energy Park Land north of the railway line as Flood Zone 3b. This assesses the probability of flooding in any given year is 1% for a fluvial flood event or 0.5% for a tidal flood event.
- 5.7.25. The North Lincolnshire Strategic Flood Risk Assessment (SFRA) concludes that the main risk within the area of the site is in fact from tidal inundation, not fluvial flooding.
- 5.7.26. The majority of the land within the Order Limits is not identified by the EA as subject to risk of Pluvial flooding except a limited number of isolated spots of surface-water flood-risk within the agricultural land within the Energy Park Land, and outside of the Order Limit within the Flixborough Industrial Estate.
- 5.7.27. In respect of flood risk from both groundwater and artificial water bodies, the land within the Order Limits is considered to be at low risk.
- 5.7.28. The River Trent to the west of the Order Limits has flood defences provided by raised earth banks. These defences provide protection from a tidal flood event up to and including a 0.5% Annual Exceedance Probability (AEP) flooding event.
- 5.7.29. These defences are designed to work in conjunction with the pumping station on Stather Road which pumps water from the Lysaught Drain (which crosses the Order Limits) into the River Trent.
- 5.7.30. At present the site is considered to be at low risk of flooding from tidal sources with the flood defences in place. However, it is potentially at a 'high' residual risk of flooding from overtopping of the defences during events that exceed a 0.5% AEP (1 in 200 chance) as well as during a future scenario resulting from climate change up to 2065 as a result of

overtopping during an event with a 0.5% AEP, or if the defences were to breach.

- 5.7.31. During construction as much of the Proposed Development is located within Flood Zones 2 and 3 the CEMP will include a requirement to comply with a flood management plan that will be prepared by the contractor to be agreed by the EA.
- 5.7.32. A Flood Risk Assessment (FRA) [APP-070] had been prepared for the Proposed Development. This considered flooding from:
- rivers (fluvial) and the sea (tidal) from overtopping of defences or in the event of a breach;
 - surface water run off (pluvial) and sewer discharge;
 - groundwater; and
 - artificial sources.
- 5.7.33. The FRA follows the principles of flood risk management:
- ensure the Proposed Development is safe for all users throughout the lifetime of the development;
 - ensure that the Proposed Development does not increase flood risk to surrounding areas;
 - ensure that the design of the Proposed Development is resilient for the future;
 - maintain discharge from the offsite areas within the Project to avoid increasing flood risk offsite;
 - manage existing overland rainfall runoff within the Order Limits to reduce impact offsite;
 - utilise passive flood mitigation measures rather than active ones that are subject to human mismanagement or mechanical failure where possible; and
 - develop mitigation measures that can provide multiple benefits and enhance the economic, social and environmental value of the Order Land.
- 5.7.34. The design of the proposals ensure that the Proposed Development would be at low risk of flooding for the lifetime of the development, but also would not increase the risk of flooding for other sites.
- 5.7.35. This information was supported by [APP-030] the Indicative surface water drainage plan which was updated by [REP3-009] during the Examination.
- 5.7.36. The Design and Access Statement (DAS) [REP6-009] set out the consideration of the alternative siting options within the site taking into account the flood risk for the area as identified within the FRA as well as the mitigation planned through the dDCO to ensure that the essential infrastructure could be appropriately protected from flooding for the lifetime of the project and ensure that there was no increased risk of flooding elsewhere in line with the requirements of NPS policy.
- 5.7.37. The Applicant had liaised with:

- the Environment Agency (EA),
- NLC as Lead Local Flood Authority (LLFA)
- Anglian and Severn Trent Water, and
- the Scunthorpe and Gainsborough Water Management Board.

- 5.7.38. In order to ensure that the Proposed Development complies with the tests out in the NPPF the Applicant proposes to raise the site level above the modelled 0.5% AEP tidal flood level. This has the potential to displace flood waters elsewhere.
- 5.7.39. The FRA [APP-070] confirms at paragraph 5.1.5 that the NLC Strategic Flood Risk Assessment (SFRA) confirms that the land within the Order Limits is not functional floodplain (Flood Zone 3b).
- 5.7.40. To control this a series of bunds are proposed at the perimeter of the Order Limits adjacent Park Ings Farm to the east of the proposed access road and to provide flood walls within the Flixborough Industrial Estate. These raised defences would result in an increase in the depth of flood waters on agricultural land north of Ferry Road west and at a commercial warehouse within Flixborough Wharf.
- 5.7.41. These changes are illustrated in Figure 6 of [APP-057].
- 5.7.42. The ES concludes that with the mitigation in place there will be a significant adverse effect at just one receptor, the commercial building at Flixborough Wharf. The Applicant proposes to develop a Flood Management Plan to manage the areas where the increase in flood risk has not been mitigated. The details of this would be agreed with the EA and secured in the dDCO.
- 5.7.43. The Operational Environmental Management Plan (OEMP) [REP8-010] sets out the inspection and monitoring measures.

Ground Conditions

- 5.7.44. The Applicant's Case is set out within Chapter 8 of the ES [APP-097] supported by a series of Appendices. This has followed the development of the pre application consultation process and the responses received from NLC, the EA and other consultees. A Conceptual Site Model was developed to develop the approach which is shown in Figure 8 of [APP-097].
- 5.7.45. A series of environmental site investigations were undertaken to establish baseline conditions and understand the potential impacts from the Proposed Development. The details of which are set out in Section 5.2 of the ES Chapter and the findings are detailed in Appendix C to F of the same document.
- 5.7.46. This in conjunction with a series of assumptions for the Proposed Development which include:
- The bunker hall will have a maximum depth of 10m below ground level;

- Construction work on the railway reinstatement land will not involve excavation below the current ballast;
- Any excavations on the Northern DHPWN Land and the Southern DHPWN Land would be for buried utilities infrastructure only and therefore will involve shallow excavation only; and
- Any excavations for landscaping and green infrastructure development (including SuDS and flood defences) will be shallow and located in areas not identified to be potential areas of concern in relation to land contamination.

Established the basis of the assessment of effects.

- 5.7.47. The ground investigations identified contaminants and the underlying hydrogeology. The details of the assessment and findings are set out in [APP-097].
- 5.7.48. This assessment includes a brief explanation of the explosion that took place on 1 June 1974 at the former Nypro UK chemical plant identifying the potential risk of contamination from this disaster.
- 5.7.49. In addition to considering the history of the site, the assessment considers the sources of and pathways along which a contaminant might travel to affect human health, controlled waters and property.
- 5.7.50. Mitigation during construction is proposed to be secured through the Construction Environmental Management Plan (CEMP) Requirement 4 of the dDCO. The CEMP will be delivered in accordance with the Code of Construction Practice (CoCP) [AS-028].
- 5.7.51. The design of the Project includes measures to contain and control any releases of contaminants to ground and surface and foul drainage network.
- 5.7.52. While beryllium, nickel and chloromethane were identified these were below levels that would be likely to have an adverse effect. Low concentrations of asbestos were also identified in the wharf area.
- 5.7.53. The Applicant concludes that the measures included in the CoCP would reduce any adverse effect on soils and groundwater to a level of negligible significance during construction and operation.
- 5.7.54. The site will require to operate within the Environmental Permit which would include conditions and measures for the protection of soils and ground water. Monitoring will be undertaken throughout the life of the Proposed Development to ensure that the effects remain as predicted and are of negligible significance.

Issues considered in the Examination

Local Impact Report

- 5.7.55. The Local Impact report (LIR) from NLC [REP1-019] confirms that NLC considered the ES provides an acceptable level of information relating to surface water and compliance with Sustainable Urban Drainage Schemes

(SuDS). Subject to the EA and the internal drainage board being consulted and providing their guidance is followed, NLC are content that the Requirements in the dDCO ensure the impacts of the Proposed Development would be adequately mitigated.

- 5.7.56. In respect of land contamination, the LIR section 12 confirm that the findings and outcomes identified by the Applicant in the ES and subject to the mitigation identified are content this would not lead a risk to human health. NLC defer to the EA in respect of effects on controlled waters.

Representations from other interested parties

- 5.7.57. Interested Parties (IPs) also expressed concern in respect of flood risk. [RR-031] considered there were more suitable sites four miles away, while [RR-011, RR-041 and RR-054] expressed concern over potential increased flood risk in Burton Upon Stather and the sustainability of building on a flood plain when it is predicted to flood within the next 30 years.
- 5.7.58. [RR-050, RR-063 and RR-048] all expressed concern that the 'Climate Central's coastal risk screening tool' consisting of Sea Level Rise and Coastal Flood maps predicts that by 2030, the proposed site will be below the annual flood level and if the water level rises by 1.0m then the proposed site could be flooded. This they considered runs counter to the NLC Local Plan policy.
- 5.7.59. While [RR-031, RR-068 and RR-079] were concerned about the potential contamination of the site, and [RR-070 and RR-078] identified concern over the potential adverse effect on geology and the water table.
- 5.7.60. AB Agri in their Relevant Representation (RR) [RR-073] and subsequent Deadline 2 response [REP2-081] expressed concern that the flood model used to inform the Flood Risk Assessment is not suitable for detailed design of food defences or for informing a flood management and evacuation plan. AB Agri were also concerned that the potential overtopping of the existing defences along the dock area may not have been represented accurately in the Applicant's model.
- 5.7.61. The Environment Agency (EA) [RR-060] confirmed they had reviewed the ES Chapter on Ground Conditions, Contamination and Hydrogeology from the perspective of protection of controlled waters only and it considers the assessment undertaken in this respect to be appropriate.
- 5.7.62. The EA however considered there remained a risk associated with piling which could create a flow path for contamination to flow to ground water.
- 5.7.63. The EA confirmed that:

"the Flood Risk Assessment (FRA) indicates that the development will have an impact on flood risk during flood events which exceed the current standard of protection of the adjacent flood defences and in the event of a breach of these defences. The FRA identifies measures to

manage and mitigate this increase in risk and provided the measures identified in the FRA are followed the Environment Agency has no objection to the proposals.

We can also confirm that the Environment Agency has undertaken a review of the hydraulic model, which underpins the FRA work. This model utilised the latest UK Climate Projections, as required by paragraph 4.8.6 of the Overarching National Policy Statement for Energy (EN-1), and it is our view that it is fit for purpose. Accordingly, it is also our view that the FRA is proportionate to the risk and appropriate to the scale, nature and location of the project as required by paragraph 5.8.7 of EN-1."

- 5.7.64. The EA went on to confirm that in summary they had no objections to the Proposed Development and were satisfied the ES has adequately considered the issues that fall within the EA's remit. They considered the draft DCO secures appropriate mitigation in relation to these issues, except for piling which can be secured through the inclusion of an additional requirement.
- 5.7.65. NE confirmed in their [RR-090] they were content that water quality impacts due to surface water runoff both during construction and operation had been successfully resolved.

ExA written questions, hearings and procedural decisions

- 5.7.66. We asked a series of questions in ExQ1 [PD-007] to clarify matters in respect of policy, the FRA, sequential and exceptions tests, flood management and mitigation. This topic area subsequently formed part of the subsequent Issue Specific Hearing (ISH) held on 26 January 2023.
- 5.7.67. During ISH3 we sought views of IPs in respect of:
- The appropriateness of site selection and the application of the sequential and exception tests;
 - The status of the Council's SFRA;
 - Management of surface water across the DCO site;
 - The relationship between the wetland area and the broader water management on the site;
 - How foul water is intended to be dealt with from the site and whether appropriate controls are secured through design or mitigation.
- 5.7.68. Following the publication of ExQ1 [PD-007] as part of the Applicant's response additional information was supplied. Including:
- [REP2-038] water courses included in the assessment;
 - [REP3-031] Environment Agency Humber Extreme water level as submitted by the Applicant;
 - [REP3-032] Fluvial flood hydrology review;
 - [REP3-033] Tidal Trent Modelling and Mapping Study;
 - [REP3-035] Ground investigation report; and
 - [REP3-037] Lincolnshire Lakes Flood Defence System.
- 5.7.69. Concerns in respect of flood risk and the suitability of the FRA continued to be expressed by IPs throughout the Examination.

- 5.7.70. Amy-Louise Ogman [REP6-049] continued to express concerns with regard to the potential flooding at Amcotts and whether the revision and clarification of the provision of a barrier screen could adversely affect flood risk.
- 5.7.71. Mr Nicholson in [REP4-041] considered there had been little or no local reference to actual flood events or risks which have been reported. In 2013 the tidal surge that affected the wharf has not been documented. Also, the flooding of 2007 which affected the area seems to have been softened as a one in 200-year event.
- 5.7.72. Other flooding in the area such as the flooding at Fishlake and the surrounding area in November 2019 could just as in the IPs view easily have been at Flixborough Stather.
- 5.7.73. Mr Nicholson also comments that the 2016 NLC Flood Risk Strategy is not controlled by mitigation but reactionary due to its unpredictable regularity. As part of the design for the proposed development set out in the FRA [APP-070], flood mitigation measures are being incorporated to ensure the site is at a low risk of flooding for the lifetime of the development.
- 5.7.74. AB Agri maintained an ongoing concern about impact upon their operation throughout the Examination.
- 5.7.75. The Applicant responded to concerns during the Examination in respect of sewerage capacity, by making changes to Schedule 1, these were subsequently refined once clarity had been obtained as to the extent of capacity within the Severn Trent system.
- 5.7.76. We address the issues raised by the different parties in turn.

Sewer network capacity

- 5.7.77. Severn Trent Water final SoCG [REP7-024] confirmed that the sewer network could accommodate the additional flow based on the removal of the previously discharged trade flow, the Applicant having demonstrated to the water companies' satisfaction that 0.35 litres/second of trade effluent capacity would be released from the removal of the previously discharged trade effluent flow.

Flood Risk

- 5.7.78. The Applicant responded to our ExQ 17.3.1 and at the ISH in how they had undertaken the site selection process in which they confirmed that none of the alternatives that had been considered were available and suitable alternatives to meet the need identified by the Applicant. As such there were no suitable and available sites outside of Flood Zone 3 which would meet the need for residual waste capacity in the Yorkshire & Humber and East Midlands region.
- 5.7.79. Further detail is provided in paragraphs 5.7.15 to 5.7.31 of the Planning Statement [APP-035].

- 5.7.80. They also explained how site selection within the site had been assessed the details of which are set out in section 9.6 of Chapter 3 of the ES [REP6-018], paragraph 9.6.1.1 states:
- "The potential impacts of flooding were a key consideration in the design development for the Project and the outcome of this design development informed where each element of the Project was located on site. Consideration of the impacts of flooding was particularly important due to the type of infrastructure proposed for the Project, and the need for it to be operational 24/7."*
- 5.7.81. Paragraph 5.7.17 of EN-1 states that:
- "Exceptionally, where an increase in flood risk elsewhere cannot be avoided or wholly mitigated, the IPC may grant consent if it is satisfied that the increase in present and future flood risk can be mitigated to an acceptable level and taking account of the benefits of, including the need for, nationally significant energy infrastructure as set out in Part 3 above".*
- 5.7.82. It is the Applicant's view that this policy is engaged on the basis that the FRA identifies a slight increase in flood depth in those areas that are already at risk of flooding and no increase in hazard or frequency. This very marginal harm should be given limited weight when applied to the benefits of the Project.
- 5.7.83. AW confirmed in their RR [RR-066] AW is responsible for managing the risks of flooding from surface water, foul water or combined water sewer systems. The FRA submitted with the application includes all forms of flooding, including surface water and sewer flooding and surface water drainage will be managed through a system of SuDSs rather than being discharged to the sewerage system.
- 5.7.84. [REP5-037] Applicant's response Section 4.2 of the FRA [APP 070] provides commentary on major tidal surge events that have been recorded by the EA and NLC and these have been reported on within the assessment.
- 5.7.85. The EA Response [REP4-037] confirm they are content the FRA undertaken by the Applicant is appropriate and has properly assessed the risks associated with the Proposed Development at this stage. The Applicant acknowledges, there would be ponding by the proposed buildings and flows would generally be deflected in a different direction to AB Agri's site. In addition to the proposed flood bund, the EA believe there is a sufficient level of protection for the site at this stage, and they have no concerns that the risk cannot be mitigated at the detailed design stage.
- 5.7.86. The Applicant confirmed a Flood Management Plan and evacuation route plan and flood resilience implementation plan will be developed with North Lincolnshire Council in consultation with the EA as part of the next stage of design. This is secured in Requirement 12 of the dDCO.

Water Framework Directive

- 5.7.87. The Applicant responded at D7 [REP7-032] para 7.0 in Comments on responses to the ExAs EXQ2 submissions.
- 5.7.88. The Applicant's response [REP5-037] provided confirmation from the EA in their Deadline 4 submission that they have no concerns in respect of water quality, monitoring and treatment or the Water Framework Directive.
- 5.7.89. EA confirmed revisions to Appendix K of the CoCP addressed concerns in respect of controlled waters. Each of these matters was included within the final SoCG with EA [REP9-027] which confirmed there were no outstanding matters by the end of the Examination.

Water resources

- 5.7.90. The EA confirmed at D4 in response to the amendments made by the Applicant at D3 particularly the Code of Construction Practice [REP3-015], with the addition of Appendix K, the Outline Piling and Foundation Works Management Plan, that this presents a comprehensive strategy for how piling works would be completed to prevent pollution to controlled waters.
- 5.7.91. Alongside the amendment of Requirement 4 of the dDCO [REP2-105], this addressed the EA concerns in respect of controlled waters, which is reflected in the SoCG [REP9-027].

Water Supply

- 5.7.92. Anglian Water (AW) in [RR-066] stated a specific risk assessment for the water mains supply network should be undertaken by the Applicant with the assistance of Anglian Water as water undertaker.
- 5.7.93. Anglian Water (AW) at D8 [REP8-035] identified there is a risk of insufficient water supplies available to meet the new and expanded water demands for non-domestic uses from planned projects in water resource zones across the Anglian Water region.
- 5.7.94. AW sought details of a technical assessment of the water demands for the Proposed Development during construction and operation. AW guided by the EA; on required water abstraction reductions, their water modelling and water resource teams will be able to advise if there is currently and will in future be insufficient water supply available in the Water Resource Zone to meet the maximum daily demand for the Proposed Development.
- 5.7.95. The Applicant prepared a Technical Assessment which AW commented upon in [REP9-024] stating:

"The draft WRMP forecasts a future deficit of water for most resource zones (including Lincolnshire Central) if no action is taken. For the region overall this deficit is forecast to be 443 megalitres per day (a megalitre is 1 million litres of water) by 2049/50.

The dWRMP24 sets out the strategy to tackle this deficit which includes both supply and demand management. However, it will take time for these strategies to take effect and as such no surplus of water is forecast to supply new non-domestic customers between 2025-2030. A potential surplus is forecast to emerge from 2030.

The Applicant has prepared a technical paper setting out the potable water requirements for the project. The process part of the project requires 2.4 litres per second from 2024 rising to 6 litres per second from 2031. AWS has advised the Applicant that it is not able to guarantee a potable water supply in the early stages of the project."

- 5.7.96. AW confirmed they will continue to work with the Applicant to consider the Applicant's solutions with a view to reaching an agreement with the Applicant by the time we report to the SoS. This position is confirmed in the Final SoCG with AW [REP9-024].
- 5.7.97. The Applicant set out their position in [AS-033] explaining how they will continue to work with AW in exploring all reasonable avenues for limiting the demand of water from the project as well as providing a water supply to the project.

Statements of Common Ground (SoCG)

- 5.7.98. By the end of the Examination, Scunthorpe and Gainsborough Water Management Board had concluded a SoCG with the Applicant [REP7-026] where all matters were agreed, as had the EA [REP9-027].
- 5.7.99. In addition, NLC in their SoCG [REP9-025] confirmed agreement to all matters in relation to flood risk, hydrology, and land contamination and that the requirements in the dDCO were acceptable to them.
- 5.7.100. Severn Trent Water [REP7-024] and Anglian Water had also agreed SoCG [REP9-024] which confirmed both water companies were content with arrangements across the site and there were no outstanding matters with the exception of the water supply raised by Anglian Water at Deadline 8.

ExA's Considerations and Conclusions

- 5.7.101. The North Lincolnshire Council (NLC) Core Strategy 2011 CS19 only allows development on a flood risk site if it demonstrates wider sustainability benefits to the community, whilst National Planning Policy Framework 159 and National Policy Statements (NPS) for Energy EN-1 5.5.1 mention inappropriate development on a flood risk area should be avoided. The NPS Renewable Energy (EN-3) states the application must set out the development's resilience to climate change.

Water Courses

- 5.7.102. We are content that the effect on water courses and their relationship with both ground water and the risks associated with the construction and operation of the Proposed Development have been appropriately assessed.

- 5.7.103. The Requirements in the dDCO, in addition to the Outline Piling and Foundation Works Management Plan (OPFWMP) (Appendix K of the CoCP [REP9-018] provide for appropriate mitigation and ensure that the water courses that are potentially affected by the Proposed Development will be safeguarded.
- 5.7.104. The EA have confirmed the CoCP, together with the amendment to the Development Consent Order Requirement 4, adequately addresses the concerns previously raised in respect of controlled waters.
- 5.7.105. We do not therefore consider there are any matters in respect of water courses that would weigh for or against the making of the Order.

Water resources

- 5.7.106. The availability of a water supply for the construction period remained an outstanding matter at the end of the Examination, with AW and the Applicant advising they would continue to work together to seek to secure a solution.
- 5.7.107. The positive engagement referenced by AW and the Applicant in working together to achieve a constructive solution, is what we would expect to see, when a late change of advice has been received during an Examination.
- 5.7.108. The supply of water for the Proposed Development remains an outstanding issue despite the positive comments from both AW and the Applicant. The current advice from AW is that they cannot offer a non-domestic connection so this would affect the construction of the Proposed Development in the short term. The availability of water during operation would appear to be a possibility subject to the findings and conclusions of the Water Resource Management Plan.
- 5.7.109. The Water Resource Management Plan to which AW refer, identifies a significant shortfall in supply in the short to medium term for non domestic supplies. With the expectation that the Plan due to be submitted in the autumn to the Department for Food and Rural Affairs (DEFRA), proposes a solution to the identified shortfall.
- 5.7.110. This plan if approved is then envisaged to set out how this shortfall will be resolved, with the current information available to the Examination giving an indication that it would be resolved around 2030.
- 5.7.111. The Proposed Development has a project time line of 6 years construction, with the phasing [APP-023] set out in the Indicative Phasing Plan and in Appendix D of [APP-061]. The Applicant in responding to our questions on waste availability dealt with later on this report, gave an indication that they consider a reasonable starting time for commencing development is 2026.
- 5.7.112. This starting time must now be open to question in light of the lack of resolution of the water supply issue at the current time.

- 5.7.113. In the event that a water supply is not available for construction, the Proposed Development would not be able to progress as anticipated and this has broader implications for the suitability of this project as a whole at this time.
- 5.7.114. We therefore consider that despite the positive remarks from the Applicant and Anglian Water the lack of availability of a water supply would weigh against the making of the Order.

Flood Risk

- 5.7.115. We are satisfied that having heard the evidence from the Applicant and sought views of both NLC and the EA that the FRA appropriately assesses the risks identified by constructing and operating the proposed development in a flood risk area.
- 5.7.116. The responses to our ExQs 4.0.6, 4.0.7, 4.0.8 and 17.1.3 supported by the evidence set out in the ES Chapter 9 [APP-057] and FRA [APP-072] satisfy us that the sequential test was appropriately applied and passed.
- 5.7.117. That the process the Applicant undertook to examine alternative sites for the delivery of the project met with the principles set out in both the PPG and NPPF, as such we are satisfied the Proposed Development can be regarded as having met the sequential and exceptions tests.
- 5.7.118. The Applicant concludes that the residual effect from the Proposed Development during either construction or decommissioning would have a moderate adverse effect on the Lysaughts Drain which would be temporary. We see no reason to disagree with this conclusion.
- 5.7.119. During operation there would be a significant adverse effect for one receptor during a breach scenario. The warehouse building at Flixborough Wharf. This adverse effect would be managed through the development of a detailed Flood Mitigation Strategy and a Flood Management Plan for the Proposed Development.
- 5.7.120. The details of both the Strategy and Plan are secured through Requirement 12 of the dDCO and will need to be agreed by NLC in consultation with the EA. Both NLC and the EA confirmed they considered this acceptable within their respective SoCG.
- 5.7.121. NPS-EN1 requires the SoS to be satisfied that in a flood risk area, the Proposed Development would be flood resilient and resistant, include for safe access and escape in emergency situations and the residual risk is safely managed through the lifetime of the project.
- 5.7.122. In addition, the dDCO includes Requirement 8 Surface Water Drainage, Requirement 9 Foul water drainage, Requirement 12 Flood Risk, the terms of which have been agreed by all of the organisations with responsibility for drainage and flooding.
- 5.7.123. The ES has appropriately assessed surface water, flood risk and drainage as required by the NPS. The Applicant has appropriately considered the

alternatives and we are satisfied that the exception and sequential test has been met.

- 5.7.124. The design of the sustainable drainage system (SuDS) as shown indicatively on the Indicative Surface Water Drainage Plan [REP3-009], this is designed to link into the current surface water drainage system that feeds into the pumping station near Neap House.
- 5.7.125. The risk of flood waters being increased beyond the Order Limits has been appropriately controlled through the design of the Proposed Development and the incorporation of the mitigation outlined and secured through the Requirements in the dDCO.
- 5.7.126. Having received confirmation from the EA, NLC both Severn Trent and Anglian Water as well as the Scunthorpe and Gainsborough Management Board they are content that the flood risk issues have been appropriately considered, and mitigation secured through the dDCO and supporting documents, we are content that the arrangements for flood planning accord with the policy requirements of NPS EN-1.
- 5.7.127. NLC, the EA, the WMB and Water Companies have all confirmed they are content with the assessment of the flood risk, the detail of the FRA and the proposed management and mitigation provided through both the physical works proposed and the plans secured through Requirement 12 of the dDCO.
- 5.7.128. In these circumstances we are satisfied that the flood risk elements of the Proposed Development have been considered appropriately and the design and subsequent mitigation would minimise the risks associated with the development of this site, as such it would accord with the tests set out in NPS EN-1.
- 5.7.129. In light of the potential impact during a flood event on the warehouse where the FRA identifies a slight increase in flood depth in those areas that are already at risk of flooding but no increase in hazard or frequency, we agree with the Applicant that this harm can be given little weight against the making of the Order.

Water Framework Directive

- 5.7.130. In respect of compliance with the requirements of the Water Framework Directive, the EA confirmed they were content that there would not be a requirement for a WFD compliance assessment, and they were content there were no outstanding issues in this respect [REP4-037].
- 5.7.131. The Winterton Beck is the only Water Framework Directive waterbody with hydraulic connection to any of the proposed works. This water body would not be directly affected by any physical works and would not be affected by any construction or operational aspects of the Project that could affect its water quality [REP9-027]. We have no reason to disagree with these conclusions.

5.7.132. Requirement 4 Environmental Management includes the requirement to submit and have approved the CoCP which includes within it:

- (c) spill response plan
- (e) construction flood management plan, and
- (m) piling and foundation works management plan.

5.7.133. We consider that there are no matters relating to the water framework directive which would weigh for or against the making of the Order.

Ground conditions

5.7.134. While initial concerns were raised at the outset by IPs, these were not progressed through the examination once confirmation had been received from both NLC and the EA that they had no concerns with regard to how the assessment had been carried out by the Applicant or the conclusions that had been reached.

5.7.135. Both NLC and the EA confirmed they were content with the mitigation proposed and secured within the Requirements of the dDCO and the supporting documentation set out in the CoCP.

5.7.136. We consider that there are no matters relating to ground conditions which would weigh for or against the making of the Order.

CONCLUSION

5.7.137. We are satisfied that all the matters dealing with, flood risk, the WFD, and ground conditions have been appropriately assessed through the ES and the mitigation secured in the dDCO will ensure that the Proposed Development could be undertaken in line with the Policy requirements identified in NPS EN-1 and EN-3. In considering these elements of the Proposed Development we consider that these matters together we ascribe little weight against the order being made.

5.7.138. However, the lack of resolution of a water supply at the end of the Examination, is a serious concern and while the Applicant and AW are continuing their engagement in trying to secure a solution, this is not before us. At this time the lack of a certainty on this matter must be regarded as a negative factor which weighs against the Order being made. The importance of water resources and the absence of a solution we ascribe significant weight against the Order being made.

5.8. HEALTH

5.8.1. This section considers the effects on human health that could be caused by dust, the contamination of land or water, pests and vermin, and electric and magnetic fields, during the construction and operation of the Proposed Development.

5.8.2. Effects on human health that could be caused by the impact of the Proposed Development in relation to air quality, noise and vibration, socio-economics, and pedestrian and cycling networks are considered in Sections 5.2, 5.11, 5.12 and 5.13 respectively.

Policy Considerations

National Policy Statement for Energy (EN-1)

- 5.8.3. Within EN-1 human health is covered as section 4.13 under the heading of "Assessment Principles". The remaining material of relevance in the context of the Proposed Development are:
- 5.8.4. 4.13.1 which states: *"Energy production has the potential to impact on the health and well-being ("health") of the population. Access to energy is clearly beneficial to society and to our health as a whole. However, the production, distribution and use of energy may have negative impacts on some people's health."*
- 5.8.5. 4.13.3 which states: *"The direct impacts on health may include water pollution, dust,...hazardous waste and substances,...exposure to radiation, and increases in pests."*

National Policy Statement for Renewable Energy (EN-3)

- 5.8.6. We consider that this adds nothing further to EN-1

Draft National Policy Statement for Energy (draft EN-1)

- 5.8.7. We consider that the corresponding paragraphs under 4.3 do not affect the EN-1 position in relation to public health.

Draft National Policy Statement for Energy (draft EN-3)

- 5.8.8. We consider that this does not affect EN-3 in relation to public health.

National Policy Statement for Electricity Network Infrastructure (EN-5)

- 5.8.9. Human health in relation to Electric and Magnetic Fields (EMFs) is considered in Section 2.10. Paragraph 2.10.15 says that the application should demonstrate conformity with Electricity Safety, Quality and Continuity Regulations 2002 (ESQCR), introduce optimal phasing of high voltage overhead power lines wherever possible and practicable in accordance with the voluntary Code of Practice published in 2011 to minimise effects of EMFs and have considered new advice emerging from the Department of Health relating to Government policy for EMF exposure guidelines. Compliance with ESQCR should mean that the 2011 voluntary Code of Practice, referred to in 2.10.9, would be complied with for power lines at or below 132 kV.

Draft National Policy Statement for Electricity Network Infrastructure (draft EN-5)

- 5.8.10. We consider that this does not affect EN-5 in relation to public health.

National Planning Policy Framework

- 5.8.11. In addition to Section 8 which states that policies and decisions “should aim to achieve healthy, inclusive and safe places” they should also avoid significant health effects caused by land contamination.

Local Development Plan

- 5.8.12. Relevant emerging North Lincolnshire Council (NLC) draft local plan policies (2021) include CSC11 “Health and Wellbeing” which seeks to ensure development proposals consider the impacts and potential for achieving positive mental and physical health outcomes and sets out ways in which NLC would seek to improve health and wellbeing in North Lincolnshire. [REP9-025]

The Applicant’s Case

- 5.8.13. The Applicant sets out in the Environmental Statement ES - Chapter 17 - Health [APP-065] its approach to the consideration of the effects of the Proposed Development on human health.
- 5.8.14. The Applicant reports and responds to the extensive comments received from Public Health England (PHE) in response to the EIA scoping report. The Applicant indicates that health effects resulting from impacts on air quality, noise and socio-economics are considered in Chapters 5, 7 and 14 respectively of the ES.
- 5.8.15. The Applicant reports that PHE commented on the methodology as part of the review of the preliminary environmental impact report (PEIR).
- 5.8.16. The Applicant considers that in the absence of any statutory guidance different Health Impact Assessments (HIAs) employ slightly different methods to meet individual project requirements. The Applicant considers that the method it uses in its health and wellbeing assessment follows established best practice, drawing upon available data to inform the assessment of potential impacts on health and wellbeing.
- 5.8.17. The Applicant’s approach involves the compilation of an evidence base, including a literature review, community profiling and stakeholder engagement, followed by the analysis of potential health impacts, and the resulting effects. The Applicant considers that its approach to the assessment is consistent with the comments received from PHE.
- 5.8.18. The Applicant summarises the health effects identified in the ES as those negative effects relating to noise and dust during construction, and emissions to air during operation and the positive socio-economic effect.
- 5.8.19. The Applicant considers that mitigation to achieve policy consistency during construction would be secured by the Code of Construction Practice (CoCP), for example the containment of spills to avoid water or land contamination and the control of dust [REP9-018] which is certified under Article 46 the draft DCO revision 8 [REP10-004], and its use is secured through the environmental management Requirement 4 of the draft DCO revision 8 [REP10-004]

- 5.8.20. The Applicant considers that the Proposed Development would be subject to strict regulatory controls and that this would mitigate any health effects during operation. Any issues not covered by the environmental permit issued by the EA, under the Environmental Permitting (England and Wales) Regulations 2016, would be addressed by the Operational Environmental Management Plan (OEMP), for example pest and vermin control [REP8-010] secured through requirement 4 of the draft DCO revision 8 [REP10-004]. The Applicant considers that the OEMP [REP8-010] would include, as necessary, pest and odour management plans.
- 5.8.21. The Applicant considers that the potential for adverse health effects to be caused by EMFs created by the buried 11 kV and 33 kV electric cables that form part of the Proposed Development is negligible.

Issues considered in the Examination

Local Impact Reports

- 5.8.22. North Lincolnshire Council (NLC) provided a Local Impact Report (LIR) [REP1-019]. NLC agreed with the Applicant's conclusion that there would not be a risk to human health from land or water contamination.

Representations from other interested parties

- 5.8.23. Relevant and written representations that raised health issues in relation to air quality and the Applicant's responses are reported in Section 5.2.
- 5.8.24. There were no matters regarding human health raised by PHE or the EA during the examination.

ExA written questions

- 5.8.25. In our first round of written questions [PD-007] we asked for the source that supported the Appendix B conclusion [APP-065] that the risk assessment values are 'conventionally considered to be acceptable for industrial regulation in the UK'
- 5.8.26. The Applicant responded [REP2-033] and stated that the HSE in its document 'Reducing Risks, Protecting People' (2001) "does not advise against granting planning permission on safety grounds for developments where such individual risk is less than 1 in a million per year". The Applicant considered this to be the best proxy available for the case of exposure to pollutants from airborne pollutants from new industrial facilities.

ExA's Considerations and Conclusions

- 5.8.27. We see no reason to disagree with the Applicant's conclusion that there would not be a risk to human health from land or water contamination as agreed by NLC in their LIR [REP1-019] as these matters were absent from the final SoCG with NLC [REP9-025] and the final SoCG with the EA [REP9-027].

- 5.8.28. We consider that the Applicant has taken account of the comments received from PHE in its approach to health assessment, for example the consideration of the baseline and PHE took no part in the examination of the Proposed Development.
- 5.8.29. Accounting for the voltages and distances to dwellings we consider that the Electricity Safety, Quality and Continuity Regulations 2002 would be complied with. We therefore see no reason to disagree with the Applicant's conclusion that the potential for adverse health effects to be caused by EMFs created by the buried 11 kV and 33 kV electric cables that form part of the Proposed Development would be negligible.
- 5.8.30. We consider that mitigation to achieve policy consistency during construction would be secured by the CoCP [REP9-018] which is certified under article 46 the draft DCO revision 8 [REP10-004], and its use would be secured through the environmental management requirement 4 of the draft DCO revision 8 [REP10-004].
- 5.8.31. We consider that, to the extent that mitigation to achieve policy consistency is necessary to supplement the environmental management system required under the environmental permit during operation this would be secured by the OEMP [REP8-010] which is certified under article 46 the draft DCO revision 8 [REP10-004], and its use secured through the environmental management requirement 4 of the draft DCO revision 8 [REP10-004].
- 5.8.32. In conclusion, when considered against EN-1 paragraphs 4.13.1 and 4.13.3 and EN-5 paragraphs 2.10.9 and 2.10.15, having had due regard for draft EN-1, draft EN-3 and draft EN-5 the LIR and other important and relevant matters, we ascribe no weight to the issue for or against the making of the Order.

5.9. LANDSCAPE AND VISUAL AMENITY

- 5.9.1. This section of Chapter 5 sets out the landscape and visual amenity effects of the Proposed Development, which were identified as principal issues in our initial assessment [PD-004].

Policy Considerations

National Policy Statement for Energy (NPS-EN1)

- 5.9.2. NPS EN-1 states that virtually all nationally significant energy infrastructure projects will have effects on the landscape (para 5.9.8). They should be designed carefully to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate. The existing character and quality of the local landscape, how highly it is valued and its capacity to accommodate change should all be considered in judging the impact of the Proposed Development.
- 5.9.3. Application documents should include an appropriate landscape and visual assessment. NPS EN-1 refers to the use of good practice guidance in this regard (para 5.10.15). Reference should be made to any

landscape character assessment and associated studies as a means of assessing landscape effects and should take account of local plan policies based on those assessments.

- 5.9.4. In reaching a decision on the weight to give landscape, visual effects, and design, the Secretary of State (SoS) needs to judge whether:
- the project has been designed carefully, taking account of the potential impact on the landscape; has regard to siting, operational and other relevant constraints and to provide reasonable mitigation where possible and appropriate (NPS EN-1, para 5.9.8);
 - the scale of such projects can mean they are highly visible and a judgement will need to be made on whether the adverse effects are so damaging that it is not offset by the benefits (para 5.9.15); and
 - the appropriate siting of infrastructure within the site, the use of colours and materials, landscaping schemes and building design would minimise adverse landscape and visual effects (NPS EN-1, para 5.9.22).

National Policy Statement for Renewable Energy Infrastructure (NPS EN-3)

- 5.9.5. NPS EN-3 sets out specific considerations for Landscape Visual Impact Assessment (LVIA) of ERF facilities in paragraphs 2.5.46 – 2.5.52 and cross refers back to the paragraphs from NPS EN-1.
- 5.9.6. The IPC (SoS) should be satisfied *“the design of the proposed generating station is of appropriate quality and minimises adverse effects on the landscape character and quality.” (Paragraph 2.5.47)*

Draft NPS EN-1

- 5.9.7. The draft NPS EN-1 reiterates the advice in the current version, recognising that nationally significant energy projects are likely to have adverse effects on the landscape (paragraph 5.10.5) and seeking to ensure that projects are designed carefully taking into account the impact on the landscape.

Draft NPS EN-3

- 5.9.8. This reiterates that an assessment of the landscape and visual effects should be undertaken in accordance with the guidance in 5.10 of EN-1.

The National Planning Policy Framework (NPPF)

- 5.9.9. The NPPF section 15 on conserving and enhancing the natural environment makes clear in paragraph 174 that “Planning policies and decisions should contribute to and enhance the natural and local environment” by, amongst other things, “protecting and enhancing valued landscapes [...] (in a manner commensurate with their statutory status or identified quality in the development plan)”.

North Lincolnshire Development Plan

- 5.9.10. Policy CS5 of the North Lincolnshire Core Strategy seeks to ensure that new development should be designed to be appropriate for the local context and contribute towards creating a sense of place. In addition, policy CS16 seeks to protect and improve the network of landscape, greenspace and waterscape.
- 5.9.11. Policy LC7 of the North Lincolnshire Local Plan seeks to ensure that new development should protect the scenic quality and distinctive character of the landscape which cross refers to the North Lincolnshire Landscape Character Assessment. (NLLCA).

Applicant's Case

- 5.9.12. The Applicant set out their findings in respect of landscape and visual effects in Chapter 11 of the Environmental Statement (ES) [APP-059]. This was supported by [APP-071] the Indicative Lighting Strategy and the Outline Landscape and Biodiversity Management and Monitoring Plan (LBMP)[REP6-018].
- 5.9.13. This assessment relies upon the maximum parameters defined in Chapter 3 of the ES [REP6-018] and shown on the vertical parameter plans [REP6-008] and indicative floor plans [APP-027], indicative elevations [APP-026] and indicative site layout [APP-025].
- 5.9.14. The Order Land sits within Humber Head Levels and Northern Lincolnshire Edge with Coversands National Landscape Character Areas (NCA) published by Natural England. These regional assessments set the context for the more localised assessments published by North Lincolnshire Council (NLC).
- 5.9.15. NLC published the North Lincolnshire Landscape Character Assessment & Guidelines to deliver a characterisation of the landscape which assesses the special character, distinctiveness, and qualities of the area.
- 5.9.16. The study area considered to assess the effect of the Proposed Development is within the Trent Levels Landscape Character Area (LCA) to the west and the Lincolnshire Edge LCA to the east. The total study area is shown in Figure 2 of [APP-059].
- 5.9.17. The assessment was undertaken having identified a series of 11 viewpoints from which baseline photography records the current position. Photomontages have then been developed to illustrate the scale and massing from the five representative viewpoints within 2.5 km.
- 5.9.18. The photomontages show the illustrative model at year 1 upon completion of the project and year 15 taking into account the maturing of the landscape mitigation planting. The details of these illustrations are shown in Figures 5 to 15 of [APP-059].
- 5.9.19. The Applicant incorporates a range of mitigation measures which they consider to be a combination of elements integral to the design and good practice. These mitigation measures are proposed to be secured through:

- The Code of Construction Practice (CoCP) [AS-028];
- Indicative Lighting Strategy [APP-071];
- Indicative Landscape and Biodiversity Plan [REP3-007];
- Landscape and Biodiversity Management and Monitoring Plan (LBMMP)[REP6-010]; and
- A Landscaping Scheme secured in the dDCO [REP10-004].

5.9.20. The Applicant acknowledges, there will be an adverse effect on the views from Amcotts and confirms further work will need to be done at the detailed design stage to reduce the effects of the Proposed Development from viewpoint 1 in Amcotts. This the Applicant considers will be secured through the Design Principles and Codes document [REP7-008] secured in the dDCO.

5.9.21. The Applicant summarises the landscape and visual effects of the Proposed Development within Tables 24 and 36 of [APP-059] which are included below.

Table 6 Summary of landscape effects

Landscape receptor	Effect during construction	Effect during operation (year 1)	Effect during operation (year 15)
Land within the Order Limits	Major adverse (significant)	Moderate adverse (significant)	Minor adverse (not significant)
Flat Drained Farmland LCT and Industrial Landscape LCT (Trent Levels LCA)	Moderate adverse (significant)	Moderate adverse (significant)	Minor adverse (not significant)
Steep Wooded Scarp Slope LCT and Despoiled Landscape LCT (Lincolnshire Edge LCA)	Moderate adverse (significant)	Moderate adverse (significant)	Minor adverse (not significant)

(Source Table 24 of APP-059)

Table 7 Summary of visual effects

Viewpoint	Receptor Group	Effect during construction	Effect during operation (year 1)	Effect during operation (year 15)

Viewpoint 1: Trent Side, Amcotts	Residential/Recreational	Major adverse (significant)	Major adverse (significant)	Major adverse (significant)
Viewpoint 2: Stather Road, Flixborough	Transport/Recreational	Major adverse (significant)	Major adverse (significant)	Moderate adverse (significant)
Viewpoint 3: Footpath at Grange Wind farm	Recreational	Moderate adverse (significant)	Moderate adverse (significant)	Minor adverse (not significant)
Viewpoint 4: A1077, Scunthorpe	Residential/Transport	Moderate adverse (significant)	Moderate adverse (significant)	Minor adverse (not significant)
Viewpoint 5: Keadby	Residential/recreational	Moderate adverse (significant)	Minor adverse (not significant)	Minor adverse (not significant)
Viewpoint 6: Outgate, Ealand	Recreational	Minor adverse (not significant)	Minor adverse (not significant)	Minor adverse (not significant)
Viewpoint 7: Ox Pasture Lane, Luddington	Residential	Moderate adverse (significant)	Minor adverse (not significant)	Minor adverse (not significant)
Viewpoint 8: Luddington Road, Garthorpe	Residential	Moderate adverse (significant)	Minor adverse (not significant)	Minor adverse (not significant)

Viewpoint 9: Stather Road, Burton Stather	Residential	Negligible (not significant)	Minor adverse (not significant)	Minor adverse (not significant)
Viewpoint 10: A1077 near Dragonby	Transport	Minor adverse (not significant)	Negligible (not significant)	Negligible (not significant)
Viewpoint 11: Public Footpath ay Phoenix Local Nature Reserve	Recreational	Moderate adverse (significant)	Moderate adverse (significant)	Minor adverse (not significant)

Source Table 36 of APP-059 (we have highlighted the **not** in viewpoint 9 as this is missing from the Applicant's Table)

5.9.22. The Applicant concludes that the landscape and visual effects summarised in the included tables above result in the following impacts.

5.9.23. The Proposed Development would have:

- a major adverse (significant) effect on the landscape character of the Order Land during construction, reducing to moderate adverse (significant) at year 1 of operation. Over time the mitigation through the landscape planting would mature reducing the effect to minor adverse (not significant).
- a moderate adverse (significant) effect on the landscape character of Flat Drained Farmland LCT and Industrial Landscape LCT (Trent Levels LCA) and Steep Wooded Scarp LCT and Despoiled Landscape LCT (Lincolnshire Edge LCA) during both the construction and operational (year 1). The landscape mitigation would provide a degree of integration by year 15 reducing the effects on all LCTs to minor adverse (not significant).
- in terms of visual amenity, the assessment identifies temporary major adverse effects, during construction for receptors with short viewing distances or characterised by a lack of mature intervening vegetation. Major adverse (significant) levels of effect are predicted during the construction phase at viewpoints 1 and 2 and moderate (significant) at Viewpoints 3, 4 and 11 (all within 2 km). Beyond this year 1 effects are predicted to be minor (not significant).
- visual effects would reduce to minor adverse (not significant) at year 15 at all viewpoints with the exception of Viewpoint 1 (major at year 15) and Viewpoint 2 (moderate at year 15).

Issues considered in the Examination

- 5.9.24. NLC confirmed in their LIR [REP1-019] in Section 6 that they were satisfied that the assessment set out by the Applicant can be relied upon to inform of the potential impacts of the Proposed Development.
- 5.9.25. NLC agree with the assessment presented by the Applicant which demonstrates that there will still be major adverse and moderate adverse impacts on viewpoints 1 and 2 respectively even following the growth of landscape mitigation planting at year 15.
- 5.9.26. NLC are also of the view that the proposed planting of woodland strips and blocks, extension of habitat from existing woodland as shown in the Indicative Landscape and Biodiversity Plans [REP3-007] and the mitigation anticipated to be delivered through the approach to the detailed design and secured through the Design Principles and Codes Document [REP7-008] will be essential to minimise visual impacts.
- 5.9.27. NLC conclude that *"Given the scale and massing of the proposed development, irrespective of mitigation, it will not be feasible to eliminate the visual impacts of the development and as such there will be residual effects which weigh against the proposal."*
- 5.9.28. We considered the approach of the Applicant and their findings through the Examination both through written questions and at Issue Specific Hearing (ISH3).
- 5.9.29. In addition to the points raised by NLC, Interested Parties (IPs) expressed concern with regard to the visual impact of the Proposed Development These points can be summarised as:
- [RR-059, RR-067, RR-079]. The visual impact of such a massive structure in what is generally a flat area is going to be detrimental for most of the local population.
 - [RR-036, RR-038, RR-039, RR-043, and RR-063] the potential adverse effect from light pollution and adverse effect on Amcotts
 - Amcotts Parish Council (PC) [REP2-084] recognise adverse effects of nighttime views and lighting with the worst effects on Amcotts and Flixborough.
- 5.9.30. Andrew Percy MP [RR-075] raised specific concerns about the scale and appearance of the development. In particular the chimney stack, which would tower over the area. He states the site is in open countryside and is not allocated for development in the North Lincolnshire Local Plan and part of the proposed development falls outside of defined development boundaries. He advises that residents feel that the entire development would be out of context with the North Lincolnshire landscape. Furthermore, residents have raised concerns with him about light pollution, in respect to the bright lights that are required at the top of the chimney stack; in addition to concerns about the visual impact the polluting plumes would have on the area.
- 5.9.31. Steven Fuller [RR-095] indicated that the combination of factors referenced has led to a proposal of such magnitude as to have a

significant detrimental impact on the local area, affecting visual impact, and local amenity.

- 5.9.32. The Applicant responded to IPs concerns in [REP1-012] explaining that their approach had been set out in [APP-059] which had followed an approach based upon a careful assessment of the site and its surroundings, as well as the consideration of design set out in the Design and Access Statement (DAS) [APP-037]. The principles built into the illustrative designs presented in this document were then secured through the Design Principles and Codes document [APP-046].
- 5.9.33. With regard to the potential effect of light NLC agreed that an appropriate Light Impact Assessment has been provided [APP-071]. Furthermore, it is noted that the dDCO includes a Requirement for a scheme of external lighting to be submitted to and approved by the Local Planning Authority (LPA).
- 5.9.34. As identified in the Environmental Statement (ES), it is inevitable that by virtue of their close proximity to the proposed development the assessment has identified significant residual effects at some receptors. The Applicant and NLC agreed that adverse impacts need to be weighed in the planning balance.
- 5.9.35. NLC confirmed in the Statement of Common Ground (SoCG) [REP9-025] with the Applicant that all matters of concern in respect of landscape and visual effects were resolved by the end of the Examination.

ExA's Consideration and Conclusions

- 5.9.36. The assessment has met the standards expected in NPS EN-1 paragraphs 5.9.5 -5.9.7 in carrying out a landscape and visual assessment identifying those areas where effects during construction and subsequent operation would occur.
- 5.9.37. We agree with the conclusions of the Applicant and NLC in both identifying the adverse effects of the Proposed Development on the landscape and visual amenity as set out in the ES and agreed in the SoCG.
- 5.9.38. While we recognise that a number of IPs expressed concerns about the adverse effects on the landscape and visual amenity we are of the view that the harm the Applicant identifies properly reflects those concerns. The assessment and our conclusions however are undertaken in light of the adopted policy in NPS EN-1. Which recognises that harm may well arise and this should be balanced against the overall benefits of the Proposed Development.
- 5.9.39. The site is neither in a nationally designated landscape nor adjacent to such an area While we appreciate that this landscape is recognised locally and is highly valued, it does not have the degree of protection, nor does the Proposed Development cause such a degree of harm that the landscape and visual effects could reasonably stand in the way of the development progressing.

- 5.9.40. The Applicant recognises that major adverse and moderate adverse impacts on viewpoints 1 and 2 respectively even following the growth of landscape mitigation planting at year 15. In line with paragraph 5.9.15 of NPS EN-1 we do not consider that these adverse effects are so damaging they could reasonably be argued as to outweigh the overall benefits of the Proposed Development.
- 5.9.41. The assessment has also included the effects of light pollution which could arise in the event the DCO is granted. The dDCO secures by way of Requirement 5 'Lighting Scheme' an appropriate method of control to minimise or otherwise mitigate artificial lighting effects in line with the principles of the Indicative Lighting Strategy [APP-071].
- 5.9.42. We are content that with the mitigation in place provided through the Requirement No. 3 on Detailed design, Requirement 4 Environmental Management, Requirement 5 the Lighting Scheme, Requirement 6 Landscape Design and Requirement 7 Landscape and Ecology Management, and the supporting mitigation documents that the degree of adverse effects has been mitigated as far as can be reasonably achieved in light of the scale of the project in the context of this landscape.
- 5.9.43. NPS EN-1 makes clear that in dealing major infrastructure projects paragraph 5.9.8 "Virtually all nationally significant energy infrastructure projects will have effects on the landscape."
- 5.9.44. We are also content that that the Proposed Development has properly had regard to the siting, operational and other relevant constraints with the aim of minimising harm to the landscape, and providing reasonable mitigation in line with paragraph 5.9.8 of NPS EN-1.
- 5.9.45. Overall taking all matters into account we ascribe moderate weight to the landscape and visual matters against the Order being made.

5.10. MAJOR ACCIDENTS AND HAZARDS

- 5.10.1. This section considers the Proposed Development in relation to major accidents and hazards, including the effects of climate change.

Policy Considerations

National Policy Statement for Energy (EN-1)

- 5.10.2. Within EN-1 major accidents and hazards are considered in Part 4 "Assessment Principles". The sections of relevance in the context of the Proposed Development are 4.11 in relation to safety and 4.12 in relation to dangerous substances.
- 5.10.3. Paragraphs 4.11.1 to 4.11.4 advise the Applicant to consult early with the HSE on matters relating to safety as the proposed energy infrastructure may itself fall within the scope of safety regulations enforced by the HSE, the COMAH regulations, or the proposals may be affected by existing major hazards.

- 5.10.4. In relation to dangerous substances paragraphs 4.12.1 to 4.12.3 advise the Applicant to consult early with the HSE and the local planning authority on matters relating to the storage of dangerous substances either at the proposed site or at existing sites in the area.

Draft National Policy Statement for Energy (draft EN-1)

- 5.10.5. We consider that the corresponding paragraphs under sections 4.12 and 4.13 do not affect the EN-1 position in relation to major accidents and hazards.

National Policy Statement for Renewable Energy (EN-3)

- 5.10.6. We consider that this adds nothing further to EN-1.

Draft National Policy Statement for Energy (draft EN-3)

- 5.10.7. We consider that this does not affect EN-3 in relation to major accidents and hazards.

The Applicant's Case

- 5.10.8. The Applicant sets out in the Environmental Statement (ES) - Chapter 16 Major Accidents and Disasters (Revision 1) [REP9-014] its approach to the identification and control of Major Accidents and Hazards both in terms of those that could be caused by the Proposed Development and to what extent the Proposed Development is vulnerable to those caused by existing development, third parties or acts of nature.

Operation

- 5.10.9. The Applicant considers that whilst the HSE does not currently provide land use planning advice for carbon dioxide capture, transport or storage, and the status of the Proposed Development relating to COMAH has not been confirmed, the Applicant considers it likely to be classified as lower tier or below.
- 5.10.10. As the Applicant regards this as a preliminary worst-case assessment based on the limited information available it recognises that it would undertake further hazard identification and risk assessment analysis in accordance with the requirements of applicable legislation and industry good practice guidance.
- 5.10.11. The Applicant considers that by carrying out a hazard identification study and adopting the As Low As Reasonably Practicable (ALARP) principle, the safety effects caused by the operation of the Proposed Development would be no worse than "*tolerable if ALARP*" which it considers is not significant. The Applicant assesses the environmental effects as not significant.
- 5.10.12. The HSE's responses to the Preliminary Environmental Information Report (PEIR) consultation reported by the Applicant [REP9-014] include the statement that: "*The presence of hazardous substances on, over or*

under land at or above set threshold quantities (Controlled Quantities) will probably require Hazardous Substances Consent (HSC)."

5.10.13. The PEIR consultation reported by the Applicant [REP9-014] goes on to say: *"Further information on HSC should be sought from the relevant Hazardous Substances Authority."*

5.10.14. The Applicant includes within the comments on the PEIR consultation [REP9-014] a comment from the HSE that: *"According to HSE's records the proposed DCO application of where people will be potentially located in this Nationally Significant Infrastructure Project is not within the consultation zones of any major accident hazard site or major accident pipeline. This is based on the current configuration as illustrated in, for example, the Masterplan within the document 'North Lincolnshire Green Energy Park, Summer 2021 Public Consultation Information'. HSE would not advise against the current Proposal."*

Construction

5.10.15. The Applicant considers that its assessment [REP9-014] includes the construction of the Proposed Development. However, the Applicant states that only significant adverse safety or environmental impacts are considered. For example, the Applicant considers that typical safety hazards associated with construction have not been included in the assessment. Through its hazard identification analysis and adoption of the ALARP principle the Applicant concludes the effects of construction are not significant.

Issues considered in the Examination

Local Impact Reports

5.10.16. North Lincolnshire Council (NLC) provided a Local Impact Report (LIR) [REP1-019] which raised no concerns regarding the potential of the Proposed Development to cause major accidents and hazards.

Representations from other interested parties

5.10.17. The Proposed Development would occupy part of the site where the Nypro disaster occurred in 1974. This provided a context for this topic and was raised as a general concern in relevant representations by individuals from the local community including: [RR-013], [RR-020], [RR-021], [RR-051], [RR-056], [RR-068], [RR-070], [RR-079], [RR-080]. It was raised again in Amy-Louise Ogman's written representation [REP2-085]. The relevant representations of Tricia Murphy [RR-051] and Amy-Louise Ogman [RR-056] both included concerns over the storage of hydrogen as part of the Proposed Development.

5.10.18. In its responses [REP1-012] and [REP3-022] the Applicant said that it was cognisant of the sad history and would seek to establish an area in the visitor centre and wetland area dedicated to those who lost their lives. The Applicant went on to explain the reasons for choosing this site and that the design and operation of the Proposed Development would be subject to the permitting requirements of the EA and HSE.

- 5.10.19. In its relevant representation [RR-069] Jotun Paints (Europe) Limited (JPEL), the operator of an upper tier COMAH site just to the north of the Proposed Development, raised concerns including:
- the proximity of parts of the Proposed Development it considered hazardous; and
 - access to its facility for emergency services during the construction of the Proposed Development.
- 5.10.20. In its response [REP1-012] the Applicant said that it would be engaging with JPEL with the aim of establishing a Statement of Common Ground (SoCG). By the close of the examination the Applicant submitted a draft SoCG [REP9-028]. The Applicant considered that the only outstanding issue to be resolved were the details of construction logistics.
- 5.10.21. Within the draft SoCG [REP9-028] the Applicant stated: *"The Applicant has agreed with Jotun Paints that the details of the Permanent Easement required will be addressed and signed off as part of a Heads of Term document to deal with the logistics of construction"*
- 5.10.22. In its final Statement of Commonality (Revision 8) [REP10-006] the Applicant stated: *"The submitted Draft SoCG with Jotun Paints is with the stakeholder and awaiting a signature for approval following approval of Heads of Terms agreement. A draft version of this SoCG that is currently with the Stakeholder was also submitted at Deadline 9 to inform the Examining Authority."*

ExA written questions

- 5.10.23. In our first round of written questions [PD-007] we referred to the JPEL relevant representation [RR-069] and asked the Applicant to provide an explanation of the relationship to this COMAH site and what advice has been received from the HSE during consultation.
- 5.10.24. In its response [REP2-033] the Applicant stated that the HSE's PEIR consultation response noted that where people will be potentially located in the Proposed Development would not be within the consultation zones of any major accident hazard site or major accident pipeline. The Applicant confirmed that it was developing a SoCG with JPEL that it would include the agreements for addressing the risk mitigation JPEL has in place for their COMAH site.
- 5.10.25. The HSE made no comment during the examination of the Proposed Development.

ExA's Considerations and Conclusions

- 5.10.26. We understand the concerns raised by those who were affected by the 1974 Nypro disaster. We consider that the lessons learned from that event, and others, have played their part in the development of the regimes, including COMAH, that now regulate facilities that have the

potential to cause major accidents and hazards. We consider that this may include the Proposed Development.

Operation

- 5.10.27. We consider that the Applicant has consulted, so far as it reasonably can do, with the relevant authorities in relation to safety and dangerous substances as indicated in EN-1. If components within the Proposed Development fall under the COMAH regime or require hazardous substances consent, we have no evidence to indicate that the corresponding permissions would not be granted based on the Applicant's preliminary worst-case assessment. We consider that the Applicant's approach has demonstrated consistency with EN-1 paragraphs 4.11.1 to 4.11.4 and paragraphs 4.12.1 to 4.12.3.

Construction

- 5.10.28. It is unclear to us what the Applicant's statement in the draft SoCG [REP9-028] "*The Applicant has agreed with Jotun Paints that the details of the Permanent Easement required will be addressed and signed off as part of a Heads of Term document to deal with the logistics of construction*" means regarding the safety of JPEL's operations as an upper tier COMAH site.
- 5.10.29. Based on the limited evidence submitted by the Applicant and the concerns raised by JPEL we consider that the issue relates primarily to emergency access to JPEL's site being always maintained, including during the construction of the Proposed Development. Having carefully considered how this might be resolved we are minded to recommend an additional Requirement as set out below.
- 5.10.30. In conclusion, when considered against EN-1 paragraphs 4.11.1 to 4.11.4 and paragraphs 4.12.1 to 4.12.3. having had due regard for draft EN-1 and draft EN-3, the LIR and other important and relevant matters, and accounting for the additional recommended Requirement, we ascribe no weight to the issue for or against the making of the Order.

ExA's recommended changes to the draft DCO

- 5.10.31. The following Requirement to be added to the draft DCO [REP10-004]:
- 5.10.32. 'No part of the authorised development may commence until arrangements for emergency access to and egress from the Jotun Paints (Europe) Limited upper tier COMAH site have been submitted to and approved by the relevant planning authority following consultation with Jotun Paints (Europe) Limited and the HSE. Any work in relation to the authorised development shall be carried out in accordance with the approved arrangements.'

5.11. NOISE AND VIBRATION

- 5.11.1. This section considers noise and vibration effects on people caused by the construction and operation of the Proposed Development.

- 5.11.2. In relation to effects on cultural heritage and ecology see sections 5.4 and 5.6 respectively of this report.

Policy Considerations

National Policy Statement for Energy (EN-1)

- 5.11.3. Noise and vibration considerations are set out in section 5.11. In the context of the Proposed Development, paragraphs that are relevant to the Applicant's assessment, Secretary of State (SoS) decision making, and mitigation include:
- 5.11.4. Paragraph 5.11.4 states that: *"Where noise impacts are likely to arise from the proposed development, the Applicant should include the following in the noise assessment:*
- *a description of the noise generating aspects of the development proposal leading to noise impacts, including the identification of any distinctive, tonal, impulsive or low frequency characteristics of the noise;*
 - *identification of noise sensitive premises and noise sensitive areas that may be affected;*
 - *the characteristics of the existing noise environment;*
 - *a prediction of how the noise environment will change with the proposed development;*
 - *in the shorter term such as during the construction period;*
 - *in the longer term during the operating life of the infrastructure;*
 - *at particular times of the day, evening and night as appropriate;*
 - *an assessment of the effect of predicted changes in the noise; and*
 - *measures to be employed in mitigating noise."*
- 5.11.5. Paragraph 5.11.4 concludes with: *"The nature and extent of the noise assessment should be proportionate to the likely noise impact."*
- 5.11.6. Paragraph 5.11.5 states that: *"The noise impact of ancillary activities associated with the development, such as increased road and rail traffic movements, or other forms of transportation, should also be considered."*
- 5.11.7. Paragraph 5.11.6 states that: *"Operational noise, with respect to human receptors, should be assessed using the principles of the relevant British Standards and other guidance. Further information on assessment of particular noise sources may be contained in the technology-specific NPSs. In particular, for renewables (EN-3) and electricity networks (EN-*

5) there is assessment guidance for specific features of those technologies. For the prediction, assessment and management of construction noise, reference should be made to any relevant British Standards and other guidance which also give examples of mitigation strategies."

5.11.8. Paragraph 5.11.8 states that: *"The project should demonstrate good design through:*

- 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,*
- the use of landscaping, bunds or noise barriers to reduce noise transmission."*

5.11.9. Paragraph 5.11.9 states that: the SoS *"should not grant development consent unless it is satisfied that the proposals will meet the following aims:*

- 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."*

5.11.10. Paragraph 5.11.10 states that: *"When preparing the development consent order, the" SoS "should consider including measurable requirements or specifying the mitigation measures to be put in place to ensure that noise levels do not exceed any limits specified in the development consent."*

Draft National Policy Statement for Energy (draft EN-1)

5.11.11. We consider that the corresponding paragraphs under 5.12 do not affect the EN-1 position in relation to noise and vibration.

National Policy Statement for Renewable Energy (EN-3)

5.11.12. Regarding energy from waste (EfW) generating stations paragraph 2.5.53 considers that: *"sources of noise and vibration may include:*

- delivery and movement of fuel and materials;*
- processing waste for fuel at EfW generating stations;*

- *the gas and steam turbines that operate continuously during normal operation; and*
- *external noise sources such as externally-sited air-cooled condensers that operate continuously during normal operation."*

- 5.11.13. Paragraph 2.5.55 considers that the SoS *"should be satisfied that noise and vibration will be adequately mitigated through requirements attached to the consent."* and *"will need to take into consideration the extent to which operational noise will be separately controlled by the EA."*
- 5.11.14. Paragraph 2.5.57 considers that mitigation is primarily achieved *"through good design to enclose plant and machinery in noise-reducing buildings."*
- 5.11.15. Paragraph 2.5.58 recognises that "noise from features including sorting and transport of material during operation EfW generating stations is unavoidable. Similarly, noise from apparatus external to the main generating station may be unavoidable. This can be mitigated through careful plant selection."

Draft National Policy Statement for Renewable Energy (draft EN-3)

- 5.11.16. We consider that the corresponding paragraphs under 2.15 do not affect the EN-3 position in relation to noise and vibration.

National Planning Policy Framework

- 5.11.17. Regarding noise this includes at paragraph 185: "Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;" and

"b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason"

Local Development Plan

- 5.11.18. Regarding noise, the North Lincolnshire Council (NLC) local plan (2003) saved policies (2007) [REP9-025] include: DS11 which seeks to prevent adverse or dangerous polluting effects from development proposals.
- 5.11.19. Emerging NLC local plan publication draft policies (2021) [REP9-025] include: DM3 which requires development proposals to demonstrate that environmental impacts on receptors have been evaluated and appropriate measures have been taken to minimise the risks of adverse

impacts to air, land and water quality, whilst assessing vibration, heat, energy, light and noise pollution.

The Applicant's Case

- 5.11.20. The Applicant sets out in the Environmental Statement (ES) - Chapter 7 - Noise Revision 2 [REP8-006] the results of the assessment of noise and vibration from the construction and operation of the Proposed Development.
- 5.11.21. The Applicant describes the methodologies which have been followed in quantifying the existing baseline conditions, the potential effects from the Proposed Development, the mitigation measures included to address any likely significant adverse effects and the potential residual effects following mitigation.

Sources of noise and vibration

- 5.11.22. The Applicant considers that the sources of noise that could cause likely significant noise and vibration effects during the operation of the Proposed Development include:
- continuous noise from fixed plant including equipment within the boiler and flue gas treatment system and the turbine hall, the stack and external cooling equipment and on-site vehicle movements;
 - intermittent loading or unloading operations during the day at the wharf and railhead;
 - railway vehicles; and
 - increases in road traffic noise off-site
- 5.11.23. The Applicant considers that likely significant noise and vibration effects during the construction of the Proposed Development could be caused by the construction of those components during the day and evening which are close to residential receptors.
- 5.11.24. The Applicant presents sound power values for the sources of construction and operational noise as A-weighted sound power level L_{WA} or A-weighted sound power level per square metre L_{WA}/m². The Applicant itself provides these values for operational noise sources and references BS 5228 for construction noise sources.

Receptors and existing noise environment

- 5.11.25. The Applicant considers a total of eleven receptor locations to carry out its assessment of noise and vibration effects caused by the Proposed Development:
- Flixborough Grange;
 - The Forge, Flixborough;
 - Charmaine, Amcotts;

- Park Ings Farm;
- Inglenook, Amcotts;
- Willowmead Close;
- Neap House;
- Betony Close;
- 29 High Street, Dragonby;
- Bolsover Road; and
- Normanby Road

5.11.26. These locations are shown in Appendix A Figure 1 [REP8-006].

5.11.27. Depending on whether the Applicant considers the receptor location would be affected by operational, construction noise and vibration, or both the Applicant characterises the existing noise environment in terms of LAeq and LA90.

Assessment methodology

5.11.28. The Applicant's assessment of noise and vibration impact is based on the application of guidance which includes:

5.11.29. BS5228-1:2009+A1:2014 (Code of practice for noise and vibration control on construction and open sites – noise) (British Standards Institute, 2014a);

5.11.30. BS5228-2:2009+A1:2014 (Code of practice for noise and vibration control on construction and open sites – vibration) (British Standards Institute, 2014a);

5.11.31. BS 8233: 2014, Guidance on Sound Insulation and Noise Reduction for Buildings, British Standards Institute, 2014;

5.11.32. BS 4142:2014 Methods for Rating and Assessing Industrial and Commercial Sound, British Standards Institute; and

5.11.33. 'Design Manual for Roads and Bridges (DMRB): LA 111 - Noise and Vibration'; Standards for Highways, May 2020.

Assessment and mitigation

5.11.34. During the construction of the Proposed Development the Applicant considers that mitigation of noise and vibration would be achieved through a Construction Environmental Management Plan (CEMP). This would set out the key management measures that contractors would be required to adopt and implement.

5.11.35. The Applicant considers that the Code of Construction Practice (CoCP) [REP9-018] provides the basis for the CEMP. The Applicant considers that the different routing for the district heating and private wire network, Option A and Option B, would be likely to cause different effects on different receptors however it does not identify either as likely to cause significant adverse noise effects having accounted for the mitigation described in the CoCP.

- 5.11.36. For operation the Applicant considers several operating scenarios, during the day and for operations that would continue through the night, with these periods defined in guidance. The Applicant's highest predicted rating levels reported at Charmaine, Amcotts during the day and night are: 54 dBA and 42 dBA respectively. These compare with what the Applicant considers to be representative background noise levels of 39 and 37 dBA during the same periods.
- 5.11.37. These values assume the corresponding mitigation is included in the design of the Proposed Development. The Applicant considers that mitigation is secured by requirement 22 in Schedule 2 of the draft DCO [REP10-004].

Issues considered in the Examination

Local Impact Reports

- 5.11.38. North Lincolnshire Council (NLC) provided a Local Impact Report (LIR) [REP1-019].
- 5.11.39. NLC raised detailed concerns regarding the Applicant's assessment of operational noise. NLC questioned the omission of penalties for character to derive the BS4142 rating level and considered that their inclusion would lead to larger noise increases than reported. Along with uncertainty, NLC considered that this further reduced confidence in the outcome of the assessment. NLC considered that noise from the operations at the wharf, that had been the cause of complaints, would be reduced. Overall, NLC considered that the Applicant's monitoring undertaken at Amcotts cannot be representative.
- 5.11.40. NLC was also concerned about the lack of detail in the measures the Applicant was proposing to mitigate construction noise.
- 5.11.41. The Applicant developed a Statement of Common Ground (SoCG) with NLC and in the final version [REP9-025] NLC continued to have concerns around operational noise that exceeded the background noise level by up to 15 dB, the omission of all possible acoustic feature corrections, also referred to as 'character,' from the predictions in the ES, their request for a noise limit for the evening period 5 dB lower than the daytime limit, based on WHO guidance, and the lack of specific consideration of low frequency noise. The Applicant's position referred to its response [REP6-032] to our second written questions, further information [REP7-032] and its amended noise assessment included in ES Chapter 7 - Noise Revision 2 [REP8-006]. There was however no preference expressed regarding option A or option B for the routing of the northern district heating and private wire network (DHPWN) in relation to noise and vibration considerations.

Representations from other interested parties

- 5.11.42. Noise and vibration was raised in relevant representations including [RR-013], [RR-021], [RR-028], [RR-029], [RR-030], [RR-036], [RR-037], [RR-041], [RR-045], [RR-056], [RR-058], [RR-059], [RR-067], [RR-

081], [RR-083], [RR-088]. The concerns included the use of the railway at night, noise from HGVs, night-time noise generally, loading and unloading at the wharf, and that the Applicant's noise assessment was compromised by existing noise nuisance from the Flixborough Industrial Estate affecting Amcotts. Some interested parties considered that if the nuisance was addressed this would result in background noise levels lower than those reported by the Applicant.

- 5.11.43. The Applicant responded [REP1-012] on the issues raised with reference to its ES noise chapter [APP-055] and the information contained within it, including national standards and guidance and the Operational Environmental Management Plan (OEMP) [APP-075].
- 5.11.44. Existing noise complaints and predicted operational noise levels in relation to thresholds and background levels were raised in written representations including Amy-Louise Ogman [REP2-085], Burton upon Stather Parish Council [REP2-089], Flixborough Parish Council [REP2-094] and Tricia Murphy [REP2-104]. Amcotts Parish Council raised concerns about noise in their responses to comments on relevant representations [REP2-084].
- 5.11.45. The Applicant responded [REP3-022] and with reference to its ES noise chapter [APP-055] and the information contained within it considered that the predicted levels were unlikely to cause significant effects when assessed in relation to the relevant guidance.
- 5.11.46. Brian Oliver made a submission [REP4-035] that detailed his concerns about noise. He considered that noise nuisance problems existed at the time of the baseline survey by the Applicant and that there was a planning consent noise limit in place for the existing industrial estate. He considered that in recent emails from NLC he has been told that there is "ambiguity" as to whether this can be enforced. NLC provided a copy of the planning permission [REP4-030] including the noise condition referred to by Brian Oliver.
- 5.11.47. Brian Oliver made a further submission [REP7-046] supported by audio-visual submissions [REP7-047] to [REP7-051].
- 5.11.48. His written submission [REP7-046] concluded:
- 5.11.49. *"Furthermore, I feel that it is unlikely that any enforceable requirement would be able to make acceptable the additional noise that could be expected to arise from the development of a waste facility of this nature and of this scale acceptable given the close proximity of the development to houses. I would therefore argue that the development ought to be refused on the grounds that significant adverse noise impacts cannot be ruled out as required by EN-1 paragraph 5.11.9"*
- 5.11.50. Amy-Louise Ogman submitted an audio-visual representation [REP8-026] made during the start-up of the EPR Glanford power station on Flixborough Industrial Estate after it had been shut down and a supporting note [REP8-029].

- 5.11.51. Brian Oliver made further representations concerning noise from existing development on the Flixborough Industrial Estate affecting Amcotts [REP8-030] and [REP8-042].
- 5.11.52. The Applicant responded [REP9-042] to these submissions explaining for example how off-loading of RDF from a train or vessel would be relatively infrequent, one train or one vessel a day, and an acoustic feature penalty had been included in the prediction which they considered could be avoided with further mitigation.

ExA written questions, hearings and procedural decisions

- 5.11.53. In our first round of written questions [PD-007] we asked the Applicant and NLC to comment on a restriction to working hours for construction to avoid potential significant effects in the evening as defined in guidance. We also asked the Applicant, NLC and the EA to comment on the need for an operational noise limit.
- 5.11.54. In its response [REP2-033] the Applicant confirmed that the core construction hours would be 07:00 to 19:00 on weekdays (excluding public holidays) and 07:00 to 13:00 on Saturdays, and this would be included in the revised CoCP [AS-011]. Regarding a noise limit the Applicant referred to the draft DCO [APP-007] requirement for a noise management plan as part of the OEMP [APP-075]. The Applicant considered that this was a matter to be discussed with NLC and the EA given that the proposed Development would require an environmental permit. In its response [REP2-042] NLC supported a restriction to construction working hours. In its response [REP2-093] the EA considered that a noise impact assessment would be undertaken at a permit application stage using BS4142, and appropriate measures would be agreed pre-design to reduce the risk of significant impact.
- 5.11.55. The Applicant's approach to controlling operational noise was considered in detail at ISH4 as detailed in written summaries of oral submissions at Issue Specific Hearing 4 [REP6-034]. Matters considered included:
- how noise change and absolute noise levels had been used by the Applicant to determine assessment of effects;
 - what penalties may be applied if the noise emitted was considered to have distinctive character;
 - the degree of mitigation assumed in the design to achieve the levels predicted in the ES;
 - the spatial scope of any environmental permit that may be issued and the relationship between the OEMP[APP-075], the permit, and the noise levels predicted in the ES; and
 - whether interested parties considered it necessary to include a new requirement which set operational noise limits in the draft DCO
- 5.11.56. In its written summaries of oral submissions put at hearings held week commencing 6 March 2023 submitted by the EA [REP6-039] the EA concurred with the Applicant that an environmental permit can regulate operational noise within the permit boundary, probably through a general condition, which requires the activities to be free from noise and

vibration at a level likely to cause pollution outside of the site boundary. The EA also described in its submission further assessment and monitoring that may be carried out after operation with reference to any approved noise and vibration management plan.

- 5.11.57. In our second round of written questions [PD-012] we asked the Applicant what quantified noise requirement would it consider to secure the mitigation that would avoid significant operational noise effects, with reference to EN1 5.11.9 and EN1 5.11.10. In its response [REP6-032] the Applicant considered that updates to the noise assessment [APP-055] and the OEMP [APP-075] provided quantifiable measures to ensure that noise levels do not exceed the levels set out in the ES, thereby achieving consistency with policy aims.
- 5.11.58. In NLC's response [REP6-037] NLC stated that their preference was for a rating level noise limit the same as background noise level or no more than 3 dB higher than background. In support of this NLC referred to the Keadby 3 DCO (EN010114 The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022).
- 5.11.59. We provided our schedule recommended amendments [PD-013] to the Applicant's draft DCO Revision 5 [REP6-004] which included a new requirement:
- "The rating level of noise from the operation of the authorised development shall not exceed: 45 dB LAeq for any fifteen-minute period between 2300 and 0700, and 50 dB LAeq for any one-hour period between 0700 and 2300 determined one metre free field external to any window or door of any existing permanent residential premises using the methods described in 'Methods for rating and assessing industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019."
- 5.11.60. The Applicant in its final draft DCO Revision 8 [REP10-004] proposed the following new requirement:
- "22. The rating level of noise from the operation of the authorised development shall not exceed 45 dB LAr for any fifteen-minute period between 23:00 and 07:00, and 55 dB LAr for any one-hour period between 07:00 and 23:00, determined one metre free-field external to any window or door of Charmaine in Amcotts, and 45 dB LAr for any fifteen-minute period between 23:00 and 07:00, and 50 dB LAr for any one-hour period between 07:00 and 23:00, determined one metre free-field external to any window or door at any other existing permanent residential premises considered in the noise chapter of the environmental statement using the methods described in 'Methods for rating and assessing industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019."

ExA's Considerations and Conclusions

Consideration of evidence submitted by interested parties

- 5.11.61. We can understand the concerns apparent in the local community expressed in the relevant representations, written representations, and the written and audio submissions of Brian Oliver and Amy-Louise Ogman. We consider that matters relating to allegations of noise nuisance are for NLC to investigate and take any enforcement action they consider to be appropriate.
- 5.11.62. Should NLC agree that there is an existing noise nuisance and take enforcement action we consider it reasonable to conclude that the background noise levels in Amcotts would become lower between now and when the Proposed Development would start operation. For example, at Charmaine, Amcotts, the background noise level of 37 dBA at night [REP8-006] reported by the Applicant may well fall back towards the level of 30 dBA considered by Brian Oliver [REP7-046] to be appropriate.
- 5.11.63. As explained in the Applicant's assessment [REP8-006] to determine significance of noise effect the Applicant considers that the relevant guidance, BS4142 and BS8233, act in combination. The Applicant considers that if the noise level at the affected premises, remains below the lowest observed adverse effect level (LOAEL) based on BS8233 guidance, an adverse effect would be unlikely to result, irrespective of the degree of noise change determined using BS4142. This was considered at ISH4 [REP6-034].
- 5.11.64. We accept this approach as we consider that it has had regard for what BS4142 refers to as context. However, where the predicted rating level is similar to the BS8233 based LOAEL and around 10 dB or more above the background noise level we consider that this causes a classification that could change from 'unlikely to be adverse' to 'likely to be significantly adverse' slightly below or slightly above the BS8233 based LOAEL respectively. In such cases we consider that the tests for the first two aims of EN-1 5.11.9 have in effect become about the same noise level.
- 5.11.65. We consider that this would be the case for the Proposed Development during the day-time at Charmaine, Amcotts (rating level (L_{Ar}) 54 compared with background 39) and potentially at night (L_{Ar} 42 compared with background 37), if noise from the existing industrial estate is reduced towards 30 as described [REP7-046].
- 5.11.66. We recommend that the measures necessary to both avoid significant adverse operational noise impacts and minimise other adverse operational noise impacts, consistent with the first two aims of EN-1 5.11.9, would most effectively be secured by our Requirement in the rDCO in the form of L_{Ar} limits, at the respective LOAEL values based on BS8233, using the BS4142 definitions and methodology to take account of acoustic character and provide sufficient guidance regarding measurement and calculation methods.
- 5.11.67. Regarding NLC's concerns about a lower limit for the evening period, with reference to WHO guidance, we consider such guidance not to be relevant unless it has been reflected in guidance referred to in policy as British Standards. We recognise that whilst the BS8233 standard does

refer to the 1999 WHO guidelines to derive recommended levels and their impact on human activity that normally occurs within dwellings during the day and night periods there are no separate recommended noise levels for the evening period. Hence, we see no reason to disagree with the Applicant's response on this point.

- 5.11.68. Regarding the specific consideration of low frequency noise raised by NLC, in the absence of further evidence or reference to guidance to support the need for this additional detail, we consider a noise limit expressed in terms of overall A-weighted rating noise level limit L_A sufficient in the context of the Proposed Development and guidance.
- 5.11.69. In the absence of any differences in the final SoCG with NLC [REP9-025] in relation to the routing of the northern DHPWN we see no reason to favour one or other of the options A or B.

Applicant's assessment

- 5.11.70. We consider that the Applicant's assessment has responded to each of the listed provisions of EN-1 Paragraph 5.11.4, including the consideration of distinctive features. For example, the Applicant has included a penalty with respect to the impulsive nature of RDF unloading. In the absence of any evidence being submitted that indicated other features should attract further penalties we consider that the nature and extent of the assessment is proportionate to the likely noise impact and therefore is consistent with 5.11.4.
- 5.11.71. We consider that the Applicant's assessment is consistent with paragraph EN-1 5.11.5 as it has considered the noise impact of increased road and rail traffic movements.
- 5.11.72. We consider that the Applicant's assessment is consistent with paragraph EN-1 5.11.6 for operational and construction noise and vibration, with respect to human receptors, as the Applicant has assessed noise and vibration using the relevant British Standards and Standards for Highways. We also consider that the Applicant has considered the sources of noise identified by EN-3 paragraph 2.5.53 as being associated with EfW facilities.

SoS decision making

- 5.11.73. We consider that noise and vibration effects likely to be caused by the construction of the Proposed Development are consistent with paragraph EN-1 5.11.9 to the extent that:
- significant adverse impacts on health and quality of life from noise would be avoided; and
 - other adverse impacts on health and quality of life from noise would be mitigated and minimised.
- 5.11.74. The mitigation to achieve policy consistency in relation to construction noise and vibration would be secured by the Code of Construction Practice (CoCP) [REP9-018] which is certified under article 46 of the draft DCO revision 8 [REP10-004], and its use is secured through the

environmental management Requirement 4 of the draft DCO revision 8 [REP10-004].

- 5.11.75. We consider that appropriate mitigation of operational noise through good design is in effect secured by the need to meet the noise limits set out in Requirement 22 and that this would achieve consistency with paragraph EN-1 5.11.8 and EN-3 2.5.55, 2.5.57 and 2.5.58.
- 5.11.76. In relation to EN-3 2.5.55 and the extent to which operational noise would be separately controlled by the EA we consider that Requirement 22 is necessary to provide consistency with EN-1 5.11.9 as not all noise emitting components of the Proposed Development would be likely to require an environmental permit.
- 5.11.77. The Applicant has proposed an operational noise limit as Requirement 22 in the draft DCO [REP10-004]. This sets a higher limit at the dwelling referred to as Charmaine, Amcotts, during the daytime, compared with other dwellings but the Applicant has submitted no evidence to justify this reduced level of protection for this dwelling. We also consider that the limit should apply to all existing permanent residential premises rather than only those considered by the Applicant in the ES, for the same reason. However, we have accepted the Applicant's proposal to describe the limit in terms of a noise rating level L_A as this would be the result of applying any adjustments to the noise level expressed in terms of L_{Aeq} following the methods described in BS4142.
- 5.11.78. We recognise that we have proposed a requirement in the rDCO that sets a daytime noise limit that is 4dB below (3 dB of which is accounted for by an acoustic feature penalty) the predicted level at Charmaine, Amcotts provided by the Applicant [REP8-006]. We consider this reasonable because as the design proceeds and operational plans are developed, from the rudimentary ideas so far presented, it would be reasonable to expect this prediction to reduce, as the Applicant would have ample opportunity to include measures that would reduce the predicted 'worst case' noise levels so far presented to below the set limits.
- 5.11.79. We consider that providing our recommended requirement is included in the rDCO, this would secure the necessary mitigation, in whatever form that might take, so that the Proposed Development would comply with paragraph EN-1 5.11.9 to the extent that:
- significant adverse impacts on health and quality of life from noise would be avoided; and
 - other adverse impacts on health and quality of life from noise would be mitigated and minimised
- 5.11.80. In conclusion, when considered against EN-1 paragraphs 5.11.4, 5.11.5, 5.11.6 5.11.8 and 5.11.9 and EN-3 paragraphs 2.5.53, 2.5.55, 2.5.57 and 2.5.58 having had due regard for draft EN-1 and draft EN-3, the LIR and other important and relevant matters, and accounting for the recommended Requirement 22 the we ascribe no weight to the issue for or against the making of the Order.

ExA's recommended changes to the draft DCO

- 5.11.81. Requirement 22 of the draft DCO [REP10-004] to be changed to:
- 5.11.82. 'The rating level (LAr) of noise from the operation of the authorised development shall not exceed:
- 45 dB LAr for any fifteen-minute period between 2300 and 0700; and
- 50 dB LAr for any one-hour period between 0700 and 2300,
- determined one metre free field external to any window or door of any existing permanent residential premises using the definitions and methods described in 'Methods for rating and assessing industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019.'

5.12. SOCIO-ECONOMICS

- 5.12.1. This section considers the beneficial and adverse effects of the Proposed Development on the regional and local economy, soil quality and the loss of Best and Most Versatile (BMV) agricultural land. There is further consideration in Chapter 8 on Compulsory acquisition and related matters.

Policy Considerations

National Policy Statement for Energy (EN-1)

- 5.12.2. Local and regional socio-economic considerations are set out in section 5.12. In the context of the Proposed Development, paragraphs that are relevant to the Applicant's assessment, SoS decision making, and mitigation include:
- 5.12.3. 5.12.3 which states that all relevant socio-economic impacts should be considered, and these may include the creation of jobs and training opportunities, the provision of additional local services and improvements to local infrastructure and the impact of temporary workforce changes notably during construction.
- 5.12.4. 5.12.4 which states that Applicants should describe the existing socio-economic conditions in the areas surrounding the proposed development and should also refer to how the development's socio-economic impacts correlate with local planning policies.
- 5.12.5. 5.12.6 to 5.12.8 which state that the SoS should have regard to the potential socio-economic impact identified by the Applicant and other sources they consider relevant and important, any relevant positive provisions the developer has made or is proposing to make to mitigate impacts and any legacy benefits, and that limited weight is given to assertions of socio-economic impacts that are not supported by evidence.
- 5.12.6. In addition, paragraph 5.10.8 on land use describes that Applicants should seek to minimise impacts on the BMV agricultural land and minimise impacts on soil quality.

Draft National Policy Statement for Energy (draft EN-1)

- 5.12.7. We consider that the corresponding paragraphs under 5.13 add some further detail that an Applicant may wish to consider without materially affecting the policy position. Paragraph 5.13.12 adds that the SoS may wish to include a requirement that specifies the approval by the local authority of an employment and skills plan.
- 5.12.8. Paragraphs 5.11.12 to 5.11.14 on land use cover agricultural land and soil quality which we consider do not materially affect the policy position as set out in EN-1 5.10.8.

National Policy Statement for Renewable Energy (EN-3)

- 5.12.9. This has nothing further to add to the statements set out in EN-1.

Draft National Policy Statement for Energy (draft EN-3)

- 5.12.10. This has nothing further to add to the statements set out in the draft EN-1

National Planning Policy Framework

- 5.12.11. Section 6 (building a strong, competitive economy) seeks to ensure that planning decisions help create a strong and competitive economy.
- 5.12.12. Paragraph 81 states: "*Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation, and in areas with high levels of productivity, which should be able to capitalise on their performance and potential*".

Local Development Plan

- 5.12.13. Relevant North Lincolnshire Council (NLC) local plan (2003) saved policies (2007) [REP9-025] include CS11 which aims to ensure that the right amount and quality of employment land is available in North Lincolnshire to support the growth of the local economy and help deliver the vision for the area.
- 5.12.14. Relevant emerging NLC Local Plan draft policies (2021) [REP9-025] include EC2 and EC5 which aim to safeguard for employment purposes the Flixborough Industrial Estate and the wharf and jetty facilities on the river Trent.

The Applicant's Case

- 5.12.15. The Applicant sets out its socio-economic impact assessment in the ES - Chapter 14 - Economic, Community and Land Use Impacts Revision 1 [REP6-022].

- 5.12.16. The Applicant considers that the Proposed Development would impact the following geographical areas:
- immediate impact area (IIA) – the local super output areas (LSOA) covering the area within Order Limits;
 - local impact area (LIA) – North Lincolnshire Unitary Authority area (UA); and
 - wider impact area (WIA) - Scunthorpe travel to work area (TTWA)
- 5.12.17. The Applicant considers the following economic impacts:
- direct jobs and Gross Value Added (GVA) that are wholly or largely related to construction, decommissioning and operation of the Proposed Development;
 - indirect jobs and GVA generated in the areas of influence in the chain of suppliers of goods and services directly to the Proposed Development;
 - induced jobs and GVA created by direct and indirect employees' spending in the study area or in the wider economy; and
 - wider employment and income generated related to the Proposed Development.
- 5.12.18. The Applicant uses economic impact key assumptions sourced from the Homes and Communities Agency (HCA) and the Office for National Statistics (ONS) and carries out an assessment of impact that considers magnitude of change and sensitivity of receptor.
- 5.12.19. The Applicant produces a set of baseline conditions sourced from:
- ONS - Employment and labour market data;
 - services provided by ONS - labour market profiles;
 - the 2011 census - population and demographics;
 - Index of Multiple Deprivation, 2020;
 - North Lincolnshire Settlement Survey, 2019;
 - North Lincolnshire Open Space Study, 2019;
 - North Lincolnshire Public Rights of Way Definitive Map and modifications orders; and
 - North Lincolnshire Strategic Housing and Economic Land Availability Assessment, September 2019.
- 5.12.20. Regarding existing land use the Applicant considers the extent and quality of the agricultural land within the draft DCO limits and the presence of any related land-based enterprises. The Applicant's assessment is based on the areas of undeveloped agricultural land identified using the Agricultural Land Classification (ALC) data provided by Natural England. The Applicant's assessment includes grades 1, 2, and 3a as BMV agricultural land, which it considers represents a worst case. The Applicant considers that the draft DCO includes approximately 235 ha of agricultural land.
- 5.12.21. The Applicant considers that the socio-economic impacts during construction include temporary disruption to resources and receptors and economic impacts such as employment, expenditure through the supply

chain, accommodation requirements for in migrating contractors and pressure on local services.

- 5.12.22. During operation the impacts include the generation of employment opportunities or loss of employment from business displacement.
- 5.12.23. Regarding impacts on existing employers who have operations on land within draft DCO limits the Applicant considers that:
- RMS Ports would either continue their operations at Flixborough wharf or relocate to their existing facilities at Gunness and Althorpe wharves with no job losses;
 - Rainham Steel's steel stockyard operations would be relocated within the Scunthorpe area to allow for their current level of steel-stockholding operations and employment to continue;
 - there would be a direct loss of up to 40 jobs associated with the relocation of the businesses at Wharfside Court unless these businesses are able to relocate locally within the LIA; and
 - it would continue to engage with AB Agri (ABAL) to resolve issues around the transport and handling of refuse derived fuel (RDF) in proximity to its operations and the impact on the biosecurity of its animal feed mill, to ensure that there would be no impact on the viability of its business at this site, noting that there would only be temporary possession of ABAL's land for the purposes of building flood defences.
- 5.12.24. Accounting for the above job losses, applying the economic impact key assumptions and using the source data for the area, the Applicant concludes that as a result of the Proposed Development:
- 2,940 jobs would be supported, corresponding to a net GVA of £140.1m during the seven-year construction programme; and
 - 175 jobs would be supported, corresponding to an annual net GVA of £8.3m during operation.
- 5.12.25. During construction, the Applicant considers that the area of BMV agricultural land disturbed would be approximately 95ha, 94% of the total area of land temporarily required. Following completion of construction, accounting for soil mitigation and the relative abundance of BMV agricultural land in the area the Applicant considers this would be unlikely to cause a significant effect.
- 5.12.26. During operation, the Applicant considers that the permanent loss would be approximately 36ha of BMV agricultural land, which excludes 103ha of BMV agricultural land permanently set aside to provide replacement floodplain storage. The Applicant considers that this represents a loss of 15% of the BMV land within the draft DCO limits and that combined with low sensitivity because of its relative abundance in this area results in an effect that is unlikely to be significant.
- 5.12.27. To realise the socio-economic benefits the Applicant puts forward an outline employment and skills policy [REP8-025] certified under Article

46 of the draft DCO, and its use is secured under the local employment and skills Requirement 21.

- 5.12.28. To mitigate any adverse effects on soil during construction the Applicant puts forward a soil management plan which is included as Appendix J of the Code of Construction Practice (CoCP) [REP9-018] which is certified under Article 46 of the draft DCO, and its use is secured through the environmental management Requirement 4.
- 5.12.29. The Applicant concludes that significant adverse socio-economic and agricultural land use effects caused by the construction or operation of the Proposed Development are unlikely.
- 5.12.30. The Applicant concludes that there would be significant beneficial effects identified in terms of employment and economic activity during the construction and operation of the Proposed Development.

Issues considered in the Examination

Local Impact Report

- 5.12.31. North Lincolnshire Council (NLC) provided a Local Impact Report (LIR) [REP1-019] and was satisfied that the approach to the assessment of socio-economic impacts presented in the ES was robust.
- 5.12.32. NLC considered that there would be a moderate positive impact on employment created during the construction phase of the Proposed Development and a minor positive long-term impact.
- 5.12.33. NLC wished to see the overall positive impact regarding employment and training secured by a requirement to secure the submission and implementation of an Employment, Skills, and Training Plan.
- 5.12.34. In its response [REP2-034] the Applicant stated that it would prepare an Employment and Skills Policy that would be agreed with NLC, that maximised the uptake of local employment opportunities and was committed to supporting training and apprenticeship schemes.
- 5.12.35. In terms of negative impacts NLC was concerned about [REP1-019]:
- the loss of the micro/small businesses at Wharfside Court, despite it being accounted for in the assessment;
 - the future operations of RMS Ports and Rainham Steel; and
 - temporary accommodation demand conflicting with visitor demand.
- 5.12.36. Regarding these matters the Applicant stated [REP2-034] that it was working with the Wharfside Court businesses, Rainham Steel and NLC to identify potential acceptable alternative premises/sites in the area.
- 5.12.37. Regarding demand for temporary accommodation the Applicant confirmed it would continue to work closely with NLC to consider the conversion of redundant buildings into hotels that would be available after construction was complete.

- 5.12.38. NLC considered that the Proposed Development would result in the loss of a significant area of BMV agricultural land [REP1-019]. Whilst NLC accepted there was an abundance of BMV land within North Lincolnshire, it considered it was an important local (and national) resource and any permanent loss should be robustly assessed and justified.
- 5.12.39. The Applicant prepared a draft SoCG with NLC [REP2-025] and a final SOCG [REP9-025] which confirmed that agreement had been reached on all socio-economic matters raised by NLC. Within the SoCG the Applicant stated that it proposed to integrate RMS Ports' operational staff within the ERF administration offices as they will form an integral part of the port operations. The Applicant stated that *"The 18 staff currently employed by RMS Ports at Flixborough Wharf will continue to be employed."*

Representations from other interested parties

Rainham Steel Company Limited

- 5.12.40. Rainham Steel Company Limited (RSCL) submitted a relevant representation (RR-046) which explained that they were a tenant on a 14-acre site within the draft DCO limits that was within 50 metres of the Flixborough Port where they imported sectional steel into the UK. They were concerned that if they were no longer to have a facility close to Flixborough and other local ports that would have a major impact on their business.
- 5.12.41. In its response [REP1-012] the Applicant confirmed that RSCL would still be able to import material to Flixborough Port and it had approached North Lincolnshire Council with a view to securing a separate planning consent on a suitable replacement site with good access to the Flixborough Wharf.
- 5.12.42. The Applicant submitted a final SoCG with RSCL [REP9-032] which confirmed that it had a full Option to Purchase land outside of the draft DCO limits for the relocation of RSCL's operations and was in discussion with NLC regarding a planning application. RSCL was in agreement with this position.

Wharfside Court businesses

- 5.12.43. Gateley Hamer submitted relevant representations on behalf of its clients [RR-001] and [RR-091]. They explained that Wharfside Court comprised 14 small industrial/workshop units which accommodated about 10 established businesses. They considered that it would be difficult for these businesses to relocate with likely loss employment and services.
- 5.12.44. The Applicant explained [REP1-012] that it had committed to use reasonable endeavours to relocate the businesses using the local planning process on land adjacent to the draft DCO limits and considered that it was offering favourable and flexible terms to the occupiers of the units to minimise business and employment impacts.

AB Agri Limited

- 5.12.45. Rapleys LLP on behalf of AB Agri Limited (ABAL) submitted a relevant representation [RR-073] and a written representation [REP2-081] which sought controls to be put in place to reduce the potential for salmonella contamination of the animal feed it produced to be caused by the RDF being delivered to and processed by the Proposed Development.
- 5.12.46. The Applicant responded [REP1-012] and [REP3-022] and confirmed that the transport and handling of RDF would be in accordance with the RDF - Code of Practice (RDF CoP) (Version 1, October 2017) prepared and published by the RDF Industry Group. The Applicant considered that this included measures to prevent the loss of waste during storage and transport, infestation, and access by vermin. The Applicant considers that this is secured in the Operational Environmental Management Plan (OEMP) [REP7-020] implemented by the draft DCO as Requirement 4. For example, the OEMP confirms that *"Refuse Derived Fuel (RDF) deliveries will be containerised, wrapped or baled, minimising odour during handling."*
- 5.12.47. In its written summaries of oral submissions put at Issue Specific Hearing 3 [REP4-029] the Applicant said it would discuss ABAL's request for mitigation measures on the ABAL site. The Applicant considered that this was the first-time receptor-based mitigation had been raised by ABAL. The Applicant considered [REP6-032] that ABAL's issues would be addressed by the environmental permit issued by the EA. The Applicant's submission [REP7-033] included a salmonella risk assessment in which the Applicant considered that the likelihood of the operation of the Proposed Development compromising ABAL's biosecurity was very small even without the application of a series of proposed measures, above and beyond compliance with the RDF CoP.
- 5.12.48. ABAL made further representations including [REP4-033] which described its existing biosecurity control measures and particular concerns it had regarding the operation of the Proposed Development. Its submission [REP6-048] considered how closure or interruption to its feed mill would affect feed to approximately 10% of the UK's chicken population and the wider food supply chain, in addition to loss of about 60 jobs at this site. Its submission [REP7-036] included a technical review of how they considered a typical EfW plant would operate, which raised doubts about whether any permit issued by the EA would address all of their biosecurity issues, for example that it could not secure the disinfecting of HGVs used by waste carriers. Its submission [REP8-037] provided a detailed critique of Applicant's D7 response including the Applicant's salmonella risk assessment including that an HGV route that avoided First Avenue would not be materially different compared with a route which included First Avenue. In its closing submissions [REP9-049] ABAL considered that the Applicant had not made any meaningful progress on responding to its proposed mitigation measures on its own site as reported in [REP4-029].
- 5.12.49. The Applicant prepared an initial draft SoCG with ABAL [REP2-026] and by the end of the examination a final SoCG [REP10-009].

- 5.12.50. Within the final SoCG [REP10-009] the Applicant summarised their position: *"Having considered all relevant aspects of risk, the Applicant considers that its operation will not result in any material change to the current salmonella contamination risk profile for the AB Agri facility."*
- 5.12.51. ABAL included [REP10-009]: *"The existing biosecurity control at AB Agri's site is satisfactory for the existing situation where there is no ERF handling RDF derived from municipal, commercial, and industrial waste of significant quantity. Even if the OEMP includes all measures proposed by the Applicant and can be enforced, the increased biosecurity cannot be reduced to a reasonable level as the existing control at AB Agri's facility is not proportionate to the increased risk"* and went to say: *"Salmonella contamination of the poultry feed plant is notoriously difficult to treat and get rid of, and would result in the prolonged or indefinite closure of the plant, which will ultimately result in significant socio-economic impacts"*
- 5.12.52. No other interested party submitted any evidence into the examination concerning the biosecurity matter between the Applicant and ABAL.
- 5.12.53. In the final SoCG with the EA [REP9-027] under the section on environmental permits, consents and licences whilst it was confirmed by the EA that the proposed operation of the components of the Proposed Development would require a permitting by the EA under the Environmental Permitting (England and Wales) Regulations 2016 for Part A(1) activities, there was no indication of concerns regarding the interaction of the Proposed Development with the ABAL facility.

ExA written questions

- 5.12.54. The two rounds of questions [PD-007] and [PD-012], in addition to questions about ABAL, asked about the loss of businesses at Wharfside Court how the use of local suppliers and employment opportunities would be secured and the loss of BMV agricultural land.
- 5.12.55. Regarding Wharfside Court the Applicant confirmed the efforts it was making to find suitable alternative sites in discussion with NLC but confirm that the loss of all jobs was accounted for in its assessment.
- 5.12.56. The Applicant stated that the incorporation of its policy on skills and employment would be agreed with NLC as part of the Construction Environmental Management Plan (CEMP)
- 5.12.57. The Applicant stated that it would revisit the assessment of the effects on agricultural land [REP2-033], taking into account the new IEMA guidance (A New Perspective on Land and Soil in Environmental Impact Assessment' published in February 2022) and produced an updated version of Chapter 14 of the ES [APP-062].

ExA's Considerations and Conclusions

Loss of BMV agricultural land and soil management

- 5.12.58. As there were no outstanding matters regarding loss of BMV agricultural land and soil management between the Applicant and NLC by the end of the examination we see no reason to disagree with the Applicant's conclusions that the effects would not be significant.
- 5.12.59. In terms of securing the mitigation of adverse impacts during construction, the Applicant's soil management plan is included as Appendix J of the Code of Construction Practice (CoCP) [REP9-018] is certified under Article 46 of the draft DCO, and its use is secured through the environmental management Requirement 4.
- 5.12.60. We consider that the Applicant has demonstrated that the Proposed Development would be consistent with EN-1 paragraph 5.10.8 having had due regard for draft En-1 paragraphs 5.11.12 to 5.11.14.

Local and regional socio-economic effects

- 5.12.61. Apart from ABAL's submissions neither NLC or any other Interested Party challenged the Applicant's conclusions that construction and operation of the Proposed Development would result in likely significant beneficial local and regional effects identified in terms of employment and economic activity.
- 5.12.62. In terms of the LIR an SoCG had been agreed with NLC with all socio-economic matters resolved [REP9-025].
- 5.12.63. We consider that the Applicant has properly considered the creation of jobs and training opportunities, improvements to local infrastructure and the impact of temporary workforce changes notably during construction and has described the existing socio-economic conditions in the area and has shown consistency with local planning policies.
- 5.12.64. In terms of securing positive impacts, the Applicant's employment, and skills policy [REP8-025] is certified under article 46 of the draft DCO, and its use is secured under the local employment and skills requirement 21. We therefore consider that the Applicant has demonstrated that the Proposed Development would be consistent with EN-1 paragraphs 5.12.3, 5.12.4 and 5.12.6 to 5.12.8 having had due regard for draft EN-1 paragraph 5.13.12.
- 5.12.65. RSCL was satisfied with the progress made with an alternative stockyard for its operations. We see no reason to believe that securing planning permission for this would be problematical given there were no outstanding matters between the Applicant and NLC in their final SoCG [REP9-025] or the Applicant and RSCL in their final SoCG [REP9-032].
- 5.12.66. Regarding the outstanding issues between ABAL and the Applicant we agree with ABAL to the extent that an environmental permit issued by the EA would be unlikely to require that the waste carrier's HGVs [REP7-036] travelling to and from the Proposed Development would be regularly disinfected, and the HGV routing plan avoiding First Avenue runs alongside it [REP8-037], so does little to increase the separation.

- 5.12.67. For salmonella contamination to take place though, as described by ABAL, we consider that it requires the RDF to contain contaminated material, the contaminated material within the RDF, that would be delivered "*containerised, wrapped or baled*" [REP7-020], to be eaten by a bird or other pest, and then deposited by the bird or other pest in such a way as to contaminate ABAL's facility, despite ABAL's existing measures to minimise the possibility of salmonella contamination [REP4-033].
- 5.12.68. Whilst ABAL consider the risk profile would have changed, because "*existing control at AB Agri's facility is not proportionate to the increased risk*" [REP10-009] we consider that no evidence has been submitted that would support a claim that the operation of the Proposed Development would cause an unacceptable risk to ABAL's operations taking into account the existing mitigation at ABAL's facility and what the Applicant has committed to regarding the operation of the Proposed Development [REP7-020].
- 5.12.69. In terms of securing the mitigation of adverse operational impacts, including the additional measures proposed to respond to the concerns of ABAL these are all included in the Applicant's OEMP [REP7-020]. The Applicant's OEMP [REP7-020] is certified under Article 46 of the draft DCO, and its use is secured through the environmental management Requirement 4.
- 5.12.70. Whilst we have accepted the submissions of ABAL, no regulatory body including the EA, has raised concerns regarding the interface with ABAL's operations and the EA has not indicated that it would be a reason for an environmental permit not to be granted.
- 5.12.71. In conclusion, when considered against NPS EN-1 and NPS EN-3, having had due regard for draft EN-1 and draft EN-3, the LIR and other important and relevant matters, we ascribe substantial weight to matters relating to the issue for the making of the Order.

5.13. TRAFFIC AND TRANSPORT

- 5.13.1. This section considers the effects of the Proposed Development on road, rail, river, cycling, bridleway, and pedestrian networks.

Policy Considerations

National Policy Statement for Energy (EN-1)

- 5.13.2. Traffic and transport are considered under section 5.13. In the context of the Proposed Development, paragraphs that are relevant to the Applicant's assessment, SoS decision making, and mitigation include:

5.13.3 which considers that if significant transport implications are likely the application should include a transport assessment carried out in consultation with the transport authorities.

5.13.4 states that a travel plan should be prepared including measures to mitigate transport impacts, and measures to improve access by public transport, walking and cycling, to reduce the need for parking.

5.13.6, 5.13.8 and 5.13.9 encourage traffic demand management measures over new road infrastructure but recognises that this may not always be feasible and operationally reasonable.

5.13.10 states that where cost effective river or rail transport is preferred over road transport.

- 5.13.3. At paragraph 5.10.24 EN-1 recognises the importance of recreational use of rights of way and other rights of access to land by walkers, cyclists and horse riders and the need for appropriate mitigation.

Draft National Policy Statement for Energy (draft EN-1)

- 5.13.4. 5.14.21 adds that the SoS should only consider preventing or refusing development on highways grounds if there would be an unacceptable impact on highway safety, or residual cumulative impacts on the road network would be severe.
- 5.13.5. 5.14.16 adds that DfT policy guidance 'Water Preferred Policy Guidelines for the movement of abnormal indivisible loads' should be considered.

National Policy Statement for Renewable Energy (EN-3)

- 5.13.6. Biomass and waste combustion are considered under Section 2.5. Transport infrastructure is considered under the factors influencing site selection.
- 5.13.7. Paragraphs 2.5.24 and 2.5.25 say that an Energy from Waste (EfW) generating station that uses 500,000 tonnes of fuel per annum might require many heavy goods vehicle (HGV) movements per day to import the fuel. The SoS should expect materials to be transported by water or rail routes where possible and that site should be located in the vicinity of existing transport routes wherever possible. It goes to say that if the existing access is inadequate and new infrastructure is proposed, the SoS will need to be satisfied that the impacts of this are acceptable as set out in Section 5.13 of EN-1.

Draft National Policy Statement for Energy (draft EN-3)

- 5.13.8. Paragraph 3.7.8 adds that residues will need to be regularly transported off site in addition to the fuel to be imported.

Local Development Plan

- 5.13.9. Regarding transportation the North Lincolnshire Council (NLC) Local Plan (2003) saved policies [REP9-025] (2007) T1 to T24 in summary seek to promote sustainable transport, require larger developments to provide access to public transport, pedestrian and cycle networks and encourage rail and river for freight movements.

- 5.13.10. Relevant emerging NLC Local Plan draft policies (2021) include:
- T1 supports measures that promote more sustainable transport choices;
- T2 supports new development where it is accessible, or can be made accessible, by sustainable modes of transport and addresses its likely transport impact; and
- T6 safeguards the existing network of rail freight routes and infrastructure and encourages the use of rail for goods traffic.

The Applicant's Case

- 5.13.11. The Applicant sets out its traffic and transport assessment in the ES Chapter 13 Traffic and Transport - Revision 1 [REP2-021] with maps showing the location of the Proposed Development in the context of the transport networks and the local road network in Figures 3.1 and 3.3 respectively of Appendix B.

Road transport assessment methodology

- 5.13.12. The factors considered by the Applicant in the road traffic and transport assessment are severance, driver delay, pedestrian and cycle delay, amenity, fear and intimidation, and highway safety.
- 5.13.13. The Applicant's approach uses the IEMA guidelines on the environmental assessment of road traffic. The Applicant defines the study area by identifying any highway link where it is considered that potentially significant adverse effects may occur because of the Proposed Development.
- 5.13.14. The Applicant assesses the potential effects of both construction traffic and operational traffic by comparing the likely trip generation of the Proposed Development with future baseline traffic conditions to determine the percentage increase in traffic on each road to be taken forward for assessment.
- 5.13.15. The Applicant determines the number of additional vehicle trips generated for both the construction and operational phases in the worst-case situation where the movement of all construction and operational materials is by road, including all the refuse derived fuel (RDF).
- 5.13.16. The Applicant does not consider that any of the road layouts would require improvement as their design was not a contributory factor in the cause of personal injury collisions over the five-year study period.

Construction

- 5.13.17. The Applicant identifies that as there is a weight restriction of 7.5 tonnes on Stather Road to the east of the existing Flixborough industrial estate so access to the industrial estate and port area from the B1216 is only possible for HGVs via the Neap House roundabout and Stather Road running north. On this section of Stather Road, because of the narrowness of the road and the junction on the bend in the vicinity of

Neap House, there are traffic-lights that only allow single lane alternate traffic movement in each of the three directions.

- 5.13.18. During the peak construction years, based on its assessment that construction would cause 84 additional HGV trips on an Annual Average Daily Traffic (AADT) basis the Applicant considers the change in traffic flows to have a negligible impact on severance, pedestrian and cycle delay, amenity, fear, and intimidation on all highway links.
- 5.13.19. During the peak construction years, based on its assessment, the Applicant considers the change in traffic flows to have a negligible impact on driver delay on all highway links except:
- the new access road;
 - the B1216 east of the new access road;
 - the A1077 north and south of the B1216 and south of the A18; and
 - the M181 north of the M180.
- 5.13.20. However, given the moderate baseline traffic flows already on these highway links, apart from the new access road, the Applicant considers that the change in traffic flow during construction is expected to result in temporary effects of minor to negligible significance on road users along these routes.
- 5.13.21. The Applicant considers that the anticipated flows on the new access road during construction are temporary and would be well within the road's designed capacity.
- 5.13.22. The Proposed Development includes a new access road that connects with the B1216 via a new roundabout mid-way between the B1216/A1077 signal controlled junction and the Neap House roundabout. A section of Stather Road 1020 metres in length between Flixborough industrial estate and Neap House would subsequently be stopped up with the Applicant assuming that existing traffic transfers to the new access road.
- 5.13.23. The Applicant proposes that the new access road would be constructed to base course level at the start of the construction phase so it would be available for construction vehicles ahead of the peak construction years.
- 5.13.24. This is secured in the draft DCO [REP10-004] as Requirement 14 (1).
- 5.13.25. In terms of the construction workforce, whilst the Applicant considers that most of the travel is expected to fall outside the highway peak hours. The Applicant considers this is secured as construction traffic management plan and a construction workers travel plan in the draft DCO [REP10-004] as Requirement 10.

Operations

- 5.13.26. During operation, based on its assessment that operation of the Proposed Development would cause 558 additional HGV trips on an AADT basis, the Applicant considers that the change in traffic flows would be

negligible on all highway links except for the B1216 east of the new access road.

- 5.13.27. However, the Applicant considers that the total forecast traffic flow on this highway link, including operational traffic from the Proposed Development, are well within the road's theoretical capacity and that of its adjoining junctions. Therefore, the impact on severance for all highway links is not considered to be significant.
- 5.13.28. In terms of driver delay during operation, based on its assessment, the Applicant considers that the change in total vehicles is negligible on all highway links except:
- the new access road;
 - the B1216 east of the new access road and east of the A1077;
 - the A1077 south of the B1216 and south of the A18; and
 - the M181 north of the M180.
- 5.13.29. However, the Applicant considers, by applying relevant guidance, that this increase could be absorbed satisfactorily within the theoretical capacity of these highway links and their adjoining junctions. Therefore, the impact on driver delay for all highway links is not considered to be significant.
- 5.13.30. The Applicant considers that these highway links form primary or strategic routes in and around the Scunthorpe area where traffic flows are high with no pedestrian or cycle infrastructure provided. Pedestrian and cycle amenity and delay is therefore unlikely to be a significant factor on these highway links.
- 5.13.31. For all other highway links with traffic flows below the threshold adopted for assessment, the Applicant considers that pedestrian/cycle amenity and delay is unlikely to be a significant factor.
- 5.13.32. The Applicant considers that the increase in pedestrian and cycle movements caused during the operation of the Proposed Development are small, hence the magnitude of change is predicted to be negligible and the likely effect on those networks negligible.
- 5.13.33. The availability of the new access road for operational purposes is secured in the draft DCO [REP10-004] as Requirement 14 (3).
- 5.13.34. The operational workforce travel plan is secured in the draft DCO [REP10-004] as Requirement 13.

Rail transport

- 5.13.35. The Proposed Development includes re-instatement of a disused single-track railway line and modifications to Dragonby sidings which would connect the Proposed Development to the national rail network via Normanby Park ground frame and Trent junction, where it would connect to the Scunthorpe to Doncaster mainline.

- 5.13.36. During the construction phase the Applicant considers that to bring in fill material by rail would represent between 3 and 20 additional train movements per month during the construction phase and a maximum total of 50 train movements per year [REP2-021].
- 5.13.37. During the operational phase the Applicant considers that if all RDF is delivered by rail this would require 720 train arrivals per year. This could be achieved either by 2 trains per day on 360 days per year or 3 trains per day on 240 days per year [REP2-021].
- 5.13.38. The Applicant's Rail Operations Report [APP-045] concludes that 3 trains per day is likely to have minimal impact on the existing railway and existing services and is considered minor or not significant.
- 5.13.39. The availability of the re-instated railway line for construction and operational purposes is secured in the draft DCO [REP10-004] as Requirement 20.

River transport

- 5.13.40. During the construction phase the Applicant considers that to bring in fill material by river would represent between 4 and 16 additional vessel movements per month and a maximum total of 80 vessel movements per year [REP2-021].
- 5.13.41. The Applicant considers that during the operational phase transport by river would include:
- delivery of up to 24% of the RDF which would require approximately 350 vessel movements per year;
 - delivery of bulk materials, primarily aggregate to make concrete blocks: which would require approximately 180 vessel movements per year; and
 - dispatch of carbon dioxide which would require approximately 50 vessel movements per year.
- 5.13.42. Whilst the Applicant considers this represents a significant increase of nearly 200% at Flixborough Wharf, compared with the 305 movements in 2019, the Applicant reports in the Navigation Risk Assessment [REP4-012] that the vessel movements at Flixborough Wharf were approximately 450 per year prior to 2000. The Applicant concludes that the use of river transport would have a negligible impact upon navigational safety on the river Trent and the impact would therefore not be significant.

Maintaining and improving road transport, walking and cycling networks

- 5.13.43. The Applicant considers that permanent closure or diversion of public rights of way (PRoW) would not be required. It considers that any temporary diversion during construction of the Proposed Development would be to the same standard as the existing PRoW.

- 5.13.44. The Applicant considers that the new access road would improve access to the existing Flixborough industrial estate and port area by reducing existing HGV congestion in the vicinity of Neap House.
- 5.13.45. The Applicant proposes additions to the walking and cycling networks that it considers are significant improvements to pedestrian and cycle infrastructure in the area which will improve general pedestrian and cycle connectivity for the surrounding area.
- 5.13.46. These improvements include:
- a new 3m shared pedestrian and cycle footway along the new access road, which will extend westbound along Stather Road and connect to the existing footways on Bellwin Drive as well as along the northern side of the B1216, connecting westward to Neap House and eastward to the A1077;
 - a new toucan crossing facility at the signal-controlled junction of the A1077 with the B1216 to enable pedestrians and cyclists to cross the A1077;
 - a new section of 3m shared pedestrian and cycle footway along First Avenue between Bellwin Drive and Flixborough Wharf, which will enhance pedestrian and cycle connections in the area; and
 - two new footbridges over the re-instated railway line including the provision of ramps suitable for disabled access.
- 5.13.47. The Applicant considers that these improvements are secured in the draft DCO [REP10-004] as certified plans.
- 5.13.48. The Applicant considers that any temporary changes to public access, PRoWs, footways, footpaths, cycle paths, parking would be subject to highways authority approval, secured by the Code of Construction Practice (CoCP) [REP9-018] which is certified under article 46 the draft DCO revision 8 [REP10-004], and its use is secured through the environmental management requirement 4 of the draft DCO revision 8 [REP10-004].

Issues considered in the Examination

Local Impact Reports

- 5.13.49. North Lincolnshire Council (NLC) provided a Local Impact Report (LIR) [REP1-019] which included a section on traffic and transport.
- 5.13.50. Whilst NLC noted that the aspirations of the Proposed Development to transport freight by rail and river in the future were consistent with its own policies it was pleased to see that the Applicant's assessment assumed the worst-case situation that all deliveries during both the construction and operational phases would be made by road.
- 5.13.51. NLC considered that the opening of the new access road for use by construction vehicles during the peak construction period to be an essential requirement.

- 5.13.52. In the draft SoCG [REP2-025] with the Applicant NLC raised several issues relating to highways and transport, public rights of way and cycle routes and to what extent HGV movements arising from the construction and operation of the development will have an impact on the highway network. These were resolved in the final SoCG with NLC [REP9-025] with there being no preference expressed regarding option A or option B for the routing of the northern district heating and private wire network (DHPWN) in relation to traffic considerations.
- 5.13.53. The Applicant finalised a draft Deed of Development Consent Obligation with NLC to support the funding of modifications to the existing junction in the vicinity of Neap House [AS-025].

Representations from other interested parties

- 5.13.54. Traffic and transport concerns were raised in several relevant representations including [RR-021], [RR-022], [RR-023] [RR-031], [RR-037], [RR-041], [RR-042], [RR-043], [RR-068], [RR-070], [RR-078], [RR-088], [RR-096]. Issues raised included increases in river and rail transport, the potentially large numbers of HGVs leading to congestion on local road junctions and the need for traffic calming measures. The Applicant's response [REP1-012] referred to details of the assessment and junction modifications to improve safety for other road users.
- 5.13.55. The parish councils of Flixborough [REP2-094], and Burton-upon-Stather [REP2-089], and Sisters Food Group [REP2-080] raised traffic and transport concerns in their written representations. These were responded to by the Applicant [REP3-022] which referred to relevant details of the assessment. No further written representations were received from these Interested Parties concerning traffic and transport.
- 5.13.56. Written representations were received from RAIN (Residents Against INcinerators) [REP4-040] and individuals [REP4-054] to [REP4-058], which duplicated that from RAIN, and again by RAIN [REP5-044] that raised concerns about the assessment of road traffic and raised doubts about the Applicant's commitment to use the railway. The Applicant did not provide any further information on traffic and transport in their response [REP5-037].
- 5.13.57. Rapleys LLP on behalf of AB Agri Limited (ABAL) [REP2-081] raised transport concerns in their written representation. The Applicant prepared a draft SoCG with ABAL and the traffic and transport issues identified were resolved in the final SoCG [REP10-009].
- 5.13.58. The Applicant prepared draft SoCGs with National Highways (NH), Network Rail Infrastructure Ltd (NR) and Associated British Ports (ABP) as transport authorities. The issues identified by NH were resolved in the final SoCG [REP9-031], who confirmed the withdrawal of their objection [REP9-056]. The issues identified by NR were resolved in the final SoCG [REP10-008], who confirmed the withdrawal of their objection [REP10-016]. The issues identified by ABP were resolved in the final SoCG [REP7-027].

ExA written questions and hearings

- 5.13.59. In our first round of written questions [PD-007] we asked the Applicant to investigate some inconsistencies in the information provided in its ES Chapter 13 submission [APP-061] and whether this would change the assessment in relation to the HGVs using the junction of the B1216 and the A1077 during the operation of the Proposed Development. The Applicant responded [REP2-042] to confirm that they considered the assessment was unchanged and provided an updated ES Chapter 13 [REP2-021].
- 5.13.60. We asked the Applicant at ISH3 about sustainable transport policy and how that could be secured. In the written summaries of oral submissions at ISH3 [REP4-029] the Applicant provided additional information around this aspect of policy and pointed to a local planning appeal where the inspector had reasoned that the use of planning conditions to secure a specified quantity of material being delivered by rail transport was unreasonable “because it requires the appellant to depend upon the performance of certain third parties”.

ExA’s Considerations and Conclusions

- 5.13.61. As all matters concerning road transport, walking, bridleways and cycling networks, including PRoWs, were resolved between the Applicant and the highways authorities, we see no reason to disagree with the Applicant’s conclusions on these matters, and no reason to favour one or other of the options A or B for the routing of the northern DHPWN.
- 5.13.62. We consider that the Applicant has demonstrated that the Proposed Development would be consistent with EN-1 with reference to paragraphs 5.13.3, 5.13.4, 5.13.6, 5.13.8, 5.13.9, and 5.10.24 regarding the reliability of the assessment and the appropriateness of the proposed mitigation.
- 5.13.63. Regarding mitigation, we consider that this would be secured in the draft DCO [REP10-004] by:
- the construction traffic management plan and a construction workers travel plan as Requirement 10;
 - the provision and timing of the new access road under Part 3 Article 14 in relation to the permanent stopping up of streets and as Requirement 14;
 - the operational travel plan as Requirement 13; and
 - implementation of the CoCP [REP9-018], including the approval of temporary PRoW diversions, as Requirement 4.
- 5.13.64. As there were no rail and river transport matters outstanding between the Applicant and the relevant rail and river network authorities, we see no reason to disagree with the Applicant’s conclusion that the additional movements would not cause an adverse impact on those networks.

- 5.13.65. We consider that the Applicant has demonstrated that the Proposed Development would be consistent with EN1 5.13.3 regarding the reliability of its assessment.
- 5.13.66. Regarding transportation by river and rail we consider that the Applicant has demonstrated that the Proposed Development would be consistent with EN-1 5.13.10 and EN-3 2.5.24 and 2.5.25 as the movement of freight to and from the Proposed Development would be available by river for construction purposes and by river and rail for operational purposes.
- 5.13.67. The timing of the completion and the availability of the railway for operational purposes would be secured by Requirement 20 of the draft DCO [REP10-004].
- 5.13.68. Regarding a new requirement that would have required a specified quantity of RDF to be transported by river or rail by a specified time we concluded that this was neither necessary, because the Applicant had mitigated the adverse effects on road transport through the provision of the new access road, nor reasonable, because of the dependency on third parties to deliver the RDF by river or rail.
- 5.13.69. We consider that the provision of the new access road would alleviate traffic congestion in the vicinity of Neap House. We also consider that the Applicant would improve walking and cycling networks, and accessibility, including the provision of disabled ramp accessible footbridges across the railway line.
- 5.13.70. We consider that these improvements would be secured in the draft DCO [REP10-004] as certified plans.
- 5.13.71. In conclusion, considered against EN-1 and EN-3 and having had due regard for draft EN-1 and draft EN-3, the LIR, and other important and relevant matters, we ascribe little weight to matters relating to the issue for the making of the Order.

5.14. WASTE

- 5.14.1. This section considers both the issue of energy from waste (EfW) treatment capacity and refuse derived fuel (RDF) availability, and the management of waste produced during the construction, operation and decommissioning of the Proposed Development.

Policy Considerations

National Policy Statement for Energy (EN-1)

EfW treatment capacity and RDF supply availability

- 5.14.2. In the context of the Proposed Development as a source of electricity and heat, Section 3.3, on the role of renewable electricity generation includes a bullet point on EfW under paragraph 3.4.3. This says that the principal purpose of the combustion of waste EfW plant is to reduce the amount of waste going to landfill in accordance with the waste hierarchy and to

recover energy from that waste as electricity and heat. It goes on to say: *"Only waste that cannot be re-used or recycled with less environmental impact and would otherwise go to landfill should be used for energy recovery."*

- 5.14.3. EN-1 explains that the waste hierarchy is as set out in Article 4 of the revised Waste Framework Directive and the Waste (England and Wales) Regulations 2011.

Waste management

- 5.14.4. In the context of waste produced by the Proposed Development during its construction and operation 5.14.6 says that the Applicant should prepare a waste management plan and 5.14.7 to 5.14.9 in summary say that the Secretary of State (SoS) should be satisfied that this plan is consistent with the proper management of waste, including any hazardous wastes, and the waste hierarchy.

Draft National Policy Statement for Energy (draft EN-1)

EfW treatment capacity and RDF supply availability

- 5.14.5. In the context of the Proposed Development as a source of electricity and heat Section 3.3, on the need for new nationally significant electricity infrastructure, has paragraphs on EfW as a type of combustion power station.
- 5.14.6. Paragraphs 3.3.37 to 3.3.42 describe that whilst EfW plants operate at over 90% availability and that energy recovery has a lower GHG impact than landfill the availability of feedstock is reducing because of government policy. Paragraph 3.3.40 says: *"The proposed plant must not compete with greater waste prevention, re-use, or recycling, or result in over-capacity of EfW waste treatment at a national or local level."*
- 5.14.7. In terms of bringing forward new infrastructure paragraph 3.3.83 recognises that whilst large numbers of consented projects drives competition, which can help deliver an affordable electricity system and enable projects with advanced technology and greater efficiency to come forward, EfW is an exception because the primary function is to treat waste, and planning decisions will be made based on the demand for waste infrastructure.
- 5.14.8. Section 5.15 on resource and waste management has paragraphs 5.15.6 to 5.15.13 on the Applicant's assessment and 5.15.14 to 5.15.19 on SoS decision making. Regarding the Applicant's assessment, this says at 5.15.7 *"The proposed plant must not compete with greater waste prevention, re-use, or recycling, or result in over-capacity of EfW or similar processes for the treatment of waste at a national or local level."*
- 5.14.9. Paragraph 5.15.19 concludes *"The Secretary of State should have regard to any potential impacts on the achievement of resource efficiency and waste reduction targets set under the Environment Act 2021 or wider goals set out in the government's Environmental Improvement Plan."*

Waste management

- 5.14.10. In the context of waste produced by the Proposed Development during its construction and operation we do not consider EN-1 is materially affected by the paragraphs in section 5.15.

National Policy Statement for Renewable Energy (EN-3)

EfW treatment capacity and RDF supply availability

- 5.14.11. Within part 2 on assessment and technology-specific information waste management paragraphs 2.5.66 to 2.5.69 set out the requirements for an Applicant's assessment stating that:
- 5.14.12. *"2.5.66 An assessment of the proposed waste combustion generating station should be undertaken that examines the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant waste plan or plans where a proposal is likely to involve more than one local authority.*
- 5.14.13. *2.5.67 The application should set out the extent to which the generating station and capacity proposed contributes to the recovery targets set out in relevant strategies and plans, taking into account existing capacity.*
- 5.14.14. *2.5.68 It may be appropriate for assessments to refer to the Annual Monitoring Reports published by relevant waste authorities which provide an updated figure of existing waste management capacity and future waste management capacity requirements.*
- 5.14.15. *2.5.69 The results of the assessment of the conformity with the waste hierarchy and the effect on relevant waste plans should be presented in a separate document to accompany the application" to the SoS.*
- 5.14.16. In terms of SoS decision making paragraph 2.5.70 states:

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

Waste management

- 5.14.17. NPS-EN3 addresses Waste management under paragraphs 2.5.77 to 2.5.78 with respect to an Applicant's assessment and 2.5.79- 2.5.83 regarding the SoS decision making.
- 5.14.18. Whilst paragraph 2.5.76 considers that the management of these wastes is a matter for the environmental permit issued by the EA paragraph

2.5.81 states that: the SoS "should give substantial positive weight to development proposals that have a realistic prospect of recovering residues."

Draft National Policy Statement for Renewable Energy Infrastructure (draft EN-3)

EfW treatment capacity and RDF supply availability

- 5.14.19. Within part 3 on general assessment and technology specific information waste combustion is considered in section 3.7. Regarding an Applicant's assessment and factors influencing site selection and design under the sub heading of waste treatment capacity paragraphs 3.7.6 explains that the primary function of EfW plants is to treat waste and 3.7.7 states that *"The proposed plant must not result in over-capacity of EfW waste treatment at a national or local level."*
- 5.14.20. Under the sub heading of commercial aspects of waste combustion plants 3.7.29 states that *"Applicants must ensure EfW plants are fit for the future, do not compete with greater waste prevention, re-use, or recycling and do not result in an over-capacity of EfW waste treatment provision at a local or national level."*
- 5.14.21. Under the sub heading of waste management, we consider that paragraphs 3.7.43 to 3.7.47 do not materially affect paragraphs 2.5.66 to 2.5.69 of EN-3, other than 3.7.45 which says that the assessment should take into account existing residual waste treatment capacity *"and that already in development."*
- 5.14.22. In terms of SoS decision making under waste management we consider 3.7.104 and 3.7.105 do not affect EN-3. Paragraph 3.7.106 adds that the SoS should consider *"whether a requirement, including monitoring, is appropriate to ensure compliance with the waste hierarchy"*

Waste management

- 5.14.23. In the context of waste produced by the Proposed Development during its construction and operation we do not consider EN-3 is materially affected by the paragraphs 3.7.104 to 3.7.111 under the sub heading of residue management.

National Planning Policy Framework

- 5.14.24. The National Planning Policy Framework (NPPF) does not have waste specific policies but includes an environmental objective to use natural resources sensibly, and to minimise waste and pollution. It states that strategic policies should make provision for waste management and where practical, take account of substitute or secondary and recycled materials and minerals waste when supplying materials. The Planning Practice Guidance (PPG) for waste provides further information in support of the implementation of waste planning policy, such as the role of waste planning in meeting objectives, implementing the waste hierarchy and what types of waste planning authorities should plan for.

Local Development Plan

- 5.14.25. The North Lincolnshire Council (NLC) emerging North Lincolnshire Council Local Plan Publication Draft Policies (2021) include several that are relevant to waste management including:
- 5.14.26. WAS1: Waste Management Principles sets out the council's strategic planning framework and principles for sustainable waste management, reflecting the requirements of national policy and guidance, as well as the Waste Framework Directive. It details that development that encourages and supports the minimisation of waste production, and the re-use and recovery of waste materials will normally be supported. It states that proposals for waste management facilities will be encouraged based on a number of principles, including – managing waste through the waste hierarchy in a sequential order; and
- 5.14.27. WAS3: Waste Management Provision states net self-sufficiency in waste management will be achieved through the provision of the waste-management capacity needs of North Lincolnshire. This capacity will be met through existing operation waste management facilities (and extensions, where appropriate) and new facilities.
- 5.14.28. These were included in NLC's draft Local Plan Submission - November 2022 [REP2-053]

The Applicant's Case

Waste management

- 5.14.29. The Applicant's consideration of waste management as a cause of likely significant adverse effects during the construction and operation of the Proposed Development is addressed in the ES - Chapter 15 – Waste [APP-063].
- 5.14.30. The Applicant considers that any adverse effects caused by waste produced during the construction of the Proposed Development would be mitigated by the Waste Management Plan which is included as Appendix G of the Code of Construction Practice (CoCP) [REP9-018] which is certified under article 46 the Draft Development Consent Order revision 8 [REP10-004], and its use is secured through the environmental management Requirement 4 [REP10-004].
- 5.14.31. The Applicant considers that flue gas treatment residues and bottom ash produced by the ERF would be used on site to make concrete blocks, within the concrete block manufacturing facility (CBMF) component of the Proposed Development. The CBMF would recycle around 125 ktpa of ash and about 5 ktpa of flue gas treatment residues.
- 5.14.32. With the operation of the CBMF as mitigation, and the requirement to operate within the conditions of an environmental permit, the Applicant considers there would be no significant waste management effects during operation. The Applicant considers this mitigation is secured by

Requirements 18 and 19 of the Draft Development Consent Order revision 8 [REP10-004].

- 5.14.33. The Applicant considers that any adverse effects caused by waste produced during decommissioning [REP2-033] would be similar to those caused during construction and be mitigated by a combination of the environmental permit surrender plan and the decommissioning plan secured by requirement 16 of the Draft Development Consent Order revision 8 [REP10-004].

EfW treatment capacity and RDF supply availability

- 5.14.34. The supply of waste as fuel in the form of refuse derived fuel (RDF) for the energy recovery facility (ERF) component of the Proposed Development is addressed in the RDF Supply Assessment Version 2 included as Appendix A of RDF Supply Assessment Revision 2 [REP3-040].

- 5.14.35. In this Appendix the Applicant considers that:

- the ERF would be capable of converting up to 760 thousand tonnes per annum (ktpa) of RDF into 95 MW of electricity;
- there is currently more RDF available than existing or committed EfW capacity;
- the capacity gap will gradually close (at the national (England) and local (Yorkshire & Humber and East Midlands) level) by 2035 if Government recycling targets of 65% are met, but recent plateauing of recycling rates at around 42% means there is significant uncertainty as to whether these targets will be met, and this difference equates to diverting about 6,000 ktpa from landfill based on 2020 figures;
- a considerable amount of EfW capacity is under development, but there is a high level of uncertainty about how much of that will be realised;
- if new build EfW is required to be carbon capture usage and storage (CCUS)-ready in order to align with the UK's Net Zero commitments, then the Proposed Development is among the minority of pipeline projects which are well placed geographically to connect to a CCUS cluster;
- assuming all EfW capacity is required to have carbon capture by 2035, to comply with the Net Zero Strategy, then there would be a capacity gap based on existing and committed capacity of over 4,000 ktpa nationally and around 2000 ktpa at the local level in 2035 if low-CCS potential projects are excluded (even if recycling targets are met); and
- based on its projections the Proposed Development does not result in over-capacity of EfW waste treatment at a national or local level.

- 5.14.36. The Applicant's indicative phasing plan is set out in Appendix D of ES Chapter 13: Traffic and Transport [REP2-021]. This indicates that establishment and site access would begin in Q1 2023 with the ERF being built between Q3 2023 and Q2 2027. The Applicant's indicative phasing

plan [APP-023] indicates that the ERF would be completed in the fifth year of construction.

Issues considered in the Examination

Waste management

- 5.14.37. No parties presented evidence contradicting the information supplied by the Applicant regarding construction or operational waste management during the examination.

EfW treatment capacity and RDF supply availability

- 5.14.38. Waste availability and its impact on conformance with the waste hierarchy as set out in EN1 and EN3 was the main issue considered during the examination and included:
- the extent to which growth in EfW capacity available combined with reductions in RDF available would result in there being an over-capacity in an area;
 - when would the ERF be likely to start operating and what impact would the ERF have on the capacity position in an area;
 - to what extent regulatory controls would prevent deviation from the waste hierarchy; and
 - whether there was evidence available that showed the degree of imbalance required to adversely impact the waste hierarchy.

Local Impact Reports

- 5.14.39. North Lincolnshire Council (NLC) provided a Local Impact Report (LIR) [REP1-019]. NLC stated:
- 5.14.40. *"At the present time the catchment area for the waste is not fully understood, nor whether the proposed development would result in an overcapacity of waste management facilities within the catchment given the proposal to process up to 760,000 tonnes of RDF annually and the potential presence of other existing/consented facilities."*
- 5.14.41. NLC said they would like to see a requirement to prevent the outdoor storage of waste/fuel or plastic in the interest of protecting the amenity of the local area.
- 5.14.42. NLC's LIR concluded with:
- "The development might also have the potential to make a contribution towards the sustainable management of waste in accordance with the waste hierarchy, by redirecting waste that would otherwise go to landfill and making an efficient use of this resource. Although it is noted that NLC already have in place a long-term contract for our waste disposal. The Council believes that these impacts have to be balanced against the potential environmental impacts of the proposed scheme"*

- 5.14.43. In the Final Statement of Common Ground (SoCG) with NLC [REP9-025] it was confirmed that all waste related matters raised in the LIR had been resolved to the satisfaction of NLC.

Representations from other interested parties

- 5.14.44. Concerns about the Proposed Development treating waste from outside the NLC area, the potential for over capacity, and effects on recycling targets were raised in relevant representations including: [RR-003], [RR-022], [RR-031], [RR-035], [RR-048], [RR-056], [RR-059], [RR-063], [RR-064], [RR-067], [RR-068], [RR-070], [RR-071], [RR-075], [RR-079], [RR-083], [RR-087], [RR-095].
- 5.14.45. Some of these relevant representations referred to the 'proximity principle' and questioned the relevance of Yorkshire & Humber and East Midlands as the RDF supply area used by the Applicant in its RDF supply assessment [APP-036].
- 5.14.46. Amcotts Parish Council in its relevant representation [RR-065] considered that the UK has more incinerator capacity than it has waste to burn, and it would impact adversely the local council's and national recycling rates conflicting with 65% of waste by 2035. They considered that Welsh and Scottish governments had already recognised these issues and called a moratorium on new incinerators.
- 5.14.47. A relevant representation [RR-062] was received from Enfinium Ltd, who consider themselves to be one of the largest EfW operators in the UK with more than 45 years industry experience. In summary they considered that there was insufficient waste to substantiate a further 760 ktpa of EfW capacity in the regions that the Proposed Development would likely serve; Yorkshire and Humber and East Midlands. They considered that a number of EfW facilities identified in the report have subsequently moved from the consented category into construction, accounting for 2,100 ktpa of additional capacity – with a significant proportion of this likely to be filled with wastes from the identified two English regions. We requested the Applicant to progress an SoCG with Enfinium. However, Enfinium took no further part in the examination and no SoCG was concluded.
- 5.14.48. United Kingdom Without Incineration Network (UKWIN), who consider themselves to be a network of anti-incineration campaigners coordinated through a not-for-profit company, made a relevant representation [RR-002] in which they considered that:
- the proposed incineration facility could result in local and/or national overcapacity, contrary to draft EN-3 (2021) which aims to prevent this;
 - in July 2022 Government confirmed the draft EN-3 position;
 - these statements add weight to the conclusion highlighted in the Wheelabrator Kemsley North refusal which found that large-scale development can undermine local recycling efforts and divert waste from recycling; and

- the Applicant's RDF Supply Assessment [APP-036] dates from 2019 so plants operating since then or under construction had not been included.
- 5.14.49. The Applicant responded to relevant representations [REP1-012]. The Applicant considered that the RDF supply assessment [APP-036] had been updated but considered that there would still be a sufficient capacity gap, and this may grow as older facilities are withdrawn from operation, and those unable to be fitted with CCUS become uncompetitive and unattractive on environmental grounds to waste producers.
- 5.14.50. Amcotts Parish Council in its response to comments on relevant representations [REP2-084] considered regarding incinerator overcapacity that figures indicated that there were over 42 UK plants processing 11.5million tonnes of waste per annum. They considered that Enfinium had stated that they need the feedstock to meet capacity in Yorkshire and Humber and East Midlands and the feedstock for the plant could be treated closer to where it was produced.
- 5.14.51. Burton upon Stather Parish Council in its written representation [REP2-089] referred to Biffa's report 'From Waste Hierarchy to Carbon Hierarchy: Biffa's Blueprint for Waste Net Zero' dated 5 Dec 2022. The Biffa report referenced states: *"The development of the UK's network of energy recovery facilities is almost complete and we now need policies to be implemented and objectives delivered before deciding if we need any more"*.
- 5.14.52. Amy-Louise Ogman in her written representation [REP2-085] considered that the 2035 target of a 65% recycling rate could be impacted if this project was allowed to go ahead.
- 5.14.53. In their written representation [REP2-110] UKWIN considered that:
- regulation 12 of the Waste Regulations 2011 cannot be relied upon to drive waste up the waste hierarchy;
 - feedstock can meet the definition of RDF with only minimal treatment, meaning incinerating material that could have been treated higher up the waste hierarchy, e.g. recyclable or compostable paper and card;
 - similar concerns influenced the Kemsley North refusal, with the Secretary of State agreeing with the Examining Authority that "...the projects would divert a significant proportion of waste from recycling rather than landfill" (ref EN010083 19 February 2021 Decision Letter paragraph 4.41) despite the Kemsley Applicant's claim the incinerator would only burn non-recyclable material;
 - English incinerator feedstock would fall from the current level of around 25,400 ktpa to 13,400 ktpa by 2042 in line with Government targets;
 - the current 15,600 ktpa of operational incineration capacity in England is set to increase to 18,900 ktpa once those incinerators currently under construction become operational; and

- this combination of increased capacity and reduced feedstock would result in around 5,500 ktpa of incineration overcapacity in England by 2042 (i.e. 18,900 ktpa capacity minus 13,400 ktpa feedstock)
- 5.14.54. The Applicant responded [REP3-022] and considered that its updated analysis [REP1-006] showed that there would be a capacity gap if CCUS had to be fitted to EfW facilities and recycling targets were met.
- 5.14.55. Regarding the Kemsley North refusal, the Applicant considered [REP3-022] that whereas little waste is treated or transferred within Kent c.2,900 ktpa of residual waste is currently managed in North Lincolnshire, of which c.2,000 ktpa arises outside the authority boundary and is destined either for local landfill or exported as RDF. The Applicant considered that it was precisely these wastes that the facility would be capable of receiving as a fuel, and for which Memoranda of Understanding were being finalised.
- 5.14.56. The Applicant considered [REP3-022] that major waste operators and waste aggregators had been engaged in dialogue with the Applicant over the past three years with a view to intercept waste that would otherwise be exported or landfilled.
- 5.14.57. UKWIN made detailed representations they considered relevant and supportive of the points they had made in their relevant and written representations. These included [REP1-023] to [REP1-028], [REP2-105 to REP2-108], [REP2-111], [REP3-043], [REP4-042 to REP4-052], [REP6-042 to REP6-047], [REP8-038 to REP8-041] and [REP9-050 to REP9-053].

ExA's Written Questions and Hearings

- 5.14.58. We asked about the Proposed Development in the context of Government Policy and emerging Government Policy at Issue Specific Hearing 1. In the written summaries of oral submissions put at Issue Specific Hearing 1 [REP1-015] the Applicant said that it recognised that if all consented EfW projects were built there would be potential over-capacity (both regionally and nationally).
- 5.14.59. In our first round of written questions [PD-007] we also asked why the Applicant had not used local authority areas as indicated in EN3 rather than a 100-mile distance to define its study area. In its response [REP2-033] the Applicant referred to the South Humber Bank Energy Centre (SHBEC) (EN010107 report to Secretary of State 10 August 2021) paragraph 4.11.44 which stated that 'National Planning Policy explicitly recognised the fact that new facilities such as the Proposed Development serve catchment areas wider than just the waste planning area in which they are located and that it is consistent with the policies set out in the National Planning Policy for Waste'. The Applicant noted that SHBEC used the same study areas, Yorkshire and Humber and East Midlands and for England, as it had used for the Proposed Development.
- 5.14.60. The Applicant submitted supplementary information on regional waste management [REP2-039] and [REP2-040].

- 5.14.61. The Applicant provided its updated RDF supply assessment [REP1-006] and this was considered in detail at ISH3 under the headings of:
- The likely balance between waste as fuel supply and energy from waste (EfW) capacity in England until 2035; and
 - Securing consistency with the waste hierarchy through the use of a draft requirement.
- 5.14.62. In terms of securing consistency with the waste hierarchy through the use of a draft requirement the Applicant considered that the primary way to achieve compliance was through the environmental permit [REP4-029]. However, the Applicant offered an additional requirement that would oblige the Applicant to engage with its fuel suppliers to a greater extent than the permit alone and would try and encourage them further to ensure the waste hierarchy would be applied in full [REP4-029].
- 5.14.63. NLC commented in its actions following ISH3 [REP4-031]. In summary NLC considered the draft requirement neither necessary nor enforceable, despite it being based on a requirement included in the DCO for Riverside Energy Park (EN010093 Decision letter 09 April 2020).
- 5.14.64. In our second round of written questions [PD-012] we asked the Applicant and UKWIN to set out in the same format their forecasts of first year of operation, RDF supply and EfW capacity in Yorkshire & Humber and East Midlands and England.
- 5.14.65. UKWIN considered in its response [REP6-043] that the year of likely first operation of the ERF would be 2027 and the Applicant considered [REP6-032] at Annex A 2026 would be the first year of operation. The Applicant also included notes to explain why they considered their forecast of RDF availability was conservative with reference to their earlier consideration of the issue [REP5-037].
- 5.14.66. Both the Applicant and UKWIN considered that:
- government targets on waste reduction and recycling would be met;
 - other uses of RDF had been included;
 - currently operational and EfW facilities that were under construction were included in their EfW capacity forecasts;
 - consented EfW facilities that had not yet begun construction were excluded from their forecasts;
 - there would be no widespread closure of EfW facilities caused by a regulatory or policy requirement to fit CCUS plant.
- 5.14.67. The final SoCG [REP9-029] between the Applicant and UKWIN described the methodologies and assumptions used in greater detail so that the reasons for any differences could be further understood.
- 5.14.68. In our second round of written questions [PD-012] we asked the EA about the effectiveness of regulation 12 of the Waste Regulations (England and Wales) 2011 and the environmental permit and use of the European Waste Catalogue (EWC) codes as a means of achieving

compliance with the waste hierarchy. The EA provided a response [REP6-040]. The EA considered that the inclusion of EWC codes on a permit will not fully ensure that waste transferred to it is restricted to non-recyclable or non-reusable wastes as compliance with the waste hierarchy is dealt with through other legislation.

- 5.14.69. The EA's final sentence of their response stated: *"The use of EWC codes is the method used in environmental permits to identify the types of waste that can be accepted to enter an ERF. The correct application and adherence to all relevant UK waste legislation and regulations should ensure that no recyclable or re -usable waste enter the ERF component of the proposed development, unless it is considered that incineration delivers the best environmental outcome in accordance with regulation 12 of the Waste Regulations 2011"*
- 5.14.70. In our third round of written questions [PD-015] we asked whether there was evidence that showed what degree of excess EfW capacity against waste available caused an adverse effect on prevention, re-use and recycling in conflict with the waste hierarchy.
- 5.14.71. The Applicant considered in summary [REP8-020] that regulatory and market mechanisms would mean any excess of EfW capacity would lead only to that capacity being under-utilised, and that this would not create an adverse effect on prevention, re-use, or recycling.
- 5.14.72. In its response to the same question UKWIN [REP8-040] included references to their previous submissions updated by graphs published by Defra that showed what UKWIN considered to be a clear correlation between higher rates of incineration and lower recycling rates at a local waste authority level.
- 5.14.73. The EA made a final submission on the subject [REP9-046] which reconsidered its response to the same question [PD-015].
- 5.14.74. In its revised response [REP9-046] the EA considered it was the relevant planning authority, and not the Environment Agency, who were responsible for driving waste generated in a given area up the waste hierarchy and for considering the implications of energy from waste treatment capacity in that area. As such, the EA did not feel it appropriate for them to comment on whether the Proposed Development could have an adverse effect on prevention, reuse, or recycling.
- 5.14.75. The sources referenced by the Applicant included the 'UK Energy from Waste Statistics – 2021' which was published on Tolvik website in May 2022. Tolvik consider themselves to be a leading provider of independent market analysis, commercial support and due diligence to the European waste and bioenergy sectors. This publication concludes its summary observations with:

"Care is also required to ensure policy avoids driving additional (and probably unneeded) EfW capacity in those geographies with access to future CCS solutions. This may be justifiable if the new EfW is more efficient than existing infrastructure - but it seems harder to justify if, as

a consequence, Residual Waste is being transported significant distances to a CCS connected EfW for no benefit other than to potentially accelerate the exhaustion of (what may be finite) carbon storage capacity.”

- 5.14.76. In its final covering letter submission [REP10-001] the Applicant stated that it had secured Memoranda of Understanding for the supply of RDF in excess of the volume required by the Proposed Development but did not provide any examples of these memoranda in support of this statement.

ExA’s Considerations and Conclusions

Waste management

- 5.14.77. We see no reason to disagree with the Applicant’s overall conclusion that waste management during construction, operation and decommissioning of the Proposed Development would be sufficiently mitigated to avoid any likely significant adverse effects.
- 5.14.78. Regarding any adverse effects caused by waste produced during construction we agree these would be mitigated by the waste management plan which is included as Appendix G of the Code of Construction Practice (CoCP) [REP9-018] which is certified under article 46 of the Draft Development Consent Order revision 8 [REP10-004], and its use is secured through the environmental management requirement 4 of the Draft Development Consent Order revision 8 [REP10-004].
- 5.14.79. Regarding any adverse effects caused by waste produced during decommissioning we agree these would be mitigated by a combination of the environmental permit surrender plan and the decommissioning plan secured by requirement 16 of the Draft Development Consent Order revision 8 [REP10-004].
- 5.14.80. We are though concerned as to whether the use of 125 ktpa of bottom ash and 5 ktpa of hazardous flue gas residues in the concrete block making facility (CBMF), to avoid it needing to be disposed of as waste, is secured by the corresponding Requirement 18 which specifies the commissioning timescales in the draft DCO [REP10-004]. We consider that this allows for a reasonable argument to be made that would delay indefinitely the commissioning of the CBMF facilities. We do however recognise that such disposal would be regulated by the environmental permit to ensure significant adverse effects would be avoided and have no reason to think that this would not be granted.
- 5.14.81. We consider that with regard to waste management the Applicant has demonstrated that the Proposed Development would be consistent with EN-1 paragraphs 5.14.6 to 5.14.9 and paragraphs 2.5.77 to 2.5.83 of EN-3.

EfW treatment capacity and RDF supply availability

- 5.14.82. The Applicant [REP6-032] and UKWIN [REP6-043] submitted forecasts of EfW treatment capacity and RDF supply availability in response to our

second round of written questions [PD-012]. UKWIN confirmed in the final SoCG [REP9-029] between the Applicant and UKWIN that it represented its final RDF supply and EfW capacity forecasts. The Applicant provided notes with its forecasts of EfW treatment capacity and RDF supply availability [REP6-032].

- 5.14.83. Regarding RDF supply we consider that the Applicant's and UKWIN's approaches to forecasting RDF availability differed in several areas. We consider that a significant difference was how they had each translated government targets on waste reduction and increased recycling into forecasts of the amount of RDF available, as described in the final SoCG [REP9-029]. They also held different views regarding the rate at which RDF exports would decline and the rate at which other uses of RDF would increase.
- 5.14.84. Despite these differences of approach, we consider that the Applicant's forecast of a downward trend in RDF availability is consistent with EN-3 having due regard for the draft EN-1 statement at paragraph 3.3.41 that indicates a further reduction in EfW feedstock will occur because of government policy.
- 5.14.85. Regarding EfW capacity, whilst we consider their approaches to forecasting differed [REP9-029], we find these differences and their impact somewhat clearer. For example, the Applicant assumed forecast capacity is 90% of permitted capacity, based on Tolvik's published data, and we consider this is consistent with draft EN-1 paragraph 3.3.37 of 90% availability. UKWIN assumed forecast capacity is the same as permitted capacity, so UKWIN assumed EfW facilities are operating all of the time, which we consider unlikely to be the case.
- 5.14.86. Despite these differences of approach, we consider that the Applicant's EfW capacity forecasting methodology is consistent with EN-3 having due regard for draft EN-3 3.7.45 by taking into account both existing residual waste treatment capacity and that already in development, to the extent that the additional treatment capacity has been included for EfW facilities where construction has started.
- 5.14.87. In its notes, the Applicant considers that if it assumed a lower recycling rate for household waste, compared with what it considered to be its conservative base case forecast [REP6-032], with recycling rates increasing from the current level of around 42% to 55% in 2035, and only reaching 60% in 2042, compared with the government target of 65%, this would lead to 2,500 ktpa more RDF than the figure in Table 1 by 2040.
- 5.14.88. The UKWIN submission [REP8-040] included examples of waste authorities contractually bound by long term agreements to provide operators of EfW facilities with a minimum quantity of waste, or potentially face penalties. We consider these examples could help to explain the inverse correlation, based on Defra 2020/21 data, between incineration rates and recycling rates for Councils in England with higher than average incineration rates presented by UKWIN. We consider that

the Applicant's response [REP9-042] to UKWIN's submission [REP8-040] did not dispute the existence of these type of agreements but the Applicant did not accept, as a matter of statistical principle, that a correlation demonstrated cause and effect. On balance we do not consider the Applicant's note detailed at 5.14.87 which refers to its earlier response [REP5-037] results in the need to adjust the Applicant's forecasts of RDF supply availability [REP6-032].

- 5.14.89. Regarding the Applicant's view that EfW facilities that fall below R1 status should not have been included in its forecast, no evidence was provided to support this in the form of existing regulations that would prohibit such facilities from operating. We consider it more likely that, depending on the local circumstances and in the case of continuing need, upgrading, refurbishment or consenting of a replacement would be supported as explained by UKWIN in the final SoCG [REP9-029]. Hence, we do not consider this causes an adjustment to be made to the Applicant's forecasts of EfW treatment capacity [REP6-032].
- 5.14.90. The Applicant also said in its notes [REP6-032] that it "*remained of the view that Government expects the EfW sector to decarbonise as part of the wider Net Zero policy, and the Government's recent consultation on decarbonisation readiness reinforces this view by extending carbon capture readiness obligations to all new EfW facilities.*" The Applicant then went on to forecast the effect of such a policy as a loss of EfW capacity of 4,817 ktpa in England and 1,399 ktpa in Yorkshire & Humber and East Midlands. However, no evidence was presented by the Applicant or any other IP that such a policy was in place, when it would be in place or that it would apply to EfW facilities that were already in operation. Hence, we do not consider it necessary to adjust the Applicant's forecasts of EfW treatment capacity on the basis of carbon capture readiness.
- 5.14.91. Overall, for the reasons set out in 5.14.84 to 5.14.90 we see no reason to disagree with the Applicant's responses as set out in [REP6-032] which give in our view a good understanding of the likely availability of EfW treatment capacity and RDF supply availability for England and Yorkshire & Humber and East Midlands presented in Tables 1 and 2 respectively.
- 5.14.92. The Applicant has indicated in its indicative phasing plan [APP-023] that completion of the ERF component of the Proposed Development would take place in the fifth year of construction, and we see no reason to disagree with this. We consider that before construction starts the complex and interdependent, commercial, fuel supply, engineering design, and environmental permitting matters would need to be sufficiently progressed. We therefore consider that it would be reasonable, for the purposes of considering EfW capacity treatment capacity and RDF supply availability, and how that might affect consistency with policy, to use 2030 as the forecast year of first operation.
- 5.14.93. We present below the range of forecasts based on the Applicant's and UKWIN's final forecast submissions, in terms of ktpa for 2030, where a negative number indicates a forecast over-capacity:

2030 Yorkshire & Humber and East Midlands

	RDF available	EfW capacity available	Difference
Applicant	3,566	3,550	16
UKWIN	1,989	3,966	-1,977

2030 England

	RDF available	EfW Capacity available	Difference
Applicant	15,281	17,122	-1,841
UKWIN	11,389	19,701	-8,312

- 5.14.94. We consider from this that the only forecast scenario where there would still be a capacity gap by 2030 is the Applicant's submission for Yorkshire & Humber and East Midlands, and the size of that gap would be 16 ktpa of RDF compared with the processing capacity of 760 ktpa of RDF for the ERF component of the Proposed Development.
- 5.14.95. Based on the Applicant's forecast we conclude that in Yorkshire & Humber and East Midlands the operation of the ERF component of the Proposed Development in 2030 would be forecast to cause an over capacity of 746 ktpa in that area and would cause the over-capacity in England to increase to 2601 ktpa. This would be 21% and 17% of the Applicant's forecast of RDF available in Yorkshire & Humber and East Midlands and England respectively by 2030.
- 5.14.96. In terms of sensitivity to the year of first operation, we consider that in the event that the ERF component began operation in 2026, as indicated by the Applicant [REP6-032], this forecast situation would not be materially different as the Applicant already forecasts an over capacity in England (239 ktpa) and a capacity gap for Yorkshire & Humber and East Midlands (475 ktpa) in 2026. That would be less than the capacity of the ERF component of the Proposed Development, hence a forecast over-capacity would still be caused in that area [REP6-032].
- 5.14.97. In the event that the ERF component began operation later than 2030, for example as a result of delays in securing a water supply for the purposes of construction or operation as outlined by the Applicant [AS-033], we consider this would exacerbate the over capacity already forecast by the Applicant, for example by 2035 in England the Applicant's forecast is 3392 ktpa and for Yorkshire & Humber and East Midlands 305 ktpa [REP6-032].

- 5.14.98. Hence, we disagree with the Applicant's assertion [REP8-020] that there *"will not be an excess of energy from waste capacity as a result of the Proposed Development, at a local, national or regional level."*
- 5.14.99. Draft EN-1 paragraphs 3.3.40 and 5.15.7 and draft EN-3 paragraphs 3.7.7 and 3.7.29, as important and relevant considerations and indicators of the direction of travel of government policy, all aim to prevent over-capacity of EfW treatment at local or national level, and that proposed plant should not compete with greater prevention, re-use, or recycling, or result in over-capacity of EfW waste treatment at a national or local level.
- 5.14.100. We consider that the Proposed Development is of a scale that would prejudice the achievement of local or national waste management targets in England and that the Applicant has not demonstrated conformity with the waste hierarchy, as expected in paragraph 2.5.69, or that the availability of waste as fuel relative to the capacity of plants for processing is consistent with EN-3 paragraph 2.5.70.
- 5.14.101. We do not consider the Applicant's statement *that "some resilience is necessary in the system to ensure as least waste as possible is going to landfill"* [REP6-032] is sufficient to justify deviation from the policy, on the scale forecast by the Applicant, having regard for draft EN-1 and EN-3 statements in relation to over-capacity of EfW waste treatment.
- 5.14.102. We consider that the statutory duties imposed through regulation, in particular the Waste (England and Wales) Regulations 2011, that aim to achieve conformity with the waste hierarchy fall mainly on those upstream of the Applicant. Transferors of RDF to the Applicant or those further upstream could diverge from the hierarchy through considerations of *"economic viability"* as stated in regulation 12 (3). We consider this to be consistent with the EA's final response [REP9-046] on the matter which placed the responsibility for driving waste up the waste hierarchy in a given area and for considering the implications of energy from waste treatment capacity in that area, with the relevant planning authority. We consider this can reasonably be interpreted as the SoS when dealing with National Infrastructure decisions.
- 5.14.103. We consider it highly likely that EWC codes would be specified on an environmental permit issued for the ERF component of the Proposed Development under The Environmental Permitting (England and Wales) Regulations 2016. We consider this would limit the types of waste the ERF may receive, for example to ensure only non-hazardous solid wastes suitable for incineration would be processed. However, the EA confirmed [REP6-040] that this does not provide any certainty that the waste would be unsuitable for treatment further up the hierarchy, for example re-use or recycling.
- 5.14.104. We do not agree with the Applicant [REP8-020] that regulatory controls can be relied upon to deliver conformance with the waste hierarchy. If they were completely effective in driving waste up the waste hierarchy, we consider there would be no need for policy statements such as EN3

2.5.70 or draft EN-1 paragraphs 3.3.40, footnote 62 to 3.3.83 and 5.15.7, and draft EN-3 paragraphs 3.7.7 and 3.7.29 which all recognise that the decisions of waste producers and processors are primarily driven by the waste market.

- 5.14.105. The Applicant referred to the recommendation report for South Humber Bank Energy Centre EfW facility (SHBEC) (EN010107 report to Secretary of State 10 August 2021) in support of its use of Yorkshire and Humber, and East Midlands as the RDF supply catchment area for the Proposed Development [REP2-033].
- 5.14.106. We are aware that the Tolvic Report is produced annually, and the latest iteration would have been published in May 2023 but after the examination closed. The SoS may wish to examine the latest version to see whether this position has changed. We have no evidence before us that indicates that this proposal has progressed despite getting a positive decision in November 2021 (EN010107 decision letter 10 November 2021).
- 5.14.107. We consider that the failure of SHBEC to progress commercially is not a persuasive argument in favour of a further EfW facility in this location. If the waste to energy market is operating properly, we consider it is more an indication of a waste market within this catchment area, that would not appear to need further capacity. As is reflected in paragraph 5.14.96 the decisions of waste producers and waste processors are primarily driven by the waste market.
- 5.14.108. Furthermore, since the examination closed the Order has been made for the Boston Alternative Energy Facility (BAEF) (EN010095 decision letter 5 July 2023), sited within the catchment area of the Proposed Development, which would be able to process an additional 1200 ktpa of RDF.
- 5.14.109. In terms of SoS decision making at EN-3 paragraph 2.5.70 we conclude that the Proposed Development would not be *"in accordance with the waste hierarchy"* and would not be *"of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England"*.
- 5.14.110. We also consider, with reference to EN-3 paragraph 2.5.70, that the Applicant has not provided sufficient evidence *"as to why this is not the case or why a deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy"*.
- 5.14.111. In conclusion, considered against EN-1 and EN-3 and having had due regard for draft EN-1 and draft EN-3, the LIR, and other important and relevant matters, we ascribe very substantial weight to matters relating to the issue against the making of the Order.

6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

6.1. INTRODUCTION

- 6.1.1. This Chapter sets out our analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Energy Security and Net Zero (SoSESNZ), as the Competent Authority, in performing their duties under the Habitats Regulations.
- 6.1.2. This Chapter is structured as follows:
- Section 6.2 sets out our findings in relation to likely significant effects (LSE) on the UK National Site Network (NSN) and other European sites;
 - Section 6.3 addresses the conservation objectives for sites and features;
 - Section 6.4 sets out our findings in relation to adverse effects on integrity (AEoI); and
 - Section 6.5 sets out our HRA conclusions.
- 6.1.3. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s)⁶ and no reasonable scientific doubt remains⁷.
- 6.1.4. Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 3 of this Report.
- 6.1.5. We have been mindful throughout the Examination of the need to ensure that the SoSESNZ has such information as may reasonably be required to carry out their duties as the competent authority. We have sought evidence from the Applicant and the relevant Interested Parties (IPs),

⁶ 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.

⁷ 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

including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and Issue Specific Hearings (ISH).

Report on the Implications for European Sites and Consultation

- 6.1.6. We produced the Report on the Implications for European Sites (RIES) [PD-014] which compiled, documented, and signposted HRA-relevant information provided in the Development Consent Order (DCO) application and Examination representations up to Deadline (D)6 (20 March 2023). The RIES was issued to set out our understanding on HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time. It aimed to identify and close any gaps in our understanding of IPs' positions.
- 6.1.7. Consultation on the RIES took place between 6 April 2023 and 28 April 2023. Comments were received from the Applicant [REP8-021], the Environment Agency (EA) [REP8-034], Natural England (NE) [REP8-036] and one other IP (Amy-Louise Ogman) [REP8-028] at D8 (28 April 2023). These comments have been taken into account in the drafting of this Chapter.
- 6.1.8. Our recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations, should the SoS wish to do so.

Proposed Development Description and HRA Implications

- 6.1.9. The Proposed Development is described in Chapter 2 of this Report. The spatial relationship between the Order Limits of the Proposed Development and European sites is shown in Figure 4 of the Report to Inform HRA [APP-043] and subsequent iterations.
- 6.1.10. The Proposed Development is not directly connected with, or necessary to, the management of a European site. As described below, LSE on European sites have been identified. Therefore, the SoS for ESNZ must make an 'appropriate assessment' (AA) of the implications of the Proposed Development on potentially affected European sites in light of their conservation objectives.
- 6.1.11. The Applicant's assessment of effects was initially reported in the Report to Inform HRA [APP-043]. Updated versions were submitted during the Examination, in response to our advice and comments from IPs [REP2-019, AS-015, AS-016, REP6-014, REP6-015, AS-023 and AS-024].
- 6.1.12. This Report will refer to two iterations of the report, as described below:

- the original Report to Inform HRA [APP-043] subsequently replaced by [REP2-019] to incorporate minor amendments, including insertion of HRA Screening and Integrity Matrices at Appendix 1 (the 'Original Report to Inform HRA') (we will use EL reference [REP2-019]; and
- the Report to Inform HRA [REP6-014] subsequently replaced by [AS-023] (accepted as an additional submission), including the Applicant's revised air quality modelling based on the reasonable operating case (ROC) and amended conclusions on LSE from operational emissions to air (the 'ROC Report to Inform HRA') (we will use EL reference [AS-023]).

6.1.13. The HRA is informed by information in Environmental Statement (ES) Volume 6, including:

- Chapter 5 Air Quality [APP-053], subsequently replaced by [REP9-011] and Appendix B Site Specific Critical Loads [REP2-041];
- Chapter 9 Water Resources [APP-057], subsequently replaced by [REP6-020];
- Chapter 10 Ecology and Nature Conservation [APP-058], subsequently replaced by [AS-026];
- Chapter 13 Traffic and Transport [APP-061], subsequently replaced by [REP2-021]; and
- Chapter 18 Cumulative Assessment [APP-066], subsequently replaced by [REP9-016].

6.1.14. At D4, the Applicant submitted a revised draft Development Consent Order (dDCO) [REP4-004], which inserted reference to works relating to trade effluent treatment and a second visual barrier into Work No.1, and a domestic flow treatment plant in Work No. 2, Schedule 1 Authorised Development. The Applicant subsequently removed the addition of the domestic flow treatment plant from the dDCO submitted at D5 [REP5-006]. This matter is described fully at Sections 1.4 and 2.1 of this Report.

6.1.15. We considered whether the proposed changes should have been subject to a change request from the Applicant and concluded that they have not resulted in significant change to that which was applied for. We are satisfied that the Report to Inform HRA [REP2-019, AS-023] adequately reflects the components of the Proposed Development.

Transboundary effects

6.1.16. The Applicant did not identify any LSE on European sites in European Economic Area (EEA) States in its Original Report to Inform HRA [REP2-019]. This was unchanged in the ROC Report to Inform HRA [AS-023]. Only European sites which form part of the United Kingdom (UK) NSN are addressed in this Report. No potential transboundary impacts were raised for discussion by any IPs during the Examination.

Summary of HRA matters considered during the Examination

- 6.1.17. The main HRA matters raised by us and NE and discussed during the Examination included:
- Emissions to air (oxides of nitrogen (NO_x), ammonia (NH₃), nutrient nitrogen deposition and acid deposition) during operation:
 - in the Original Report to Inform HRA, based on air quality modelling described in ES Chapter 5 [APP-053], the Applicant could not exclude LSE from the Proposed Development alone to the Humber Estuary SAC and Ramsar site, and from the Proposed Development in-combination with Keadby 2 and 3 to the three Humber Estuary sites, Thorne and Hatfield Moors SPA and Thorne Moor SAC; and
 - in the ROC Report to Inform HRA, based on the ROC modelling described in Appendix 1 of [AS-023], the Applicant excluded LSE to the Humber Estuary SPA, Thorne and Hatfield Moors SPA and Thorne Moor SAC but could not exclude LSE from the Proposed Development in combination with Keadby 2 and 3 developments to the Humber Estuary SAC and Ramsar site.
 - Traffic emissions during construction and operation to the Humber Estuary SAC, SPA and Ramsar.
 - Potential disturbance to the migration route of the river lamprey and sea lamprey qualifying features of the Humber Estuary SAC and Ramsar site from noise and vibration arising from piling activity and vessel movements.
 - Dust emissions during construction to the Humber Estuary SAC and Ramsar site.
 - Noise, vibration and visual disturbance during construction and operation to the Humber Estuary Ramsar and to functionally linked land (FLL) associated with the Humber Estuary SPA and Ramsar.
 - Loss of FLL associated with the Humber Estuary SPA and Ramsar during construction.
 - Recreational disturbance to the Humber Estuary SPA and Ramsar during operation.

- 6.1.18. These matters are discussed in the sections below, as appropriate.

6.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

- 6.2.1. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an AA and the activities, sites or plans and projects to be included for further consideration in the AA.
- 6.2.2. The original Report to Inform HRA [REP2-019] described the selection process undertaken to identify European sites and qualifying features

that could be affected by the Proposed Development. This was unchanged in the ROC Report to Inform HRA [AS-023].

- 6.2.3. Section 3 of the ROC Report to Inform HRA [AS-023] describes the screening methodology for the operational emissions to air impact pathway. Atmospheric modelling was used to predict short and long-term process contributions (PC) and predicted environmental contributions (PEC) of the Proposed Development against critical level and loads set out in guidance published by Department for Environment, Food and Rural Affairs (DEFRA) and the EA. Table 3 of [AS-023] presents the threshold at which a contribution cannot be considered as insignificant. European sites within 15km of the main emission source at the Energy Recovery Facility (ERF) stack were considered in the air quality modelling based on DEFRA/ EA guidance for some large emitters⁸.
- 6.2.4. Section 4 of the ROC Report to Inform HRA [AS-023] describes the broad selection process for other potential impact pathways. For construction dust and water quality impacts, it is informed by guidance used in the aspect specific assessments in the ES (ie ES Chapter 5 [REP9-011] and ES Chapter 9 [REP6-020]). The Applicant does not provide a quantitative screening methodology for the other impact pathways considered but draws conclusions based on the potential for birds to be present and/ or affected, based on its survey data.
- 6.2.5. The European sites and qualifying features that were considered in the Applicant's assessments of LSEs are presented in Tables A.1 to A.4 of Annex 1 of the RIES [PD-014]. The sites were:
- Hatfield Moor SAC;
 - Humber Estuary SAC;
 - Humber Estuary SPA;
 - Humber Estuary Ramsar site;
 - Thorne Moor SAC; and
 - Thorne and Hatfield Moors SPA.
- 6.2.6. NE (Q2.1.1 in [REP8-036]) confirmed that all relevant European sites had been identified, and that the correct features were listed in Table 4 of in the ROC Report to Inform HRA [AS-023].

Likely Significant Effects from the Proposed Development Alone

- 6.2.7. The impact pathways originally screened by the Applicant [REP2-019] for LSE were:
- emissions to air (operation)⁹;

⁸ Defra and EA, 'Air Emissions Risk Assessment for your Environmental Permit', (as updated on 7 October 2020)

⁹ The qualifying interest features considered to be sensitive to nitrogen or acidity are detailed in Table 5 of the Original Report to Inform HRA [REP2-019]. These were unchanged in the ROC Report to Inform HRA [AS-023].

- disturbance or displacement of qualifying bird features (construction, operation and decommissioning);
- disturbance or displacement of qualifying bird features using FLL (construction, operation and decommissioning);
- recreational disturbance of qualifying bird features (construction, operation and decommissioning);
- changes to water quality (construction, operation and decommissioning); and
- changes to air quality (dust) (construction and decommissioning).

- 6.2.8. The Applicant [AS-023] considered that all potential impacts during the decommissioning phase would be similar in approach and scale to those in the construction phase and applied its assessment of construction effects to the decommissioning phase.
- 6.2.9. Hatfield Moor SAC is located just beyond 15km from the main ERF stack but it was screened for operational emissions to air. The Applicant [AS-023] subsequently screened out Hatfield Moor SAC on the basis that its updated air quality modelling (ES Chapter 5 [REP9-011]) showed there would be no potential for LSE beyond 15km. In response to our ExQ1 (Q5.0.2 in [PD-007]), NE confirmed [REP2-100] that it was satisfied with the Applicant's approach and agreed that LSE could be screened out for the Hatfield Moor SAC.
- 6.2.10. Thorne Moor SAC and Thorne and Hatfield Moors SPA were also screened for operational emissions to air. As evidenced in Tables 6 to 11, and Appendix 1, HRA Screening Matrices 4 and 5 of the Original Report to Inform HRA [REP2-019], the PCs for all pollutants assessed did not exceed 1% of the critical load screening threshold (or 10% for NO_x 24 hour) from the Proposed Development alone and therefore these sites were screened out of the assessment. NE [RR-090] agreed that LSE from the Proposed Development alone could be excluded for these sites.
- 6.2.11. We agree that there would be no LSEs from the Proposed Development alone to Hatfield Moor SAC, Thorne Moor SAC and Thorne and Hatfield Moors SPA can be excluded, based on the information provided.
- 6.2.12. In the Original Report to Inform HRA [REP2-019], the Applicant identified the potential for LSE impacts from the Proposed Development alone on three European sites: Humber Estuary SAC, SPA and Ramsar site. However, the Applicant discounted the possibility of LSE for several qualifying features of the Humber Estuary SAC and Ramsar site on the basis that they comprise coastal and/ or marine features that do not occur within 15km of the Proposed Development, and in many instances are located at least 45 kilometres (km) away. These qualifying features are identified in Tables A.1 and A.3 of Annex 1 to the RIES [PD-014]. NE [RR-090, REP4-021, REP8-036] did not dispute the Applicant's approach.
- 6.2.13. Based on the information provided, we agree that LSEs from the Proposed Development alone can be excluded in relation to the coastal and/ or marine features of the Humber Estuary SAC/SPA/Ramsar site.

- 6.2.14. The Applicant initially identified LSE on the Humber Estuary SAC and Ramsar site from air quality effects and screened these effects into its assessment of adverse effects on integrity (AEoI). However, NE raised concerns about the Applicant's conclusions on AEoI, which led the Applicant to undertake additional air quality modelling. The Applicant concluded that the additional air quality modelling supported a conclusion of no LSE on the Humber Estuary SAC and Ramsar sites (see below for a more detailed discussion of this issue).
- 6.2.15. During the Examination, NE [RR-090, REP2-100] and we (Q5.1.5 of [PD-007]) raised concerns about the potential for additional LSE from:
- construction and operational phase traffic emissions (Humber Estuary SAC, SPA and Ramsar site);
 - noise and vibration from construction activities, including bored and impact piling, and vessel movements, on river and sea lamprey (Humber Estuary SAC and Ramsar site); and
 - loss of functionally linked land (FLL) (Humber Estuary SPA and Ramsar site).
- 6.2.16. NE [RR-090, REP2-100] also disputed the Applicant's conclusions to screen out LSEs in respect of:
- disturbance or displacement of qualifying bird features of the Humber Estuary Ramsar site (except mallard) during construction and operation;
 - disturbance or displacement of qualifying bird features using FLL of the Humber Estuary SPA and Ramsar site (except mallard) during construction and operation; and
 - recreational disturbance of qualifying bird features of the Humber Estuary SPA and Ramsar site during operation.
- 6.2.17. We sought to clarify screening conclusions and positions of the Applicant and NE during the Examination, including through questions raised in Table 2.3 of the RIES [PD-014]. The Applicant's ROC Report to Inform HRA [AS-023] provided additional information to support its LSE conclusions. Where there were differences of position relating to the screening stage, these are discussed below.
- 6.2.18. The European sites and qualifying features identified for LSEs have been included in Table 6.1 of this Report, against the relevant impact pathways.

Humber Estuary SAC and Ramsar site – operational emissions to air

- 6.2.19. The Applicant's approach to air quality modelling and assessment is described in paragraphs 2.5.4 to 2.5.23 of the RIES [PD-014]. The Original Report to Inform HRA [REP2-019] screened in LSE from the Proposed Development alone for the following pollutants:
- Table 6 – NO_x (24 hour): paragraph 4.4.2.4 states that for 24 hour NO_x, the PC is >10% of the critical level;

- Table 7 – NH₃: paragraph 4.4.3.3 states that levels exceeded the PC threshold of 1% and the PEC threshold of 70%; and
- Table 10 – nitrogen deposition: paragraph 4.4.6.1 states that the PC exceeds 1% of critical load and the PEC exceeds the 70% thresholds for Atlantic salt meadow and estuary habitat types.

- 6.2.20. NE [RR-090] raised concerns regarding potential AEOI of the Humber Estuary SAC and Ramsar site from NH₃ emissions and nitrogen deposition from operation of the Proposed Development alone. In response, the Applicant [REP2-034, REP4-021, REP4-028] stated that its assessment was precautionary as it included a number of worst case assumptions and that the actual impacts would be substantially lower than those reported in the ES. The Applicant [REP4-021] committed to achieving specific levels for NH₃ whilst also proposing to undertake revised modelling based on the ROC parameters for nitrogen deposition. NE [REP4-021] stated that it welcomed an opportunity to review any proposals from the Applicant to reduce NH₃ emissions but that use of any measures would have to be secured in the DCO, as the HRA could not rely on a mechanism which has not yet been secured, such as the Environmental Permit (EP). An EP application has not yet been submitted by the Applicant and the latest status as reported in [REP6-012] is *"...early initial discussion have been held but the formal process has not been initiated."*
- 6.2.21. We (Q2.5.1.2 in [PD-012]) sought clarification from the Applicant about its proposed approach, how any parameters in the ROC modelling could be secured and the weight to be given to submissions regarding NH₃ operating levels in advance of an EP application.
- 6.2.22. The Applicant (Q2.5.1.2 in [REP6-032]) responded that [REP2-019] had assessed air quality impacts using several worst case scenarios, which represented an unrealistic worst case when considered together. The Applicant stated that to address this, it had modelled the ROC, which it described as a more realistic and likely prediction of impacts representing the environmental performance of the Proposed Development averaged over a typical year. It stated that it would not be appropriate to secure any one parameter of the ROC, as at any one time one parameter might exceed the value used in the ROC whilst another might be below the value. The Applicant stated that the we could attach considerable weight to the ROC *"when looked at in the round."*
- 6.2.23. In relation to the emission values for NH₃, the Applicant (Q2.5.1.2 in [REP6-032]) responded that the ROC modelling was based on EA annual ERF performance data, 2021 Incineration Monitoring Reports, which it had extrapolated for NO_x and NH₃ emissions to meet upcoming BREF¹⁰ limits. The Applicant considered that BREF limits are likely to be what the EA expects the Proposed Development to perform to (as part of the EP), and that reasonable weight can therefore be attached to them.

¹⁰ BREF refers to EU Best Available Techniques Reference Documents (see Acronyms and Abbreviations in [REP2-019, AS-023])

- 6.2.24. We (Q2.5.2 in [PD-014]) asked the EA to comment on whether it considers the use of ERF performance data is a reasonable proxy for the expected emissions' limits for NO_x and NH₃ to be established through a future EP. The EA (Q5.1.3 in [REP8-034]) advised that when permitting any EfW facility, it would ensure Best Available Techniques (BAT) are used. It confirmed that there are BAT Associated Emissions Limits for NO_x that must be met as a minimum requirement but for NH₃, it would expect the Applicant to propose a limit that is justified as BAT in the context of predicted impacts. The EA advised that it could not make any comment at this stage, ie prior to any EP determination process, as it could be considered pre-determination, and referred to paragraph 4.10.3 of the Overarching Energy National Policy Statement (NPS EN-1), which states that it should be assumed that the environmental regulatory regime will be properly applied and enforced.
- 6.2.25. We (Q6.0.2 in [PD-015]) asked the EA whether there were any impediments that may stand in the way of granting an EP. The EA [REP8-034] advised that the *"...type and nature of the project is such that it should be capable of being adequately regulated under the Environmental Permitting regime, and it is not currently aware of anything that would preclude the grant...[but] its view could change depending on... the permit application when this is received."*
- 6.2.26. The Applicant undertook revised assessment using the ROC and presented the results in the ROC Report to Inform HRA [AS-023]. The below updates were made to the conclusions for pollutants that had been shown to exceed critical levels from the Proposed Development alone in the Original Report to Inform HRA [REP2-019], resulting in the Applicant concluding that LSE could be screened out for the Humber Estuary SAC and Ramsar site:
- Table 6 – NO_x (24 hour): paragraph 4.4.2.5 states that for 24 hour NO_x, the PC is <10% of the critical level (at 8.8%);
 - Table 7 – NH₃: paragraph 4.4.3.3 states that the PC is <1% of the critical level (at 0.65%); and
 - Table 10 – nitrogen deposition: paragraph 4.4.6.1 states that the PC is <1% of critical level for Atlantic salt meadow and estuary habitat types (at 0.96%).
- 6.2.27. Appendix 1 of [AS-023] set out the ROC parameters used and confirmed that the modelling continued to use worst case meteorological data. The ROC parameters included:
- Emissions of hydrogen chloride (HCl), NO_x, SO₂ and NH₃ amended from BREF emissions' limits to likely actual emissions, based on EA annual ERF performance data. Appendix 1, Table 2.1 of [AS-023] presents a comparison of the emissions for each pollutant between the original modelling in ES Chapter 5 [REP4-009] and [AS-023] modelling. Some values (NO_x) have not changed but others (SO₂, NH₃ and HCl) have significantly reduced in the ROC parameters.
 - Operating hours reduced from 24 hours per day all year at full load to 8,000 hours per annum at full load.

- A modal split of 50% of material movements by road (confirmed by the Applicant in (Q2.5.5 in [REP8-021]) and the remainder by vessel and rail, as follows:
 - 24% of operational material movements by vessel, equating to 290 ships per year, with ships on the wharf for 9 hours per day and engines running at 30% of full power; and
 - RDF and aggregate delivery trains, assuming one train per day, class 66 locomotive.
- Road traffic modelling to include reduction in impacts arising from removal of the existing Flixborough Industrial Estate access road with the proposed new access road in use, and a reasonable case traffic scenario, ie proportion of road movements reduced reflecting those by ship and rail.

6.2.28. The Applicant [AS-023] also used a revised standard for NO_x in the ROC modelling, comprising short term NO_x emissions considered against a standard of 200 µg m³ instead of a daily NO_x (24 hours) against a standard of 75 µg m³. The Applicant stated that this is consistent with Institute of Air Quality Management (IAQM) guidance¹¹, and more appropriate because of existing lower levels of SO₂ concentration in the UK. We (Q2.5.9 in [PD-014]) sought further clarification from the Applicant as to why this approach was appropriate given the standard originally used represents the critical level in Air Pollution Information System (APIS). We also asked NE (Q2.5.10 in [PD-014]) to comment on the revised approach. The Applicant [REP8-021] reiterated its original explanation by reference to WHO guidelines, which state *"experimental evidence exists that the CLE decreases from around 200 µg m³ to 75 µg m³ when in-combination with O₃ or SO₂ at or above their critical levels... If a regulator does require the use of the short term NO_x critical level, given the low UK SO₂ concentrations IAQM consider it is most appropriate to use 200 µg m³ as the short term critical load."* NE [REP8-036] confirmed that it had reached its decision on NO_x based on the annual emission period, which provides for a more accurate consideration of potential for long term impacts, ie it did not consider the short term standard.

6.2.29. We sought further explanation from the Applicant as to the suitability of the ROC modelling to inform the HRA and implications if any of the parameters were secured in the DCO (see Q2.5.4 and Q2.5.6 in [PD-014]). The Applicant [REP8-021] stated in the ISH that it was agreed with NE that the ROC modelling would be for illustrative purposes and designed to inform NE about likely impacts due to the sizeable difference between the reasonable worst case presented in the ES and the ROC, *"...particularly the difference between the [stack] emissions' limits in the environmental permit and actual emissions from the ERF."* The Applicant stated that the ROC was not designed to secure any conditions and that the Proposed Development would *"...require a degree of headroom in emissions limits to avoid exceeding these within normal fluctuations of*

¹¹ IAQM, A Guide to the Assessment of Air Quality Impacts on Designated Nature Conservation Sites, version 1.1 (May 2020)

plant operations.” The Applicant explained that securing the emissions’ limits and/ or the modal split would unduly constrain the Proposed Development and risk non-compliance with emissions’ limits, which would be secured within the EP. The Applicant noted that the HRA will be updated and agreed with NE as part of the EP application.

- 6.2.30. We (Q2.5.6 in [PD-014]) asked the Applicant to explain why the ES had not been updated based on the ROC modelling, noting that the dDCO [REP10-004] limits effects by reference to the ES. The Applicant [REP8-021] confirmed it would provide an updated ES Chapter 10. This was submitted as [AS-026], incorporating the results in Appendix A: Effects of Air Quality on European, Nationally and Locally Designated Sites.
- 6.2.31. We (Q2.5.7 in [PD-014]) asked NE to comment on the acceptability of the ROC modelling as a basis for assessment and identification of LSEs, given that the Applicant did not propose to secure parameters in the DCO. NE [REP8-036] advised that it agreed with the Applicant that use of the ROC modelling to undertake HRA was suitable, noting that the ERF technology would be secured. NE noted that other parameters, such as operating hours, are not proposed to be secured but considered that these matters could be set through the EP, which would also be subject to HRA. NE explained its concern about the modelling on the worst-case emissions’ scenario in the Original Report to Inform HRA [REP2-019], which was that it did not provide sufficient evidence to conclude that a scenario existed where there would be no AEoI. NE stated that relying on this being demonstrated through an EP would have been inappropriate. NE was now *“...satisfied that the [ROC] modelling has been undertaken using the best available information to demonstrate no AEoI.”* NE advised that the HRA submitted for the DCO application should be considered in the EP HRA.
- 6.2.32. We are content that LSEs from SO₂, hydrogen fluoride (HF) and acid deposition can be screened out in the worst case operating scenario, as the PC was <1% of the critical level (and <10% of the critical level for HF), as described in in the Original Report to Inform HRA [REP2-019].
- 6.2.33. We are also content that LSEs from NO_x can be screened out, as NE has confirmed that the annual emission period provides for a more accurate consideration of potential for long term impacts to the qualifying features of the European sites, and the Original Report to Inform HRA [REP2-019] reported that the PEC for NO_x annual mean was below the threshold of 70% of the critical level.
- 6.2.34. We are satisfied that the revised air quality modelling in the ROC Report to Inform HRA [AS-023] demonstrates that there is at least one scenario in which the Proposed Development can operate without LSEs from NH₃ and nitrogen deposition to the relevant qualifying features of the Humber Estuary SAC and Ramsar site.
- 6.2.35. We acknowledge that the Applicant and NE [REP10-010] agree that the ROC modelling is an acceptable basis for assessment and identification of LSEs from NH₃ and nitrogen deposition and have set out their views on

why the ROC parameters do not need to be further secured in the DCO. However, we remain concerned that, as currently drafted, the dDCO [REP10-004], would authorise development capable of operating on the basis of the worst case scenario reported in [REP2-019].

6.2.36. During our further questioning, the Applicant [REP6-032, REP8-021] maintained its position that the ROC modelling parameters did not need to be secured in the DCO and sought authorisation for operation of the Proposed Development in line with the original air quality modelling in [REP2-019]. Both the Applicant and NE pointed out that stack emissions would be further assessed as part of the EP application, which would be subject to a separate HRA. However, NE [REP4-021] had also previously advised that use of any measures to reduce emissions would have to be secured in the DCO as the HRA could not rely on a mechanism that has not yet been secured. Whilst the EA has advised that it is not currently aware of anything that would prevent grant of an EP, it caveated that this view could change, and we note that the EA has not had the benefit of reviewing detailed information that would support an EP application. We also note that transport emissions associated with material movements would not be considered as part of the EP, or any other consenting process.

6.2.37. As the Applicant did not wish to secure any of the ROC modelling parameters in the DCO, we have reached our conclusion on LSEs from operational emissions to air based on the original air quality modelling in [REP2-019]. We are of the view that LSEs to the Humber Estuary SAC and Ramsar site from NH₃ and nitrogen deposition from the Proposed Development alone cannot be excluded, as the PC for each pollutant exceeds 1% of critical load and the PEC exceeds the 70% threshold.

Humber Estuary Ramsar site – noise, vibration and visual disturbance effects to bird qualifying features

6.2.38. As described at ID2.1.7 and ID2.1.10 of Table 2.3 in the RIES [PD-014], the Original Report to Inform HRA [REP2-019] screened out an LSE from disturbance to the Humber Estuary Ramsar site, aside from mallard (as part of the waterbird assemblage, Criterion 5).

6.2.39. NE [RR-090] did not agree with the Applicant's conclusion that there would be no LSE because of low numbers of qualifying feature bird species. It requested:

- an assessment of noise impacts from construction works such as piling;
- assessment of visual disturbance during operation;
- information on disturbance from traffic and human presence on wintering birds; and
- reinstatement of a Construction Ornithological Management Plan (COMP).

Construction and decommissioning phases – noise and vibration

- 6.2.40. The Applicant stated [REP4-021] that bored piling would not result in significant vibration effects and that construction noise levels are expected to be consistent as construction work would not involve impact piling¹². It stated that construction noise levels along the River Trent would be approximately 50dB (decibel) $L_{Aeq, 12hr}$ which is unlikely to result in significant effects on birds. In the Applicant's view, some elevated noise levels may be experienced from specific activities eg breaking of concrete, but it stated that use of hoardings would reduce noise levels.
- 6.2.41. At D5, the Applicant acknowledged the potential for impact piling to be undertaken for short durations [REP5-001, REP5-021]. The Outline Piling and Foundation Works Management Plan (OPFWMP) (Appendix K of the Code of Construction Practice (CoCP) [REP5-021]) was revised to require the Construction Environmental Management Plan (CEMP) to set out procedures and restrictions if impact piling is required with input from NE.
- 6.2.42. In its revised Report to Inform HRA [REP6-014] submitted at D6, the Applicant stated that 55dB could be used as a reference threshold level for noise effects of bored piling based on published reviews for coastal bird species, which state that noise of less than 55dB is a low level disturbance stimulus unlikely to cause a response in wetland bird species in intertidal areas¹³. [REP6-014] incorporated a summary of the background noise levels based on data collected for the ES and the predicted distances for unmitigated construction noise to reduce to 55dBL $_{Aeq, 12hr}$ to demonstrate that noise levels above this threshold are likely to be restricted to areas within approximately 500 metres (m) of the Proposed Development. [REP6-014] included bird survey information to support the Applicant's conclusion that only wintering mallard of the waterbird assemblage criterion were present in numbers of >1% of the population in areas where predicted noise levels are more than 55dBL $_{Aeq, 12hr}$. Noise effects from impact piling were not assessed.
- 6.2.43. NE (Q2.5.1.6 in [REP6-041]) confirmed that noise impacts of bored and impact piling should be assessed and noted that the latter was of more significant concern for birds because it involves loud bangs that are more disturbing than continuous noise. Amy-Louise Ogman [REP8-028] queried what piling method the Applicant was proposing to use and why no clear assessment had been undertaken for either type of piling.
- 6.2.44. The Applicant [AS-023] subsequently submitted an updated ROC Report to Inform HRA, which included an assessment of impact piling and

¹² The Applicant and NE variously refer to percussive piling, impact piling and driven piling. We understand these terms to be interchangeable in the context of the Applicant's assessment of this type of piling method and for consistency have referred to impact piling within this Report.

¹³ Cutts N, Hemingway K and Spencer J (2013), *Waterbird Disturbance Toolkit informing Estuarine Planning and Construction Projects* (Version 3.2), University of Hull

identified LSE on the waterbird assemblage qualifying feature from piling during construction.

- 6.2.45. We agree with the Applicant's conclusion of an LSE from construction noise and vibration to mallard of the waterbird assemblage qualifying feature of the Humber Estuary Ramsar site and have considered this matter for AEoI.

Operational phase - noise

- 6.2.46. The Applicant stated [REP4-021] that noise levels during operation would only exceed the 55dB $L_{Aeq, 12hr}$ threshold for significant effects in areas adjacent to the Proposed Development, where qualifying features would not be present.
- 6.2.47. NE [REP10-010] agreed with the Applicant's conclusion that noise levels are not predicted to be at a significant level during operation.
- 6.2.48. We agree that LSEs on bird qualifying features from noise disturbance during operation can be screened out based on information provided in the Applicant's Report to Inform HRA [REP2-019, AS-023]. Information within the ROC Report to Inform HRA clarified that operational noise levels would not exceed 55dB $L_{Aeq, 12hr}$ where qualifying features are present, based on bird records from survey data; this information did not rely on the ROC parameters and we are therefore content that it can be used to inform the conclusion on LSEs.

Construction, operational and decommissioning phases – visual disturbance

- 6.2.49. As described in ID2.1.7 and ID2.1.10 of Table 2.3 in the RIES [PD-014], the Original Report to Inform HRA [REP2-019] screened out an LSE to all qualifying bird species from visual and recreational disturbance.
- 6.2.50. In response to a request for information from NE [RR-090], the Applicant [REP4-021, REP4-028] confirmed that the existing embankments along the Humber Estuary and River Trent are 2-3m high, which would provide screening to birds including from operational activities and users of the new visitor centre. It stated [REP4-021] that the Indicative Lighting Strategy [APP-071] avoids light spill onto the River Trent. In [AS-023], the Applicant confirmed that the lighting strategy is an integral part of the project design and that the proposed visitor centre and wetland area are in places where no birds were recorded.
- 6.2.51. NE [REP10-010] agreed with the Applicant's conclusion of no LSE from visual and recreational disturbance.
- 6.2.52. We agree that LSEs on bird qualifying features of the Humber Estuary Ramsar site from visual and recreational disturbance can be screened out based on the information in the Applicant's Report to Inform HRA [REP2-019, AS-023]. Information in the ROC Report to Inform HRA clarified that the existing embankments along the River Trent would provide screening for visual disturbance to support the Applicant's conclusion of no LSEs;

this information did not rely on the ROC parameters and we are therefore content that it can be used to inform the conclusion on LSEs.

Humber Estuary SPA and Ramsar site – noise, vibration and visual disturbance effects on FLL used by bird qualifying features (construction, operation and decommissioning)

- 6.2.53. As described at ID2.1.9 of Table 2.3 in the RIES [PD-014], the Original Report to Inform HRA [REP2-019] screened out an LSE from disturbance to bird features of the Humber Estuary SPA using FLL, except for mallard of the waterbird assemblage. It did not assess this impact pathway on the Humber Estuary Ramsar site. NE [RR-090] requested further impact assessment for the Humber Estuary SPA and Ramsar site at AA stage.
- 6.2.54. The Applicant [REP4-021] stated that few birds associated with the FLL were recorded and the majority were some distance from the Proposed Development or in areas where there would not be a significant risk of disturbance. It stated that bored piling would be barely perceptible even 10-15m from the source.
- 6.2.55. As described above (under noise, vibration and visual effects to the Humber Estuary Ramsar site), at D5 the Applicant acknowledged that impact piling might be required and we (Q2.5.1.6 in PD-012]) sought clarification from the Applicant as to how the assessment considered use of this method. We also requested confirmation from NE as to whether it was content with the Applicant's proposed mitigation in Appendix K of the CoCP [REP5-020].
- 6.2.56. NE (Q2.5.1.6 in [REP6-041]) requested further information about impacts from bored and impact piling, and proposed mitigation measures, and lighting and operational noise. Amy-Louise Ogman [REP8-028] also expressed concern about effects to birds using FLL, stating that species would appear to be affected by noise, vibration and light disturbance.
- 6.2.57. The Applicant's ROC Report to Inform HRA [AS-023] incorporated additional assessment, including further information about bird records and the extent of FLL within and adjacent to the Proposed Development. We summarise the information provided by the Applicant under the loss of FLL pathway considered in Section 6.2 of this Report. The Applicant (Q2.1.8 in [REP8-021] confirmed that the assessment considered bird qualifying features of both the Humber Estuary SPA and Ramsar site.
- 6.2.58. The Applicant's conclusion regarding LSE was unchanged, ie LSE are screened out for this impact pathway aside from mallard of the waterbird assemblage. The final SoCG with NE [REP10-010] shows that, following the provision of the additional information, NE agreed with the Applicant's conclusions.
- 6.2.59. At ISH4, we asked the Applicant to explain the relationship between defined operational land under Article 43 of the dDCO [REP6-004] and the location of FLL. We were concerned about potential for noise from operational activities carried out under permitted development rights,

which had not been considered in the assessment, to occur on FLL. The Applicant (Item 14 of [REP6-034]) confirmed that it intended to exclude Work Nos. 12 and 12A, which cover the area of FLL located to the west of the proposed new access road, from the definition of operational land. The dDCO [REP10-004] submitted at D10 excluded Work Nos. 12 and 12A from the definition of operational land in Article 44.

- 6.2.60. We agree with the Applicant's conclusions of an LSE from construction noise to FLL used by mallard of the waterbird assemblage qualifying feature of the Humber Estuary SPA and Ramsar site. We agree that LSEs to other qualifying features and from other impact pathways, including visual disturbance and operational noise, can be excluded based on the Applicant's Report to Inform HRA [REP2-019, AS-023]. Information in the ROC Report to Inform HRA included clarified where qualifying features are present, based on bird records from survey data, confirmed predicted noise levels and that the existing embankments would provide screening for visual disturbance to support the Applicant's conclusion of no LSEs; this information did not rely on the ROC parameters and we are therefore content that it can be used to inform the conclusion on LSEs.

Humber Estuary SAC and Ramsar site – construction and decommissioning phase changes to air quality (dust)

- 6.2.61. The Applicant [AS-023] screened in LSE for "*areas of upper saltmarsh of reedbed along the River Trent*", which we understood to mean the qualifying features of the Humber Estuary SAC and Ramsar site identified at ID2.1.3 in Table 2.3 of the RIES [PD-014]. We (Q2.1.3 in [PD-014]) sought clarification from NE that it was satisfied the Applicant had screened in the correct qualifying features. NE [REP8-036] confirmed that these were the correct qualifying features for dust impacts.
- 6.2.62. We agree with the conclusion of an LSE from construction dust to the identified qualifying features of the European sites.

Humber Estuary SAC, SPA and Ramsar site – construction and operational phase traffic emissions

- 6.2.63. As described in ID2.1.1 and ID2.1.2 of Table 2.3 in the RIES [PD-014], the Applicant [REP2-019] screened out an LSE from construction phase traffic emissions and did not assess potential impacts of operational phase traffic emissions. NE [RR-090] queried whether the thresholds in its guidance document NEA001 had been adhered to and if NH₃ from vehicle exhaust emissions should be considered.
- 6.2.64. The Applicant (Q2.5.1.5 in [REP4-021]) confirmed that the existing access road to the Flixborough Industrial Estate (which is within 100m of the European sites) would be stopped up and a new access road would be located 200m to the east of the European sites for the entirety of its length. The location of the new access road in relation to the River Trent is shown on the Indicative Highways' Drawings [REP3-008].
- 6.2.65. NE (Q2.5.1.4 and Q2.5.1.4 in [REP6-041]) stated that these impact pathways could be screened out for LSEs on that basis but requested an

updated HRA confirming that there would be no vehicle movements within 200m of the European sites.

6.2.66. The ROC Report to Inform HRA [AS-023] included confirmation that a new access road would be constructed that is more than 200m from the European sites and, in accordance with NE's guidance, roads at such a distance do not present "*...a credible risk of a significant effects which might undermine a site's conservation objectives.*"

6.2.67. We agree that LSE from construction and operational phase traffic emissions can be excluded on the basis that vehicle movements will be more than 200m from the European sites, and note that construction of the new access road to base course level prior to commencement of the energy park works is secured through R14 of the dDCO [REP10-004].

Humber Estuary SAC and Ramsar site – noise and vibration impacts to river and sea lamprey

Bored and impact piling (construction and decommissioning)

6.2.68. As described in ID2.1.4 of Table 2.3 in the RIES [PD-014], the Applicant [REP2-019] did not assess noise and vibration impacts on migrating river and sea lamprey from construction activities. NE [RR-090] advised that the potential impact for disturbance due to maximum noise levels should be considered. It noted (Q5.1.9 in [REP2-100]) that bored piling at the River Trent could have potential impacts on development, physiology and behaviour including disruption to migration routes.

6.2.69. The Applicant (Q5.1.5 of [REP2-033]) confirmed that there would be no piling in the River Trent and hence considered there would be no effects on lamprey species. It stated that piling on land would be bored and barely perceptible even at 10-20m away from the source.

6.2.70. Discussions on this matter continued between the Applicant and NE, and at D4 an updated draft SoCG with NE was submitted by the Applicant [REP4-021]. NE maintained that an assessment should be provided, whilst the Applicant provided further information about potential effects stating that there is no specific information about effects of piling on lamprey species. Referring to thresholds for human receptors in BS5228, it noted that the threshold for perception is between 0.14 millimetres (mm)⁻¹ (just perceptible in most sensitive situations) and 0.3mm⁻¹ (just perceptible in a residential environment). The Applicant described measurements taken close to bored piling activities on a Docklands Light Railway project in London, which recorded vibration levels of between 0.4 and 1.4mm per second at 3m. The Applicant stated that, using the BS5228 method, the highest vibration measurement is estimated to reduce to 0.14mm per second at 20m and the nearest building to be piled is >40m from the River Trent. It referenced technical guidance from

the California Department of Transportation¹⁴, which described benefits of undertaking piling on land to avoid effects on fish in water.

- 6.2.71. At D5, the Applicant acknowledged the potential for impact piling to be undertaken for short durations [REP5-001, REP5-021]. It did not comment on the potential implications for lamprey species.
- 6.2.72. NE (Q2.5.1.6 in [REP6-041] advised that an updated HRA was required and that noise impacts of impact piling should be assessed where it may be required, in addition to bored piling. It advised that the assessment should include predicted construction noise levels against current background levels, and that suitability of proposed mitigation should be assessed at AA stage.
- 6.2.73. The Applicant incorporated information relevant to the assessment of bored piling in the ROC Report to Inform HRA [AS-016] and NE (Q2.1.4 in [REP8-036]) confirmed that it considered LSE could be screened out for bored piling on that basis.
- 6.2.74. In response to our clarification request (Q2.1.4 in [PD-014]), NE [REP8-036] advised that, whilst its concerns about use of impact piling primarily related to birds, these activities could impact the migrating route of lampreys due to more significant vibrations. It stated that the Applicant's [AS-016] possible mitigation of soft start may be suitable for lamprey but this would need to be included in the assessment, together with predicted noise and vibration levels.
- 6.2.75. The Applicant [AS-023] provided additional information about impact piling, confirming that this would only be used where blockages from sheet piling have occurred, which would be limited to the location of the proposed bunker hall approximately 110m from the River Trent, and would be temporary over a short period of time. It referred to studies that have reported levels of vibration from impact piling fall below the level perceptible in a residential environment within 100m.
- 6.2.76. The Applicant [AS-023] concluded that an LSE from impact piling to lamprey could be screened out on this basis and noted that in reaching this conclusion it had not considered use of a soft start approach, which is proposed to avoid adverse effects to birds. As such, [AS-023] did not assess impact piling impacts to lamprey at AA stage.
- 6.2.77. NE [REP10-010] stated that it was satisfied based on the submission of additional documents, including [AS-023] and management plans at Appendices K to M of the CoCP [AS-028] that no AEOI could also be determined for impact piling. It stated that its preference would have been for the Applicant to assess impact piling at AA stage due to the soft start procedure being advised as a further precaution but noted that there would not have been a difference in outcome.

¹⁴ California Department of Transportation, Technical Guidance for the Assessment of the Hydroacoustic Effects of Pile Driving on Fish' (2020)

- 6.2.78. We agree with the Applicant's conclusion to screen out an LSE to river and sea lamprey from bored piling on the basis that the ROC Report to Inform HRA [AS-023] demonstrates that noise and vibration levels would be just perceptible in the most sensitive situations at 20m and bored piling would be undertaken at locations more than 40m from the European sites. We are content that the information provided in respect of bored piling impacts is separate to the ROC parameters and can therefore be used to inform the conclusion on LSEs. In reaching this conclusion, we note that the Works Plans A [REP5-013] define the lateral Limit of Deviation (LoD) to restrict the distance between the closest buildings to the River Trent. The Works Plan would be a certified document under Schedule 15 of the dDCO [REP10-004].
- 6.2.79. Given the soft start procedure is proposed to address a specific potential impact, and that the Applicant [AS-023] stated that it could provide a further "*level of safeguard against effects to lamprey*", we decided on a precautionary basis that LSE from impact piling cannot be excluded for the river and sea lamprey qualifying features of the Humber Estuary SAC and Ramsar site. We have considered this impact for AEoI.

Vessel movements (operation)

- 6.2.80. As described at ID2.1.5 of Table 2.3 in the RIES [PD-014], the Original Report to Inform HRA [APP-043] did not assess noise and vibration impacts on migrating river and sea lamprey from vessel movements. We (Q5.1.5 of [PD-007]) requested consideration of this impact pathway. The Applicant [REP2-033] noted that the number of vessel movements on the River Trent have declined in recent years. It stated that the Proposed Development could result in an additional 580 vessel movements at Flixborough Wharf per year, but the total number of movements would be within recent baseline levels; it therefore considered effects against background fluctuations would be indiscernible. This information was incorporated in the ROC Report to Inform HRA [AS-023]. NE (Q2.1.5 in [REP8-036]) agreed with the Applicant's conclusion.
- 6.2.81. In light of the above, we are content with the Applicant's screening assessment conclusions that an LSE from noise and vibration associated with vessel movements in the River Trent can be screened out for lamprey qualifying features of the Humber Estuary SAC and Ramsar site.

Humber Estuary SPA and Ramsar site – loss of FLL during construction

- 6.2.82. As described in ID2.1.8 of Table 2.3 in the RIES [PD-014], the Applicant [REP2-019] did not assess the potential for loss of FLL. NE [RR-090] could not rule out LSE and sought clarification from the Applicant. The Applicant [REP4-021] responded with reference to survey information, explaining that:
- pink-footed goose was not recorded using the project site or immediate surroundings and no FLL was identified for the species;

- only one redshank was recorded within the area of the Order Limits where loss of land will occur and small numbers were recorded around Lysaght's Drain, which is an area that would not be developed; and
- most mallard records were in habitat outside the Order Limits and will not be lost, or in areas within it that will remain undeveloped.

- 6.2.83. The Applicant [AS-023] subsequently incorporated this information into the ROC Report to Inform HRA. The Applicant (Q2.1.9 in [REP8-021]) confirmed that its assessment related to bird features of both the Humber Estuary SPA and Ramsar site.
- 6.2.84. We (Q2.1.8 in [PD-014]) sought clarification of the quantum of FLL that would be lost. The Applicant [REP8-021] stated that FLL comprises areas that are regularly used by more than 1% of the qualifying population of the SPA and as such was focused on the River Trent corridor, where there would be no direct/ permanent losses of FLL.
- 6.2.85. The final SoCG with NE [REP10-010] shows this matter as being agreed. NE stated that *"...the bird results demonstrate that there will not be a permanent loss of land which supports significant numbers of birds associated with the designated sites...it can be concluded that there is no adverse effect from this impact pathway."*
- 6.2.86. We agree with the Applicant's conclusion that an LSE to the qualifying features of the Humber Estuary SPA and Ramsar site from loss of FLL can be screened out. This is based on the additional evidence provided about bird records in [AS-023], which demonstrates a limited presence of FLL within the River Trent corridor, and confirmation that no direct or permanent loss would occur in this location. We are content that the information provided does not rely on the ROC parameters and can therefore be used to inform the conclusion on LSEs.

Likely Significant Effects from the Proposed Development In Combination with Other Plans and Projects

- 6.2.87. The Applicant addressed potential in-combination effects arising from the Proposed Development within Sections 2 and 4 of the ROC Report to Inform HRA [AS-023]. Paragraph 4.6.1.1 states that the approach to identifying other plans and projects follows that used in ES Chapter 18 [REP9-016] for the assessment of cumulative effects. The other plans and projects included in the in-combination assessment are Keadby 2 and Keadby 3 Power Stations. These were drawn from a short list, which is set out in Table 14 of [AS-023]. Project locations are shown on Figure 6 of [AS-023].
- 6.2.88. Three recently approved power generation projects (Eggborough, West Burton and Drax Repower) were identified within 15 kilometres (km) of European sites that located within 15km of the Proposed Development's ERF stack. The Applicant screened these projects out of the in-combination assessment on the basis that they would be *'displacing the emissions of a previous similar-sized emitter.'* It [AS-023] stated that

each of the projects would be replacing coal fired generation stations, one of which ceased operating in 2018 (but which the Applicant assumed had been contributing to the baseline emissions in recent years), one of which was due to be operational until September 2022 and the third of which remains operational. The contribution of these emitters would therefore be reflected in the baseline emissions used by the Applicant in the assessment, which it stated [REP4-009] were derived from DEFRA background mapping and APIS, accessed in 2021.

- 6.2.89. Two further power generation projects (Doncaster Energy Recovery Facility and Hull Energy Centre) were also screened out on the basis that they were located 13.3km and 13.9km (respectively) away from any part of the European sites within 15km of the Proposed Development's ERF stack and the air quality assessments undertaken for these projects demonstrated that they would not result in effects beyond 10km.
- 6.2.90. NE [RR-090] [REP2-100] [REP6-041] [REP10-010] did not identify any additional plans or projects to be considered in the assessment and did not dispute the Applicant's approach to the in-combination assessment.
- 6.2.91. North Lincolnshire Council (NLC) (Q1.0.29 in [REP2-042]) did not identify any additional projects or plans but suggested that the Applicant might want to check the Humber Nature Partnership in-combination database. The Applicant [REP3-021] responded that the database is not publicly available.

Humber Estuary SAC, SPA and Ramsar site, Thorne Moor SAC and Thorne and Hatfield Moors SPA – operational emissions to air

- 6.2.92. As described in paragraphs 2.5.10 to 2.5.123 of the RIES [PD-014], the Applicant's Original Report to Inform HRA [APP-043] summarised predicted effects of air pollutants from the Proposed Development in combination with Keadby 2 and 3. It concluded that, when considering the combined PC of the projects, there was potential for exceedances of the 1% critical level/ load for NH₃ and nitrogen deposition at the Humber Estuary SAC, SPA and Ramsar site, Thorne Moor SAC and Thorne and Hatfield Moors SPA. Similarly, for acid deposition, the combined PC of the projects could exceed the 1% critical load at Thorne Moor SAC.
- 6.2.93. NE [RR-090] raised concerns about potential AEoI on the European sites from NH₃ and nutrient nitrogen deposition, particularly in respect of in-combination effects with Keadby 2 and 3. The Applicant subsequently undertook the ROC modelling in [AS-023], which for Keadby 2 is based on 4,000 hours of operation per annum, consistent with its EP issued in November 2020.
- 6.2.94. The Applicant [AS-023] revised its screening assessment based on the ROC modelling and concluded that an LSE from operational emissions to air from the Proposed Development in-combination with Keadby 2 and 3 could be screened out for all qualifying features of the Humber Estuary SPA, Thorne Moor SAC and Thorne and Hatfield Moors SPA.

- 6.2.95. We (Q2.5.11 in [PD-014]) asked the Applicant to clarify its conclusion for nitrogen deposition in-combination to the Humber Estuary SPA, as paragraph [AS-016] suggested that the combined PC is 0.9 – 1.02% (minimum), ie potentially above the 1% critical level. The Applicant [REP8-021] responded that the range of combined PCs for the Proposed Development in-combination with Keadby 2 and 3 was provided. It stated that data for Keadby 3 is likely to be worst case, as the values referred to are generally the highest occurring anywhere within the European site; that predictions are usually from the worst case year for meteorological data input to the dispersion model; and that predictions are based on worst case operating hours. The Applicant had therefore assumed that the in-combination levels are likely to be <1%.
- 6.2.96. As in [REP2-019], based on the ROC modelling in [AS-023], the Applicant could not exclude an LSE from operational emissions to air arising from the Proposed Development in-combination with Keadby 2 and 3 to the qualifying features of the Humber Estuary SAC and Ramsar site identified in Table 6.1 of this Report.
- 6.2.97. NE (Q2.5.12 in [REP8-036]) confirmed that it was satisfied that the correct screening conclusions had been reached following the revised ROC results but Amy-Louise Ogman [REP8-028] queried how the Applicant concluded no LSEs to Thorne Moor SAC and Thorne and Hatfield Moors SPA when LSEs could not be excluded in the Original Report to Inform HRA [APP-043].
- 6.2.98. We are satisfied that the Applicant's use of information from Keadby 2's EP in the ROC modelling is an appropriate approach to in-combination screening, as it is based on Keadby 2's actual emissions' level thresholds.
- 6.2.99. We agree with the Applicant's conclusion of LSEs to the Humber Estuary SAC and Ramsar site from operational emissions to air in-combination with Keadby 2 and 3 and have considered this for AEoI. We note that the Applicant's conclusions in this respect remains unchanged between the Original [APP-043] and ROC [AS-023] Reports to Inform HRA.
- 6.2.100. For the same reasons as set out in under the operational emissions to air pathway for the Proposed Development alone, we cannot exclude LSE to the Humber Estuary SPA, Thorne Moor SAC and Thorne and Hatfield Moors SPA, as the PC for each pollutant exceeds 1% of critical load when considered in-combination with Keadby 2 and 3. On a precautionary basis, we decided to consider potential effects to the qualifying features listed in Table 6.1 for AEoI, including potential for mitigation.

Humber Estuary SPA and Ramsar site – noise, vibration and visual disturbance effects

- 6.2.101. The Applicant's Report to Inform HRA [REP2-019, AS-023] considered in-combination effects from disturbance or displacement of bird qualifying features of the Humber Estuary SPA (using FLL) and Ramsar site. The Applicant screened out LSEs on the basis that all but one of the other plans and projects considered are located more than 1km from the River Trent and Humber Estuary Ramsar site, and none of the developments

are likely to affect FLL due to their location. The other project located close to the River Trent is a proposed flood defence scheme, which the Applicant stated is more than 4km south of the stretch that would be affected by the Proposed Development. NE [RR-090, REP4-021] did not dispute the Applicant's conclusions.

- 6.2.102. We agree with the Applicant's conclusions that LSE can be screened out for in-combination noise, vibration and visual disturbance effects.

Likely Significant Effects Assessment Outcomes

- 6.2.103. The Applicant concluded that LSEs could occur for qualifying features of three European sites in the NSN, being the Humber Estuary SAC, SPA and Ramsar site. The final signed SoCG between the Applicant and NE [REP10-010] records broad agreement on the Applicant's screening assessment, although NE stated that their preference would have been for the Applicant to assess the effects of impact piling to lamprey species at AA stage (although this would not have affected the outcome). By the close of the Examination, the Applicant's conclusions about LSEs were not disputed by any IPs although Amy-Louise Ogman raised concerns about how its conclusions for several impact pathways had been reached.
- 6.2.104. We are satisfied, based on the information provided, that the correct impact-effect pathways on each site have been assessed. We are generally satisfied with the approach to assessment of alone and in-combination LSEs; however, in view of the soft start procedure that could be used as a further precaution to mitigate effects to lamprey species, and our decisions to reach conclusions regarding LSEs from operational emissions to air to Humber Estuary SPA, Thorne Moor SAC and Thorne and Hatfield Moors SPA based on the original air quality modelling in [REP2-019], we have considered these pathways for AEoI on a precautionary basis.
- 6.2.105. Table 6.1 of this Report sets out the impacts, European sites, and their qualifying features, for which we consider the Proposed Development is likely to have a significant effect alone and in-combination with Keadby 2 and 3.

Table 6.1: European sites and features for which LSEs could not be excluded

European site(s)	Qualifying feature(s)	LSE(s) alone from:	LSE(s) in-combination from:
Humber Estuary SAC	Estuaries	Operational emissions to air	Operational emissions to air
	Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>)	Changes to water quality Changes to air quality during construction	
	Sea lamprey River lamprey	Noise and vibration disturbance from impact piling during construction	N/A
Humber Estuary SPA	Wintering mallard of the waterbird assemblage	Disturbance or displacement from FLL (noise, lighting and visual disturbance)	Operational emissions to air affecting supporting habitat
Humber Estuary Ramsar site	Ramsar criterion 1: representative example of a near natural estuary	Operational emissions to air affecting supporting habitat	Operational emissions to air affecting supporting habitat
	Ramsar criterion 6: species/populations occurring at levels of national importance	Changes to water quality Changes to air quality during construction	

European site(s)	Qualifying feature(s)	LSE(s) alone from:	LSE(s) in-combination from:
	Ramsar criterion 5: assemblages of non-breeding waterfowl (mallard)	Disturbance or displacement (noise, lighting and visual disturbance) Changes to water quality Changes to air quality during construction Disturbance or displacement from FLL (noise, lighting and visual disturbance)	Operational emissions to air affecting supporting habitat
	Ramsar criterion 8: river lamprey <i>Lampetra fluviatilis</i> and sea lamprey <i>Petromyzon marinus</i>	Noise and vibration disturbance from impact piling during construction	N/A
Thorne Moor SAC	Degraded raised bogs still capable of natural regeneration (7120)	N/A	Operational emissions to air
Thorne and Hatfield Moors SPA	European nightjar (breeding) <i>Caprimulgus europaeus</i>	N/A	Operational emissions to air affecting supporting habitat

6.3. CONSERVATION OBJECTIVES

- 6.3.1. The ROC Report to Inform HRA [AS-023] provides a general summary of the conservation objectives relevant to the European sites included in the assessment of effects on integrity. Reference is also made to NE's supplementary guidance and links provided to the conservation objectives of the Humber Estuary sites, Thorne Moor SAC and Thorne and Hatfield Moors SPA.
- 6.3.2. Neither NE's relevant representation [RR-090] nor the Original Report to Inform HRA [REP2-019] stated whether the European sites are in favourable or unfavourable condition. In response to ExQ1 (Q5.1.8 in [PD-007]), NE [REP2-100] confirmed that all European sites considered are currently in unfavourable condition and provided a link to information about individual units of the underpinning SSSIs.
- 6.3.3. 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, we consider this to be a reasonable approach.

6.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY

- 6.4.1. The five European sites and qualifying features identified in Table 6.1 of this Report were further assessed in Section 5 of the Original Report to Inform HRA [REP2-019] to determine if they would be subject to AEoI. The assessment of AEoI was made in light of the conservation objectives for the European sites. The Applicant's conclusion was that, with the appropriate mitigation in place, AEoI could be excluded for all European sites assessed in [REP2-019].
- 6.4.2. NE [RR-090] requested further justification for the Applicant's conclusions of no AEoI on all European sites from operational emissions to air (for NH₃ and nitrogen deposition) given that case law makes it clear that small contributions should not be disregarded where the additional contribution is likely to undermine the sites' conservation objectives. The Applicant sought to address NE's concerns through the ROC modelling presented in the ROC Report Inform HRA [AS-023], which (as described above) resulted in revised screening conclusions for the Humber Estuary SPA, Thorne Moor SAC and Thorne and Hatfield Moors SPA. For the reasons stated in Section 6.2 of this Report, we have considered all five European sites for AEoI.
- 6.4.3. Our 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.

Operational emissions to air

Humber Estuary SAC and Ramsar site

- 6.4.4. The Applicant's original assessment of operational emissions to air from the Proposed Development alone concluded that AEoI on the qualifying features of the Humber Estuary SAC and Ramsar site listed at Table 6.1 of this Report could be excluded (paragraphs 5.2.1.1 to 5.2.3.4 and Appendix 1, Tables 8 and 9 of [REP2-019]). The Applicant stated that emissions in respect of the pollutants of concern (NH₃ and nitrogen deposition) were not expected to have a significant effect as they only slightly exceeded the 1% threshold of the critical level/ load, effects would be localised and only a very small percentage of the habitats across the European sites would be affected.
- 6.4.5. The Applicant [REP2-019] stated that the underlying sensitive habitat is saltmarsh; Figure 7 in Appendix 2 of [REP2-019] comprised a comparison of drone survey results (taken in June 2020) mapping habitats along the River Trent with NE's Priority Habitat Inventory Dataset to demonstrate that the majority of habitat was reedbed intermingled with saltmarsh. It concluded that reedbed was more common than the NE data showed and made an assumption in the assessment that a mosaic of reedbed and upper saltmarsh habitat exists along the River Trent.
- 6.4.6. The Applicant provided contour plots at Figures 9 and 10 of Appendix 2 of [REP2-019] to show the main areas where NH₃ and nitrogen deposition would exceed the critical level threshold. It concluded as follows:
- NH₃: 3.7 hectares of reedbed and 0.3ha of upper saltmarsh is located within the 1% critical load contour line, equating to 0.4% and 0.03% of the total habitat areas across the European sites; and
 - nitrogen deposition: 4.4 hectares of reedbed and 1.2ha of upper saltmarsh is located within the 1% critical load contour line, equating to 0.4% and 0.1% of the total habitat areas across the European sites.
- 6.4.7. The Applicant [REP2-019] also originally concluded that AEoI could be excluded from operational emissions to air from the Proposed Development in-combination with Keadby 2 and 3 projects (section 5.5 and Appendix 1, Tables 8 and 9 of [REP2-019]). The Applicant stated that factors such as local emissions' reduction (eg from the closure of Keadby 1), changes in other local facilities and continued improvement to background air quality were expected to offset emissions from the combined developments.
- 6.4.8. As the Humber Estuary sites are in unfavourable condition, NE [RR-090] requested further justification that the additional PCs from the Proposed Development would not undermine their conservation objectives. It also asked that consideration be given to reedbed habitat as part of the saltmarsh feature of the Humber Estuary SAC.
- 6.4.9. The Applicant [REP4-021] noted that reedbed is a common, transitional community at upper end of saltmarsh that can tolerate additional

nutrient input and is unlikely to be affected by additional levels of deposited nitrogen. It further noted that areas of affected saltmarsh would be small. NE [REP4-021] queried whether this input has the potential to undermine conservation objectives.

- 6.4.10. As described in Section 6.2 of this Report, the Applicant undertook the ROC modelling, which resulted in [AS-023] screening out LSEs from operational emissions to air from the Proposed Development alone to the Humber Estuary SAC and Ramsar site.
- 6.4.11. The Applicant's ROC Report to Inform HRA [AS-023] assessment of operation emissions to air from the Proposed Development in-combination with Keadby 2 and 3 concluded that AEoI could be excluded (section 5.5 and Appendix B, Tables 8 and 9 of [AS-023]). The Applicant stated that further analysis of the habitats likely to be affected, their location and resilience to the effects of NH₃ and nitrogen deposition found that AEoI were not predicted, noting that reedbed is resilient and along the River Trent may be subject to inundation by nutrient rich tidal water.
- 6.4.12. NE [REP10-010] was satisfied based on information in [AS-023] that there would be no AEoI to the Humber Estuary SAC and Ramsar site from operational emissions to air. NE (Q2.5.1 in [REP8-036]) advised that it was acceptable to use the air quality modelling results for Humber Estuary SAC in respect of the Humber Estuary Ramsar site, as the underlying habitats are the same.

Humber Estuary SPA

- 6.4.13. The Applicant's [REP2-019] original assessment of operational emissions to air from the Proposed Development in-combination with Keadby 2 and 3 projects concluded that AEoI on the qualifying features of the Humber Estuary SPA listed at Table 6.1 of this Report could be excluded (section 5.5 and Appendix 1, Table 10 of [REP2-019]) on the same basis as for the Humber Estuary SAC and Ramsar site, as described above.
- 6.4.14. The Applicant's ROC modelling resulted in [AS-023] screening out an LSE from operational emissions to air from the Proposed Development in-combination with Keadby 2 and 3 to Humber Estuary SPA on the basis that the cumulative PCs for NH₃ and nitrogen deposition are both <1% (0.68% and 0.9% (minimum) to 0.61% (maximum) respectively).
- 6.4.15. NE [REP10-010] was satisfied based on information in [AS-023] that there would be no AEoI to the Humber Estuary SPA from operational emissions to air from the Proposed Development in-combination with Keadby 2 and 3.

Thorne Moor SAC and Thorne and Hatfield Moors SPA

- 6.4.16. The Applicant's [REP2-019] original assessment of operational emissions to air from the Proposed Development in-combination with Keadby 2 and 3 projects concluded that AEoI on the qualifying features of the Thorne Moor SAC and Thorne and Hatfield Moors SPA listed at Table 6.1 of this Report could be excluded (section 5.5 and Appendix 1, Tables 11 and 12

of [REP2-019]) on the same basis as for the Humber Estuary SAC and Ramsar site, as described above.

- 6.4.17. NE [RR-090] advised that, in accordance with the Dutch Nitrogen ruling, an AA may not consider other measures (such as predicted baseline trends) where the benefits are not certain at the time of assessment. NE requested further evidence to support the Applicant's conclusion.
- 6.4.18. The Applicant's ROC modelling resulted in [AS-023] screening out an LSE from operational emissions to air from the Proposed Development in-combination with Keadby 2 and 3 to Thorne Moor SAC and Thorne and Hatfield Moors SPA on the basis that the combined PCs would not exceed 1%. The Applicant stated that the PCs for the Proposed Development in-combination with Keadby 2 were:
- Thorne Moor SAC:
 - 0.58% of the critical level for NH₃; and
 - 0.7% (minimum) to 0.45% (maximum) of the critical load for nitrogen deposition.
 - Thorne and Hatfield Moors SPA:
 - 0.33% of the critical level for NH₃; and
 - 0.25% (minimum) to 0.12% (maximum) of the critical load for nitrogen deposition.
- 6.4.19. The Applicant [AS-023] stated that data was not available for Keadby 3, but that it was unlikely that any contribution from that development would cause the combined PCs to exceed 1%.
- 6.4.20. NE [REP10-010] was satisfied based on information in [AS-023] that there would be no AEoI to Thorne Moor SAC and Thorne and Hatfield Moors SPA from operational emissions to air from the Proposed Development in-combination with Keadby 2 and 3.

Mitigation

- 6.4.21. ES Chapter 19 [REP8-009], Table 1 referred to BAT abatement systems for reducing emissions to air from the ERF. NE requested [RR-090] that an air quality assessment should be presented without BAT mitigation so its effectiveness could be demonstrated. NE (Q5.1.7 in [REP2-100]) advised that it continued to discuss with the Applicant whether the BAT abatement was mitigation or part of the standard design of the ERF. NE subsequently acknowledged [REP4-021] that meeting BAT emissions' limits is a legal obligation and agreed that further modelling was not required. The commitment to designing the ERF with BAT abatement is captured in the Operational Environmental Management Plan (OEMP) [REP8-010], which is secured through R4(6) of the dDCO [REP10-004].
- 6.4.22. We (Q5.1.7 in [PD-012]) also asked NE to explain whether it considered the design parameters of the stacks for the main ERF, boiler and back-up generator needed to be further secured beyond what is specified in Schedule 1, Part 3 Parameters Table of the dDCO [REP10-010]. NE

[REP2-100] welcomed this commitment and did not raise any concerns about the Applicant's approach.

Examining Authority's (ExA) conclusions on operational emissions to air

- 6.4.23. We have considered operational emissions to air (NH₃ and nitrogen deposition) for AEoI in light of our concerns about the Applicant's reliance on its ROC modelling as a basis to exclude LSE, as described in Section 6.2 of this Report. The qualifying features considered for this impact pathway are listed in Table 6.1 of this Report.
- 6.4.24. We recognise that a further level of detailed information about the stack emissions will be provided in respect of the EP application and that this will be subject to a separate HRA. An EP application has not been submitted and therefore no decision will be reached before the SoS is due to reach a conclusion on the DCO. Our 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. We also note paragraph 4.10.3 of NPS EN-1, which states that when considering an application for development consent the focus should be *"...on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves...work on the assumption that the relevant pollution control regime and other environmental regulatory regimes... will be properly applied and enforced by the relevant regulator. It should act to completely but not seek to duplicate them."*
- 6.4.25. We are satisfied that embedded measures such as the stack design and BAT abatement systems are adequately secured through the parameters specified in the dDCO and OEMP commitments.
- 6.4.26. On the evidence before us, the original air quality modelling in [REP2-019] shows a potential LSE from operational emissions to air from the stack, based on the worst case scenario of operational hours and emissions' levels for NH₃. NE did not agree that AEoI could be excluded to the Humber Estuary sites, Thorne Moor SAC and Thorne and Hatfield Moors SPA using this modelling. [AS-023] excluded LSE based on one set of modelling parameters for operating hours and NH₃ emissions' levels defined by the Applicant for the ROC. NE agreed that no AEoI could be determined based on [AS-023]. The Applicant did not submit information in respect of any modelling scenarios other than the worst case and ROC and did not wish to secure any of the ROC parameters in the DCO. We note that there is no BAT Associated Emissions Levels for NH₃ that would have to be met as a minimum as part of the EP and it would be for the Applicant to propose a level based on predicted effects. We are content that emissions' limits would be subject to further assessment as part of the EP application, which would include an HRA. The Proposed Development would not be able to come into operation without an EP. We note that R4(7) of the dDCO requires the OEMP to be in accordance with any conditions in the EP. We are also satisfied that the ROC modelling demonstrates that there is at least one scenario in which AEoI

could be excluded and we acknowledge that NE was satisfied by the close of Examination that AEoI could be excluded for operational emissions to air based on the ROC conclusions. We are satisfied that there is a safeguard in the form of the EP process, which would be used to secure appropriate parameters including emissions' limits and operating hours, and that we do not need to duplicate the EP process, as described in NPS EN-1. A fall-back option for the EP exists in the form of the ROC parameters, which [AS-023] demonstrates that this would result in no AEoI to the European sites.

- 6.4.27. Regarding contribution from operational transport movements, on the evidence before us, [REP2-019] shows a potential LSE from operational emissions to air, including emissions arising from transport movements, from the worst case scenario of deliveries. NE did not agree that AEoI could be excluded. [AS-023] excluded LSE based on one set of modelling parameters for transport movements defined by the Applicant for the ROC. This included no more than 50% of material movements by road as described at Section 6.2 of this Report. It is unclear to us from the Applicant's submissions to what extent operational traffic emissions would contribute to the overall conclusions for this impact pathway, and the Applicant did not submit information in respect of any modelling scenarios other than the worst case and ROC. We are content that it was appropriate for the ROC modelling to assess the net change in vehicle movements given the commitment to construction of the new access road and that R14 of the dDCO [REP10-004] requires this to be completed to the satisfaction of the relevant planning authority prior to the ERF coming into operation. We have considered in detail at Section 5.14 of this Report the Applicant's case for not securing a modal split for operational transport movements in the DCO, including reference to precedent examples. We note that ES Chapter 13 [REP2-021] described that most operational movements arise from the ERF, including RDF deliveries. The volume of RDF that could be processed at the Proposed Development is restricted in Schedule 1 Authorised Development, Work No. 1 of the dDCO [REP10-004] to 760,000 tonnes per annum. It is stated that there will be freight movements associated with the concrete block manufacturing and loading of CO₂ processes. These would also be linked to the volume of RDF processed. We therefore consider it likely that the restriction on RDF volume would inherently limit the overall number of movements and that it can reasonably be concluded that the worst case scenario of deliveries 100% by road (up to a maximum daily total of 244 HGV arrivals and 244 HGV departures) and 100% by rail and 100% by vessel originally assessed would not arise in reality but note that there is nothing in the DCO to prevent or control this. As discussed at Section 6.2 of this Report, the Applicant concluded that LSE from construction and operational phase traffic emissions could be excluded on the basis that vehicle movements will be more than 200m from the European sites (secured by R14 of the dDCO), and NE agreed with this position. No IPs raised concerns about emissions to air from rail or vessel. We therefore consider that it can be concluded that there would be no AEoI as a result of emissions to air from operational transport movements.

- 6.4.28. Focusing therefore on the land use that would be authorised by the DCO, we consider that it can be concluded that there would be no AEoI on the qualifying features of the Humber Estuary SAC, SPA and Ramsar site, Thorne Moor SAC and Thorne and Hatfield Moors SPA listed at Table 6.1 of this Report, from the effects of operational emissions to air.

Changes to surface water quality during construction and operation

Humber Estuary SAC and Ramsar site

- 6.4.29. The Applicant's assessment of changes to surface water quality from the Proposed Development alone during construction and operation concluded that AEoI to the Humber Estuary SAC and Ramsar site could be excluded, subject to mitigation in the form of best practice measures for all surface water crossings and interactions, including crossing of drains and agricultural ditches within the Order Limits (paragraphs 2.1.1 and 5.2.1.2 and Appendix B, Tables 8 and 9 of [AS-023]).
- 6.4.30. ES Chapter 9 [REP6-020] summarised measures that would be taken to prevent potentially contaminated leachate or surface water from entering directly or indirectly, any water course, underground strata, or adjoining land.
- 6.4.31. The CoCP [AS-028] listed measures to manage surface water, including a provision of a spill response plan, good housekeeping techniques and informing site personnel of potential risks during construction to reduce accidental impacts. Construction mitigation measures will be further detailed in a CEMP, which must be in accordance with the CoCP, and is secured by R4(3) of the dDCO [REP10-004].
- 6.4.32. The OEMP [REP8-010] listed measures to manage impacts during operation, including mitigation to contain and control any release of contaminants to surface water and foul drainage network. Submission of a detailed OEMP in accordance with [REP8-010] is secured by R4(7) of the dDCO [REP10-004]; R4(8) requires the Proposed Development to be carried out in accordance with the OEMP.
- 6.4.33. R8 and R9 of the dDCO [REP10-004] required submission and approval of detailed surface water and foul water drainage plans, including future maintenance plans, which must be in accordance with the Indicative Surface Water Drainage Strategy [REP3-009, REP5-019].
- 6.4.34. NE [RR-090] confirmed it was satisfied that AEoI can be excluded for construction and operation, subject to appropriate mitigation being adequately secured and noting that there will be no discharge to or abstraction from the River Trent, as specified in ES Chapter 9 [REP6-020]. No other IP commented on this matter.

ExA's conclusions on surface water quality during construction and operation

- 6.4.35. We are satisfied that, subject to the implementation of the mitigation measures as secured, there would be AEOI can be excluded for the qualifying features of the Humber Estuary SAC and Ramsar site listed in Table 6.1 from the Proposed Development alone.

Changes to air quality (dust) during construction

Humber Estuary SAC and Ramsar site

- 6.4.36. The Applicant's assessment concluded that there would be no AEOI (paragraphs 5.2.2.1 to 5.2.2.3 and Appendix B, Tables 8 and 9 of [AS-023]) from changes to air quality (dust) from the Proposed Development alone during construction. The Applicant has not undertaken a specific assessment of dust impacts but has committed to use of best practice measures to prevent any adverse effects. The CoCP [AS-028] included an outline Dust Management Plan (DMP) at Appendix B, which sets out proposed mitigation measures. Submission and approval of a detailed DMP (as part of the CEMP), which must be in accordance with [AS-028], is secured by R4(3)(a) of the dDCO [REP10-004].
- 6.4.37. NE [RR-090] welcomed the proposal to develop a DMP as part of the final CEMP but considered the measures should be informed by a 200m screening distance. The Applicant [REP4-021] subsequently confirmed that the measures would prevent any significant effects along the River Trent within 200m of the Order Limits and updated the ROC Report to Inform HRA [AS-023].
- 6.4.38. We (Q3.1.3 in [PD-014]) asked NE whether it was satisfied that AEOI could be excluded on that basis. NE [REP8-036] stated that use of a 200m screening distance and implementation of the CEMP as mitigation meant that a conclusion of no AEOI could be confirmed.
- 6.4.39. The final SoCG with NE [REP10-010] showed this matter as being agreed, with NE advising that "*mitigation via the measures to be outlined in the CEMP will be suitable to prevent impacts to designated sites.*" No other IP commented on this matter.

ExA's conclusions on air quality (dust) during construction

- 6.4.40. We are satisfied that, subject to the implementation of the mitigation measures as secured, AEOI can be excluded for the qualifying features of the Humber Estuary SAC and Ramsar site listed in Table 6.1 from the Proposed Development alone.

Disturbance effects from noise on birds during construction

Humber Estuary SPA and Ramsar site

- 6.4.41. The Applicant's assessment concluded that there would be no AEOI (Section 5.3 and Appendix B, Tables 9 and 10 of [AS-023]) from the Proposed Development alone from noise disturbance effects on birds during construction. This was on the basis that with mitigation in place,

noise levels at locations where birds are present would be below the 55dB threshold established for significance.

- 6.4.42. The assessment considered mallard as part of the waterbird assemblage qualifying feature of the Humber Estuary SPA and Ramsar site, following confirmation from NE (Q3.1.5 in [REP8-036]) that the River Trent should be considered as FLL of the Humber Estuary SPA due to the high number of mallards that may be affected by noise.
- 6.4.43. The Applicant [AS-023] provided predicted distances for unmitigated construction noise to reduce to 55dB as follows:
- main building construction (ie ERF) – 359m for northern buildings and 275m for southern buildings;
 - concrete breaking – 489m; and
 - railway construction work – 158m.
- 6.4.44. The Applicant [AS-023] compared the distances with bird locations from its survey data and concluded that most bird records are in areas where predicted noise levels from the construction of the Proposed Development are less than 55dB. However, in the absence of mitigation, the Applicant identified potential effects on mallard present in small numbers along the River Trent to the west and south west of the Proposed Development.
- 6.4.45. The Applicant [AS-023] also identified that impact piling may be required if sheet piling is not successful at the bunker hall location. Based on information from BS5228 (Tables C3 and C12), the Applicant predicted that typical noise from impact piling methods such as hydraulic hammer or cast in situ generate average noise similar to concrete breaking, which would equate to between 89dB and 92dB at 10m distance respectively. The Applicant [REP9-058] stated that, if required, impact piling would occur in a location approximately 110m to the east of the River Trent, with most at distances well over 110m.
- 6.4.46. The Applicant [AS-023] proposed mitigation in the form of acoustic barriers around the construction works, which it stated would reduce the distance at which the 55dB threshold would be reached by works at the Proposed Development. As an example, the Applicant stated that the 55dB threshold would be reached at 225m for concrete breaking with mitigation in place compared to 489m without mitigation. Appendix C of [AS-023] presented a figure with contours for construction activities based on unmitigated and mitigated noise predictions; the Applicant stated that a reduction of 10dB is the upper end of what is expected to be achieved with the acoustic barriers.
- 6.4.47. The Applicant concluded that with the acoustic barriers in place, the areas of the River Trent where mallard could potentially be affected by construction noise from the Proposed Development would experience noise levels of below 55dB.
- 6.4.48. To further reduce the risk of AEoI, the Applicant [AS-023] proposed the following measures:

- Timing of construction activities likely to generate higher noise levels outside the period September to April wherever possible.
- Noise and vibration controls such as soft start of the piling, monitoring for signs of disturbance to birds and employment of an ecological clerk of works (ECoW) to oversee construction works. The ECoW would be able to recommend further mitigation including use of acoustic shrouds and a non-metallic dolly. These measures are secured in management plans appended to the CoCP [AS-028]:
 - Appendix K OPFWMP;
 - Appendix L Outline Construction Noise and Vibration Management Plan (OCNVMP); and
 - Appendix M COMP.

6.4.49. As described in the RIES (ID 3.1.4 and ID 3.1.5 of [PD-014]), during the Examination, NE [REP4-021, REP6-041 and REP8-036] raised several concerns about the Applicant's approach to assessment of noise disturbance. NE requested further information about predicted noise levels for both bored and impact piling and clarity in the CoCP about mechanisms for triggering mitigation.

6.4.50. By close of the Examination, NE [REP10-010] was satisfied that there would be no AEoI from noise disturbance based on the Applicant's final assessment and mitigation proposals described in the ROC Report to Inform HRA [AS-023] and secured in Appendices K, L and M of the CoCP [AS-028]. Amy-Louise Ogman [REP8-028] queried how timings of activities could be secured by the Applicant so as not to disturb birds. NE (Q3.1.4 in [REP8-036]) confirmed that timing of bored piling did not need to be secured if use of acoustic barriers was secured in the DCO. In [REP10-010], NE said that the commitment could be in the DCO or the CoCP. No other IP commented on this matter.

6.4.51. Mitigation measures will be further detailed in a CEMP, which must be in accordance with the CoCP [AS-028], and is secured by R4(3)(k to m) of the dDCO [REP10-004]. It must be agreed with NE prior to works commencing. Appendix M of [AS-028] states that it is assumed that noise barriers would be in place around the construction site but does not specify the noise level to be achieved. Section 7 of Appendix M requires trigger points to be set in the detailed plan in the CEMP.

ExA's conclusions on disturbance effects from noise to birds during construction

6.4.52. We note NE's advice that no AEoI could be determined was based on the use of acoustic barriers, which it stated should be secured in the DCO or CoCP. Appendix M of the CoCP [AS-028] stated that it is assumed that acoustic barriers would be present but neither the CoCP nor the dDCO include a specific commitment. We considered whether there was a sufficiently clear commitment to the use of acoustic barriers and/ or whether there were other measures secured through the dDCO that would result in the same outcomes to mitigate noise disturbance effects to bird qualifying features. We are satisfied that the measures in the CoCP and accompanying management plans in Appendices K, L and M

are sufficiently clear to be translated into a detailed CEMP, which we note must be agreed with NE prior to construction commencing, and consider that this provides confidence that mitigation will be in place to avoid exceedance of the identified 55db thresholds for significance, which may or may not be in the form of an acoustic barrier. As such, we do not consider that the use of an acoustic barrier needs to be specifically secured in the rDCO.

6.4.53. We also note that the Applicant's conclusions regarding impact piling are in part reached on the basis of a separation distance of at least 100m between the location of impact piling and the River Trent, which is the distance referenced in studies cited by the Applicant over which vibration levels are likely to become imperceptible. The bunker hall, where impact piling might be required, would be in the ERF building forming part of Work No. 1 in the dDCO [REP10-004]. The Indicative Layout [APP-025] shows the bunker hall set back from the River Trent but the proposed LoD would allow it to be located anywhere within the defined area for Work No. 1 as shown on Works Plans A [REP5-013] and therefore potentially closer to the River Trent. In order to ensure that the bunker hall would not be closer than 100m to the River Trent, no matter where it is located within the Applicant's defined LoD, and therefore be consistent with the Applicant's assessment that this is the distance over which vibration levels are likely to become imperceptible, we consider that the wording *"...provided that a minimum separation distance of 100m is maintained between the bunker hall (within Work No. 1) and the River Trent at their closest points"* should be inserted at the end of Article 5(1)(a) of the dDCO. We also consider that an update to the definition of limits of deviation in Part 1 Interpretation of the dDCO is required for clarity, so it reads *"limits of deviation" means the limits of deviation shown for each work number on the works plans subject to this being in accordance with Article 5 (Limits of Deviation) of this Order."*

6.4.54. We are 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 SPA and Ramsar site listed in Table 6.1 from noise impacts during construction from the Proposed Development alone.

Disturbance effects on lamprey from noise and vibration arising from impact piling during construction

Humber Estuary SAC and Ramsar site

6.4.55. The Applicant [AS-023] concluded no LSE from disturbance effects arising from impact piling to the river and sea lamprey qualifying features of the Humber Estuary SAC and Ramsar site. The Applicant seems to have placed reliance on a soft start procedure as a further precaution to mitigate adverse effects in reaching the assessment conclusions. In light of the People Over Wind judgment¹⁵, and in keeping with the

¹⁵ People Over Wind and Sweetman v Coillte Teoranta (Case C-323/17)

precautionary principles, we consider it necessary to consider whether impact piling would result in AEoI.

- 6.4.56. Appendices K and M of the CoCP [AS-028] set out mitigation measures to be implemented if impact piling is required, which includes commitment to use of a soft start approach. Measures will be further detailed in a CEMP, which must be in accordance with the CoCP, and is secured by R4(3)(l) and (m) of the dDCO [REP10-004].
- 6.4.57. NE [REP10-010] agreed that there would be no AEoI due to impact piling based on additional mitigation measures proposed in [AS-023], including those outlined in Appendix K of the CoCP [AS-028]. No other IP commented on this matter.

ExA's conclusions on disturbance effects to lamprey during construction

- 6.4.58. Subject to our comments in respect of mitigating effects of impact piling to birds above, which we consider apply also to lamprey, we are satisfied that, with implementation of the mitigation measures as secured, there would be no AEoI on the lamprey qualifying features of the Humber Estuary SAC and Ramsar site listed in Table 6.4 of this Report from impact piling during construction from the Proposed Development alone.

6.5. HRA CONCLUSIONS

- 6.5.1. 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.
- 6.5.2. 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 site;
 - Thorne Moor SAC;
 - Thorne and Hatfield Moors SPA; and
 - Hatfield Moor SAC.
- 6.5.3. LSE were identified from the Proposed Development alone for the Humber Estuary sites and for the Proposed Development in-combination with other plans and projects for all sites aside from Hatfield Moor SAC, for the features and impact pathways listed in Table 6.1 of this Report.
- 6.5.4. The methodology and outcomes of the Applicant's screening for LSE 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 other than Amy-Louise Ogman.

- 6.5.5. We are 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 LSEs have been identified.
- 6.5.6. Our findings are that, subject to the mitigation measures to be secured in the rDCO, AEoI on the Humber Estuary SAC, SPA and Ramsar site, Thorne Moor SAC and Thorne and Hatfield Moors SPA from the Proposed Development when considered alone or in-combination with other plans and projects can be excluded for the impact pathways assessed.
- 6.5.7. This includes the following recommended amendment to the final DCO:
- amended definition of limits of deviation in Part 1 Interpretation of the dDCO to read "*limits of deviation*" means the limits of deviation shown for each work number on the works plans subject to this being in accordance with Article 5 (Limits of Deviation) of this Order"; and
 - insertion of the wording "...provided that a minimum separation distance of 100m is maintained between the bunker hall (within Work No. 1) and the River Trent at their closest points" at the end of Article 5(1)(a).
- 6.5.8. We consider that there is sufficient information before the SoS to enable them to undertake an AA.

7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1. INTRODUCTION

- 7.1.1. In determining the application in accordance with s.104 of the Planning Act 2008 (as amended), the Secretary of State must have regard to any relevant National Policy Statements, Local Impact Reports, prescribed matters and other matters considered to be important and relevant to the decision.
- 7.1.2. The need for proposals of this nature is set out in Government policy in NPS EN-1 and NPS-EN3.
- 7.1.3. We have considered the need for the development in the light of the policy background set out in NPS EN-1, EN-3 and EN-5. We have also had regard to the emerging NPS, National Planning Policy Framework (NPPF) and local plan policies as important and relevant considerations. We believe that the specific policies in the NPSs should prevail and form the primary means of assessing the acceptability in planning policy terms of the Proposed Development.
- 7.1.4. We have considered the more recent developments in national policy and the references made in those documents to the need for new energy from waste power generation. These include the Energy White Paper, the Draft NPS EN-1 and Draft NPS EN-3. We find that through this sequence of various policy documents and reports, the Government has clearly and consistently explained the role that energy from waste has to play. Furthermore, the Government's position on need is determinative. This leads us to the conclusion that there is an urgent need for new energy generating infrastructure.
- 7.1.5. We find that the Proposed Development responds to the identified need and the national policy commitment to deliver to meet this requirement.
- 7.1.6. The Proposed Development has a notional capacity of 95MW and this corresponds with the capacity being offered for the grid connection. We sought views of the Applicant in our ExQ 14.0.3 [PD-007] on whether the gross or net energy generation should be applied in assigning weight towards the overall planning balance.
- 7.1.7. The Applicant responded in [REP2-033] *"The net generation per year is 641,896 MWh. In terms of the contribution of the Project to the need for low carbon electricity, either can be used, but the net output and its contribution in terms of equivalent number of homes that could be potentially be powered, is a useful way of articulating the need."*
- 7.1.8. In light of the power needed to sustain the associated development sought by the Applicant, we have concluded that the net figure of 64MW is more appropriate in this instance. We do not believe there is evidence that supports an approach that would allow energy generating projects to

gain substantial policy support if the energy generated is used within the confines of the development itself.

- 7.1.9. In line with the advice in NPS EN-1 at paragraph 3.2.3 we give substantial weight to the consideration of need, but we recognise that this should be proportionate to the actual contribution to satisfying the need for a particular type of infrastructure.
- 7.1.10. We therefore conclude that the Proposed Developments contribution to satisfying that need would be moderate, nevertheless we ascribe substantial weight to this matter for the Order being made.
- 7.1.11. We have considered the materiality of the various benefits put forward by the Applicant in support of its case and whether those benefits have been substantiated. This is set out in the relevant topic sections of Chapter 5 of this Report. We have also made findings in relation to the various potential adverse effects that would occur during the construction, and operation of the Proposed Development. We shall now summarise our Chapter 5 findings in relation to the benefits and adverse impacts of the Proposed Development to be weighed in the overall planning balance.
- 7.1.12. In the light of NPS EN-1 paragraph 4.10.3 we have acted on the basis that the relevant licensing and permitting regimes will be properly applied and enforced; that we should not duplicate matters that are within the remit of other regulators and that a decision should not be delayed as to whether to grant consent until completion of the licensing or permitting process.

Water supply

- 7.1.13. The absence of a water supply, potentially upto 2030 brings the suitability of granting consent at this time, for this scheme seriously into question. While we recognise that the Applicant and Anglian Water remain in a positive dialogue, we have no information on what solution might be available or the time frame that this might be forthcoming. Nor do we have information on the alternatives under consideration and if they may have additional environmental effects that have to date not been considered within the ES.
- 7.1.14. Anglian Water stated in [REP8-035]
- "The regulatory position is that demands for water for non-domestic purposes are not permitted to jeopardise current and future supplies for domestic purposes, whether to household or non-household premises.*
- Anglian Water guided by the Environment Agency; on required water abstraction reductions, our water modelling and water resource teams will be able to advise if there is currently and will in future be insufficient water supply available in the Water Resource Zone to meet the maximum daily demand for the project."*
- 7.1.15. Anglian Water onfirmed their position in [REP9-047] response to our Rule 17 letter [PD-016] stating it had advised the Applicant it could not guarantee a potable water supply in the early stages of the project.

- 7.1.16. In the absence of a water supply to deliver the project we are of the view that the appropriateness of granting a consent at this time is brought into question. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 sets out in Regulation 3(2) that the period of time for serving notice to treat is expected to take place within five years beginning with the date on which the order granting consent is made. It is not clear at the current time whether that time table could be met.

Air Quality

- 7.1.17. In relation to air quality effects on people, for the reasons described in Chapter 5, when considered against the relevant NPS we ascribe no weight to the issue for or against the making of the Order.

Alternatives

- 7.1.18. We consider that the Applicant has correctly identified all legal and policy requirements relating to the assessment of alternatives applicable to this project.
- 7.1.19. The issue of flood risk and the application of the Sequential and Exception Tests is considered in the Flood Risk section 5.7 of Chapter 5 of this Report. We conclude that the Applicant has fully addressed the flood risk associated with construction and operation of the Proposed Development. In reaching this conclusion, we have had regard to EN-1 sections 4 and 5 including paragraphs 5.7.13 to 5.7.17.
- 7.1.20. We conclude in relation to the consideration of reasonable alternatives to avoid significant harm to biodiversity and geological conservation interests that in accordance with section 4.4 of EN-1, the Applicant has undertaken a proportionate consideration of reasonable alternatives.
- 7.1.21. We conclude that there are no other common law, policy or legal requirements relating to the consideration of alternatives that would lead it to recommend that development consent be refused for the Proposed Development in favour of another alternative. Consequently, there are no matters relating to alternatives that would weigh for or against the making of the Order.

Options A and B for the Northern District Heat and Private Wire Network (NDHPWN)

- 7.1.22. The Applicant proposes two alternative routes of the NDHPWN. In considering each of the issue specific sections of Chapter 5 we have sought to address the difference between these alternatives where the issue has raised different aspects that need to be considered.
- 7.1.23. Option A - the route passes south towards the built-up urban centre of Scunthorpe via Normanby Road, where the route remains lined on both sides by residential and industrial areas; or
- 7.1.24. Option B –the route continues on the A1077 until the junction with Bessemer Way to the south. The route will follow Bessemer Way until the

junction with Warren Road turning due west to meet the Normanby Road.

- 7.1.25. In support of the justification for this additional option, the Applicant explained in response to ExQ [REP2-033] that either would be suitable, but that only one option would be developed. The dDCO is limited by way of the Compulsory Acquisition powers which would only enable one alternative to be exercised.
- 7.1.26. In light of the issues raised in the noise section 5.11 we conclude that *"In the absence of any differences in the final SoCG with NLC [REP9-025] in relation to the routing of the northern DHPWN we see no reason to favour one or other of the options A or B."*
- 7.1.27. With regard to transport as set ou in section 5.13 we say *"As all matters concerning road transport, walking, bridleways and cycling networks, including PRoWs, were resolved between the Applicant and the highways authorities, we see no reason to disagree with the Applicant's conclusions on these matters, and no reason to favour one or other of the options A or B for the routing of the northern DHPWN."*
- 7.1.28. Consequently we conclude that either option would be acceptable, and neither would cause likely significant adverse effects in terms of noise or traffic.

Climate Change

- 7.1.29. In relation to effects on climate change, for the reasons described in Chapter 5, when considered against the relevant NPS we ascribe no weight to the issue for or against the making of the Order.

Cultural Heritage

- 7.1.30. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, we have given specific consideration to the desirability of preserving listed buildings and scheduled monuments or their setting or any features of special architectural or historic interest which they possess, and the desirability of preserving or enhancing the character or appearance of conservation areas.
- 7.1.31. We find that policy on the historic environment within NPS EN-1 has been followed by the Applicant. This policy is consistent with the aims of Section 16 of the NPPF and with the aims of the relevant policies of the local authorities' development plans.
- 7.1.32. We also consider that despite the shortcomings identified in respect the lack of an assessment on the setting of the listed buildings in Amcotts, we are confident that we have been able to reach an informed conclusion on the significance of effect on the historic environment for the construction, and operation phases of the Proposed Development.
- 7.1.33. Despite our findings of some shortcomings in the overall assessment of the setting of listed buildings, we are satisfied there was sufficient

information before the Examination that we have been able to come to a properly informed recommendation.

- 7.1.34. The safeguards secured through the dDCO and the supporting documentation in the OAMS and WSI should ensure that archaeology is properly respected, and where appropriate safeguarded, protected or recorded.
- 7.1.35. No Listed buildings will be directly affected by the proposals, and we have concluded that the adverse effect on setting on the church in Amcotts would result in less than substantial harm.
- 7.1.36. The HLCA will be adversely affected by the introduction of this range of large industrial buildings and the degree of harm is moderate adverse (significant) in EIA terms, in respect of the Axholme Fens. We recognise that even with the mitigation offered through the landscape planting secured through the dDCO an adverse effect would remain. This in our view would result in less than substantial harm to a non-designated heritage asset, to which we ascribe little to moderate weight against the Order being made.
- 7.1.37. We also recognise there is the potential for some benefit through the identified enhancement to interpretation of Flixborough Saxon Nunnery secured in Requirement 11 of the dDCO to which we ascribe limited weight in favour of the Order being made.
- 7.1.38. We are content that with the controls in place through Requirement 11 Archaeology in the dDCO and the supporting documents (OAMS) and (WSI) that the undertaking of the Proposed Development would be done in accordance with the policies set out in NPS EN-1 and NPS EN-3.
- 7.1.39. When deciding an application that affects a listed building or its setting, Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 requires the decision-maker to have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.
- 7.1.40. Additionally, the NPSs, the NPPF and relevant development plan policies make clear that great weight should be given to the conservation of historic assets and any harm to, or loss of, significance of a designated heritage asset should require clear and convincing justification.
- 7.1.41. The NPS, the dNPS and the NPPF give a clear indication that loss affecting any designated heritage asset should require clear and convincing justification and when considering applications for development affecting the setting of a designated heritage asset, the SoS should weigh any negative effects against the wider benefits of the application.
- 7.1.42. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.

- 7.1.43. On balance, while we acknowledge there would be some harm to the setting of the listed church in Amcotts, and the ancient monument at Flixborough Saxon Nunnery, as well as to some non-designated archaeological assets, and afford this great weight. When accounting for the urgent need for new energy production and the benefit this brings we conclude that the harm is clearly outweighed by the wider public benefit.
- 7.1.44. In conclusion we consider that overall, there would be moderate adverse effects and we ascribe moderate weight to matters relating to cultural heritage in the overall planning balance against the making of the Order.

Design and Layout

- 7.1.45. We are content with the revisions to the DP&C document [REP7-008] which now provides greater precision in the principles and codes set out to deliver a good design. We believe that this would give NLC greater certainty that the quality of the end design can be achieved and NLC the appropriate mechanisms to ensure this would occur if applied consistently.
- 7.1.46. This in conjunction with the incorporation of a role for a Design Champion and an independent Design Review Panel should provide the appropriate tools to support NLC when considering future submissions for approval of the detailed design elements yet to be finalised. Both of these elements are secured by way of Requirement 4 of the dDCO which relies upon the Design Principles and Codes, a document to be certified in Schedule 15 of the dDCO.
- 7.1.47. We remain of the view that irrespective of the quality of the end design, the scale, height and mass of the complex of buildings included in the Proposed Development will change the local context, and this could be regarded as an adverse effect on the locality which would weigh negatively in the planning balance against the scheme.
- 7.1.48. We recognise therefore that some IPs, particularly in the nearby settlements of Amcotts and Flixborough will be affected by the visual changes that would result in the event the DCO were to be granted and subsequently implemented. We are however not of the view that these changes would be so harmful as to affect individual amenity of properties that this should count against the development in the planning balance.
- 7.1.49. The development of the D&PC document in conjunction with the methods used to monitor and manage future submissions will give NLC sufficient control in our view that a good design solution can be achieved.
- 7.1.50. The establishment of a project specific Design Review Panel, secured by way of Requirement 3 of the dDCO 'Detailed Design' and the role of a Design Champion both agreed by the Applicant and NLC as confirmed in the final SoCG [REP9-025] provides significant assurance in this respect.
- 7.1.51. We are therefore of the view that the Proposed Development would accord with the principles of securing good design as expected by both NPS EN-1 and EN-3.

- 7.1.52. Overall, the changes to the area and the introduction of this complex of buildings will change the appearance of the locality, particularly in the short term, however we do not consider that these elements should weigh against the scheme in the overall planning balance.

Ecology and Biodiversity

- 7.1.53. We are satisfied that the Applicant has carried out a suitable ES as required by paragraphs 5.3.3 and 5.3.4 of NPS-EN1.
- 7.1.54. The harm that would arise to species and habitats of principal importance we consider would be outweighed by the benefits of the Proposed Development and conclude therefore that paragraph 5.3.17 of NPS EN-1 has been satisfied.
- 7.1.55. The Applicant has designed the Proposed Development to create a biodiverse mixture of habitats, which exceeds the minimum future planned 10% threshold of BNG. This goes beyond what policy currently requires and we consider this should be given moderate weight in favour of the order being granted.
- 7.1.56. This BNG is not presented as a form of compensation for the adverse effects created at the SSSI, it provides for a different range of ecological benefits, which are in themselves welcome, but they do not address directly the harms to the SSSI.
- 7.1.57. In light of the harm that has been identified to the Messingham Heath SSSI, Humber Estuary SSSI and Risby Warren SSSI both alone and cumulatively with the emissions from Keadby 2 and 3 and the strong policy argument that substantial weight should be afforded to the protection of such nationally important sites we find that this must be given substantial weight against the order being made.
- 7.1.58. The SoS will be aware that that our conclusions are based on the original assessment undertaken by the Applicant, and the original comments received by NE in their original RR [RR-090]. We, understand that our views do not correspond with NE in this instance, as we do not agree that the ROC case which NE have relied upon to inform their final conclusions as set out in the final SoCG [REP10-010] can be relied on to predict future emissions from the Proposed Development as the ROC is not secured.
- 7.1.59. We are also aware of the advice in the NPS EN-1 which states at paragraph 4.10.3

"In considering an application for development consent, the IPC should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The IPC should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced

by the relevant regulator. It should act to complement but not seek to duplicate them."

7.1.60. From the evidence presented to the Examination, and in the absence of any progress being made on the Environmental Permit by the Applicant while we accept the evidence presented by NE that the ROC could provide one way to avoid these harms, these are not currently before the Examination.

7.1.61. As such we conclude that the harm to biodiversity and ecology assets weighs against the Order being made and we give them substantial weight. Therefore, development consent should not be granted unless the need for, and benefits of, the Proposed Development would clearly outweigh the harm.

Flood Risk and Water environment

7.1.62. We are satisfied that all the matters dealing with, flood risk, the WFD, and ground conditions have been appropriately assessed through the ES and the mitigation secured in the dDCO will ensure that the Proposed Development could be undertaken in line with the Policy requirements identified in NPS EN-1 and EN-3. In considering these elements of the Proposed Development we consider that these matters together we ascribe little weight against the order being made.

7.1.63. However the lack of resolution of a water supply at the end of the Examination, is a serious concern and while the Applicant and AW are continuing their engagement in trying to secure a solution, this is not before us. At this time the lack of a certainty on this matter must be regarded as a negative factor which weighs against the Order being made. The importance of water resources and the absence of a solution we ascribe significant weight against the Order being made.

7.1.64. At the close of the Examination there was still uncertainty as to how the permanent water supply would be secured. AW and the Applicant were still engaging on this matter, the SoS may wish to ascertain whether progress has been made towards resolving the current problem, and if a solution has now been reached that might overcome the lack of availability of the water supply.

Health

7.1.65. In relation to effects on people's health caused by dust, the contamination of land or water, pests and vermin, and electric and magnetic fields, for the reasons described in Chapter 5, when considered against the relevant NPS we ascribe no weight to the issue for or against the making of the Order.

Landscape and Visual Amenity

7.1.66. The assessment has met the standards expected in NPS EN-1 paragraphs 5.9.5 -5.9.7 in carrying out a landscape and visual assessment identifying those areas where effects during construction and subsequent operation would occur.

- 7.1.67. We agree with the conclusions of the Applicant and NLC in both identifying the adverse effects of the Proposed Development on the landscape and visual amenity as set out in the ES and agreed in the SoCG.
- 7.1.68. While we recognise that a number of IPs expressed concerns about the adverse effects on the landscape and visual amenity we are of the view that the harm the Applicant identifies properly reflects those concerns. The assessment and our conclusions however are undertaken in light of the adopted policy in NPS EN-1. Which recognises that harm may well arise and this should be balanced against the overall benefits of the Proposed Development.
- 7.1.69. The site is neither in a nationally designated landscape nor adjacent to such an area While we appreciate that this landscape is recognised locally and is highly valued, it does not have the degree of protection, nor does the Proposed Development cause such a degree of harm that the landscape and visual effects could reasonably stand in the way of the development progressing.
- 7.1.70. The Applicant recognises that major adverse and moderate adverse impacts on viewpoints 1 and 2 respectively even following the growth of landscape mitigation planting at year 15. In line with paragraph 5.9.15 of NPS EN-1 we do not consider that these adverse effects are so damaging they could reasonably be argued as to outweigh the overall benefits of the Proposed Development.
- 7.1.71. The assessment has also included the effects of light pollution which could arise in the event the DCO is granted. The dDCO secures by way of Requirement 5 'Lighting Scheme' an appropriate method of control to minimise or otherwise mitigate artificial lighting effects in line with the principles of the Indicative Lighting Strategy [APP-071].
- 7.1.72. We are content that with the mitigation in place provided through the Requirement No. 3 on Detailed design, Requirement 4 Environmental Management, Requirement 5 the Lighting Scheme, Requirement 6 Landscape Design and Requirement 7 Landscape and Ecology Management, and the supporting mitigation documents that the degree of adverse effects has been mitigated as far as can be reasonably achieved in light of the scale of the project in the context of this landscape.
- 7.1.73. NPS EN-1 makes clear that in dealing major infrastructure projects paragraph 5.9.8 "Virtually all nationally significant energy infrastructure projects will have effects on the landscape."
- 7.1.74. We are also content that that the Proposed Development has properly had regard to the siting, operational and other relevant constraints with the aim of minimising harm to the landscape, and providing reasonable mitigation in line with paragraph 5.9.8 of NPS EN-1.
- 7.1.75. Overall taking all matters into account we ascribe moderate weight to the landscape and visual matters against the Order being made.

Major Accidents and Hazards

- 7.1.76. In relation to major accidents and hazards, including the effects of climate change, for the reasons described in Chapter 5, when considered against the relevant NPS we ascribe no weight to the issue for or against the making of the Order.

Noise and Vibration

- 7.1.77. In relation to noise and vibration effects on people, for the reasons described in Chapter 5, when considered against the relevant NPS we ascribe no weight to the issue for or against the making of the Order.

Socio economics

- 7.1.78. In relation to effects on the regional and local economy, soil quality and loss of Best and Most Versatile (BMV) agricultural land, for the reasons described in Chapter 5, when considered against the relevant NPS we ascribe substantial weight to the issue for the making of the Order.

Traffic and transport

- 7.1.79. In relation to effects on road, rail, river, cycling, bridleway, and pedestrian networks, for the reasons described in Chapter 5, when considered against the relevant NPS we ascribe little weight to the issue for the making of the Order.

Waste

- 7.1.80. In terms of SoS decision making at EN-3 paragraph 2.5.70 we conclude that the Proposed Development would not be *"in accordance with the waste hierarchy"* and would not be *"of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets in England"*.
- 7.1.81. We also consider, with reference to EN-3 paragraph 2.5.70, that the Applicant has not provided sufficient evidence *"as to why this is not the case or why a deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy"*.
- 7.1.82. In relation to effects on waste management targets and driving waste up the waste hierarchy, for the reasons described in Chapter 5, when considered against the relevant NPS we ascribe very substantial weight to the issue against the making of the Order.

7.2. THE PLANNING BALANCE

- 7.2.1. In accordance with paragraph 4.1.3 of EN-1, in making a determination of the application, the decision maker should take into account:
- the potential benefits, including in addition to its contribution to meeting the need for energy, its contribution to job creation and any long term or wider benefits; and

- the potential adverse impacts, including any long term and cumulative adverse impacts as well as any measures to avoid, reduce or compensate for any adverse impacts.

Matters with a neutral weight in the planning balance neither for nor against the making of the DCO

- 7.2.2. We consider that the air quality, climate change, health, major accident and hazards and noise and vibration issues. once mitigation is secured through the provisions of the DCO are in place to be neutral in the overall planning balance.

Matters weighing in favour of making the DCO

- 7.2.3. The Proposed Development brings forward benefits in respect of Biodiversity Net Gain which would be managed and secured over the long term to which we ascribe limited weight in favour of the making of the Order.
- 7.2.4. The Proposed Development would result in positive benefits to employment and the local economy equating to in excess of 2000 jobs during construction and a further 136 direct jobs during operation which we ascribe substantial weight in favour of the Order being made.
- 7.2.5. With regard to the traffic and transport matters, the benefits that come through the DCO we conclude should be given little weight in favour, while the effects in respect of, flood risk and ground conditions we give little weight against.
- 7.2.6. The delivery of up to 95MW is a modest benefit adding to the case for the making of the DCO

Matters weighing against the making of the DCO

- 7.2.7. We have found that the Proposed Development would result in less than substantial harm to the setting of designated and non-designated heritage assets and to below ground archaeology. However, while we afford great weight to the conservation of these assets, we consider the overall level of harm would be less than substantial and would be outweighed by the wider public benefits. Consequently, we consider this should be afforded only a moderate amount of weight against the making of the Order.
- 7.2.8. We have also found it would result in some landscape harm particularly when viewed from two receptors, this harm would remain even after the planting to be delivered through the landscape scheme, and we ascribe this moderate weight against the making of the Order.
- 7.2.9. In light of the clear advice in NPS EN-1 and the harm identified to the SSSIs we have concluded that this should be given substantial weight against the making of the Order.

- 7.2.10. In respect of the importance of water resources, and the absence of a water supply at the current time we ascribe significant weight against the Order being made.
- 7.2.11. In respect of the issues of waste, in light of the conclusions that we have reached, based on the Applicant's own figures in respect of the balance of the quantity of waste available as fuel against the energy from waste capacity available we conclude this should be given very substantial weight against the making of the Order.

The Balance of the Issues

- 7.2.12. The designated and draft NPS make clear that there is an urgent need for additional electricity generating capacity. The Proposed Development would support this aspiration, contribute to energy security, network resilience and help move towards a more secure, flexible energy supply.
- 7.2.13. The NPS EN-3 makes clear in paragraph 2.5.70 the support for EfW is conditional on their compliance with the waste hierarchy. While we consider the Proposed Development would make a modest contribution to the UK's transition to low carbon energy generation, in failing to comply with the waste hierarchy we afford this substantial weight against the making of the Order.
- 7.2.14. NPS EN-1 makes clear that where a Proposed development is likely to have an adverse effect on a SSSI, development consent should not normally be granted. As an exception a development may be consented *"where the benefits clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs."* The evidence in our view does not support this position and we do not consider that the balance of benefits clearly outweighs the harms.
- 7.2.15. The NPS EN-1 makes clear that where significant harm cannot be avoided appropriate compensation measures should be sought. Even in the Applicant's Reasonable Operating Case, the harm to Risby Warren SSSI remained and no compensation measures had been secured by the close of the Examination.
- 7.2.16. Taking the above factors into account, and having had regard to all important and relevant matters, we conclude that the harm we have identified clearly outweighs the benefits from the provision of energy that the Proposed Development would deliver.
- 7.2.17. While the energy provided would meet the need identified in NPS EN-1 (and continued into dNPS EN-1 and dNPS EN-3) we conclude that there is a conflict with NPS policy EN-3 as the Proposed Development would fail to conform with the waste hierarchy.
- 7.2.18. The support for EfW plants is conditional on being in conformity with the waste hierarchy and this in our view has not been clearly demonstrated.

- 7.2.19. In light of our findings in respect of the balance of harms relative to benefits we also conclude that the tests in EN-1 set out in section 5.3.11 have not been met and the Applicant has failed to demonstrate why an exception should apply in this case. The benefits do not clearly outweigh the harms identified consequently the Proposed Development is considered to be in conflict with NPS EN-1 in this respect.
- 7.2.20. For these reasons, and as set out in the earlier chapters of this Report, we find that the Proposed Development is not acceptable and that the case for Development Consent is not made.
- 7.2.21. We have outlined a number of additional matters, outlined in Appendix D which remained unresolved at the close of the Examination, which the SoS may wish to consider in assisting them to reach their final decision on the application for development consent.

8. COMPULSORY ACQUISITION AND RELATED MATTERS

8.1. INTRODUCTION

- 8.1.1. 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 these proposals and related issues and sets out our conclusions and recommendations about whether the powers sought by the Applicant should be granted?
- 8.1.2. The full extent of the land which would be subject to powers of Compulsory Acquisition (CA) and required in order to enable the Applicant to construct the Proposed Development, as described in the Statement of Reasons (SoR) [REP%-011], is shown on the Land Plans [REP2-014], and the Works Plans [REP5-013 to 015]. It is further described in the Book of Reference (BoR) [AS-020], the Explanatory Memorandum (EM) [REP9-007] and in the documents comprising the Environmental Statement (ES).

CONSIDERATION OF THE COMPULSORY ACQUISITION ISSUES

- 8.1.3. Our approach to the question of whether and what compulsory acquisition powers we should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of the Act, notably s.122 and s.123, the CA Guidance¹⁶, and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 8.1.4. We understand, however, that the DCO deal with both the development (the Proposed Development) and compulsory acquisition powers. The case for compulsory acquisition powers cannot properly be considered unless and until the case for the Application has been made. We have shown in Chapter 7 of this Report that we have reached the view that development consent should not be granted for the Proposed Development. Should the Secretary of State agree with those conclusions then the case for the powers sought in the DCO falls away.
- 8.1.5. We also consider that in light of the unresolved position of the availability of water, that the timing of the Proposed Development is uncertain which further adds to the doubt over the suitability of granting the DCO and subsequently the CA powers at this time. Should the SoS agree with our recommendation, then it can be concluded that the Public Interest test cannot be passed if the Proposed Development is not deliverable.

¹⁶ Planning Act 2008; Guidance related to procedures for the compulsory acquisition of land, former Department for Communities and Local Government, September 2013

- 8.1.6. However, in the event that the Secretary of State takes a different view and is content the water supply issue is not an obstacle to granting the DCO, we have addressed the extent to which the case is made for compulsory acquisition powers necessary to enable the development to proceed.

8.2. THE REQUEST FOR CA AND TP POWERS

- 8.2.1. The application for the Development Consent Order (DCO) seeks to compulsorily acquire interests and rights in land and to use land temporarily, to construct, operate and maintain a new Energy Recovery Facility (ERF) capable of converting up to 760,000 tonnes of non-recyclable waste into 95 Megawatts (MW) of electricity.
- 8.2.2. Additional land is sought to facilitate the associated development included in addition to the ERF. These include habitat creation, together with hard and soft landscaping works (Work No 12) flood defences and bunds (Work No 13).
- 8.2.3. In addition, the railway reinstatement land (Work Nos 3 and 4) seeks the permanent acquisition of plots (or part of plots) for the provision of the railway and for the ongoing operation and use of the same during the operation of the Proposed Development.
- 8.2.4. Land is also sought to facilitate the northern and southern District Heat and Private Wire Networks (DHPWN)(Work Nos 10 and 11). The Applicant has identified two options as alternatives for the eastern end of the Northern DHPWN. Option A is shown on sheet 10A of the Land Plans while Option B is detailed on sheet 10B [REP2-014].
- 8.2.5. The powers sought in the draft Development Consent Order (dDCO) for both DHPWN include powers to enter land to a maximum width of 10 metres (m), create easements over this land for access and maintenance. The acquisition of rights are limited such that CA can only be exercised for one of these options, in the event the Secretary of State (SoS) does not select one option over the other.
- 8.2.6. Permanent freehold acquisition is sought for the provision of the new access road connecting the B1216 and Stather Road (Work No 5).
- 8.2.7. The application was accompanied by a Statement of Reasons (SoR) [APP-011] and a Funding Statement [APP-012]. These were revised through the Examination, with the final versions being [REP5-011 and REP7-004] respectively.
- 8.2.8. The powers of temporary possession would be provided through Articles 32 and 33.
- 8.2.9. The Book of Reference (BoR) and the Land Plans were also revised through the Examination, with the final revisions being Revision 4 of the BoR [AS-020] and Revision 3 of the Land Plans [AS-022].

- 8.2.10. The BoR and Land Plans detail all the land and rights that are sought. Land that would be the subject of the proposed CA is included within 'the Order Land' in the dDCO, along with land proposed for temporary possession.
- 8.2.11. The Applicant has set out what they regard as compelling reasons why the Project should proceed in the Planning Statement [REP2-017], Explanatory Memorandum [REP5-007] and Statement of Reasons [REP5-011] and other application documentation where applicable.

Crown Land

- 8.2.12. There is no crown land included in or affected by the Proposed Development. [AS-020].

Statutory Undertakers' Land

- 8.2.13. If a Statutory Undertaker (SU) makes a representation about the CA of land or a right over land which has been acquired for the purpose of its undertaking, and this is not withdrawn, s127 PA2008 applies. In these circumstances, the DCO can only include a provision authorising the CA of that land or right if the SoS is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by use of alternative land.
- 8.2.14. Section 138 PA2008 applies where a SU has a relevant right or relevant apparatus in the CA land. In those circumstances, the DCO can only authorise the extinguishment of the right or removal of the apparatus if the SoS is satisfied that this is necessary for the purpose of carrying out the development to which the Order relates.
- 8.2.15. The land affected by the Proposed Development includes land, rights or other interests owned by several SUs [AS-020]. The Statutory Undertaker Tracker [REP9-038] reports on the Applicant's negotiations with each of these SUs.
- 8.2.16. The Applicant also set out their Case under Section 127 and 138 of the Planning Act 2008 (PA2008) in respect of Statutory Undertakers Land [REP8-024] as not all matters in this respect had been resolved between the Applicant and Cadent Gas Limited by the end of the Examination.
- 8.2.17. A Status of negotiations with Statutory Undertakers (SU) was also received at Deadline 9 [REP9-038] supported with a tracked version [REP9-039]. This confirms all other SUs had confirmed that no agreement was necessary or Protective Provisions had been agreed.
- 8.2.18. The land affected by the Proposed Development includes land, rights or other interests owned by several SUs. The SoR final version [REP5-011] sets out the Applicant's negotiations with the SUs. This was updated by a Statutory Undertaker tracker [REP9-038].

- 8.2.19. Representations that were subsequently withdrawn by representation or Statement of Common Ground (SoCG) were made by the following SUs:
- Openreach Limited - confirmed on 28 November 2022 that the Protective Provisions contained in Schedule 14 of the draft DCO is acceptable and specific Protective Provisions are not required.
 - Associated British Ports Limited – confirmed on 13 January 2023 that no Protective Provisions were required.
 - Anglian Water Services Ltd [RR-066 and REP9-024] confirmed Protective Provisions had been agreed on 28 February 2023.
 - Severn Trent Water Limited– did not respond to requests from the Applicant in respect of Protective Provisions nor did they make any objection.
 - Northern Powergrid (Yorkshire) Plc confirmed agreement of Protective Provisions.
 - National Highways Limited completed an agreement with the Applicant on 10 May 2023 and stated that no Protective Provisions were required.
 - Network Rail Infrastructure Limited – The Applicant set out its position that Protective Provisions had been developed following negotiation with Network Rail. Network Rail confirmed withdrawal of their objection on 15 May 2023 [REP10-016].
- 8.2.20. Cadent Gas Limited however maintained that the negotiations with the Applicant had not resolved all of the issues that they had identified, and an objection remained to the DCO, the Protective Provisions offered and consequently the exercise of powers of Compulsory Acquisition.
- 8.2.21. We consider the case in respect of s127 and s138 below.

Special Category Land

- 8.2.22. The Application Land contains three areas of special category land this is shown on the Special Category Land Plans [APP-034]. All of the affected plots are open space land which form parts of three areas of open space at:
- 8.2.23. Plots 4-97, 6-7, 6-8, 6-9, 9-38 and 9-39, being part of the Atkinson's Warren (Atkinson's Warren Open Space);
- 8.2.24. Plots 6-50, 6-51, 6-55, 6-71, 6-72, 6-74, 6-76, 6-78, 6-79, 6-80 and 6-82 on land south of the proposed Railway Reinstatement works (Flixborough Open Space); and
- 8.2.25. Plots 9-8, 9-9, 9-10, 9-11, 9-12 and 9-40 being land at Phoenix Parkway Local Nature Reserve (Phoenix Parkway Open Space).
- 8.2.26. The total area of land within the Order Limits is approximately 127,817m², 117,941m² is not proposed to be affected by acquisition. The remaining areas include 3,872m² that would be covered by temporary possession, 315m² acquisition of rights, and 138.63m² permanent acquisition.

8.2.27. We consider the case in respect of s131 below.

8.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

8.3.1. The proposed CA, and powers of temporary possession, form part of the application for development consent for the North Lincolnshire Green Energy Park Project. The Order Limits for the project are shown by the red line boundary on the Land Plans [REP2-014]. The Order Land, covers the land required for the construction and operation of the Proposed Development and for the electrical connection.

8.3.2. The SoR provides a summary [REP5-011] of the relevant permanent powers that would be provided by the dDCO. These would be through Articles 24 in respect of the compulsory acquisition of land and Article 26 in respect of the permanent acquisition of rights. The summary of the Applicant's case is that in the absence of powers of CA, it might not be possible to assemble all of the land within the Order Limits. In which case uncertainty would prevail. This could in the Applicant's submission, undermine their objectives and those of Government Policy.

8.3.3. We were kept updated by the Applicant throughout the Examination on the progress of negotiations with Affected Persons (AP)s by means of a CA schedule. The final CA Schedule setting out the position at the close of the Examination was submitted at Deadline 9 [REP9-036].

8.4. LEGISLATIVE REQUIREMENTS

8.4.1. Compulsory acquisition powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008 are met.

8.4.2. Section 122(2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate, as set out in the CA Guidance.

8.4.3. The condition within section 122(2)(c) addresses replacement land that would be given in exchange for Order Land under sections 131 and 132.

8.4.4. Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, Compulsory Acquisition must be justified in its own right. This does not mean that the Compulsory Acquisition proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.

8.4.5. Section 123 requires that one of three conditions is met by the proposal. We are satisfied that the condition in s123(2) was met because the application for the DCO included a request for Compulsory Acquisition of the land to be authorised.

- 8.4.6. Relevant guidance is to be found in the Department for Communities and Local Government (DCLG) publication "Planning Act 2008 - Guidance related to procedures for the Compulsory Acquisition of land" ('the DCLG guidance'), dated September 2013. Page 5 of the DCLG guidance highlights 'General considerations', which include that:
- all reasonable alternatives to Compulsory Acquisition must be explored;
 - the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
 - the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 8.4.7. Paragraphs 17 and 18 of the DCLG guidance, address funding for CA. They highlight that any application for a consent order authorising CA must be accompanied by a statement explaining how it will be funded. The funding statement should provide as much information as possible on the resource implications of acquiring the land and implementing the development proposed.
- 8.4.8. Paragraph 18 of the DCLG guidance states that "*...Applicants should be able to demonstrate that adequate funding is likely to be available to enable the Compulsory Acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of...*".
- 8.4.9. Paragraph 19 notes that it would be helpful if the Applicant were able to demonstrate that:
- the application is firmly rooted in any relevant national policy statement; any potential risks or impediments to implementation of the scheme have been properly managed; and,
 - the Applicant has taken account of any other physical and legal matters pertaining to the application including the programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent.
- 8.4.10. If s127(1) of PA2008 applies, Compulsory Acquisition of statutory undertakers' land or a right over statutory undertakers' land cannot be authorised unless the tests in s127 are met. Section 127(3) states that CA of Statutory undertakers' land can only be authorised where the land:
- can be purchased and not replaced without serious detriment to the undertaking; and if purchased, it can be replaced with other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

8.5. EXAMINATION OF THE CA AND TP CASE

- 8.5.1. In examining the application, we considered all written material in respect of CA and TP. We asked questions of the Applicant and APs in our First Written Questions (ExQ1), and Second Written Questions (ExQ2). In

addition, we held a Compulsory Acquisition Hearing (CAH) [EV-034] where the issues were explored further.

Written Processes

- 8.5.2. In our ExQ1 [PD-007] (ExQ 7.0.1-Q 7.029), we sought additional information and clarification in respect of land ownership (including in relation to unknown owners) as well as an update on any progress made with negotiations with APs and SUs.
- 8.5.3. We also sought clarification on the scope of the powers sought, on the consideration of reasonable alternatives, and if adequate funding would be available.
- 8.5.4. In ExQ2 [PD-012] we sought information from the Applicant with regard to progress on the discussions with SUs and any agreements that were in place.

Hearings

- 8.5.5. We held one CAH [EV-034] where we invited the Applicant to outline their case for CA and TP and how it would meet the tests of the PA2008.
- 8.5.6. APs were provided an opportunity to be heard and comment on the process and on the rights sought and provisions proposed in the dDCO. SUs were offered the opportunity to raise or expand on any concerns or objections.
- 8.5.7. Only British Steel and North Lincolnshire Council (NLC) attended the CAH. British Steel confirmed orally that they were there to observe and did not raise any specific objections. No SUs chose to attend the CAH.
- 8.5.8. Our oral questions sought information and clarification on a number of matters including:
 - Progress on negotiations with APs;
 - The need to acquire rights and alternatives;
 - Protective Provisions (PPs) in relation to SUs and others;
 - Whether there is a compelling case in the public interest; and
 - Availability of funding.
- 8.5.9. During the CAH the Applicant advised that they had come to an agreement with landowners covering in excess of 92% of the land area involved. Of those who had objected to CA or TP, the Applicant updated us in respect of the following APs:
 - Rainham Steel Company Ltd [RR-046] Heads of Terms have been agreed and signed, and the drafting of legal documents is underway. The Applicant understands the objection to be withdrawn;
 - Mr Rajan Marwaha [RR-055] when he purchased Bellwin House did not complete a Transfer of whole of registered title form (TR1) so does not appear as the legal title owner, the Applicant has offered assistance, but until this is resolved further progress cannot be made until the land registry title matter is resolved;

- Mr Green [RR-080] of Church Farm has now appointed an agent and Heads of Terms have been provided;
- AB Agri Limited [RR-073] have met with the Board of Directors in respect of temporary possession for building the flood wall;
- Jotun Paints [RR-069], have engaged with them, intend to form a Statement of Common Ground (SoCG) in respect of a small area of land for a construction easement, engaged with the Humberside Emergency Working Group who deal with Health and Safety and Emergency; and
- Bagmoor Wind Limited [RR-076] have an easement across the railway line which is to remain.

8.5.10. NLC attended the CAH and raised a series of objections which had not previously been raised prior to the CAH in either their RR [RR-092] or within the Local Impact Report (LIR) [REP1-019].

8.5.11. Councillor Waltham Leader of NLC said they would not be able to make agreement on the sale of land for a number of reasons, which can be summarised as:

- Not being in compliance with the Council's economic strategy;
- Not delivering jobs on each parcel of land affected;
- There are contracts in place or in the course of negotiation which currently support jobs in the area; and
- The Council has an obligation to achieve best consideration.

Site Inspections

8.5.12. We visited a number of the sites affected by the Applicant's CA/TP proposals either unaccompanied or as part of the Accompanied Site Inspection (ASI). Together this provided us with a good understanding of the location of the affected plots as well as any above ground infrastructure.

The Applicant's case

8.5.13. The Applicant's case for the CA and TP powers sought is set out in the SoR [REP5-011] where the Applicant explains how it considers it has met the tests set out in s122. It also explains how the Applicant has met the advice provided by the CA Guidance.

8.5.14. In summary, the Applicant explains that it has included CA and TP powers in the dDCO in order to ensure the Proposed Development can be built, operated and maintained. In the absence of these powers, the Applicant notes that the Order land may not be assembled and uncertainty around the project will continue.

8.5.15. In addition, it states that in designing the scheme it has ensured that the scope of CA powers is no more than is needed. This is demonstrated in the evidence provided at the CAH and in the SOR.

8.5.16. The Applicant's response to our detailed questions at the CAH and the subsequent written submissions [REP6-035] provide reassurance that the

tests set out in the PA2008 with regard to CA and TP have been considered by the Applicant in preparing the application.

- 8.5.17. Overall, we are satisfied that the Applicant has demonstrated that the land is needed and would be no more than is reasonably necessary for the Proposed Development. Additionally, we are content that the land included is required either for the Proposed Development, to facilitate it or is incidental to it. Therefore, subject to our consideration of outstanding objections/representations set out below we consider the test in s122(2) of the PA2008 has been met.
- 8.5.18. In respect of s122(3), the Applicant provided an assessment of public benefits that it considers would result from the Proposed Development including the provision of over 2200 jobs during construction and a further 136 during operation, a new 26 hectares (ha) wetland site, improvements and new connections to the Public Rights of Way (PRoW) network, new access road, district heat and private wire network and a minimum of 10% biodiversity net gain.
- 8.5.19. Overall, the Applicant considers the benefits of the Proposed Development overwhelmingly outweigh the private loss to those affected, it considers this loss is outweighed by the public benefits that would arise.
- 8.5.20. Taking these matters into account, the Applicant concludes that there is a clear and compelling case in the public interest for the inclusion of powers of CA and that the public benefit of allowing the Proposed Development to progress outweighs the infringement of private rights which would occur in the event that the CA powers were exercised.

Alternatives

- 8.5.21. The Applicant should demonstrate to the satisfaction of the SoS that all reasonable alternatives have been explored to compulsory acquisition (including modifications to the scheme) as indicated in the CA Guidance.
- 8.5.22. The Applicant's approach to the consideration of alternatives in relation to CA is set out in paragraphs 7.26 to 7.35 of the SoR. This is supported by the case considering alternatives set out in section 9 of Chapter 3 of the Environmental Statement (ES) [REP6-018]. It explains the rationale for the site selection, including the availability of a grid connection, the availability of direct access to the wharf and the opportunity to create a connection to the rail line.
- 8.5.23. The Applicant confirmed at the CAH and in [REP6-035] in their post hearing submission that it has been actively pursuing the acquisition of the land and rights needed by voluntary agreement and to minimise the need for CA powers wherever possible. Furthermore, notwithstanding the request for CA and TP powers, the Applicant has conducted negotiations with APs in parallel with the Examination with the aim of acquiring the land by agreement.

- 8.5.24. As can be seen from the original SoR [APP-011] (paragraph 7.11) and the post hearing written submission [REP6-035] (e page 5) the proportion of the land where an agreement had been reached had risen from 60% to over 92% by area.
- 8.5.25. The final CA Schedule [REP9-036] records that at the close of the Examination the Applicant had:
- Confirmation that no further engagement or agreement was required from 15 APs;
 - Agreement had been completed with 2 APs (Flixborough Wharf and with National Highways);
 - Heads of Terms were in place with a further 22 APs, but the agreement had not been finalised;
 - Negotiation was actively underway with a further 24 APs;
 - 11 APs had been contacted and invited to commence negotiations; and
 - APs with a Category 2 interest were either engaging in discussion or had been invited to negotiate.
- 8.5.26. Table 1.3 of [REP9-036] sets out the APs where objections to CA or TP have been received which had not been fully resolved by the end of the Examination.
- 8.5.27. It is worth noting that NLC are not included in this table despite their appearance at the CAH. We sought clarification of the Council at the hearing and in post hearing submissions as no objection had been raised prior to the hearing, and during questioning.
- 8.5.28. In respect of each specific test that needs to be applied to the assessment of whether CA powers should be granted NLC confirmed they had no evidence to submit to the hearing which we could take into account to demonstrate that there were any specific reasons why CA powers should not be granted.
- 8.5.29. In light of the evidence received, we consider the application has satisfactorily demonstrated that all reasonable alternatives to CA have been explored.
- 8.5.30. As part of the consideration presented by the Applicant, two options were presented as alternatives for the eastern end of the route for the NDHPWN.
- Option A - the route passes south towards the built-up urban centre of Scunthorpe via Normanby Road, where the route remains lined on both sides by residential and industrial areas; or
 - Option B –the route continues on the A1077 until the junction with Bessemer Way to the south. The route will follow Bessemer Way until the junction with Warren Road turning due west to meet the Normanby Road.
- 8.5.31. These alternatives were presented as a response to the concerns identified by NLC during the pre application consultation, however they

did not form part of the response from the Council in either their Relevant Representation [RR-092] or the LIR [REP1-019].

- 8.5.32. In our ExQ [PD-007] we sought the views of the Applicant and NLC. The Applicant in response indicated a preference for Option A [REP2-033] but ultimately considered that either alternative would achieve a suitable connection to the substation and connectivity for the DHPWN.
- 8.5.33. NLC identified that noise and traffic would be key considerations, but did not object to either option, or identify specific concerns in respect of traffic or noise. In terms of ecology Option A could run the risk of spreading Japanese Knotweed which grows in the vicinity, and Option B would pass areas of open mosaic habitat. NLC did not regard this as an objection.
- 8.5.34. NLC concluded that:
- "the section of Normanby Road in question is predominantly dual carriageway, whereas the alternative routes are single carriageway. Depending upon the traffic management requirements to facilitate the provision of the DPHWN, then Normanby Road may be a more appropriate route as any traffic management may cause less disruption to road users and traffic flows."*
- 8.5.35. We agree with the Applicant that either option can be achieved without adverse effects. Mitigation for either traffic control, or noise management would be achieved and would be under the control of NLC as the local planning and highway authority.
- 8.5.36. The Invasive Non-Native Species Management Plan (INNS) would provide appropriate management in respect of invasive non native species in the event the route along Option A were to be chosen. This is secured by way of the Code of Construction Practice (CoCP).

Availability of funds

- 8.5.37. The Applicant's Funding Statement [REP7-004] explains that the Applicant is a company incorporated and registered in England with company number 10949653 and is a Special Purpose Vehicle (SPV).
- 8.5.38. Solar 21 Renewable Energy Limited (S21) and Greenzone Consulting Limited (GZC) own 51% and 49%, respectively of the ordinary shares of the Applicant.
- 8.5.39. The financial statements provided indicate that the Applicant has the financial resources required for the Proposed Development, including the cost of acquiring any land and rights and the payment of compensation.
- 8.5.40. We sought an update to the calculations of the costs of the project and this was provided following the CAH and included in section 2.3.2 of the revised Funding Statement [REP7-004].
- 8.5.41. This followed our questions ExQ1 [PD-007] 7.0.28 and 7.0.29 where the Applicant provided information in response [REP2-033] and reiterated it

had "sufficient funds on account to exercise compulsory acquisition powers (should that be required) and pay compensation for all of the interests to be acquired within the statutory timescale."

- 8.5.42. Based on the information provided, we are satisfied that the necessary funds would be available to the Applicant to cover the likely costs of CA.

Special Category Land

- 8.5.43. S131 of the PA2008 provides that where an application for a development consent order includes special category land (open space) as in this case, the Order would need to be subject to special parliamentary procedures unless the SoS is satisfied that one of subsections (4) to (5) applies.
- 8.5.44. In this case the open space that forms part of Atkinson Warren Open Space is not proposed to be subject to CA but to facilitate the creation of habitats and enhancement measures proposed as Work No12A. The Applicant concludes that s131 and s132 are not as a consequence engaged.
- 8.5.45. Plot 6-51 part of the Flixborough open space, is subject to TP to enable the construction of the footbridge over the railway line, being temporary, the Applicant concludes that the exception in section 131(4B)(c) of the 2008 Act would apply, replacement land will not be required and Special Parliamentary Procedure would not be engaged.
- 8.5.46. Plots 6-82, 6-55 and 6-74 also part of the Flixborough open space, are each less than 200m² and cumulatively total 138.63m², as such the Applicant concludes section 131(5)(a) applies so that replacement land is not required, and Special Parliamentary Procedure is not required.
- 8.5.47. Plots 9-9, 9-10 and 9-40 are part of the Phoenix Parkway open space and are required on a temporary basis. being temporary, the Applicant concludes that the exception in section 131(4B)(c) of the 2008 Act would apply, replacement land will not be required and Special Parliamentary Procedure would not be engaged.
- 8.5.48. The Applicant also seeks acquisition of new rights over plots 9-8,9-11, and 9-12. In the case of these plots the Applicant maintains that s132 would apply, however as the works to be undertaken would be temporary and once complete the relevant infrastructure would be buried the land will be no less advantageous than it was previously. In such circumstances the Applicant concludes that the exception in s132(3) would apply and special parliamentary procedure would not be required.

Matters raised in the Examination/Objections to CA and TP

- 8.5.49. At the beginning of or during the Examination, the following APs objected to CA and TP proposals:
- Network Rail Infrastructure Limited

- National Highways
- Northern Powergrid (Yorkshire) Plc
- Anglian Water Services Limited
- Rajan Marwaha
- British Steel Limited
- Rainham Steel Company Limited
- Andrew Gravel
- Elizabeth Ann Norris
- Lee Garry Norris
- Jotun Paints
- AB Agri Limited
- Cadent Gas Limited
- DM and A Green
- Bagmoor Wind Limited
- Gleeson Regeneration Limited.

8.5.50. We were kept updated throughout the Examination on how matters were progressing with the parties by the means of a CA Schedule. The final version was received at Deadline 9 [REP9-036].

Withdrawn Objections

8.5.51. National Highways confirmed withdrawal of its objection to the application by letter at Deadline 9 [REP9-056].

8.5.52. At Deadline 10 the Final SoCG with Network Rail Infrastructure Limited (NR) [REP10-008] indicated agreement between the parties in respect of Protective Provisions with the Applicant acknowledging "*that it is reasonable for Network Rail to refuse its consent for any powers of acquisition of any interest in Network Rail's land or possession of land over Network Rail's railway to be exercised by the Applicant*".

8.5.53. With the inclusion of the agreed Protective Provisions NR confirmed that the Examination could treat its objection as withdrawn [REP10-016].

8.5.54. A letter of 30 April 2023 from Northern Powergrid (Yorkshire) Plc [REP9-054] confirmed the withdrawal of their objection to the application.

8.5.55. Anglian Water Services Limited's (AW) final SoCG [REP9-024] confirmed that Protective Provisions were detailed as agreed. There is no compulsory acquisition of land with regard to plots under AW's control, the Applicant is seeking land on a temporary basis on which AW does have some rights in respect of apparatus. This is set out as agreed in the SoCG.

Heads of Terms Provided

8.5.56. Rainham Steel Company Ltd completed a SoCG with the Applicant [REP9-032] which indicated that documentation for a full option to purchase had been provided by the Applicant on 13 April 2023. This reflected the terms signed under the Heads of Terms, nevertheless a formal withdrawal of their objection had not been received by the end of the Examination.

- 8.5.57. Heads of Terms had been agreed with Andrew Gravel, Lee Garry Norris and Elizabeth Ann Norris; however no formal withdrawal of their objection was received prior to the end of the Examination.
- 8.5.58. Gleeson Regeneration had received Heads of Terms from the Applicant but matters had not been finalised between the parties by the close of the Examination.
- 8.5.59. According to the CA Schedule [REP9-036] the Heads of Terms have been agreed with DM and A Green although signatures were still awaited at the end of the Examination.
- 8.5.60. Draft Heads of Terms were issued to Jotun Paints by the Applicant on 4 May 2023 these remained unsigned at the end of the Examination and no letter withdrawing Jotun Paints objection had been received.
- 8.5.61. British Steel Limited identified they had a series of land interests within the Order Limits, stating in [RR-047] *"British Steel would like some reassurance that any service media in the area will not be effected by the development and our access rights remain unchanged"* they did not formerly object to CA or TP and indicated during the CAH they were engaging positively with the Applicant.
- 8.5.62. According to the final SoCG with Bagmoor Wind Limited [REP10-011] an Asset Protection Agreement had been prepared but was still under review at the close of the Examination.

Outstanding Objections

- 8.5.63. AB Agri Limited's final SoCG [REP10-009] confirmed their objection remained to the temporary possession of their land.
- 8.5.64. Cadent Gas Limited maintained their objection at the end of the Examination.
- 8.5.65. Rajan Marwaha having objected at the outset provided no further details into the Examination. The Applicant explained that the land interest had not been properly registered, and they were unable to progress negotiations until this matter had been resolved.
- 8.5.66. North Lincolnshire Council did not object to either CA or TP in their Relevant Representation (RR) or their LIR. They did however attend the CAH and stated that they did not agree that plots within their possession would be sold to the Applicant. We have assumed that this is an objection.

Outstanding objections/representations

- 8.5.67. In respect of Rainham Steel Company Ltd, Gleeson Regeneration, Andrew Gravel, DM and A Green, British Steel Ltd, Lee Garry Norris and Elizabeth Ann Norris and Bagmoor Wind Limited the Applicant had actively engaged with each party and progressed with negotiations to prepare Heads of Terms or are in ongoing discussions. Only British Steel

Ltd chose to attend the CAH and did not indicate any outstanding concerns during or after the hearing.

8.5.68. We are satisfied in each respect the parties would be actively negotiating with the Applicant and there was an indication that there was an ongoing willingness to work with the Applicant to finalise matters. Nevertheless, as at the conclusion of the Examination we had not received confirmation that final agreement had been reached we have considered each of the APs below.

8.5.69. In considering the relevant plots:

- Gleeson Regeneration – Plots 9-10, 9-11, 9-12, 9-17, 9-19, 9-20, 9-22, 9-26, 9-27, 9-28, 9-29, 9-34, 9-35, 9-42, 9-43, Acquisition of permanent rights and temporary possession.
Each of these plots are required to facilitate the grid connection and the route of the northern district heat and private wire network.
- Mr Andrew Gravel – Plots 5-42, 5-43, 5-46, 5-47, 5-48, 5-49, 5-50, 5-51, 5-52- Permanent Acquisition.
Each of these plots are required to enable the construction operation and maintenance of the ERF.
- Mr Andrew Green – Plots 6-20, 6-30, 6-31, 6-35, 6-37, 6-42, 6-49- Combination of permanent acquisition of land, acquisition of rights and temporary possession.
Each of these plots is required for the provision of the Railway Reinstatement works and for the ongoing operation and use in association with the Proposed Development.
- British Steel Limited – Plots 2-7, 4-7, 4-12, 4-20, 4-25, 4-28, 4-50, 4-55, 4-58, 4-61, 4-62, 4-63, 4-67, 4-75, 4-83, 4-84, 4-85, 4-89, 4-101, 4-108, 5-71, 5-74, 5-78, 6-17, 6-33, 6-38, 6-41, 6-54, 6-58, 6-60, 6-63, 6-65, 6-66, 6-67, 6-68, 7-1, 7-3, 7-5, 7-6, 7-7, 8-2, 8-5, 8-10, 8-11, 8-12, 8-13, 8-14, 8-15, 8-16, 9-36, 9-37, 10-15, 10-18, 10-50, 10-62, 10-63, 10-67, 10-69, 10-70, 10-71, 10-75, 10-79, - Combination of acquisition of permanent rights and temporary possession.
Each plot is required for acquisition of rights for the provision of the permanent DHPWN routes, the new access road, railway reinstatement works, or electrical connection.
- Rainham Steel Limited– Plots 4-26, 5-17, 5-21, 5-24, 5-26, 5-84, - combination of permanent acquisition and temporary possession.
The plots are required to either enable the construction operation and maintenance of the ERF or facilitate access to the energy park land.
- Lee Garry Norris and Elizabeth Ann Norris – Plots 5-40, 5-42, 5-45, 5-47, 5-48, 5-49, 5-50, 5-51, 5-52- permanent acquisition.
Each plot is required to enable the construction operation and maintenance of the ERF.
- Bagmoor Wind Limited – Plots 7-5, 7-6, 8-8 – Combination of permanent acquisition and acquisition of rights.
Each plot is required to facilitate the construction, operation and maintenance of the railway reinstatement works.

- 8.5.70. Overall, we are satisfied that these plots are either required for the proposed development, to facilitate it or are incidental to it and as such meet the test set out in s122(2) of the PA2008.
- 8.5.71. In respect of the public interest, we acknowledge the CA, and CA of rights in addition to the TP involved with each of the respective plots would result in some disruption and inconvenience to each of the owners. We consider the extent of the rights being sought is limited appropriately and CA is being sought where it is necessary.
- 8.5.72. Accordingly, while we accept that the CA and TP powers sought would result in some adverse impacts to the owner's private interests. In view of the established need for energy generation and the need to provide certainty in terms of project delivery, we consider there is a compelling case in the public interest for the specific plots to be acquired compulsorily, or rights acquired. We are therefore satisfied that this meets the tests in s122(3) PA2008.
- 8.5.73. We also conclude that the land to be taken is no more than is reasonably necessary and is proportionate, and that the interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.

AB Agri Limited

- 8.5.74. Temporary possession of plot 5-54 is sought by the Applicant to facilitate the construction and carryout of the authorised development and for access for carrying out the authorised development. It is specifically required for Work No. 13 (construction of flood defences) as shown on Works Plan A11 (AS-009).
- 8.5.75. The Applicant explained in [REP1-012] in response to RRs that it is not intended to interfere with or disrupt the ongoing operations of AB Agri's access via First Avenue and Second Avenue. The Applicant's understanding is that Plot 5-54 is an area of non-operational grassland, part of which falls within the fence line of AB Agri's land, occupation of which should not cause interference to AB Agri's operations.
- 8.5.76. In their Written Representation (WR) [REP2-081] and response to ExQ1 [REP2-082] AB Agri maintained their objection to TP of plot 5-54, stating that this area of land comprises a 6m deep strip extending for 60m along the western boundary and 100m along the southern boundary. It would abut the main entrance to the processing plant.
- 8.5.77. AB Agri maintain possession for three years would both compromise the enjoyment of the land, would increase the biosecurity risk due to the close proximity of the construction works to their main intake. The increased risk of contamination by way of airborne or ground contamination could pose a risk to the viability of the business.
- 8.5.78. AB Agri do not consider the Applicant has demonstrated consideration of an alternative which would avoid TP of AB Agri's land such as an alternative construction method.

8.5.79. The Order provides for a loss or compensation claim (clause 31(5)) in the worst-case scenario this could result in a business extinguishment claim, which would incur a cost disproportionate to the purpose of the possession and which could have a significant effect on the viability of the project. AB Agri maintain that the Applicant has failed to demonstrate a compelling case to take TP in light of the potential damage to AB Agri's business.

8.5.80. The Applicant explained further in [REP3-022] that:

"The flood mitigation wall is currently proposed close to the AB Agri site to maintain clearance within the wharf area for movement of vehicles, minimising any potential impact on existing and future operations within the wharf and to minimise impact on First Avenue. As shown in APP-074 Indicative Utility Diversion Drawings, Drawing No. NLGEP-BHE-XX-XX-DR-C-9105 Sheet 5, within First Avenue and the area west of the AB Agri site, existing Open Reach telecommunication cables are located. It is intended that an appropriate set-back is allowed from the proposed flood wall sub-base footing to these cables. Temporary access within Plot 5-54 is sought to allow, if necessary, the appropriate access required to construct the wall. If construction of the flood defence can be secured without the temporary possession of AB Agri land, this option will be taken. Appropriate measures required to minimise biosecurity and contamination risks during construction will be discussed with AB Agri as part of ongoing discussions."

8.5.81. In response to ExQ2 AB Agri stated in [REP6-048] that:

"we would bring the following to the Inspectors' attention, following a recent meeting between the Applicant and AB Agri on 27 February 2023:

- *The concerns that AB Agri have raised regarding temporary acquisition were noted by the Applicant, and they have agreed to remove AB Agri's land from their proposals and therefore withdraw their application to temporarily acquire it.*
- *Our client is yet to receive any further information on this, and, as stated above, still awaits the Applicant's response for additional mitigation on AB Agri's site, as agreed at the meeting in order to urgently reach an acceptable solution. "*

8.5.82. In the Applicant's response to Deadline 7 submissions at Deadline 8 [REP8-032] the Applicant reiterated what it had said previously, but added the following:

"Plot 5-54 is an area of non-operational grassland, part of which falls within the fence line of AB Agri's land. Temporary occupation of this land should not cause interference to AB Agri's operations. If construction of the flood defence can be secured without the temporary possession of AB Agri land, this option will be taken. This will be confirmed post Decision due to further information required on the detailed design and construction methodology."

- 8.5.83. As confirmed in the final SoCG [REP10-009] between the Applicant and AB Agri this area of disagreement remained at the conclusion of the Examination.
- 8.5.84. We have considered the issues raised by both the Applicant and AB Agri in respect of the reasoning for temporary possession of Plot 5-54 and we believe that the Applicant has demonstrated a sufficient case that would justify the temporary possession of this plot to facilitate the construction of the flood wall.
- 8.5.85. The provision of the flood wall we regard as an important part of the overall flood mitigation works which would be necessary to meet the policies within National Policy Statement (NPS) EN-1, and NPS EN-3 and the National Planning Policy Framework 2021 (NPPF) in respect of flood risk. The temporary possession, if ultimately required following, further detailed design work in respect of the flood mitigation as set out in the Flood Risk Assessment (FRA), we do not consider to result in any lasting detriment, although we accept there could be some inconvenience and disruption.
- 8.5.86. We consider that the rights being sort are appropriately limited and while the TP of plot 5-54 could result in some adverse impacts to the owner's private interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, we consider there is a compelling case in the public interest for the land to be subject to TP. We are therefore satisfied that it meets the tests in s122(3) PA2008.
- 8.5.87. We also conclude that the land to be taken is no more than is reasonably necessary and is proportionate, and that the interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.

North Lincolnshire Council (NLC)

- 8.5.88. The plots affected by CA owned by NLC are plots 4-9, 4-10, 4-12, 4-15, 4-20, 4-24, 4-29, 4-30, 4-31, 4-32, 4-35, 4-46, 4-47, 4-49, 4-51, 4-52, 4-60, 4-61, 4-62, 4-65, 4-66, 4-68, 4-69, 4-70, 4-107, 4-108, 5-2, 5-3, 5-9, 5-13, 5-14, 5-15, 5-16, 5-21, 5-22, 5-35, 5-38, 5-39, 5-84, 5-85, 5-86 located within the Energy Park Land.
- 8.5.89. Plots 5-87, 5-88, 5-89, also located within the Energy Park Land but required for the Hydrogen Production Facility (Work No. 7) and infrastructure associated with the ERF (Work No.1).
- 8.5.90. Plots 5-73, 5-74, 5-75, 6-22, 6-24, 6-35, 6-37, 6-38, 6-56, 6-58, 6-62, 6-63, 6-64, 6-65, 6-74, 6-82, 7-2, 8-11, 8-12, 8-16. Railway reinstatement works (Work No.s 3 And No. 4)
- 8.5.91. As previously stated NLC did not formerly object to CA or TP in either their RR or the LIR. Despite this at the CAH the Leader of the Council, Councillor Waltham made clear it was not their intention to sell the plots by agreement with the Applicant.

- 8.5.92. Throughout the hearing when we asked whether there was any evidence why CA powers should not be granted in respect of each specific test under the PA2008, it was confirmed orally there were no specific arguments against the CA case being presented.
- 8.5.93. The Council did not seek to argue that either:
- the land was not required for the Proposed Development; or
 - the land was not required to facilitate or be incidental to the Proposed Development.
- 8.5.94. Nor did the Council seek to argue that there was not a compelling case in the public interest for the land to be acquired compulsorily.
- 8.5.95. The evidence presented gave reasons why the sale would not be agreed, but this does not meet the tests which needed to be addressed. We invited NLC to address this in their post hearing submissions.
- 8.5.96. In response NLC [REP6-038] state:
- "NLC has no positive case to say that those parcels or lands and/or rights over those parcels of land are not required to deliver the DCO development or required to facilitate or incidental to the DCO. Nor does NLC dispute the evidence from the Applicant that the identified land owned by them is required. Therefore, NLC wishes to defer to the judgment of the Examining Authority on whether the land meets the test in s.122(2) Planning Act 2008."*
- 8.5.97. NLC, however, maintain that the tests in s122(3) are not met as the Council has received an offer from the Applicant which it is still considering. Under these circumstances, there is no case that the land must be acquired by compulsion. The Council considers this argument is supported by the Court of Appeal judgement in R. (FCC Environment) v SSECC [2015] Env L.R. 22. It cites paragraph 11 from that judgement which states:
- "The land may be necessary but, during the course of the Panel's consideration of the application, the owner may agree to sell it willingly rather than by compulsion (a common scenario in compulsory purchase inquiries)."*
- 8.5.98. The Applicant responded in [REP7-032] stating that the Court of Appeal did not determine the point as suggested by the Council as the parties to the case had already agreed the position. In any event as the Council has not at this stage willingly agreed to sell in order to ensure the DCO could be undertaken CA powers would be required in respect of the plots in the Council's possession.
- 8.5.99. In respect of the public interest test we acknowledge that CA of these plots may affect the Council's abilities to comply with the Council's economic strategy; and that there is the potential that not every single plot may deliver jobs individually, and by exercising the powers existing contracts may be disrupted.

- 8.5.100. These private and Council interests do not however recognise the potential for job creation over the wider site which could materialise should the DCO progress. This is recognised as a positive benefit of the Proposed Development in the Council LIR, contradicting the position taken during the CAH. We recognise that the status of the LIR in our judgement has a higher standing than the evidence presented at the CAH, and we are minded to give this greater weight in coming to an overall judgement on this matter.
- 8.5.101. The Council's obligation to achieve best consideration, could be met through appropriate negotiation with the Applicant. Evidence presented indicates the current offer exceeds market value, and nothing has been presented that suggests this is not a fair representation, of the Applicant's offer.
- 8.5.102. We are satisfied that despite some adverse effects potentially arising the powers sought for these plots are either required for the proposed development, to facilitate it or are incidental to it and as such meet the test set out in s122(2) of the PA2008.
- 8.5.103. We are not persuaded by the argument presented by the Council that CA powers should not be granted where negotiations are ongoing. the delivery of the DCO cannot rely on the possibility that agreement may be reached.
- 8.5.104. In view of the established need for energy generation and the need to provide certainty in terms of project delivery, we consider there is a compelling case in the public interest for the land to be acquired compulsorily. We are therefore satisfied that it meets the tests in s122(3) PA2008.
- 8.5.105. We also conclude that the land to be taken is no more than is reasonably necessary and is proportionate, and that the interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.

Mr Rajan Marwaha

- 8.5.106. Mr Rajan Marwaha in his representation [RR-055] opposing the permanent acquisition of plots 5-38, 5-41 acknowledged the Applicant had been seeking to negotiate, however he argued that this did not fully assess the value of the land and the planning permission he had been granted and the future profits he anticipated.
- 8.5.107. We wrote to him as part of ExQ1 but received no response. Nor did he choose to attend the CAH or provide any further written explanation or justification as to why CA powers should not be granted to the Applicant.
- 8.5.108. The Applicant has explained that they could not progress further with negotiations as the proper documentation had not been completed during the purchase process. Despite the Applicant offering legal assistance to remedy this shortcoming, the matter had not progressed during the Examination.

- 8.5.109. The land plots sit within the energy park land, and we are satisfied would be required to enable the Proposed Development to progress. The arguments about value of the land or future profit potential are not for us. The DCO provides that parties having interest in the land, or the interest or right in the land, may be entitled to compensation. Any dispute in respect of the compensation payable is to be determined by the Lands Chamber of the Upper Tribunal.
- 8.5.110. We are satisfied that these plots are required for the proposed development, to facilitate it or are incidental to it and as such meet the test set out in s122(2) of the PA2008.
- 8.5.111. In respect of the public interest test, we acknowledge the CA of plots 5-38 and 5-41 while we note his concerns regarding future profits, we have seen nothing that would demonstrate the Applicant has not met their duties under the PA2008 in respect of CA and we are satisfied that while there would be an adverse impact on the private interests of the owner. We consider there is a compelling case in the public interest for that the land to be acquired compulsorily. We are therefore satisfied that it meets the tests in s122(3) PA2008.
- 8.5.112. We also conclude that the land to be taken is no more than is reasonably necessary and is proportionate, and that the interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.

Cadent Gas Limited (Cadent)

- 8.5.113. With regards to Cadent land ownership, the Applicant is seeking:
- CA over plots 4-28, 4-45, 4-73, 4-75, 4-78, 4-79, 4-80, 5-5, 5-11, 5-35, 5-85, 5-86, 5-88,
 - TP of plots 10-52, 10-55, 10-66, 10-67, and
 - Rights and TP in respect of plots 4-27, 4-76, 5-36, 5-37, 5-55, 5-56, 5-58, 5-60, 5-62, 5-64, 5-89, 10-50, 10-53, 10-54.
- in addition, where Cadent Gas is listed with a Category 2 interest in respect of easements:
- CA over plots 4-28, 4-31, 4-45, 4-73, 4-75, 4-78, 4-79, 4-80, 5-5, 5-11, 5-35, 5-49, 5-50, 5-51, 5-52, 5-63, 5-70, 5-71, 5-72, 5-84, 5-85, 5-86, 5-88, 6-8, 6-22, 6-24,
 - TP of plots 6-26, 6-27, 9-10, 9-17, 9-34, 9-42, 9-43, 10-41, 10-45, 10-46, 10-52, 10-55, 10-66, 10-67, 10-72,
 - Rights and TP in respect of plots 3-19, 3-26, 4-17, 4-26, 4-27, 4-38, 4-39, 4-76, 5-8, 5-19, 5-23, 5-24, 5-25, 5-33, 5-36, 5-37, 5-55, 5-56, 5-57, 5-58, 5-59, 5-60, 5-62, 5-64, 5-65, 5-66, 5-67, 5-76, 5-77, 5-82, 5-89, 9-11, 9-12, 9-19, 9-20, 9-22, 9-28, 9-29, 9-35, 10-3, 10-4, 10-6, 10-7, 10-30, 10-31, 10-32, 10-34, 10-50, 10-53, 10-54, 10-56, 10-73, 10-81, 10-82.

Summary of Cadent Gas Limited's Position

- 8.5.114. Cadent set out their preferred PP in [REP2-091] stating that Cadent require the Protective Provisions secured within the DCO to be in their

preferred form to ensure that there is no serious detriment to the carrying on of Cadent's undertaking.

- 8.5.115. Cadent requires specific PP in place for an appropriate level of control and assurance that the industry regulatory standards will be complied with in connection with works in the vicinity of Cadent's Apparatus.
- 8.5.116. PP include necessary insurance and security measures which are required to be put in place before works which may affect Cadent's apparatus.
- 8.5.117. In the current energy and security of supply crisis, providing full and proper protection to the gas distribution network is increasingly important.
- 8.5.118. Cadent went on to cite a series of other DCO decisions where PP of a similar type have been included, these are:
- The A585 Windy Harbour to Skippool Highway Development Consent Order 2020;
 - The M42 Junction 6 Development Consent Order 2020;
 - The A38 Derby Junctions Development Consent Order 2021;
 - The A47/A11 Thickthorn Junction Development Consent Order 2022;
 - The A47 Blofield to North Burlingham Development Consent Order 2022;
 - The A57 Link Roads Development Consent Order 2022;
 - The M25 Junction 28 Development Consent Order 2022; and
 - The M54 to M6 Link Road Development Consent Order 2022.
- 8.5.119. The Applicant set out their case under Section 127 and 138 of the PA2008 in [REP8-024] and a further response in [REP10-015].
- 8.5.120. While Cadent reiterated their position in [REP8-032, REP8-033, and REP9-057].
- 8.5.121. Cadent criticised the Applicant for not responding to their submission at Deadline 2 until Deadline 8, considering this did not give sufficient time to fully address matters. Nevertheless, the two areas of most concern come from the changes to the PPs proposed by the Applicant in respect of security and indemnity.
- 8.5.122. Cadent set out their arguments in turn:

Security

- 8.5.123. The security measures contained in the Cadent PP are required in order to provide certainty that the indemnity afforded to Cadent can be relied upon in the event that damage is caused to the Apparatus and the gas distribution network. The Article as drafted does not afford security as it only extends to liabilities in respect of Compulsory Acquisition powers and does not extend to damage that may be caused as a consequence of the construction or use of the Project.
- 8.5.124. The Cadent PP prevent the compulsory acquisition of any land (or rights in land) in which Cadent has an interest. Therefore, as a matter of basic

principle, Article 22 would never be capable of providing protection to Cadent as powers of compulsory acquisition cannot be exercised in respect of Cadent.

Indemnity Cap

- 8.5.125. The only justification provided by the Promoter for seeking to cap the indemnity to Cadent as part of the Examination is that: "*Cadent has a significant number of plots in which it has an interest in respect of apparatus*" (section 3.9.2 of the Promoter's Section 127 Case).
- 8.5.126. The significant interaction between the Project and Cadent's Apparatus, and the potential for damage associated with that interaction which could have far-reaching consequences for Cadent's gas distribution network, are precisely the reason why a capped indemnity is not appropriate.
- 8.5.127. The extensive interactions between the Project and Cadent's Apparatus mean that it is not possible to quantify the potential financial consequences of damage to, or disturbance of, Cadent's gas distribution network.
- 8.5.128. The position adopted by the Applicant is contradicted by the approach taken to indemnify Network Rail where the Applicant states that an uncapped indemnity would be "*disproportionate given that only two plots (Plot 2-6 and 8-3) are affected*".
- 8.5.129. Cadent derives no benefit from the Project and should not be exposed to any potential financial consequences as a result of damage to, or disturbance of, Cadent's gas distribution network.

Summary of the Applicant's position

- 8.5.130. The Applicant maintains that the PP it proposes in the dDCO do not result in serious detriment to Cadent and any interference can be minimised through the Protective Provisions to be included in the dDCO.
- 8.5.131. The Applicant considers the two points of disagreement are commercial points with regard to the level of protection and indemnity provided which the Applicant considers should be capped at £50 million.
- 8.5.132. Section 127 of the PA2008 requires that the Secretary of State is satisfied that:
- a) the land or right may be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
 - b) it can be replaced with other land belonging to, or available for acquisition by, the undertaker without serious detriment to the carrying on of the undertaking.
- 8.5.133. The Applicant argues that there would be no serious detriment as:
- PP have been substantially agreed, save for the provision of security for the sum of £50 million in addition to the provision of insurance.

- The Applicant has included third party liability insurance at £50 million and has included an indemnity in favour of Cadent capped at £50 million.
- The Applicant is to provide a form of security under Article 22 of the Order before it can exercise any compulsory acquisition powers.
- Any works required for the interface with Cadent's assets would be carried out by Cadent or their approved contractors. This is envisaged within the PP (which have been agreed).

- 8.5.134. The Applicant concludes that there would be no serious detriment to Cadent's undertaking if it were to acquire these rights and interests in the land and that s127 is satisfied.
- 8.5.135. Additionally, the Applicant is of the view that through the agreed PP set out in schedule 14 in respect of operational requirements there will not be any serious detriment to Cadent carrying out its undertaking.
- 8.5.136. In respect of s138 the Applicant argues that extinguishing Cadent's rights or removal of Cadent's apparatus is necessary and the proposed development and works could not be completed without the extinguishment of the rights and/or removal or repositioning of apparatus.
- 8.5.137. The inclusion of PP (which have largely been agreed with Cadent) in the DCO means that Cadent's rights are protected, and the undertaker is required to agree with Cadent before any rights are interfered with. As such Cadent's rights will not be affected to the detriment of its ability to carry out its undertaking.
- 8.5.138. The Applicant's position is that section 127(3)(a) is engaged in that the statutory undertaker land subject to compulsory acquisition can be purchased and not replaced without serious detriment to the carrying on of the undertaking. As such under section 127(2) the development consent order may include provision authorising the compulsory acquisition of that statutory undertakers' land.
- 8.5.139. The Applicant concludes that:

"pursuant to section 127 of the Act, the Secretary of State can be satisfied that the prescribed tests of section 127 have been met and that the land in which Cadent have interests may be included for compulsory acquisition in the DCO.

pursuant to section 138 of the Act, the Secretary of State can be satisfied that the power for the Applicant to extinguish the rights of, remove or reposition the apparatus belonging to Cadent is necessary for the purpose of carrying out the proposed development but for which Cadent has protection in the form of Protective Provisions so that the test of section 138 has therefore been met."

ExA's conclusion

- 8.5.140. Cadent in submitting their initial RR did not clearly set out their case in respect of this proposal, making a series of objections to solar panels

being sited on land in which they had an interest. Solar panels were never part of the application.

- 8.5.141. In referencing a series of previous DCO decisions for road schemes Cadent have not sought to provide any specific justification as to why those cases could be said to be similar to this proposal, or why the provisions provided should be comparable.
- 8.5.142. Each case referenced is a road scheme, which is materially different from this proposal. Nor was any information provided as to the approach taken by the Applicant's in each of those cases and the specific justification for each PP sought.
- 8.5.143. In arguing against the Applicant's offer of £50 million third party insurance, Cadent have given no explanation of the value of their assets, or the potential costs in the event that any form of damage were to arise other than to say that there are extensive interactions which mean it is not possible to quantify the potential financial consequence of any damage.
- 8.5.144. Having said that as can be seen from the Indicative Utility Diversion drawings [APP-031] there are a series of utilities which cross the site and which would be affected by the Proposed Development.
- 8.5.145. Statutory Undertakers have specific protections under s127 and s138 of the PA2008, which properly recognise their role in providing, maintaining and operating key infrastructure.
- 8.5.146. The statutory tests set out in the PA2008 require sufficient information to be available to the SoS to make an informed decision about whether in the specifics of the case there would or would not be serious detriment to the SUs undertaking.
- 8.5.147. The Applicant, throughout the Examination at each stage of updating us as to progress with negotiations with SUs continued to advise that progress was being made. Indeed, during the CAH, when we sought a further update, we were advised there were only minor commercial interests outstanding with Cadent.
- 8.5.148. The Applicant indicates that in the event that Cadent's provisions were required, this could prevent the scheme from progressing as they had been unable to obtain security through the market up to the value Cadent require.

Section 127 and Section 138 of PA2008

- 8.5.149. S138(4) provides that a DCO may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, only if the SoS is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the order relates.

- 8.5.150. In relation to s138 of the PA2008, we are satisfied that, throughout its scope, the extinguishment and the removal or relocation of apparatus under the DCO would be necessary for the purpose of carrying out the Proposed Development.
- 8.5.151. Despite the difficulty in determining the differences between the parties, we ultimately give greater weight to the need to protect the SUs assets and ensure that security of these assets is maintained, we are not satisfied that the Applicant's provisions would meet this test.
- 8.5.152. In addition, we are not in a position to assess the level of security that would be necessary to fully protect Cadent's Assets. Neither party have provided a breakdown as to the likely costs in the event something were to go wrong, we are of the view that the SoS can only be confident that there would be no serious detriment to Cadent's undertakings if the PP they propose are set out in full.
- 8.5.153. In the context of s127 and s138 PA2008, with the PPs proposed by Cadent in place we cannot see anything in the Examination representations that should prevent the grant of the CA powers sought. We have therefore adjusted the PPs in our rDCO to reflect the request of Cadent to include their PPs in full.

Jotun Paints

- 8.5.154. Jotun Paints in their RR [RR-069] identified their land may be affected by the Proposed Development including through powers of CA. They did not formerly object, on this basis but expressed concern over the relationship to their site as an upper tier COMAH site, which includes the need to maintain access and egress in the event of an emergency.
- 8.5.155. The Applicant clarified in [REP1-012] that Jotun Paints have been identified as the owners of Plot 5-28 which is highway verge, together with Plots 5-29, 5-30, 5-31, and 5-32 which all form part of the public highway. Jotun Paints has been listed as an owner of the subsoil on the basis of the rebuttable presumption that the owners of land that abuts a public or private highway owns the subsoil up to the centreline.
- 8.5.156. The Applicant is seeking rights in this land for the carrying out of works to the same. It is not the intention of the Applicant to prevent any access to Jotun Paints.
- 8.5.157. We are content that the acquisition of rights for these plots are required to facilitate the Proposed Development and as such meet the test set out in s122(2) of the PA2008.
- 8.5.158. Subject to the safeguards we recommend and as referred to in Chapter 5 section 5.11 (Major Accidents and Hazards) and proposed in the Recommended Development Consent Order (rDCO). That the Health and Safety Executive (HSE) and NLC are content that an emergency plan has been appropriately prepared and agreed in advance of any works to the highway, which might affect access to or egress from the Jotun Paints site. We are satisfied that there is a compelling case in the public interest

for the rights to be acquired compulsorily. And would meet the tests in s122(3) PA2008 under these circumstances.

Protective Provisions (PP)

- 8.5.159. The PP within the rDCO have been agreed with all SUs identified by the Applicant under s127 and s138 PA2008 with the exception of Cadent Gas and Severn Trent Water.
- 8.5.160. Severn Trent Water agreed a SoCG with the Applicant which confirmed all matters were agreed, but this made no reference to any effects on their land or apparatus. The Applicant confirmed they had received no response from Severn Trent Water despite several attempts to encourage a response. In the absence of any evidence to the contrary we consider that Severn Trent Water would be safeguarded by the PP set out in Schedule 14 of the DCO.

Special Category Land

- 8.5.161. At no point during the Examination did any Interested Party (IP) or AP raise any concerns with the conclusions the Applicant had come to with regard to the CA and TP of the various plots of open space included within the Order Limits.
- 8.5.162. Having considered the arguments and reasoning presented by the Applicant in respect of these plots and how the PA2008 applies, we have no reason to disagree with the Applicant's conclusions.
- 8.5.163. In the event the SoS considers the DCO should be granted we conclude it would not be necessary to go through the Special Parliamentary procedure as the exceptions cited by the Applicant would apply.

Human Rights Act 1998 and Equalities Act 2010 Considerations

- 8.5.164. 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) and Article 1 of the First Protocol (protection of property) are engaged. There are no residential properties to be acquired for the Proposed Development and, as such, we have no reason to believe that Article 8 (Right to respect for private and family life) would be engaged.
- 8.5.165. In considering Article 6, we accept that appropriate consultation took place before and during the process and that there has been an opportunity to make representations during the preparation of the application and the owners of land have been consulted. There has also been the opportunity to make representations during the Examination.
- 8.5.166. At the CAH, we provided all APs who wished to be heard, an opportunity to be heard fully, fairly and in public. We also recognise that, should an Order be made, there are further opportunities for APs to challenge the

Order in the High Court. We, therefore, consider this is sufficient to meet the obligations set out in Article 6.

- 8.5.167. The Applicant acknowledges in the SoR [REP5-011] that the Order has the potential to infringe the rights of APs and the need to strike a balance between the rights of the individual and the interests of the public, as such Article 1 is relevant. We note, the Applicant has sought to minimise the amount of land affected and included suitable provisions for the payment of compensation in the dDCO.
- 8.5.168. We have found that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. We therefore consider that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. We conclude, therefore that the CA and TP powers sought are compatible with the Human Rights Act.
- 8.5.169. 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. We have had regard to this duty throughout the Examination and in our consideration of the issues raised in this report.
- 8.5.170. We find, overall, that the Proposed Development does 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. We have, consequently, found no breach of the Public Sector Equality Duty.

8.6. CONCLUSIONS

- 8.6.1. We have shown in Chapter 7 of this Report that we have reached the view that development consent should not be granted for the Proposed Development. We also consider that in light of the unresolved position of the availability of water, that the timing of the Proposed Development is uncertain which further adds to the doubt over the suitability of granting the DCO and subsequently the CA powers at this time.
- 8.6.2. If the Secretary of State concludes that the case for the Project is made, we are satisfied that the CA powers sought over all of the land identified in the Land Plans and BoR are required for the Proposed Development, to facilitate it or are incidental to it. We are therefore satisfied that the powers sought meet the condition set out in S122(2) of the PA2008.
- 8.6.3. Additionally, we accept that the CA and TP powers sought may result in some adverse impacts to the private interests of the owners of the land affected, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, we consider there is a compelling case in the public interest for that land to be acquired compulsorily. We are therefore satisfied that it meets the tests in s122(3) PA2008.

- 8.6.4. Having considered all of the material submitted to the Examination, we have concluded that with the changes proposed in our rDCO:
- The application site has been appropriately selected.
 - All reasonable alternatives to CA have been explored.
 - The dDCO provides a clear mechanism whereby the necessary funding can be guaranteed.
 - There is a clear need for all the land included in the BoR to be subject to CA or TP.
 - There is a need to secure the land and rights required to construct the Proposed Development within a reasonable timeframe, and the Proposed 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; the minimisation of the extent of the rights and interests proposed to be acquired and the inclusion, where relevant, of PPs in favour of those affected.
 - The powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance.
 - The powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.
 - That special parliamentary procedures would not need to be invoked in respect of the plots of open space that are included within the Order Land and under the terms of s131 and s132 of the PA2008 replacement land is not required.
- 8.6.5. If the Secretary of State is minded to accept the Proposed Development based on its compliance with national policy, there would be a compelling case in the public interest for the CA and TP powers sought in respect of the CA and TP land shown on the Land Plans.

9. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

9.1. INTRODUCTION

- 9.1.1. A draft Development Consent Order (dDCO) [APP-007] and Explanatory Memorandum (EM) [APP-009] were submitted with the application. The EM describes the purpose and effect of the provisions in the application dDCO. This Chapter provides a summary of the main changes made to the dDCO during the Examination, between the application dDCO and a final dDCO submitted by the Applicant at Deadline (D) 10 [REP10-004]. The Applicant also submitted a comparison tracked changes version of the dDCO with its predecessor as each change was made.
- 9.1.2. We also explain the changes we would recommend be made to the dDCO should the Secretary of State (SoS) decide to grant consent and provide our Recommended Development Consent Order (rDCO) in Appendix C.
- 9.1.3. We do not report on every change made as each version was revised as many amendments were as a consequence of:
- typographical or referencing errors;
 - minor revisions of the wording following either discussion between the Applicant and relevant Interested Parties (IP) or from their Written Representations (WR);
 - as a result of minor changes following the Examining Authority's First Written Questions (ExQ1) [PD-007], Second Written Questions (ExQ2) [PD-012], Issue Specific Hearing (ISH) 1 [EV-004, EV-006, EV-008] or ISH4 [EV-038, EV-039, EV-040].

9.2. THE STRUCTURE OF THE DCO

- 9.2.1. The dDCO [REP10-004] content page sets out the structure of the dDCO and is in line with the accepted format, we do not consider it necessary to recommend any changes to it.
- 9.2.2. The Applicant used a 'Rochdale Envelope' approach to assess the maximum parameters of the Proposed Development. This allows for a degree of flexibility and is a common approach in projects such as this.
- 9.2.3. This is supported by a series of Design Principles and Codes [REP7-008] which have been established allowing flexibility but seeking to ensure that the quality of design reflects the vision set out in the Design and Access Statement [REP6-009].
- 9.2.4. In addition to the Design Principles and Codes, other Development Consent Order (DCO) Requirements, certified documents and plans will operate to control and manage the detailed design of the Proposed Development, as well as its construction, operation (including maintenance) and decommissioning.

9.3. EXAMINATION OF THE DCO

- 9.3.1. The provisions contained in the dDCO were subject to discussion throughout the Examination and resulted in several changes. These were generally confined to resolving inconsistencies, providing clarification and certainty and in drafting updates resulting from agreement reached between the Applicant and IPs.
- 9.3.2. Details of the changes made between each version can be found in the Schedules of changes made to the dDCO [REP10-013] the final version of which contains all the iterations of changes made throughout the examination.
- 9.3.3. This provided regular updates throughout the Examination and the ongoing discussions that were taking place between the Applicant and IPs.
- 9.3.4. The Applicant provided 4 iterations of the Explanatory Memorandum (EM) the third and final version, Revision 3 at deadline 9 [REP9-007].
- 9.3.5. We held two separate ISH into the dDCO, ISH1 and ISH4 where we raised a series of questions and invited oral submissions on various matters raised by Relevant Representations (RR), and WRs. During this initial ISH we also sought views of IPs on the dDCO.
- 9.3.6. We subsequently went on to ask a series of questions in ExQ1 [PD-007] about the dDCO and EM which led to a series of changes to the dDCO from the Applicant.
- 9.3.7. We issued a schedule of our recommended amendments to the dDCO [PD-013] on the 6 April 2023.
- 9.3.8. We provide a summary of the main changes to the dDCO at each stage as it progressed through the Examination.

Summary of the Applicant's Changes to the dDCO through the Examination

Revision 1 [AS-006]

- 9.3.9. Following receipt of the initial s51 advice provided by the Planning Inspectorate, upon the acceptance of the application, the DCO was revised on 28 September 2022 (Revision 1) [AS-006].

Revision 2 [REP2-004]

- 9.3.10. This was received at Deadline 2, following questions and discussions at the first Issue Specific Hearing (ISH) ISH2 on the DCO. This was supported by a Schedule of Drafting Changes [REP2-037].
- 9.3.11. This iteration introduced specific reference to two footbridges and three user elevated crossings as part of the railway reinstatement works. It also deleted air cooled condenser from Work No.1 within Schedule 1.
- 9.3.12. This revision also added the definition of maintain to make clearer what is to be authorised under Article 6. While Article 2(2) was strengthened

to ensure that the parameters set out in Article 5 and Schedule 1 Part 3 were not regarded as approximate.

- 9.3.13. In addition, Requirement 15 'Fuel Type' was amended as the Applicant sought to address our ExQ1 7.1.63 set out in [PD-007].

Revision 3 [REP4-004]

- 9.3.14. Was received at Deadline 4. This proposed a series of revisions in respect of Part 3 'Streets' in response to concerns raised by North Lincolnshire Council (NLC). It also added a new Article 40 'Removal of Human Remains' which had previously been absent from the dDCO.
- 9.3.15. The Applicant also added into Schedule 1 'Authorised Development' a trade effluent plant, a visual barrier, and a domestic flow treatment plant.
- 9.3.16. Requirement 12 was amended following the Environment Agency's (EA)s comments at the ISH, to now include:

"No part of the authorised development may commence, save for the preliminary works, until a detailed flood mitigation strategy, including the flood defences forming part of Work No. 13, an implementation timetable and long-term maintenance arrangements, has for that part, been submitted to and approved by the relevant planning authority in consultation with the Environment Agency."

- 9.3.17. Reference to the domestic flow treatment plant added at the previous change was removed.

Revision 4 [REP5-005]

- 9.3.18. Was received at Deadline 5 supported by a Schedule of Changes (Revision 2) to the dDCO [REP5-030].
- 9.3.19. This incorporated further changes to Requirements 3, 6 and 8 to refer to the Design Principles and Codes document [REP5-017].

Revision 5 [REP6-005]

- 9.3.20. Was received at Deadline 6, supported by the latest Schedule of Drafting Changes (Revision 3 [REP6-031] and followed the second Issue Specific Hearing into the dDCO (ISH4).
- 9.3.21. It introduced further changes in response to questions raised by the Examining Authority (ExA) and added bespoke Protective Provisions for Anglian Water Services Limited.
- 9.3.22. Article 43 'Operational Land' was amended by inserting "*in relation to the land in respect of which Work Nos. 1, 1A, 1B, 1D, 2, 10, 11 and 14 are authorised*".
- 9.3.23. Further amendments were made to Requirement 11 'Archaeology and Requirement 6 'Landscape Design'.

Revision 6 [REP8-005]

- 9.3.24. Was received at Deadline 8, supported by a Schedule of Drafting Changes (Revision 4) [REP8-019] and the Applicant's response to our recommended amendments [REP8-022].

Revision 7 [REP9-006]

- 9.3.25. Was received at Deadline 9, supported by a Schedule of Drafting Changes [REP9-040]. This iteration of the dDCO also included the changes the Applicant made to the dDCO in response to our Schedule of recommended amendments [PD-013].
- 9.3.26. Requirements 6 'Landscape design' and 7 'Landscape and ecology management' were amended to allow consultation with Natural England.
- 9.3.27. Requirement 15 was replaced with the previous requirement 15 relating to fuel type that was in the dDCO as originally submitted.
- 9.3.28. New Requirements 21 'Employment and Skills', and 22 'Noise', 23 Plastic Recycling facility' were added.
- 9.3.29. Protective Provisions (PP) agreed with Northern Powergrid (Yorkshire) Plc were inserted as were the Applicant's preferred PPs for Network Rail Infrastructure Limited and Cadent Gas Limited.

Revision 8 [REP10-005]

- 9.3.30. Was received at Deadline 10, supported by the latest Schedule of Changes (Revision 6) [REP10-013].
- 9.3.31. The Agreed PPs for Network Rail Infrastructure Limited were inserted.
- 9.3.32. The final version of Schedule of Changes compiles the full list of changes that have taken place to the dDCO throughout the Examination as they occurred.
- 9.3.33. We set out below a summary of the main points raised by the IPs who expressed concerns about the dDCO below.
- 9.3.34. Version 8 of the dDCO [REP10-004] has consolidated all previous versions, and addressed the drafting points raised by us during the Examination.

The Environment Agency (EA)

- 9.3.35. As can be seen from the Statement of Common Ground (SoCG) with the EA [REP9-027] the EA had agreed the dDCO had been changed to meet the concerns they had identified. The EA confirming, they were satisfied that the amendments to:

- Requirement 4: Environmental management;
- Requirement 7: Landscape and ecology management;
- Requirement 8: Surface water drainage;
- Requirement 9: Foul water drainage; and

- Requirement 12: Flood risk.

Consequently, this was considered to adequately resolve all concerns expressed in their earlier representations.

Anglian Water Services Limited (AW)

- 9.3.36. AW in their SoCG [REP9-024] confirmed they were content with the Protective Provisions included in the dDCO at Deadline 6 and they were content with the dDCO.

United Kingdom Without Incineration (UKWIN)

- 9.3.37. UKWIN expressed concern in respect of Requirement 15 [REP8-040] as proposed after the amendment had been introduced by the Applicant at Deadline 2. They considered it could not obviate the harm caused to the waste hierarchy and the Government's recycling and waste reduction ambitions.
- 9.3.38. We proposed that this requirement be changed back to the wording originally proposed by the Applicant at the outset of the Examination in our Schedule of recommended amendments to the dDCO [PD-013].
- 9.3.39. The Applicant accepted this change in their response [REP9-004].

North Lincolnshire Council (NLC)

- 9.3.40. NLC in their SoCG [REP9-025] with the Applicant set out their position in respect of the dDCO in Appendix C of this document which confirmed they were in agreement with the Applicant that the wording of Articles and Requirements that they had expressed concern about had been resolved.
- 9.3.41. The parties agreed the Overarching Archaeological Mitigation Strategy (OAMS) should be included within the list of certified documents under Article 46. This was not, however included by the Applicant in the final iteration provided at Deadline 10.
- 9.3.42. The SoCG in setting out their respective positions with regard to Requirement 11 Archaeology NLC confirmed they had received a draft version of the OAMS, which is currently being agreed. A final agreed version of this strategy would not be available for D9. NLC has reviewed the wording of Requirement 11 and is content that this will secure the submission and agreement of a finalised OAMS prior to works commencing on each phase of the development.
- 9.3.43. NLC wished for there to be certainty that the new access road would be available for use by the public at the point the current road was closed. The Applicant considered this was already adequately addressed by the original wording in Article 13, however, to provide additional reassurance the Applicant has amended the wording to of Requirement 14 to reflect NLCs preferred wording in the final version of the dDCO.

- 9.3.44. Requirement 15 – Waste hierarchy scheme. NLC had expressed concern regarding the amended wording the Applicant had introduced in seeking to resolve concerns expressed during the Examination by IPs. Following our publication of suggested changes Requirement 15 was changed back to that originally proposed by the Applicant at the commencement of the Examination. NLC confirmed this was agreed.

DCO PROVISIONS WITH OUTSTANDING OBJECTIONS

Article 44

- 9.3.45. Article 44 (originally Article 43) would grant specific planning permission for the land included in the Order Limits. As originally drafted the whole of the DCO Order Land was included and would have become 'operational land'. If this had remained unchanged permitted development rights under Part 15 Class B of the Town and Country Planning General Permitted Development Order 2015 would have existed for the whole area.
- 9.3.46. At the outset of the Examination, we expressed concern as to the extent of land that could qualify for permitted development rights under the wording of Article 43 now Article 44 'Operational Land' and sought views of all IPs at ISH1. NLC confirmed at the hearing they also objected to the wording as originally drafted.
- 9.3.47. The Applicant confirmed during ISH1 they would revisit the wording to assess whether their original proposed wording was appropriate.
- 9.3.48. When we prepared our Schedule of recommended changes [PD-013] we again reiterated our concern that Operational Land should properly relate to the energy generating station and be linked only to Work Nos. 1, 1A, 1D, 10, 11 and 14.
- 9.3.49. The Applicant accepted that Work No.2 could be removed but maintained that Work No. 1B should properly be regarded as part of the principal development and it would be reasonable for this to benefit from permitted development rights.
- 9.3.50. In the final SoCG with NLC [REP9-025], NLC stated:
- "NLC appreciate that the list of work areas to be treated as operational land has been narrowed down on an inclusive basis. However I also note the comment from the ExA in their recommended amendments to the dDCO, which questions the inclusion of Work 1B (Carbon Capture Facility) and Work 2 (residue handling and treatment facility, concrete block manufacturing facility; and offices and elevated walkway). I can confirm that NLC are of the view that Article 43 should be amended in accordance with the recommendation of the ExA so that those areas of the site defined as 'operational land' are restricted to the generating station facility.*

NLC are happy with the changes to Article 43 and have no further comment or objection in this regard."

- 9.3.51. While the Applicant explain that in their view Work 1B (carbon capture facility) should be retained within the operational land as this can be properly considered to be part of the Nationally Significant Infrastructure Project (NSIP) and should equally benefit from permitted development rights the same way as Work No 1, 1A and 1D.
- 9.3.52. We have read this section as agreed between the parties.
- 9.3.53. Being agreed between the parties, we have revisited the work plans to assess further the degree of effect this change would have and are of the view that there where would be only marginal differences considering the additional area of land that would be included. We therefore are willing to accept the Applicant's arguments that Work 1B should remain within the list of Work Nos. benefiting from the inclusion as operational land, and therefore do not propose a further change to the dDCO.

Requirement 11

- 9.3.54. NLC in their SoCG advised that the OAMS has been submitted but the final agreement had not been reached, nevertheless they were content that Requirement 11 provided suitable protection.
- 9.3.55. Considering the position between the parties at the end of the Examination the SoS may wish to ascertain whether NLC and the Applicant have now agreed the wording of the OAMS and if so whether this should now be included within the list of Certified documents.
- 9.3.56. We have concluded, that as drafted, the wording of Requirement 11 affords sufficient protection and NLC have confirmed they agree with this. The Requirement secures the submission and agreement of the OAMS prior to works commencing on each phase of development. We have therefore not proposed any change in our rDCO and consequently is not included as a certified document.

Schedule 1 Part 1

- 9.3.57. In respect of Schedule 1 Part 1 we suggested the title 'Associated Development be added prior to the work number as a heading. We thought that this would assist in clarifying which elements of the project were considered to be 'Associated Development'.
- 9.3.58. The Applicant explained that the approach they had taken followed that set out in the South Humber Bank Energy Centre Order 2021, which does not include a separate heading/section for associated development, with each work that is associated development explicitly stating so within the description of that work.
- 9.3.59. We are content to accept the wording as suggested by the Applicant in this instance, and therefore do not propose a change in this regard.

Noise

- 9.3.60. During the Examination noise in Amcotts in particular was a significant concern for IPs. The Council also remained opposed to how the amenity of residents could be secured. We have set out our reasoning for the conclusions we have reached in the Noise section of Chapter 5.
- 9.3.61. Our suggested change to the Noise Requirement in [PD-013] was not accepted fully by the Applicant as we set out in the Noise section of Chapter 5.
- 9.3.62. Considering the change to the wording of the Noise Requirement proposed by the Applicant in their response to our suggested changes [REP8-022] we have reviewed our position. As we explain in the Noise section, we do not accept that there is evidence that Charmaine as an individual property should have a lower degree of protection from activities associated with the Proposed Development than other residential properties.
- 9.3.63. We are also satisfied that by specifying the noise requirement that we have in the rDCO that this noise level can be achieved through the detailed design process that is still to be undertaken by the Applicant. In doing it this way, we consider the most appropriate noise environment can be achieved for noise sensitive receptors.

Jotun Paints

- 9.3.64. In light of the absence of a conclusion being reached by the end of the Examination that properly secures the safe access and egress to Jotun Paints, a upper tier Control of Major Accident Hazards (COMAH) site, we recommend an additional Requirement in order to ensure that the Health and Safety Executive (HSE), NLC and Jotun Paints have a safety plan in place that facilitates their ongoing operation in a safe manner whilst construction is undertaken which has the potential to affect their access and egress arrangements.
- 9.3.65. If the SoS agrees with our recommendation to include this additional requirement, the SoS may wish to consider whether it is necessary to consult the relevant parties as this recommended change has not been seen by the parties. We have included it at this late stage, as the final SoCG between Jotun Paints and the Applicant had not finally resolved this matter.
- 9.3.66. We are also mindful of the anxiety expressed by some IPs in respect of the Proposed Development as a whole in light of the past history in this location, and in our view, this would provide additional reassurance that we have properly exercised caution when dealing with such matters.

Habitats Regulations Assessment (HRA)

- 9.3.67. In Chapter 6 while considering HRA matters we have recommended that an adjustment be made to both the interpretation section of the dDCO and the subsequent wording of Article 5(1)a.

- 9.3.68. This is to ensure that the protection afforded to lamprey in the River Trent is commensurate with the phraseology within the Environment Statement (ES) assessment.
- 9.3.69. In order to ensure that the bunker hall would not be closer than 100m to the River Trent, no matter where it is located within the Applicant's defined Limits of Deviation (LoD), and therefore be consistent with the Applicant's assessment that this is the distance over which vibration levels are likely to become imperceptible.
- 9.3.70. Without which, we are of the view there would be the potential for works that may harm the lamprey but could also exceed the worst case scenario as assessed by the Applicant.

Cadent Gas Limited (Cadent) Protective Provisions (PP)

- 9.3.71. As can be seen from our assessment under the CA and TP chapter, we are persuaded that to ensure s127 and s138 are met and that Cadent undertaking is not subject to serious detriment, the preferred PPs of Cadent should be incorporated into the dDCO. We have as a consequence incorporated the changes Cadent sought in their submission [REP9-057].
- 9.3.72. Neither the Applicant nor Cadent make specific reference to the section of the PPs included within Cadent's submission and set out below.

"Protective works to buildings

5. (1) The undertaker must exercise the powers conferred by article [##] (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed)"

- 9.3.73. No other reference is made to this clause by the Applicant, nor is specific reference made by Cadent to its justification. There is no reference anywhere else in Cadent's case as to why this should be included, or what harm might arise to its ability to carry out its undertaking in the event this was not included.
- 9.3.74. However, the Applicant has not provided any form of explanation or justification as to why this element of the PP should be excluded. Without specific justification, on a precautionary basis we are minded for this element of the PP as requested by Cadent to remain, and so we have included them within the rDCO.
- 9.3.75. We could not with any certainty in light of the absence of any evidence from the Applicant determine if the SUs would be able to carry out it's undertaking without detriment.

STATUTORY NUISANCE

- 9.3.76. The application is accompanied by a Statutory Nuisance Statement (SNS) in accordance with regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 [APP-040].

- 9.3.77. Having reviewed the SNS, we are content that the Applicant has appropriately identified the scope of potential nuisance sources from the construction and operation of the Proposed Development. It identified that there was potential for significant effects on air quality, noise, visible plumes and lighting. With the mitigation identified, no significant effects would arise in respect of lighting or air quality and the residual effects of construction noise were predicted to be of moderate significance. We agree with this conclusion.
- 9.3.78. Article 45 of the dDCO contains a defence to proceedings in respect of statutory nuisance of a type that is commonly provided for in NSIPs. This was amended during the Examination to limit the defence to only those matters that the Applicant had assessed in the ES.
- 9.3.79. The drafting is based on other made DCOs. We agree that the necessary steps to reduce the risk of nuisance events have been taken and that this provision is an appropriate provision against circumstances where unforeseen but unavoidable nuisance may occur.

CONCLUSIONS

- 9.3.80. We have considered all versions of the dDCO as set out in sections 9.1.1 -9.1.28 above and considered the degree to which the final dDCO (version 8) [REP10-004] has addressed outstanding matters.
- 9.3.81. We are satisfied that the Requirements set out in version 8 of the dDCO provide mitigation for potential adverse effects identified in the ES and sufficiently address the issues raised during the course of the Examination with the exception of the adjustments we recommend as set out above. The recommended DCO at Appendix C reflects the changes we propose should be made to the dDCO in the event the SoS agrees the Order be made.
- 9.3.82. Taking all matters raised in this chapter and all matters relevant to the DCO raised elsewhere in this Report fully into account, if the SoS is minded to make the Order, we recommend it should be made in the form set out in Appendix C.

Table 8: DCO Provisions Recommended to be Changed

Provision	Examination Issue	Recommendations
Interpretation 'limits of deviation'	To ensure that the works undertaken align with the assessment of effects in respect of possible impacts on the River Trent in HRA terms.	Insert after "limits of deviation" means the limits of deviation shown for each work number on the works plans " subject to this being in accordance with article 5 (limits

Provision	Examination Issue	Recommendations
		of deviation) of this Order."
Part 2 Principal Powers 5(1) (a)	In order to ensure that the bunker hall would not be closer than 100m to the River Trent, no matter where it is located within the Applicant's defined LoD, and therefore be consistent with the Applicant's assessment that this is the distance over which vibration levels are likely to become imperceptible.	Insert after (a)deviate laterally from the lines or situations of the authorised development shown on the works plans to the extents of the limits of deviation show on those plans "provided that a minimum separation distance of 100m is maintained between the bunker hall (within Work No. 1) and the River Trent at their closest point."
Requirement 22 Noise	Measurement and control of noise at the nearest residential properties, to ensure all residential properties that may be adversely affected have the same level of protection.	Replace the current wording with the following: Noise 22 The rating level (LAr) of noise from the operation of the authorised development shall not exceed: 45 decibels (dB) LAr for any fifteen-minute period between 2300 and 0700; and 50 dB LAr for any one-hour period between 0700 and 2300, determined one metre free field external to any window or door of any existing permanent residential

Provision	Examination Issue	Recommendations
		premises using the definitions and methods described in 'Methods for rating and assessing industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019. Delete Charmaine in Amcotts, and 45 dB LAr for any fifteen-minute period between 23:00 and 07:00, and 50 dB LAr for any one-hour period between 07:00 and 23:00, determined one metre free-field external to any window or door at any other existing permanent residential premises considered in the noise chapter of the environmental statement using the methods described in 'Methods for rating and assessing industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019.
Requirement 24	Typographical error	Insert a '.' at the end of the sentence.
New Requirement 28	To ensure any changes to access and egress arrangements to Jotun Paints an upper tier COMAH site are managed and controlled to ensure	Add an additional requirement No. 28 Construction COMAH site management plan

Provision	Examination Issue	Recommendations
	that safe access and egress is maintained throughout construction and operation.	28 No part of the authorised development may commence until arrangements for emergency access to and egress from the Jotun Paints (Europe) Limited upper tier COMAH site have been submitted to and approved by the relevant planning authority following consultation with Jotun Paints (Europe) Limited and the HSE. Any work in relation to the authorised development shall be carried out in accordance with the approved arrangements.'
Subsequent articles are renumbered from 29 onwards		
Schedule 14 Protective Provisions PART 6 For the Protection of Cadent Gas Limited	S127 and s138 of the PA2008 and the case for CA and the ability of SUs to carry out their undertaking without detriment	Insert in Paragraph 69 after (d) "acceptable security" means either: (a) a parent company guarantee from a parent company in favour of Cadent to cover the undertaker's liability to Cadent to a cap of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a

Provision	Examination Issue	Recommendations
		form reasonably satisfactory to Cadent and where required by Cadent, 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 Cadent to cover the undertaker's liability to Cadent for an amount of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent);
PART 6 For the Protection of Cadent Gas Limited Protective works to buildings	To ensure protective provisions in respect of buildings	Insert after paragraph 71 a new heading <i>"Protective works to buildings"</i> 72. (1) The undertaker must exercise the powers conferred by article [72] (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be

Provision	Examination Issue	Recommendations
		unreasonably withheld or delayed.)
Adjust numbering after the previous insertion		
Indemnity Article 77(b)		New numbering 78 (b) Delete the final part of the sentence of (b) "and limited to £50,000,000 (fifty million pounds)
77 (5) (a)		Now 78 (5) (a) After the words "that the undertaker has" Replace 'procured acceptable insurance with ' first provided the acceptable security ' After the words "that it shall maintain such acceptable" Replace 'insurance' with ' security ' After the words "cadent has confirmed the same" delete 'in writing' And insert the following after "the undertaker" in writing; and insert (b) .unless and until Cadent is

Provision	Examination Issue	Recommendations
		satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent 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 Cadent has confirmed the same in writing to the undertaker.

10. SUMMARY OF FINDINGS AND CONCLUSIONS

10.1. INTRODUCTION

10.1.1. This section of the Report provides a summary of the findings and conclusions that we have made that have led to our overall conclusion and recommendation for this application for development consent.

10.1.2. As we set out earlier in our report, the urgent need for energy generation of all types is established through the National Policy Statements (NPS). This position remains in the current iteration of the draft NPS. We consider the Proposed Development would make a modest but meaningful contribution to meeting this need.

CONSIDERATION OF FINDINGS AND CONCLUSIONS

10.1.3. The legal and policy context that we consider applies to this application is set out in Chapter 3.

10.1.4. The main issues have been identified in Chapter 4, sections 4.1 to 4.3 of this Report. This includes in section 4.3 issues arising in the Local Impact Report (LIR) submitted by North Lincolnshire Council. The Council's main issues were set out under the following headings:

- Planning Policy;
- Landscape and Visual Impact;
- Traffic and Transport;
- Biodiversity and Ecology;
- Cultural Heritage;
- Noise;
- Air Quality;
- Land Contamination;
- Light;
- Hydrology and Flood Risk; and
- Socio Economic Impact.

10.1.5. Our findings and conclusions in respect of the planning issues are considered in Chapter 5, and the conclusions and findings summarised in Chapter 7.

10.1.6. We have taken account of the LIR in our examination of the application and in different sections of Chapter 5 of the Report we have addressed relevant matters raised by the LIR. In coming to our conclusions, we have had regard to the North Lincolnshire Council (NLC) Local Impact Report (LIR) and recognise that on balance NLC as the host authority consider the Proposed Development would be acceptable subject to the mitigation measures secured in the draft Development Consent Order (dDCO).

10.1.7. The relevant prescribed matters as set out in the Infrastructure Planning (Decisions) Regulations 2010 are those relating to listed buildings,

conservation areas and scheduled monuments, and biological diversity. We have had regard to all these prescribed matters where relevant in our consideration of the application, as set out in the relevant sections of Chapter 5.

- 10.1.8. The Energy White Paper 'Powering our net zero future' confirms that whilst the NPS review is undertaken, the current suite of NPS remain Government policy and continue to provide a proper basis on which the SoS can make decisions on applications for development consent.
- 10.1.9. We are also content, having taken account of the advice of NE that there is sufficient information before the Secretary of State for Energy Security and Net Zero (SoSENZ) to enable them to undertake an Appropriate Assessment (AA).
- 10.1.10. We have also had regard to the advice from Natural England (NE) and the Environment Agency (EA) in their respective roles as consultees and regulators, who also recognise their conclusions as set out in the final Statements of Common Ground do not raise any fundamental issues of concern.

Matters with a neutral weight in the planning balance neither for nor against the making of the DCO

- 10.1.11. We consider that the air quality, climate change, health, major accident and hazards and noise and vibration issues once mitigation is secured through the provisions of the DCO are in place to be neutral in the overall planning balance.

Matters weighing in favour of making the DCO

- 10.1.12. The Proposed Development brings forward benefits in respect of Biodiversity Net Gain which would be managed and secured over the long term to which we ascribe limited weight in favour of the making of the Order.
- 10.1.13. The Proposed Development would result in positive benefits to employment and the local economy equating to in excess of 2000 jobs during construction and a further 136 direct jobs during operation which we ascribe substantial weight in favour of the Order being made.
- 10.1.14. With regard to the traffic and transport matters, the benefits that come through the DCO we conclude should be given little weight in favour, while the effects in respect of, flood risk and ground conditions we give little weight against.
- 10.1.15. The delivery of up to 95MW generating capacity is a modest benefit adding to the case for the making of the DCO

Matters weighing against the making of the DCO

- 10.1.16. We have found that the Proposed Development would result in less than substantial harm to the setting of designated and non-designated heritage assets and to below ground archaeology. However, while we

afford great weight to the conservation of these assets, we consider the overall level of harm would be less than substantial and would be outweighed by the wider public benefits. Consequently, we consider this should be afforded only a moderate amount of weight against the making of the Order.

- 10.1.17. We have also found it would result in some landscape harm particularly when viewed from two receptors, this harm would remain even after the planting to be delivered through the landscape scheme, and we ascribe this moderate weight against the making of the Order.
- 10.1.18. In light of the clear advice in NPS EN-1 and the harm identified to the SSSIs we have concluded that this should be given substantial weight against the making of the Order.
- 10.1.19. In respect of the importance of water resources, and the absence of a water supply at the current time we ascribe significant weight against the Order being made.
- 10.1.20. In respect of the issues of waste, in light of the conclusions that we have reached, based on the Applicant's own figures in respect of the balance of the quantity of waste available as fuel against the energy from waste capacity available we conclude this should be given very substantial weight against the making of the Order.

Adverse Effects on SSSI

- 10.1.21. NE in providing advice to the Examination, concluded that the harm they had initially highlighted in their RR had been overcome except in respect of harms to Risby Warren SSSI.
- 10.1.22. Our conclusions on the effects on the SSSI differ from those made by NE as their conclusions rely on the assessment of effects on ecology and biodiversity which rely upon emissions values set out in the Applicant's Reasonable Operating Case (ROC).
- 10.1.23. The levels in the ROC are below those in the ES and do not form part of the Applicant's assessment included within their ES or defined within the 'Rochdale Envelope' in terms of the extent to which emissions could arise.
- 10.1.24. The Applicant reiterated that the ROC was never intended to be a baseline against which limits could be applied within the DCO. The Applicant's own conclusions even within the ROC confirm that adverse effects would remain and under these circumstances we must conclude that even in these circumstances harm to the SSSI would occur.
- 10.1.25. We have set out in our planning balance why we do not consider the benefits identified from the Proposed Development outweigh the harms and, in these circumstances, it is clear why a negative recommendation must follow.

- 10.1.26. These conclusions are critical to understanding the potential adverse effects upon the SSSI and the subsequent assessment relative to national policy.

Absence of a confirmed water supply

- 10.1.27. The Applicant's ability to undertake the Proposed Development in the short term has also been brought into question by the outstanding objection that remained at the close of the Examination from Anglian Water.
- 10.1.28. The water company could not provide assurance that a water supply would be available, until such time as their Water Resource Management Plan had developed further and the mitigation for the predicted shortfall in supplies had been brought on stream. This was envisaged to be around 2030.

Human Rights Act 1998

- 10.1.29. We have also had regard to human rights under the Human Rights Act 1998 and equality considerations under the Equality Act 2010. We have also taken into account the objective of contributing to the achievement of sustainable development, as required by s10 PA2008. In that respect, we have considered the Government's wider objectives for energy infrastructure, as explained in EN-1 paragraph 2.2.7, which include contributing to sustainable development and ensuring that our energy infrastructure is safe.

Conclusion

- 10.1.30. Having regard to all the matters referred to in this Report as summarised in Chapter 7, and in the light of issues which remained unresolved at the close of the Examination, the conclusion we reach is that the case for the grant of development consent for the Proposed Development is not yet made out. We recommend accordingly.
- 10.1.31. Should the SoS disagree with our recommendation for the application, we have also considered the request for Compulsory Acquisition powers in Chapter 8. We conclude that, in that eventuality, there would be a compelling case in the public interest for the grant of the Compulsory Acquisition powers sought by the Applicant. Our recommendation in respect of the grant of Compulsory Acquisition powers, including the s127, and s138 representations and Special Category Land, is set out in Chapter 8.
- 10.1.32. Furthermore, should the SoS disagree with our main recommendation on the application, we conclude that any development consent granted should take the form of the Recommended DCO attached as Appendix C to this Report. The changes we have recommended are explained in Chapter 9.
- 10.1.33. We have had due regard to the Public Sector Equality Duty (PSED) throughout the Examination, including the method by which hearings and

site inspections were undertaken, and in producing this report. The Proposed Development does 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, we consider there is no breach of the PSED.

Matters which the SoS may wish to consider further

- 10.1.34. If the Applicant has managed to conclude an agreement with a neighbouring landowner such that the concerns in respect of potential adverse effects on the Risby Warren Site of Special Scientific Interest (SSSI) have been resolved and secured.
- 10.1.35. If progress has been made between Anglian Water Ltd and the Applicant on the provision of a water supply.
- 10.1.36. Whether to consult parties on our recommended Development Consent Order (rDCO) in light of adjustments made after the Examination closed in respect of a revised noise requirement and an additional requirement in respect of safeguarding the access and egress to Jotun Paints, an upper tier Control of Major Accident Hazards (COMAH) site, as well as our conclusions on the disputed Protective Provisions between the Applicant and Cadent Gas Ltd.
- 10.1.37. Whether since the closing of the Examination there has been any progress on the expected decision following the consultation on Decarbonisation Readiness. If this has progressed to such an extent that it might influence either the environmental permitting regime or the draft National Policy Statement for Renewable Energy Infrastructure (NPS-EN3).
- 10.1.38. In the event that the new suite of energy NPS is designated before a decision is made by the SoSESNZ, whether there is a need to satisfy themselves that the Proposed Development would continue to accord with any alterations made to the draft NPS prior to designation. The normal rules in respect of consultation would apply.

10.2. RECOMMENDATION

- 10.2.1. For all of the above reasons and having had regard to the LIR produced by NLC as well as our findings and conclusions on important and relevant matters set out in this report, we conclude that the case for the development has not been made and that development consent should not be granted.
- 10.2.2. Should the SoS disagree with our recommendation for the application, then the Order for the grant of development consent should be in the form of the Recommended DCO set out in Appendix C to this Report.
- 10.2.3. If the SoS is minded to grant an Order for development consent, then in relation to the application for Compulsory Acquisition within the Order, the ExA recommends the grant of Compulsory Acquisition powers as set out in Chapter 8.

APPENDICES

APPENDIX A: THE EXAMINATION LIBRARY II

APPENDIX B: LIST OF ABBREVIATIONS III

APPENDIX C: THE RECOMMENDED DCO..... IV

APPENDIX D: CONSIDERATIONS FOR THE SECRETARY OF STATE..... V

APPENDIX A: EXAMINATION LIBRARY

North Lincolnshire Green Energy Park

Examination Library

Updated – 1 June 2023

This Examination Library relates to the North Lincolnshire Green Energy Park 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.

EN010116 - North Lincolnshire Green Energy Park**Examination Library - Index**

Category	Reference
Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination including responses to Rule 6 and Rule 8 letters	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications and applicant's hearing notices	EV-xxx
Representations – by Deadline	
Procedural Deadline A	PDA - xxx
Deadline 1: Deadline for receipt by the ExA of: - Written summaries of oral submissions put at Issue Specific	REP1-xxx

Hearings held on the 16 and 17 November 2022 - Comments on Relevant Representations (RR) - Summaries of all RR exceeding 1500 words - Local Impact Reports (LIR) from Local Authorities - Statements of Common Ground (SoCGs) requested by the ExA (see Annex B) - Statements of Commonality for SoCG (see Annex B) - Notification of Statutory Parties of their wish to be considered as an Interested party (IP) - Notification of a wish to speak at ISH1 (see Annex C) - Notification of any Affected Person (AP) of a wish to speak at a Compulsory Acquisition Hearing (CAH) - Notification of an interested party of a wish to speak at an Open Floor Hearing (OFH) - Submission of suggested sites to be included in any Accompanied Site Inspection (ASI) or Unaccompanied Site Inspection (USI) including reasons why the site needs to be visited on an accompanied basis and any access requirements - Notification of wish to attend an ASI - Revised Application Guide - National Policy Statement (NPS) Tracker - A Compulsory Acquisition Schedule/Status of Negotiations Schedule - Comments on any further information/submissions accepted by the ExA - Updated Book of Reference (BoR) and Schedule of Changes to the BoR and tracked versions (if required) - Comments on any updated application documents - Notification of wish to have any future correspondence received electronically - Any further information requested by the ExA under Rule 17 of the	

Examination Procedure Rules - Requests to be heard at any of the hearings notified at Annex D of the Rule 6 letter - Comments on any further information/submissions accepted by the ExA	
Deadline 2: Deadline for the receipt by the ExA of: - Responses to ExQ1 - Responses to comments on Relevant Representations - Written Representations (WRs), including summaries of all WRs exceeding 1500 words - Comments on LIRs - Updated SoCG - Updated Statement of Commonality for SoCG - Revised Status of Negotiations Schedule - Applicant to provide a draft itinerary for the ASI - Applicant's updated dDCO (clean and tracked versions) - Updated schedule of changes to the Applicant's dDCO - Revised Application Guide (clean and tracked versions) - Comments on any other submissions received at D1 - Any further information requested by the ExA under Rule 17 of the Examination Rules	REP2-xxx
Deadline 3: Deadline for receipt by the ExA of: - Comments on responses to the ExA's ExQ1 - Responses to comments on LIRs - Comments on WRs - Comments on any other information submitted at D2 - Revised Statement of Negotiations Schedule (clean and tracked versions) - Comments on the Applicants' dDCO	REP3-xxx

- Revised Application Guide (clean and tracked versions) - Comments on the Applicant's draft itinerary for the ASI - Any further information requested by the ExA under Rule 17 of the Examination Rules	
Deadline 4: Deadline for receipt by the ExA of: - Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings held during w/c 23 January 2023. Responses to comments on WRs - Comments on any other information submitted at D3 - Updated SoCGs (clean and tracked versions) - Updated Statement of Commonality for SoCGs - Updated dDCO (clean and tracked versions) - Updated schedule of changes to the dDCO - Revised Application Guide (clean and tracked versions) - Revised Statement of Negotiations Schedule (clean and tracked versions) - Any further information requested by the ExA under Rule 17 of the Examination Rules	REP4-xxx
Deadline 5: Deadline for the receipt by the ExA of: - Comments on any other information submitted at D4 - Updated SoCGs (clean and tracked versions) - Updated Statement of Commonality for SoCGs - Updated NPS Tracker - A Compulsory Acquisition Schedule - Revised Statement of Negotiations Schedule (clean and tracked versions)	REP5-xxx

- Updated Book of Reference (BoR) and Schedule of Changes to the BoR and tracked versions (if required) - Updated dDCO (clean and tracked versions) - Updated schedule of changes to the dDCO - Revised Application Guide (clean and tracked versions) - Any further information requested by the ExA under Rule 17 of the Examination Rules	
Deadline 6 (D6) Deadline for receipt by the ExA of: - Written summaries of oral submissions put at any hearings held week commencing 6 March 2023 - Responses to the ExA's ExQ2 - Comments on the Applicants' proposed changes to the dDCO - Comments on any other information submitted at D5 - Revised Statement of Negotiations Schedule (clean and tracked versions) - Revised Application Guide (clean and tracked versions) - Comments on any other information submitted at D5 - Any further information requested by the ExA under Rule 17 of the Examination Rules	REP6-xxx
Deadline 7 (D7) Deadline for the receipt of by the ExA of: - Comments on responses to the ExA's ExQ2 - Written summaries of oral submissions put at hearings held on week commencing 27 March 2023 - An updated version of the dDCO (including final protective provisions) - An updated Mitigation Schedule - An updated version of the Guide to the Application - An updated version of the Land Acquisition and Temporary Possession Negotiations Schedule - Comments on any further information	REP7-xxx

requested by the ExA and received on Deadline 6 - Any further information requested by the ExA under Rule 17 of the Exam Rules	
Deadline 8 (D8) Deadline for the receipt of by the ExA of: - Responses to the ExA's ExQ3 (if required) - Comments on the RIES - Comments on the ExA's dDCO - An updated version of the Guide to the Application - An updated version of the Compulsory Acquisition and Temporary Possession Negotiations Schedule - Any further information requested by the ExA under Rule 17 of the Exam Rules - Comments on any further information requested by the ExA and received to Deadline 7	REP8-xxx
Deadline 9 (D9) For receipt by the ExA of: - Comments on responses to the ExA's ExQ3 (if required) - Final DCO - Final DCO to be submitted by the Applicant in the SI template with the SI template validation report - Final updated BoR - Final BoR and schedule of changes to BoR and tracked version - Final SoCG - Final Statement of Commonality of SoCG - List of matters not agreed where SoCG could not be finalised - Final Navigation Document/Guide to the application - Final Status of Negotiations CA Schedule - Final Status of Negotiations with Statutory Undertakers - Final NPS tracker	REP9-xx

- Signed final versions of any Development Consent Obligations associated with the application (if required) - Comments on any further information/submissions received - Comments on any additional information/submissions received at D 8 - Any further information requested by ExA - Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 - Closing Submissions	
Deadline 10 (D10) The ExA is under a duty to complete the Examination of the application by the end of the period of six months	REP10-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

**EN010116 - North Lincolnshire Green Energy Park
Examination Library**

Application Documents

APP-001	North Lincolnshire Green Energy Park Limited 1.1 Covering Letter
APP-002	North Lincolnshire Green Energy Park Limited 1.2 Application Guide
APP-003	North Lincolnshire Green Energy Park Limited 1.3 Section 55 Acceptance of Applications Checklist
APP-004	North Lincolnshire Green Energy Park Limited 1.5 Application Form
APP-005	North Lincolnshire Green Energy Park Limited 1.6 Notices for Statutory Publicity
APP-006	North Lincolnshire Green Energy Park Limited 1.7 Project Glossary
APP-007	North Lincolnshire Green Energy Park Limited 2.1 Draft DCO
APP-008	North Lincolnshire Green Energy Park Limited 2.1 Draft DCO Validation Report
APP-009	North Lincolnshire Green Energy Park Limited 2.2 Explanatory Memorandum
APP-010	North Lincolnshire Green Energy Park Limited 3.1 Book of Reference
APP-011	North Lincolnshire Green Energy Park Limited 3.2 Statement of Reasons
APP-012	North Lincolnshire Green Energy Park Limited 3.3 Funding Statement
APP-013	North Lincolnshire Green Energy Park Limited 4.1 Location Plan and Order Limit Plans
APP-014	North Lincolnshire Green Energy Park Limited 4.2 Land Plans
APP-015	North Lincolnshire Green Energy Park Limited 4.3 Rights of way and access plans
APP-016	North Lincolnshire Green Energy Park Limited 4.4 Works Plans A
APP-017	North Lincolnshire Green Energy Park Limited 4.4 Works Plans B
APP-018	North Lincolnshire Green Energy Park Limited 4.4 Works Plans C
APP-019	North Lincolnshire Green Energy Park Limited 4.5 Indicative Connections Plans
APP-020	North Lincolnshire Green Energy Park Limited 4.6 Plans of statutory or non statutory sites or features of nature conservation
APP-021	North Lincolnshire Green Energy Park Limited 4.7 Plans showing statutory or non statutory historic or scheduled monument sites or features of the historic environment
APP-022	North Lincolnshire Green Energy Park Limited

	4.8 Hedgerow Plans
APP-023	North Lincolnshire Green Energy Park Limited 4.9 Indicative Phasing Plan
APP-024	North Lincolnshire Green Energy Park Limited 4.10 Indicative Landscape and Biodiversity Plans
APP-025	North Lincolnshire Green Energy Park Limited 4.11 Indicative Site Layout for the ERF and Associated Development
APP-026	North Lincolnshire Green Energy Park Limited 4.12 Indicative elevations and sectional drawings for the ERF and built Associated Development (with vertical parameters)
APP-027	North Lincolnshire Green Energy Park Limited 4.13 Indicative floor plans and roof plans for the ERF and built associated development
APP-028	North Lincolnshire Green Energy Park Limited 4.14 Indicative Highways drawings
APP-029	North Lincolnshire Green Energy Park Limited 4.15 Indicative Railway drawings
APP-030	North Lincolnshire Green Energy Park Limited 4.16 Indicative Surface water drainage plan
APP-031	North Lincolnshire Green Energy Park Limited 4.17 Indicative Utility Diversion Drawings
APP-032	North Lincolnshire Green Energy Park Limited 4.18 Vertical Parameters
APP-033	North Lincolnshire Green Energy Park Limited 4.19 TRO drawings
APP-034	North Lincolnshire Green Energy Park Limited 4.20 Special Category Land Plans
APP-035	North Lincolnshire Green Energy Park Limited 5.1 Planning Statement
APP-036	North Lincolnshire Green Energy Park Limited 5.2 RDF Supply Assessment
APP-037	North Lincolnshire Green Energy Park Limited 5.3 Design and Access Statement
APP-038	North Lincolnshire Green Energy Park Limited 5.4 Combined Heat and Power Assessment
APP-039	North Lincolnshire Green Energy Park Limited 5.5 Grid Connection Statement (1)
APP-040	North Lincolnshire Green Energy Park Limited 5.6 Statutory Nuisance Statement
APP-041	North Lincolnshire Green Energy Park Limited 5.7 Outline Landscape and Biodiversity Management and Monitoring Plan (LBMMP)
APP-042	North Lincolnshire Green Energy Park Limited 5.8 Consents and Licenses Document
APP-043	North Lincolnshire Green Energy Park Limited 5.9 Report to Inform Habitats Regulations Assessment
APP-044	North Lincolnshire Green Energy Park Limited 5.10 R1 Assessment
APP-045	North Lincolnshire Green Energy Park Limited 5.11 Rail Operations Report

APP-046	North Lincolnshire Green Energy Park Limited 5.12 Design Principles and Codes
APP-047	North Lincolnshire Green Energy Park Limited 5.13 Draft Deed of Development Consent Obligations
APP-048	North Lincolnshire Green Energy Park Limited 6.1 Environmental Statement: Non-Technical Summary
APP-049	North Lincolnshire Green Energy Park Limited 6.2.1 Environmental Statement: Introduction
APP-050	North Lincolnshire Green Energy Park Limited 6.2.2 - ES - Chapter 2 - Policy and Legislative Context
APP-051	North Lincolnshire Green Energy Park Limited 6.2.3 Environmental Statement: Project Description and Alternatives
APP-052	North Lincolnshire Green Energy Park Limited 6.2.4 Environmental Statement: EIA Process and Assessment Methodology
APP-053	North Lincolnshire Green Energy Park Limited 6.2.5 Environmental Statement: Air Quality
APP-054	North Lincolnshire Green Energy Park Limited 6.2.6 Environmental Statement: Climate
APP-055	North Lincolnshire Green Energy Park Limited 6.2.7 Environmental Statement: Noise
APP-056	North Lincolnshire Green Energy Park Limited 6.2.8b - ES - Chapter 8 - Appendix B - Envirocheck Report
APP-057	North Lincolnshire Green Energy Park Limited 6.2.9 - ES - Chapter 9 - Water Resources
APP-058	North Lincolnshire Green Energy Park Limited 6.2.10 - ES - Chapter 10 - Ecology and Nature Conservation
APP-059	North Lincolnshire Green Energy Park Limited 6.2.11 - ES - Chapter 11 - Landscape and Visual Impact (1)
APP-060	North Lincolnshire Green Energy Park Limited 6.2.12 - ES - Chapter 12 - Archaeology and Cultural Heritage
APP-061	North Lincolnshire Green Energy Park Limited 6.2.13 - ES - Chapter 13 - Traffic and Transport
APP-062	North Lincolnshire Green Energy Park Limited 6.2.14 - ES - Chapter 14 - Economic, Community and Land Use Impacts
APP-063	North Lincolnshire Green Energy Park Limited 6.2.15 - ES - Chapter 15 - Waste
APP-064	North Lincolnshire Green Energy Park Limited 6.2.16 - ES - Chapter 16 - Major Accidents and Hazards
APP-065	North Lincolnshire Green Energy Park Limited 6.2.17 - ES - Chapter 17 - Health
APP-066	North Lincolnshire Green Energy Park Limited 6.2.18 - ES - Chapter 18 - Cumulative Effects
APP-067	North Lincolnshire Green Energy Park Limited 6.2.19 - ES - Chapter 19 - Mitigation
APP-068	North Lincolnshire Green Energy Park Limited 6.3.1 - ES - Annex 1 - NLGEP Scoping Report
APP-069	North Lincolnshire Green Energy Park Limited 6.3.2 - ES - Annex 2 - PINS Scoping Opinion

APP-070	North Lincolnshire Green Energy Park Limited 6.3.3 Annex 3 Flood Risk Assessment
APP-071	North Lincolnshire Green Energy Park Limited 6.3.4 Annex 4 Indicative Lighting Strategy
APP-072	North Lincolnshire Green Energy Park Limited 6.3.5 Annex 5 Indicative Drainage Strategy
APP-073	North Lincolnshire Green Energy Park Limited 6.3.6 Annex 3 Navigation Risk Assessment
APP-074	North Lincolnshire Green Energy Park Limited 6.3.7 - ES - Annex 7 - Code of Construction Practice
APP-075	North Lincolnshire Green Energy Park Limited 6.3.8 - ES - Annex 8 - Operational Environmental Management Plan
APP-076	North Lincolnshire Green Energy Park Limited 7.1 Consultation Report
APP-077	North Lincolnshire Green Energy Park Limited 7.2.1 Appendix A-1 Groups consulted as part of non-statutory consultation
APP-078	North Lincolnshire Green Energy Park Limited 7.2.2 Appendix A-2: Materials published as part of non-statutory consultation
APP-079	North Lincolnshire Green Energy Park Limited 7.2.3 Appendix A-3: Responses to non-statutory consultation
APP-080	North Lincolnshire Green Energy Park Limited 7.2.4 Appendix A-4: Update newsletter
APP-081	North Lincolnshire Green Energy Park Limited 7.2.5 Appendix B-1: Scoping Report Acknowledgement Letter
APP-082	North Lincolnshire Green Energy Park Limited 7.2.6 Appendix C-1: LPA feedback on early draft Statement of Community Consultation
APP-083	North Lincolnshire Green Energy Park Limited 7.2.7 Appendix C-2: Draft Statement of Community Consultation and covering email
APP-084	North Lincolnshire Green Energy Park Limited 7.2.8 Appendix C-3: LPA Response to draft Statement of Community Consultation
APP-085	North Lincolnshire Green Energy Park Limited 7.2.9 Appendix C-4: Publication Statement of Community Consultation and Section 47 notice as inserted
APP-086	North Lincolnshire Green Energy Park Limited 7.2.10 Appendix D-1 List of prescribed consultees
APP-087	North Lincolnshire Green Energy Park Limited 7.2.11 Appendix D-2: List of land interests consulted under S42(1)(d) and S44 of the Planning Act 2008
APP-088	North Lincolnshire Green Energy Park Limited 7.2.12 Appendix D-3: Letters to consultees under S42(1)(a), (b) and (d)
APP-089	North Lincolnshire Green Energy Park Limited 7.2.13 Appendix E-1: S46 Notification
APP-090	North Lincolnshire Green Energy Park Limited

	7.2.14 Appendix F-1: List of non-statutory groups consulted during statutory consultation
APP-091	North Lincolnshire Green Energy Park Limited 7.2.15 Appendix G-1: Consultation publicity materials
APP-092	North Lincolnshire Green Energy Park Limited 7.2.16 Appendix G-2: Statutory consultation materials
APP-093	North Lincolnshire Green Energy Park Limited 7.2.17 Appendix H-1: Newspaper notices under S48 of the Planning Act 2008
APP-094	North Lincolnshire Green Energy Park Limited 7.2.18 Appendix I-1: Regard had to consultation responses
APP-095	North Lincolnshire Green Energy Park Limited 7.2.19 Appendix J-1: Scheme website
APP-096	North Lincolnshire Green Energy Park Limited 7.2.20 Appendix K-1: Further consultation under S42(1)(d) and S44 of the Planning Act 2008
APP-097	North Lincolnshire Green Energy Park Limited 6.2.8 Environmental Statement: Ground Conditions, Contamination and Hydrogeology
Adequacy of Consultation Responses	
AoC-001	Section 55 - Adequacy of consultation request
AoC-002	Bassetlaw District Council
AoC-003	East Riding Yorkshire Council
AoC-004	Lincolnshire County Council
AoC-005	North Lincolnshire Council
AoC-006	Nottinghamshire County Council
AoC-007	West Lindsey District Council
Relevant Representations	
RR-001	Gateley Hamer on behalf of Andrew Gravel t/a ADG Autotech
RR-002	United Kingdom Without Incineration Network (UKWIN) (United Kingdom Without Incineration Network (UKWIN))
RR-003	Brian Close
RR-004	Carol Richardson
RR-005	David Moulson
RR-006	Diane Sigsworth
RR-007	James O
RR-008	Kim Golightly
RR-009	Lincolnshire Wildlife Trust
RR-010	Ray Barker
RR-011	Bob Meldrum
RR-012	Canal & River Trust
RR-013	David Hinchcliffe
RR-014	David Parker
RR-015	Gail Lockey
RR-016	Graham James Fullwood
RR-017	Harold Homer
RR-018	John Newsham
RR-019	Lesley Barsley

RR-020	Michael Sharp
RR-021	Dr Jeremy Jolley
RR-022	Malcolm Plaskitt
RR-023	Steve Duree
RR-024	Eamonn Igoe
RR-025	Kenneth Brocklesby
RR-026	Mr John Jarvis
RR-027	Michael Giles
RR-028	Norman Turner
RR-029	Stuart Trethewey
RR-030	Tina Podmore
RR-031	Simon Nicholson
RR-032	Janet Peacock
RR-033	Kevin John Bird
RR-034	Christine Nutt
RR-035	Alan Nigel Craddock
RR-036	Anna Flewker
RR-037	Michael Dillon
RR-038	Amanda Farnham
RR-039	Andrew Farnham
RR-040	Appleby Parish Council
RR-041	Katrina Young
RR-042	The Hickingbottom Family
RR-043	Carl Young
RR-044	Patrick Leslie Nothard
RR-045	Paul Gracey
RR-046	Rainham Steel Company Ltd
RR-047	British Steel on behalf of British Steel Ltd
RR-048	Burton upon Stather Parish Council
RR-049	KING Family
RR-050	Residents Against INCinerators (RAIN) (Residents Against INCinerators (RAIN))
RR-051	Tricia Murphy
RR-052	Anthony Buccieri
RR-053	Peacock and Smith Ltd on behalf of Gleeson Regeneration Ltd
RR-054	Harold Homer
RR-055	Rajan Marwaha
RR-056	Amy-Louise Ogman
RR-057	Dawn Gray
RR-058	Nigel Rhodes
RR-059	Brian Oliver
RR-060	Environment Agency
RR-061	Jeff Barker
RR-062	enfinium Ltd
RR-063	Flixborough Parish Council
RR-064	John Briggs
RR-065	Amcotts Parish Council
RR-066	Jacobs UK Limited on behalf of Anglian Water Services Ltd
RR-067	Eileen Oliver
RR-068	Elaine Marper

RR-069	Jotun Paints
RR-070	Nathaniel Heath
RR-071	Philip Sleight
RR-072	UK HEALTH SECURITY AGENCY
RR-073	Rapleys LLP on behalf of AB Agri Limited
RR-074	Amy Alexander
RR-075	Andrew Percy MP
RR-076	BayWa r.e. Operation Services Limited on behalf of Bagmoor Wind Limited
RR-077	Caroline Adlard
RR-078	Chris Sanderson
RR-079	Colin Shucksmith
RR-080	D, M & A Green
RR-081	David Oxby
RR-082	Eileen Rounce
RR-083	Helen Barker
RR-084	Holly Mumby-Croft MP
RR-085	Marine Management Organisation
RR-086	Maritime and Coastguard Agency
RR-087	Maurice Whitfield
RR-088	Mrs Susan Taylor
RR-089	BDB Pitmans LLP on behalf of National Grid Carbon Limited
RR-090	Natural England
RR-091	Gateley Hamer on behalf of Norris Family
RR-092	North Lincolnshire Council
RR-093	Weightmans LLP on behalf of Northern Powergrid (Yorkshire) PLC (Northern Powergrid (Yorkshire) PLC)
RR-094	Roxby Parish Council
RR-095	Steven Fuller
RR-096	Susan Scoffin
RR-097	Tina Ashenden
Procedural Decisions and Notifications from the Examining Authority	
PD-001	Notification of Decision to Accept Application
PD-002	Section 55 Checklist
PD-003	Section 51 advice to the Applicant
PD-004	Rule 6 letter - notification of the preliminary meeting and matters to be discussed
PD-005	Notification of the appointment of Examining Authority
PD-006	Rule 8 letter - notification of timetable for the examination
PD-007	Examining Authority's First Written Questions (ExQ1)
PD-008	Rule 17 Letter - Request for further information
PD-009	Rule 13 Letter
PD-010	Rule 17 Letter dated 14 February 2023 – Request for further information
PD-011	Rule 13 - Notification of Hearing
PD-012	Examining Authority's (ExA) Second Written Questions (ExQ2)
PD-013	The Schedule of the Examining Authority's (ExA) recommended amendments to the Applicant's draft Development Consent Order (dDCO)

	Issued by the Examining Authority - 6 April 2023
PD-014	Report on the Implications for European Sites (RIES) Issued by the Examining Authority - 6 April 2023
PD-015	ExA's Third Written Questions (ExQ3)
PD-016	Rule 17 Letter - Request for further information dated 4 May 2023
PD-017	Notification of completion of the Examining Authority's Examination
Additional Submissions	
AS-001	Network Rail Infrastructure Limited Additional Submission - Late Relevant Representation, accepted at the discretion of the Examining Authority
AS-002	North Lincolnshire Green Energy Park Limited Section 51 Response - Cover Letter
AS-003	North Lincolnshire Green Energy Park Limited Summary Table of responses to Section 51 Advice
AS-004	North Lincolnshire Green Energy Park Limited Additional Submission - 1.2 Application Guide - Revision 1
AS-005	North Lincolnshire Green Energy Park Limited Additional Submission - 1.7 Project Glossary - Revision 1
AS-006	North Lincolnshire Green Energy Park Limited Additional Submission - 2.2 Draft Development Consent Order (Clean) - Revision 1
AS-007	North Lincolnshire Green Energy Park Limited Additional Submission - 2.2 Draft Development Consent Order (Tracked) - Revision 1
AS-008	North Lincolnshire Green Energy Park Limited Additional Submission - 2.2 Validation Report
AS-009	North Lincolnshire Green Energy Park Limited Additional Submission - 4.4 Work Plans A - Revision 1
AS-010	North Lincolnshire Green Energy Park Limited Additional Submission - 4.7 Plans showing statutory or non statutory historic or scheduled monument sites or features of the historic environment
AS-011	North Lincolnshire Green Energy Park Limited Additional Submission - 6.3.7 Annex 7 - Code of Construction Practice - Revision 1
AS-012	National Highways Additional Submission - Late Relevant Representation, accepted at the discretion of the Examining Authority
AS-013	Simon Nicholson, Chair of RAIN Additional Submission - Accepted at the discretion of the Examining Authority
AS-014	Natural England Additional Submission, accepted at the discretion of the Examining Authority – Written submission in lieu of attendance at Issue Specific Hearing 3 (ISH3)
AS-015	North Lincolnshire Green Energy Park Limited

	Additional Submission - Accepted at the discretion of the Examining Authority - 5.9 Report to Inform Habitats Regulations Assessment (Tracked) - Revision 2
AS-016	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 5.9 Report to Inform Habitats Regulations Assessment (Clean) - Revision 2
AS-017	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - Additional submission covering letter
AS-018	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 1.2 Application Guide (Clean) [Revision 11]
AS-019	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 1.2 Application Guide (Tracked) [Revision 11]
AS-020	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 3.1 Book of Reference (BoR) [Revision 4] (clean)
AS-021	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 3.1 Book of Reference (BoR) [Revision 4] (tracked)
AS-022	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 4.2 Land Plans [Revision 3]
AS-023	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 5.9 Report to Inform Habitats Regulations Assessment (HRA) [Revision 3] (clean).
AS-024	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 5.9 Report to Inform Habitats Regulations Assessment (HRA) [Revision 3] (tracked)
AS-025	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 5.13 Deed of Development Consent Obligation [Revision 1]
AS-026	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 6.2.10 - Environmental Statement (ES) Chapter 10 - Ecology and Nature Conservation [Revision 1] (clean)
AS-027	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 6.2.10 - Environmental Statement (ES) Chapter 10 - Ecology and Nature Conservation [Revision 1] (tracked)
AS-028	North Lincolnshire Green Energy Park Limited

	Additional Submission - Accepted at the discretion of the Examining Authority - 6.3.7 Environmental Statement (ES) - Annex 7 - Code of Construction Practice (CoCP [Revision 7] (clean)
AS-029	North Lincolnshire Green Energy Park Limited (PDF, 2 MB) Additional Submission - Accepted at the discretion of the Examining Authority - 6.3.7 Environmental Statement (ES) - Annex 7 - Code of Construction Practice (CoCP [Revision 7] (tracked)
AS-030	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 9.7 Schedule of Changes to Book of Reference (BoR) and Land Plans [Revision 3]
AS-031	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 9.37 - Closing Submissions [Revision 0]
AS-032	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 9.41 - Updated Grid Connection Letter
AS-033	North Lincolnshire Green Energy Park Limited Additional Submission - Accepted at the discretion of the Examining Authority - 9.42 Comments on Anglian Water's Response to Rule 17 letter
Events and Hearings	
Unaccompanied Site Inspection – 21 & 22 September 2022	
EV-001	Note of Unaccompanied Site Inspection – 21 & 22 September 2022
Hearings on 15, 16 and 17 November 2022	
EV-002	Recording of Preliminary Meeting on 15 November 2022
EV-003	Transcript for the Recording of Preliminary Meeting (PM) on Tuesday 15 November 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-003a	Preliminary Meeting note
EV-004	Recording of Issue Specific Hearing 1 (ISH1) - Part 1 on Wednesday 16 November 2022
EV-005	Transcript for Part 1 of the Recording of the Issue Specific Hearing 1 (ISH1) on the Scope of the Proposed Development on Wednesday 16 November 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-006	Recording of Issue Specific Hearing 1 (ISH1) - Part 2 on Wednesday 16 November 2022

EV-007	Transcript for Part 2 of the Recording of the Issue Specific Hearing 2 (ISH2) on the draft Development Consent Order (dDCO) on Thursday 17 November 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-008	Recording of the Issue Specific Hearing 1 (ISH1) - Part 3 on Wednesday 16 November 2022
EV-009	Transcript for Part 3 of the Recording of the Issue Specific Hearing 1 (ISH1) on the Scope of the Proposed Development on Wednesday 16 November 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-010	Recording of the Issue Specific Hearing 2 (ISH2) - Part 1 on Thursday 17 November 2022
EV-011	Transcript for Part 1 of the Recording of the Issue Specific Hearing 2 (ISH2) on the draft Development Consent Order (dDCO) on Thursday 17 November 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-012	Recording of the Issue Specific Hearing 2 (ISH2) - Part 2 on Thursday 17 November 2022
EV-013	Transcript for Part 2 of the Recording of the Issue Specific Hearing 2 (ISH2) on the draft Development Consent Order (dDCO) on Thursday 17 November 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.
January Hearings	
EV-014	North Lincolnshire Green Energy Park Limited Applicant's notice of January 2023 hearings
EV-015	Issue Specific Hearing 3 (ISH3) Agenda on Environmental Matters - 25 and 26 January 2023
EV-016	Issue Specific Hearing 3 Agenda Annex - List of items to have available for display for agenda item 3 (Waste)
EV-018	Recording of the Open Floor Hearing 1 (OFH1) – Session 1 on Tuesday 24 January 2023
EV-019	Transcript for the Recording of the Open Floor Hearing 1 (OFH1) – Session 1 on Tuesday 24 January 2023 (PDF, 114 KB) 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	Recording of the Open Floor Hearing 1 (OFH1) – Session 2 on Tuesday 24 January 2023
EV-021	Transcript for the Recording of the Open Floor Hearing 1 (OFH1) – Session 2 on Tuesday 24 January 2023 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-022a	Recording of the Issue Specific Hearings 3 (ISH3) – Part 1 on Wednesday 25 January 2023
EV-023	Transcript for the recording of the Issue Specific Hearing 3 (ISH3) – Part 1 on Wednesday 25 January 2023 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	Recording of the Issue Specific Hearings 3 (ISH3) – Part 2 on Wednesday 25 January 2023
EV-025	Transcript for the recording of the Issue Specific Hearing 3 (ISH3) – Part 2 on Wednesday 25 January 2023 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-026	Recording of the Issue Specific Hearings 3 (ISH3) – Part 3 on Wednesday 25 January 2023
EV-027	Transcript for the recording of the Issue Specific Hearing 3 (ISH3) – Part 3 on Wednesday 25 January 2023 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-028	Recording of the Issue Specific Hearings 3 (ISH3) – Part 1 on Thursday 26 January 2023
EV-029	Transcript for the recording of the Issue Specific Hearing 3 (ISH3) – Part 1 on Thursday 26 January 2023 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-030	Recording of the Issue Specific Hearings 3 (ISH3) – Part 2 on Thursday 26 January 2023
EV-031	Transcript for the recording of the Issue Specific Hearing 3 (ISH3) – Part 2 on Thursday 26 January 2023 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-032	Recording of the Issue Specific Hearings 3 (ISH3) – Part 3 on Thursday 26 January 2023

EV-033	Transcript for the recording of the Issue Specific Hearing 3 (ISH3) – Part 3 on Thursday 26 January 2023 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.
Accompanied Site Inspection - Friday 27 January 2023	
EV-017	Accompanied Site Inspection itinerary - Friday 27 January 2023
Unaccompanied Site Inspection – 23 January 2023	
EV-022b	Note of Unaccompanied Site Inspection – 23 January 2023
March 2023 Hearings	
EV-034	Compulsory Acquisition Hearing 1 (CAH1) Agenda - 8 and 9 March 2023
EV-035	North Lincolnshire Green Energy Park Limited Applicant's notice of hearing during the week commencing 6 March 2023.
EV-036	Issue Specific Hearing 4 (ISH4) Agenda on the draft Development Consent Order (dDCO) - Tuesday 7 March 2023
EV-037	North Lincolnshire Green Energy Park Limited Notice of March 2023 Hearings
EV-038	Recording of Issue Specific Hearing 4 (ISH4) on the draft Development Consent Order (dDCO) - Part 1 on Tuesday 7 March 2023
EV-039	Recording of Issue Specific Hearing 4 (ISH4) on the draft Development Consent Order (dDCO) - Part 2 on Tuesday 7 March 2023
EV-040	Recording of Issue Specific Hearing 4 (ISH4) on the draft Development Consent Order (dDCO) – Part 3 on Tuesday 7 March 2023
EV-041	Transcript for the recording of Issue Specific Hearing 4 (ISH4) on the draft Development Consent Order (dDCO) - Part 1 on Tuesday 7 March 2023 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-042	Transcript of Recording of Issue Specific Hearing 4 (ISH4) on the draft Development Consent Order (dDCO) - Part 2 on Tuesday 7 March 2023 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-043	Transcript of Recording of Issue Specific Hearing 4 (ISH4) on the draft Development Consent Order (dDCO) – Part 3 on Tuesday 7 March 2023 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-044	Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 1 on Wednesday 8 March 2023
EV-045	Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 2 on Wednesday 8 March 2023
EV-046	Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 3 on Wednesday 8 March 2023
EV-047	Transcript of Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 1 on Wednesday 8 March 2023 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-048	Transcript of Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 2 on Wednesday 8 March 2023 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-049	Transcript of Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 3 on Wednesday 8 March 2023 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.

Representations

Procedural Deadline A – 2 November 2022

Deadline for receipt by the ExA of:

- Written submissions on the Examination Procedure, including any submissions about the use of virtual or blended methods
- Requests to be heard orally (in-person or virtual) at the Preliminary Meeting including which agenda items you wish to speak on.
- Requests to be heard orally (in person or virtual) at Issue Specific Hearing 1 and Issue Specific Hearing 2

PDA-001	North Lincolnshire Green Energy Park Limited Procedural Deadline A Submission - Written submissions on the Examination Procedure, including any submissions about the use of virtual or blended methods
PDA-002	North Lincolnshire Council

	Procedural Deadline A Submission - Requests to be heard orally (in-person or virtual) at the Preliminary Meeting
PDA-003	Alan Craddock Procedural Deadline A Submission
PDA-004	Amy Ogman Procedural Deadline A Submission - Written submissions on the Examination Procedure, including any submissions about the use of virtual or blended methods
PDA-005	Anglian Water Procedural Deadline A Submission - Requests to be heard orally (in-person or virtual) at the Preliminary Meeting
PDA-006	Associated British Ports Procedural Deadline A Submission - Requests to be heard orally (in person or virtual) at Hearings
PDA-007	David Connell Procedural Deadline A Submission - Requests to be heard orally (in person or virtual) at Hearings
PDA-008	Environment Agency Procedural Deadline A Submission - Requests to be heard orally (in person or virtual) at Hearings
PDA-009	National Grid Carbon Limited Procedural Deadline A Submission - Requests to be heard orally (in person or virtual) at Issue Specific Hearing 1
PDA-010	RAIN (Residents Against Incinerators) Procedural Deadline A Submission - Requests to be heard orally (in-person or virtual) at the Preliminary Meeting
PDA-011	RAIN (Residents Against Incinerators) Procedural Deadline A Submission - Requests to be heard orally (in person or virtual) at Issue Specific Hearing 1
PDA-012	United Kingdom Without Incineration Network (UKWIN) Procedural Deadline A Submission - Requests to be heard orally (in-person or virtual) at the Preliminary Meeting
PDA-013	United Kingdom Without Incineration Network (UKWIN) Procedural Deadline A Submission - Requests to be heard orally (in person or virtual) at Issue Specific Hearing 1

Deadline 1 – 1 December 2022

Deadline for receipt by the ExA of:

- Written summaries of oral submissions put at Issue Specific Hearings held on the 16 and 17 November 2022
- Comments on Relevant Representations (RR)
- Summaries of all RR exceeding 1500 words
- Local Impact Reports (LIR) from Local Authorities
- Statements of Common Ground (SoCGs) requested by the ExA (see Annex B)
- Statements of Commonality for SoCG (see Annex B)
- Notification of Statutory Parties of their wish to be considered as an Interested party (IP)
- Notification of a wish to speak at ISH1 (see Annex C)
- Notification of any Affected Person (AP) of a wish to speak at a Compulsory Acquisition Hearing (CAH)

- Notification of an interested party of a wish to speak at an Open Floor Hearing (OFH)
- Submission of suggested sites to be included in any Accompanied Site Inspection (ASI) or Unaccompanied Site Inspection (USI) including reasons why the site needs to be visited on an accompanied basis and any access requirements
- Notification of wish to attend an ASI
- Revised Application Guide
- National Policy Statement (NPS) Tracker
- A Compulsory Acquisition Schedule/Status of Negotiations Schedule
- Comments on any further information/submissions accepted by the ExA
- Updated Book of Reference (BoR) and Schedule of Changes to the BoR and tracked versions (if required)
- Comments on any updated application documents
- Notification of wish to have any future correspondence received electronically
- Any further information requested by the ExA under Rule 17 of the Examination Procedure Rules
- Requests to be heard at any of the hearings notified at Annex D of the Rule 6 letter
- Comments on any further information/submissions accepted by the ExA

REP1-001	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - Cover Letter
REP1-002	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 1.2 Application Guide - Revision: 2
REP1-003	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 3.1 Book of Reference (Clean) - Revision 1
REP1-004	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 3.1 Book of Reference (Tracked) - Revision 1
REP1-005	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 4.2 Land Plans - Revision 1
REP1-006	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 5.2 RDF Supply Assessment - Revision 1
REP1-007	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 8.1 Statement of Commonality
REP1-008	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 8.2.1 Draft Statement of Common Ground with Severn Trent Water
REP1-009	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 8.2.2 Draft Statement of Common Ground with Lincolnshire Wildlife Trust
REP1-010	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 8.2.3 Initial Draft Statement of Common Ground with Network Rail
REP1-011	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 8.2.4 Initial Draft Statement of Common Ground with Anglian Water
REP1-012	North Lincolnshire Green Energy Park Limited

	Deadline 1 Submission - 9.1 Applicants comments on Relevant Representations
REP1-013	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 9.2 National Policy Statement Tracker
REP1-014	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 9.3 Compulsory Acquisition Schedule
REP1-015	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 9.4 Written summaries of oral submissions put at Issue Specific Hearing 1
REP1-016	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 9.5 Written summaries of oral submissions put at Issue Specific Hearing 2
REP1-017	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 9.6 Grid Connection Letter
REP1-018	North Lincolnshire Green Energy Park Limited Deadline 1 Submission - 9.7 Schedule of Changes to Book of Reference (BoR) and Land Plans
REP1-019	North Lincolnshire Council Deadline 1 Submission - Local Impact Reports (LIR) from Local Authorities
REP1-020	RAIN (Residents Against Incinerators) Deadline 1 Submission - Written summaries of oral submissions put at Issue Specific Hearings held on the 16 and 17 November 2022
REP1-021	Environment Agency Deadline 1 Submission - Summaries of all relevant representations exceeding 1500 words
REP1-022	Environment Agency Deadline 1 Submission - Written summaries of oral submissions put at Issue Specific Hearings held on the 16 and 17 November 2022
REP1-023	United Kingdom Without Incineration Network (UKWIN) Deadline 1 Submission - Written summaries of oral submissions put at Issue Specific Hearings held on the 16 and 17 November 2022
REP1-024	United Kingdom Without Incineration Network (UKWIN) Deadline 1 Submission - Consultation on environmental targets
REP1-025	United Kingdom Without Incineration Network (UKWIN) Deadline 1 Submission - Environment Acts Targets Impact Analysis: Waste Reduction
REP1-026	United Kingdom Without Incineration Network (UKWIN) Deadline 1 Submission - Resource efficiency and waste reduction targets
REP1-027	United Kingdom Without Incineration Network (UKWIN) Deadline 1 Submission - Annual Performance Report 2020 - Ferrybridge Multifuel 1
REP1-028	United Kingdom Without Incineration Network (UKWIN) Deadline 1 Submission - The Waste (England and Wales) Regulations 2011
REP1-029	National Grid Carbon Limited (NGCL)

	Deadline 1 Submission - Statements of Common Ground (SoCGs) requested by the ExA (see Annex B)
REP1-030	Wakako Hirose, Ripleys LLP on behalf of AB Agri Limited Deadline 1 Submission - Notification of wish to have any future correspondence received electronically
REP1-031	M & A Green on behalf of Andrew Green D Deadline 1 Submission - A Compulsory Acquisition Schedule/Status of Negotiations Schedule
REP1-032	M & A Green on behalf of Andrew Green D Deadline 1 Submission - Comments on Relevant Representations (RR)
REP1-033	Andrew Green on behalf of D, M & A Green Deadline 1 - Submission of suggested sites to be included in any Accompanied Site Inspection (ASI)
REP1-034	Ripleys LLP on behalf of AB Agri Limited Deadline 1 - Submission of suggested sites to be included in any Accompanied Site Inspection (ASI)
REP1-035	Ripleys LLP on behalf of AB Agri Limited Deadline 1 Submission - Submission of suggested sites to be included in any Accompanied Site Inspection (ASI)

Deadline 2 – 15 December 2022

Deadline for the receipt by the ExA of:

- Responses to ExQ1
- Responses to comments on Relevant Representations
- Written Representations (WRs), including summaries of all WRs exceeding 1500 words
- Comments on LIRs
- Updated SoCG
- Updated Statement of Commonality for SoCG
- Revised Status of Negotiations Schedule
- Applicant to provide a draft itinerary for the ASI
- Applicant's updated dDCO (clean and tracked versions)
- Updated schedule of changes to the Applicant's dDCO
- Revised Application Guide (clean and tracked versions)
- Comments on any other submissions received at D1
- Any further information requested by the ExA under Rule 17 of the Examination Rules

REP2-001	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - Cover Letter and Draft Itinerary for Accompanied Site Inspection (ASI)
REP2-002	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 1.2 Application Guide (Clean) - Revision: 3
REP2-003	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 1.2 Application Guide (Tracked) - Revision: 3
REP2-004	North Lincolnshire Green Energy Park Limited

	Deadline 2 Submission - 2.1 Development Consent Order (Clean) - Revision: 2
REP2-005	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 2.1 Development Consent Order (Tracked) - Revision: 2
REP2-006	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 2.2 Explanatory Memorandum (Clean) - Revision: 1
REP2-007	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 2.2 Explanatory Memorandum (Tracked) - Revision: 1
REP2-008	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 3.1 Book of Reference (Clean) - Revision: 2
REP2-009	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 3.1 Book of Reference (Tracked) - Revision: 2
REP2-010	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 3.2 Statement of Reasons (Clean) - Revision: 1
REP2-011	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 3.2 Statement of Reasons (Tracked) - Revision: 1
REP2-012	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 3.3 Funding Statement (Clean) - Revision: 1
REP2-013	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 3.3 Funding Statement (Tracked) - Revision: 1
REP2-014	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 4.2 Land Plans - Revision: 2
REP2-015	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 4.6 Plans of statutory or non statutory sites or features of nature conservation - Revision: 1
REP2-016	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 4.10 Indicative Landscape and Biodiversity Plans - Revision: 1
REP2-017	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 5.1 Planning Statement - Revision: 1
REP2-018	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 5.7 Outline Landscape and Biodiversity Management and Monitoring Plan (LBMMP)
REP2-019	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 5.9 Report to Inform Habitats Regulations Assessment - Revision: 1
REP2-020	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 6.1 - Environmental Statement - Non-Technical Summary - Revision: 1
REP2-021	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - Environmental Statement - 6.2.13 Traffic and Transport - Revision: 1

REP2-022	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 6.3.6 Annex 3 Navigation Risk Assessment
REP2-023	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 8.1 Statement of Commonality (Clean) - Revision: 1
REP2-024	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 8.1 Statement of Commonality (Tracked) - Revision: 1
REP2-025	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 8.2.5 Draft Statement of Common Ground with North Lincolnshire Council
REP2-026	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 8.2.6 Draft Statement of Common Ground with AB Agri Limited
REP2-027	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 8.2.7 Draft Statement of Common Ground with National Grid Carbon Ltd
REP2-028	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 8.2.8 Draft Statement of Common Ground with Environment Agency
REP2-029	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 8.2.9 Draft Statement of Common Ground with Scunthorpe and Gainsborough Water Board Management
REP2-030	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 9.3 Compulsory Acquisition Schedule (Clean) - Revision: 1
REP2-031	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 9.3 Compulsory Acquisition Schedule (Tracked) - Revision: 1
REP2-032	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 9.7 Schedule of Changes to Book of Reference and Land Plans - Revision: 1
REP2-033	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 9.8 Applicant's Response to Written Questions
REP2-034	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 9.9 Applicant's Comments on Local Impact Report
REP2-035	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 9.10 Status of Negotiations with Statutory Undertakers
REP2-036	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 9.11 Special Protection Area (SPA) and Special Area of Conservation (SAC) Citations
REP2-037	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 9.12 Draft Development Consent Order: Schedule of Drafting Changes
REP2-038	North Lincolnshire Green Energy Park Limited

	Deadline 2 Submission - 9.13 Water Courses included in the Assessment
REP2-039	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 9.14 Footprint Services: North Lincolnshire Green Energy Park – Regional Waste Assessment (August 2021)
REP2-040	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - 9.15 Footprint Services: North Lincolnshire Green Energy Park Supplementary Information
REP2-041	North Lincolnshire Green Energy Park Limited Deadline 2 Submission - Appendix C to Environmental Statement Chapter 5 Site Specific Critical Loads
REP2-042	North Lincolnshire Council Deadline 2 Submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-043	North Lincolnshire Council Deadline 2 Submission - Development Standards
REP2-044	North Lincolnshire Council Deadline 2 Submission - The Historic Environment
REP2-045	North Lincolnshire Council Deadline 2 Submission - The Ironstone Gulleys
REP2-046	North Lincolnshire Council Deadline 2 Submission - Landscape and Conservation
REP2-047	North Lincolnshire Council Deadline 2 Submission - Leisure and Recreation
REP2-048	North Lincolnshire Council Deadline 2 Submission - Rural Development
REP2-049	North Lincolnshire Council Deadline 2 Submission - Transportation
REP2-050	North Lincolnshire Council Deadline 2 Submission - Waste
REP2-051	North Lincolnshire Council Deadline 2 Submission - North Lincolnshire Local Development Framework - Core Strategy Adopted 2011
REP2-052	North Lincolnshire Council Deadline 2 Submission - North Lincolnshire Local Development Framework - Housing and Employment Land Allocations Development Plan Document Adopted March 2016
REP2-053	North Lincolnshire Council Deadline 2 Submission - Local Submission Plan - November 2022
REP2-054	North Lincolnshire Council Deadline 2 Submission - Lincolnshire Lakes Area Action Plan
REP2-055	North Lincolnshire Council Deadline 2 Submission - Sustainable Drainage Systems (SuDS) and Flood Risk Guidance Document
REP2-056	North Lincolnshire Council Deadline 2 Submission - Planning for Renewable Energy Development
REP2-057	North Lincolnshire Council Deadline 2 Submission - North Lincolnshire Landscape Character Assessment and Guidelines

REP2-058	North Lincolnshire Council Deadline 2 Submission - Strategic Flood Risk Assessment
REP2-059	North Lincolnshire Council Deadline 2 Submission - Inset 03 - Amcotts and Flixborough Industrial Estate
REP2-060	North Lincolnshire Council Deadline 2 Submission - Inset 19 - Flixborough
REP2-061	North Lincolnshire Council Deadline 2 Submission - Saved North Lincolnshire Local Plan 2003 Policies
REP2-062	North Lincolnshire Council Deadline 2 Submission - Scunthorpe & Bottesford Urban Area
REP2-063	North Lincolnshire Council Deadline 2 Submission - Amcotts and Flixborough Industrial Estate
REP2-064	North Lincolnshire Council Deadline 2 Submission - Proposals Map
REP2-065	North Lincolnshire Council Deadline 2 Submission - Any further information requested by the ExA under Rule 17 of the Examination Rules
REP2-066	North Lincolnshire Council Deadline 2 Submission - Alkborough Conservation Area Appraisal
REP2-067	North Lincolnshire Council Deadline 2 Submission - Alkborough Townscape Analysis
REP2-068	North Lincolnshire Council Deadline 2 Submission - Appleby Conservation Area Appraisal
REP2-069	North Lincolnshire Council Deadline 2 Submission - Appleby
REP2-070	North Lincolnshire Council Deadline 2 Submission - Burton upon Stather Conservation Area Appraisal
REP2-071	North Lincolnshire Council Deadline 2 Submission - Burton upon Stather Townscape Analysis
REP2-072	North Lincolnshire Council Deadline 2 Submission - New Frodingham Conservation Area Appraisal
REP2-073	North Lincolnshire Council Deadline 2 Submission - New Frodingham Townscape Analysis
REP2-074	North Lincolnshire Council Deadline 2 Submission - Normanby Conservation Area Appraisal
REP2-075	North Lincolnshire Council Deadline 2 Submission - Normanby Townscape Analysis
REP2-076	North Lincolnshire Council Deadline 2 Submission - Old Crosby Conservation Area Appraisal
REP2-077	North Lincolnshire Council Deadline 2 Submission - Old Crosby Townscape Analysis
REP2-078	North Lincolnshire Council Deadline 2 Submission - Winterton Conservation Area Appraisal
REP2-079	North Lincolnshire Council Deadline 2 Submission - Winterton Townscape Analysis

REP2-080	2 Sisters Food Group Limited Deadline 2 Submission - Written Representation (WRs)
REP2-081	Rapleys LLP on behalf of AB Agri Ltd Deadline 2 Submission - Written Representations (WRs), including summaries of all WRs exceeding 1500 words
REP2-082	Rapleys LLP on behalf of AB Agri Ltd Deadline 2 Submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-083	Rapleys LLP on behalf of AB Agri Ltd Deadline 2 Submission - Examination of Development Consent Order
REP2-084	Amcotts Parish Council Deadline 2 Submission - Responses to comments on Relevant Representations
REP2-085	Amy Ogman Deadline 2 Submission - Written Representations (WRs), including summaries of all WRs exceeding 1500 words
REP2-086	Gateley Hamer on behalf of Andrew Gravel Deadline 2 Submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-087	Associated British Ports Deadline 2 Submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-088	Burton upon Stather Parish Council Deadline 2 Submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-089	Burton upon Stather Parish Council Deadline 2 Submission - Written Representation (WRs)
REP2-090	Cadent Gas Limited Deadline 2 Submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-091	Cadent Gas Limited Deadline 2 Submission - Draft Protective Provisions
REP2-092	Environment Agency Deadline 2 Submission - Written Representation (WRs)
REP2-093	Environment Agency Deadline 2 Submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-094	Flixborough Parish Council Deadline 2 Submission - Written Representations (WRs), including summaries of all WRs exceeding 1500 words
REP2-095	Gateley Hamer on behalf of Andrew Gravel t/a ADG Autotech Deadline 2 Submission - Written Representations (WRs), including summaries of all WRs exceeding 1500 words
REP2-096	Historic England Deadline 2 Submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-097	Kevin John Bird Deadline 2 Submission - Written Representations (WRs), including summaries of all WRs exceeding 1500 words
REP2-098	M & A Green

	Deadline 2 Submission - Written Representations (WRs), including summaries of all WRs exceeding 1500 words
REP2-099	National Grid Carbon Limited Deadline 2 Submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-100	Natural England Deadline 2 Submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-101	Network Rail Infrastructure Limited Deadline 2 Submission - Written Representations (WRs)
REP2-102	Network Rail Infrastructure Limited Deadline 2 Submission - Response to the Examining Authority's First Written Questions (ExQ1)
REP2-103	Gateley Hamer on behalf of the Norris Family Deadline 2 Submission - Written Representations (WRs), including summaries of all WRs exceeding 1500 words
REP2-104	Tricia Murphy Deadline 2 Submission - Written Representations (WRs), including summaries of all WRs exceeding 1500 words
REP2-105	United Kingdom Without Incineration Network (UKWIN) Deadline 2 Submission - Incineration Overcapacity
REP2-106	United Kingdom Without Incineration Network (UKWIN) Deadline 2 Submission - Incineration Overcapacity: UKWIN's Response to ESA comments
REP2-107	United Kingdom Without Incineration Network (UKWIN) Deadline 2 Submission - Recycling prices 2022
REP2-108	United Kingdom Without Incineration Network (UKWIN) Deadline 2 Submission - Comments on any other submissions received at D1
REP2-109	United Kingdom Without Incineration Network (UKWIN) Deadline 2 Submission - Good Practice Guidance for Assessing the Greenhouse Gas (GHG) Impacts of Waste Incineration
REP2-110	United Kingdom Without Incineration Network (UKWIN) Deadline 2 Submission - Written Representation (WRs)
REP2-111	United Kingdom Without Incineration Network (UKWIN) Deadline 2 Submission - Incineration Overcapacity Methodology

Deadline 3 – 12 January 2023

Deadline for receipt by the ExA of:

- Comments on responses to the ExA's ExQ1
- Responses to comments on LIRs
- Comments on WRs
- Comments on any other information submitted at D2
- Revised Statement of Negotiations Schedule (clean and tracked versions)
- Comments on the Applicants' dDCO
- Revised Application Guide (clean and tracked versions)
- Comments on the Applicant's draft itinerary for

the ASI - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP3-001	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Cover Letter and updated Itinerary for Accompanied Site Inspection (ASI)
REP3-002	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 1.2 Application Guide (Clean) - Revision: 04
REP3-003	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 1.2 Application Guide (Tracked) - Revision: 04
REP3-004	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 4.1 Location Plan and Order Limit Plans - Revision: 01
REP3-005	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 4.3 Rights of way and access plans - Revision: 01
REP3-006	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 4.5 Indicative Connections Plans - Revision: 01
REP3-007	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 4.10 Indicative Landscape and Biodiversity Plans - Revision: 02
REP3-008	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 4.14 Indicative Highways drawings - Revision: 01
REP3-009	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 4.16 Indicative Surface water drainage plan - Revision: 01
REP3-010	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 4.17 Indicative Utility Diversion Drawings - Revision: 01
REP3-011	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 4.19 Traffic Regulation Order (TRO) drawings - Revision: 01
REP3-012	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 5.3 Design and Access Statement - Revision: 01
REP3-013	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 5.12 Design Principles and Codes (Clean) - Revision: 01
REP3-014	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 5.12 Design Principles and Codes (Tracked) - Revision: 01
REP3-015	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 6.3.7 Code of Construction Practice (Clean) - Revision: 02
REP3-016	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 6.3.7 Code of Construction Practice (Tracked) - Revision: 02

REP3-017	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 9.3 - Compulsory Acquisition Schedule (Clean) - Revision: 02
REP3-018	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 9.3 - Compulsory Acquisition Schedule (Tracked) - Revision: 02
REP3-019	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 9.10 Status of Negotiations with Statutory Undertakers (Clean) - Revision: 01
REP3-020	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 9.10 Status of Negotiations with Statutory Undertakers (Tracked) - Revision: 01
REP3-021	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 9.16 Applicant's comments on responses to the Examining Authority's First Written Questions (ExQ1)
REP3-022	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 9.17 Comments on Written Representations
REP3-023	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 9.18 Applicant's further responses to Examining Authority's First Written Questions (ExQ1)
REP3-024	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 9.19 Bibliography of External References
REP3-025	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 9.20 The purpose for which compulsory acquisition and temporary possession powers are sought
REP3-026	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Phase 1 Environmental Site Assessment
REP3-027	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Marine Traffic Assessment
REP3-028	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Condition Survey and Exception Report for Flixboroughh Wharf Jetty, Gunness Wharf Main Jetty & Gunness Wharf Fina Oil Jetty
REP3-029	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Feasibility Study
REP3-030	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Carbon Balances and Energy Impacts of the Management of UK Wastes
REP3-031	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Environment Agency Humber Extreme Water Level
REP3-032	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Fluvial flood hydrology review
REP3-033	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Tidal Trent Modelling and Mapping Study
REP3-034	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Guidance Note - The Reduction of Obtrusive Light

REP3-035	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Ground Investigation Report 2018
REP3-036	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Bats and artificial lighting in the UK
REP3-037	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Lincolnshire Lakes Flood Defence System
REP3-038	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Northern Powergrid Quotation - 63MW Stather Road Flixborough
REP3-039	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - Response to the 'Rule 17' letter dated 8 December 2022
REP3-040	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 5.2 RDF Supply Assessment - (Clean) - Revision: 2
REP3-041	North Lincolnshire Green Energy Park Limited Deadline 3 Submission - 5.2 RDF Supply Assessment - (Tracked) - Revision: 2
REP3-042	Amy Ogman Deadline 3 Submission - Comments on the Applicant's draft itinerary for the Accompanied Site Inspection (ASI)
REP3-043	United Kingdom Without Incineration Network (UKWIN) Deadline 3 Submission - Comments on responses to the Examining Authority's First Written Questions (ExQ1)
REP3-044	Rapleys LLP on behalf of AB Agri Limited Deadline 3 Submission - Comments on the Applicant's draft itinerary for the Accompanied Site Inspection (ASI)
REP3-045	Rapleys LLP on behalf of AB Agri Limited Deadline 3 Submission - Comments on Written Representations (WRs)
REP3-046	Brian Oliver Deadline 3 Submission - Comments on the Applicant's draft itinerary for the Accompanied Site Inspection (ASI)
REP3-047	Environment Agency Deadline 3 Submission - Comments on the Applicants' draft Development Consent Order (dDCO)

Deadline 4 – 7 February 2023

Deadline for receipt by the ExA of:

- Post hearing submissions, including written submission of oral case and any post-hearing notes requested at the hearings held during w/c 23 January 2023. Responses to comments on WRs
- Comments on any other information submitted at D3
- Updated SoCGs (clean and tracked versions)
- Updated Statement of Commonality for SoCGs
- Updated dDCO (clean and tracked versions)
- Updated schedule of changes to the dDCO
- Revised Application Guide (clean and tracked versions)

- Revised Statement of Negotiations Schedule (clean and tracked versions) - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP4-001	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - Cover Letter
REP4-002	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 1.2 Application Guide (Clean) - Revision: 5
REP4-003	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 1.2 Application Guide (Tracked) - Revision: 5
REP4-004	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 2.1 Development Consent Order (DCO) (Clean) - Revision: 3
REP4-005	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 2.1 Development Consent Order (DCO) (Tracked) - Revision: 3
REP4-006	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - Development Consent Order (DCO) Validation Report - Revision: 3
REP4-007	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - Environmental Statement - 6.2.3 Project Description and Alternatives (Clean) - Revision: 1
REP4-008	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - Environmental Statement - 6.2.3 Project Description and Alternatives (Tracked) - Revision: 1
REP4-009	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - Environmental Statement - 6.2.5 Air Quality (Clean) - Revision: 1
REP4-010	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - Environmental Statement - 6.2.5 Air Quality (Tracked) - Revision: 1
REP4-011	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - Environmental Statement - 6.2.12 Archaeology and Cultural Heritage
REP4-012	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - Environmental Statement - 6.3.6 Annex 6: Navigation Risk Assessment (Clean) - Revision: 1
REP4-013	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - Environmental Statement - 6.3.6 Annex 6: Navigation Risk Assessment (Tracked) - Revision: 1
REP4-014	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 8.1 Statement of Commonality (Clean) - Revision: 2
REP4-015	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 8.1 Statement of Commonality (Tracked) - Revision: 2
REP4-016	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 8.2.4 Draft Statement of Common Ground with Anglian Water Services Limited - Revision: 1

REP4-017	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 8.2.5 Draft Statement of Common Ground with North Lincolnshire Council - Revision: 1
REP4-018	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 8.2.6 Draft Statement of Common Ground with AB Agri Limited - Revision: 1
REP4-019	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 8.2.10 Initial Draft Statement of Common Ground with Jotun Paints
REP4-020	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 8.2.11 Draft Statement of Common Ground with United Kingdom Without Incineration Network (UKWIN)
REP4-021	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 8.2.12 Draft Statement of Common Ground with Natural England
REP4-022	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 8.2.13 Initial Draft Statement of Common Ground with Associated British Ports
REP4-023	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 9.3 Compulsory Acquisition Schedule (Clean) - Revision 3
REP4-024	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 9.3 Compulsory Acquisition Schedule (Tracked) - Revision 3
REP4-025	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 9.10 Status of Negotiations with Statutory Undertakers (Clean) - Revision: 2
REP4-026	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 9.10 Status of Negotiations with Statutory Undertakers (Tracked) - Revision: 2
REP4-027	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 9.12 Draft Development Consent Order (dDCO): Schedule of Drafting Changes - Revision: 1
REP4-028	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 9.21 Written summaries of oral submissions put at Issue Specific Hearing 3 (Day one – 25 January 2023)
REP4-029	North Lincolnshire Green Energy Park Limited Deadline 4 Submission - 9.22 Written summaries of oral submissions put at Issue Specific Hearing 3 (Day two – 26 January 2023)
REP4-030	North Lincolnshire Council Deadline 4 Submission - Any further information requested by the Examining Authority (ExA) under Rule 17 of the Examination Rules
REP4-031	North Lincolnshire Council Deadline 4 Submission - Actions following Issue Specific Hearing 3 (ISH3)
REP4-032	North Lincolnshire Council

	Deadline 4 Submission - The Setting of Heritage Assets - Historic Environment Good Practice Advice in Planning Note 3 (Second Edition)
REP4-033	AB Agri Limited Deadline 4 Submission - Post hearing submission for Issue Specific Hearing 3 (ISH3)
REP4-034	Amy Ogman Deadline 4 Submission - Comments on any other information submitted at Deadline 3
REP4-035	Brian Oliver Deadline 4 Submission - My objections to the proposed North Lincolnshire Green Energy Park
REP4-036	Environment Agency Deadline 4 Submission - Comments on any other information submitted at Deadline 3
REP4-037	Environment Agency Deadline 4 Submission - Post hearing submission for Issue Specific Hearing 3 (ISH3)
REP4-038	Network Rail Infrastructure Limited Deadline 4 Submission - Update on Statement of Common Ground (SoCG)
REP4-039	RAIN (Residents Against Incinerators) Deadline 4 Submission - Post hearing submission - Pollution Inventory 2021
REP4-040	RAIN (Residents Against Incinerators) Deadline 4 Submission - Post hearing submission - Issue Specific Hearing 3 (ISH3) and Open Floor Hearing 1 (OFH1)
REP4-041	Simon Nicholson Deadline 4 Submission - Post hearing submission
REP4-042	United Kingdom Without Incineration Network (UKWIN) Deadline 4 Submission - Comments on any other information submitted at Deadline 3
REP4-043	United Kingdom Without Incineration Network (UKWIN) Deadline 4 Submission - Notice of variation and consolidation with introductory note
REP4-044	United Kingdom Without Incineration Network (UKWIN) Deadline 4 Submission - Horsham Permit Decision Document (Highlighted Extracts)
REP4-045	United Kingdom Without Incineration Network (UKWIN) Deadline 4 Submission - Post hearing submission
REP4-046	United Kingdom Without Incineration Network (UKWIN) Deadline 4 Submission - Defra 2020 Resources and Waste Strategy Monitoring Progress Report
REP4-047	United Kingdom Without Incineration Network (UKWIN) Deadline 4 Submission - Advanced Fuels Fund (AFF) competition winners - GOV.UK
REP4-048	United Kingdom Without Incineration Network (UKWIN) Deadline 4 Submission - Riverside Energy Park Dischargement of Requirement 16
REP4-049	United Kingdom Without Incineration Network (UKWIN)

	Deadline 4 Submission - Lift off for projects fuelling jet liners with bin liners - GOV.UK
REP4-050	United Kingdom Without Incineration Network (UKWIN) Deadline 4 Submission - Mandating the use of sustainable aviation fuels in the UK - GOV.UK
REP4-051	United Kingdom Without Incineration Network (UKWIN) Deadline 4 Submission - Riverside Energy Park Approved Waste Hierarchy Scheme
REP4-052	United Kingdom Without Incineration Network (UKWIN) Deadline 4 Submission - Riverside Energy Park Approved Waste Hierarchy Scheme - Appendix B Waste Compositional Analysis
REP4-053	United Kingdom Without Incineration Network (UKWIN) Deadline 4 Submission - Department for Business, Energy and Industrial Strategy (BEIS) Net Zero Strategy (Highlighted Extracts)
REP4-054	Alex Zimmerman Deadline 4 Submission – Accepted at the discretion of the Examining Authority
REP4-055	Deborah Zimmerman Deadline 4 Submission – Accepted at the discretion of the Examining Authority
REP4-056	Eleanor Zimmerman Deadline 4 Submission – Accepted at the discretion of the Examining Authority
REP4-057	Scott Zimmerman Deadline 4 Submission – Accepted at the discretion of the Examining Authority
REP4-058	Trevor Zimmerman Deadline 4 Submission – Accepted at the discretion of the Examining Authority
Deadline 5 (D5) Deadline for the receipt by the ExA of: - Comments on any other information submitted at D4 - Updated SoCGs (clean and tracked versions) - Updated Statement of Commonality for SoCGs - Updated NPS Tracker - A Compulsory Acquisition Schedule - Revised Statement of Negotiations Schedule (clean and tracked versions) - Updated Book of Reference (BoR) and Schedule of Changes to the BoR and tracked versions (if required) - Updated dDCO (clean and tracked versions) - Updated schedule of changes to the dDCO - Revised Application Guide (clean and tracked versions) - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP5-001	North Lincolnshire Green Energy Park Limited

	Deadline 5 Submission - Covering Letter
REP5-002	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - Validation Report
REP5-003	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 1.2 Application Guide [Revision 6] (Clean)
REP5-004	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 1.2 Application Guide [Revision 6] (Tracked)
REP5-005	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 2.1 Development Consent Order [Revision 4] (tracked).
REP5-006	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 2.1 Development Consent Order [Revision 4] (clean)
REP5-007	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 2.2 Explanatory Memorandum [Revision 2] (clean)
REP5-008	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 2.2 Explanatory Memorandum [Revision 2] (tracked)
REP5-009	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 3.1 Book of Reference [Revision 2] (clean).
REP5-010	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 3.1 Book of Reference [Revision 2] (tracked)
REP5-011	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 3.2 - Statement of Reasons [Revision 2] (clean).
REP5-012	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 3.2 - Statement of Reasons [Revision 2] (tracked)
REP5-013	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 4.4 Works Plans A [Revision 3]
REP5-014	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 4.4 Works Plans B [Revision 2]
REP5-015	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 4.4 Works Plans C [Revision 2]
REP5-016	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 4.5 Indicative Connections Plans [Revision 2]
REP5-017	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 5.12 Design Principles and Codes [Revision 2] (clean)
REP5-018	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 5.12 Design Principles and Codes [Revision 2] (tracked)
REP5-019	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 6.3.5 Indicative Drainage Strategy Report [Revision 1]

REP5-020	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 6.3.7 - Code of Construction Practice (CoCP) [Revision 3] (clean)
REP5-021	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 6.3.7 - Code of Construction Practice (CoCP) [Revision 3] (tracked)
REP5-022	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 8.1 Statement of Commonality (clean).
REP5-023	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 8.1 Statement of Commonality (tracked)
REP5-024	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 8.2.1 - Severn Trent Updated Draft Statement of Common Ground (SoCG)
REP5-025	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 8.2.7 - National Grid Updated Draft Statement of Common Ground (SoCG)
REP5-026	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 8.2.8 - Environment Agency Updated Draft Statement of Common Ground
REP5-027	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 8.2.10 - Jotun Paints Updated Draft Statement of Common Ground (SoCG)
REP5-028	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 9.10 Status of negotiations [Revision 3] (clean)
REP5-029	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 9.10 Status of negotiations [Revision 3] (tracked)
REP5-030	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 9.12 draft Development Consent Order (dDCO) Schedule of Changes [Revision 2]
REP5-031	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 9.2 National Policy Statement (NPS) Tracker [Revision 1] (tracked)
REP5-032	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 9.2 National Policy Statement (NPS) Tracker [Revision 1] (clean)
REP5-033	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 9.3 Compulsory Acquisition Schedule [Revision 4] (clean)
REP5-034	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 9.3 Compulsory Acquisition Schedule [Revision 4] (tracked)
REP5-035	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 9.7 Schedule of Changes to Book of Reference (BoR) and Land Plans [Revision 2].
REP5-036	Reference not in use
REP5-037	North Lincolnshire Green Energy Park Limited Deadline 5 Submission - 9.23 - Applicant's responses to Deadline 4 submissions and Rule 17 Request of 140223
REP5-038	North Lincolnshire Council

	Deadline 5 Submission - Any further information requested by the Examining Authority (ExA) under Rule 17 of the Examination Rules
REP5-039	Environment Agency Deadline 5 Submission - Any further information requested by the Examining Authority (ExA) under Rule 17 of the Examination Rules
REP5-040	Environment Agency Deadline 5 Submission - Comments on any other information submitted at Deadline 4
REP5-041	Network Rail Infrastructure Limited Deadline 5 Submission
REP5-042	Rapleys on behalf of AB Agri Limited Deadline 5 Submission
REP5-043	Amy-Louise Ogman Deadline 5 Submission - Comments on any other information submitted at Deadline 4
REP5-044	Simon Nicholson Deadline 5 Submission
REP5-045	Simon Nicholson Late Deadline 5 Submission - Accepted at the discretion of the Examining Authority
REP5-046	Mr Kevin S Scales Deadline 5 Submission - Accepted at the discretion of the Examining Authority
Deadline 6 (D6) Deadline for receipt by the ExA of: - Written summaries of oral submissions put at any hearings held week commencing 6 March 2023 - Responses to the ExA's ExQ2 - Comments on the Applicants' proposed changes to the dDCO - Comments on any other information submitted at D5 - Revised Statement of Negotiations Schedule (clean and tracked versions) - Revised Application Guide (clean and tracked versions) - Comments on any other information submitted at D5 - Any further information requested by the ExA under Rule 17 of the Examination Rules	
REP6-001	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - Applicant's Covering Letter
REP6-002	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 1.2 Application Guide (Revision 7) (clean)
REP6-003	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 1.2 Application Guide (Revision 7) (tracked)
REP6-004	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 2.1 Development Consent Order [Revision 5] (clean)

REP6-005	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 2.1 Development Consent Order [Revision 5] (tracked)
REP6-006	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 4.15 Indicative Railway drawings [Revision 1] (clean)
REP6-007	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 4.15 Indicative Railway drawings [Revision 1] (tracked)
REP6-008	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 4.18 Vertical Parameters [Revision 1]
REP6-009	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 5.3 Design and Access Statement [Revision 2]
REP6-010	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 5.7 Outline Landscape and Biodiversity Management and Monitoring Plan (LBMMP) [Revision 1] (clean)
REP6-011	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 5.7 Outline Landscape and Biodiversity Management and Monitoring Plan (LBMMP) [Revision 1] (tracked)
REP6-012	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 5.8 Consents and Licenses Document [Revision 1] (clean)
REP6-013	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 5.8 Consents and Licenses Document [Revision 1] (tracked)
REP6-014	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 5.9 Report to Inform Habitats Regulations Assessment (HRA) [Revision 2] (clean)
REP6-015	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 5.9 Report to Inform Habitats Regulations Assessment (HRA) [Revision 2] (tracked)
REP6-016	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 5.12 Design Principles and Codes [Revision 3] (clean)
REP6-017	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 5.12 Design Principles and Codes [Revision 3] (tracked)
REP6-018	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 6.2.3 - Environmental Statement (ES) - Chapter 3 - Project Description and Alternatives [Revision 2] (clean)
REP6-019	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 6.2.3 - Environmental Statement (ES) - Chapter 3 - Project Description and Alternatives [Revision 2] (tracked)
REP6-020	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 6.2.9 - Environmental Statement (ES) - Chapter 9 - Water Resources and Flood Risk [Revision 1] (clean)
REP6-021	North Lincolnshire Green Energy Park Limited

	Deadline 6 Submission - 6.2.9 - Environmental Statement (ES) - Chapter 9 - Water Resources and Flood Risk [Revision 1] (tracked)
REP6-022	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 6.2.14 - Environmental Statement (ES) - Chapter 14 - Economic, Community and Land Use Impacts [Revision 1] (clean)
REP6-023	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 6.2.14 - Environmental Statement (ES) - Chapter 14 - Economic, Community and Land Use Impacts [Revision 1] (tracked)
REP6-024	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 6.3.7 - Code of Construction Practice (CoCP) [Revision 4] (clean)
REP6-025	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 6.3.7 - Code of Construction Practice (CoCP) [Revision 4] (tracked)
REP6-026	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 8.2.5 North Lincolnshire Council (NLC) draft Statement of Common Ground (SoCG)
REP6-027	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 9.3 Compulsory Acquisition Schedule [Revision 5] (tracked)
REP6-028	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 9.3 Compulsory Acquisition Schedule [Revision 5] (clean)
REP6-029	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 9.10 Status of negotiations with Statutory Undertakers [Revision 4] (clean)
REP6-030	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 9.10 Status of negotiations with Statutory Undertakers [Revision 4] (tracked)
REP6-031	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 9.12 draft Development Consent Order (dDCO) Schedule of Changes [Revision 3]
REP6-032	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 9.24 - Applicant's response to the Examining Authority's Second Written Questions (ExQ2)
REP6-033	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 9.25 Applicants response to Deadline 5 submissions
REP6-034	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 9.26 Written summaries of oral submissions at Issue Specific Hearing 4 (ISH4)
REP6-035	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - 9.27 Compulsory Acquisition Hearing 1 (CAH1) Post Hearing Submissions of the Applicant
REP6-036	North Lincolnshire Green Energy Park Limited Deadline 6 Submission - Validation Report
REP6-037	North Lincolnshire Council

	Deadline 6 Submission - Response to the Examining Authority's Second Written Questions (ExQ2)
REP6-038	North Lincolnshire Council Deadline 6 Submission - Written summaries of oral submissions put at any hearings held week commencing 6 March 2023
REP6-039	Environment Agency Deadline 6 Submission - Written summaries of oral submissions put at any hearings held week commencing 6 March 2023
REP6-040	Environment Agency Deadline 6 Submission - Response to the Examining Authority's Second Written Questions (ExQ2)
REP6-041	Natural England Deadline 6 Submission - Response to the Examining Authority's Second Written Questions (ExQ2)
REP6-042	United Kingdom Without Incineration Network (UKWIN) Deadline 6 Submission - Comments on any other information submitted at Deadline 5
REP6-043	United Kingdom Without Incineration Network (UKWIN) Deadline 6 Submission - Response to the Examining Authority's Second Written Questions (ExQ2)
REP6-044	United Kingdom Without Incineration Network (UKWIN) Deadline 6 Submission - Altalto website page on Immingham waste-to-Sustainable Aviation Fuel (SAF)
REP6-045	United Kingdom Without Incineration Network (UKWIN) Deadline 6 Submission - Excerpts from Environmental Improvement Plan 2023
REP6-046	United Kingdom Without Incineration Network (UKWIN) Deadline 6 Submission - Velocys website page on Immingham waste-to-Sustainable Aviation Fuel (SAF)
REP6-047	United Kingdom Without Incineration Network (UKWIN) Deadline 6 Submission - The Environmental Targets (Residual Waste) (England) Regulations 2023
REP6-048	Rapleys on behalf of AB Agri Limited Deadline 6 Submission - Response to the Examining Authority's Second Written Questions (ExQ2)
REP6-049	Amy-Louise Ogman Deadline 6 Submission - Matters of Concern from Hearings, Documents submitted by the Applicant

Deadline 7 (D7)

Deadline for the receipt of by the ExA of:

- Comments on responses to the ExA's ExQ2
- Written summaries of oral submissions put at hearings held on week commencing 27 March 2023
- An updated version of the dDCO (including final protective provisions)
- An updated Mitigation Schedule
- An updated version of the Guide to the Application
- An updated version of the Land Acquisition and Temporary Possession Negotiations Schedule
- Comments on any further information requested by the ExA and received on

Deadline 6 - Any further information requested by the ExA under Rule 17 of the Exam Rules	
REP7-001	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - Covering Letter
REP7-002	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 1.2 Application Guide (Revision 8) (clean)
REP7-003	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 1.2 Application Guide (Revision 8) (tracked)
REP7-004	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 3.3 Funding Statement (Revision 2) (clean)
REP7-005	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 3.3 Funding Statement (Revision 2) (tracked)
REP7-006	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 4.3 Rights of way and access plans (Revision 2) (tracked)
REP7-007	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 4.3 Rights of way and access plans (Revision 2) (clean)
REP7-008	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 5.12 Design Principles and Codes (Revision 4) (clean)
REP7-009	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 5.12 Design Principles and Codes (Revision 4) (tracked)
REP7-010	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.1 - Environmental Statement - Non-Technical Summary - Revision: 2 (clean)
REP7-011	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.1 - Environmental Statement - Non-Technical Summary - Revision: 2 (tracked)
REP7-012	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.2.5 - Environmental Statement (ES) - Air Quality (Revision 2) (clean)
REP7-013	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.2.5 - Environmental Statement (ES) - Air Quality (Revision 2) (tracked)
REP7-014	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.2.7 - Environmental Statement (ES) - Noise (Revision 1) (clean)
REP7-015	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.2.7 - Environmental Statement (ES) - Noise (Revision 1) (clean)
REP7-016	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.2.19 - Environmental Statement (ES) - Chapter 19 - Mitigation (Revision 1) (clean)

REP7-017	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.2.19 - Environmental Statement (ES) - Chapter 19 - Mitigation (Revision 1) (tracked)
REP7-018	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.3.7 Code of Construction Practice (Clean) - Revision: 5
REP7-019	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.3.7 Code of Construction Practice (tracked) - Revision: 5
REP7-020	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.3.8 - Environmental Statement (ES) - Annex 8 - Operational Environmental Management Plan (Revision 1) (clean)
REP7-021	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 6.3.8 - Environmental Statement (ES) - Annex 8 - Operational Environmental Management Plan (Revision 1) (tracked)
REP7-022	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 8.1 Statement of Commonality (clean) - Revision: 4
REP7-023	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 8.1 Statement of Commonality (tracked) - Revision: 4
REP7-024	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 8.2.1 - Final Statement of Common Ground (SoCG) with Severn Trent Water
REP7-025	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 8.2.5 - Final Statement of Common Ground (SoCG) with North Lincolnshire Council
REP7-026	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 8.2.9 - Final Statement of Common Ground (SoCG) with Scunthorpe and Gainsborough Water Management Board
REP7-027	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 8.2.13 - Final Statement of Common Ground (SoCG) with Associated British Ports
REP7-028	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 9.3 Compulsory Acquisition Schedule (Revision 6) (clean)
REP7-029	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - Deadline 7 Submission - 9.3 Compulsory Acquisition Schedule (Revision 6) (tracked)
REP7-030	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 9.10 Status of negotiations with Statutory Undertakers (Revision 5) (clean)
REP7-031	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 9.10 Status of negotiations with Statutory Undertakers (Revision 5) (tracked)
REP7-032	North Lincolnshire Green Energy Park Limited

	Deadline 7 Submission - 9.29 Applicant's Responses to ExAs ExQ2, submissions received at Deadline 6 and further information
REP7-033	North Lincolnshire Green Energy Park Limited Deadline 7 Submission - 9.29 Salmonella Risk Assessment
REP7-034	Environment Agency Deadline 7 Submission
REP7-035	Fulcrum Pipelines Limited Deadline 7 Submission - Comments on responses to the ExA's ExQ
REP7-036	Rapleys LLP on behalf of AB Agri Limited Deadline 7 (D7) Submission
REP7-037	United Kingdom Without Incineration Network (UKWIN) Deadline 7 Submission - Comments on responses to the ExA's ExQ2
REP7-038	United Kingdom Without Incineration Network (UKWIN) Deadline 7 Submission - Extracts from Draft EN-1 - March 2023
REP7-039	United Kingdom Without Incineration Network (UKWIN) Deadline 7 Submission - Extracts from Draft EN-3 - March 2023
REP7-040	United Kingdom Without Incineration Network (UKWIN) Deadline 7 Submission - Extracts from Government Consultation Response on Draft Energy NPS - March 2023
REP7-041	United Kingdom Without Incineration Network (UKWIN) Deadline 7 Submission - Extracts from the Keadby 3 Carbon Capture Equipped Gas Fired Generating Station Order 2022
REP7-042	United Kingdom Without Incineration Network (UKWIN) Deadline 7 Submission - StokeOnTrentLive incinerator article - 3rd April 2023
REP7-043	Amy-Louise Ogman Deadline 7 Submission - Comments on responses to the ExA's ExQ2
REP7-044	Carol Richardson Deadline 7 Submission
REP7-045	Simon Nicholson Deadline 7 Submission
REP7-046	Brian Oliver Deadline 7 Submission - Late submission, accepted at the discretion of the Examining Authority
REP7-047	Brian Oliver Deadline 7 Submission - Video 1: Noise from survey boat, 12 September 2021. Late submission, accepted at the discretion of the Examining Authority
REP7-048	Brian Oliver Deadline 7 Submission - Video 4: Noise video, offloading steel at Flixborough wharf, 16th October 2021. Late submission, accepted at the discretion of the Examining Authority
REP7-049	Brian Oliver Deadline 7 Submission - Video 5: Flixborough Industrial Estate Noise levels at my home, 10th March 2023. Late submission, accepted at the discretion of the Examining Authority

REP7-050	Brian Oliver Deadline 7 Submission - Video 3: Noise video offloading steel at Flixborough wharf, 16th October 2021. Late submission accepted at the discretion of the Examining Authority
REP7-051	Brian Oliver Deadline 7 Submission - Video 2: Noise Video offloading steel at Flixborough wharf, 16th October 2021. Late Submission - accepted at the discretion of the Examining Authority
Deadline 8 (D8) Deadline for the receipt of by the ExA of: - Responses to the ExA's ExQ3 (if required) - Comments on the RIES - Comments on the ExA's dDCO - An updated version of the Guide to the Application - An updated version of the Compulsory Acquisition and Temporary Possession Negotiations Schedule - Any further information requested by the ExA under Rule 17 of the Exam Rules - Comments on any further information requested by the ExA and received to Deadline 7	
REP8-001	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - Cover Letter
REP8-002	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 1.2 Application Guide (Clean) - Revision:9
REP8-003	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 1.2 Application Guide (Tracked) - Revision:9
REP8-004	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 2.1 Development Consent Order (DCO) (Clean) - Revision: 6
REP8-005	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 2.1 Development Consent Order (DCO) (Tracked) - Revision: 6
REP8-006	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 6.2.7 Environmental Statement - Noise (Clean) - Revision number: 2
REP8-007	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 6.2.7 Environmental Statement- Noise (Tracked) - Revision number: 2
REP8-008	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 6.2.19 Environmental Statement Chapter 19: Mitigation (Tracked) - Revision number: 2
REP8-009	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 6.2.19 Environmental Statement Chapter 19: Mitigation (Clean) - Revision number: 2
REP8-010	North Lincolnshire Green Energy Park Limited

	Deadline 8 Submission - 6.3.8 Environmental Statement - Annex 8 - Operational Environmental Management Plan (Clean) - Revision number: 2
REP8-011	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 6.3.8 Environmental Statement - Annex 8 - Operational Environmental Management Plan (Tracked) - Revision number: 2
REP8-012	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 8.1 Statement of Commonality (Clean) - Revision number: 5
REP8-013	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 8.1 Statement of Commonality (Tracked Changes) - Revision number: 5
REP8-014	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 8.2.5 Draft Statement of Common Ground with North Lincolnshire Council - Revision number: 4
REP8-015	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 9.3 Compulsory Acquisition Schedule (Clean) - Revision number: 7
REP8-016	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 9.3 Compulsory Acquisition Schedule (Tracked) - Revision number: 7
REP8-017	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 9.10 Status of Negotiations with Statutory Undertakers (Clean) - Revision number: 6
REP8-018	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 9.10 Status of Negotiations with Statutory Undertakers (Tracked) - Revision number: 6
REP8-019	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 9.12 Draft Development Consent Order: Schedule of Drafting Changes - Revision number: 4
REP8-020	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 9.30 - Applicant's Responses to the Examining Authority's Third Written Questions (ExQ3)
REP8-021	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 9.31 Applicant's responses to Report on the Implications for European Sites (RIES)
REP8-022	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 9.32 Applicant's responses to ExAs recommended amendments to the Development Consent Order (DCO)
REP8-023	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 9.33 Applicant's comments on submissions received at Deadline 7
REP8-024	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 9.34 The Applicant's Case under Section 127 and 138 Planning Act 2008 - Statutory Undertakers' Land
REP8-025	North Lincolnshire Green Energy Park Limited Deadline 8 Submission - 9.35 Outline Employment and Skills Policy
REP8-026	Amy Ogman

	Deadline 8 Submission - Video submission regarding EPR Glanford Noise - <i>To view the full video, please download the video by clicking on the three dots next to the volume icon and selecting "download"</i>
REP8-027	Amy Ogman Deadline 8 Submission - Comments on any further information received at Deadline 7
REP8-028	Amy Ogman Deadline 8 Submission - Comments on the Report on the Implications for European Sites (RIES)
REP8-029	Amy Ogman Late Deadline 8 Submission, accepted at the discretion of the Examining Authority - Accompanying information for video submission
REP8-030	Brian Oliver Deadline 8 Submission - [Accompanying video is REP8-042]
REP8-031	Brian Oliver Deadline 8 Submission - Objection to the application
REP8-032	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Limited Deadline 8 Submission - Draft Protective Provisions
REP8-033	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Limited Deadline 8 Submission
REP8-034	Environment Agency Deadline 8 Submission - Responses to the Examining Authority's Third Written Questions (ExQ3)
REP8-035	Jacobs on behalf of Anglian Water Services Limited Deadline 8 Submission
REP8-036	Natural England Deadline 8 Submission - Response to the Report on the Implications for European Sites (RIES)
REP8-037	Rapleys on behalf of AB Agri Limited Deadline 8 Submission - Comments on any further information received at Deadline 7
REP8-038	United Kingdom Without Incineration Network (UKWIN) Deadline 8 Submission - Comments on any further information
REP8-039	United Kingdom Without Incineration Network (UKWIN) Deadline 8 Submission - Extracts from Stop Sort Burn Bury report for the Scottish Government (Dr Colin Church)
REP8-040	United Kingdom Without Incineration Network (UKWIN) Deadline 8 Submission - Responses to the Examining Authority's Third Written Questions (ExQ3)
REP8-041	United Kingdom Without Incineration Network (UKWIN) Deadline 8 Submission - United Kingdom Without Incineration Network (UKWIN) Briefing on how incineration harms recycling
REP8-042	Brian Oliver Deadline 8 Submission - Video taken on riverbank at Amcotts at 14.04 on 17 April 2023 showing level of noise from operations on wharf (quay) [Video accompanies submission REP8-030]

REP9-001 Deadline 9 (D9)

For receipt by the ExA of:

- Comments on responses to the ExA's ExQ3 (if required)
- Final DCO
- Final DCO to be submitted by the Applicant in the SI template with the SI template validation report
- Final updated BoR
- Final BoR and schedule of changes to BoR and tracked version
- Final SoCG
- Final Statement of Commonality of SoCG
- List of matters not agreed where SoCG could not be finalised
- Final Navigation Document/Guide to the application
- Final Status of Negotiations CA Schedule
- Final Status of Negotiations with Statutory Undertakers
- Final NPS tracker
- Signed final versions of any Development Consent Obligations associated with the application (if required)
- Comments on any further information/submissions received
- Comments on any additional information/submissions received at D 8
- Any further information requested by ExA
- Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010
- Closing Submissions

REP9-001	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - Cover Letter
REP9-002	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 1.2 Application Guide (Clean)
REP9-003	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 1.2 Application Guide (Tracked)
REP9-004	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 2.1 Draft Development Consent Order (revision 7) (clean).
REP9-005	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 2.1 - Validation Report - Deadline 9
REP9-006	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 2.1 Draft Development Consent Order (revision 7) (tracked).
REP9-007	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 2.2 Explanatory Memorandum (Revision 3) (clean)
REP9-008	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 2.2 Explanatory Memorandum (Revision 3) (tracked)
REP9-009	North Lincolnshire Green Energy Park Limited

	Deadline 9 Submission - 5.4 - Combined Heat and Power Assessment (Clean)
REP9-010	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 5.4 - Combined Heat and Power Assessment (Tracked)
REP9-011	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 6.2.5 - Environmental Statement (ES) - Chapter 5 - Air Quality [Revision 3
REP9-012	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 6.2.14 - Environmental Statement (ES) - Chapter 14 - Economic Community and Land Use Impacts (Revision 2) (clean)
REP9-013	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 6.2.14 - Environmental Statement (ES) - Chapter 14 - Economic Community and Land Use Impacts (Revision 2) (tracked)
REP9-014	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 6.2.16 - Environmental Statement (ES) - Chapter 16 Major Accidents and Disasters (Revision 1) (clean).
REP9-015	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 6.2.16 - Environmental Statement (ES) - Chapter 16 Major Accidents and Disasters (Revision 1) (tracked)
REP9-016	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 6.2.18 - Environmental Statement (ES) - Chapter 18 - Cumulative and Indirect Effects {Revision 1) (clean)
REP9-017	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 6.2.18 - Environmental Statement (ES)- Chapter 18 - Cumulative and Indirect Effects (Revision 1) (tracked)
REP9-018	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 6.3.7 - Code of Construction Practice (CoCP) [Revision 6] (CLEAN)
REP9-019	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 6.3.7 - Code of Construction Practice (CoCP) [Revision 6] (tracked)
REP9-020	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.1 Statement of Commonality (Clean)
REP9-021	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.1 Statement of Commonality (Tracked)
REP9-022	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.2.2 - FINAL Statement of Common Ground (SoCG) with Lincolnshire Wildlife Trust
REP9-023	North Lincolnshire Green Energy Park Limited

	Deadline 9 Submission - 8.2.3 - Draft Statement of Common Ground (SoCG) with Network Rail
REP9-024	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.2.4 - FINAL Statement of Common Ground (SoCG) with Anglian Water
REP9-025	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.2.5 - Final Statement of Common Ground (SoCG) with North Lincolnshire Council
REP9-026	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.2.6 - DRAFT Statement of Common Ground (SoCG) with AB Agri Limited
REP9-027	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.2.8 - FINAL Statement of Common Ground (SoCG) with Environment Agency
REP9-028	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.2.10 - Draft Statement of Common Ground (SoCG) with Jotun Paints
REP9-029	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.2.11 - Statement of Common Ground (SoCG) with United Kingdom Without Incineration Network (UKWIN)
REP9-030	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.2.14 - Initial Draft Statement of Common Ground (SoCG) with Historic England.
REP9-031	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.2.15 - Final Statement of Common Ground (SoCG) with National Highways.
REP9-032	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.2.16 - Final Statement of Common Ground (SoCG) with Rainham Steel
REP9-033	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 8.2.17 - Draft Statement of Common Ground (SoCG) with Bagmoor Wind Limited
REP9-034	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 9.2 National Policy Statement (NPS) Tracker. (Revision 2). (Clean)
REP9-035	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 9.2 National Policy Statement (NPS) Tracker (Revision 2) (tracked)
REP9-036	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 9.3 Compulsory Acquisition (CA) Schedule (Revision 8) (clean)
REP9-037	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 9.3 Compulsory Acquisition (CA) Schedule (Revision 8) (tracked)
REP9-038	North Lincolnshire Green Energy Park Limited

	Deadline 9 Submission - 9.10 Statutory Undertaker tracker (Revision7) (clean)
REP9-039	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 9.10 Statutory Undertaker tracker (Revision 7) (tracked)
REP9-040	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 9.12 draft Development Consent Order (dDCO) Schedule of Changes - Clean
REP9-041	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 9.12 draft Development Consent Order (dDCO) Schedule of Changes (D9) - Tracked
REP9-042	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 9.36 Applicants Response to Examining Authority's Third Written Questions (ExQ3) and Submissions received at Deadline 8
REP9-043	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 9.38 Updated Archaeological Impact Assessment
REP9-044	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 9.39 Overarching Archaeological Mitigation Strategy
REP9-045	North Lincolnshire Council Deadline 9 Submission - Responses to the Examining Authority's Third Written Questions (ExQ3)
REP9-046	Environment Agency Deadline 9 Submission - Comments on responses to the Examining Authority's Third Written Questions (ExQ3)
REP9-047	Jacobs on behalf of Anglian Water Services Deadline 9 Submission - Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010
REP9-048	Natural England Deadline 9 Submission - Responses to the Examining Authority's Third Written Questions (ExQ3)
REP9-049	Rapleys LLP on behalf of AB Agri Limited Deadline 9 Submission - Closing Submissions
REP9-050	United Kingdom Without Incineration Network (UKWIN) Deadline 9 Submission - Comments on any additional information/submissions received at Deadline 8
REP9-051	United Kingdom Without Incineration Network (UKWIN) Deadline 9 Submission - Comments on responses to the Examining Authority's Third Written Questions (ExQ3)
REP9-052	United Kingdom Without Incineration Network (UKWIN) Deadline 9 Submission - Altato Immingham Project Update (10th May 2023)
REP9-053	United Kingdom Without Incineration Network (UKWIN)

	Deadline 9 Submission - The Engineer - Jet2 announces Sustainable Aviation Fuel investment
REP9-054	Weightmans LLP on behalf of Northern Powergrid (Yorkshire) PLC Deadline 9 Submission - Northern Powergrid (Yorkshire) PLC - Letter to withdraw objection
REP9-055	Amy Ogman Deadline 9 Submission - Comments on any further information/submissions received at Deadline 8
REP9-056	National Highways Late Deadline 9 Submission - Accepted at the discretion of the Examining Authority - Withdrawal of objection
REP9-057	CMS Cameron McKenna Nabarro Olswang LLP on behalf of Cadent Gas Limited Late Deadline 9 Submission - accepted at the discretion of the Examining Authority
REP9-058	North Lincolnshire Green Energy Park Limited Deadline 9 Submission - 9.40 Applicants Response to Examining Authority's Rule 17 request for information
Deadline 10 (D10)	
The ExA is under a duty to complete the Examination of the application by the end of the period of six months	
REP10-001	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - Cover Letter
REP10-002	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 1.2 Application Guide (Clean)
REP10-003	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 1.2 Application Guide (Tracked)
REP10-004	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 2.1 Draft Development Consent Order revision 8 - (Clean)
REP10-005	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 2.1 Draft Development Consent Order revision 8 - Tracked
REP10-006	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 8.1 Statement of Commonality (Revision 8) (Clean)
REP10-007	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 8.1 Statement of Commonality (Revision 8) (Tracked)
REP10-008	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 8.2.3 - Final Statement of Common Ground (SoCG) with Network Rail Infrastructure Limited
REP10-009	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 8.2.6 - Final Statement of Common Ground (SoCG) with AB Agri Limited
REP10-010	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 8.2.12 - Final Statement of Common Ground (SoCG) with Natural England

REP10-011	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 8.2.17 - Final Statement of Common Ground (SoCG) with Bagmoor Wind Limited
REP10-012	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 8.2.18 - Final Statement of Common Ground (SoCG) with Economic Benefits Group
REP10-013	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 9.12 Draft Development Consent order (dDCO) Schedule of Changes (Revision 6) (Clean)
REP10-014	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 9.12 Draft Development Consent order (dDCO) Schedule of Changes (Revision 6) (Tracked)
REP10-015	North Lincolnshire Green Energy Park Limited Deadline 10 Submission - 9.43 - Comments on Cadent Gas Limited's submission received at Deadline 9
REP10-016	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited Deadline 10 submission - Withdrawal of objection
Other Documents	
OD-001	North Lincolnshire Green Energy Park Limited Section 56 Reg 8 Notice
OD-002	North Lincolnshire Green Energy Park Limited Section 56 Reg 9 Notice
OD-003	North Lincolnshire Green Energy Park Limited Applicant's s56 notice of accepted application
OD-004	North Lincolnshire Green Energy Park Limited Section 59 Compliance Certificate
OD-005	North Lincolnshire Green Energy Park Limited Certificate of Compliance with Regulation 16 Notice
OD-006	North Lincolnshire Green Energy Park Limited Regulation 32 Transboundary Screening

APPENDIX B: LIST OF ABBREVIATIONS AND DEFINITIONS

Abbreviation	Definition
2008 Act	Planning Act 2008
AA	Appropriate Assessment
AAP	Area Action Plan
AAWT	Annual Average Weekday Traffic
ABC	Air Blast Chillers
ABP	Associated British Ports
ACC	Air Cooled Condensers
AEP	Annual Exceedance Probability
AEoI	Adverse Effect on Integrity
AGI	Above Ground Installation
ALARP	As Low as Reasonably Practicable
ALC	Agricultural Land Category
ANCB	Appropriate Nature Conservation Body
AOD	Above Ordnance Datum
AP	Affected Person
APC	Air Pollution Control
APFP	Applications: Prescribed Forms and Procedures
APIS	Air Pollution Information System
AQAL	Air Quality Assessment Level
AQAP	Air Quality Action Plan
AQIA	Air Quality Impact Assessment
AQMA	Air Quality Management Area
AQS	Air Quality Standards
AQTAG	Air Quality Trends Analysis Group
As	Arsenic
ASI	Accompanied Site Inspection
AW	Anglian Water Services Limited
BAP	Biodiversity Action Plan
BAT	Best Available Techniques

Abbreviation	Definition
BBS	Breeding Bird Survey
BCT	Bat Conservation Trust
BEIS	Department for Business, Energy and Industrial Strategy
BESS	Battery Energy Storage System
Bgl	Below Ground Level
BGS	British Geological Society
BMV	Best and most versatile
BMVL	Best and most versatile land
BNG	Biodiversity Net Gain
BoR	Book of Reference
BPF	British Plastics Federation
BPM	Best Practicable Means
BREF	EU Best Available Techniques reference notes
BRES	Business Register and Employment Survey
BS	British Standard
BW	Bridleway
C	Celsius
C4SL	Category 4 Screening Levels
C&I	Commercial and Industrial Waste
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CAZ/s	Clean Air Zone/s
CBMF	Concrete Block Manufacturing Facility
CBR	California Bearing Ratio tests
CC	Carbon Capture
CCC	Committee on Climate Change/Climate Change Committee
CCGT	Combined cycle gas turbine
CCP	Carbon Capture Plant
CCR	Carbon Capture Readiness

Abbreviation	Definition
CCS	Carbon Capture and Storage
CCTV	Closed Circuit Television
CCU	Carbon capture and Usage
CCUS	Carbon Capture Utilisation and Storage
Cd	Cadmium
CD	Chart Datum
CDM	Construction Design and Management
CEA	Cumulative Effects Assessment
Cefas	Centre for Environment, Fisheries and Agriculture Sciences
CEMP	Construction Environmental Management Plan
CEP	Circular Economy Package
CFCs	Chlorofluorocarbons
CfD	Contracts for Readiness
CH4	Methane
CHP	Combined Heat and Power
CHP-R	CHP-Ready
CHPQA	CHP Quality Assurance
CIBSE	Chartered Institute of Building Services Engineers
CIEEM	Chartered Institute of Ecology and Environmental Management
CIEH	Chartered Institute of Environmental Health
CIfA	Chartered Institute for Archaeologists
CIRIA	Construction Industry Research and Information Association
CLEA	Contaminated Land Exposure Assessment
CLP	Construction Logistics Plan
CMLI	Chartered Members of the Landscape Institute
Co	Cobalt
CO	Carbon Monoxide
CO₂	Carbon Dioxide

Abbreviation	Definition
CoCP	Code of Construction Practice
COMAH	Control of Major Accident Hazards
COMEAP	Committee on the Medical Effects of Air Pollutants
COMP	Construction Ornithological Management Plan
CoPA	Control of Pollution Act
CPO	Compulsory Purchase Order
CRN	Calculation of Railway Noise
CRTN	Calculation of Road Traffic Noise
CTMP	Construction Traffic Management Plan
CWTP	Construction Workers Travel Plan
D	Deadline
DAS	Design and Access Statement
dB	Decibels
DBA	Desk Based Assessment
DBIS	Department for Business Innovation and Skills
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DEM	Digital Elevation Model
DEMP	Decommissioning Environmental Management Plan
DFE	Design Flood Event
DfT	Department for Transport
DH	District Heating
DHN	District Heat Network
DHPWN	District Heat and Private Wire Network
DLUHC	Department for Levelling Up, Housing and Communities
DML	Deemed Marine Licence
DMP	Dust Management Plan

Abbreviation	Definition
DMRB	Design Manual for Roads and Bridges
DN250	250mm diameter pipework
DNA	Deoxyribonucleic Acid
DNO	Distribution Network Operator
dNPS EN-1	The Draft Overarching Energy National Policy Statement
dNPS EN-3	Draft National Policy Statement for Renewable Energy Infrastructure
DoS	Degree of Saturation
DoW CoP	Definition of Waste: Development Industry Code of Practice
DP&C	Design Principles and Codes
DPD	Development Plan Document
EA	Environment Agency
EALs	Environmental Assessment Levels
EBG	Emergency Backup Generator
EC	European Commission
EclA	Ecological Impact Assessment
ECow	Ecological Clerk of Works
EEA	European Economic Area
EFT	Emission Factors for Transport
EfW	Energy from Waste
EHO	Environmental Health Officer
EHS	Environment, Health and Safety
EIA	Environmental Impact Assessment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2263) (as amended)
EM	Explanatory Memorandum
EMF	Electromagnetic Field or Electric and Magnetic Field
EMP	Ecological Management Plan
EMS	Environmental Management System

Abbreviation	Definition
EP	Environmental Permit
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EPS	European Protected Species
EPUK	Environmental Protection UK
ERF	Energy Recovery Facility
ERT	Electrical Resistivity Tomography
ES	Environmental Statement
ESCo	Energy Services Company
ESNZ	Department for Energy Security and Net Zero
ETS	Emissions Trading System
EU	European Union
EWC	European Waste Catalogue
ExA	Examining Authority
ExQ1	First Written Questions [PD-007]
ExQ2	Second Written Questions [PD-012]
ExQ3	Third Written Questions [PD-015]
FCS	Favourable Conservation Status
FEED	Front End Engineering Design
FGTr	Flue Gas Treatment residue
FLL	Functionally linked land
FRA	Flood Risk Assessment
GAC	Generic Assessment Criteria
GCN	Great Crested Newt
GHG	Greenhouse gas
GI	Ground Investigation
GLNP	Greater Lincolnshire Nature Partnership
GLVIA3	Guidelines for Landscape and Visual Impact Assessment
GPA	Good Practice Advice
GVA	Gross Value Added

Abbreviation	Definition
GZC	Greenzone Consulting Limited
H&S	Health and Safety
H₂	Hydrogen
H++	H plus plus (climate change scenario)
ha	Hectare
Habitats Regulations	Conservation of Habitats and Species Regulations 2017
HCA	Homes and Communities Agency
HCFCs	Hydrochlorofluorocarbons
HCl	Hydrogen Chloride
HE	Historic England
HELADPD	North Lincolnshire Housing and Employment Land Allocations Development Plan Document
HER	Historic Environment Record
HF	Hydrogen Fluoride
HGV(s)	Heavy Goods Vehicle(s)
HLCA	Historic Landscape Character Area
HPI	Habitats of Principal Importance
HRA	Habitats Regulations Assessment
HSC	Hazardous Substances Consent
HSE	Health and Safety Executive
IAP	Initial Assessment of Principal Issues
IAQM	Institute of Air Quality Management
IBA	Incinerator Bottom Ash
IDB	Internal Drainage Board
IED	Industrial Emissions Directive
IEMA	Institute of Environmental Management & Assessment
IIA	Immediate Impact Area
INNS	Invasive Non-Native Species

Abbreviation	Definition
IP	Interested Party
IPC	Infrastructure Planning Commission
IPCC	Intergovernmental Panel on Climate Change
IROPI	Imperative Reasons of Overriding Public Interest
ISH	Issue Specific Hearing
ISH3	Issue Specific Hearing 3
ISO	International Organisation for Standardisation
JPEL	Jotun Paints (Europe) Limited
Kg	Kilogram
Km	kilometre
kV	Kilovolt(s)
LAQM	Local Air Quality Management
LAr	Rating level
LB	Listed Buildings
LBBMP	Landscape and Biodiversity Management and Monitoring Plan
LCA	Landscape Character Area
LCT	Landscape Character Types
LDF	Local Development Framework
LIA	Local Impact Area
LiDAR	Light Detection and Ranging
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LMP	Landscape Management Plan
LNR	Local Nature Reserve
LOAEL	Lowest Observed Adverse Effect Level
LoC	Loss of Containment
LoD	Limits of Deviation
LOR	Light Output Ratio

Abbreviation	Definition
LPA	Local Planning Authority
LQM	Land Quality Management
LSE	Likely Significant Effect
LSoA	Lower Super Output Area
LV	Limit values
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Sites
m	Metre(s)
M bgi	Metres below ground level
MA&D	Major Accidents and Disasters
MAGIC	Multi-Agency Geographic Information for the Countryside
MAH	Major Accident Hazard
MBT	Mechanical biological treatment
MCA	Maritime and Coastguard Agency
MCAA	Marine and Coastal Access Act 2009
MDS	Maximum Design Scenario
MEA	Monoethanolamine
MJ/kg	Mega Joules per kilogram
Mm	millimetre
MMO	Marine Management Organisation
Mn	Manganese
MoD	Ministry of Defence
MoU	Memorandum of Understanding
MPH	Miles per Hour
MRF	Materials Recovery Facility
MSA	Minerals Safeguarding Area
MSW	Municipal Solid Waste
mt	Metric tonnes
Mt	Million tonnes

Abbreviation	Definition
MVA	Mega Volt Amp
MW	Megawatts
MWe	Megawatts electric
MWh	Electrical generation in megawatt-hours
MWhe	Electrical generation in megawatt-hours (electric)
MWhth	Heat generation in megawatt-hours (thermal)
MWMS	Municipal Waste Management Strategy
N2O	Nitrous Oxide
NCA	National Character Area
NCN	National Cycle Network
NCV	Net calorific value
NDHPWN	Northern District Heat and Private Wire Network
NE	Natural England
NERC	Natural Environment and Rural Communities
NERCA	The Natural Environment and Rural Communities Act 2006
NH	National Highways
NH₃	Ammonia
NHLE	National Heritage List for England
Ni	Nickel
NIC	National Infrastructure Commission
NLC	North Lincolnshire Council
NLCS	North Lincolnshire Core Strategy
NLLP	North Lincolnshire Local Plan
NNR	National Nature Reserves
NO	Nitric Oxide
NO₂	Nitrogen Dioxide
NOAEL	No Observed Adverse Effect Level
NO_x	Oxides of Nitrogen
NPA2017	The Neighbourhood Planning Act 2017

Abbreviation	Definition
NPPF	The National Planning Policy Framework 2021
NPPG	The National Planning Practice Guidance 2019
NPS	National Policy Statement
NPS EN-1	The Overarching Energy National Policy Statement
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure
NPSE	Noise Policy Statement for England
NPSP	National Policy Statement for Ports
NPV	Net Present Value
NR	Network Rail Infrastructure Limited
NRA	Navigation Risk Assessment
NSER	No Significant Effect Report
NSIP	Nationally Significant Infrastructure Project
NSN	National Site Network
NSR	Noise Sensitive Receptor
OAMS	Overarching Archaeological Mitigation Strategy
OCNVMP	Outline Construction Noise and Vibration Management Plan
OFGEM	Office of Gas and Electricity Markets
OECD	Organisation for Economic Co-operation and Development
OEMP	Operational Environmental Management Plan
OFH	Open Floor Hearing
OLBMMP	Outline Landscape and Biodiversity Management and Monitoring Plan
OMP	Odour Management Plan
ONS	Office for National Statistics
OPFWMP	Outline Piling and Foundation Works Management Plan
ORR	Office of Rail and Road
PA2008	The Planning Act 2008

Abbreviation	Definition
PAC	Potential Area of Concern
PAH	Polycyclic Aromatics Hydrocarbons
PAVIS	Port and Vessel Information System
Pb	Lead
PC	Process Contributions
PCB	Polychlorinated Biphenyls
PEC	Predicted Environmental Concentration
PEIR	Preliminary Environmental Information Report
PET	Polyethylene Terephthalate
PEM	Polymer Electrolyte Membranes
PES	Primary Energy Savings
PHE	Public Health England
PHL	Preliminary Hazard List
PINS	Planning Inspectorate
pLWS	Potential Local Wildlife Site
PLC	Primary Logistics Compound
PM¹⁰	Particulate Matter
PM^{2.5}	Particulate Matter
pNRA	Preliminary Navigational Risk Assessment
PP	Protective Provisions
PPDW	Permitted Preliminary Development Works
PPE	Personal Protective Equipment
PPF	Polymer Production Facility
PPG	Planning Practice Guidance
PPV	Peak Particle Velocity
PRF	Plastic Recycling Facility
PRoW(s)	Public Right(s) of Way
PS	Position Statement
PSMP	Protected Species Management Plan

Abbreviation	Definition
PSED	Public Sector Equality Duty
PWN	Private Wire Network
Q	Trains that operate as reQuired
QRA	Qualitative Risk Assessment
rDCO	Recommended Development Consent Order
RDF	Refuse Derived Fuel
RHTF	Residue Handling and Treatment Facility
RIAA	Report to Inform Appropriate Assessment
RIES	Report on the Implications for European Sites
RO	Renewables Obligation
ROC	Reasonable Operating Case
ROR	Rail Operations Report
RR	Relevant Representation
RSPB	Royal Society for the Protection of Birds
RW	Residual Waste
RWS	Resource and Waste Strategy (2018)
Rule 17	Request for further information under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010
s	Section
SAC	Special Area of Conservation
Sb	Antimony
SCR	Selective catalytic reduction
SDHPWN	Southern District Heat and Private Wire Network
SFRA	Strategic Flood Risk Assessment
SGWMB	Scunthorpe & Gainsborough Water Management Board
SI	Site Investigation
SM	Scheduled Monument
SMP	Soil Management Plan
SMS	Safety Management System

Abbreviation	Definition
SNCB	Statutory Nature Conservation Body
SNS	Statutory Nuisance Statement
SO₂	Sulphur Dioxide
SO_x	Sulphur Oxide
SOAEL	Significant Observed Adverse Effect Level
SOC	Standard Occupation Classification
SOCC	Statement of Community Consultation
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SPA	Special Protection Area
SPD	Supplementary Planning Document
SPV	Special Purpose Vehicle
SPZ	Source Protection Zone
SRF	Solid Recovered Fuel
SRN	Strategic Road Network
SRP	Spill Response Plan
SSSI	Site of Special Scientific Interest
SU(s)	Statutory Undertaker(s)
SuDS	Sustainable Drainage Systems
SWDS	Surface Water Drainage System
TA	Transport Assessment
TCPA1990	Town and Country Planning Act 1990
TD	Total Daily Intake
TG	Technical Guidance
TI	Thallium
TOC	Total Organic Carbon
TOR	Terms of Reference
TP	Temporary Possession

Abbreviation	Definition
TRTO	Temporary Road Traffic Order
TTWA	Travel to Work Area
TWh	Terawatt hours
UA	Unitary Authority
UAEL	Unacceptable Adverse Effect Level
UK	United Kingdom
UKWIN	United Kingdom Without Incineration Network
USI	Unaccompanied Site Inspection
V	Vanadium
VCA	Vehicle Certification Agency
VOC	Volatile Organic Compound
W&CA	Wildlife and Countryside Act 1981
WaF	Waste as a fuel
WFD	Water Framework Directive
WHO	World Health Organisation
WIA	Wider Impact Area
WID	Waste Incineration Directives
WMP	Waste Management Plan
WMS	Waste Management Strategy
WR	Written Representation
WSI	Written Scheme of Investigation
ZoI	Zone of Influence
ZTV	Zone of Theoretical Visibility

APPENDIX C: THE RECOMMENDED DCO (rDCO)

2022 No.

INFRASTRUCTURE PLANNING

The North Lincolnshire Green Energy Park Order 202[*]

Made - - - - - ***

Laid before Parliament ***

Coming into force ***

CONTENTS

PART 1

PRELIMINARY

1.	Citation and commencement	4
2.	Interpretation	4
3.	Electronic Communications	8

PART 2

PRINCIPAL POWERS

4.	Development consent etc. granted by the Order	8
5.	Limits of deviation	9
6.	Maintenance of authorised development	9
7.	Operation of authorised development	9
8.	Planning permission	9
9.	Benefit of the Order	9
10.	Consent to transfer benefit of the Order	9
11.	Application and modification of legislative provisions	10

PART 3

STREETS

12.	Street works	11
13.	Power to alter layout, etc., of streets	12
14.	Permanent stopping up of streets	12
15.	Temporary stopping up of streets	13
16.	Public rights of way – creation and temporary stopping up	13
17.	Accesses	13
18.	Clearways, prohibitions and restrictions	14
19.	Classification of highways	15

20.	Speed limits	15
21.	Traffic regulation	15
22.	Agreements with street authorities	16

PART 4 COMPULSORY ACQUISITION

23.	Funding	17
24.	Compulsory acquisition of land	17
25.	Time limit for exercise of authority to acquire land and rights compulsorily	18
26.	Compulsory acquisition of rights	18
27.	Private rights	18
28.	Application of the 1981 Act	19
29.	Application of Part 1 of the 1965 Act	20
30.	Acquisition of subsoil or airspace only	21
31.	Rights under or over streets	21
32.	Temporary use of land for carrying out the authorised development	21
33.	Temporary use of land for maintaining the authorised development	23
34.	Statutory undertakers	24
35.	Apparatus and rights of statutory undertakers in stopped up streets	24
36.	Recovery of costs of new connections	25

PART 5 SUPPLEMENTAL POWERS

37.	Discharge of water	26
38.	Authority to survey and investigate the land	26

PART 6 OPERATIONS

39.	Felling or lopping of trees	27
40.	Removal of hedgerows	27

PART 7 MISCELLANEOUS AND GENERAL

41.	Removal of human remains	28
42.	Protective provisions	29
43.	Application of landlord and tenant law	29
44.	Operational land for purposes of the 1990 Act	30
45.	Defence to proceedings in respect of statutory nuisance	30
46.	Certification of plans, etc.	30
47.	Service of notices	31
48.	Procedure in relation to certain approvals, etc.	32
49.	Arbitration	32

SCHEDULES

SCHEDULE 1 — AUTHORISED DEVELOPMENT	32
PART 1 — NUMBERED WORKS	32
PART 2 — OTHER ASSOCIATED DEVELOPMENT	35
PART 3 — PARAMETERS TABLE	35
SCHEDULE 2 — REQUIREMENTS	37
PART 1 — REQUIREMENTS	37
PART 2 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS	44
SCHEDULE 3 — STREETS SUBJECT TO STREET WORKS	47
SCHEDULE 4 — STREETS TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED	49
SCHEDULE 5 — PUBLIC RIGHTS OF WAY	50
PART 1 — PUBLIC RIGHTS OF WAY TO BE TEMPORARILY SUSPENDED	50
PART 2 — NEW PUBLIC RIGHTS OF WAY TO BE CREATED	50
SCHEDULE 6	51
PART 1 — PRIVATE MEANS OF ACCESS TO BE CLOSED FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED	51
PART 2 — NEW PRIVATE MEANS OF ACCESS CREATED	52
SCHEDULE 7 — CLEARWAYS	52
SCHEDULE 8 — CLASSIFICATION OF HIGHWAYS	53
SCHEDULE 9 — SPEED LIMITS	53
SCHEDULE 10 — LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED	53
PART 1 — OPTION A – LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED	53
PART 2 — OPTION B - LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED	66
SCHEDULE 11 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS	78
SCHEDULE 12 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN	81
PART 1 — OPTION A - LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN	81
PART 2 — OPTION B - LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN	82
SCHEDULE 13 — REMOVAL OF HEDGEROWS	83
PART 1 — HEDGEROWS	83
PART 2 — IMPORTANT HEDGEROWS	84
SCHEDULE 14 — PROTECTIVE PROVISIONS	84
PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS	84
PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS	88
PART 3 — FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED	89
PART 4 — FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC	95
PART 5 — FOR THE PROTECTION OF RAILWAY INTERESTS	100
PART 6 — FOR THE PROTECTION OF CADENT GAS LIMITED	100

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

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

The Secretary of State, in accordance with section 104(2) of the 2008 Act, has had regard to the relevant national policy statements and those matters which the Secretary of State thinks are both important and relevant to his decision.

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

The Secretary of State’s determination was published on [xxx].

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 North Lincolnshire Green Energy Park Order 202[x] and comes in to force on [x] 202[x].

Interpretation

2.—(1) In this Order—

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

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

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

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

“the 1984 Act” means the Road Traffic Regulation Act 1984(h);

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

-
- (a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.
 - (b) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).
 - (c) S.I. 2010/103, amended by S.I. 2012/635.
 - (d) 1961 c.33.
 - (e) 1965 c.56.
 - (f) 1980 c.66.
 - (g) 1981 c.66.
 - (h) 1984 c.27.
 - (i) 1990 c.8.

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

“the 2003 Act” means the Communications Act 2003(b);

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

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

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

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 of the 1991 Act (street works in England and Wales) save that “apparatus” 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;

“authorised development” means the development, associated development and other associated development described in Part 1 and Part 2 of Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act (meaning of “development”);

“the book of reference” means the book of reference submitted under regulation 5(2)(d) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

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

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

“cables” means cables for the transmission of electricity and ancillary cables (including fibre optic cables) for the purpose of control, monitoring, protection or general communications;

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

“CBMF” means the concrete block manufacturing facility;

“CCUS” means the carbon capture utilisation and storage facility;

“CLP” means the outline construction logistics plan submitted as Appendix D of Chapter 13 of the environmental statement referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“CoCP” means the code of construction practice submitted as Annex 7 of the environmental statement referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

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

“design principles and codes” means the design principles and codes submitted under regulation 5(2)(q) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“DHPWN” means the district heating and private wire network;

(a) 1991 c.22.
 (b) 2003 c.21.
 (c) 2008 c.29.
 (d) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.

“the environmental statement” means the environmental statement submitted under regulation 5(2)(a) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“ERF” means the energy recovery facility;

“the flood risk assessment” means the flood risk assessment submitted as Annex 3 of the environmental statement referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

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

“framework travel plan” means the framework travel plan submitted as Appendix C of Chapter 13 of the environmental statement referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“hedgerows plan” means the plan submitted under regulation 5(2)(o) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

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

“indicative drainage strategy” means the indicative drainage strategy submitted as Annex 5 of the environmental statement referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“the indicative landscape and biodiversity plans” means the indicative landscape and biodiversity plans submitted under regulation 5(2)(o) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“the indicative lighting strategy” means the indicative lighting strategy submitted as Annex 4 of the environmental statement referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“indicative railway plans” means the indicative railway plans submitted under regulation 5(2)(o) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“the land plans” means the land plans submitted under regulation 5(2)(i) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“limits of deviation” means the limits of deviation shown for each work number on the works plans subject to this being in accordance with article 5 (limits of deviation) of this Order.;

“maintain” includes (i) inspect, repair, adjust, alter, refurbish for the whole of the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to materially new or materially different environmental effects; and “maintenance” and “maintaining” are to be construed accordingly;

“OEMP” means the operational environmental management plan submitted as Annex 8 of the environmental statement referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“option A” means the land shown on Sheets 1 to 10 and Sheet 10A of the land plans;

“option B” means the land shown on Sheets 1 to 10 and Sheet 10B of the land plans;

“the Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference;

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

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

“outline employment and skills policy” means the outline employment and skills policy referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“outline LBMMP” means the outline landscape and biodiversity management and monitoring plan submitted under regulation 5(2)(q) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“preliminary works” means works consisting of site clearance and removal of minor structures, environmental surveys, investigations for the purpose of assessing ground conditions including gas monitoring, erection of any temporary means of enclosure, temporary display of notices or installation of a site compound;

“public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964 (interpretation)(b), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation;

“RHTF” means the bottom ash and flue gas residue handling and treatment facility;

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

“relevant planning authority” means the 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) to this Order;

“rights of way and access plans” means the rights of way and access plans submitted under regulation 5(2)(k) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of Chapter I) of the 2003 Act;

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

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act for which purposes “highway authority” has the meaning given in this article; “street works” means the works listed in article 12(1);

“TRO drawings” means the TRO drawings submitted under regulation 5(2)(o) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

“undertaker” means The North Lincolnshire Green Energy Park Limited (Company No. 10949653), whose registered office is Office 71, The Colchester Centre, Hawkins Road, Colchester, CO2 8JX, or a person who has the benefit of this Order in accordance with articles 9 and 10;

“vertical parameters plans” means the vertical parameters plans submitted under regulation 5(2)(o) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

(a) 1981 c.67.

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

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

“working day” means any day other than a Saturday, Sunday or English bank or public holiday; and “the works plans” means the works plans submitted under regulation 5(2)(j) of the 2009 Regulations and certified as the works plans by the Secretary of State for the purposes of this Order.

“works plans” means works plans A, works plans B and works plans C submitted under regulation 5(2)(j) of the 2009 Regulations referred to in Schedule 15 and certified as such by the Secretary of State for the purposes of this Order under article 46 (certification of plans, etc.);

(2) All distances, directions, measurements and lengths referred to in this Order are approximate, except the parameters referred to in article 5 and Schedule 1 Part 3.

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

(4) References in this Order to “numbered works” or “Work No” are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans.

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

Electronic Communications

3.—(1) In this Order, subject to article 47 (service of notices)—

(a) references to documents, maps, plans, drawings, certificates or to copies, include reference to them in electronic form; and

(b) references to a form of communication that satisfies the conditions in paragraph (3) and “written” and cognate expressions are to be constructed accordingly.

(2) If an electronic communication is received outside the recipient’s business hours, it is to be taken to have been received on the next working day.

(3) The conditions are that the communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(4) For the purposes of paragraph (3)(b), a communication is legible in all material respects if the information contained in it is available to the recipient to no lesser extent than it would be if transmitted by means of a document in printed form.

(5) In this article “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)(a).

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

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

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

(a) 2000 (c. 7), S15 as amended by paragraph 158, schedule 17, of the Communications Act 2003 (c. 21).

Limits of deviation

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

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extents of the limits of deviation shown on those plans provided that a minimum separation distance of 100m is maintained between the bunker hall (within Work No. 1) and the River Trent at their closest point; and
- (b) in relation to Work Nos. 1, 1A, 1B, 1C, 1D, 2, 6, 7, 8, 9, 12, 13, 14 and 15 deviate vertically to the extent upwards as shown on the vertical parameters plans and listed in the parameters table in Part 3 of Schedule 1;
- (c) in relation to Work Nos. 1, 1A, 1B, 1C, 1D, 2, 6, 7, 8, 9, 12, 13, 14 and 15 deviate vertically to any extent downwards as may be found necessary to construct foundations or any underground structure;
- (d) in relation to Work Nos. 3 and 4 deviate vertically by a maximum of 1 metre upwards or 1 metre downwards from the AOD levels shown on the indicative railway plans and listed in the parameters table in Part 3 of Schedule 1; and
- (e) deviate vertically downwards by up to 3 metres in relation to Work Nos. 10 and 11.

(2) The undertaker must construct Work No. 5 within the following vertical limits of deviation: between 2.1 metres AOD and 5.2 metres AOD.

Maintenance of authorised development

6.—(1) The undertaker is authorised to, and may at any time, maintain the authorised development subject to any provision in this Order, including the requirements, or to an agreement made under this Order.

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

Operation of authorised development

7.—(1) The undertaker is authorised to use and operate the authorised development.

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

Planning permission

8. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order.

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

Benefit of the Order

9. Subject to article 10 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer benefit of the Order

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

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

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3) and paragraph (8) include references to the transferee or the lessee.

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

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

- (a) the holder of a licence under section 6 of the Electricity Act 1989 (licences authorising supply, etc.)(a);
- (b) in relation to a transfer or lease of utility or other infrastructure connection works the relevant statutory undertaker or licence holder; or
- (c) in relation to a transfer or lease of any works within a highway a highway authority responsible for the relevant highway.

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

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

- (a) the name and contact details of the person to whom the benefit of the powers are to be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer is proposed to take effect;
- (c) the powers to be transferred or granted;
- (d) the restrictions, liabilities and obligations that are to apply to the person exercising the powers transferred or granted under paragraph (3); and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

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

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

(9) In this article “relevant statutory undertaker” or “licence holder” means a body—

- (a) who falls within section 127(8) of the 2008 Act (statutory undertakers’ land), is a holder of a statutory licence or a licence granted under a statute or other regulatory framework; and
- (b) whose licensed duties include owning, operating or maintaining utilities and or infrastructure and their connections.

Application and modification of legislative provisions

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

-
- (a) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), and section 6(10) amended by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to this section that are not relevant to this Order.
 - (b) SI 1997/1160.

“or

- (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

(2) The provisions of the Neighbourhood Planning Act 2017^(a) insofar as they relate to temporary possession of land under articles 32 (temporary use of land for carrying out the authorised project) and 33 (temporary use of land for maintaining the authorised project) of this Order do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project.

PART 3

STREETS

Street works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in the street;
- (e) maintain, renew or alter apparatus in the street, change its position or remove it;
- (f) demolish, remove, replace and relocate any street furniture;
- (g) execute any works to provide or improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;
- (j) remove and install temporary and permanent signage; and
- (k) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (j).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3) the undertaker may carry out any of the works referred to in paragraph (1) in any street.

(3) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority but such consent must not be unreasonably withheld and if the street authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

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

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

(6) Where the person carrying out any works under paragraph (1) is not the street authority the provisions of sections 54 (advance notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any such works.

(a) 2017 c.20.

Power to alter layout, etc., of streets

13.—(1) Subject to paragraph (3), the undertaker may for the purposes of constructing and maintaining the authorised development alter the layout of any street within the Order limits and the layout of any street at its junction with such a street, and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of such a kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain crossovers and passing places.

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

(3) The powers conferred by paragraph (1) may not be exercised without the consent of the street authority but such consent must not be unreasonably withheld and if the street authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application is submitted with all relevant information, it is deemed to have granted consent.

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being constructed.

Permanent stopping up of streets

14.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently the streets specified in column (2) of Schedule 4 (streets to be permanently stopped up for which a substitute is to be provided) to the extent specified, by reference to the letters shown on the access and rights of way plans, in column (3) of that Schedule.

(2) No street specified in column (2) of Schedule 4 (streets to be permanently stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

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

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

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is bounded on both sides by land owned by the undertaker.

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

(5) This article is subject to article 35 (apparatus and rights of statutory undertakers in stopped up streets).

(a) 1961 c. 33, Part 1 was amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

Temporary stopping up of streets

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

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

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

(3) The undertaker may not temporarily stop up, alter or divert any street without the consent of the highway authority, and the highway authority may attach reasonable conditions to any such consent.

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

Public rights of way – creation and temporary stopping up

16.—(1) Subject to the provisions of this article, the undertaker may, for any reasonable time, in connection with the carrying out and maintaining of the authorised development—

- (a) temporarily stop up the public rights of way specified in columns (1) and (2) of Part 1 of Schedule 5 (public rights of way to be temporarily suspended) to the extent specified in column (3) of that Part of that Schedule;
- (b) provide substitute temporary public rights of way where specified in column (4) of Part 1 of Schedule 5 (public rights of way to be temporarily suspended) on an alignment to be agreed with the relevant highway authority prior to the temporary stopping up of the public right of way concerned; and
- (c) temporarily stop up any other public rights of way to the extent agreed with the relevant highway authority.

(2) Any temporary substitute right of way must be maintained by the undertaker with appropriate signage, and must remain in place until the relevant temporarily suspended public right of way for which it is a substitute is again open for use by the public.

(3) The undertaker must not exercise the powers in paragraph (1) unless it has given not less than 28 days' notice in writing of its intention so to do the relevant highway authority.

(4) The undertaker may in connection with carrying out of the authorised development provide the new public rights of way specified in column (2) of Part 2 of Schedule 5 (new public rights of way to be created) and open them for use on such day as approved by the relevant highway authority.

Accesses

17.—(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or the relevant street authority as appropriate (such consent not to be unreasonably withheld), form and lay out such means of access (permanent or temporary) 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) The agreement of the relevant highway authority or the relevant street authority as appropriate is not required for the formulation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Parts 1 and 2 of Schedule 14 (protective provisions).

(3) If a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

(4) The private means of access as set out in column (2) of Part 1 of Schedule 6 (private means of access to be closed for which no substitute is to be provided) may be closed by the undertaker without a substitute being provided.

(5) The undertaker may provide the private means of access as set out in column (2) of Part 2 of Schedule 6 (new private means of access created).

Clearways, prohibitions and restrictions

18.—(1) Subject to paragraphs (3) and (4), from the date on which the undertaker notifies the relevant highway authority, no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait on any part of a carriageway specified in column (2) of Schedule 7 (clearways) as indicated in column (3) of Schedule 7.

(2) Nothing in paragraph (1) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of the carriageway or verge, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the carriageway or verge;
 - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the carriageway or verge of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A to the Communications Act 2003(a); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, Highways England, a safety camera partnership or the Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2011(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the person's control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in Schedule 7 for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(a) See paragraph 5 of Schedule 3A (the electronic communications code) to the Communications Act 2003 (c.21). Schedule 3A was inserted by Schedule 1 to the Digital Economy Act 2017 (c. 30).

(b) 1991 c.56.

(c) 2011 c.5.

(4) Paragraphs (1) to (3) have effect as if made by a traffic regulation order under the 1984 Act and their application may be varied or revoked by such an order under that Act or by any other enactment which provides for the variation or revocation of such orders.

Classification of highways

19.—(1) From the date on which the undertaker and relevant highway authority agree that the new highways described in Schedule 8 (classification of highways) have been completed they are to become classified roads as set out in column (3) of Schedule 8 for the purpose of any enactment or instrument which refers to highways classified as roads as if such classification had been made under section 12(3) (general provisions as to principal and classified roads) of the 1980 Act.

(2) The application of paragraph (1) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Speed limits

20.—(1) From the date on which the roads specified in Schedule 9 (Speed Limits) are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of Schedule 9 along the lengths of road identified in the corresponding row of column (2).

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development, impose a temporary speed limit either at all times or at times, on days or during such periods, and on such highways as may be specified by the undertaker.

(3) The undertaker must not exercise the powers in paragraph (2) unless it has given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority.

(4) The speed limits imposed by this Order are deemed to have been imposed by an order under the 1984 Act and—

(a) have the same effect; and

(b) may be varied by the relevant traffic authority in the same manner,

as any other speed limit imposed by an order under that Act.

(5) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011^(a) when used in accordance with regulation 3(5) of those Regulations.

Traffic regulation

21.—(1) Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development—

(a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;

(a) S.I. 2011/935.

- (c) suspend or authorise the use as a parking place of any highway;
- (d) make provision as to the direction or priority of vehicular traffic on any highway; and
- (e) permit or prohibit vehicular access to any highway;

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker is not to exercise the powers in paragraph (3) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and
- (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority's receipt of notice of the undertaker's intention under sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under paragraph (3) is to—

- (a) have effect as if duly made by, as the case may be—
 - (i) the relevant traffic authority as a traffic regulation order under the 1984 Act; or
 - (ii) the local highway authority as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act; and
- (b) be deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).

(4) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (3) at any time.

(5) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(6) If the relevant traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (3) that is accompanied by all relevant information the relevant traffic authority is deemed to have given consent.

Agreements with street authorities

22.—(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 landscaping within a highway constructed as part of the highway works;
- (d) the maintenance of highway related assets which fall outside of the extent of highway maintained by a relevant highway authority;
- (e) any stopping up, alteration or diversion of a street as part of or to facilitate the authorised development;
- (f) the carrying out in the highway of any of the works referred to in article 12(1) (street works); or
- (g) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing publicly maintainable highway; and
 - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.

(a) 2004 c. 18, Section 2 was brought into force by Article 2 of S.I. 2004/2380 and Article 2 of S.I. 2009/1095 (W.55).

(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

COMPULSORY ACQUISITION

Funding

23.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either:

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land.

(2) The provisions are—

- (a) article 24 (compulsory acquisition of land);
- (b) article 26 (compulsory acquisition of rights);
- (c) article 27 (private rights);
- (d) article 30 (acquisition of subsoil or airspace only);
- (e) article 31 (rights under or over streets);
- (f) article 32 (temporary use of land for carrying out the authorised development);
- (g) article 33 (temporary use of land for maintaining the authorised development);
- (h) article 34 (statutory undertakers).

(3) A guarantee or alternative form of security, provided under paragraph (1), is 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 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.

Compulsory acquisition of land

24.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental, to it.

(2) The undertaker may only acquire compulsorily the land required for either option A or option B.

(3) This article is subject to paragraph (2) of article 26 (compulsory acquisition of rights) and article 32 (temporary use of land for carrying out the authorised development).

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

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

- (a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 28 (application of the 1981 Act).

(2) The authority conferred by article 32 (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 prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

26.—(1) The undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, article 27 (private rights) and article 34 (statutory undertakers), in the case of the Order land specified in column (1) of Part 1 of Schedule 10 (land in which only new rights etc. may be acquired) in relation to option A, or column (1) of Part 2 of Schedule 10 (land in which only new rights etc. may be acquired) in relation to option B, the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Part of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, as substituted by paragraph (5) of Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land or restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 11 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights under paragraphs (1) and (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

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

Private rights

27.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 24 (compulsory acquisition of land) are suspended and unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenants, extinguished in so far as in either case their continuance would be inconsistent with the acquisition—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry)

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 26 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 34 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of the land,
 - (iii) the undertaker's entry onto the land, or
 - (iv) the undertaker's taking temporary possession of the landthat 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 in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person;
- (c) the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

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

Application of the 1981 Act

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

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

(3) Section 5 (earliest date for execution of declaration) is omitted.

- (4) Section 5A (time limit for general vesting declaration) is omitted^(a).
- (5) In section 5B (extension of time limit during challenge)^(b)—
 - (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the North Lincolnshire Green Energy Park Order 202[X]”.
- (6) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.
- (7) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)^(c), omit paragraph 1(2).
- (8) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 of the 2008 Act (as modified by article 29 (application of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.

Application of Part 1 of the 1965 Act

- 29.**—(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)^(d)—
 - (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period specified in section 4” substitute “the seven year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the North Lincolnshire Green Energy Park Order 202[X]”.
 - (3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 25 (time limit for exercise of authority to acquire land compulsorily) of the North Lincolnshire Green Energy Park Order 202[X]”.
 - (4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)^(e)—
 - (a) omit paragraphs 1(2) and 14(2); and
 - (b) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 32 (temporary use of land for carrying out the authorised development) or article 33 (temporary use of land for maintaining the authorised development) of the North Lincolnshire Green Energy Park Order 202[X].”

(a) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c.22)
 (b) Inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).
 (c) Inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
 (d) Inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
 (e) Inserted by schedule 17(1) paragraph 3 to the Housing and Planning Act 2016 (c. 22).

Acquisition of subsoil or airspace only

30.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph 22(1) of article 24 (compulsory acquisition of land) or article 26 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil or airspace of land under paragraph (1), the undertaker is not 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, as modified by article 29 (application of Part 1 of 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) (blighted land: proposed acquisition of part interest, material detriment test) 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 factory or airspace above a house, building or factory.

Rights under or over streets

31.—(1) The undertaker may enter on and appropriate so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised 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 appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 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

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

(a) enter on and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Part 1 of Schedule 12 (land of which temporary possession may be taken) in relation to option A, or the land specified in columns (1) and (2) of Part 2 of Schedule 12 (land of which temporary possession may be taken) in relation to option B, for the purpose specified in relation to that land in column (3) of that Part of that Schedule; and

- (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
 - (b) remove any buildings and vegetation from that land;
 - (c) construct temporary works (including the provision of means of access), running tracks, security fencing, bridges, structures and buildings on that land;
 - (d) use the land for the purposes of a working site with access to the working site in connection with the authorised development; and
 - (e) construct any works, or use the land, as specified in relation to that land in column 3 Part 1 of Schedule 12 (land of which temporary possession may be taken) in relation to option A, or column 3 Part 2 of Schedule 12 in relation to option B, or any mitigation works.
- (2) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) Part 1 of Schedule 12 (land of which temporary possession may be taken) in relation to option A, or that land in column (4) Part 2 of Schedule 12 in relation to option B, unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.
- (4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over 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—
- (a) replace any building, structure, drain or electric line removed under this article;
 - (b) remove any drainage works installed by the undertaker under this article; or
 - (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to street works).
- (5) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—
- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 26 (compulsory acquisition of rights) to the extent that such land is listed in column (1) Part 1 of Schedule 10 (land in which only new rights etc., may be acquired) in relation to option A, or column (1) Part 2 of Schedule 10 (land in which only new rights etc., may be acquired) in relation to option B; or

- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 30 (acquisition of subsoil or airspace only).

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

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

Temporary use of land for maintaining the authorised development

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

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker is not required to comply with paragraph (3) in a case of emergency and if an emergency exists they must—

- (a) give to the owners and occupiers of the land in question notice of its intended entry or (as the case may be) of its having entered onto the land as soon as is reasonably practicable; and
- (b) comply with paragraph (1) so far as is reasonably possible in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (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 maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

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

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory

acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(12) In this article “the maintenance period” means the period of 5 years beginning with the date on which the authorised development first exports electricity to the national electricity transmission network.

Statutory undertakers

34. Subject to the provisions of Schedule 14 (protective provisions) the undertaker may—

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

Apparatus and rights of statutory undertakers in stopped up streets

35.—(1) Where a street is stopped up under article 14 (permanent stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 14 (permanent stopping up of streets) any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).
- (c) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—the execution of the relocation works required in consequence of the stopping up of the street; and
- (d) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(3) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(4) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(7) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

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

Recovery of costs of new connections

36.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (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 34, 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 Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

(a) 2003 c. 21, as implemented by Article 1, Section 2 and Schedule 1 of S.I. 2003/1900, Article 3 of S.I. 2003/3142; as amended by Schedule 1 of S.I. 2011/1210.

PART 5

SUPPLEMENTAL POWERS

Discharge of water

37.—(1) Subject to paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation 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 under paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers)(**a**).

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

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

(5) Except as authorised under this Order, the undertaker must not, in constructing or maintaining works, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence under the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(8) In this article expressions excluding “public sewer or drain” and “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

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

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes or boreholes 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 and boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(a) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c.37).

(b) S.I. 2016/1154.

(c) 1991 c.57

- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required, produce written evidence of their authority to do so; and
 - (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes or boreholes 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 (determination of questions of disputed compensation).

PART 6

OPERATIONS

Felling or lopping of trees

39.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and 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 (determination of questions of disputed compensation).

(4) Save in an emergency, the undertaker must not enter any land under paragraph (1) without serving a notice of the intended entry on the owners and occupiers of that land and, where the land is a highway maintainable at the public expense, on the highway authority.

(5) The notice under paragraph (4) must be served no less than 14 days before entering the land.

(6) In carrying out any activity authorised by paragraph (1) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does not apply.

Removal of hedgerows

40.—(1) The undertaker may, for the purposes of carrying out the authorised development —

- (a) remove any hedgerows within the Order limits and specified in Schedule 13 Part 1 (removal of hedgerows);
- (b) remove any important hedgerows within the Order limits and specified in Schedule 13 Part 2 (removal of important hedgerows); and
- (c) without limitation on the scope of sub-paragraph (a), and with the consent of the local authority in whose area the hedgerow is located, remove or translocate any hedgerow within the Order limits.

(2) The grant of consent of a local authority in terms of paragraph (1)(c) must not be unreasonably withheld.

(3) If a local authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (1)(c) the local authority is deemed to have granted consent.

(4) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(a).

PART 7

MISCELLANEOUS AND GENERAL

Removal of human remains

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

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

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the land for a minimum of 28 days.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2), the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the land specified in the notice may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such re-interment or cremation provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

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

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(a) S.I. 1997/1160.

- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under powers conferred by this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority.

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

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

(13) Section 25 (offence of removal of body from burial ground)(a) of the Burial Act 1857 does not apply to a removal carried out in accordance with this article.

(14) Section 3 (burial not to take place after Order in Council for discontinuance)(b) of the Burial Act 1853 does not apply to a removal carried out in accordance with this article.

(15) In this article, “the specified land” means any land within the Order limits.

Protective provisions

42. Schedule 14 (protective provisions) has effect.

Application of landlord and tenant law

43.—(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.

(a) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1) and amended by section 96(1) of, and paragraph 1 of Schedule 3 to, the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (No. 3).

(b) 1853 c. 134.

(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

44. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land) in relation to the land in respect of which Work Nos. 1, 1A, 1B, 1D, 10, 11 and 14 are authorised.

Defence to proceedings in respect of statutory nuisance

45.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisances)(a) in relation to a nuisance falling within paragraphs (b), (c), (d), (fb) and (g) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

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

(2) Section 61(9) of the Control of Pollution Act 1974 (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), does not to 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.

46.—(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 referred to in Schedule 15 (documents and plans to be certified) to this Order for certification that they are true copies of those documents.

(a) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

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

Service of notices

47.—(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 (references to service by post)(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(a) 1978 c30.

- (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.

(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.

48.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority, an internal drainage board or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval must be given in writing and must not be unreasonably withheld or delayed.

(2) Save for applications made in relation to requirements, if, within eight weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed in writing with the undertaker) it has not notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval), it is deemed to have approved the application or request.

Arbitration

49.—(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.

(2) This article does not apply where any difference under any provision of this Order is between any person and the Secretary of State.

Signed by authority of the Secretary of State for Energy Security and Net Zero

Address
Date

Name
Title

Department for Energy Security and Net Zero

SCHEDULES

SCHEDULE 1

Article 4

AUTHORISED DEVELOPMENT

In the Borough of North Lincolnshire

A nationally significant infrastructure project as defined in sections 14(1)(a) (nationally significant infrastructure projects: general) and 15 (generating stations) of the 2008 Act and associated development within the meaning of section 115(2) (development for which development consent may be granted), comprising the following development and works—

PART 1

NUMBERED WORKS

Energy park: ERF infrastructure

Work No. 1 — an electricity generating station located on land at Flixborough Wharf, Lincolnshire, fuelled by refuse derived fuels, with a capacity to process up to 760,000 tonnes of

refuse derived fuel per annum, with a gross generation capacity of up to 95 megawatts at ISO conditions comprising the following works—

- (a) fuel reception and storage facilities, consisting of vehicle ramps, a tipping hall, shredder, bunker hall and cranes;
- (b) a combustion system housed within a boiler hall, consisting of three combustion lines and associated boilers;
- (c) a steam turbine and generator housed within a turbine hall with a cooling system;
- (d) a bottom ash handling system, including an ash conveyor housed within a bottom ash hall connecting to Work No. 2;
- (e) a flue gas treatment system, including residue and reagent silos housed within a flue gas treatment hall;
- (f) a silo or tank for the storage of ammonia reagents;
- (g) district heating equipment;
- (h) a tank for the storage of fuel oil;
- (i) a compressed air system;
- (j) a process effluent storage tank;
- (k) a switchyard including a sub-station and battery storage;
- (l) a transformer compound containing the generator transformer;
- (m) utility connections within the works limits;
- (n) pipe racks, pipe runs and cabling;
- (o) fire water pump house and fire water tank;
- (p) internal vehicle access roads, crossings and pedestrian and cycle facilities and routes;
- (q) administration offices and control room, security gatehouse, barriers and enclosures;
- (r) elevated walkway connected to Work Nos. 1C, 2 and 6;
- (s) weighbridges;
- (t) car parking;
- (u) a demineralised water treatment plant and demineralised water storage tanks;
- (v) indoor storage tanks for boiler water treatment chemicals;
- (w) a back-up generator;
- (x) trade effluent treatment plant; and
- (y) two visual barriers.

Work No. 1A — three emissions stacks, consisting of ERF stack windshield, back up boilers stack windshield and back-up generator stack, and associated emissions monitoring system.

Work No. 1B — carbon capture utilisation and storage facility capable of capturing at least 54,387 tonnes of CO₂ per annum including carbon dioxide storage tanks.

Work No. 1C — associated development being a visitors centre containing offices, exhibition space and visitor accommodation with elevated walkway connected to Work Nos. 1, 2 and 6.

Work No. 1D – a cooling system consisting of air-cooled condensers or air blast chillers.

Work No. 2 comprising associated development—

- (a) a bottom ash and flue gas residue handling and treatment facility;
- (b) a concrete block manufacturing facility; and
- (c) offices and elevated walkway connected to Work Nos 1, 1C and 6.

Rail infrastructure

Work No. 3 — associated development being reinstatement of the railway line between Flixborough Wharf and the Dragonby sidings including new sidings and two footbridges across the railway line and three user worked crossings.

Work No. 4 — associated development being a railhead, sidings and associated equipment to allow loading and unloading.

Energy park: supporting infrastructure

Work No. 5 — associated development being a new access road linking the B1216 and Stather Road, stopping up of the section of Stather Road between Neap House and Bellwin Drive, improvements to footpaths and the junction between the B1216 and A1077 and section of elevated walkway that connects to Work Nos. 1, 1C, 2 and 6.

Work No. 6 — associated development being a plastic recycling facility and associated infrastructure including gatehouses, weighbridges, electrical equipment, heat exchange equipment, office and welfare facilities, pre-processed material storage and post processed material storage, and section of elevated walkway connected to Work Nos. 1, 1C and 2.

Work No. 7 — associated development being a hydrogen electrolyser, associated infrastructure, equipment required to inject hydrogen into the gas grid.

Work No. 8 — associated development being an electric and hydrogen vehicle refuelling station, with hydrogen production and equipment required to inject hydrogen into the gas grid and offices.

Work No. 9 — associated development being a battery storage facility capable of peak discharge of 30MWe, with associated infrastructure including site roads, offices, control equipment, transformers and rectifiers.

DHPWN

Work No. 10 — associated development being private wire networks linking Work No. 1 with Work No. 2, Work No. 6, Work No. 7, Work No. 8, Work No. 9 and to end users outside of the Order limits.

Work No. 11 — associated development being a district heating network providing heating and/or cooling, pipes carrying hydrogen gas and pipes carrying carbon dioxide to end users inside and outside of the Order limits.

Landscaping, mitigation and utility works

Work No. 12 — associated development being hard and soft landscaping and the construction of landscape features including a wetland area and ecological mitigation works.

Work No. 12A - associated development being habitat creation measures incorporating biodiversity enhancements.

Work No. 13 — associated development comprising flood defences and sustainable drainage systems, including swales, attenuation ponds and below ground tanks and the diversion of ditches.

Work No. 14 — associated development comprising new cables, including the grid connection, and diversions of existing utilities which conflict with the construction of Work No. 1, Work No. 2, Work No. 5, Work No. 6, Work No. 10 and Work No. 11.

Work No. 15A — associated development being temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas, generators, concrete batching facilities, vehicle and cycle parking facilities, security fencing and gates, external lighting, roadways and haul routes, wheel wash facilities, and signage in connection with Work Nos 1-14.

Work No. 15B — associated development being construction access, temporary laydown areas to allow for storage of materials and working areas in connection with Work Nos. 1-14.

PART 2

OTHER ASSOCIATED DEVELOPMENT

In connection with and in addition to Work Nos. 1, 1A to 1D and 2 to 14, to the extent that they do not otherwise form part of any such work, other associated development within the Order limits, being associated development within the meaning of section 115(2) of the 2008 Act (Development for which development consent may be granted), including—

- (a) temporary lighting, including lighting columns;
- (b) security fencing, gates, boundary treatment and other means of enclosure;
- (c) closed circuit television cameras and columns and other security measures;
- (d) surface and foul water drainage systems, oil-water separators, including channelling, culverting, crossings and works to existing drainage ditches and systems;
- (e) electric, gas, water, telecommunication and other infrastructure connections and works, and works to alter such services and utilities connections;
- (f) hard and soft landscaping;
- (g) biodiversity mitigation and enhancement measures;
- (h) site establishment and preparation works, including site clearance (including vegetation removal); earthworks (including soil stripping and storage and site levelling) and excavations; temporary fencing; the creation of temporary construction access points; and the temporary alteration of the position of services and utilities apparatus and connections;
- (i) vehicle access roads, crossings, parking, and pedestrian and cycle facilities and routes;

and such other works as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule 1 which do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 3

Article 5

PARAMETERS TABLE

<i>(1)</i> <i>Component</i>		<i>(2)</i> <i>Maximum dimensions</i> <i>(m)</i>	<i>(2)</i> <i>Maximum height above Finished Floor Level (FFL)</i> <i>(m)</i>	<i>(2)</i> <i>Maximum height AOD</i> <i>(m)</i>
ERF (Work No.1)	Tipping hall	87.5 x 60	31	37.6
	Bunker hall	92 x 40	43	49.6
	Boiler hall	105 x 60	55	61.6
	Flue gas treatment hall	41 x 60	45	51.6
	Turbine hall	80 x 37	25	31.6
	Bottom ash hall	37 x 37	25	31.6
	Transformer compound	52 x 22	10	16.6

	Switchyard	93 x 44	10	14.6
	Offices and admin facilities	30 x 100	43	49.6
	Fire water tank	11.3 diameter	19.3	25.9
	Fire water pumphouse	6 x 6	6.5	13.1
	Gatehouses	32 x 12	5	11.6
	Visual barriers		4.5	11.1
ERF stack windshield (Work No. 1A)		10 diameter	120	126.6
Back up boilers stack windshield (Work No. 1A)		3 diameter	53	59.6
Back-up generator stack (Work No. 1A)		0.85 diameter	55	61.6
Carbon capture utilisation and storage facility (Work No. 1B)		79 x 66	50	56.6
Carbon dioxide storage tanks (Work No. 1B)		28 x 20	20	26.6
Visitor centre (Work No. 1C)		41 x 36	16	19.05
Elevated walkway (Work No. 1 and 1C)		700 x 4	12	17.05
Air-cooled condensers/Air blast chillers (Work No. 1D)		75 x 35	50	56.6
RHTF and CBMF (Work No.2)	process building and storage areas	280 x 130	25	30.1
	Admin buildings	62 x 10	21	26.1
Rail Infrastructure (Work No. 3)	Footbridge No. 1			55.385
	Footbridge No. 2			48.561
Access road (Work No. 5)				5.2
Plastic recycling facility (Work No. 6)	Pre-processed material storage	65 x 35	10	13.9
	Heat exchange building	35 x 17	15	18.9
	Post processed storage	5 x 16.4	15	18.9
	Electrical rooms	15 x 7	10	13.9
	Process building	130 x 80	25	28.9
	Admin building	62 x 10	21	24.9
Hydrogen electrolyser (Work No. 7)	Northern Gas AGI	60 x 60	5	9.6
	Northern hydrogen production and storage facility	100 x 25	8	12.6
Vehicle refuelling station (Work No. 8)		95 x 80	12.5	15.5
Hydrogen refuelling station (Work No. 8)	Southern Gas AGI	60 x 60	5	10.1
	Southern hydrogen production and storage facility	100 x 25	8	11.6
Battery storage facility (Work No. 9)		115 x 58	8.5	11.5

SCHEDULE 2 REQUIREMENTS

Article 4

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“coming into operation” or “come into operation” means the date on which the commissioning of the relevant part of the authorised development is completed so that that part becomes operational;

“commissioning” means the process of assuring that all systems and components of any phase of the authorised development as the context requires, are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker;

“energy park works” means Work Nos. 1, 1A, 1B, 1C, 1D, 2, 6, 7, 8, 9 and 12;

“PPDW CEMP” means a permitted preliminary development works construction environmental management plan as described in section 5.3 of the CoCP;

“operation” or “operational” means the operational running of the relevant part of the authorised development;

“railway reinstatement works” means Work Nos. 3 and 4.

Commencement and phasing of the authorised development and notices

2.—(1) The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

(2) The authorised development must not be commenced until a written scheme setting out the proposed phasing of the authorised development has been submitted to and approved by the relevant planning authority and the approved phasing scheme must be complied with thereafter.

(3) The undertaker must notify the relevant planning authority within seven days of each of the following events occurring—

- (a) the start of commissioning of any part of the authorised development; and
- (b) the coming into operation of any part of the authorised development.

Detailed design

3.—(1) In relation to any part of the authorised development no development of that part may commence, save for any preliminary works, until details of the following have been submitted to and approved by the relevant planning authority-

- (a) the siting, design, external appearance and dimensions of all buildings and structures comprising the authorised development which are to be retained;
- (b) the colours, materials and surface finishes of all new permanent buildings and structures referred to in sub-paragraph (a);
- (c) the permanent circulation roads, vehicle parking and hardstanding; and
- (d) grounds levels and heights of all permanent buildings and structures.

(2) The details submitted and approved under sub-paragraph (1) must be in accordance with the design process and codes set out in the design principles and codes, and the flood risk assessment and must take into account any results of preliminary ground investigations, including ongoing archaeological investigations, topographical surveys and ground gas monitoring.

(3) The authorised development must be carried out in accordance with the details approved under sub-paragraph (1) for the relevant part of the authorised development.

Environmental management

4.—(1) The preliminary works may not commence until a PPDW CEMP has been submitted to and approved by the relevant planning authority and the preliminary works must be carried out in accordance with the approved PPDW CEMP unless otherwise agreed in writing by the relevant planning authority.

(2) No part of the authorised development may commence, save for the preliminary works, until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority following consultation with the Environment Agency and Natural England to the extent the construction environmental management plan relates to matters relevant to their functions.

(3) The construction environmental management plan submitted and approved must be in accordance with the CoCP and incorporate the following—

- (a) dust management plan;
- (b) remediation strategy
- (c) spill response plan;
- (d) asbestos management plan;
- (e) construction flood management plan;
- (f) construction waste management plan;
- (g) protected species management plan;
- (h) invasive non-native species management plan;
- (i) soil management plan;
- (j) community relations plan;
- (k) construction noise and vibration management plan;
- (l) construction ornithology management plan; and
- (m) piling and foundation works management plan.

(4) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan for the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

(5) No part of the energy park works or railway reinstatement works may come into operation until a detailed operational environmental management plan for that part has been submitted to and approved by the relevant planning authority to the extent that such a plan is necessary to supplement the environmental management system required under the environmental permit.

(6) The detailed operational environmental management plan submitted and approved must be in accordance with the OEMP.

(7) The detailed operational environmental management plan in respect of the energy park works must also be in accordance with any conditions in the environmental permit and incorporate the following (to the extent such matters are not covered in the environmental management system required under the environmental permit)-

- (a) noise management plan;
- (b) waste management plan; and
- (c) surface water discharge strategy.

(8) The maintenance and operation of the authorised development must be carried out in accordance with the approved detailed operational environmental management plan for the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

Lighting scheme

5.—(1) No part of the energy park works or railway reinstatement works may come into operation until a scheme for all permanent external lighting has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved under sub-paragraph (1) must be in accordance with the principles of the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the operation of the authorised development.

(3) The scheme must be implemented as approved prior to the coming into operation of the authorised development and maintained throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

Landscape design

6.—(1) No part of the energy park works or railway reinstatement works may commence until a landscaping scheme has been submitted to and approved by the relevant planning authority following consultation with Natural England to the extent the landscaping scheme relates to matters relevant to their functions.

(2) The scheme submitted and approved under sub-paragraph (1) must be in accordance with the indicative landscape and biodiversity plans, the plans in appendix I (biodiversity net gain report) of the ecology and nature conservation chapter of the environmental statement in order to deliver the biodiversity net gain, and design process and codes set out in the design principles and codes and must include details of all hard and soft landscaping works, including—

- (a) materials, and the number, species, sizes and planting positions of any planting;
- (b) measures to protect any existing shrub and tree planting that is to be retained;
- (c) hard surfacing materials;
- (d) an implementation plan; and
- (e) a future maintenance plan.

(3) The scheme must be implemented within a period of 12 months beginning with the coming into operation of the authorised development and maintained as approved during the operation of the authorised development, unless otherwise agreed with the relevant planning authority.

Landscape and ecology management

7.—(1) No part of the energy park works or railway reinstatement works may come into operation until a landscape and biodiversity management and monitoring plan for that part has been submitted to and approved by the relevant planning authority following consultation with Natural England to the extent the landscape and biodiversity management and monitoring plan relates to matters relevant to their functions.

(2) The landscape and biodiversity management and monitoring plan submitted and approved must be in accordance with the principles in the outline LBMMP and must include an implementation timetable, including monitoring and maintenance activities.

(3) The plan approved under sub-paragraph (1) must be implemented and delivered as approved and in accordance with the approved timetable.

Surface water drainage

8.—(1) No part of the energy park works may commence, save for the preliminary works, until details of the permanent surface water drainage systems, including a future maintenance plan,

have been submitted to and approved by the relevant planning authority following consultation by the undertaker with the lead local flood authority, Scunthorpe and Gainsborough Water Management Board and the Environment Agency on matters related to their function.

(2) The details submitted and approved under sub-paragraph (1) must be in accordance with the principles set out in the indicative drainage strategy and the design process and codes set out in the design principles and codes.

(3) The scheme approved under sub-paragraph (1) must be implemented as approved prior to the development coming into operation and maintained as approved throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Foul water drainage

9.—(1) No part of the energy park works may commence, save for the preliminary works, until details of the permanent foul water drainage systems, including a future maintenance plan, have been submitted to and approved by the relevant planning authority following consultation with the Environment Agency on matters related to their function.

(2) The details submitted and approved under sub-paragraph (1) must be in accordance with the principles set out in the indicative drainage strategy.

(3) The scheme approved under sub-paragraph (1) must be implemented as approved prior to the development coming into operation and maintained as approved throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

Construction traffic management and travel planning

10.—(1) No part of the authorised development may commence, save for the preliminary works, until a construction traffic management plan and a construction workers travel plan for that part has been submitted to and approved by the relevant planning authority.

(2) The construction traffic management plan submitted and approved under sub-paragraph (1) must be in accordance with the CLP.

(3) The construction traffic management plan and construction workers travel plan approved under sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

Archaeology

11.—(1) No part of the authorised development is to commence until the undertaker has completed the following sequence of measures for that part of the authorised development—

- (a) commissioned a programme of exploratory archaeological investigation of areas within the Order limits that provides for the identification and evaluation of the extent, character and significance of archaeological remains in any areas of the Order limits where previous evaluation investigations have not taken place or are incomplete.
- (b) submitted to the relevant planning authority for approval a written scheme of investigation setting out the details of the programme of evaluation for the relevant planning authority to approve prior to commencement of the evaluation investigations.
- (c) completed the evaluation investigations and submitted final reports to the relevant planning authority in accordance with the details and timings of the approved written scheme of investigation, provided that the evaluation investigations must be timed so that the results can inform the scope of the archaeological mitigation measures, referred to in sub-paragraph (2).
- (d) submitted to the relevant planning authority for approval an updated archaeological impact assessment of the significance of all identified and potential heritage assets and the impact of the authorised development on that significance; and

- (e) submitted to the relevant planning authority for approval an overarching archaeological mitigation strategy that details all mitigation measures to preserve, and if necessary enhance, all heritage assets affected by the authorised development.

(2) No part of the authorised development is to commence until a programme of archaeological mitigation measures for that part of the authorised development informed by the evaluation investigations referred to in sub-paragraph (1) and by earlier phases of investigation has been implemented in accordance with the approved overarching archaeological mitigation strategy and further written schemes of investigation for archaeological fieldwork which have been approved in writing by the relevant planning authority. The overarching archaeological mitigation strategy and written schemes of investigation must include and make provision for the following elements—

- (a) mitigation fieldwork including measures to ensure the preservation in situ or by record of archaeological features of identified importance;
- (b) post mitigation fieldwork methodologies for assessment and analysis;
- (c) reporting and dissemination of findings, including publication of significant results;
- (d) preparation of site archive, arrangements and timetable for deposition and sustainable management at a store approved in writing by the relevant planning authority;
- (e) a timetable including sufficient notification to ensure that the mitigation fieldwork is undertaken and completed in accordance with the mitigation strategy before commencement of the relevant part of the authorised development;
- (f) curatorial monitoring arrangements, including the notification in writing to the North Lincolnshire Historic Environment Record Office of the commencement of archaeological works and the opportunity to monitor such works;
- (g) a list of all staff involved in the implementation of the mitigation strategy, including sub-contractors and specialists, their responsibilities and qualifications;
- (h) any arrangements for community involvement; and
- (i) measures to enhance the interpretation and public appreciation of heritage assets.

(3) The approved mitigation measures must be carried out in accordance with the written scheme of mitigation measures.

Flood risk

12.—(1) No part of the authorised development may commence, save for the preliminary works, until a detailed flood mitigation strategy, including the flood defences forming part of Work No. 13, an implementation timetable and long-term maintenance arrangements, has for that part, been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) No part of the energy park works may be commissioned until a flood management plan, which must include an evacuation route plan and flood resilience implementation plan, has, for that part, been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved under sub-paragraphs (1) and (2) must be in accordance with the principles in the flood risk assessment unless otherwise agreed by the relevant planning authority in consultation with the Environment Agency and the lead local flood authority.

(4) The schemes approved under sub-paragraphs (1) and (2) must be implemented as approved prior to the coming into operation of the energy park works and maintained throughout the operation of the energy park works unless otherwise agreed with the relevant planning authority.

Operational travel plan

13.—(1) The energy park works must not come into operation until a travel plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved under sub-paragraph (1) must be in accordance with the framework travel plan unless otherwise agreed by the relevant planning authority.

(3) The plan approved under sub-paragraph (1) must be implemented as approved throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority.

New highway access

14.—(1) The undertaker must not commence development of the energy park works or railway reinstatement works, excluding any preliminary works, until the new access road (Work No. 5) has been constructed to base course level and connected to the public highway.

(2) As part of constructing the new access road to base course level under sub-paragraph (1), the undertaker must carry out such parts of Work Nos. 10 and 11 as fall within the land in respect of which Work No. 5 is authorised.

(3) Prior to the energy recovery facility (Work No.1) coming into operation the undertaker must complete the new access road (Work No. 5) to the reasonable satisfaction of the relevant planning authority, in consultation with the relevant highway authority, and make it available for public use.

Fuel Type

15. Only refuse derived fuel comprising of processed waste from municipal, household, commercial and industrial sources may be used in the combustion system in Work No. 1 (b), except for the purposes of start-up or support firing when gas or fuel oil may be used.

Decommissioning

16.—(1) Within two years of the date that the undertaker decides to end commercial operation of the energy park works, the undertaker must submit to the relevant planning authority for its approval a decommissioning plan, including a timetable for its implementation and a decommissioning environmental management plan which shall include, but not be limited to, matters such as flood risk.

(2) The plan submitted to and approved under sub-paragraph (1) must be implemented as approved unless otherwise agreed with the relevant planning authority.

Combined heat and power

17.—(1) No part of the energy park works may be commissioned until a scheme for the provision of steam or hot water pass-outs has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted under sub-paragraph (1) must as a minimum comply with the conditions relating to steam and hot water pass-outs within any environmental permit granted in respect of the authorised development.

(3) The scheme approved under sub-paragraph (1) must be implemented as approved prior to the coming into operation of the authorised development and maintained throughout the operation of the authorised development.

Commissioning

18.—(1) Notice of the intended completion of commissioning of Work Nos. 1 (ERF), 1B (CCUS) and 2(b) (CBMF) must be given to the relevant planning authority where practicable prior to such completion.

(2) Work No. 1B (CCUS) must be constructed and commissioned within 6 months of the commissioning of Work No. 1 (ERF) and Work No. 2(b) (CBMF) must be constructed and commissioned within 12 months of the commissioning of Work No. 1B except that these timescales may be amended where it has been demonstrated to the satisfaction of the relevant

planning authority that the alternative timescales sought are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Carbon Capture

19.—(1) Once commissioned Work No. 1B (CCUS) must capture a minimum quantity of CO₂ which equates to the lesser of 54,387 tonnes per annum or 8.37% of the weight of the ERF waste throughput per annum from the date that the CCUS is commissioned until the energy park works are decommissioned.

(2) Within 28 days of the date which is one calendar year from the date Work No. 1B comes into operation, the undertaker must submit a report to the relevant planning authority confirming the amount of CO₂ captured during the previous year of operation and must continue to submit such reports annually until the energy park works are decommissioned.

Rail

20.—(1) The undertaker must use reasonable endeavours to complete all necessary works forming part of Work No.3 to such an extent as to facilitate the use of the railway by rail freight importing or exporting waste or other materials within 12 months of construction of the new access road (Work No. 5) to base course level as per requirement 14 and in any event must complete Work No. 3 prior to commissioning of Work No. 1

(2) Following completion of Work No.3 the undertaker must retain, manage and keep the railway forming part of the authorised development available for use throughout the construction and operation of the authorised development.

Local employment and skills

21.—(1) No part of the authorised development, save for the preliminary works, may commence until a detailed employment and skills plan (which must be in accordance with the outline employment and skills policy) has been submitted to and approved by the relevant planning authority.

(2) The employment and skills plan shall identify opportunities for individuals and businesses based in the region of Greater Lincolnshire to access employment opportunities associated with the construction, operation and maintenance of the authorised development.

(3) The employment and skills plan shall be implemented as approved.

Noise

22. The rating level (L_{Ar}) of noise from the operation of the authorised development shall not exceed 45 dB L_{Ar} for any fifteen-minute period between 23:00 and 07:00, and 50 dB L_{Ar} for any one-hour period between 07:00 and 23:00, determined one metre free-field external to any window or door of any existing permanent residential premises using the definitions and methods described in 'Methods for rating and assessing industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019,

PRF

23. The plastic recycling facility (Work No. 6) shall only treat plastic waste received from suppliers who are also supplying the undertaker with refuse derived fuel used to fuel the combustion system in Work No. 1 (b).

Approved details and amendments to them

24. Where a requirement requires the authorised development to be constructed in accordance with details approved by the relevant planning authority, the approved details are taken to include any amendments subsequently approved by the relevant planning authority.

Amendments agreed by the relevant planning authority

25.—(1) Where the words “unless otherwise agreed by the relevant planning authority” appear in the requirements—

- (a) whenever the undertaker requests that the relevant planning authority provides its agreement in accordance with those words, the undertaker must provide the relevant planning authority with information on compliance with any document listed in the relevant requirement and any other relevant certified document; and
- (b) 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.

Requirement for written approval

26. Where under any of the requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

Anticipatory steps towards compliance with any requirement

27.(1) If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of this Schedule, those steps must be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

(2) Any document submitted to the relevant planning authority which the undertaker considers may constitute a step referred to at sub-paragraph (1) must include a statement that it is likely to engage sub-paragraph (1).

Construction COMAH site management plan

28. No part of the authorised development may commence until arrangements for emergency access to and egress from the Jotun Paints (Europe) Limited upper tier COMAH site have been submitted to and approved by the relevant planning authority following consultation with Jotun Paints (Europe) Limited and the HSE. Any work in relation to the authorised development shall be carried out in accordance with the approved arrangements.’.

—PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

29.—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order:

- (a) The undertaker must give the discharging authority sufficient information to identify the requirement(s) to which the application relates;
 - (b) The undertaker must provide such particulars, and the request be accompanied by such plans and drawings as are reasonably considered necessary to deal with the application.
- (2) The discharging authority must give notice to the undertaker of the decision on the application before the end of the decision period
- (3) For the purposes of sub-paragraph (2), the decision period is-
- (a) Where no information is requested under paragraph 30, 8 weeks from the day immediately following that on which the application is received by the discharging authority;
 - (b) Where further information is requested under paragraph 30, 8 weeks from the day immediately following that on which further information has been supplied by the undertaker under paragraph 30 (further information); or
 - (c) such longer period as may be agreed between the parties.
- (4) In determining any application made under sub-paragraph (1), the discharging authority may-
- (a) Give or refuse its consent, agreement or approval; or
 - (b) Give its consent, agreement or approval subject to reasonable conditions,
- and where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision pursuant to sub-paragraph (2).

Fees

- 30.—**(1) Where an application is made to the discharging authority for consent, agreement or approval in respect of a requirement, a fee of £116 is to be paid to that authority.
- (2) Any fee paid under this Schedule must be refunded to the undertaker within 42 days of—
- (a) the application being rejected as invalidly made; or
 - (b) the discharging authority failing to determine the application within the decision period as determined under paragraph 28, unless within that period the undertaker agrees, in writing, that the fee is to be retained by the discharging authority and credited in respect of a future application.

Further information

- 31.—**(1) In relation to any part of an application made under this Schedule, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.
- (2) In the event that the discharging authority considers such further information to be necessary the discharging authority must, as soon as reasonably practicable and within 20 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.
- (3) In the event that the discharging authority does not give such notification within that 20 business day period it is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.
- (4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 28 (applications made under requirements) and in this paragraph.

Appeals

32.—(1) The undertaker may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any agreement or approval required by a requirement included in this Order;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period as determined in paragraph 28;
- (c) on receipt of a request for further information pursuant to paragraph 30 (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not reasonably necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not reasonably necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State, a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
- (b) the undertaker must on the same day provide copies of the appeal documentation to the discharging authority and the requirement consultee (if applicable);
- (c) as soon as is practicable after receiving the appeal documentation, but in any event within 20 business days of receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the discharging authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under sub-paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person; and
- (e) the appeal parties must make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to sub-paragraph (d) above.

(3) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 20 business days of that date.

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

(7) The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Part 1 of Schedule 2 (requirements) as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the discharging 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 Planning Practice Guidance on the award of costs or any guidance which may from time to time replace it.

Interpretation

33. In this Schedule

“the appeal parties” means the discharging authority, the requirement consultee and the undertaker; “business day” means a day other than Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a);

“discharging authority” means that person or body responsible for approving details pursuant to the requirements in Schedule 2 Part 1.

SCHEDULE 3

Article 12

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of street works</i>
The rights of way and access plans – Sheet 1		
In the Borough of North Lincolnshire	Brumby Common Lane and verge, Scunthorpe between points SW1 and SW2	Installation of the DHPWN (Work Nos. 11 and 12).
The rights of way and access plans – Sheet 2		
In the Borough of North Lincolnshire	West of M181 between points SW3 and SW4	Installation of the DHPWN (Work Nos. 11 and 12).
The rights of way and access plans – Sheet 3		
In the Borough of North	A18 Doncaster Road between	Installation of the DHPWN

(a) 1971 c. 80 to which there are amendments not relevant to this Order.

Lincolnshire	points SW5 and SW6	(Work Nos. 11 and 12).
The rights of way and access plans – Sheet 4		
In the Borough of North Lincolnshire Flixborough Parish Council	B1216 Ferry Road West between points SW7 and SW8	The creation of a new roundabout at the junction with the new spine road. Installation of the DHPWN (Work Nos. 11 and 12).
In the Borough of North Lincolnshire Flixborough Parish Council	B1216 Ferry Road West between points SW8 and SW9	Installation of the DHPWN (Work Nos. 11 and 12).
In the Borough of North Lincolnshire Flixborough Parish Council	A1077 Phoenix Parkway between points SW10 and SW11 including the eastern and western junctions with Ferry Road West	The creation of a new staggered toucan crossing, extension of the existing exit lane towards Ferry Road West with the associated road marking, re-shape of the existing traffic islands, realignment of the kerb line located at the north of the crossing and the creation of a new shared footway that connects to the junction with Ferry Road West and Main Avenue. Installation of the DHPWN (Work Nos. 11 and 12).
In the Borough of North Lincolnshire Flixborough Parish Council	A1077 Phoenix Parkway between points SW11 and SW12	Installation of the DHPWN (Work Nos. 11 and 12).
In the Borough of North Lincolnshire Flixborough Parish Council	Holyrood Drive between points SW13 and SW14	Installation of the DHPWN (Work Nos. 11 and 12).
The rights of way and access plans – Sheet 5		
In the Borough of North Lincolnshire Flixborough Parish Council	First Avenue between points SW16 and SW17	Improvements including the creation of a segregated cycle track, the realignment of the southern kerbline and new road marking. Installation of the DHPWN (Work Nos. 11 and 12) and other utilities.
In the Borough of North Lincolnshire Flixborough Parish Council	Bellwin Drive between points SW17 and SW18	Installation of the DHPWN (Work Nos. 11 and 12) and other utilities.
In the Borough of North Lincolnshire Flixborough Parish Council	The junction of Bellwin Drive and Stather Road between points SW18 and SW19	Improvements and widening including the creation of a segregated cycle track, realignment of Stather Road and Bellwin Drive with associated road marking, creation of a new junction with a ghost island arranged to the new spine road and new junction to the proposed employee parking area for the ERF.

		Installation of the DHPWN (Work Nos. 11 and 12) and other utilities.
In the Borough of North Lincolnshire Flixborough Parish Council	North of Stather Road between points SW19 and SW20	Installation of the DHPWN (Work Nos. 11 and 12) and other utilities.
In the Borough of North Lincolnshire Flixborough Parish Council	First Avenue between points SW20 and SW17	Installation of the DHPWN (Work Nos. 11 and 12) and other utilities.
In the Borough of North Lincolnshire Flixborough Parish Council	First Avenue between points SW20 and SW21	Installation of the DHPWN (Work Nos. 11 and 12) and other utilities.
The rights of way and access plans – Sheet 9		
In the Borough of North Lincolnshire	A1077 Phoenix Parkway between points SW15 (also on Sheet 4) and SW22	Installation of the DHPWN (Work Nos. 11 and 12).
In the Borough of North Lincolnshire	A1077 Phoenix Avenue and Clayfield Road roundabout between points SW22 and SW23	Installation of the DHPWN (Work Nos. 11 and 12).
The rights of way and access plans – Sheet 10		
In the Borough of North Lincolnshire	A1077 Phoenix Parkway between points SW23 (Sheet 9) and SW24	Installation of the DHPWN (Work Nos. 11 and 12).
In the Borough of North Lincolnshire	A1077 Phoenix Parkway and Normanby Road roundabout between points SW24 and SW25	Installation of the DHPWN (Work Nos. 11 and 12).
In the Borough of North Lincolnshire	Normanby Road, Warren Road, Bessemer Way and Mannaberg Way between points SW25 and SW26	Installation of the DHPWN (Work Nos. 11 and 12).

SCHEDULE 4

Article 14

STREETS TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
The rights of way and access plans – Sheets 4 and 5			
In the Borough of North Lincolnshire Flixborough Parish Council	Reference A1 to A2 Part of Stather Road	Reference A1 to A2 from point A1 located 40 metres north of Neap House to point A2 located at the junction between Stather Road and Bellwin Drive, a distance of 1020 metres	Reference B1 to B2 To be substituted by a new highway from point B1 located on the B1216 Ferry Road West running in a northern direction to a point B2 located 146 metres east of Bellwin Drive, a distance of 1410 metres

SCHEDULE 5

Article 16

PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY SUSPENDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be temporarily suspended or diverted</i>	<i>(3)</i> <i>Extent of temporary suspension</i>	<i>(4)</i> <i>Diversion to be provided</i>
The rights of way and access plans – Sheet 6			
In the Borough of North Lincolnshire Flixborough Parish Council	Public footpath FLIX175 from its junction with Stather Road to the railway crossing point	Between points E1 and E2, a distance of 116 metres	No
In the Borough of North Lincolnshire Flixborough Parish Council	Public footpath FLIX178 in the vicinity of the railway crossing point	Between points E3 and E4, a distance of 47.5 metres	No
The rights of way and access plans – Sheet 9			
In the Borough of North Lincolnshire	Public footpath SCUN 175 at the crossing with the A1077 Phoenix Parkway	Between points E5 and E6, a distance of 21 metres	Yes
In the Borough of North Lincolnshire	Cycle track NCN 169 at the crossing with the A1077 Phoenix Parkway	Between points E5 and E6, a distance of 21 metres	Yes

PART 2

NEW PUBLIC RIGHTS OF WAY TO BE CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Length of footpath/pedestrian-cycle path</i>
The rights of way and access plans – Sheet 4	
In the Borough of North Lincolnshire Flixborough Parish Council	Reference CCF1 to CCF2 A cycle track in the verge on the northern side of the B1216 Ferry Road West from point CCF1 in a south eastern direction to point CCF2, a distance of 501 metres
In the Borough of North Lincolnshire Flixborough Parish Council	Reference CCF3 to CCF5 (Sheet 5) A cycle track in the verge on the northern side of Ferry Road West from point CCF3 (east of the A1077 Phoenix Parkway) in a north western direction to point CCF2 on the new spine road and then in a northern direction to Point CCF4 on Stather Road and then in a western direction to point CCF5 at the junction

In the Borough of North Lincolnshire Flixborough Parish Council	with Bellwin Drive, a distance of 2090 metres Reference CCF6 to CCF7 A cycle track from point CCF6 on the new spine road in a western direction to point CCF7 on Stather Road, a distance of 330 metres
In the Borough of North Lincolnshire Flixborough Parish Council	Reference FP1 to FP2 A footpath from point FP1 on the new spine road in an eastern direction along Lysaght's drain to point FP2, a distance of 921 metres
The rights of way and access plans – Sheet 5	
In the Borough of North Lincolnshire Flixborough Parish Council	Reference CCF8 to CCF9 A cycle track in the verge on the south side of First Avenue from point CCF8 in a north eastern direction to point CCF9, a distance of 150 metres
In the Borough of North Lincolnshire Flixborough Parish Council	Reference FP3 to FP4 A footpath from point FP3 on Stather Road in a north western direction to point FP4 on existing public right of way FLIX 304, a distance of 412 metres
The rights of way and access plans – Sheet 6	
In the Borough of North Lincolnshire Flixborough Parish Council	Reference FP6 to FP5 A footpath from point FP6 on existing public right of way FLIX 178 in a south western direction to point FP5, a distance of 97 metres

SCHEDULE 6

Article 17

PART 1

PRIVATE MEANS OF ACCESS TO BE CLOSED FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Area</i>	(2) <i>Private means of access</i>
The rights of way and access plans – Sheet 4	
In the Borough of North Lincolnshire Flixborough Parish Council	The private means of access shown as C1
In the Borough of North Lincolnshire Flixborough Parish Council	The private means of access shown as C2
In the Borough of North Lincolnshire Flixborough Parish Council	The private means of access shown as C10
In the Borough of North Lincolnshire Flixborough Parish Council	The private means of access shown as C11
The rights of way and access plans – Sheet 5	
In the Borough of North Lincolnshire Flixborough Parish Council	The private means of access shown as C3
In the Borough of North Lincolnshire Flixborough Parish Council	The private means of access shown as C4
In the Borough of North Lincolnshire Flixborough Parish Council	The private means of access shown as C5
In the Borough of North Lincolnshire	The private means of access shown as C6

Flixborough Parish Council	
In the Borough of North Lincolnshire	The private means of access shown as C7
Flixborough Parish Council	
In the Borough of North Lincolnshire	The private means of access shown as C8
Flixborough Parish Council	
In the Borough of North Lincolnshire	The private means of access shown as C9
Flixborough Parish Council	
In the Borough of North Lincolnshire	The private means of access shown as C12
Flixborough Parish Council	

PART 2

NEW PRIVATE MEANS OF ACCESS CREATED

(1) <i>Area</i>	(2) <i>Private means of access</i>
The rights of way and access plans - Sheet 4	
In the Borough of North Lincolnshire	The private means of access shown as D1
Flixborough Parish Council	
In the Borough of North Lincolnshire	The private means of access shown as D2
Flixborough Parish Council	
In the Borough of North Lincolnshire	The private means of access shown as D3
Flixborough Parish Council	
The rights of way and access plans - Sheet 5	
In the Borough of North Lincolnshire	The private means of access shown as D4
Flixborough Parish Council	
In the Borough of North Lincolnshire	The private means of access shown as D5
Flixborough Parish Council	
In the Borough of North Lincolnshire	The private means of access shown as D6
Flixborough Parish Council	
In the Borough of North Lincolnshire	The private means of access shown as D7
Flixborough Parish Council	

SCHEDULE 7

Article 18

CLEARWAYS

(1) <i>Area</i>	(2) <i>Road name and length</i>	(3) <i>Measures</i>
The TRO drawings – Sheet 4		
In the Borough of North Lincolnshire Flixborough Parish Council	Reference B and C The B1216 Ferry Road West including the new roundabout between B and C.	Clearway (including verges and hardshoulders)
The TRO drawings – Sheets 4 and 5		
In the Borough of North Lincolnshire Flixborough Parish Council	Reference A and D A new road between B1216 Ferry Road West northwards to Stather Road between A and D.	Clearway (including verges and hardshoulders)
The TRO drawings – Sheet 5		

In the Borough of North
Lincolnshire
Flixborough Parish Council

Reference E and F
First Avenue between E and
F.

Proposed waiting time
restriction

SCHEDULE 8

CLASSIFICATION OF HIGHWAYS

Article 19

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of highway</i>	<i>(3)</i> <i>Classification</i>
The rights of way and access plans – Sheets 4 and 5		
In the Borough of North Lincolnshire Flixborough Parish Council	A new road from the B1216 Ferry Road West northwards to Stather Road in the approximate position between B1 to B2	Classified C Road

SCHEDULE 9

SPEED LIMITS

Article 20

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of highway</i>	<i>(3)</i> <i>Speed limit</i>
The TRO drawings – Sheets 4 and 5		
In the Borough of North Lincolnshire Flixborough Parish Council	Reference A and D A new road from the B1216 Ferry Road West northwards to Stather Road between A and D.	50 miles per hour

SCHEDULE 10

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

Article 26

PART 1

OPTION A – LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on land plan</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
Access tracks Plots 1-1, 1-2, 1-3, 1-11, 1-12, 1-13, 1-14, 2- 12, 2-13, 2-15, 2-16, 2-17, 2-18, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-17, 3-18, 3-22, 3-25, 4-33, 4- 81, 6-2, 8-4, 8-5, 8-6, 8-7, 8-8	(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to— (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining

land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing authorised works;

- (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;
- (c) retain, maintain and use temporary supporting or protective structures and erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to and from adjoining land;
- (e) retain and maintain existing temporary permissive paths and lay out temporary permissive paths for public use (if applicable);
- (f) effect access and egress to and from the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal works are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (i) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this

Access tracks (public rights of way)
Plots 5-66, 5-67

paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing authorised works;
- (b) retain and maintain existing hardstandings for the purposes of access to adjoining land and highway;
- (c) retain, maintain and use temporary supporting or protective structures and erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to and from adjoining land;
- (e) effect access and egress to and from the highway;
- (f) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (g) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal works are being carried out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (h) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse

and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

Full cable rights

Plots 1-4, 1-5, 1-9, 1-10, 2-1, 2-2, 2-4, 2-9, 2-14, 3-3, 3-9, 3-11, 3-12, 3-13, 3-14, 3-19, 3-20, 3-21, 3-26, 4-1, 4-18, 4-21, 4-22, 4-23, 4-106, 5-26, 5-28, 5-31, 5-57, 5-58, 9-1, 9-4, 9-8, 9-11, 9-12, 9-14, 9-19, 9-20, 9-22, 9-23, 9-24, 9-25, 9-27, 9-28, 9-32, 9-35, 9-37, 10-35, 10-53, 10-56, 10-57, 10-60, 10-62

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables and pipes by way of drilling and/or trenching;
- (b) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables, cable ducts and jointing works;
- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables, cable ducts and jointing works;
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables and steam along the pipes, or use of the cable ducts and jointing works;
- (f) retain and use the pipes and cables for the purposes of the transmission of steam, communications, gas and electricity;
- (g) place and use plant, machinery and

temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipes, cables, cable ducts and jointing works;

- (h) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
- (i) remove, store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the pipes and cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the pipes, cables, cable ducts and jointing works;
- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of construction, maintenance, repair, replacement, renewal, upgrade and removal of the pipes, cables, cable ducts and jointing

works;

- (q) when the pipes and cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land steam pipes, electric lines, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised development.

(2) The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development, and to—

- (a) enter upon the land and to create temporary secure areas;
- (b) place equipment on the land, including portakabins and welfare equipment;
- (c) store plant, materials and equipment;
- (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
- (e) effect access and egress to and from the highway;
- (f) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised development; and
- (g) access the underground pipes, cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground steam pipes,, cables, cable ducts and jointing works, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground steam pipes and cables.

(3) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of

laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the pipes, cables, cable ducts and jointing works;

- (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;
- (c) erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to and from adjoining land;
- (e) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (f) effect access and egress to and from the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the pipes and cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the exercise of the rights); and
- (i) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 3 means such other parts of the

land within the Order limits required for the authorised development.

(4) A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supportive structures thereto);
- (b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised development nor make it materially more difficult or expensive to maintain the authorised development);
- (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the undertaker save as are reasonably required for agricultural activities;
- (d) prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised development nor make it materially more difficult or expensive to access the relevant part of the authorised development) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker; and
- (e) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere

with the exercise of the other rights set out in this Schedule or the use of the authorised development or in any way render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Cable rights in highways

Plots 1-7, 1-8, 2-3, 4-2, 4-3, 4-6, 4-7, 4-13, 4-14, 4-16, 4-17, 4-19, 4-25, 4-27, 4-38, 4-39, 4-107, 4-108, 5-23, 5-24, 5-25, 5-27, 5-29, 5-30, 5-32, 5-33, 5-59, 5-60, 5-61, 5-62, 5-89, 9-5, 9-18, 9-26, 9-29, 9-31, 10-1, 10-2, 10-3, 10-4, 10-5, 10-6, 10-7, 10-10, 10-12, 10-13, 10-18, 10-37, 10-38, 10-50, 10-54, 10-61, 10-64, 10-73, 10-75, 10-76, 10-79, 10-80

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables and pipes by way of drilling and/or trenching;
- (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables and cable ducts;
- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables and cable ducts;
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity and telecommunications along the pipes, cables and cable ducts;
- (f) retain and use the cables for the purposes of the transmission of steam, telecommunications and electricity;
- (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing,

upgrading, inspecting, removal and replacing of the pipes, cables and cable ducts;

- (h) install and maintain cable marker posts to identify the location of the pipes, cables and cable ducts as required for routine integrity testing;
- (i) remove store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the pipes, cables and cable ducts;
- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the pipes, cables and cable ducts;
- (q) when the pipes or cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land steam pipes,

electric lines, telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and

- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised development.

Major crossings (railway, highways)
Plots 2-6, 2-7, 3-23, 3-24

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the pipes, pipe sleeves and cables by way of horizontal drilling or other trenchless techniques;
- (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of transmitting steam along the pipes and electricity along the cables and cable ducts;
- (d) retain and use the pipes and cables for the purposes of the transmission of steam and electricity; and
- (e) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers).

Highway works
Plots 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-13, 4-21, 4-22, 4-23, 4-25, 4-27, 4-98, 4-105, 4-106, 4-107, 4-108, 5-23, 5-24, 5-25, 5-26, 5-27, 5-28, 5-29, 5-30, 5-36, 5-37, 5-55, 5-62

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove road works and associated infrastructure and street furniture;
- (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse,

and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of road works;
- (d) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus of statutory undertakers.

Utility works

Plots 4-2, 4-3, 4-6, 4-7, 4-13, 4-14, 4-16, 4-17, 4-18, 4-19, 4-21, 4-22, 4-23, 4-25, 4-26, 4-27, 4-38, 4-39, 4-106, 4-107, 4-180, 5-23, 5-24, 5-25, 5-26, 5-27, 5-28, 5-29, 5-30, 5-31, 5-32, 5-33, 5-36, 5-37, 5-55, 5-56, 5-57, 5-58, 5-59, 5-60, 5-61, 5-62, 5-64, 5-65, 5-68, 5-69, 5-82

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) divert install, underground, retain, use, monitor and maintain pipes, cables, conduits or apparatus of statutory undertakers;
- (b) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the pipes, cables, conduits or apparatus;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of utility works.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

(2) A restrictive covenant over the land to protect the apparatus from excavation.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, retain, maintain, install, use, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

(2) The right to drain on, in and/or through the land to and from adjoining land.

Drainage rights

Plots 4-34, 4-41, 4-42, 4-43, 4-44, 4-76, 4-81, 4-82, 4-87, 4-88, 4-95, 5-7, 5-8, 5-19, 5-90, 6-1, 6-2, 6-3, 6-5, 6-11, 6-12, 6-13, 6-83

“adjoining land” for the purposes of this paragraph 2 means such other parts of the land within the Order limits required for the authorised development.

(3) A restrictive covenant over the land for the benefit of the remainder of the Order land to prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may interfere with the right to drain.

Landscaping access
Plots 5-76, 5-89, 6-34

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

(a) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of landscaping works.

(2) A restrictive covenant over the land for the benefit of the remainder of the Order land to—

(a) prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may interfere with access to the landscaping works;

(b) prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Railway works
Plots 8-1, 8-2, 8-3, 8-5, 8-9

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

(a) construct, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove railway works and associated infrastructure;

(b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

(c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of railway works.

PART 2

OPTION B - LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

(1) <i>Number of land shown on land plan</i>	(2) <i>Purpose for which rights may be acquired</i>
Access tracks Plots 1-1, 1-2, 1-3, 1-11, 1-12, 1-13, 1-14, 2-12, 2-13, 2-15, 2-16, 2-17, 2-18, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-17, 3-18, 3-22, 3-25, 4-33, 4-81, 6-2, 8-4, 8-5, 8-6, 8-7, 8-8	(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to— (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing authorised works; (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway; (c) retain, maintain and use temporary supporting or protective structures and erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway; (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to and from adjoining land; (e) retain and maintain existing temporary permissive paths and lay out temporary permissive paths for public use (if applicable); (f) effect access and egress to and from the highway; (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway; (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal works are being carried out and for

the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and

- (i) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

Access tracks (public rights of way)
Plots 5-66, 5-67

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing authorised works;
- (b) retain and maintain existing hardstandings for the purposes of access to adjoining land and highway;
- (c) retain, maintain and use temporary supporting or protective structures and erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to and from adjoining land;
- (e) effect access and egress to and from the highway;
- (f) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;

Full cable rights

Plots 1-4, 1-5, 1-9, 1-10, 2-1, 2-2, 2-4, 2-9, 2-14, 3-3, 3-9, 3-11, 3-12, 3-13, 3-14, 3-19, 3-20, 3-21, 3-26, 4-1, 4-18, 4-21, 4-22, 4-23, 4-106, 5-26, 5-28, 5-31, 5-57, 5-58, 9-1, 9-4, 9-8, 9-11, 9-12, 9-14, 9-19, 9-20, 9-22, 9-23, 9-24, 9-25, 9-27, 9-28, 9-32, 9-35, 9-37, 10-11, 10-19, 10-20, 10-21, 10-22, 10-29, 10-35, 10-53, 10-56, 10-57, 10-60, 10-62

- (g) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal works are being carried out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights); and
- (h) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables and pipes by way of drilling and/or trenching;
- (b) construct, install, use, retain, maintain, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables, cable ducts and jointing works;
- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes,

- cables, cable ducts and jointing works;
- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables and steam along the pipes, or use of the cable ducts and jointing works;
 - (f) retain and use the pipes and cables for the purposes of the transmission of steam, communications, gas and electricity;
 - (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipes, cables, cable ducts and jointing works;
 - (h) install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;
 - (i) remove, store and stockpile materials (including excavated material) within the Order land;
 - (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the pipes and cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
 - (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
 - (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
 - (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
 - (n) remove archaeological artefacts where

they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the pipes, cables, cable ducts and jointing works;

- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of construction, maintenance, repair, replacement, renewal, upgrade and removal of the pipes, cables, cable ducts and jointing works;
- (q) when the pipes and cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land steam pipes, electric lines, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised development.

(2) The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development, and to—

- (a) enter upon the land and to create temporary secure areas;
- (b) place equipment on the land, including portakabins and welfare equipment;
- (c) store plant, materials and equipment;
- (d) create car parking sites, site offices, site areas for temporary security and welfare facilities;
- (e) effect access and egress to and from the highway;
- (f) create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised development; and
- (g) access the underground pipes, cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground steam pipes,

cables, cable ducts and jointing works, over the temporary secure area within the land, for purposes in connection with the installation and use of the underground steam pipes and cables.

(3) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the pipes, cables, cable ducts and jointing works;
- (b) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of access to adjoining land and highway;
- (c) erect temporary supporting or protective structures (including the bridging over or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
- (d) alter, lop, uproot and replant trees, shrubs and hedges and other vegetation for the purposes of enabling the right to pass and repass to and from adjoining land;
- (e) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (f) effect access and egress to and from the highway;
- (g) retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
- (h) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the pipes and cables (subject to the prior erection of any temporary stock proof fencing as

is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the exercise of the rights); and

- (i) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 3 means such other parts of the land within the Order limits required for the authorised development.

(4) A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction or erection of works of any kind (including the foundations, footings or other supportive structures thereto);
- (b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised development nor make it materially more difficult or expensive to maintain the authorised development);
- (c) prevent mole draining or anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the undertaker save as are reasonably required for agricultural activities;
- (d) prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood

would not cause damage to the relevant part of the authorised development nor make it materially more difficult or expensive to access the relevant part of the authorised development) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker; and

- (e) prevent anything to be done in or upon the Order land or any part thereof which shall or which it is reasonably foreseeable may interfere with the exercise of the other rights set out in this Schedule or the use of the authorised development or in any way render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Cable rights in highways

Plots 1-7, 1-8, 2-3, 4-2, 4-3, 4-6, 4-7, 4-13, 4-14, 4-16, 4-17, 4-19, 4-25, 4-27, 4-38, 4-39, 4-107, 4-108, 5-23, 5-24, 5-25, 5-27, 5-29, 5-30, 5-32, 5-33, 5-59, 5-60, 5-61, 5-62, 5-89, 9-5, 9-18, 9-26, 9-29, 9-31, 10-7, 10-12, 10-13, 10-18, 10-23, 10-24, 10-25, 10-26, 10-27, 10-28, 10-30, 10-31, 10-32, 10-34, 10-37, 10-38, 10-50, 10-54, 10-61, 10-64, 10-73, 10-75, 10-76, 10-79, 10-80

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables and pipes by way of drilling and/or trenching;
- (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables and cable ducts;
- (d) retain and maintain existing hardstandings and lay down, use, repair, alter and remove hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the pipes, cables and cable ducts;

- (e) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity and telecommunications along the pipes, cables and cable ducts;
- (f) retain and use the cables for the purposes of the transmission of steam, telecommunications and electricity;
- (g) place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the pipes, cables and cable ducts;
- (h) install and maintain cable marker posts to identify the location of the pipes, cables and cable ducts as required for routine integrity testing;
- (i) remove store and stockpile materials (including excavated material) within the Order land;
- (j) remove fences, hedges or other barriers during any period in which construction, maintenance, upgrading, improvement, renewal or removal are being carried out and for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the end of each period of the exercise of the rights);
- (k) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);
- (l) carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;
- (m) retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
- (n) remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew,

Major crossings (railway, highways)
Plots 2-6, 2-7, 3-23, 3-24

upgrade, inspect or remove the pipes, cables and cable ducts;

- (o) carry out environmental mitigation, remediation and enhancement works;
- (p) install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the pipes, cables and cable ducts;
- (q) when the pipes or cables are temporarily unusable, to lay down, install, use, maintain and inspect on the surface of the land steam pipes, electric lines, telecommunications, ancillary equipment and associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and
- (r) place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised development.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the pipes, pipe sleeves and cables by way of horizontal drilling or other trenchless techniques;
- (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of transmitting steam along the pipes and electricity along the cables and cable ducts;
- (d) retain and use the pipes and cables for the purposes of the transmission of steam and electricity; and
- (e) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of

Highway works

Plots 4-2, 4-3, 4-4, 4-5, 4-6, 4-7, 4-8, 4-13, 4-21, 4-22, 4-23, 4-25, 4-27, 4-98, 4-105, 4-106, 4-107, 4-108, 5-23, 5-24, 5-25, 5-26, 5-27, 5-28, 5-29, 5-30, 5-36, 5-37, 5-55, 5-62

Utility works

Plots 4-2, 4-3, 4-6, 4-7, 4-13, 4-14, 4-16, 4-17, 4-18, 4-19, 4-21, 4-22, 4-23, 4-25, 4-26, 4-27, 4-38, 4-39, 4-106, 4-107, 4-180, 5-23, 5-24, 5-25, 5-26, 5-27, 5-28, 5-29, 5-30, 5-31, 5-32, 5-33, 5-36, 5-37, 5-55, 5-56, 5-57, 5-58, 5-59, 5-60, 5-61, 5-62, 5-64, 5-65, 5-68, 5-69, 5-82

statutory undertakers).

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove road works and associated infrastructure and street furniture;
- (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of road works;
- (d) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus of statutory undertakers.

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) divert install, underground, retain, use, monitor and maintain pipes, cables, conduits or apparatus of statutory undertakers;
- (b) pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the pipes, cables, conduits or apparatus;
- (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of utility works.

“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised development.

(2) A restrictive covenant over the land to protect the apparatus from excavation.

Drainage rights

Plots 4-34, 4-41, 4-42, 4-43, 4-44, 4-76, 4-81, 4-82, 4-87, 4-88, 4-95, 5-7, 5-8, 5-19, 5-90, 6-1, 6-2, 6-3, 6-5, 6-11, 6-12, 6-13, 6-83

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, retain, maintain, install, use, inspect, modify, improve, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

(2) The right to drain on, in and/or through the land to and from adjoining land.

“adjoining land” for the purposes of this paragraph 2 means such other parts of the land within the Order limits required for the authorised development.

(3) A restrictive covenant over the land for the benefit of the remainder of the Order land to prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may interfere with the right to drain.

Landscaping access

Plots 5-76, 5-89, 6-34

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of landscaping works.

(2) A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may interfere with access to the landscaping works;
- (b) prevent anything to be done in or upon the land or any part thereof which shall or which it is reasonably foreseeable may render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

Railway works

Plots 8-1, 8-2, 8-3, 8-5, 8-9

(1) The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised development and to—

- (a) construct, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove railway works and associated infrastructure;
 - (b) construct, retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
 - (c) enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of railway works.
-

SCHEDULE 11

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 apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-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 4—

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

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

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

(a) 1973 c.26.

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

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

5. Section 8(1) of the Compulsory Purchase Act 1965 has effect as if references to acquiring land were to acquiring a right in the land, and Schedule 2A to that Act is to be read as if, for that Schedule, there were substituted—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an undertaker serves a notice to treat in respect of a right over the whole or part of a house, building or factory.

(2) But see section 2A of the Acquisition of Land Act 1981 (under which a compulsory purchase order can exclude from this Schedule land that is 9 metres or more below the surface).

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 undertaker to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice the undertaker 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 undertaker 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 undertaker decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the undertaker does 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 undertaker serves 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 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,
- (b) the proposed use of the right, and
- (c) if the right is proposed to be acquired 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 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 undertaker 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 undertaker 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 undertaker 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.

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

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

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

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 12

Article 32

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

PART 1

OPTION A - LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Part of the authorised development</i>
Borough of North Lincolnshire	1-6, 2-10, 2-11, 3-1, 3-2, 3-16, 9-17, 10- 14, 10-15	Facilitating construction and carrying out the authorised development; construction compounds for carrying out the authorised development; access for carrying out the authorised development.	Work Nos. 10, 11 and 15
Borough of North Lincolnshire	6-28, 6-29, 6-32, 6- 36, 6-39, 6-43, 6-44, 6-45, 6-46, 6-48, 6- 51, 6-52, 6-61, 6-67, 6-68, 6-69, 6-81	Facilitating construction and carrying out the authorised development; carrying out the authorised development; access for carrying out the authorised development.	Work Nos. 3 and 12
Borough of North Lincolnshire	2-5, 2-8, 3-10, 3-15, 5-10, 9-3, 9-6, 9-7, 9- 9, 9-10, 9-13, 9-15, 9- 33, 9-34, 9-36, 9-40, 9-41, 9-42, 9-43, 9- 44, 9-45, 10-8, 10-9,	Facilitating construction and carrying out the authorised development; carrying out the	Work Nos. 10 and 11

Borough of North Lincolnshire	10-41, 10-45, 10-46, 10-47, 10-51, 10-52, 10-55, 10-58, 10-59, 10-63, 10-65, 10-66, 10-67, 10-71, 10-72 6-25, 6-26, 6-27	authorised development; access for carrying out the authorised development. Laying of hardstanding and improvements to tracks; access for carrying out the authorised development.	Work No. 3
Borough of North Lincolnshire	5-54	Facilitating construction and carrying out the authorised development; carrying out the authorised development; access for carrying out the authorised development.	Work Nos. 10 and 13
Borough of North Lincolnshire	4-72, 5-1	Laying of hardstanding; Facilitating construction and carrying out the authorised development.	Work Nos. 5 and 14

PART 2

OPTION B - LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Part of the authorised development</i>
Borough of North Lincolnshire	1-6, 2-10, 2-11, 3-1, 3-2, 3-16, 9-17, 10-14, 10-15	Facilitating construction and carrying out the authorised development; construction compounds for carrying out the authorised development; access for carrying out the authorised development.	Work Nos. 10, 11 and 15
Borough of North Lincolnshire	6-28, 6-29, 6-32, 6-36, 6-39, 6-43, 6-44, 6-45, 6-46, 6-48, 6-	Facilitating construction and carrying out the	Work Nos. 3 and 12

	51, 6-52, 6-61, 6-67, 6-68, 6-69, 6-81	authorised development; carrying out the authorised development; access for carrying out the authorised development.	
Borough of North Lincolnshire	2-5, 2-8, 3-10, 3-15, 5-10, 9-3, 9-6, 9-7, 9-9, 9-10, 9-13, 9-15, 9-33, 9-34, 9-36, 9-40, 9-41, 9-42, 9-43, 9-44, 9-45, 10-8, 10-9, 10-41, 10-45, 10-46, 10-47, 10-51, 10-52, 10-55, 10-58, 10-59, 10-63, 10-65, 10-66, 10-67, 10-71, 10-72, 10-74	Facilitating construction and carrying out the authorised development; carrying out the authorised development; access for carrying out the authorised development.	Work Nos. 10 and 11
Borough of North Lincolnshire	6-25, 6-26, 6-27	Laying of hardstanding and improvements to tracks; access for carrying out the authorised development.	Work No. 3
Borough of North Lincolnshire	5-54	Facilitating construction and carrying out the authorised development; carrying out the authorised development; access for carrying out the authorised development.	Work Nos. 10 and 13
Borough of North Lincolnshire	4-72, 5-1	Laying of hardstanding; Facilitating construction and carrying out the authorised development.	Work Nos. 5 and 14

SCHEDULE 13

REMOVAL OF HEDGEROWS

Article 40

PART 1

HEDGEROWS

<i>(1)</i> <i>Location of hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
The hedgerows plan – Sheet 9		
H404	Removal	Work No. 10, 11 and 14
H410	Removal	Work No. 10, 11 and 14
H412	Partial removal	Work No. 10, 11 and 14
H413	Removal	Work No. 10, 11 and 14

PART 2

IMPORTANT HEDGEROWS

<i>(1)</i> <i>Location of hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
The hedgerows plan – Sheet 4		
H297	Removal	Work No. 5
The hedgerows plan – Sheet 5		
H267	Removal	Work No. 5

SCHEDULE 14

PROTECTIVE PROVISIONS

Article 42

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of 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;
- (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—

(a) See section 64; there are amendments not relevant to this Order.

- (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) (agreements to adopt water main or service pipe at future date);
- (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^(b) (adoption of sewers and disposal works) or an agreement to adopt made under section 104 of that Act^(c) (agreements to adopt sewer, drain or sewage disposal works, at future date), and includes a disposal main (within the meaning of section 219 of that Act (general interpretation)), a sludge main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989 (electricity supply);
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986^(d) (gas supply);
- (g) water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 2 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Part 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 (street works in England and Wales).

4. Regardless of the temporary stopping up of streets and public rights of way under the powers conferred by article 15 (temporary stopping up of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part, 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

(a) Section 51A was inserted by section 92(1) of the Water Act 2003 (c. 37); section 51A was amended by section 10(1) and (2) of the Water Act 2014 (c. 21).

(b) Section 102(4) of the Water Industry Act 1991 was amended by section 56 of, and paragraphs 2 ad 90 to, the Water Act 2014.

(c) Section 104 was amended by section 96(4) of the Water Act 2003. There are other amendments not relevant to this Order.

(d) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000 (c. 27) and section 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20).

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 constructing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 49 (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 49 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 49 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the construction 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 constructed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (1) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 49 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to 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, and nor does sub-paragraph (1) impose any liability on the undertaker in respect of consequential losses.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part—

“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 (application of the electronic communications code) to 119 (power to give assistance in relation to certain proceedings) and Schedule 3A(b) (the electronics communication code) of the 2003 Act;

(a) 2003 c. 21.

(b) Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

- (a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and
- (b) a network which the Secretary of State is providing or proposing to provide; and

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network.

13. The exercise of the powers of article 34 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the 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 49 (arbitration).

15. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

16. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

Application

17. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

18. 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 Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means:

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991;
- (c) 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,
- (d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water, and
- (e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning

“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;

Apparatus in stopped up streets

19.—(1) Where any street is stopped up under article 14 (permanent stopping up of streets), where Anglian Water has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must use reasonable endeavours to grant or procure the grant of legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 6 or the power of the undertaker to carry out works under paragraph 8.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up of streets), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

20. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

21.—(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 requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until:

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 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 Anglian Water 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 an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water 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 Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best 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 Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48, and after the grant to Anglian Water 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 apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, allow Anglian Water not less than 30 days to enable Anglian Water to:

- (a) make network contingency arrangements; or

- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

22.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Anglian Water 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 are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 48 (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 Anglian Water 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 Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation.

Retained apparatus

23.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 21(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water 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 18 to 19 and 21 to 23 apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

- (a) 4 metres where the diameter of the pipe is less than 250 millimetres;
- (b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and
- (c) a distance to be agreed on a case by case basis and before the submission of the Plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

24.—(1) Subject to the following provisions of this paragraph and paragraph 26 below, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water 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 this Part of this Schedule.

(2) There must be deducted from any sum payable under subparagraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was 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 article 48 (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 Anglian Water by virtue of subparagraph (1) must 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; 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 is to be treated as if it also had been agreed or had been so determined.

25.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 21(2), or by reason of any subsidence resulting from such development or 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 those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3),

excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents and nor does sub-paragraph (1) impose any liability in respect of pure economic losses (which term for the avoidance of doubt may not constitute additional operational or administrative costs, fines and expenses, wasted expenditure or charges rendered unnecessary or the additional cost of procuring or providing replacement services).

(4) Anglian Water 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 (such consent not to be unreasonably withheld or delayed) 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.

26. Anglian Water must use its reasonable endeavours to mitigate losses in whole or in part and to minimise any claim, costs, expenses, loss, demands and penalties. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how the claim has been minimised.

Cooperation

27. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 21(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 23, 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 taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

Unmapped Apparatus

28. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

Miscellaneous

29. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

30. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

Disputes

31. Any difference or dispute arising between the undertaker and Anglian Water under this Part must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 48 (arbitration).

PART 4

FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC

32. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

33. 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.

34. 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.

35. 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.

36.—(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 or authorisation by written agreement from NPG for a tenure no less favourable than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (6).

(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 (such plans and details to be approved by Northern Powergrid in writing approval not to be unreasonably withheld or delayed) 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, in the exercise of the powers conferred by this Order, 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 49 (arbitration)) of the Order; and
- (b) the undertaker and Northern Powergrid agree (or in default of agreement, it is determined through arbitration under article 49 (arbitration)) of the Order that the promotion of compulsory purchase powers by the undertaker would be significantly more onerous than the exercise of Northern Powergrid's own compulsory purchase 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 49 of the Order.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 49 of the Order, 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 and any costs associated with the removal of any of the apparatus shall be borne by the undertaker.

(6) If Northern Powergrid fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 35 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved.

37.—(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 49 (arbitration) of the Order.

(2) In the event that the parties cannot reach agreement in accordance with paragraph 37(1) and the parties seek determination pursuant to article 49 (arbitration) of the Order, then 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.

38.—(1) Not less than 35 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 36(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 where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(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 (2) 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 36(1) to 36(6) apply as if the removal of the apparatus had been required by the undertaker under paragraph 36(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to 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.

39.—(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 36(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 36(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 36(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 greater specification, capacity or dimensions is placed in substitution for existing apparatus 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 capacity, specification 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 49 (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 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 36(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.

40.—(1) Subject to sub-paragraphs (2) to (4), if by reason or in consequence of the construction of any of the works referred to in paragraph 36(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 and limited to a maximum aggregate liability of the undertaker to Northern Powergrid to the sum total of £50,000,000.00 (fifty million pounds) for all claims arising from this Part of this Schedule.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to:

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents; and/or
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by Northern Powergrid as an assignee, transferee or lessee of the undertaker with the benefit of the Order subject to the proviso that once such works become apparatus any works yet to be executed by the undertaker and not falling within this paragraph 40(2)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 40 in respect of such new apparatus.

(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 its losses and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 40 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 40 for claims reasonably incurred by Northern Powergrid.

41. 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.

42. 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 36 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 38, 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.

43. If in consequence of an agreement reached in accordance with paragraph 35 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.

44. 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.

45. Where practicable, the Undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction operation and maintenance of the authorised development. Such liaison shall be carried out where any works are:

- (a) within 15m of any above ground apparatus; and/or
- (b) are to a depth of between 0 – 4m below ground level.

PART 5

FOR THE PROTECTION OF RAILWAY INTERESTS

46. 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 60 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

47. In this Part of 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 and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“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 licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under:

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“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 maintenance of such works under the powers conferred by article 6 (maintenance of authorised development) in respect of such works.

48.—(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.

49.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 4 (development consent etc. granted by the Order);
- (b) article 6 (maintenance of authorised development);
- (c) article 7 (operation of authorised development);
- (d) article 16 (Public rights of way – creation and temporary stopping up);
- (e) article 17 (Accesses);
- (f) article 24 (compulsory acquisition of land);
- (g) article 26 (compulsory acquisition of rights);
- (h) article 27 (private rights);
- (i) article 30 (acquisition of subsoil or airspace only);
- (j) article 32 (temporary use of land for carrying out the authorised development);
- (k) article 33 (temporary use of land for maintaining the authorised development);
- (l) article 34 (statutory undertakers);
- (m) article 37 (discharge of water);
- (n) article 38 (authority to survey and investigate the land);
- (o) article 39 (felling or lopping of trees);
- (p) article 40 (removal of hedgerows);
- (q) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (r) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (s) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016; and
- (t) any powers under in respect of the temporary possession of land under 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, article 26 (Compulsory acquisition of rights), article 27 (private rights) or article 34 (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 but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

50.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(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 de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

51.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 50(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 50;
- (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.

52. 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.

53. 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.

54.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified 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 to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 50(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 55(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.

55. 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 50(3) or in constructing any protective works under the provisions of paragraph 50(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.

56.—(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 50(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 50(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) 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 50(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 sub-paragraphs (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 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 60(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 sub-paragraph (6) applies.

(10) For the purpose of paragraph 55(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 49 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

57. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

58. 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.

59. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

60.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; 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;
- (f) in respect of any losses incurred by Network Rail, as a result of or in connection with a specified work, under any leases, tenancy agreements, easements and/or wayleaves granted by Network Rail on the railway land (to the extent that any are applicable);

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 such steps as are within its control and are reasonable in the circumstances 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 subparagraph (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.

61. 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 Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 60) and with such information

as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

62. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

63. 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.

64. 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.

65. 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 10 (consent to transfer benefit of 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.

66. 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 46 (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.

67. In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 56) the provisions of article 49 (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 CADENT GAS LIMITED

Application

68. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

69. In this Part of the Schedule—

“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 to a level of not less than £50,000,000.00 (fifty 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) Cadent as a Co-Insured;
- (b) a cross liabilities clause;
- (c) a waiver of subrogation in favour of Cadent; and
- (d) 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 Cadent to cover the undertaker’s liability to Cadent to a cap of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent and where required by Cadent, 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 Cadent to cover the undertaker’s liability to Cadent for an amount of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent);

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking 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 the 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;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” and “commencement” include any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

“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;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (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 Cadent’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” have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised works or activities (including maintenance) 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 sub-paragraph 74(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 74(2) or otherwise.

On Street apparatus

70.—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 71, 76, 77 and 78; and
- (b) where sub-paragraph (2) applies, paragraphs 73 and 74.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) The Protective Provisions in this Part of this Schedule apply and take precedence over article 35 of the Order which shall not apply to Cadent.

Apparatus of Cadent in stopped up streets

71.—(1) Where any street is stopped up under article 14 (permanent stopping up of streets), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the

undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent 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 shall affect any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 73.

(2) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 15 (temporary stopping up of streets), Cadent will be at liberty at all times to take all necessary access across any such street and to execute and execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

72. (1) The undertaker must exercise the powers conferred by article [72] (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed)

Acquisition of land

73.—(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 appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised works (or in such other timeframe as may be agreed between Cadent 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 Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure or secure the consent to 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 Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 75 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where the undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 73 do not apply, the undertaker must, unless Cadent agrees otherwise—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register)

include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

74.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 72, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any 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 Cadent 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 (which must be approved by Cadent in accordance with the standard SLA) and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 74(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If 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, Cadent 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 assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed as soon as reasonably practicable save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) 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 Cadent and the undertaker or settled by arbitration.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed or settled, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

75.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent

than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) 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 Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 81 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

76.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent 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 specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) For the purposes of sub-paragraph (4)(b) it will be deemed to be reasonable for any approval to be refused if Cadent considers that the specified works would:

- (a) cause interference with or risk of damage to its apparatus; or
- (b) prevent access to its apparatus at any time.

(6) Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Specified works must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(8) Where Cadent 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 Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(9) If Cadent, 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 68 to 70 and 72 to 74 apply as if the removal of the apparatus had been required by the undertaker under paragraph 73(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 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.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent 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 76.

(12) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(13) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

77.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent within 28 days of receipt of an invoice all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent 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 Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 73(3) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, 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;
- (g) any watching brief pursuant to sub-paragraph 75(6).

(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 81 (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 Cadent 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 (or it would be unlawful due to a statutory or regulatory change) 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) An amount which apart from this sub-paragraph would be payable to Cadent 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 Cadent 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

78.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, 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 the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent,

by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent 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 Cadent, its officers, servants, contractors or agents;
- (b) any part of the authorised works carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 10 (consent to transfer benefit of the Order) of the Order; and
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue,
- (d) profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1).

(4) Cadent must:

- (a) give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability 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) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by Cadent or in respect of which Cadent has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent's apparatus until the following condition is satisfied:

- (a) unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence to Cadent 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 Cadent has confirmed the same to the undertaker in writing; and
- (b) . unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent 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 Cadent has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with 77(5) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

79. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent 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

80.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 73(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 75, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

81. If in consequence of any agreement reached in accordance with paragraph 72(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

82. Save for differences or disputes arising under sub-paragraphs 73(2) and 73(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 49 (arbitration).

Notices

83. Notwithstanding article 47 (service of notices) any plans submitted to Cadent by the undertaker pursuant to paragraph 75(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by e-mail to toby.feirn@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 15

Article 46

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) <i>Document name</i>	(2) <i>Document reference</i>	(3) <i>Revision number</i>	(4) <i>Date</i>
Book of reference	3.1	Rev. 4	May 2023
CLP (outline construction logistics plan)	environmental statement 6.2.13 chapter 13 appendix D	Rev. 1	December 2022
design principles and codes	5.12	Rev. 4	April 2023
environmental statement	environmental statement 6.1: non-technical summary	Rev. 2	April 2023
	environmental statement 6.2 .1, 6.2.2, 6.2.4, 6.2.6,	Rev. 0	May 2022

6.2.11, 6.2.15, 6.2.17 (excluding chapters 3, 5, 7, 8, 9, 10, 12, 13, 14, 16, 18, 19)		
environmental statement 6.2.3 (chapter 3)	Rev. 2	March 2023
environmental statement 6.2.5 (chapter 5)	Rev. 3	May 2023
environmental statement 6.2.7 (chapter 7)	Rev. 2	April 2023
environmental statement 6.2.8 (chapter 8)	Rev. 0	May 2022
environmental statement 6.2.9 (chapter 9)	Rev. 1	March 2023
environmental statement 6.2.10 (chapter 10)	Rev. 1	May 2023
environmental statement 6.2.12 (chapter 12)	Rev. 1	February 2023
environmental statement 6.2.13 (chapter 13)	Rev. 1	December 2022
environmental statement 6.2.14 (chapter 14)	Rev. 2	May 2023
environmental statement 6.2.16 (chapter 16)	Rev. 1	May 2023
environmental statement 6.2.18 (chapter 18)	Rev. 1	May 2023
environmental statement 6.2.19 (chapter 19)	Rev. 3	May 2023
environmental statement 6.3.1 (annex 1 (NLGEP scoping report)), 6.3.2 (annex 2 (PINS scoping report)), 6.3.3 (annex 3 (flood risk assessment)), 6.3.4 (annex 4 (indicative lighting strategy))	Rev. 0	May 2022
environmental statement 6.3.5 (annex 5 (indicative drainage strategy) and annex 6.3.6 (navigation risk	Rev. 1	February 2023

CoCP (code of construction practice)	assessment)) environmental statement 6.3.7 (annex 7 (code of construction practice))	Rev. 6	May 2023
OEMP (operational environmental management plan)	environmental statement 6.3.8 (annex 8 (operational environmental management plan))	Rev. 2	April 2023
framework travel plan	environmental statement 6.2.13 chapter 13 appendix C	Rev. 0	May 2022
hedgerows plan	4.8	Rev. 0	May 2022
indicative landscape and biodiversity plans	4.10	Rev. 2	January 2023
indicative railway plans	4.15	Rev. 1	March 2023
land plans	4.2	Rev. 2	May 2023
outline employment and skills policy	9.35	Rev. 0	April 2023
outline LBMMP (outline landscape and biodiversity management and monitoring plan)	5.7	Rev. 1	March 2023
rights of way and access plans	4.3	Rev. 2	April 2023
TRO drawings	4.19	Rev. 1	January 2023
vertical parameters plans	4.18	Rev. 1	March 2023
works plans	4.4 Works Plans A	Rev. 3	February 2023
	4.4 Works Plans B and C	Rev. 2	February 2023

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises The North Lincolnshire Green Energy Park (referred to in this Order as the undertaker) to construct, operate and maintain an energy from waste electricity generating station located at Stather Road, Flixborough, Scunthorpe fuelled by refuse derived fuels, with a gross generation capacity of up to 95 megawatts at ISO conditions.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 46 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Church Square House, 30-40 High Street, Scunthorpe, North Lincolnshire DN15 6NL.

APPENDIX D: CONSIDERATIONS FOR THE SECRETARY OF STATE

- 10.2.4. The Table below lists several matters which do not affect our recommendation based on the evidence available at the close of the Examination, but the SoS may wish to consider them should the decision on the application for development consent differ from our recommendation, or the SoS were to conclude further consultation were appropriate in advance of making a decision.
- 10.2.5. The Section reference is provided to signpost where more details about the issue can be found.

Section Reference	Unresolved Issue
1.8.3 5.6.124-5.6.129	Legal agreement with neighbouring landowner to provide mitigation for adverse effects at Risby Warren SSSI
9.3.64-9.3.66 5.10.31-5.10.32	Retention of safe access and egress to an upper tier COMAH site and change to DCO Requirement
1.9.3 5.7.22, 5.7.92-5.7.96	Availability of a water supply for the construction of the Proposed Development.
1.9.4 – 1.9.6	Conclusions on the consultation on Decarbonisation Readiness and potential amendments to Environmental Permitting Regulations
1.9.7	Progress on the designation of the draft NPS
9.3.60-9.3.66 5.11.80-5.11.81	Revised requirement for noise
9.3.71-9.3.74	Cadent Gas Protective Provisions