The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Drax Bioenergy with Carbon Capture and Storage Project

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Energy Security and Net Zero

Examining Authority

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17 October 2023

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OVERVIEW

File Ref: EN010120

The application, dated 23 May 2022, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on that date.

The Applicant is Drax Power Limited.

The application was accepted for examination on 22 June 2022.

The examination of the application began on 17 January 2023 and was completed on 17 July 2023.

The development proposed comprises the construction, operation, and maintenance of post-combustion carbon capture technology as an extension to an existing biomass generating station (Units 1 and 2 of the generating station).

Summary of Recommendation:

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

REPORT TABLE OF CONTENTS

1. INTRODUCTION 1
1.1. BACKGROUND TO THE EXAMINATION 1
1.2. APPOINTMENT OF THE EXAMINING AUTHORITY 1
1.3. THE APPLICATION 1
1.4. THE EXAMINATION 6
1.5. CHANGES TO THE APPLICATION 7
1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS 9
1.7. OTHER CONSENTS 9
1.8. STRUCTURE OF THIS REPORT 9
2. HOW THE APPLICATION IS DETERMINED 10
2.1. INTRODUCTION 10
2.2. LEGISLATION AND POLICY 10
2.3. KEY LEGISLATION 10
2.4. NATIONAL POLICY STATEMENTS 11
2.5. OTHER RELEVANT NATIONAL POLICIES 12
2.6. LOCAL IMPACT REPORT 12
2.7. ENVIRONMENTAL IMPACT ASSESSMENT 13
2.8. HABITATS REGULATIONS ASSESSMENT 13
2.9. TRANSBOUNDARY EFFECTS 13
3. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES 15
3.1. INTRODUCTION 15
3.2. THE PRINCIPLE OF THE DEVELOPMENT 15
3.3. AIR QUALITY AND EMISSIONS 25
3.4. BIODIVERSITY AND ECOLOGY 33
3.5. GREENHOUSE GAS EMISSIONS 44
3.6. HISTORIC ENVIRONMENT 51
3.7. LANDSCAPE AND VISUAL AMENITY 55
3.8. LAND USE, GROUND CONDITIONS AND CONTAMINATION 63
3.9. NOISE AND VIBRATION 66
3.10. WATER ENVIRONMENT AND FLOOD RISK 71
3.11. SOCIO-ECONOMIC EFFECTS 77
3.12. TRAFFIC, TRANSPORT AND WASTE MANAGEMENT 80
3.13. OTHER MATTERS 84
4. SUMMARY OF CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT 89
4.1. INTRODUCTION 89
4.2. HABITATS REGULATIONS ASSESSMENT IMPLICATIONS 89
4.3. SUMMARY OF HABITATS REGULATIONS ASSESSMENT MATTERS CONSIDERED DURING THE EXAMINATION 89
4.4. SUMMARY OF FINDINGS IN RELATION TO ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS 90
4.5. SUMMARY OF FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY 90
4.6. CONCLUSIONS 91

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT 92
5.1. INTRODUCTION 92
5.2. SUMMARY OF THE MAIN PLANNING ISSUES 92
5.3. THE PLANNING BALANCE 98
6. LAND RIGHTS AND RELATED MATTERS 100
6.1. INTRODUCTION 100
6.2. THE REQUEST FOR COMPULSORY ACQUISITON AND TEMPORARY POSESSION POWERS 100
6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED 101
6.4. THE COMPULSORY ACQUISITION AND TEMPORARY POSESSION POWERS SOUGHT 101
6.5. LEGISLATIVE REQUIREMENTS 102
6.6. EXAMINATION OF THE COMPULSORY ACQUISITION AND TEMPORARY POSESSION CASE 104
6.7. CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES 106
6.8. OTHER PARTICULAR CONSIDERATIONS 110
6.9. CONCLUSIONS 112
7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS 113
7.1. INTRODUCTION 113
7.2. THE ORDER AS APPLIED FOR 113
7.3. EXAMINATION OF THE DEVELOPMENT CONSENT ORDER 115
7.4. PROTECTIVE PROVISIONS 121
7.5. EXAMINING AUTHORITY'S PROPOSED CHANGES 122
7.6. CONCLUSIONS 123
8. SUMMARY OF FINDINGS AND CONCLUSIONS 124
8.1. CONSIDERATION OF FINDINGS AND CONCLUSIONS 124
8.2. RECOMMENDATION 126

APPENDIX A: REFERENCE TABLES A:1
APPENDIX B: LIST OF ABBREVIATIONS B:1
APPENDIX C: HABITATS REGULATIONS ASSESSMENT C:1
APPENDIX D: THE RECOMMENDED DCO D:1

List of Figures

Figure 1: Location Plan 2
Figure 2: Existing Drax Power Station looking east 3
Figure 3: Illustrative 3D layout of Proposed Development (with numbered key added) 4

Figure 4: 3D Model Flyover video 4
Figure 5: Modelled discrete human receptors 28
Figure 6: Internationally designated sites 36
Figure 7: Nationally designated sites 37
Figure 8: Non-designated sites 41
Figure 9: Looking towards the site from the Drax Augustinian Priory 53
Figure 10: Viewpoint 2 - View north-east from Camela Lane baseline panorama 59
Figure 11: Viewpoint 2 - View north-east from Camela Lane photomontage and maximum parameters panorama 60
Figure 12: Extract of the EA's Flood Map for Planning 73
Figure 13: Indicative location of Flood Compensation Area 74
Figure 14: Economic benefits at Drax level 78

List of Tables

Table 1: Key dDCO documentation submitted into the Examination 115
Table 2: Notable changes made to the dDCO 116
Table 3: DCO Provisions Recommended to be Changed 122

The Planning Inspectorate

ERRATA SHEET – Drax Bioenergy with Carbon Capture and Storage Project Ref. EN010120

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 17 October 2023

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

PDF Page No.	Paragraph	Error	Correction
115	Table 1: Key dDCO documentation submitted into the Examination	05, D2 - REP2-008 (dDO tracked)	REP2-008 (dDCO tracked)
57	3.7.12	PRoW	Public Rights of Way (PRoW)
42	3.4.48	In its WR [REP2-030], Biofuelwatch raised concerns	Link is not to a WR but to EN010120-001031-D2_Drax Power Limited_6.3.5.2 Environmental Statement - Volume 3 - Appendix 5.2 Framework Construction Worker Travel Plan (Clean) - Rev 3 (2)
84	3.12.31	The EA confirmed in its RR [RR-051]	Link is not to EA but Representation by Jamie Russell
107	6.7.9	NGN submitted an RR [RR-283]	Link is not to NGN but Representation by Derby/South Derbyshire Unfriends the Burning Earth

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

1.1.1. An application (the Application) for the Drax Bioenergy with Carbon Capture and Storage Project (the Proposed Development), Planning Inspectorate (the Inspectorate) reference EN010120, was submitted by Drax Power Limited (the Applicant) to the Inspectorate on 23 May 2022 under section (s) 31 of the Planning Act 2008 (PA2008) and accepted for Examination under s55 of the PA2008 on 20 June 2022 [PD-001]. This report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State (SoS) for Energy Security and Net Zero (ESNZ).

1.1.2. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the SoS for the Department for Levelling Up, Housing and Communities (DLUHC) in its decision to accept the Application for Examination in accordance with s55 of the PA2008 [PD-001].

1.1.3. The Proposed Development is an extension of an onshore biomass powered generating station. As the existing generating station has a capacity of more than 50 megawatt (MW), the Proposed Development falls within s15(2) of the PA2008 and meets the definition of an NSIP set out in s14(1) of the PA2008. As such, the Proposed Development requires development consent in accordance with s31 of the PA2008.

1.1.4. The Examination Library (EL) provides a record of all application documents and submissions to the Examination, each of which is given a unique reference number eg [APP-001]. The reference numbers are used throughout this report and hyperlinks are included to allow the reader to access them directly.

1.1.5. This report does not contain extensive summaries of all documents and representations received, although full regard has been had to them and all important and relevant matters arising. Key written sources are set out further below.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 1 September 2022, Caroline Jones and Ben Northover were appointed as the ExA for the Application under s61 and s65 of the PA2008 [PD-004].

1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

1.3.1. The location of the Proposed Development is shown in the Location Plan [AS-104] (extract shown in Figure 1 below) and the final versions of the Land Plans [AS-105]. The site lies within North Yorkshire Council (NYC) and East Riding of Yorkshire Council's (ERoY) administrative areas and is wholly in England.

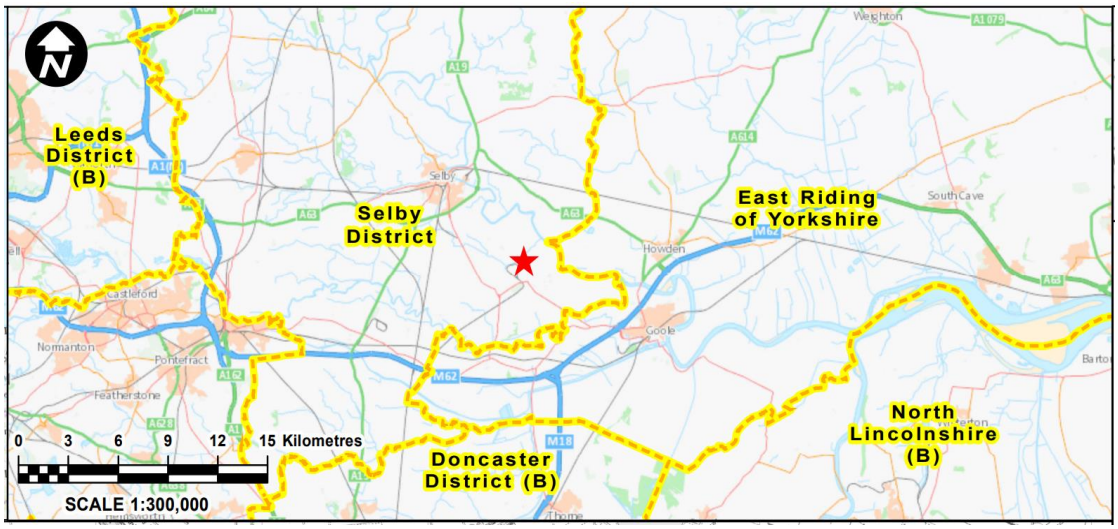


Figure 1: Location Plan

1.3.2. Chapter 9 of the Environmental Statement (ES) [APP-045] provides a detailed description of the surrounding area. In summary, the characteristics of the surrounding area are:

- a low lying, predominately flat landscape of arable farmland with a high concentration of small woodland blocks, intermittent hedgerows and hedgerow trees;
- small to medium settlements, isolated residential properties and farmsteads;
- long and unbroken views to distant horizons, with big expansive skies;
- very prominent vertical elements like water towers, power stations and wind turbines;
- a strong human influence from the industrial Drax Power Station which is highly visible from throughout the landscape; and
- a time depth from the juxtaposition of Drax Power Station with the historic village of Drax.

1.3.3. The Design Framework [APP-195] provides a description of the existing Drax Power Station. In summary, and as can be seen in Figure 2 below (extract from Design Framework), the site is characterised by a number of large structures including:

- the main boiler/ turbine house housing four biomass units and two coal units;
- a main emissions stack of 259m in height;
- 12 cooling towers each of 116.5m in height;
- flue gas desulphurisation (FGD) plant;
- gas turbine (GT) chimney;
- storage buildings and structures (including biomass stores);
- offices and administration facilities;
- overhead electricity cables; and
- rail infrastructure.

Figure 2: Existing Drax Power Station looking east

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.4. The Proposed Development is for the construction, operation, and maintenance of post-combustion carbon capture technology as an extension to an existing biomass generating station (Units 1 and 2 of the generating station). The Proposed Development is designed to remove approximately 95% of the carbon dioxide from the flue gas from these two units (around 8 megatonnes (Mt) per year).

1.3.5. The Proposed Development works comprise:

- Work No. 1 – Carbon capture plant as an extension to an existing generating station;
- Work No. 2 – Infrastructure to transport compressed carbon dioxide;
- Work No. 3 – Supporting works in connection with and in addition to Work Nos. 1, 2 and 5;
- Work No. 4 – Works to facilitate construction access to Work Nos. 1 to 5 and 7
- Work No. 5 – Temporary construction laydown areas;
- Work No. 6 – Habitat provision area;
- Work No. 7 – Works to create a floodplain compensation area; and
- Work No. 8 – Works to facilitate the delivery of abnormal indivisible loads to the site.

1.3.6. At the time of application, the Proposed Development comprised Work No. 1 (inclusive of Work Nos. 1A to 1F) for which development consent is required as an NSIP, and Associated Development under Work Nos. 2 to 6.

1.3.7. Work Nos. 7 and 8 were added into the Proposed Development with the Applicant's change request dated 5 December 2022 (see section 1.5 of this report). Further details of the proposal for each Work No. can be found in Schedule 1 of the recommended Development Consent Order (rDCO) in Appendix D.

1.3.8. The illustrative layout is shown below in Figure 3 (extract from ES Chapter 2 [APP-038]). Please note that the numbered key in Figure 3 corresponds to the process block flow described in section 2.2 of ES Chapter 2 and does not correspond to the work numbers listed above.

Figure 3: Illustrative 3D layout of Proposed Development (with numbered key added)

1.3.9. The Applicant also included a 3D Model Flyover video (Figure 4 below) in the Application document set [APP-198] which illustrates the appearance of the main works and their construction sequence within the Order Limits. Click play below to run the video:

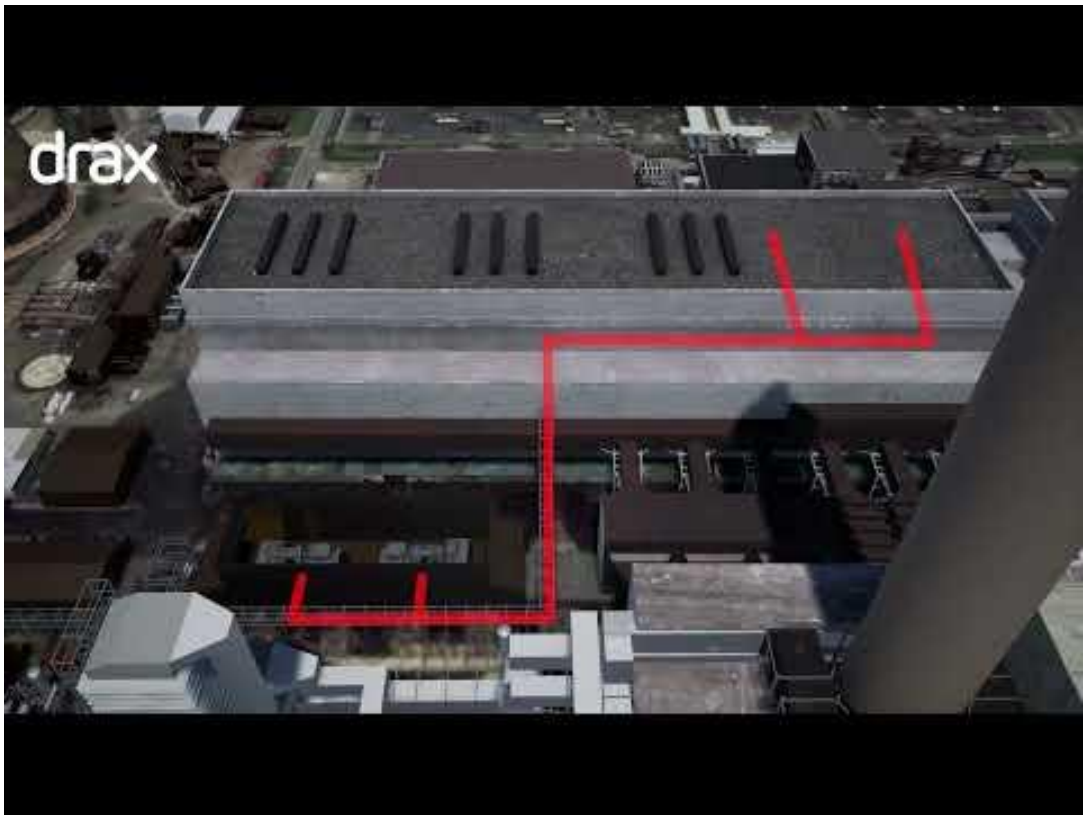


Figure 4: 3D Model Flyover video

RELEVANT PLANNING HISTORY

1.3.10. Drax Power Station opened in 1975, generating electricity with three coal fired units and a total generating capacity of just under 2,000MW. In 1986 the power station was extended to develop a further three units and has operated six units since then.

1.3.11. Planning permission was granted by the Department of Energy and Climate Change under s36 of the Electricity Act 1989 (2009/0694/GOV) to develop a 290MW biomass fuelled electricity generating station on 10 August 2011 for four of the six existing coal-fired units. Units 1 to 4 were then converted to biomass use; Unit 4 being the last to convert in August 2018.

1.3.12. The two remaining units not covered by the above planning permission run on coal. These units had stopped generating electricity commercially in March 2021. At Issue Specific Hearing (ISH) 1 ([EV-006], [EV-008], [EV-010]) the Applicant confirmed that it had since been approached by National Grid to extend operations of the two coal units and that decommissioning of these units would now occur in 2023. The Applicant also confirmed that decommissioning of these units would have to occur for the Proposed Development to run. The two remaining coal units would cease operations entirely prior to works to construct the Proposed Development commencing (see paragraph 1.3.15 below).

1.3.13. In October 2019, development consent was granted to the Applicant for The Drax Power (Generating Stations) Order 2019, which allows Drax Power Limited to repower up to two of the existing coal-powered generating units with new gas turbines that can operate in both combined cycle and open cycle modes so that the source of fuel would change from coal fuel to natural gas (referred to as the Drax Repower Project).

1.3.14. The Applicant has stated that it has no plans to progress the Drax Repower Project, and this is confirmed by Article 8(3) in the rDCO. As such, for the purpose of the Examination, it was assumed that the Drax Repower Project would not be built.

1.3.15. In January 2021, the Applicant received full planning permission under the Town and Country Planning Act 1990 for the demolition of the redundant FGD Plant and associated restoration works at Drax Power Station. The decommissioning and demolition of Absorber Units 4, 5 and 6 is scheduled to take place prior to the start of the construction of the Proposed Development, and the demolition of Absorber Units 1, 2 and 3 is expected to take place following the construction of the Proposed Development.

1.3.16. Other planning history for the site generally consists of planning decisions relating to the operation of Drax Power Station and for ancillary buildings, structures and infrastructure. The relevant planning history and planning permissions relating to the site and its surrounds are set out in more detail within Table A.1 in Appendix A of the Planning Statement [APP-032].

1.3.17. The Applicant has undertaken a search of relevant planning history for major development within 15 kilometres (km) of the Order Limits, including NSIPs; and projects beyond 15km of the Order Limits proposed as part of Zero Carbon Humber (ZCH). ES Chapter 18 (Cumulative Effects) [REP4-035] states that all of the relevant developments that may be affected by or create cumulative impacts of relevance to the Proposed Development have been considered.

THE EAST COAST CLUSTER

1.3.18. The Proposed Development would form part of the ZCH industrial decarbonisation proposals which is part of the East Coast Cluster (ECC) alongside Net Zero Teesside (NZT) and supported by the Northern Endurance Partnership (NEP).

1.3.19. In October 2021, the ECC was named as one of the UK's first Carbon Capture, Usage and Storage (CCUS) clusters following a successful bid to the (former) Department for Business, Energy and Industrial Strategy (BEIS). The Applicant stated in the Needs and Benefits Statement [APP-033] that *"Once operational, the cluster has the potential to transport and securely store nearly 50% of all UK industrial cluster CO_2 emissions – up to 27 million tonnes of CO_2 emissions a year by 2030."*

1.4. THE EXAMINATION

CHANGES TO LOCAL AUTHORITIES

1.4.1. When the Application was submitted, the host local authorities comprised Selby District Council (SDC) and North Yorkshire County Council (NYCC).

1.4.2. Following the ExA's acceptance of the proposed changes (PC-01 and PC-02) into the Examination [PD-009] (section 1.5 of this report), the Applicant confirmed at the Preliminary Meeting (PM) [EV-004] that ERoY had become a host authority. The Applicant responded to question GEN.1.20 of the Examining Authority's First Written Questions (ExQ1) [REP2-060] to confirm that prior to the proposed changes application, ERoY was treated informally as a host authority, and the authorities bordering ERoY were treated informally as neighbouring authorities for the purpose of consultation on the Application.

1.4.3. Under Local Government Reorganisation (LGR), on Saturday 1 April 2023, NYCC and SDC ceased to exist and were replaced by North Yorkshire Council (NYC). Local government arrangements in ERoY were unaffected.

1.4.4. At Deadline (D) 1, NYCC and SDC submitted a Statement on LGR [REP-040] confirming that throughout the process, the two councils had adopted an approach of responding to the Application jointly as 'the Authorities'. As such, a project team had been established across both councils and there were no plans in place to alter staff roles after the formation of NYC. The councils did not consider that LGR would have an impact on their response to the Application and participation in the Examination.

1.4.5. In the following sections of the report, we refer to the councils as they were at the end of the Examination for ease of understanding.

START OF THE EXAMINATION

1.4.6. The PM took place on 17 January 2023 [EV-004]. The ExA's Procedural Decisions (PD) and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-012], dated 24 January 2023.

1.4.7. The Examination began on 17 January 2023 and concluded on 17 July 2023. The principal components of and events around the Examination can be seen in the Examination Timetable and are summarised below. No party requested to join or leave the Examination.

PROCEDURAL DECISIONS

1.4.8. The PDs taken by the ExA are recorded in the Examination Library referenced [PD-]. They detail the ExA's decisions relating to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development.

STATEMENTS OF COMMON GROUND

1.4.9. By the end of the Examination, the following bodies had concluded and signed Statements of Common Ground (SoCG) with the Applicant:

- Environment Agency [REP8-018].
- Goole and Airmyn Internal Drainage Board (IDB) [REP5-020].
- Historic England [AS-033].
- National Grid ESO [REP10-012].
- National Highways [REP10-015].
- Natural England [REP8-019].
- North Yorkshire Council [REP10-014].
- Selby IDB [REP5-018].

1.4.10. The SoCGs with the following bodies remained unsigned at the end of the Examination:

- East Riding of Yorkshire Council [REP10-016].
- National Grid Carbon Limited (NGCL) [REP10-013].
- National Grid Electricity Transmission (NGET) [REP10-017].

1.4.11. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this report. The weight afforded to unsigned SoCGs is considered in the relevant sections of this report.

WRITTEN QUESTIONS, SITE INSPECTIONS AND HEARINGS

1.4.12. The ExA asked two rounds of written questions (ExQ1 [PD-011] and ExQ2 [PD-015]) and made three requests for further information and comments under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 [PD-018, PD-021, PD-022].

1.4.13. The ExA carried out an Unaccompanied Site Inspection (USI) [EV-001] and an Accompanied Site Inspection (ASI) [EV-024, AS-098].

1.4.14. Five ISHs were held: ISH1 [EV-006, EV-008, EV-010], ISH2 [EV-014, EV-016], ISH3 [EV-026, EV-028], ISH4 [EV-034, EV-036] and ISH5 [EV-041]. Two Compulsory Acquisition Hearings (CAH) were held: CAH1 [EV-030, EV-032] and CAH2 [EV-039]. Two Open Floor Hearings (OFH) were held: OFH1 [EV-012] and OFH2 [EV-043].

1.5. CHANGES TO THE APPLICATION

1.5.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the Examination. The changes sought to address points raised by Interested Parties (IP) and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the Examination.

1.5.2. The Applicant's changes to the Application documents, together with any additional information submitted, are detailed in the Application Guide submitted at D10 [REP10-001]. 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 full record of all documentation submitted into the Examination.

FIRST CHANGE REQUEST

1.5.3. The Applicant submitted a formal change request on 5 December 2022. Table A2 in Appendix A of this report sets out the documents comprising the change request.

1.5.4. The Proposed Changes Application Report (PCAR) [AS-045] details the proposed changes. Two changes were proposed, PC-01 and PC-02, for which the Applicant carried out a non-statutory consultation exercise.

1.5.5. The ExA agreed with the Applicant that neither of the proposed changes was so material that it constituted a materially different project. The proposed changes were not considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally applied for in May 2022.

1.5.6. The ExA therefore issued a PD [PD-009] to accept both changes into the Examination, subject to the subsequent fulfilment of duties under Regulations 7, 8 and 9 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations).

1.5.7. The Applicant subsequently provided a Regulation 9a notice [OD-015] and Regulation 9b certificate [OD-016] to demonstrate that it fulfilled those duties.

SECOND CHANGE REQUEST

1.5.8. The Applicant submitted a second change request on 21 April 2023. Table A2 in Appendix A of this report sets out the documents comprising the change request.

1.5.9. The Second Change Application Report (SCAR) [AS-126] details the proposed changes.

1.5.10. In its letter of 14 April 2023 [PD-014], the ExA confirmed that the consultation the Applicant had carried out to date (described in the SCAR) was appropriate and proportionate given the specific targeted nature of the proposed change and that further non-statutory consultation was not required on this basis.

1.5.11. Given the proposed 'upgrade' in powers sought over some plots, the ExA agreed with the Applicant that the proposed change would invoke the requirements of the CA Regulations.

1.5.12. The ExA agreed with the Applicant that the proposed change was not so material that it constituted a materially different project. The proposed change was not considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally applied for in May 2022.

1.5.13. The ExA therefore issued a PD [PD-017] to accept the change into the Examination, subject to the subsequent fulfilment of duties under Regulations 7, 8 and 9 of the CA Regulations.

1.5.14. The Applicant subsequently provided a Regulation 9a notice [OD-017] and Regulation 9b certificate [OD-018] to demonstrate that it fulfilled those duties.

1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.6.1. By the end of the Examination, NYC had entered into a s106 of the Town and Country Planning Act 1990 (s106) agreement with the Applicant [REP8-025]. The agreement relates to the ecological off-site improvement works and river habitat provision to deliver 10% net gain in biodiversity value.

1.6.2. Some parties have confirmed that, during the Examination, they have reached private agreements with the Applicant regarding protection of their assets and/ or interests. These are referred to, where relevant, in subsequent sections of this report.

1.6.3. These undertakings, obligations and/ or agreements (other than unsigned or incomplete ones) have been taken fully into account by the ExA in all relevant sections of this report.

1.7. OTHER CONSENTS

1.7.1. In addition to the consents required under the PA2008, the Applicant would require other consents to construct, operate and maintain the Proposed Development. This is set out by the Applicant in the Other Consents and Licences [APP-035], subsequently updated at D8 [REP8-010].

1.8. STRUCTURE OF THIS REPORT

1.8.1. The structure of the remainder of this report is as follows:

- **Chapter 2** identifies the planning issues and summaries the key legislation and policy context.
- **Chapter 3** sets out the findings and conclusions in relation to the planning issues that arose from the Application and during the Examination.
- **Chapter 4** provides a summary of the Habitats Regulations Assessment (HRA).
- **Chapter 5** sets out the balance of planning considerations arising from Chapters 3 and 4 in the light of important and relevant factual, legal and policy considerations.
- **Chapter 6** sets out the ExA's examination of land rights and related matters.
- **Chapter 7** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- **Chapter 8** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.8.2. This report is supported by the following appendices:

- **Appendix A** – Reference Tables.
- **Appendix B** – List of Abbreviations.
- **Appendix C** – Habitats Regulations Assessment.
- **Appendix D** – The Recommended DCO.

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This chapter identifies the key legislation, policy and Local Impact Report (LIR) that the Examining Authority's (ExA) recommendations are made against.

2.2. LEGISLATION AND POLICY

2.2.1. This section identifies the key legislation and policy that the ExA considers to be important and relevant to its findings and recommendations to the SoS. More detail is provided in Annex A to this report.

2.3. KEY LEGISLATION

PLANNING ACT 2008

2.3.1. The Planning Act 2008 (PA2008) provides a different basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) has effect from that where no NPS has effect.

2.3.2. Whilst Carbon Capture and Storage (CCS) infrastructure is not explicitly listed as being covered by the designated energy NPSs, in the Overarching NPS for Energy (NPS EN-1) (designated in 2011) CCS is identified in paragraph 4.7.1 as an emerging technology, and it is clear from paragraph 3.8.19 that at the time CCS technologies for power and industrial sectors were not yet proven to be technically and commercially viable. However, CCS is implicit within NPS EN-1 which states that all commercial scale (at or over 300 megawatts (MW)) combustion power stations (including gas, coal, oil or biomass) have to be constructed Carbon Capture Ready (CCR). Paragraph 2.5.4 of NPS for Renewable Energy (NPS EN-3) also states that biomass generating stations should be CCR and/ or have CCS technology applied. Details of the Government's policy on CCR and CCS is set out in section 4.7 of NPS EN-1.

2.3.3. The matter of whether the Proposed Development should be assessed against section (s) 104 or s105 of the PA2008 was discussed at Issue Specific Hearing (ISH) 1 [EV-006]. A summary of the Applicant's case on this matter can be found in Appendix 2 of The Applicant's Summary of Oral Case at ISH1 [REP-028]. As NPS EN-1 and NPS EN-3 have effect in relation to development that is the subject of this application, the ExA considers that it is to be assessed against s104 of the PA2008.

2.3.4. It should be noted that, even if the Proposed Development were to be assessed against s105 of the PA2008, the ExA's overall recommendation would remain unchanged given that the NPSs would be treated as important and relevant considerations. The LIR [REP9-039] stated that local planning policies support the Proposed Development in principle and the need for carbon capture infrastructure that is established in other documents set out under 'The Principle of Development' in Chapter 3.

2.3.5. Section 104(2) of the PA2008 sets out the matters to which the SoS must have regard when making its decision. These include any relevant NPS, any LIR, any matters prescribed in relation to the development, and any other matters the SoS thinks are both important and relevant to the decision.

2.3.6. Section 104(3) of the PA2008 requires the SoS to decide the Application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in s104(4) to (8) as follows:

- Deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations.
- Deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment.
- Deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment.
- The adverse impact of the Proposed Development would outweigh its benefits.
- Any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

2.3.7. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

2.3.8. A full list of relevant legislation, including details of the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in Table A5 of Appendix A of this report.

2.4. NATIONAL POLICY STATEMENTS

2.4.1. NPSs set out Government policy on different types of national infrastructure development. With regard to the purposes of s104(2)(a) of the PA2008, the ExA considers that NPS EN-1 and NPS EN-3 are relevant to the Application.

2.4.2. The NPSs form the primary policy context for this Examination. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008. The purpose and broad content of these NPSs is summarised here. Table A3 in Appendix A provides further detail on the NPSs of relevance to the Proposed Development.

OVERARCHING NATIONAL POLICY STATEMENT FOR ENERGY (NPS EN-1)

2.4.3. NPS EN-1 (July 2011) sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. All other energy NPSs sit under the policy framework provided by this NPS. It provides the primary basis for determining if development consent should be granted. All other energy NPSs are used together with this NPS.

NATIONAL POLICY STATEMENT FOR RENEWABLE ENERGY (NPS EN-3)

2.4.4. NPS EN-3 (July 2011) details assessment criteria specific to different types of renewable energy infrastructure including energy from biomass proposals. The assessment criteria for energy from biomass proposals include impacts relating to air quality and emissions; landscape and visual; noise and vibration; waste management; and water quality and resources amongst others.

2.4.5. Whilst the Proposed Development is not for a biomass generating station, it constitutes an extension to an existing generating station and is referred to as post-combustion carbon capture as the carbon dioxide is captured from the flue gas

produced during the combustion of biomass in Units 1 and 2. For that reason the ExA considers NPS EN-3 to be applicable to the Proposed Development.

DRAFT NATIONAL POLICY STATEMENTS

2.4.6. In March 2023 the Department for Energy Security and Net Zero (DESNZ) published revised draft NPSs (dNPS) in relation to energy (dNPS EN-1 to dNPS EN-5 (inclusive)) for consultation. These draft NPSs reiterate the urgent need for low carbon energy development and carbon capture, as well as confirming the role of the combustion of biomass for electricity generation.

2.4.7. The dNPSs are clear that *"…for any application accepted for examination before designation of the 2021 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS"* (paragraph 1.6.2 of dNPS EN-1). However, it is also clear in paragraph 1.6.3 that any emerging dNPSs may potentially be important or relevant matters for consideration, pursuant to s104(2)(d) of the PA2008.

2.5. OTHER RELEVANT NATIONAL POLICIES

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

- The National Planning Policy Framework.
- Net Zero: The UK's Contribution to Stopping Global Warming Emissions.
- Ten Point Plan for a Green Industrial Revolution.
- Energy White Paper: Powering our Net Zero Future.
- Industrial Decarbonisation Strategy (HM Government, 2021).
- Net Zero Strategy: Build Back Greener.
- British Energy Security Strategy (2022).
- Powering up Britain (DESNZ, 2023).
- Carbon capture, usage and storage net zero investment roadmap, 2023.

2.5.2. Table A4 in Appendix A provides further detail on the relevance of each of the above policies to the Proposed Development. These policies are also discussed in more detail in Chapter 3 within 'The Principle of Development'.

2.6. LOCAL IMPACT REPORT

2.6.1. One LIR was submitted into the Examination jointly by Selby District Council (SDC) and North Yorkshire County Council (NYCC) [REP-039] at D1 (assumed by North Yorkshire Council (NYC) on 1 April 2023). The LIR stated that local planning policies support the Proposed Development in principle and covered the following issues:

- Planning Policy.
- Principle of Development.
- Noise and Vibration.
- Landscape.
- Ecology and Biodiversity.
- Built Heritage.
- Archaeology.
- Highways and Transportation.
- Public Rights of Way.
- Air Quality and Emissions.
- Hydrology and Flood Risk.

- Mineral and Waste Planning.
- Ground Conditions.
- Adequacy of the Development Consent Order (DCO).

2.6.2. The issues raised are considered in further detail in relation to relevant planning issues in Chapter 3 of this report. Table A6 in Appendix A sets out the individual local policies that are relevant to the Proposed Development.

2.7. ENVIRONMENTAL IMPACT ASSESSMENT

2.7.1. The Applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) of its intention to provide an Environmental Statement (ES). Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the ExA determined that the Proposed Development was EIA development.

2.7.2. On 18 January 2021, the Applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion) [APP-115].

2.7.3. On 26 February 2021 the Planning Inspectorate provided a Scoping Opinion [APP-116].

2.7.4. Overall, the ExA considers that the ES, as supplemented with additional information during the Examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.

2.7.5. The ExA considered that changes to the documentation, comprising the ES during the Examination, together with the change requests (see section 1.5 of this report) did not individually or cumulatively undermine the scope and assessment of the ES. Chapter 3 of this report will summarise the environmental effects under each topic section.

2.8. HABITATS REGULATIONS ASSESSMENT

2.8.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

2.8.2. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects (LSE) on European sites and hence is subject to a Habitats Regulations Assessment (HRA). As is the convention and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Appendix C of this report, a summary of which can be found in Chapter 4.

2.9. TRANSBOUNDARY EFFECTS

2.9.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS on 26 February 2021 following the Applicant's request for an EIA Scoping Opinion. No significant effects were identified on the environment in a European Economic Area (EEA) member state.

2.9.2. A second screening was published on 30 May 2023. Again, no EEA states were identified as being likely to have significant effects on their environment in terms of extent, magnitude, probability, duration, frequency or reversibility.

2.9.3. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. Biofuelwatch expressed concerns in [REP2-073], [REP6-034] and [REP8-034] that there was potential for impacts on other countries arising from pollutant dispersion from the Proposed Development. The Applicant responded to this within [REP4-020], [REP7-017] and [REP9-023]. The ExA is satisfied, on the basis of the information provided by the Applicant and Natural England's agreement that the correct sites had been considered in the HRA [REP2-085], that the Proposed Development would not have an LSE on European sites in any EEA States.

3. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This chapter sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. The chapter is structured to firstly examine the matters of principle, including need and alternatives, followed by 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.

3.1.2. In each section, the ExA will identify the policy background, followed by a summary of the Application as made, then report on the main issues for each topic. Findings and conclusions will then be drawn for each topic and whether the effects carry little weight, moderate weight, great weight, or very great weight for/ against the making of the Development Consent Order (DCO).

INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAPI)

3.1.3. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, the ExA made an IAPI arising from the Application in advance of the Preliminary Meeting (PM). This formed an initial assessment of the issues based on the Application documents and submitted Relevant Representations (RR). The list of issues relates to all phases of the Proposed Development. The IAPI was raised at the PM and no other key topics were identified during the Examination. The IAPI can be found in Annex C of the Rule 6 letter [PD-008].

3.1.4. The ExA considers that the issues raised by Interested Parties (IP) were broadly in line with the IAPI and were subject to written and oral questioning during the Examination. The ExA has nevertheless had regard to all submissions from IPs and has reported on these, if required, within each topic below.

3.2. THE PRINCIPLE OF THE DEVELOPMENT

INTRODUCTION

3.2.1. For the reasons set out in Chapter 2 above, the ExA considers that the National Policy Statements (NPS) form the primary policy context for the Examination, specifically NPS EN-1 and NPS EN-3. In addition, draft NPS (dNPS) EN-1 and dNPS EN-3 are also important and relevant considerations in deciding whether the Proposed Development is acceptable in principle.

3.2.2. The ExA comments on the principle of the Proposed Development as bioenergy with carbon capture and storage (BECCS) and carbon emissions as separate matters. Decarbonisation as a policy objective is discussed here and carbon emissions as an impact of the Proposed Development is discussed below in section 3.5, 'Greenhouse Gas Emissions'.

POLICY BACKGROUND

Need

NPS EN-1

3.2.3. NPS EN-1 sets out the case for both the need and urgency for new energy infrastructure to be consented and built as soon as possible. It acknowledges that energy is vital to economic prosperity and social well-being and sets out how the energy sector can help deliver the Government's climate change objectives by setting out the need for new low carbon energy infrastructure to contribute to climate change mitigation.

3.2.4. NPS EN-1 makes it clear that applications for development consent for the types of infrastructure covered should be assessed on the presumption that there is a need for those types of infrastructure and that substantial weight should be given to this need (paragraph 3.2.6).

3.2.5. It emphasises the need for new nationally significant energy infrastructure projects to achieve energy security as well as dramatically reducing greenhouse gas (GHG) emissions in the UK. It goes on to state that the UK is choosing to largely decarbonise its power sector by adopting low carbon sources quickly and the Government would like the industry to bring forward many new low carbon developments to meet the twin challenge of energy security and climate change as we move towards 2050.

3.2.6. The Government supports the use of biomass as a significant source of renewable and low carbon energy (paragraph 3.4.3). The Government also supports Carbon Capture and Storage (CCS) which it states has the potential to reduce carbon emissions by up to 90% (paragraph 3.6.4).

3.2.7. Given the level and urgency of the identified need, NPS EN-1 advises that applications for development consent should start with a presumption in favour of granting consent unless any more specific and relevant policies set out in the NPS clearly indicate that consent should be refused.

NPS EN-3

3.2.8. Further detail on nationally significant renewable energy infrastructure is set out in NPS EN-3. It highlights that the combustion of biomass for electricity generation is likely to play an increasingly important role in meeting the UK's renewable energy targets (paragraph 2.5.1).

3.2.9. It identifies the need to prioritise biomass use to applications where it can deliver GHG emission reductions in hard to decarbonise sectors to comply with the Government's Net Zero and wider environmental goals and that one of these priorities is the use of biomass to deliver negative emissions through BECCS. It states that The Biomass Strategy (TBS) will establish the role which BECCS could play in reducing carbon emissions across the economy and sets out how the technology could be deployed.

dNPS EN-1

3.2.10. The general principles set out in NPS EN-1 are relevant to all energy infrastructure and are carried forward into dNPS EN-1. It states the Government's objectives are to ensure the supply of energy always remains secure, reliable, affordable and consistent with meeting the target of cutting GHG emissions. It goes on to say that meeting these objectives necessitates the infrastructure needed to capture, transport and store carbon dioxide.

3.2.11. It recognises that there is an urgent need for new carbon capture infrastructure to support the transition to a Net Zero economy and quotes the Committee on Climate

Change (CCC) as stating that CCS is a necessity not an option and the International Energy Agency as further reinforcing the need for CCS in the clean energy transition.

3.2.12. The dNPS EN-1 confirms at paragraph 3.5.8 that alternatives to new CCS infrastructure for delivering Net Zero by 2050 are *"limited"*, with the paragraph also confirming that: "*CCS therefore has an essential role to play, either on its own or in combination with measures such as electrification and fuel switching*."

dNPS EN-3

3.2.13. The dNPS EN-3 reiterates that the combustion of biomass for electricity generation plays an important role in meeting the UK's energy needs and supports the decarbonisation of the sector and has a potentially significant role in supporting the delivery towards the UK's Net Zero target when combined with CCS.

3.2.14. It identifies the need to prioritise biomass use to applications where it can deliver GHG emission reductions in hard to decarbonise sectors to comply with the Government's Net Zero and wider environmental goals and that one of these priorities is the use of biomass to deliver negative emissions through BECCS. It states that TBS will establish the role which BECCS could play in reducing carbon emissions across the economy and sets out how the technology could be deployed.

Climate Change Act 2008

3.2.15. Through the Climate Change Act 2008 (CCA2008), the UK set a legally binding emissions reduction target of 34% of the 1990 levels of GHG emissions by 2020 and at least 80% of the '1990 baseline'.

Climate Change Act 2008 (2050 Target Amendment) Order

3.2.16. The CCA2008 (2050 Target Amendment) Order 2019 introduced a revised target of achieving net zero GHG emissions by 2050. This legislated for a 100% reduction in GHG emissions instead of the 80% reduction that had originally been stated in the CCA2008.

Net Zero: The UK's Contribution to Stopping Global Warming Emissions

3.2.17. In May 2019, the CCC published a report 'Net Zero: The UK's contribution to stopping global warming' (CCC, 2019).

3.2.18. The executive summary states that industry must be largely decarbonised and where there are remaining emissions *"…these must be fully offset by removing CO_2 from the atmosphere and permanently sequestering it, for example by using sustainable bioenergy in combination with CCS".* It also states that in order to achieve UK Net Zero by 2050, CCS is a necessity not an option.

3.2.19. The report identifies that progress regarding CCS has been slow and while there are 43 large-scale Carbon Capture Usage and Storage (CCUS) projects operating or under development around the world, none are in the UK.

Ten Point Plan for a Green Industrial Revolution

3.2.20. In November 2020, the Government published 'The Ten Point Plan for a Green Industrial Revolution' (HM Government, 2020). The plan seeks to ensure that the UK's recovery from the coronavirus pandemic *"will be green, generate jobs and*

bolster the economy, whilst continuing to drive down emissions both now and in the future" (p.30).

3.2.21. The plan highlights the need for CCUS in delivering a green economy, stating the Government's commitment to establishing CCUS at two industrial clusters by the mid-2020s and aims to establish CCUS at four industrial clusters by 2030.

3.2.22. Point 8 of the plan is 'Investing in Carbon Capture, Usage and Storage', stating: *"Our ambition is to capture 10Mt of carbon dioxide a year by 2030, the equivalent of four million cars' worth of annual emissions. We will invest up to £1 billion to support the establishment of CCUS in four industrial clusters, creating 'Super Places' in areas such as the North East, the Humber, North West, Scotland and Wales."*

Energy White Paper: Powering our Net Zero Future

3.2.23. In December 2020, the Government published its 'Energy White Paper: Powering our Net Zero Future' (HM Government, 2020), which builds on the Ten Point Plan and sets out the Government's policies and commitments which seek to achieve Net Zero and tackle climate change.

3.2.24. The white paper states (p.43) *"A low-cost, net zero consistent system is likely to be composed predominantly of wind and solar. But ensuring the system is also reliable, means intermittent renewables need to be complemented by technologies which provide power, or reduce demand, when the wind is not blowing, or the sun does not shine."*

3.2.25. The White Paper confirms the Government's support for CCUS and, like the Ten Point Plan, outlines the Government's ambition to capture 10 megatonnes (Mt) of CO_2 a year by 2030 and invest up to £1 billion to support the establishment of CCUS in four industrial clusters in the UK. In relation to BECCS specifically, it states (p.53) *"BECCS plants could deliver negative emissions, by capturing the carbon released during biomass combustion, gasification and other processes, provided supply chain emissions are sufficiently low."*

Industrial Decarbonisation Strategy (HM Government, 2021)

3.2.26. In March 2021, the Government published the Industrial Decarbonisation Strategy which considers how the full range of the UK's industrial sectors can reflect the Net Zero target. The indicative roadmap to Net Zero UK industry includes carbon capture clusters in the next decade.

Net Zero Strategy: Build Back Greener

3.2.27. The Net Zero Strategy expands on key commitments in the energy white paper. The executive summary states the proposals to "*fully decarbonise our power system by 2035"* and deliver *"four carbon capture, usage and storage (CCUS) clusters, capturing 20-30 MtCO2 across the economy, including 6 MtCO2 of industrial emissions, per year by 2030."*

3.2.28. The strategy states (p.184) that greenhouse gas removals (GGR) (of which BECCS is identified as an engineering-based approach) are essential to compensate for the residual emissions arising from the most difficult activities to reduce or eliminate from within polluting sectors.

3.2.29. Furthermore, in relation to BECCS, the strategy states (p.189) *"By 2030 we envisage significant deployment of mature BECCS technologies and commercial*

scale deployment of DACCS. BECCS technologies will include retrofit applications in the power and industry sectors. BECCS applications in the power sector could be deployed by the late 2020s".

3.2.30. The Net Zero Strategy was found to be unlawful by the High Court in its judgement on the case of case of R. (on the application of Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 1841 (Admin). Whilst the Net Zero Strategy was not quashed, a report that addresses the concerns identified within the strategy was required to be prepared and submitted, with compliance required by 31 March 2023 (see paragraph 3.2.35 below).

British Energy Security Strategy (2022)

3.2.31. In April 2022, the Government published the British Energy Security Strategy (BESS) in response to the rising global energy costs, which has ultimately resulted in an increase in the cost of living in the UK. The policy paper sets out how the UK Government is "*going to bring clean, affordable, secure power to the people for generations to come"* and *"build a British energy system that is much more self-sufficient."*

3.2.32. It states that the Government will ensure a new lease of life for the North Sea in low-carbon technologies including delivering on the £1 billion commitment to four CCUS clusters.

Powering up Britain (Department for Energy Security and Net Zero (DESNZ), 2023)

3.2.33. In March 2023, the Government published the "Powering Up Britain" policy paper. It sets out the Government's plans to enhance energy security, seize the economic opportunities of the energy transition, and deliver on the Government's Net Zero commitments.

3.2.34. The 'Powering Up Britain – Energy Security Plan' (ESP) sets out the steps by which the Government will enhance the country's energy security following the publication of the BESS in April 2022. The ESP confirms that the use of biomass combined with CCS "*can deliver negative emissions, which is key to delivering net zero*". The ESP acknowledges the role that BECCS can play in contributing to Net Zero goals and confirms the Government's intention of driving the bioenergy agenda forward by publishing TBS, and incentivising deployment of power BECCS through development of a bespoke business model.

3.2.35. The Net Zero Growth Plan (NZGP) outlines how the UK will achieve its climate targets following the High Court's conclusion that the Government's original Net Zero plan lacked the sufficient level of detail on how the UK would reduce its emissions. The NZGP considers CCUS as an emerging industry that is central to decarbonising the UK's economy. It summarises the Government's policies and incentives that aim to facilitate rapid deployment of CCUS projects across the UK, including different funding mechanisms and business models to drive investment into key Net Zero technologies, including CCUS. The NZGP confirms that TBS will outline the role that BECCS can play in reducing carbon emissions across the economy and set out how the technology could be deployed.

CCUS Net Zero Investment Roadmap, 2023

3.2.36. In April 2023, the Government published the CCUS Net Zero investment roadmap (the Roadmap), which outlines Government and industry commitments to the deployment of CCUS in the UK and sets out the approach to delivering four CCUS

low carbon industrial clusters, capturing 20-30 $MtCO_2$ per year across the economy by 2030 to help meet the UK's 2050 Net Zero target.

Alternatives

3.2.37. NPS EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, applicants are required to include in their Environmental Statement (ES) information about the main alternatives they have studied and include an indication of the main reasons for the choice made, taking into account the environmental, social and economic effects including technical and commercial feasibility.

3.2.38. The dNPS EN-1 indicates that the consideration of alternatives should be carried out in a proportionate manner, and that the Secretary of State (SoS) should only consider those alternatives that can meet the objective need for the proposed development and have a realistic prospect of delivering the same capacity in the same timescale.

THE APPLICATION

Need

3.2.39. The Applicant's Needs and Benefits Statement set out its case for the need for the Proposed Development [APP-033]. It sets out that national, international and local policy establishes a clear identified need for BECCS technology and the Proposed Development in order to contribute to satisfying the overall need for CCUS. An analysis of the primary policy framework was also submitted in Chapter 4 of the Planning Statement [APP-032], an addendum to which was submitted at Deadline (D) 2 [REP2-019]. An update was provided at D5 following Government publications on energy matters in March 2023 [REP5-029].

3.2.40. The Applicant points out that experts including the CCC agree that negative emissions technology, including BECCS is essential to fight the climate crisis and meet Net Zero targets by 2050. The Applicant sets out that BECCS at Drax could ensure the generation of renewable power to millions of UK homes and businesses whilst capturing 8 Mt of carbon from the atmosphere each year. The Applicant considers that it could deliver over 15% of the negative emissions the CCC says the UK requires from BECCS to achieve Net Zero.

3.2.41. In summary, the Applicant considers that there is a clear national policy support for major energy infrastructure and CCUS and reliable renewable energy supplies can help us reach Net Zero. This culminates in an overarching need for the use of BECCS technology and the Proposed Development and that the Overarching NPS EN-1 recognises the contribution CCUS can play in meeting emissions targets.

Alternatives

3.2.42. ES Chapter 3 sets out the Applicant's Consideration of Alternatives [APP-039]. It sets out the main reasons for the options selected for the Proposed Development and the reasons for not opting to select the other alternatives considered, including the 'do nothing' scenario.

3.2.43. In summary, given the nature and requirements of the Proposed Development ie retrofitting post-combustion carbon capture technology, alternative power station sites were not considered a viable option. In terms of layout, the northern solution for the location of the carbon capture plants within the power station site was

selected based on minimising disruption to existing processes and the re-use of existing infrastructure, the minimisation of pipe runs and the close proximity of the main flue gas stack.

3.2.44. A number of alternative technologies were considered and selected on the basis of feasibility studies, the reliability and efficiencies of certain technologies and their reduced environmental impacts.

3.2.45. In 2018, the Applicant ran a pilot facility at Drax demonstrating post-combustion capture from biomass feedstock using a non-amine solvent. However, non-amine solvent technology is not yet sufficiently technologically advanced nor has been demonstrated at scale to be a viable technology option which could be utilised for the Proposed Development. In 2020, the Applicant's preferred supplier installed and operated an amine solvent based post-combustion carbon capture pilot facility at Drax Power Station.

3.2.46. Transport of Abnormal Indivisible Loads (AIL) and construction materials by road from the Port of Goole was selected instead of the Drax Jetty which would have resulted in higher costs and greater environmental impacts, including, but not limited to, impacts on wintering birds and otters, higher levels of noise and vibration and changes to landscape character.

3.2.47. Due to a lack of space on the Drax site beyond those areas already proposed, no viable alternatives were identified for construction laydown areas. The East Construction Laydown Area (ECLA) was selected due to its proximity and was refined to remove areas which would not be required for construction laydown purposes.

ISSUES ARISING DURING THE EXAMINATION

Policy

3.2.48. There were a number of submissions made requesting a delay to the Examination because IPs considered that the existing policy framework was outdated and incomplete (see for example [PDA-004], [PDA-011] and [PDA-009]). Reference was made to NPS EN-1 and NPS EN-3, TBS and the Net Zero Strategy. On this basis, IPs requested that the Examination should be delayed until it could be assessed against the most up to date policy.

3.2.49. The ExA did not consider that there was any justification for delaying the Examination on this basis. The Application was examined, and the recommendation is made on the basis of adopted policy at the close of the Examination. The energy NPSs set out national energy policy and provide the foundation for decision-making for Nationally Significant Infrastructure Projects (NSIP) subject to an application for development consent. Integral to the energy NPSs is a clear need case for the infrastructure and assessment principles, against which this application has been examined. The Government has also made it clear that for any application accepted for Examination before designation of the updated energy NPSs, the original suite of energy NPSs should have effect.

3.2.50. During the course of the Examination, the Government published Powering up Britain, which included both the ESP and the Net Zero Delivery Plan. The ExA invited all parties to make submissions on this suite of documents in the Examining Authority's Second Written Questions (ExQ2) (question PPL.2.2) [PD-018] and they are considered important and relevant.

3.2.51. TBS was published on 10 August 2023, following the close of the Examination. TBS sets out the role sustainable biomass can play in reaching Net Zero, what the Government is doing to enable that objective, and whether further action is needed. Chapter 6 of the Strategy relates to BECCS. Alongside TBS the Government published the report 'Ability of bioenergy with carbon capture and storage (BECCS) to generate negative emissions'. This report, by the Chief Scientific Advisor's Task and Finish Group, focuses on the carbon dynamics of BECCS, including carbon neutrality of feedstock, with the aim of establishing an evidence-based position on the validity of BECCS as a GGR option.

3.2.52. As both documents were published following the close of the Examination and no parties were given the opportunity to make comments, the ExA has not taken either document into consideration in reaching its findings and conclusions. Those findings and conclusions are based solely on the evidence presented during the Examination. A number of IPs requested the right to make submissions on potential implications for the Proposed Development once TBS was published, for example [REP10-035]. On this basis, the ExA recommends that the SoS may wish to consider if the publication of either document might have implications on the findings and conclusions in this report and whether parties should be consulted on this matter.

Principle of biomass/ subsidies

3.2.53. Throughout the Examination, a considerable number of submissions were made regarding the principle and sustainability of energy from biomass including the legitimacy of classifying energy from biomass as renewable, the sustainability of biomass, carbon neutrality of biomass and the allocation of subsidies to such developments (for examples see [RR-018, REP2-080, REP10-026, REP10-028, and REP10-033]).

3.2.54. It was put to the ExA that the Examination of the Proposed Development could not be taken in isolation of the burning of biomass at Drax. This was because the biomass boilers were nearing the end of their design life and the continuation of the biomass station would depend on future subsidy allocation which in turn rested on the technological case for BECCS as a whole (for example [REP2-080]). Therefore, should the Proposed Development be consented, it was tantamount to granting consent for the continuation of the existing biomass station.

3.2.55. The application before the ExA was for the installation of post-combustion carbon capture technology on up to two of the existing biomass boilers. The purpose of the Examination was to examine the Proposed Development only. The biomass generating station already benefits from consent and could continue to generate energy from biomass under that consent regardless of the outcome of this Application. Any incentives the existing power station currently receives in terms of renewable energy support, the principle of the biomass generating station or the continuation of such at the site are not matters the ExA considered relevant in the context of the application before it.

3.2.56. The current or future subsidy regime and how or why those subsidies are granted are matters outside the scope of the Examination and the ExA has not commented on such. Whilst acknowledging that the link between carbon neutrality and the allocation of subsidies may be a matter under review, there was no substantive evidence before the ExA that indicated that the plant would become economically unviable if the DCO for CCS was not granted or if financial support was withdrawn.

3.2.57. Whilst acknowledging the strength of feeling and considerable efforts of IPs to gather and submit evidence into the Examination in these regards, for the above reasons, the ExA did not find it necessary to advance these matters into the Examination and they are therefore not considered further in this report.

The CCS chain

3.2.58. Submissions were also made that the Proposed Development should not be consented without the transportation pipeline and storage in place, for example [REP10-029]. The Proposed Development forms part of Zero Carbon Humber (ZCH). Once captured, the carbon would be transported by a pipeline forming part of the Humber Low Carbon Pipelines Project (HLCP). This is subject to a separate DCO application which is yet to be made. Similarly, the Northern Endurance Partnership (NEP) would develop the offshore pipeline and storage. Both projects are outside of the control of the Applicant.

3.2.59. The ExA does not consider there is any reason why a decision cannot be taken on the Proposed Development prior to the consent or construction of the pipeline or storage. If a different approach were to be taken, then all decisions on all the projects which form part of the wider ZCH would need to be delayed until consent was in place for the pipelines, and precedent exists in the Keadby 3 Carbon Capture and Storage Project made DCO which would also connect to the HLCP.

3.2.60. Furthermore, paragraph 4.8.20 of dNPS EN-1 acknowledges that due to the approach of deploying CCS in clusters in the UK with shared transport and storage infrastructure, it is likely that development consent applications for power CCS projects may not include an application for consent for the full CCS chain (including the onward transportation and storage of CO_2).

Energy penalty

3.2.61. A number of concerns were raised that the net reduction in efficiency of the biomass boilers due to the carbon capture would decrease electricity generation that could potentially cause more fossil fuels to be burned in other power stations. Thus, the Proposed Development would not be the sustainable development defined in NPS EN-1 (see for example [RR-008, RR-101 and AS-043]).

3.2.62. The ExA posed questions to the Applicant on this matter at ISH1. The Applicant clarified that the output from Units 1 and 2 would remain the same and that it was only due to BECCS having its own ‘parasitic’ energy requirement that the exported value to the National Grid would decrease. The Applicant also confirmed that there would be compression but not contribution of power to the transportation of the CO_2 through the transportation pipeline.

3.2.63. There was no evidence before the ExA that the likely scenario of the shortfall in energy would lead to generation from fossil fuel elsewhere. The ExA agrees with the Applicant that the direction of policy in reaching Net Zero includes the deployment of BECCS and it is accepted in NPS EN-1 that CCS has the potential to reduce carbon emissions despite requiring energy in its own right (paragraph 3.6.4).

Use of emerging technology

3.2.64. A number of concerns were raised by IPs regarding the ability of the Proposed Development to achieve the high carbon capture rate claimed given the use of emerging technology and the lack of evidence supporting the claim. For example, Carolyn Whitehead in her RR [RR-013] raised concern that the technology applied

to flue gases from wood burning has so far been tested only in experimental small scale trials; and that there is no full-scale CCS facility operating on any wood burning power station anywhere in the world. At ISH1 [EV-006, EV-008 and EV-010], James Hewitt expressed concern that woody biomass has different characteristics in post-combustion and that the Proposed Development would be the first project of this nature and Biofuelwatch submitted that the technology was not yet working at the scale to which the Proposed Development requires.

3.2.65. At D6, Biofuelwatch submitted that based on the slow trajectory of the technology, it was unlikely that the Proposed Development would come on line in time to make a contribution to the UK achieving Net Zero by 2050 [REP6-040]. It provided a paper regarding the closure of a CCS plant in Texas to support its claims [REP6-039].

3.2.66. The technology and efficiency rate of CCS was a matter raised by the ExA at ISH1. The Applicant responded that the 'new' element of the Proposed Development would be the use of the flue gas stream, rather than the CCS technology itself. The Applicant also stated that biomass flue gas has several benefits in relation to carbon capture, with the purpose of its pilot programme being to prove that flue gas would work as a capture mechanism and that through this pilot programme, the Applicant was the first company in the world to demonstrate carbon capture from biomass. It went on to say that following its trial, the next logical step was to apply for the scheme on a commercial scale.

3.2.67. In its response to RRs and Additional Submissions (AS) [PDA-003], the Applicant noted that the CCS process does not differentiate between the fuel type, that the process is not new, has been developed over the past 45 years and the solvent technology that drives the process has been evolving over that time frame, and the Applicant would be using the very latest version of that solvent technology.

3.2.68. At ISH1, the ExA asked the Applicant if other examples that the Applicant had referred to using similar technology had achieved the 95% capture rate. Whilst the Applicant could not comment on this, it noted that the underpinning research undertaken by the Environment Agency (EA) for its Best Available Techniques (BAT) post-combustion carbon capture guidance was based on further research which confirmed that best available technology would be able to meet the 95% requirement.

3.2.69. The Applicant also noted at ISH1 that a variation to the Environmental Permit (EP) is required for the Proposed Development, and it was always of the view that the capture efficiency would form a critical component of the EP application which was affirmed with the BAT guidance. As this requires that the plant should achieve around 95%, the Applicant needed to be confident that the technology selected could achieve this and the associated scrutiny that would be applied during the assessment and determination of the EP.

3.2.70. The EP and the 95% carbon capture efficiency rate is discussed further in section 3.5, 'Greenhouse Gas Emissions'. However, having regard to the Applicant's evidence and in light of the EA's requirements in the BAT guidance, the ExA is satisfied that the ability of the Proposed Development to achieve a 95% capture efficiency can be regulated through the EP regime.

CONCLUSIONS

3.2.71. The urgent need for energy security at the same time as dramatically reducing GHG emissions is established through the NPSs and is carried forward into the dNPSs

which recognise that there is an urgent need for new carbon capture infrastructure to support the transition to a Net Zero economy. The ExA concludes that the Proposed Development as a CCS project would make a meaningful contribution to meeting this need, would help in the transition to a low carbon system and would generally be in accordance with the designated NPSs.

3.2.72. It is also clear that in the intervening period from the designation of the NPSs that the direction of travel in Government policy is that the deployment of CCS is central to the decarbonisation of the UK economy and in reaching Net Zero by 2050 and that without it, the legally binding target in the CCA2008 is unlikely to be met. As such, the Proposed Development would clearly make an important contribution towards meeting the Net Zero obligation.

3.2.73. The ExA is satisfied that sufficient details of the alternatives, including the 'do nothing' scenario, the approach to site selection, layout and technologies and how these were considered as part of the overall project design, have been provided to meet the requirements contain within NPS EN-1, dNPS EN-1 and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations).

3.2.74. The ExA concludes, notwithstanding the consideration of project-specific issues, the overarching need argument for the Proposed Development is very strong in terms of meeting the urgent need for low carbon energy and this weighs heavily in favour of making the order and carries very great weight in the planning balance.

3.3. AIR QUALITY AND EMISSIONS

INTRODUCTION

3.3.1. This section considers the effects of the Proposed Development in relation to air quality and emissions on human receptors. Matters relating to GHG emissions are separately considered under 'Greenhouse Gas Emissions' in section 3.5 of this report. Matters relating to air quality impacts on ecological receptors are separately considered under 'Biodiversity and Ecology' in section 3.4 of this report. Matters relating to Habitats Regulations Assessment (HRA) and air quality are considered in Appendix C and summarised in Chapter 4 of this of this report.

POLICY BACKGROUND

3.3.2. Sections 4.10 and 5.2 of NPS EN-1 relate to pollution control and air quality matters. Paragraphs of particular note are identified below.

3.3.3. Paragraph 5.2.1 of NPS EN-1 advises that the construction, operation and decommissioning of infrastructure development can *"involve emissions to air which could lead to adverse impacts on health, on protected species and habitats, or on the wider countryside."* Paragraph 5.2.6 states that where a project is likely to have adverse effects on air quality the Applicant should undertake an assessment as part of the ES and paragraph 5.2.7 sets out what should be included in that assessment.

3.3.4. Paragraph 5.2.9 states that air quality considerations should be given substantial weight where a project would lead to a deterioration in air quality in an area or leads to a new area where air quality breaches any national air quality limits. It is also clear that air quality considerations will be important where substantial changes in air quality levels are expected, even if this does not lead to any breaches of national air quality limits.

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

3.3.6. Paragraph 4.10.3 of NPS EN-1 states that the SoS should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. It also states that the SoS should work on the assumption that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced and that the SoS should seek to complement but not duplicate them as part of the DCO process.

3.3.7. Paragraph 4.10.7 states that the SoS should be satisfied, before consenting development, that the relevant pollution control authority is satisfied that potential releases can be adequately regulated, and that the effects of existing sources of pollution are not such that the cumulative effects of pollution will make the development unacceptable.

3.3.8. Paragraph 4.10.8 is clear that the 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.

THE APPLICATION

3.3.9. ES Chapter 6 (Air Quality) [APP-042] identified the likely significant effects (LSE) of the Proposed Development on air quality and its potential impacts on both human and ecological receptors, and designated ecological sites. The supporting figures and appendices are listed in Table A1 in Appendix A of this report.

3.3.10. The assessment identified key pollutants of concern resulting from construction and operation of the Proposed Development and that have potentially elevated background concentrations from other sources. These are particulate matter (PM_{10} and $PM_{2.5}$), nitrogen oxides (NO_x), ammonia (NH_3), hydrogen chloride (HCl), sulphur dioxide (SO_2), amine and nitrosamine compounds.

Baseline

3.3.11. The Applicant explained in ES Chapter 6 [APP-042] that the baseline air quality within the study area is mainly influenced by emissions from the existing Drax Power Station and other power plants, emissions from traffic on local roads, including the M62 motorway, and agricultural practices.

Construction and decommissioning phases

3.3.12. Appendix 6.2 of the ES [APP-126] sets out the main impacts relating to dust generated during the construction phase. The assessment assumed that dust generating activity could occur anywhere within the Order Limits and that the worst-case construction programme option would be used whereby the carbon capture plant for Unit 1 and Unit 2 as well as the common plant would be constructed at the same time.

3.3.13. Local air quality impacts associated with exhaust emissions from construction traffic were scoped out of the assessment as the short-term change in vehicle emissions attributed to construction traffic would have insignificant local air quality effects.

3.3.14. With respect to dust soiling and human health, the assessment identified the human receptors listed below within 350m of the Order Limits:

- Drax Abbey Farm.
- Foreman's Cottage.
- Drax Sports and Social Club.
- East Yorkshire Caravan Salvage.
- Old Lodge.
- Residential receptors adjacent to Adamson Court and Hales Lane.

3.3.15. The sensitivity of the above receptors was considered 'medium' for dust soiling effects and 'low' for human health (PM_{10}) effects for all relevant construction activities.

3.3.16. The assessment identified there would be potential for temporary, direct moderate adverse effects during the construction phase. Due to the location of residential properties, these effects would most likely occur when earthworks and construction activities are being undertaken in the eastern, northern, and southern areas of the site. However, the assessment concluded that the residual effects of dust and PM_{10} would be negligible (not significant) following the application of mitigation measures.

3.3.17. The Applicant's proposed mitigation measures are set out in the Register of Environmental Actions and Commitments (REAC) [REP9-019], to be secured in the recommended Development Consent Order (rDCO) by the following plans:

- Construction Environmental Management Plan (CEMP) in Requirement (R) 14.
- Construction Traffic Management Plan (CTMP) [REP2-028] in R15.
- Construction Worker Travel Plan (CWTP) [REP2-030] in R16.
- Decommissioning Environmental Management Plan (DEMP) in R18.
- Decommissioning Traffic Management Plan (DTMP) in R19.

Operational phase

3.3.18. The assessment of air quality impacts in the operational phase is based on the following scenarios:

- Baseline – operation of four existing biomass units operating on a mid-merit operating regime (4,000 hours per year).
- 'With proposed scheme'– operation of two biomass units with CCS operating continuously (8,760 hours per year) and two biomass units without CCS operating on a mid-merit operating regime.
- 'With proposed scheme and other projects (cumulative impacts)' – the 'with proposed scheme' scenario and emissions related to other relevant projects.

3.3.19. In addition to the above scenarios, the Applicant undertook further sensitivity testing for the scenarios above but with all four biomass units operating continuously for 8,760 hours per year representing a worst-case emissions profile for the baseline and the 'with proposed scheme' scenario.

3.3.20. Appendix 6.3 of the ES [APP-127] provided detailed information on the atmospheric dispersion modelling and the amine chemistry modelling used in the assessment.

The pollutants assessed comprise NO_x, SO_2, NH_3, PM_{10}, $PM_{2.5}$ and amine and nitrosamine compounds.

3.3.21. The specified reactivity data for the proprietary amine and nitrosamine compounds was commercially confidential, so additional model sensitivity testing was undertaken by the Applicant based on applying amine reaction rate coefficients equivalent to proxy amine and nitrosamine compounds, for which published data in the public domain is available. The use of Monoethanolamine (MEA) and Nitrosodimethylamine (NDMA) as proxy compounds enabled direct comparison with the EA's Environmental Assessment Levels (EAL).

3.3.22. The EA confirmed in response to the Examining Authority's First Written Questions (ExQ1) at D2 [REP2-076] that, whilst the Applicant had made a 'commercial in confidence' request on the naming of the substances in the amine solvent, this does not apply to the EA. The EA does know the make-up of the solvent for the purposes of the EP regime.

3.3.23. Potential for exposure to impacts to health, at human receptors of high sensitivity, exists throughout the 30km by 30km study area. For illustrative purposes, properties representing sensitive human receptors were included in the assessment as shown in Figure 5 below (extract from Figure 6.3 of the ES [APP-070]).

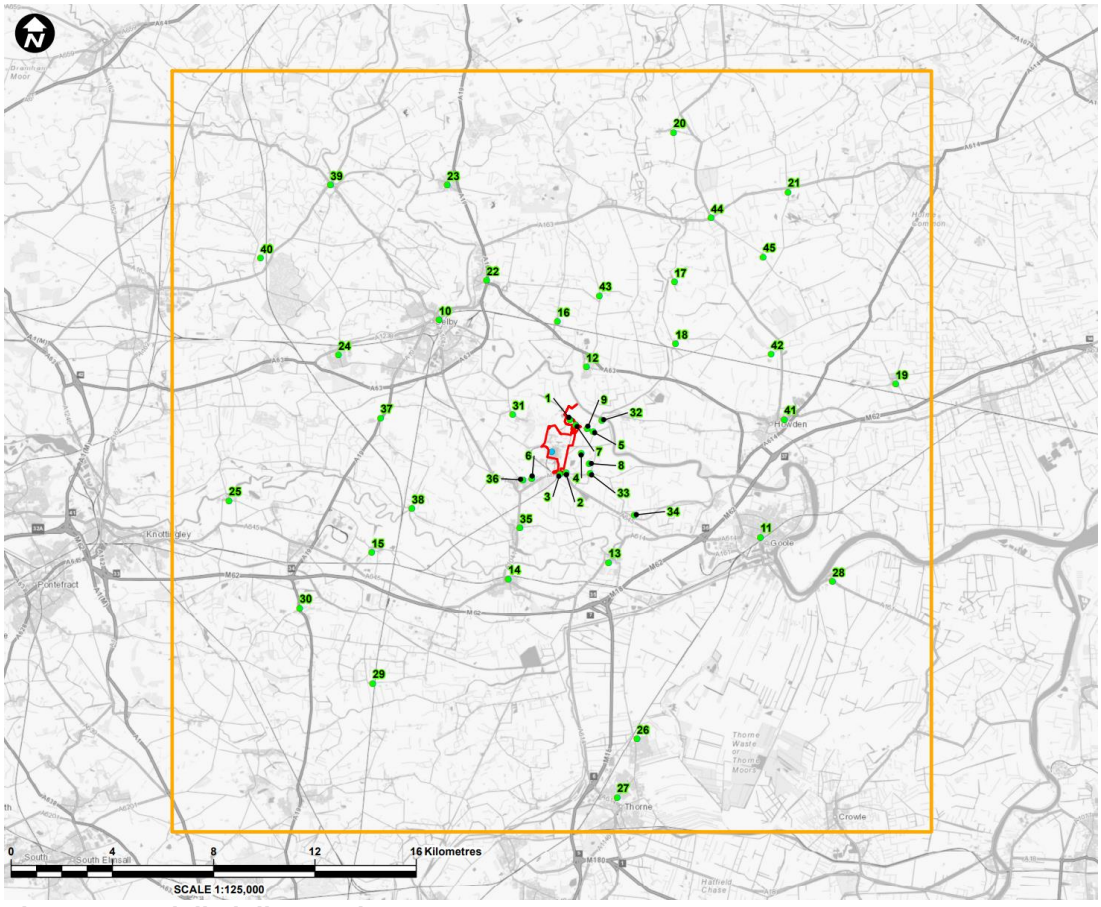


Figure 5: Modelled discrete human receptors

3.3.24. The Applicant's proposed mitigation measures included:

- increasing buoyancy in the flue gases leaving the main stack by increasing the exit temperature of flue gases from the CCS units from 80ºC to 103ºC, thereby improving dispersion of all pollutants; and

- reducing the concentration of SO_2 being emitted by 40%.

3.3.25. In the Applicant's response to ExQ1 (ref. AQ1.8) at D2 [REP2-060] it explained that the reduction in the concentration of SO_2 is achieved by adjusting the pH of the water in the quench column. The Applicant also stated that a further 25% reduction in SO_2 emissions would be included as a permit condition for the annual Emission Limit Value (ELV). Whilst this revision was set out set out in Air Quality Technical Note 2 [REP2-065], the final versions of the REAC and ES were not updated to reflect this. Furthermore, the signed Statement of Common Ground (SoCG) with the EA also refers to a 40% reduction as an agreed parameter in the permit. In light of this, the ExA has considered the air quality impacts on the basis of a 40% reduction.

3.3.26. The Applicant identified that the Proposed Development, both alone and cumulatively with other proposed projects, would not result in significant air quality effects at human receptors even with the sensitivity testing of the worst-case emissions profile and the amine chemistry model sensitivity testing (see paragraph 3.3.21 above).

3.3.27. The Applicant confirmed in ES Chapter 6 [APP-042] that conditions for the operation of the BECCS plant, as part of the Proposed Development, would be the subject of a variation to the existing EP for Drax Power Station. A variation application was duly made in May 2023.

ISSUES CONSIDERED DURING THE EXAMINATION

Construction phase

3.3.28. North Yorkshire Council (NYC) in its Local Impact Report (LIR) [REP-039] raised concern that R14 of the draft Development Consent Order (dDCO) submitted with the Application [APP-013] would allow a number of permitted preliminary works to take place prior to the approval of the CEMP. NYC was concerned that there was uncertainty as to whether or not those permitted preliminary works would result in any harm to air quality related to the location of temporary facilities, the remedial works, construction techniques in the laying of services and the location of the enclosure for site security.

3.3.29. The Applicant responded at D2 [REP2-067] to clarify which activities could be progressed prior to the production of the CEMP. NYC did not respond directly to the Applicant's submission at D2 regarding uncertainty of whether permitted preliminary works would result in harm relating to air quality but in the signed SoCG between the Applicant and NYC [REP10-014], NYC confirmed agreement of the mitigation measures for the construction phase and the Applicant's approach to the relevant dDCO requirements in relation to air quality. The ExA is satisfied that the Applicant provided a reasonable explanation of why no harm would be caused.

Amine emissions

3.3.30. In relation to the operational phase, there were a number of similar RRs related to the impacts of amine and nitrosamine compounds on human health receptors. For example Veronica Clark in her RR [RR-006] raised concerns that amines can form other compounds when they are emitted, including nitrosamines and nitramines which are possible carcinogens. The same concern was also raised by 179 other IPs, all of whom are listed in response ref. 16.1 of the Applicant's response to RRs [PDA-002].

3.3.31. In the Applicant's response to the concerns in RRs [PDA-002], it explained that since there is no 'zero risk' level for carcinogens, the approach taken is to reduce the risk to as low as reasonably practicable by process controls within the CCS plant and emissions would be regulated by the EA under the EP regime. The Applicant stated that the maximum modelled combined concentration of nitrosamines and nitramines would result in an annual mean impact of 0.019ng/m^3.

3.3.32. The Applicant went on to explain that, assuming all nitrosamines and nitramines have the same carcinogenicity as NDMA, the excess lifetime cancer risk resulting from the Proposed Development is less than 1 in 1,000,000 and therefore negligible. Furthermore, it explained that this assumption, along with the assumed operating load of the BECCS units, is a conservative worst case and the actual risks would therefore be lower than 1 in 1,000,000.

3.3.33. The ExA asked the EA at ExQ1 [PD-011] whether further assessment of the impacts to human health was required. The EA explained in its response [REP2-076] that it had begun a programme of works to determine new EALs for a range of amines and degradation products. However, by the close of the Examination, those EALs had not been published. The EA confirmed in the SoCG between the Applicant and the EA [REP8-018] that it will take the new EALs into account during the EP variation determination process.

3.3.34. The UK Health Security Agency (UKHSA) confirmed in its RR [RR-141] that following review of the Application documentation, it was satisfied that the Proposed Development should not result in any significant adverse impact on public health. UKHSA re-iterated its position in response to ExQ1 [REP2-097] that it was satisfied that the Applicant's risk assessment for amine emissions from the Proposed Development was appropriately conservative and in-line with the current knowledge base relating to nitrosamines and nitramines.

3.3.35. Biofuelwatch raised a number of concerns relating to the assessment and impacts of amine emissions throughout the Examination, particularly in its Written Representation (WR) at D2 [REP2-073] and its D6 submission [REP6-034]. Concerns raised by Biofuelwatch in its WR included matters in respect to incorrect figures in the ES assessment, deterioration of air quality including consequences and mitigation, the extent of the area modelled in the assessment, cumulative impacts, modelling prediction uncertainties, Atmospheric Dispersion Modelling Liaison Committee (ADMLC) guidance, Air Dispersion Modelling System (ADMS) uncertainties, technology uncertainties, measurement uncertainties, assumed emissions rates and parameters, amine and nitrosamine EALs, nitrosamine uncertainties, nitrosamine dispersion modelling to protect human health and the environment, lack of environmental monitoring, dioxin emissions, fugitive emissions and the position of UKHSA in its RR [RR-141].

3.3.36. The detail of the above issues and other raised issues can be found in the documents referenced above as well as in Biofuelwatch's submissions at D7 [REP7-018], D8 [REP8-034] and D10 [REP10-026]; and the Applicant's responses at D7 [REP7-017], D8 [REP8-026], D9 [REP9-023] and D10 [REP10-018]. The key matters for consideration by the ExA are summarised below.

3.3.37. Biofuelwatch raised concern that the location with the largest nitrosamine concentrations could be beyond the 15km x 15km study area ([REP2-073] and [REP6-034]) and even that there was potential for impacts at an international scale. The Applicant responded [REP7-017] that the maximum modelled concentration of impacts are captured within the study area between 13 to 15km from the main

stack, and pointed out that the modelling of impacts becomes increasingly conservative with distance from the stack. The Applicant also considered that the potential for impacts on nitrosamine concentrations to cause impacts in other countries is insignificant.

3.3.38. Biofuelwatch raised concerns that there would be a range of meteorological conditions likely to exist under which less-than-maximum impacts could combine from different developments to exceed the maximum ground level impact [REP6-034]. The ExA asked Biofuelwatch to provide evidence to support its view in the Rule 17 request dated 6 June 2023 (R17QA) [PD-018], which it provided a response to at D8 [REP8-033]. The Applicant provides a detailed response in Section 3 of its D9 submission [REP9-023] concluding that there is no realistic prospect for cumulative short-term impacts arising as a result of the combination of amine emissions from Keadby and the Proposed Development that exceed the maximum impacts presented in the ES.

3.3.39. Biofuelwatch raised concern that the modelling in the Applicant's assessment assumed no background levels of amines in the study area from other sources or amines associated with existing biomass combustion at Drax [REP6-034]. The Applicant responded that whilst there is a theoretical potential for the formation of amines in the combustion process, that potential is very low [REP7-017]. In response to R17QA [REP8-029] the Applicant further explained that the assessment of incremental risk is independent of background amine concentrations since cancer risk is considered proportional to exposure and without a threshold value.

3.3.40. Biofuelwatch also raised concern with the uncertainties in the ADMS model [REP2-073]. The Applicant acknowledged in its response to ExQ1 [REP2-060] that uncertainty in model results is inherent to all modelling studies. The Applicant stated in response to Biofuelwatch's WR [REP4-020] that its approach to uncertainty has been to use a well validated dispersion model, ensure that all parameters are set at their worst case, undertake sensitivity modelling including for meteorological conditions and to assess the Proposed Development against the maximum modelled concentrations over all model scenarios. The EA in its SoCG [REP8-018] confirmed that the ADMS Amine Chemistry Module is an accepted way of assessing atmospheric amine chemical reactions.

3.3.41. In its D6 submission [REP6-034], Biofuelwatch submitted that aldehyde and nitrosamine concentrations from the BECCS units would increase at times that the non-BECCS units are not operating.

3.3.42. In response to the ExA's Rule 17 questions [REP8-029] the Applicant explained that the worst-case impacts are captured by the assessment, whether from BECCS alone or BECCS plus non-BECCS operation. Furthermore, the Applicant explained that, in general, the maximum ground level concentrations occur with both BECCS and non-BECCS units operating. Maximum impacts occur with the operation of the BECCS units only since a spatial offset is introduced between the points of maximum impacts.

3.3.43. At the end of the Examination in its closing D10 submission [REP10-026], Biofuelwatch stated: *"The vast majority of our concerns with Drax's application for BECCS at its Selby plant remain"*.

3.3.44. Whilst the ExA has had regard to the representations and submissions from IPs, including Biofuelwatch, on the basis of the information before it and the lack of substantive evidence to the contrary, the ExA is satisfied that the Applicant has

provided sufficient evidence to address concerns raised and has adequately assessed the impacts of the Proposed Development on air quality.

Environmental Permit

3.3.45. The signed SoCG between the Applicant and the EA [REP8-018] confirmed that the EP variation application was 'duly made' on 18 May 2023 and determination of the application is not expected before March 2024.

3.3.46. The ExA asked the EA questions in respect of the following issues relating to air quality and emissions in ExQ1 [PD-011] and R17QA [PD-018]:

- The reasonable worst-case emissions profile in the ES and whether sufficient detail was provided in the ES (ExQ1 AQ.1.3).
- The size of the study area (ExQ1 AQ.1.4 and R17QA.7).
- Potential uncertainties in the modelling of atmospheric degradation of amines (ExQ1 AQ.1.5).
- The Applicant's approach of undertaking no additional project-specific air quality surveys (ExQ1 AQ.1.7).
- Cumulative impacts associated with amine compounds from the Proposed Development and Keadby 3 (ExQ1 AQ.1.9, AQ.1.10 and R17QA.9).
- Monitoring of existing emissions and background levels of amines/ nitrosamines (R17QA.8).

3.3.47. Except for where otherwise stated, the EA was not able to provide comment other than to confirm, in response to the Rule 17 request [REP8-035], that these matters would be considered as part of the EP determination process. At the close of the Examination, there was no update from the EA regarding its position on any matters that come under the EP regime.

3.3.48. In accordance with NPS EN-1, the ExA has assumed that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced. Furthermore, having regard to the signed SoCG with the EA, the ExA does not consider there to be any reasons as to why the EP variation application as applied for, would not be granted, as no specific concerns that could not be acceptably addressed were identified during the Examination.

3.3.49. Notwithstanding the above, the SoS may wish to satisfy themselves that the EA is satisfied that potential releases can be adequately regulated, and that the effects of existing sources of pollution are not such that the cumulative effects of pollution will make the Proposed Development unacceptable by seeking responses to those questions referred to in paragraph 3.3.46 above.

CONCLUSIONS

3.3.50. The ExA has assumed that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced. The ExA is satisfied that the air quality assessment undertaken by the Applicant adequately assesses impacts on air quality.

3.3.51. The ExA is satisfied, subject to the imposition of appropriate requirements in the rDCO, that no significant effects on air quality are likely to arise in the construction or decommissioning phase. The ExA consider residual impacts related to construction and decommissioning activities, including from traffic, can be effectively managed through the mitigation measures secured in R14 (CEMP), R15 (CTMP), R16 (CWTP), R18 (DEMP) and R19 (DTMP) of the rDCO.

3.3.52. The ExA is satisfied that no significant effects on air quality on human receptors are likely to arise in the operational phase of the Proposed Development both alone and cumulatively with other projects. The ExA considers, based on the SoCG with the EA, that there is no reason why it cannot be assumed that the mitigation measures proposed to increase the plume buoyancy and reduce SO_2 emissions can be incorporated into the EP conditions.

3.3.53. The ExA considers that the requirements of NPS EN-1 and dNPS EN-1 will be met. Air quality effects are therefore neutral and do not weigh for or against the making of the order.

3.4. BIODIVERSITY AND ECOLOGY

INTRODUCTION

3.4.1. This section considers the effects of the Proposed Development on biodiversity and the natural environment. It includes effects on protected species and consideration of sites of national, local and regional interest. The effects on European sites in the context of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) are separately considered in Appendix C of this report although there are some linkages with the content of this section.

POLICY BACKGROUND

3.4.2. Paragraph 5.3.3 of NPS EN-1 states that where the development is subject to Environmental Impact Assessment (EIA), the Applicant should ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity.

3.4.3. Paragraph 5.3.7 of NPS EN-1 states that development should aim to avoid significant harm to biodiversity and geological conservation interests. Paragraph 5.3.8 states that the SoS should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.

3.4.4. Paragraph 5.3.4 of NPS EN-1 states that the Applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests. Paragraphs 5.3.15 and 5.3.19 state that the SoS should maximise opportunities for building-in beneficial biodiversity or geological features, using requirements or planning obligations where appropriate.

THE APPLICATION

3.4.5. ES Chapter 8 (Ecology) [APP-044] assessed the effects of construction, operation and decommissioning and their effects on the natural environment. A number of supporting figures and appendices were also submitted including a Preliminary Ecological Appraisal (PEA) [APP-136] and a number of ecological surveys. A full list can be found in Table A1 of Appendix A of this report.

3.4.6. The Applicant also notes that ES Chapter 8, and its associated figures and appendices, should be read as part of the wider ES with particular reference to ES

Chapter 6 (Air Quality) [APP-042], Chapter 11 (Ground Conditions) [APP-047] and Chapter 12 (Water Environment) [APP-048].

3.4.7. The key measures being undertaken to mitigate and compensate the effects of the Proposed Development on habitats and the species they support were contained in an Outline Landscape and Biodiversity Strategy (OLBS) [APP-180] and a REAC [APP-179]. In light of the direction of travel provided for by the Environment Act 2021 and the Government's recent consultation on its implementation, the Applicant also submitted a Biodiversity Net Gain Assessment (BNGA) [APP-196]. These documents were subsequently updated throughout the Examination, the final versions of which can be found at [REP6-017] (OLBS), [REP9-019] (REAC) and [REP6-025] (BNGA).

3.4.8. ES Chapter 8 detailed the analysis and assessment of LSEs predicted to arise from the Proposed Development on the following categories of ecological receptors:

- Statutory designated sites.
- Non-statutory designated sites.
- Habitats of principal importance and species of principal importance.
- Protected species and notable habitats and species.

3.4.9. The PEA was informed by an ecological desk study, a Phase 1 habitat survey and a protected/ notable species assessment for species identified in the survey area. Protected species surveys were carried out in relation to peregrine falcon, bats, otter, water voles, badger, reptile and breeding and wintering birds.

Construction and decommissioning

3.4.10. The ES assumed the effects of decommissioning to be no worse than those of construction. It identified that likely effects from construction and decommissioning include disturbance and clearance of habitats, disturbance to protected species and the risk of water borne pollutants from plant and machinery.

3.4.11. Mitigation would be carried out to reinstate, create or enhance habitats within the Order Limits or Off-site Habitat Provision Area (OSHPA) in line with the OLBS. Measures would also be put in place to manage and mitigate effects on protected and notable species during site clearance, construction and decommissioning activities. These measures are set out in the REAC [APP-179] and would be incorporated into a CEMP and DEMP which are secured by R14 and R18 of the dDCO [APP-013].

3.4.12. Following the implementation of mitigation measures, set out in section 8.10 of ES Chapter 8, the Applicant considered that during construction there would be no significant effects on statutory designated and non-statutory designated sites, otters, reptiles or amphibians.

3.4.13. Effects on habitats, bats and terrestrial invertebrates were considered significant adverse at a Local scale. Effects on breeding and wintering birds were considered significant adverse at the District scale. These effects are anticipated to be short term until compensation measures have reached their target condition. Effects on vascular plants would also be significant adverse at a County scale. This would be short term until successful establishment of the green-winged orchid receptor site which would be translocated from the power station site to a receptor site in the OSHPA. The OSHPA would be secured by means of a s106 Agreement [REP8-025].

Operation

3.4.14. The ES established the likely effects from operation to include emissions from the power station main stack (combustion by-products) when the operating scenario for Units 1 and 4 of the power station is taken into account with BECCS installed and the end of the existing subsidy regime; and the risk of accidental release of chemicals associated with the CCS process entering local watercourses (Carr Dyke and the River Ouse).

3.4.15. Emissions of treated flue gas to air would be relevant in terms of potential effects on the concentration and deposition rates of NH_3, nitrogen and acid deposition on designated sites. Mitigation to address these effects included adjustment of emissions from the main stack to increase the temperature of gases exiting the flue, thereby improving dispersion of pollutants; and adjustment to the pH of the water in the quench column, thereby decreasing the concentration of SO_2 contained in the exhaust gasses.

3.4.16. A Surface Water Drainage Strategy (SWDS) would be delivered to manage the risk of incidental pollution releases [APP-162] (application version) and [REP2-043] (final version). This would be secured by R10 of the DCO. This includes measures such as drip trays, and bunding to capture any accidental releases from chemical stores. On-site water treatment facilities would be installed, and facilities will be included in the Proposed Development for storage, on-site treatment, and, where necessary, off-site treatment of waste chemicals.

3.4.17. Following the implementation of mitigation measures identified in section 8.10 of ES Chapter 8, the Applicant anticipated that there would be no significant adverse effects during operation on statutory designated and non-statutory designated sites, habitats, otter, vascular plants and fish. With the implementation of mitigation measures, including the Draft Lighting Strategy [APP-184] and once reinstated habitat and planting have matured, a significant beneficial effect was predicted on bats, breeding and wintering birds, terrestrial invertebrates and amphibians.

ISSUES ARISING IN THE EXAMINATION

3.4.18. NYC confirmed in its LIR that it considered the surveys and assessments which had been completed were undertaken using appropriate methods. NYC deferred to the expertise of Natural England (NE) on the impact of the Proposed Development on statutory designated sites. With the exception of Biodiversity Net Gain (BNG), the council did not raise any concerns in relation to biodiversity and ecology and all matters are shown as agreed, including in respect of BNG in the signed SoCG submitted at D10 [REP10-014].

3.4.19. NE provided regular updates to its RR and WR throughout the Examination [AS-011, REP2-085, REP4-041, REP7-019 and REP8-038]. Part II of these submissions set out NE's position on key issues where it had changed in response to additional documents submitted or where it provided more detailed advice.

3.4.20. A number of RRs raised similar general concerns that the Proposed Development would lead to the degradation and destruction of internationally, nationally and locally important habitats where ecological reports found rare and protected species, for example [RR-258, RR-274, and RR-241].

Statutory Designated Sites

3.4.21. The impacts of the Proposed Development on internationally designated sites are considered in detail in Appendix C and summarised in Chapter 4 of this report. Therefore, this section focuses primarily on nationally designated and non-statutory designated sites although there is a strong degree of overlap given the internationally protected sites are underpinned by the Site of Special Scientific Interest (SSSI) designations. Figures 6 and 7 below depict the internationally and nationally designated sites in relation to the site location (extracts from [APP-092]).

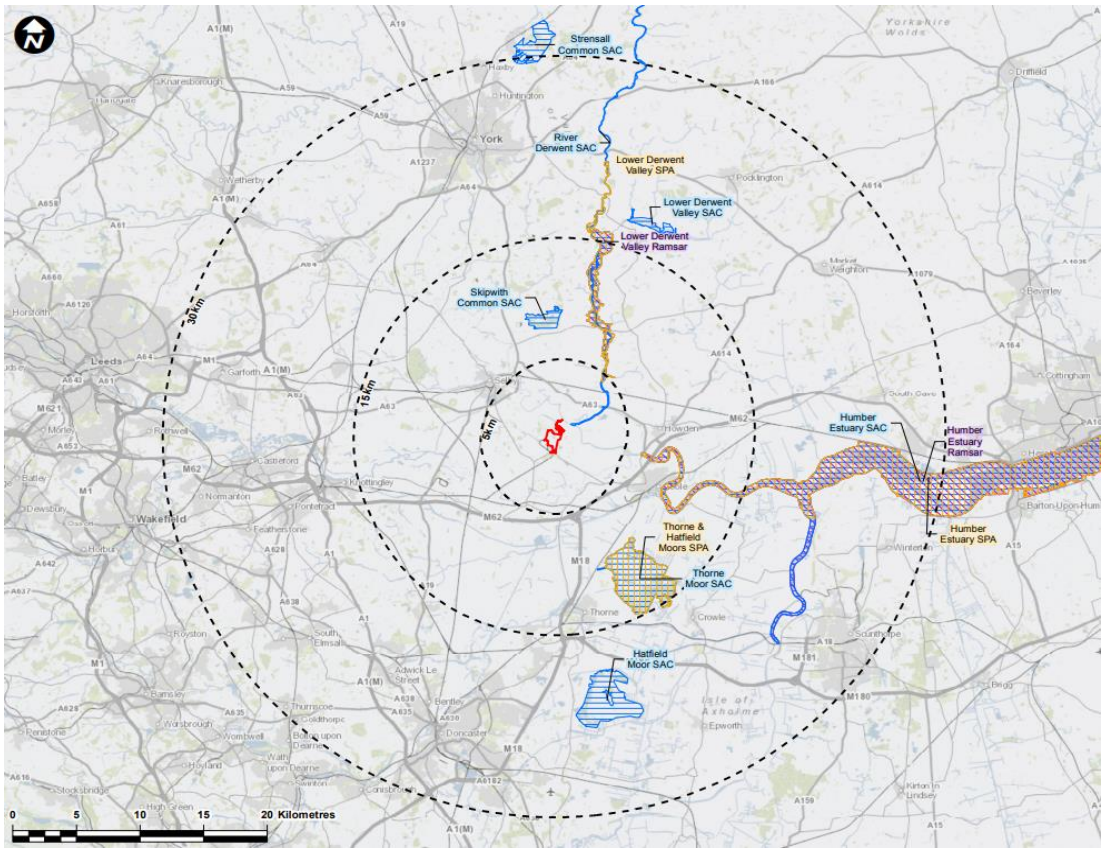


Figure 6: Internationally designated sites

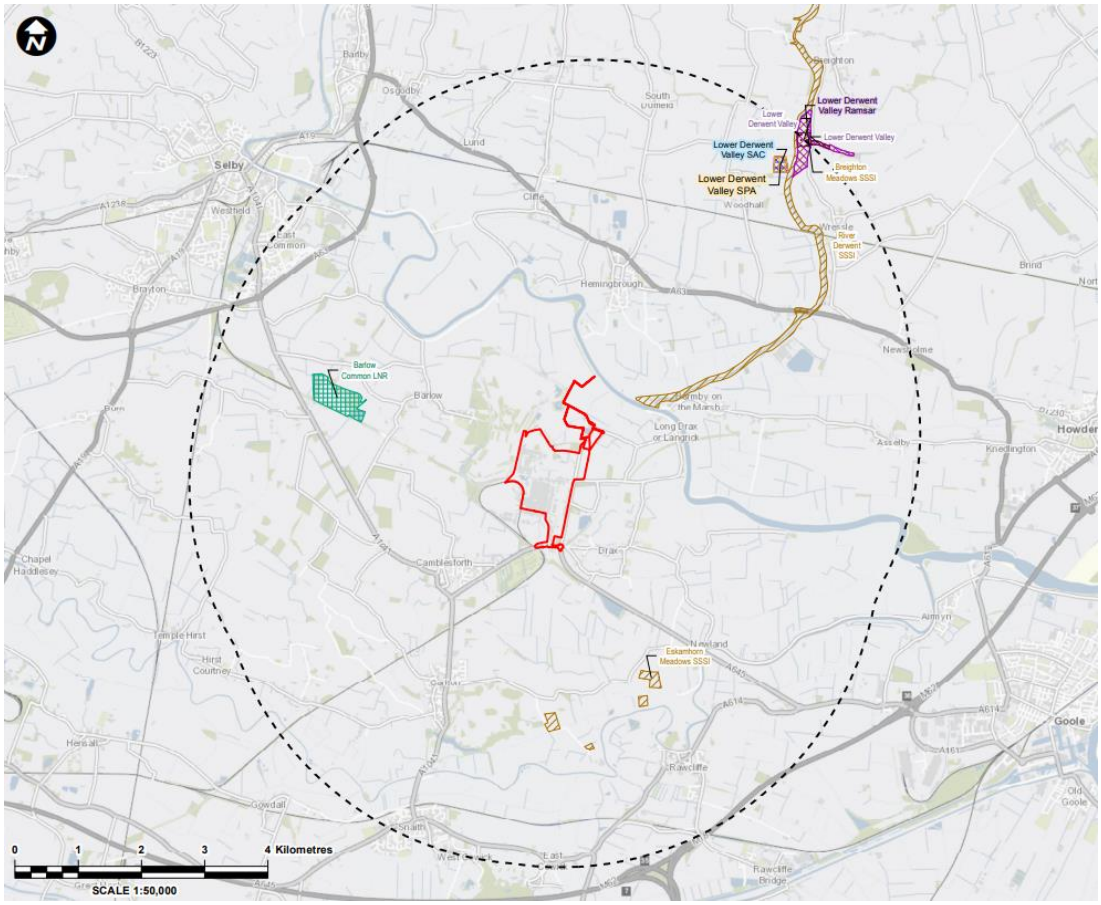


Figure 7: Nationally designated sites

3.4.22. In its RR [AS-011] NE disputed the Applicant's conclusions on the impacts to designated sites and considered further evidence was required regarding:

- clarification on scenarios used to assess the impacts from aerial emissions;
- impacts from traffic emissions to air from construction traffic on:
  - Humber Estuary Special Protection Area (SPA)/ Special Area Conservation (SAC)/ Ramsar site and SSSI;
- impacts from potential loss of functionally linked land (FLL) on:
  - Humber Estuary SPA/ Ramsar site and SSSI;
- impacts of acid deposition from aerial emissions on:
  - Lower Derwent Valley SAC/ Ramsar site, Breighton Meadows SSSI, Derwent Ings SSSI and Barn Hill Meadows SSSI;
- impacts of nitrogen deposition from aerial emissions on:
  - Thorne Moor SAC, River Derwent SAC, Thorne, Crowle and Goole Moors SSSI and River Derwent SSSI;
- impacts of ammonia from aerial emissions on:
  - Thorne Moor SAC; and
- proposed mitigation for aerial emissions on:

- Lower Derwent Valley SAC/ Ramsar site, Thorne Moor SAC, River Derwent SAC, Skipwith Common SAC, Barn Hill Meadows SSSI, Breighton Meadows SSSI, Derwent Ings SSSI, Melbourne and Thornton Ings SSSI, Thorne, Crowle and Goole SSSI, River Derwent SSSI and Skipwith Common SSSI.

3.4.23. Following the Applicant's first change request, NE also considered that the Applicant had provided insufficient evidence on the construction impacts from potential loss/ disturbance to land which was potentially functionally linked to the Humber Estuary SPA/ SAC/ Ramsar site and SSSI [RR-281].

Scenarios, traffic emissions and FLL

3.4.24. The Applicant responded to NE's initial concerns in [AS-038]. This included further clarification on the impacts to air from construction traffic using the M62 on the Humber Estuary SPA/ SAC/ Ramsar site and SSSI, the loss or deterioration of FLL and the scenarios used to assess impacts from operational aerial emissions.

3.4.25. Following the submission of the additional information, NE subsequently agreed with the Applicant's methodology and conclusions in relation to these matters in the SoCG submitted at D1 and in its D2 submission [REP2-085]. NE also agreed that a significant effect arising from the permanent loss of and potential disturbance impacts to FLL associated with the first change request could also be ruled out [REP4-041] following the submission of further information at D3 [REP3-020].

3.4.26. Biofuelwatch considered that no information had been provided to justify that a mid-merit scenario was the worst case, ie two CCS units operating at full load for the entire year (8760 hours per year) and in addition two non-CCS units operating at full load for 4000 hours [REP9-030]. The Applicant responded to this point at D10 [REP10-018] referring to its previous submissions [PDA-002 and REP7-017] which explained its rationale for the assessment of the chosen scenarios and for determining the mid-merit scenario to be the worst case.

Acid, nitrogen and NH_3 deposition

3.4.27. In terms of the impacts of acid, nitrogen and NH_3 deposition, the Applicant undertook additional analysis and survey work. Further clarification was presented in [AS-038] and the following additional documents were submitted:

- Air Quality Technical Note 2 [REP2-065].
- Updated Appendix 6.5 of the ES, Operational Phase Air Quality Assessment.
- Results Tables: Ecological Receptors [REP2-034 and REP9-017].
- HRA Appendix 7, SAC Habitat Monitoring [REP2-107 and REP8-014].
- HRA Appendix 8, Lower Derwent Valley Habitats and Soil Analysis [REP3-009].

3.4.28. With the exception of the impacts of acid deposition on Barn Hill Meadows SSSI, NE confirmed at D4 [REP4-041] that having considered the assessments and the measures proposed to mitigate for adverse effects that could potentially occur from acid deposition, nitrogen deposition and impacts from ammonia from aerial emissions, it concurred with the Applicant that there would be no adverse effect on site integrity provided all mitigation measures were appropriately secured.

3.4.29. In relation to Barn Hill Meadows SSSI, the Applicant subsequently carried out further survey work, submitting a Habitats and Soil Analysis Technical Note [REP8-027] and Air Quality Technical Note 3 [REP8-030] at D8. NE confirmed that it was satisfied with the content and conclusions and agreed that the Proposed

Development would not damage or destroy the interest features for which Barn Hill Meadows SSSI has been notified [REP8-038].

3.4.30. Throughout the Examination Biofuelwatch made submissions on the impacts to designated sites, initially agreeing with the concerns raised by NE [AS-040, REP2-073 and REP3-024]. At ISH3, Biofuelwatch raised concerns that no reference had been made to uncertainties in the nitrogen deposition modelling [REP4-037]. The Applicant responded to explain that a reasonable worst-case scenario is inherently taken into account in the modelling and provided further details at D4 [REP4-030].

3.4.31. At D5, Biofuelwatch raised questions regarding NE's conclusions relating to the level of cumulative uncertainty it assumed when assessing nitrogen and acid deposition at Thorne Moor and why significant increased long-term nitrogen and acid deposition was considered to be acceptable when critical loads would be exceeded at several sites. It was Biofuelwatch's opinion that significant long-term increases could be expected to cause further significant harm [REP5-030].

3.4.32. Both the Applicant [REP6-030] and NE responded at D6 [REP6-050]. In summary, NE made the following points:

- Whilst the use of modelling to predict pollutant deposition levels will be subject to uncertainty, NE has no reason to suggest further uncertainty needs to be applied to the assessment which has been designed to be precautionary.
- Although any conclusion that a certain addition of a pollutant will be within the realms of natural variation for any particular protected site is necessarily subjective, having regard to the site-specific considerations in this case, NE was able to accept the conclusion that the additional nitrogen and acid deposition would not result in an adverse effect to the integrity of Thorne Moor SAC.
- It is correct that when critical loads for a protected site are exceeded in the background extra caution must be taken when allowing development even by very small amounts. However, thresholds should be used to identify the possibility of risk of harm to a designated feature, rather than be interpreted as an indicator of actual harm.
- While NE considers that exceedance of the critical load is an indicator of potential, long-term risk to the qualifying habitats from air pollution, an exceedance alone does not necessarily undermine the site's Conservation Objectives or mean that a site is deemed to be unfavourable.
- NE agreed with the conclusions in the Applicant's HRA that the Proposed Development would not impact on measures to reduce emissions from existing sources (such as Drax itself, via increasingly stringent environmental permit conditions and the National Emissions Ceiling Regulations) and from the dominant sources of nitrogen deposition in the area (agricultural operations and imports from other countries via long range transport).
- Proposed mitigation will substantially decrease acid deposition from the Proposed Development and this mitigation will be ensured by monitoring as a condition of the EP. Therefore, NE accepted in this case that addition of the cited in-combination amounts of acid deposition and nitrogen deposition to the protected habitats would not undermine the Conservation Objectives even though critical loads are already exceeded at the protected sites.

3.4.33. At the close of the Examination, Biofuelwatch maintained its concerns about uncertainties in the Applicant's modelling approach and considered that any exceedances to the critical levels/ loads would be likely to result in harm. As habitats with those critical levels/ loads are present, Biofuelwatch expected them to be harmed [REP10-026].

Mitigation for aerial emissions

3.4.34. In response to NE's concerns relating to mitigation for aerial emissions, the Applicant stated that the Proposed Development would be regulated by the EA under the Environmental Permitting (England and Wales) Regulations 2016 which would control its aerial emissions. In its response [REP2-060] to ExQ1 the Applicant confirmed that the existing EP contained mitigation and monitoring requirements and that similarly the varied EP would contain the proposed operational mitigation and monitoring arrangements for the Proposed Development.

3.4.35. NE confirmed at D4 [REP4-041] that on the basis of the updated dispersion modelling [REP2-065] and additional mitigation proposed by the Applicant, it agreed with the assessment conclusions on this matter.

Other matters

3.4.36. In its WR, [REP2-030] Biofuelwatch also raised concerns on the impacts of amine and nitrosamine contamination of cooling water on the River Ouse, which further downstream forms part of the Humber Estuary SPA/ SAC/ Ramsar site and SSSI and the effects of accidental release of water borne pollutants on wintering birds that are associated with designated sites.

3.4.37. At D3, the Applicant responded to explain that there would no potential for water containing amines to be discharged into the water environment as the process water treatment plant would remove the amines from the water stream for containment and treatment offsite.

3.4.38. NE stated in [AS-011] that subject to the proposed mitigation it considered that the Proposed Development was unlikely to result in impacts from increased sediment load on FLL or from accidental releases of water-borne pollutants during construction or operation.

3.4.39. Having regard to all submissions relating to designated sites, on the basis of the information provided by the Applicant and taking into account the view of NE, the ExA is satisfied that the operational scenarios used to the assess the impacts from aerial emissions are sufficient. Mitigation for aerial emissions would be secured via operational changes to the main stack emissions parameters which would be controlled by measures in the varied EP which are set out in AQ2 of the REAC. In the SoCG with the EA [REP8-018], the EA agrees that these parameters will be able to be secured through the permit.

3.4.40. The ExA is also satisfied that there would not be any adverse impacts on designated sites, either during construction or operation, from traffic emissions to air, arising from the potential loss of FLL or from acid deposition, nitrogen deposition and ammonia from aerial emissions.

3.4.41. The ExA considers that adequate controls would be secured to ensure that there would be no adverse impacts from the accidental release of water-borne pollutants (during construction, operation and decommissioning) on designated sites. This is on the basis that during construction and decommissioning, the ExA considers the proposed measures set out in the REAC (including the use of method statements, appropriate management of stockpiles and a Surface Water Management Plan (SWMP)) would provide effective mitigation and would be incorporated into a CEMP and DEMP which is secured by R14 and R18 of the rDCO.

3.4.42. During operation, the ExA considers that the proposed mitigation measures set out in WE8 of the REAC and Proposed SWDS [REP2-043] (including containment measures to collect potentially contaminated surface water runoff and appropriate oil storage and management systems) which would be incorporated into an approved SWDS would provide effective mitigation. These would be secured by R10 of the rDCO which requires that the approved SWDS must be "*substantially in accordance"* with the principles set out in the proposed SWDS.

Non-statutory designated sites

3.4.43. The figure below is taken from Figure 3 of the PEA [APP-136] and shows the location of non-designated sites in relation to the Proposed Development.

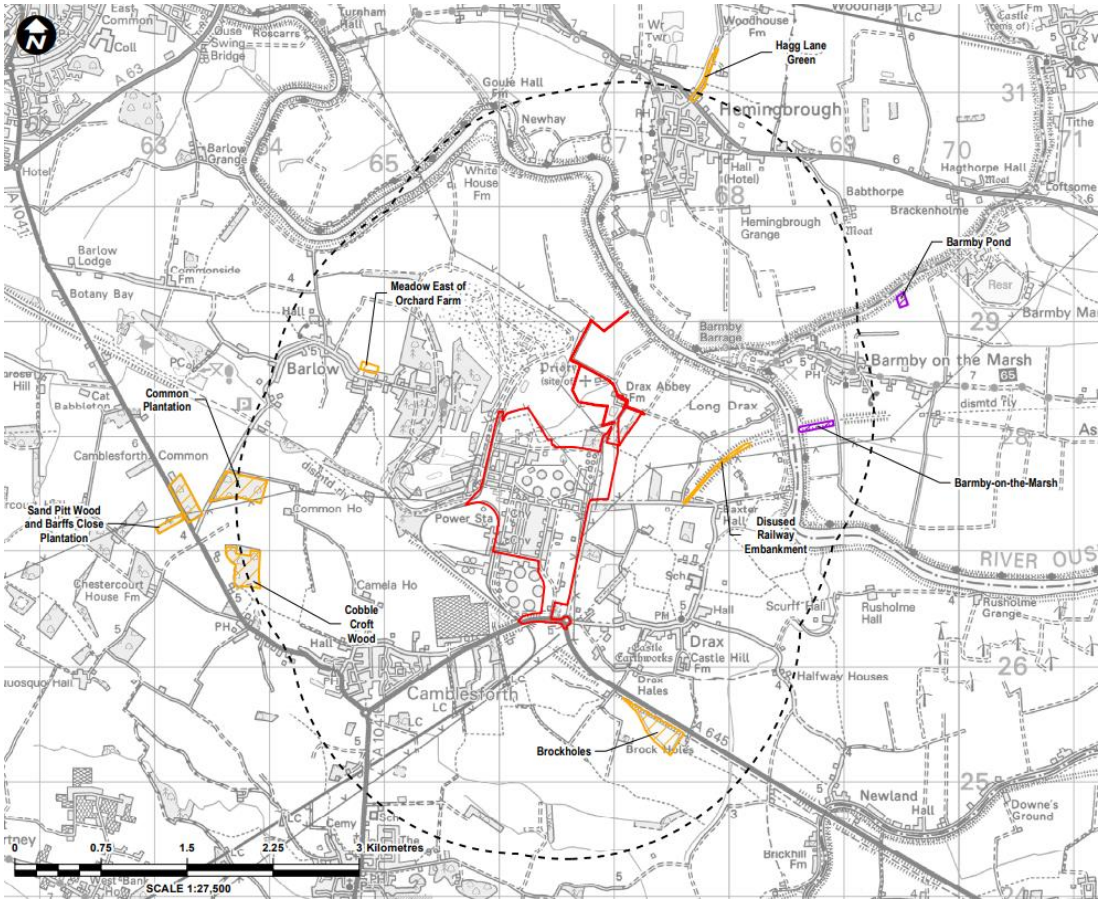


Figure 8: Non-designated sites

3.4.44. Concerns were raised, for example by Biofuelwatch, that the Applicant had not considered a large enough number of sites, including sites in nearby council districts. Biofuelwatch expected there to be Sites of Nature Conservation Importance that would also be impacted and perhaps at higher levels given their proximity to the site.

3.4.45. NYC in its SoCG agreed with the ES study area and methodology and was satisfied that the Application included an adequate ecological impact assessment.

3.4.46. On the basis of the Applicant's comments and the signed SoCG in relation to ecology, the ExA has no reason to conclude that the assessment was inadequate. Furthermore, neighbouring authorities had the opportunity to make submissions into the Examination on this matter and none were raised.

3.4.47. The mitigation proposed and impacts would be the same for designated sites as non-designated sites and therefore the ExA considers that there would be no significant adverse impacts on non-statutory designated sites from the Proposed Development.

Protected species and habitats

3.4.48. In its WR [REP2-030], Biofuelwatch raised concerns that the Application relied on outdated species surveys, some dating as far back as 2018, and therefore did not properly assess the impact on biodiversity. Biofuelwatch also raised specific concerns regarding badger, Great Crested Newts (GCN), the green winged orchid and breeding and wintering birds.

3.4.49. In its LIR, NYC set out that it considered that the majority of mitigation, compensation and enhancement measures had been detailed in the ES and the OLBS. It considered that the ecological surveys and assessments completed to inform ES Chapter 8 had been undertaken using appropriate methods and this is shown as agreed in the SoCG [REP10-014].

3.4.50. In its RR, NE stated that on the basis of the information submitted, it was not yet satisfied that the Proposed Development would not adversely affect bats or badgers. The Applicant provided clarification on the matters in [AS-038] and [REP3-020] and NE confirmed in its D2 [REP2-085] and D4 [REP4-041] submissions that it was now satisfied that the Proposed Development would not affect bats or badgers.

3.4.51. In its RR [RR-051], the EA disagreed with the Applicant that several of the ponds which were identified in ES Chapter 12 as having the potential to be affected by the Proposed Development should not be considered as sensitive receptors as they may provide habitat for GCNs [RR-051]. This was a concern echoed by Biofuelwatch [AS-040].

3.4.52. The Applicant acknowledged the ponds could be considered a sensitive receptor as GCNs have been recorded/ they provided suitable habitat. However, the Applicant considered that they were not likely to be affected by the construction given they are separated from the construction area by an earth embankment which would prevent any pollutants/ contaminants which are accidentally released from reaching them. In response to ExQ1, the EA confirmed that it agreed the embankment would constitute a physical barrier and GCNs were not likely to be affected [REP2-076].

3.4.53. Whilst acknowledging that some of the surveys submitted with the Application date back to 2018, neither NE or NYC raised concerns on this matter and the ExA has no reason to conclude otherwise. Furthermore, commitment E13 of the REAC requires a preconstruction/ site clearance walkover at least three months ahead of commencement where there could be an impact on biodiversity. This would reassess the baseline conditions and determine if any additional mitigation is required beyond that specified in the OLBS and ES. This would be secured by R7 and R14 of the rDCO and the s106 agreement for offsite works.

3.4.54. The OLBS contains a number of measures for the reinstatement, enhancement and provision of compensatory habitat and a number of mitigation commitments for protected species are contained within the REAC (E2 to E11). This includes the creation of new habitats such as new hedgerows or enhancement of existing ones, species rich grassland, pond creation and wetland planting, woodland and scrub and scrape and swale habitat that the ES states would have a beneficial effect on

bats, breeding and wintering birds, amphibians and terrestrial invertebrates at a local level. The ExA has no reason to conclude that this would not be the case.

3.4.55. Mitigation during construction would be secured via the CEMP which is secured by R14 of the rDCO. A written strategy, which must be substantially in accordance with the OLBS must be submitted and approved for each phase or part of the Proposed Development. This is secured by R7 of the rDCO.

3.4.56. Overall, the ExA agrees with the Applicant that while there would be significant adverse effects on some protected species during construction, these effects would be temporary until compensation measures have reached their target condition or establishment is complete. Following the completion of mitigation measures set out in the OLBS and commitments in the REAC, the ExA considers that there would be no significant adverse impacts on any protected species and a beneficial effect on bats, breeding and wintering birds, amphibians and terrestrial invertebrates at a local scale.

Biodiversity Net Gain

3.4.57. Concerns were initially raised by NE, NYC and Biofuelwatch regarding the BNG assessment that was submitted with the Application, particularly in relation to the lack of net gain on riverine BNG units.

3.4.58. The Applicant continued to engage with NE and NYC throughout the Examination and submitted updated BNGAs at D3 [REP3-010] and D6 [REP6-027]. At D7 [REP7-017] NE welcomed the updates made to the BNGA and OLBS [REP6-017] submitted at D6 and considered that the habitats required to achieve BNG on and off-site and their subsequent long-term management and monitoring were now adequately reflected.

3.4.59. In the final SoCG with NE and NYC it was agreed that the Application included adequate BNG, securing a 10% BNG through the OLBS and the s106 agreement. The ExA finds no reason to conclude otherwise.

Commencement of the Proposed Development

3.4.60. The Applicant's dDCO submitted at D6 amended R1, increasing the commencement time period from five to seven years. Concerns were raised by IPs about the delay in terms of ecological surveys and assessments given they were already considered outdated.

3.4.61. In NE's response to R17QA.5 [PD-018] about the Applicant's proposal to delay the start of the construction programme by two years, NE stated that the commitments in the REAC to complete pre-commencement ecological surveys and determine if any additional mitigation would be required would be suitable to ensure that the ecological information would be updated prior to commencement [REP8-038]. Similarly, NE was satisfied that the delay would not impact the air quality assessment or the suitability of R7 and the s106 agreement in securing BNG.

3.4.62. In response to the Rule 17 request dated 22 June 2023 (R17QB) [PD-021], question R17QB.3, NE stated that a seven-year commencement period would introduce uncertainty into the reliability of the ES conclusions. However, it reiterated that any future applications would have to make their own assessment including the Proposed Development as an in-combination project [REP9-036]. NE confirmed that its advice on the air quality assessment, the ecological survey results and BNG remained as detailed in its D8 response.

3.4.63. The ExA is satisfied, on the basis of the information contained in the Applicant's and NE's responses, that the proposed extension of time in which to commence the DCO would not have any adverse implications for biodiversity or ecology.

CONCLUSIONS

3.4.64. The ExA has given careful consideration to the views of IPs, to the evidence presented and the responses received, including the view of the relevant Statutory Nature Conservation Body (SNCB), NE. The ExA is satisfied that during the Examination, the Applicant has adequately addressed those concerns.

3.4.65. Whilst acknowledging that there would be adverse impacts on some habitats and protected species during construction, these would be short term until mitigation measures have reached their target condition.

3.4.66. In the long term, during the operational phase, the ExA considers that adequate mitigation measures would be put in place to ensure that there would be no significant residual effects on ecology and biodiversity and the creation/ enhancement measures secured in the OLBS would result in a beneficial effect for some species.

3.4.67. These measures are adequately secured through the OLBS, proposed SWDS, draft Lighting Strategy and commitments in the REAC, all of which would be secured through the rDCO by R7 (Landscape and Biodiversity mitigation), R8 (Lighting), R10 (Surface Water Drainage), R14 (CEMP) and R18 (DEMP). Works within the OSHPA would be secured by the duly executed s106 agreement.

3.4.68. Furthermore, the ExA considers that the BNG proposed would represent a considerable benefit which weighs positively in favour of the Proposed Development.

3.4.69. Given the evidence presented, the ExA considers that biodiversity and ecology have been adequately assessed and that the policy requirements of NPS EN-1, NPS EN-3 and the dNPSs are met. The rDCO would adequately secure the mitigation necessary to address any effects. Overall, the ExA considers that those mitigation measures, the beneficial effects for some species and the BNG arising from the Proposed Development would enhance biodiversity in the long term. As such the ExA considers the effects to attract moderate positive weight in the planning balance.

3.5. GREENHOUSE GAS EMISSIONS

INTRODUCTION

3.5.1. This section considers the overall change in GHG emissions that may arise from the construction and operation phases of the Proposed Development.

3.5.2. The ExA comments on the principle of the Proposed Development as BECCS and carbon emissions as separate matters. Carbon emissions as an impact of the Proposed Development is discussed here and decarbonisation as a policy objective is discussed above in section 3.2, 'The Principle of the Development'.

POLICY BACKGROUND

3.5.3. Section 2.2 of NPS EN-1 relates to GHG emissions. Paragraphs of particular note are identified below.

3.5.4. Paragraph 2.2.12 of NPS EN-1 states that the European Union (EU) Emissions Trading System (ETS) forms the cornerstone of UK action to reduce emissions. Paragraph 2.2.13 explains that the caps on emissions translate to a finite number of allowances to emit GHG that companies can trade with each other. The UK has since established an ETS to replace the UK's participation in the EU's ETS and increased the climate ambition of the UK's carbon pricing policy.

3.5.5. Section 2.4 of dNPS EN-1 updates this to include that a key mechanism for increasing deployment of low carbon generation has been the implementation of Contracts for Difference. It states the Government is developing business models to incentivise CCUS and identifies the UK ETS, Carbon Price Support (CPS) and the Emissions Performance Standard (EPS) as further levers to encourage further decarbonisation within the power sector.

3.5.6. NPS EN-1 promotes CCS as an emerging technology that the Government is aiming to facilitate and encourage. Paragraph 2.2.23 states that CCS is part of the UK's plans to *"reduce its dependence on fossil fuels, particularly unabated combustion"*. Paragraph 2.2.6 states that the UK needs to wean itself off a high-carbon energy mix: to reduce GHG emissions and to improve the security, availability and affordability of energy through diversification.

3.5.7. Section 3.5 of dNPS EN-1 recognises the importance of new CCS infrastructure stating it *"…has an essential role to play, either on its own or in combination with measures such as electrification and fuel switching"* (paragraph 3.5.8 of dNPS EN-1). However, paragraph 3.5.9 also stresses *"It is not the role of the planning system to deliver or limit specific amounts of CCS infrastructure covered by this NPS".*

3.5.8. The dNPS EN-1 states in paragraph 5.3.8 that the SoS must be satisfied that the Applicant has, as far as possible, assessed the GHG emissions of all stages of the development. It adds in paragraph 5.3.9 that the SoS should be content that the Applicant has taken all reasonable steps to reduce the GHG emissions of the construction and decommissioning stage of the development.

3.5.9. Paragraph 5.3.11 of dNPS EN-1 maintains from NPS EN-1 paragraph 5.2.2 that given the range of non-planning policies that can be used to decarbonise electricity generation, such as the UK ETS, Government has determined 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.

3.5.10. The Biomass Strategy (TBS) was published by DESNZ in August 2023 after the close of the Examination period. There is a section on BECCS and, more specifically, how BECCS can deliver negative emissions. The ExA has recommended that the SoS may wish to consider the implications of TBS, if any, in reaching their decision.

THE APPLICATION

3.5.11. The GHG assessment in ES Chapter 15 (Greenhouse Gases) [APP-051] identified the impacts of GHG emissions in construction and operation and their effects on climate. The supporting appendices are listed in Table A1 in Appendix A of this report.

3.5.12. The assessment uses the term carbon dioxide equivalent (CO_2e) to describe different GHGs in a common unit. CO_2e signifies the amount of CO_2 which would

have the equivalent global warming impact. In this section CO_2e is quantified in tonnes (tCO_2e) or kilotonnes ($ktCO_2e$).

Construction and decommissioning phases

3.5.13. The baseline scenario involves no construction activities and therefore the construction baseline is zero emissions.

3.5.14. The construction phase GHG emissions would be made up of embodied emissions from the construction materials of 104,488 tonnes (t) CO_2e (as detailed in Table 15.9 of the ES [APP-051]) plus carbon storage loss due to land use change of 212 tonnes of carbon (tC). There would be an overall increase of 104,700 tCO_2e from the baseline scenario resulting in a moderate significant adverse effect.

3.5.15. Mitigation measures to reduce GHG emissions during the construction of the Proposed Development include detailed design measures to reduce embodied carbon and use of efficient construction processes. The mitigation measures would be set out in the CEMP via the REAC [APP-179] (superseded by [REP9-019]). However, the impacts of the mitigation measures are not quantifiable at this stage and as such, the residual moderate significant adverse effects remain.

3.5.16. The effects of the decommissioning phase of the Proposed Development have been scoped out due to the Proposed Development's design life of 25 years and uncertainties around deconstruction techniques at the Proposed Development's end of life. However, the Applicant anticipated that GHG emissions would be less than at construction phase because decommissioning would not involve the construction of new infrastructure.

Operational phase

3.5.17. In terms of the operational phase baseline, the GHG emissions are set out in ES Appendix 15.1 [APP-168] and include biomass combustion from the biomass units, the biomass supply chain and carbon stored in the organic matter (ie vegetation and soils) at the Drax Power Station which would be disturbed as part of the Proposed Development.

3.5.18. The Applicant considered the CO_2 emissions from the combustion of biomass to be zero in both the baseline and with Proposed Development scenario. Other GHGs from the combustion of biomass (CH_4 and N_2O) are captured in the assessment of operational impacts. The Applicant's approach to the zero rating was informed by the 2019 Refinement to the 2006 IPCC Guidelines for National Greenhouse Gas Inventories, section 2.3.3.4, hereafter referred to as the IPCC guidelines (Intergovernmental Panel on Climate Change (IPCC), 2019).

3.5.19. In Appendix B to the Applicant's response to RRs [PDA-002], it explained that since support on the unabated biomass generating units will cease in 2027, a future full-load scenario is considered unlikely and a more intermittent operating regime would more likely result. For the purpose of the operational GHG baseline scenario the Applicant explained in the ES [APP-051] that it has taken an *"optimistic yet realistic"* view that each unit will generate for 4,000 hours per annum.

3.5.20. In the operational phase, the Applicant assumed that Units 1 and 2 (with CCS applied) would operate continuously at baseload for all hours of the year (8,760 hours per annum). This assumption represents a reasonable worst-case operating profile.

3.5.21. The Proposed Development is designed to achieve an approximate 95% efficient carbon capture rate of the CO_2 emissions from Units 1 and 2. The Applicant calculated that the operation of the Proposed Development would result in a net reduction of 7,975,620 tCO_2e per year compared to the baseline 'do-nothing' scenario. A detailed calculation can be found in ES Appendix 15.2 [APP-169].

3.5.22. The Applicant then divided the overall construction phase emissions by the anticipated operating period for the Proposed Development of 25 years to present a total reduction of GHG emissions of 7,972,111 tCO_2e per year for the whole life of the Proposed Development [APP-169].

3.5.23. The emissions in construction and operation were presented in the context of the UK's carbon budgets in paragraph 15.9.19 and Table 15.13 of the ES [APP-051] and summarised as follows:

- Fourth carbon budget (2023-2027): +70 $ktCO_2$ or 0.004% of carbon budget.
- Fifth carbon budget (2028-2032): -31,867 $ktCO_2$ or -1.847% of carbon budget.
- Sixth carbon budget (2023-2027): -39,878 $ktCO_2$ or -4.132% of carbon budget.

3.5.24. In terms of cumulative effects, the Applicant identified that GHG emissions relate to their contribution to global warming and climate change which are global and cumulative in nature. GHG emissions result in the same global effects wherever and whenever they occur. Therefore, consideration of cumulative GHG emissions is inherent in the assessment against various contextual scales, such as sector and local authority policies and UK carbon budgets.

3.5.25. The Proposed Development was assessed by the Applicant to result in a significant beneficial effect that outweighs the adverse effect during the construction phase. The Applicant explained in its response to ExQ1 [REP2-060] (question CC1.2) that it considers the conclusion of significance is in line with Institute of Environmental Management and Assessment (IEMA) 'Assessing greenhouse gas emissions and evaluating their significance' guidance (February 2022) which states that only projects that actively reverse the risk of severe climate change should be considered to have a beneficial effect.

ISSUES CONSIDERED DURING THE EXAMINATION

Baseline

3.5.26. Throughout the Examination, submissions were made by IPs arguing that there would not be a feasible future for the power station to continue to operate unabated as far into the future as it would with the Proposed Development. Therefore, if the Proposed Development were to go ahead, it would facilitate the continued burning of biomass and associated emissions. Conversely, if the Proposed Development did not go ahead, the argument being that the power station would cease to operate. This argument implies that the future baseline operating scenario should be of no biomass combustion rather than of a mid-merit operating scenario.

3.5.27. As stated above, the Applicant acknowledged in its response to RRs [PDA-002] that a future full-load scenario is considered unlikely and a more intermittent operating regime would more likely result. In its response to issues raised at D6 [REP7-017], the Applicant stated that a scenario in which unabated biomass units are not operating at all is an unrealistic future scenario. In support of its stance, the Applicant provided National Grid's Future Energy Scenarios which envisage a role for bioenergy up to 2050 (Appendix B of [REP7-017]).

3.5.28. Submissions from James Hewitt [REP9-043] and Climate Emergency Planning and Policy (CEPP) [REP9-032] at D9 referred to the CCC's report 'Progress in Reducing Emissions - 2023 Report to Parliament'. The report stated *"Large-scale unabated biomass power plants should be converted to bioenergy with carbon capture and storage (BECCS) as early as feasible and should not be given extended contracts to operate unabated at high load factors beyond 2027 (recommendation R2023-124)".*

3.5.29. In its submission, CEPP goes on to state that *"If unabated biomass burning ceases in 2027 at the Drax site, as it almost certainly must, then the development does introduce new biomass combustion emissions from 2027."* CEPP proposed that this was an important argument on why biomass emissions should be included in the assessment as new emissions from the Proposed Development.

3.5.30. CEPP's position was that by including combustion emissions in both the 'baseline' and 'do-something' scenarios, the Applicant was breaching EIA Regulations by not correctly identifying the likely indirect significant effects of the development.

3.5.31. At D10, in its responses to issues raised at D9 [REP10-018], the Applicant stated in response to the CCC report recommendation that *"The Proposed Scheme involves the conversion of 2 biomass fired units to BECCS and has employed a scenario of operation involving mid-merit operation of the remaining 2 unabated biomass units. This is exactly in line with the CCC's recommendation."*

3.5.32. The ExA notes the argument that if the Proposed Development did not go ahead, the power station could cease to operate. However, there was no substantive evidence before the ExA at the close of the Examination that the plant would cease to operate if the DCO was not granted. The ExA cannot, on the evidence before it, disregard the Applicant's position that it will continue operating at mid-merit (4000 hours per annum).

Biomass combustion and efficiency of carbon capture

3.5.33. As mentioned above, the Applicant considered the CO_2 emissions from the combustion of biomass to be zero. CEPP in its D4 submission [REP4-038] provided the reasoning for its position that the IPCC guidelines are not guidance on how to comply with the EIA Regulations.

3.5.34. At D10, CEPP summarised its detailed submission from D9 [REP10-027] regarding the treatment of biomass combustion emissions. CEPP's position was that there is a strong causal inter-dependence between the biomass combustion emissions and the Proposed Development. Therefore, the climate impacts of the biomass combustion emissions should be included in the EIA assessment as a strongly causal indirect effect of the Proposed Development. By not including these impacts, CEPP's position is that the Applicant's EIA assessment of the climate impacts of the project was in breach of the EIA Regulations and not lawful.

3.5.35. At D10, in its responses to issues raised at D9 [REP10-018], the Applicant stated its position was that biomass supply chain matters and combustion emissions are not indirect effects of the Proposed Development. This is because the Proposed Development is not seeking to consent the continued operation of the biomass units at the existing power station; their operation is an entirely separate matter already controlled and consented.

3.5.36. The Applicant also reiterated its position that the treatment of biogenic emissions is in accordance with IPCC international conventions and all appropriate regulations eg UK ETS and UK renewables obligation. The Applicant considered that the application of this current guidance was a legitimate and reasonable approach to take; and in the absence of any guidance to the contrary, it would in fact be unreasonable to take any other approach.

3.5.37. CEPP provided alternative calculations of the GHG emissions in its D4 submission [REP4-038] for when the combustion emissions are not zero rated. It assumed a full load operating scenario and proposed that a 90% capture rate would be more realistic. CEPP calculated the additional GHG emissions to be 13,279,326 tCO_2e per annum and considered these to be additional emissions as a result of the Proposed Development rather than a reduction from the GHG emissions from the current operation which CEPP presents as 22,001,736 tCO_2e per annum.

3.5.38. The Applicant provided a response to CEPP's D4 submission at D5 [REP5-028], stating that the calculation of emissions presented by CEPP, did not take account of international guidance, UK Guidelines or UK policy with regards to the zero rating of biomass. The Applicant also stated that CEPP's calculations failed to recognise that the Application was not for the combustion of biomass, which is already consented and operational, but for the addition of carbon capture technology to the existing plant.

3.5.39. Throughout the Examination, submissions were made by IPs raising concern that the 95% efficient carbon capture rate would not be achievable. For example, Biofuelwatch in its WR [REP2-073] stated there were no examples of BECCS working at scale and suggested that the performance of existing carbon capture facilities is a strong indication that the Applicant's expectation of a 95% efficient carbon capture rate from BECCS is highly implausible.

3.5.40. At ISH1 [EV-006, EV-008, EV-010] the ExA questioned the Applicant and EA on whether the 95% capture efficiency would be regulated through an EP. The Applicant confirmed that the Proposed Development would not be able to operate without an EP from the EA, which would contain a condition of compliance with and monitoring of the 95% requirement. The EA confirmed that the minimum standard of 95% must be met. It also explained that there were ongoing discussions taking place between the EA, (former) Department for Business, Energy and Industrial Strategy (BEIS) and the Department for Environment, Food & Rural Affairs (DEFRA) on what emissions are included in this 95%. On this basis, the ExA has no reason to conclude that the 95% capture efficiency could not be achieved and regulated through the EP.

3.5.41. Having regard to the above, the ExA considers that, based on the evidence presented during the Examination, it is reasonable to treat the biomass combustion emissions as zero rated and the Applicant has provided sufficient justification for this consideration.

3.5.42. Should the SoS disagree and conclude that biomass combustion emissions should not be zero rated, the ExA considers that the Proposed Development would still result in an overall reduction in net emissions. The ExA consider that the figures in Appendix 15.1 (Baseline GHG Emissions Calculation) [APP-168] and Appendix 15.2 (Proposed Scheme GHG Emissions Calculation) [APP-169] demonstrate that Units 1 and 2 operating at full capacity with the Proposed Development capturing 95% of combustion emissions (as regulated by the EP), would generate considerably lower GHG emissions over the 25 year lifetime of the project than Units 1 and 2 of the

extant power station operating at mid merit without the Proposed Development. This includes construction emissions, operational supply chain emissions, operational combustion emissions and changes in potential Land Use, Land-Use Change, and Forestry (LULUCF) carbon storage due to the Proposed Development.

Cumulative impact and connection to East Coast Cluster (ECC)

3.5.43. The ExA questioned the Applicant at ISH1 on whether the Biomass Policy Statement required the full supply chain to be included within the GHG assessment, including from the 'eventual store'. The Applicant's position was that the assessment referred to in the Biomass Policy Statement is not one to be undertaken by project applicants, but by the Government itself. In the ES [APP-051] the Applicant stated that consideration of cumulative GHG emissions is inherent in the assessment as GHG emissions of the Proposed Development are assessed against various contextual scales, such as sector and local authority policies and UK carbon budgets.

3.5.44. CEPP raised concern in its D9 submission [REP9-032] that the Application did not address the impacts of the transport and storage of the captured carbon. CEPP stated that these should have been included for cumulative assessment even if the precise details are not known at this stage and that this is a breach of the EIA Regulations.

3.5.45. The Applicant provided in its D10 submission [REP10-018] the estimated GHG emissions for:

- the onshore elements of the carbon transport infrastructure from the Humber Low Carbon Pipeline (HLCP) project's statutory consultation Preliminary Environmental Information Report (PEIR); and
- the offshore storage and cabling elements of the NEP from the Scoping Report for the works, provided to the Net Zero Teesside Examination.

3.5.46. However, the Applicant went on to explain that it did not consider that the HLCP was part of the same project as the Proposed Development because the transport and storage is still in development, the projects would be used not only by Drax but other projects across the Humber, and it would be subject to its own approvals.

3.5.47. The Applicant also stated in relation to the cumulative assessment of these projects that the GHG assessment is inherently cumulative as it takes into account various contextual scales and compares the Proposed Development GHG emissions against the annual emissions of Selby and North Yorkshire and the UK carbon budgets. Furthermore, the Applicant stated that this approach was supported by the case law of the High Court's decision in respect of the Sizewell Nuclear Power Station and the High Court's decision in respect of the SoS for Transport's consenting of three projects on the A47 in Norfolk, both of which were appended to the Applicant's D10 submission.

3.5.48. The ExA agrees with the Applicant that the onshore carbon transport infrastructure elements of the HLCP and the offshore storage and cabling elements of the NEP do not form part of the Proposed Development. The ExA considers that it is appropriate to assess the cumulative impact of the Proposed Development against the UK carbon budgets. Impacts are not geographically limited to a local area and the UK carbon budgets account for the cumulative emissions from a number of sectors and it is therefore appropriate to consider how the carbon emissions of the Proposed Development compare against this.

CONCLUSIONS

3.5.49. The ExA considers, based on the current policy framework and guidance, that the assessment carried out by the Applicant is reasonable against the information available, sufficient to understand the impacts of the Proposed Development on climate and is therefore compliant with the EIA Regulations.

3.5.50. Whilst in the construction phase there would be significant adverse effects in relation to GHG emissions, the ExA considers that the Applicant has taken reasonable steps to reduce the GHG emissions in accordance with dNPS EN-1. This is in general accordance with NPS EN-1.

3.5.51. Over the whole life of the Proposed Development there would be a significant beneficial effect due to carbon captured in the operational phase and this is sufficient to outweigh the negative effects from construction to the effect that, over the lifetime of the project, it would result in negative GHG emissions. The ExA is satisfied that negative emissions from the Proposed Development would contribute to meeting the UK's carbon commitment and supporting the transition to a low carbon economy.

3.5.52. The ExA is satisfied that the Proposed Development would accord with the guidance in the relevant NPSs and would be in accordance with the UK's commitments under the CCA2008 and the Paris Agreement 2015.

3.5.53. GHG emission impacts of the Proposed Development are a benefit that weighs heavily in favour of making the order and carries very great weight in the planning balance.

3.6. HISTORIC ENVIRONMENT

INTRODUCTION

3.6.1. This section considers the effects of the Proposed Development in relation to the historic environment, including both designated and non-designated heritage assets.

POLICY

3.6.2. The Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations) require the SoS to have regard to the desirability of preserving, amongst other things, the setting of a listed building.

3.6.3. Section 5.8 of NPS EN-1 relates to the historic environment. Paragraphs of particular note are identified below.

3.6.4. Paragraph 5.8.1 of NPS EN-1 recognises that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment.

3.6.5. Paragraph 5.8.12 states that the SoS should take into account the particular nature of the significance of the heritage assets and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between conservation of that significance and proposals for development.

3.6.6. Paragraph 5.8.14 is clear that there should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated

heritage asset, the greater the presumption in favour of its conservation should be. Loss affecting any designated heritage asset should require clear and convincing justification.

3.6.7. Paragraph 5.8.15 states that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss.

3.6.8. The dNPS EN-1 and dNPS EN-3 continue these themes and make it clear that the SoS should give considerable importance and weight to the desirability of preserving all designated heritage assets. Any harmful impact on the significance of a designated heritage asset should be given significant weight when weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss. Paragraph 5.9.30 states that where the harm to the significance of the designated heritage asset will be less than substantial, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

3.6.9. Similar advice can be found in the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG).

THE APPLICATION

3.6.10. The Applicant's assessment of historic environment matters is primarily contained within Chapter 10 (Heritage) of the ES [APP-046]. The supporting figures and appendices are listed in Table A1 in Appendix A of this report. For EIA purposes the ES only considered effects which are moderate or very large to be 'significant'. Nonetheless, the ES explained that effects which are considered 'slight' would still amount to less than significant harm to the significance of an asset, albeit limited.

3.6.11. ES Appendix 10.1 [APP-154] provided a Historic Environment Desk-Based Assessment (HEDBA) which provided a baseline of known and potential buried heritage assets and above ground heritage assets, assessing heritage significance, the impact of the Proposed Development on that setting and proposed mitigation where necessary.

3.6.12. A total of 513 designated heritage assets are present within the wider 10km study area, including 20 scheduled monuments, 15 Grade I listed buildings, 18 Grade II* listed buildings, 447 Grade II listed buildings and 14 conservation areas. Potential adverse impacts were identified on the setting of seven of these heritage assets.

3.6.13. There are eight non-designated heritage assets within 500m of the Proposed Development. Most of the non-designated heritage assets relate to the medieval Drax Augustinian Priory in the north of the Proposed Development, or to Barlow Airfield, which was located 300m to the west of the Proposed Development.

Above ground heritage assets

3.6.14. The HEDBA identified six heritage assets where the setting contributes to the value of the asset and where there would be both temporary and permanent slight adverse effects on their setting [APP-154] during construction and operation. This includes the following:

- Drax Augustinian Priory (Scheduled Monument) (see Figure 9 below (extract from [APP-154])).
- The Church of St Peter and St Paul (Grade I Listed).
- Cowick Hall (Grade I Listed).
- Church of St Mary the Virgin (Grade I Listed).
- Airmyn Conservation Area.
- Snaith Conservation Area.

Figure 9: Looking towards the site from the Drax Augustinian Priory

3.6.15. As the ES only considers effects that are moderate or very large to be 'significant', the Applicant concluded that there would be no significant effect on above ground heritage assets as a result of the Proposed Development in EIA terms. However, the ES does identify that a 'slight adverse effect is considered' to result in 'limited less than substantial harm'.

Unknown buried heritage assets

3.6.16. ES Chapter 10 [APP-046] states that during the construction phase and decommissioning there is potential for groundworks within the ECLA to impact unknown buried archaeological remains. Landscaping, including the planting of trees and hedges for screening and ecological mitigation within the OSHPA and Habitat Provision Area, also has the potential to disturb unknown buried archaeological remains. The value of any such buried assets is currently unknown but has the potential to range from negligible to high, depending on their archaeological interest.

3.6.17. The HEDBA [APP-154] identifies that there is low to moderate potential for buried heritage assets of Romano-British date, low potential for early medieval remains, moderate potential for remains from the late medieval period, moderate potential for post-medieval remains and high potential for modern remains associated with

agricultural activity within the ECLA and Habitat Provision Area. Mitigation measures for unknown buried heritage assets include:

- an Archaeological Clerk of Works (ACoW), who would be responsible for the design and implementation of the archaeological works and would oversee all heritage aspects for the Proposed Development (REAC item H2);
- an archaeological watching brief to an approved archaeological Written Scheme of Investigation (WSI) (REAC item H3); and
- if impacts do occur on currently unknown but nationally important below-ground heritage assets (related to Drax Augustinian Priory) within the Habitat Provision Area, preservation in-situ will be explored where practicable (REAC item H5).

3.6.18. ES Chapter 10 [APP-046] states that there would be no significant effects during the operational phase. All impacts upon buried heritage assets would take place during the construction phase. The ES concludes that, taking account of the proposed mitigation, the effects on buried heritage assets would range from negligible to moderate adverse (significant) depending on the value of the asset.

ISSUES CONSIDERED DURING THE EXAMINATION

3.6.19. NYC's LIR [REP-039] raised concern that Grade II listed buildings were not identified and assessed within the 10km study area. The Applicant responded [REP2-067] that *"…only significant effects need to be reported, and because there are no significant effects on Grade II listed buildings, the ES chapter has limited the assessment of effects to Grade I and Grade II* listed buildings."* This matter is noted as agreed in the signed SoCG between NYC and the Applicant [REP10-014].

3.6.20. In relation to buried heritage assets, the LIR stated that *"The information provided is sufficient to assess the impact of the proposal on the archaeological resource."* The LIR goes on to state that the proposed archaeological mitigation in the form of archaeological monitoring and recording prior to development *"… is a proportionate response to the expected significance of the archaeological remains."*

3.6.21. A signed SoCG with Historic England (HE) [AS-033] was submitted as an Additional Submission during the Pre-examination period and was accepted into the Examination at the discretion of the ExA. The signed SoCG noted all matters as agreed with HE including the ES study area and methodology, predicted impacts, design, mitigation and enhancement measures and approach to on-going public engagement.

3.6.22. As the SoCG with HE preceded the Applicant's proposed changes PC-01 and PC-02, the ExA asked the Applicant at ExQ2 [PD-015] whether it had sought confirmation from HE that its position in the signed SoCG remained unchanged. The Applicant confirmed this to be the case.

3.6.23. The ExA questioned the Applicant (ExQ1 [PD-011]) regarding its choice of the location for the On-site Habitat Provision Area in close proximity to the Scheduled Monument. The Applicant responded that the reasons included that the planting would reflect field boundaries characteristic of the wider setting, enhance hedgerow structures, reinstate habitat connectivity and would have no adverse impacts on the Drax Augustinian Priory [REP2-060]. Furthermore, the summary of consultation in the ES [APP-046] stated that HE considered *"…the changes were in keeping with the evolution of the post-Dissolution landscape."*

3.6.24. The Applicant revised the wording of R13 of the dDCO at D2 [REP2-007] in response to questions from the ExA at ISH2 [EV-014 and EV-016] and in ExQ1 [PD-

011]. The amendment to R13 ensures a pre-commencement requirement for a WSI or agreement with the local authority that a WSI is not required to Work Nos. 6 and 8 (in addition to Work No. 5).

CONCLUSIONS

3.6.25. Taking the above matters into account, the ExA considers the Applicant has adequately assessed the significance of the heritage assets affected by the Proposed Development and that the extent of the likely impact can be understood. In this regard the ExA considers that the Application meets the requirements of NPS EN-1, dNPS EN-1, the NPPF and PPG.

3.6.26. The ExA has no reason to disagree with the Applicant's conclusions in ES Chapter 10 or the HEDBA and notes this is the view of HE and NYC. The ExA is satisfied that the Proposed Development would not result in significant adverse effects to any of the heritage assets identified in EIA terms.

3.6.27. Nevertheless, notwithstanding the mitigation measures proposed, the Proposed Development would result in slight adverse effects to the setting of a number of designated assets. The ExA agrees with the Applicant's assessment that this harm would be limited to less than substantial harm to the following designated assets:

- Drax Augustinian Priory (Scheduled Monument).
- The Church of St Peter and St Paul (Grade I Listed).
- Cowick Hall (Grade I Listed).
- Church of St Mary the Virgin (Grade I Listed).
- Airmyn Conservation Area.
- Snaith Conservation Area.

3.6.28. To conclude, the ExA considers that the Proposed Development would result in less than substantial harm to designated heritage assets. Where there is a harm, the SoS must give that harm considerable importance and weight. The ExA considers the slight adverse effects would be at the lower end of the scale of less than substantial harm and therefore ascribes this little weight against the making of the order.

3.6.29. This harm requires clear and convincing justification and is weighed against the public benefits of the Proposed Development at section 5.3 of this report, in the planning balance.

3.7. LANDSCAPE AND VISUAL AMENITY

INTRODUCTION

3.7.1. This section considers the effects of the Proposed Development in relation to design, landscape and visual impacts.

POLICY BACKGROUND

3.7.2. Section 5.9 of NPS EN-1 sets out guidance and policy for undertaking the assessment of landscape and visual effects. Section 4.5 sets out the criteria for 'good design'. Paragraphs of particular note are identified below.

3.7.3. Paragraph 5.9.8 recognises that virtually all nationally significant energy infrastructure projects will have effects on the landscape and states that projects need to be designed carefully, taking account of potential landscape impacts.

Paragraph 5.9.15 states that the scale of such projects means that they will often be visible within many miles of the site of the proposed infrastructure and the SoS should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.

3.7.4. In relation to mitigation, paragraph 5.9.22 of NPS EN-1 states that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within that site, design including colours and materials, and landscaping schemes depending on the size and type of the proposed project. Materials and designs of buildings should always be given careful consideration.

3.7.5. Paragraph 4.5.1 states that 'good design' for energy projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, and matched by an appearance that demonstrates good aesthetic as far as possible. Paragraph 4.5.3 states that the SoS should satisfy itself that the Applicant has taken into account both functionality and aesthetics as far as possible. It also states that while there may be little or no choice in the physical appearance of some energy infrastructure, there may be opportunities for the Applicant to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation.

3.7.6. The importance of good design is also emphasised in NPS EN-3 paragraph 3.7.61 with reference to good design that is sympathetic which can go some way to mitigate adverse landscape and visual effects.

THE APPLICATION

3.7.7. The Applicant's assessment of landscape and visual amenity matters was primarily contained within ES Chapter 9 (Landscape and Visual Amenity) [APP-045]. The supporting figures and appendices are listed in Table A1 in Appendix A of this report.

3.7.8. The assessment considered the impact of the Proposed Development during construction, decommissioning and operation on residents, visitors and workers, and users of recreational areas, footpaths and transport routes.

Baseline landscape character and visual context

3.7.9. The assessment gathered information on the existing baseline through a desk-based study including, among other sources, the Landscape and Visual Impact Assessment (LVIA) chapter of the ES from the Drax Repower application. A Zone of Theoretical Visibility (ZTV) was produced for the ES using a maximum parameter height of 95m for the absorber columns and a maximum parameter height of 70m for the regenerator as shown on Figure 9.3 of the ES [APP-100]. The study area was refined from an initial radius of 10km from the Order Limits to a 3km radius focussed study area. The Applicant based this on a combination of an analysis of the height and massing of the Proposed Development design, professional judgement and previous experience on the Drax Repower Project.

3.7.10. In ES Appendix 9.2: Landscape Baseline [APP-150] the Applicant stated that although National Character Areas (NCA) provide a thorough and robust base for landscape led decision making, they are too general for smaller sites such as the Proposed Development. At a local level the 3km Study Area is divided into landscape character areas (LCA) as shown on Figure 9.1: Landscape Character [APP-098] and as follows:

- Selby District LCAs:
    - LCA 5: Ouse Valley.
    - LCA 6: Derwent Valley.
    - LCA 7: Aire Valley.
    - LCA 10: East Selby Farmland.
    - LCA 15: Camblesforth Farmland.
- East Riding of Yorkshire Landscape Character Type 4 (LCT 4: River Corridors):
    - LCA 4A: Derwent Valley, Barmby on the Marsh to Pocklington Canal Reach.
    - LCA 4B: River Ouse Corridor, Barmby on the Marsh to M62 Toll Bridge.
    - LCA 4D: River Aire Corridor, Gowdall and Snaith to the Ouse Reach.
- East Riding of Yorkshire LCT 5: Open Farmland:
    - LCA 5A: Howden to Bubwith Farmland.

3.7.11. Whilst there are no national statutory designations within the study area relating to landscape value; there is one landscape in the study area which is designated as a local Important Landscape Area (ILA) within the administrative boundary of East Riding of Yorkshire: the Lower Derwent Valley ILA, located approximately 0.75km away from the Order Limits.

3.7.12. The topography within the study area is relatively flat, mainly lying between 5m and 15m Above Ordnance Datum (AOD). Barlow Mound to the west of Drax Power Station is a distinct local landmark, formed in the 1970s using residual materials from Drax. The River Ouse flows in a north-west to south-east direction to the north of the Order Limits and the River Aire runs eastwards, south of the Order Limits before its confluence with the River Ouse near the village of Airmyn. The study area is characterised by small woodland blocks with intermittent hedgerow and hedgerow trees along the majority of local road network and PRoWs.

3.7.13. The study area is also characterised by small to medium settlements and isolated residential properties and farmsteads. A number of motorways and A roads connect the larger settlements within the wider 10km study area and several railway lines bisect the study area connecting Selby with Leeds, York, Goole and Hull.

3.7.14. Several PRoWs run in close proximity to the Drax Power Station linking Barlow, Camblesforth, Carlton, Drax and Long Drax. PRoWs which run in close proximity to the Order Limits with potential to be affected by the Proposed Development are shown on ES Figure 9.7: Landscape Designations [APP-104].

3.7.15. Drax Power Station is a functional site which has been active since the 1960s. The original design was heavily influenced by A Weddle's strategy to consider the symmetry, scale and massing of the large-scale built form relative to the landscape and mitigation. Further information on the historic design guidance can be found in section 2.3 of the Design Framework [APP-195].

3.7.16. The Applicant acknowledged in the ES that planting within the power station site has become eroded because of progressive change to the footprint of the power station as development and technology changes. The condition of planting ranges from poor to moderate.

3.7.17. Existing lighting levels in the 3km study area are influenced by the lighting of the existing Drax Power Station and the surrounding settlements of Selby, Goole, Howden and other smaller villages. The Applicant explained in the ES that the rural

nature of the landscape, in an area of predominantly low district brightness, means that the existing Drax Power Station and its associated lighting is visually perceived in isolation from surrounding light sources.

3.7.18. The Applicant selected representative viewpoints from analysis of the ZTV, a field survey and through consultations with NYC, ERoY, Doncaster Metropolitan Borough Council (DMBC) and statutory consultees. Locations of the representative viewpoints are shown on Figure 9.5: Viewpoint Location Plan [APP-102] and the photography including night-time views can be seen in Figure 9.6: Viewpoint Photography [APP-103].

Construction and decommissioning phase

3.7.19. The changes experienced by sensitive receptors during construction and decommissioning phases were assessed by the Applicant to include:

- the presence of construction activities, compounds and site security in the near and middle-distance;
- additional construction traffic, site clearance and movement of materials and plant/ cranes;
- the presence of tall construction plant and cranes; and
- the gradual emergence of the Proposed Development, notably the absorber columns and regenerators (95m and 70m maximum height parameters respectively) and the Carbon Capture Wastewater Treatment Plant Area (40m maximum height parameter).

3.7.20. The following sensitive receptors would experience some or all the above changes and overall effects that are temporary moderate adverse (significant):

- Residential receptors with western facing views off Pear Tree Avenue.
- Residential receptors with eastern facing views off Camela Lane and Clay Lane.
- Residential receptors with north-east facing views from the settlement of Camblesforth.
- Recreational receptors travelling along PRoW with close proximity eastern facing views.
- Recreational receptors travelling along PRoW with south-western facing views.

3.7.21. Mitigation measures for the construction and decommissioning phases were set out in the ES and included:

- landscape mitigation planting; measures within the CEMP and DEMP;
- the construction programme to be no longer than reasonably necessary;
- protection of soil quality for the purposes of landscape planting; and
- the protection of existing trees and shrubs not affected by the construction works.

3.7.22. The Applicant anticipated that whilst the mitigation measures proposed would reduce the magnitude of change experienced for sensitive receptors, the assessed level of effects would remain as moderate adverse (significant).

Operational phase

Design principles

3.7.23. The strategic aims of the site and how the design of the Proposed Development fits into this context were contained within the Design Framework [APP-195]. The

design principles that are detailed in the framework are summarised in the following paragraphs.

Siting

3.7.24. In relation to the siting of the Proposed Development, there were two solutions considered: a northern and a southern solution. Further detail can be found in ES Chapter 3 (Consideration of Alternatives) [APP-039]. The northern solution was selected by the Applicant because:

- it enables the use of the existing cooling towers associated with Unit 5 and Unit 6 (currently coal operating units);
- it locates the BECCS process equipment close to the existing general plant equipment, in particular the high-pressure CO_2 compressors and pipeline, which minimises the length of pipe runs required;
- the close proximity of the main flue gas stack to the northern solution improves the flue gas supply and return tie-in locations; and
- It allows the re-use of existing infrastructure such as piles from the by then removed flue gas desulphurisation (FGD) plant.

Massing and appearance

3.7.25. The Applicant stated in the Design Framework that the material form of much of the Proposed Development is largely driven by operational requirements. The Applicant used the Rochdale Envelope approach for the maximum parameters of components of Work Nos. 1 and 2. This approach provided for some deviation to allow for design and technology changes in the detailed design stage. It is the maximum parameters that were assessed in the ES in relation to landscape and visual impact. The maximum parameters are set out in Schedule 14 of the dDCO [APP-013].

3.7.26. It was acknowledged by the Applicant in the Design Framework that the absorber columns, which would be the most prominent structures of the Proposed Development, would introduce a new major vertical element to the western elevation of Drax Power Station, displacing the current horizontal emphasis. However, the Applicant considered that the main horizontal emphasis of the skyline would continue to be largely defined by the existing boiler/ turbine house. Figures 10 and 11 below (extracts from [APP-103]) show the baseline and with Proposed Development view of the western elevation. The maximum parameters are shown with a red line on Figure 11.

Figure 10: Viewpoint 2 - View north-east from Camela Lane baseline panorama

Figure 11: Viewpoint 2 - View north-east from Camela Lane photomontage and maximum parameters panorama

Colour palette

3.7.27. The Applicant proposed a colour palette for the main structures to ensure compliance with the design approach for the power station from the historic design guidance. In summary, buildings up to 15m in height would be coloured dark brown; and buildings over 15m in height, tanks, pipework, ducting and storage structures would be coloured with light grey tones.

Lighting design

3.7.28. A Draft Lighting Strategy [APP-184] was included in the Application. This would be secured by R8 of the dDCO [APP-013] which requires that the scheme for permanent external lighting must be substantially in accordance with the draft strategy.

Landscape within the power station

3.7.29. The Applicant set out measures for the retention of vegetation in the OLBS [APP-180] (final version [REP6-017]) and Figure 3 of the OLBS [APP-183]. The Applicant accepted that there is likely to be necessary loss of amenity planting in order to facilitate works. Where the loss of such planting is unavoidable, the Applicant stated that the detailed design would seek to reinstate those landscape elements that would be temporarily lost, or to incorporate new amenity planting measures. Design principles for the soft and hard landscaping were set out in the Design Framework paragraphs 4.2.20 to 4.2.33.

3.7.30. The ES did not report any likely significant effects on landscape or visual receptors due to the Proposed Development in the operational phase. As such, there were no specific landscape-focused mitigation measures proposed.

ISSUES CONSIDERED DURING THE EXAMINATION

Good design

3.7.31. The ExA asked the Applicant to expand on how it had demonstrated 'good design' in relation to both aesthetics and functionality. In its response [REP2-060], the Applicant explained that the location of the proposed buildings and structures was reviewed and visualised to ensure that proposals would not result in a significantly different or degraded appearance, with colours and materials creating cohesion between the new and existing structures. The Applicant also explained that the

location of the large pieces of infrastructure has been designed to be as efficient as possible for a retro-fit solution, minimising pipe runs across the site.

3.7.32. The ExA questioned the Applicant on the extent to which the external appearance of the large absorber columns is fixed by the functionality at ISH3 [EV-026 and EV-028] referencing the contrast between the visually complex exoskeleton design of the proposed absorber columns and the large simple building forms of the existing power station. The Applicant explained that there would be pipework connections throughout the height of the absorber columns which cannot be enclosed within a simpler building form for reasons of effective operation and practicality of periodic maintenance.

3.7.33. The Design Framework set out the design principles for the Proposed Development in the context of historic design guidance. NYC agreed with the Design Framework principles in its D3 submission [REP3-032] but queried how in practice these principles would be applied to the detailed design stage given that the Design Framework was not included in Schedule 13 (documents and plans to be certified) of the dDCO and was not referenced directly in R6 (Detailed Design Approval), R7 (Provision of landscape and biodiversity mitigation and enhancement) or R8 (External lighting during operation).

3.7.34. As there was a lack of clarity about how the design principles would be secured in the DCO, at ISH3 the ExA asked NYC to confirm what it would wish to see in the REAC (final version [REP9-019]) in terms of the Design Framework principles. The ExA also asked for the Applicant to subsequently set out how the Design Framework principles would be secured. The Applicant provided a detailed explanation at D5 in response to NYC [REP5-028] identifying how each principle is secured in the REAC, OLBS (final version [REP6-017]) and in R6, R7 and R8 of the dDCO [REP4-022].

3.7.35. The ExA accepts that the visual appearance of the structures that make up the Proposed Development would be in some ways fixed by the function of those structures. Nonetheless, the ExA is satisfied that the Applicant has demonstrated that 'good design' could be achieved for the Proposed Development through siting and use of colours and materials.

Landscape

3.7.36. NYC raised a number of landscape and visual related issues in its LIR [REP-039]. In its D3 submission [REP3-032], whilst NYC confirmed that it agreed that in EIA terms there would be no significant adverse landscape and visual effects it did consider that there were a notable number of minor adverse landscape and visual effects. NYC's position was that these, less significant but still adverse, impacts needed to be reduced where reasonable and possible in accordance with local plan policy.

3.7.37. NYC's position in its D3 submission was that in other cases, where an application does not meet the threshold for an EIA, a landscape strategy would be expected to comply with local plan policy. It goes on to say that in EIA cases such as the Proposed Development, it would be perverse to only develop a strategy mitigating significant adverse effects, leaving lesser effects to go unchecked.

3.7.38. At D6, NYC stated in response to ExQ2 [REP6-051], in relation to the updated OLBS, that: *"The balance of landscape development has been addressed and other than two points which have been referred to in our response to DLV2.4 the Authority is happy with the landscape elements of the scheme."* By the close of the

Examination there was only point of disagreement remaining between the Applicant and NYC which was in relation to vegetation retention. This disagreement was detailed in the final SoCG between the parties [REP10-014] and the Applicant's position was expanded in its D8 submission 'Pre-Hearing Position Statement on Outstanding Matters with North Yorkshire Council' [REP8-028].

3.7.39. In summary, the long-term (30 years) maintenance and management of the landscape features in the OLBS extends to new planting, existing planting to be retained as referenced on the existing vegetation plan [APP-183] and any removed and reinstated planting. NYC requested that the long-term (30 years) maintenance and management be extended to all existing vegetation within the Order Limits. NYC's concern was that it was unclear what vegetation was likely to be lost and how that might be compensated for. NYC would prefer to see a commitment of no net loss of landscaping features within the OLBS.

3.7.40. NYC stated in the final SoCG that this should not be seen as an overall objection to the Proposed Development. It was seeking to express its concern that amenity planting could be lost because of the Application rather than be enhanced.

3.7.41. The Applicant's position (detailed in its D8 submission referenced above) was that it is not considered appropriate to also commit to maintaining all existing landscape features other than those identified in the OLBS. It included the following reasons amongst others:

- This vegetation is not being affected by the Proposed Development, nor is it necessary in order to mitigate impacts of the Proposed Development.
- The LVIA that was carried out for the Proposed Development concluded no permanent significant adverse effects for landscape and visual amenity during construction, decommissioning or operation.
- Such a requirement would not meet the tests of being necessary and relevant to the development being consented.
- As per NPS EN-1, the aim should be to minimise harm to the landscape (from the Proposed Development), providing reasonable mitigation where possible and appropriate. The existing vegetation in question could not be said to be required to be maintained in order to mitigate and minimise harm to the landscape resulting from the Proposed Development.

3.7.42. The ExA considers that NYC's request that the long-term (30 years) maintenance and management being extended to all existing vegetation within the Order Limits goes further than the requirements of NPS EN-1. The ExA considers that the Applicant's approach to retention of vegetation within the power station site is reasonable and there would be sufficient controls within the rDCO to minimise the loss of landscape features and to ensure maintenance and management of landscape features affected by the Proposed Development.

CONCLUSIONS

3.7.43. The ExA considers that there would be temporary significant effects in relation to visual amenity for residential and recreational receptors as a result of the Proposed Development in the construction phase. While the OLBS, CEMP and DEMP set out mitigation to reduce some visual amenity effects, the significant adverse effects of the Proposed Development would remain.

3.7.44. R7 (Provision of landscape and biodiversity mitigation and enhancement) and R14 (CEMP) of the rDCO would secure mitigation identified in the ES. The ExA accepts that the adverse visual effects of the Proposed Development in the construction

phase cannot be avoided entirely, and as such the OLBS mitigates the landscape and visual effects of the Proposed Development as far as reasonably practicable. In that regard the ExA concludes that the Proposed Development complies with the policies in NPS EN-1.

3.7.45. The ExA considers that there would be no significant adverse effects in the operational phase. The ExA is satisfied that the landscape and visual effects would be minimised through the appropriate siting of the Proposed Development within the site and the use of an appropriate colour palette to create a cohesion between the new and existing structures. R6 (Detailed design approval), R7 (Provision of landscape and biodiversity mitigation and enhancement) and R8 (External lighting during operation) would ensure design principles identified in the Design Framework would be applied within the detailed design, and this is secured in the rDCO.

3.7.46. As NPS EN-1 and dNPS EN-1 make clear, all proposed energy infrastructure is likely to have visual effects. The significant effects on landscape and visual amenity during the construction phase would cause harm weighing against the Proposed Development. However, as this would be temporary and localised, the ExA affords this little negative weight in the planning balance.

3.8. LAND USE, GROUND CONDITIONS AND CONTAMINATION

INTRODUCTION

3.8.1. This section considers the effects of the Proposed Development in relation to land use, ground conditions and contamination.

POLICY BACKGROUND

3.8.2. Section 5.10 of NPS EN-1 sets out guidance and policy for undertaking the assessment of impacts on land use. Paragraphs of particular note are identified below.

3.8.3. In relation to agricultural land and soils, paragraph 5.10.8 states that applicants should seek to minimise impacts on the best and most versatile (BMV) agricultural land and that applicants should also identify any effects and seek to minimise impacts on soil quality taking into account any mitigation measures proposed. BMV land is defined as land in Grades 1, 2 and 3a of the Agricultural Land Classification (ALC).

3.8.4. Paragraph 5.10.15 states that the SoS should ensure that applicants do not site their Proposed Development on BMV land without justification. The SoS should give little weight to the loss of poorer quality agricultural land (in Grades 3b, 4 and 5).

3.8.5. Paragraph 5.10.19 states that although 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, applicants should nevertheless seek to minimise these effects and the effects on existing or planned uses near the site by the application of good design principles, including the layout of the project.

3.8.6. In relation to contamination, paragraph 5.10.8 of NPS EN-1 states that applicants should ensure that they have considered the risk posed by land contamination where the development is proposed on previously developed land.

3.8.7. The dNPS EN-1 adds in paragraph 5.11.14 that applicants are encouraged to develop and implement a Soil Management Plan which could help minimise potential land contamination.

THE APPLICATION

3.8.8. The Applicant's assessment of land use, ground conditions and contamination related impacts is primarily contained within Chapter 11 (Ground Conditions) of the ES [APP-047]. The supporting appendices are listed in Table A1 in Appendix A of this report. Matters relating to contamination and the water environment are discussed in section 3.10 of this report.

Baseline

3.8.9. A detailed assessment of the baseline conditions can be found in section 11.7 of ES Chapter 11 including historical land uses, geology, soils, agricultural land, hydrology, flooding, ecological designations, registered landfills, radon, mining, previous investigations and potential sources, pathways and receptors for contamination.

3.8.10. The Applicant collected details of the ground conditions from geological maps, flood mapping, Coal Authority maps and ALC maps as well as data from previous ground investigations and a site visit in September 2021.

3.8.11. An agricultural land survey was carried out in 2022 and can be seen in ES Appendix 11.2: Soil Resource and ALC Survey [APP-158] and Figure 11.2: ALC Plan [APP-109]. The survey graded the land as Grade 2 (BMV) (4.9 hectares (ha)) in the centre of the ECLA and Subgrade 3b (2.2 ha) on the northern and southern extents of the ECLA.

3.8.12. The major feature within the site is the existing power station. The site is 'lower tier' classified under the Control of Major Accident Hazards (COMAH) Regulations. The site is otherwise predominantly rural and agricultural. The villages of Barlow, Camblesforth and Drax are located within 1km of the Order Limits. Sensitive receptors in relation to contamination include human receptors, controlled waters, building fabric and services, agricultural land and ecological receptors.

Construction and decommissioning phase impacts

3.8.13. The Applicant identified potential effects on construction workers and site users from contamination within the underlying soils and groundwater during the construction and decommissioning phases. Following implementation of mitigation measures, the Applicant determined the effect to be neutral. Mitigation measures proposed by the Applicant would include:

- good practice measures set out in the CEMP including management of dust, hazardous materials and contaminated land;
- a remediation strategy which would specify protective measures during construction which would be agreed with the regulators prior to implementation;
- a Verification Report to provide confidence that the remediation undertaken would be validated; and
- a Materials Management Plan (MMP) would be produced, if necessary, to ensure that soil re-use and imported materials are suitable for their intended use and will not significantly affect human health or the environment.

3.8.14. Activities such as drilling, piling, and excavation have the potential to create new migratory pathways through which contaminants could migrate into underlying aquifers. Mitigation measures proposed by the Applicant include those listed in the above paragraph in addition to a Piling Risk Assessment which would be produced to outline measures to protect the underlying aquifers and mitigate risk of creating new migratory pathways for contamination. Following implementation of mitigation, the Applicant determined the effect to be neutral.

3.8.15. During construction, agricultural soils within the ECLA could be degraded due to construction activities without appropriate mitigation through compaction and erosion. Mitigation measures proposed by the Applicant include a Soil Handling Management Plan (SHMP), which would be included in the CEMP, to include site specific soil management considerations to reduce potential impacts. Following implementation of mitigation, the Applicant determined the effect to be sight adverse (not significant).

Operational phase impacts

3.8.16. An area of the Habitat Provision Area to the north of the ECLA would be permanently used for ecological mitigation, removing it from agricultural use. The Applicant determined this effect to be not significant as the impact is reversible as the land could be returned to agricultural use.

ISSUES CONSIDERED DURING THE EXAMINATION

3.8.17. In its RR [AS-011] NE raised concerns regarding the ALC methodology, the agricultural land and soils EIA methodology and the appropriateness of the proposed soil handling for the Habitat Provision Area.

3.8.18. The Applicant submitted an updated Soil Resource and ALC survey at D2 [REP2-038]. The survey confirmed that the area of land proposed to be used for the Habitat Provision Area to the north of the ECLA and the flood compensation area (FCA) are classified as ALC Subgrade 3b. It also confirmed that although the Off-site Habitat Provision Area is not agricultural land, it would be classified as ALC Subgrade 3b should it return to agricultural use. In relation to NE's concerns regarding soil handling, the Applicant provided a response to ExQ1 [REP2-060] that R14 (CEMP) specifies consultation with NE on the CEMP regarding soil management prior to its approval.

3.8.19. NE confirmed in its WR [REP2-085] that the concerns relating to soils and BMV agricultural land were adequately resolved subject to the appropriate measures as outlined in the application documents being secured. In its responses to ExQ1 [REP2-085] NE reiterated the need for the ALC grading of the Habitat Provision Area to be determined in a robust and reliable manner. NE submitted an update to its WR at D4 [REP4-041] welcoming the updated ALC survey information and confirmed this matter to be resolved.

3.8.20. The ExA questioned the Applicant in ExQ1 [PD-011] regarding the impacts on BMV soils and agricultural practices from Work No. 8 in the operational phase of the Proposed Development. The Applicant responded [REP2-060] that any disruption to farming operations would be minimised by the location of cables within ducts and maintenance would be largely via permanent access chambers, removing the need for disruption of additional agricultural land. In respect of the impact on soils the Applicant confirmed the SHMP would treat the soils in this area as BMV and there is not anticipated to be any loss of BMV.

3.8.21. At D9 ERoY confirmed [REP9-028] it had no concerns regarding cable route and depth, soil management, field drainage, future rights, works compound and access, and the impact of undergrounding telecommunication lines from a planning perspective in relation to Work No. 8.

CONCLUSIONS

3.8.22. The ExA is satisfied that the assessment set out in the ES meets the requirements of NPS EN-1 and dNPS EN-1. The ExA is also satisfied that no significant land use, ground conditions and contamination effects are likely to arise from the Proposed Development.

3.8.23. In relation to impacts on BMV agricultural land, the ExA is satisfied that the control and management measures included in the rDCO would be sufficient to mitigate any negative impacts to an acceptable level. R14 (CEMP) would ensure mitigation identified in the ES is adequately carried out, and this is secured in the rDCO.

3.8.24. In relation to effects of contamination on construction workers, site users and controlled waters, the ExA is satisfied that the remediation, verification and management measures included in the rDCO would be sufficient to mitigate any negative impacts to an acceptable level. R12 (Ground Conditions) and R14 (CEMP) would ensure mitigation identified in the ES is adequately carried out, and this is secured in the rDCO.

3.8.25. Overall, the ExA considers land use, ground conditions and contamination to be a negative consideration in the planning balance due to the slight adverse effects on BMV agricultural land. However, as negative impacts could be managed to an acceptable level, the ExA affords this little negative weight in the planning balance.

3.9. NOISE AND VIBRATION

INTRODUCTION

3.9.1. This section considers the effects of the Proposed Development in relation to noise and vibration.

POLICY BACKGROUND

3.9.2. Section 5.11 of NPS EN-1 sets out guidance and policy for undertaking the assessment of noise impacts. Paragraphs of particular note are identified below.

3.9.3. Paragraph 5.11.9 is clear 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.
- Mitigate and minimise other impacts on health and quality of life.
- Where possible, contribute to improvements to health and quality of life through the effective management and control of noise.

3.9.4. Paragraph 5.11.8 states that good acoustic design should be demonstrated 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.

3.9.5. With regard to mitigation, paragraph 5.11.11 states that consideration should be given to whether measures are needed over and above those that form part of the application. Paragraph 5.11.12 goes on to state that mitigation measures may include those relating to engineering (to reduce or contain noise generated); layout (including distance from sensitive receptors and screening) and administration (restricting activities and specifying acceptable noise limits).

THE APPLICATION

3.9.6. The Applicant's assessment of noise and vibration impacts was primarily contained within ES Chapter 7 (Noise and Vibration) [APP-043]. The supporting figures and appendices are listed in Table A1 in Appendix A of this report.

Baseline

3.9.7. The study area for the construction noise and vibration assessment considered sensitive receptors within 1km of the Order Limits.

3.9.8. Baseline noise monitoring locations were agreed with Selby District Council (SDC) and noise monitoring was carried out at 13 locations between 19 May 2021 and 16 June 2021. Further data was collected from permanent noise monitoring locations in 2020 and 2021. The baseline noise survey monitoring locations and sensitive receptor locations were shown in ES Figure 7.1 [REP2-025] and listed in Tables 7.15 and 7.16 in ES Chapter 7.

3.9.9. The baseline monitoring results presented in ES Appendix 7.3 [APP-132] showed that the baseline noise environment is dominated by noise from the Drax Power Station and traffic using the wider road network, as well as farm machinery.

Construction and decommissioning

3.9.10. Construction and decommissioning were considered together as it was assumed that noise and vibration sources associated with decommissioning would be equivalent to those assessed for the construction phase.

3.9.11. A noise model was used to predict the likely construction noise associated with the Proposed Development. Predicted noise levels were based on the items of plant assumed to be used for each construction activity and were assessed over the daytime, evening and night-time periods. Vibration levels from piling and compacting activities were predicted and assessed at the nearest sensitive receptors. The assumptions used in the assessment of construction noise and vibration are set out in Appendix 7.1 of the ES [APP-130].

3.9.12. The Applicant's noise assessment showed the predicted noise levels at the nearest noise sensitive receptors would be expected to be below the baseline ambient noise levels (see Tables 7.20 and 7.21 in ES Chapter 7), and therefore, below the Lowest Observed Adverse Effect Level (LOAEL). The Applicant's vibration assessment (see Tables 7.22 to 7.24 in ES Chapter 7) showed the predicted vibration levels at the nearest sensitive receptor would also be expected to be below the LOAEL set for human vibration perception.

3.9.13. The Applicant therefore concluded that there would be a negligible magnitude of impact for both noise and vibration, and therefore, the construction activity noise and vibration effects would be not significant.

3.9.14. The results of the Applicant's road traffic noise assessment in ES Appendix 7.5 [REP2-036] indicated that traffic noise levels would likely increase by up to 1 decibel (dB), which is classified as a minor magnitude of impact, and therefore, the construction traffic noise effect would also be not significant.

Operation

3.9.15. A noise model was prepared by the Applicant to determine the likely noise levels arising during the operation of the Proposed Development. The Applicant anticipated that noise sources from the Proposed Development would likely include flue gas blowers, steam turbines, pumps, low-pressure and high-pressure compressors. The assumptions used in the assessment of operational noise were set out in Appendix 7.2 of the ES [APP-131] including an example of the primary mitigation measures that could be implemented in order to achieve the assumed operational noise levels.

3.9.16. Sound levels from plant during operation were assessed by comparing noise from operation of equipment (predicted rating level ($L_{Ar,Tr}$ dB)) against existing background noise levels ($L_{A90,\ 15min}$ dB). This is in line with 'British Standard BS4142:2014 +A1:2019: Methods for rating and assessing industrial and commercial sound'. An increase of 5dB above background levels was considered likely to indicate an adverse impact on sensitive receptors and an increase of 10dB above background levels was considered likely to indicate a significant adverse impact on sensitive receptors, depending on the context.

3.9.17. The results of this comparison can be found in Tables 7.25 and 7.26 of ES Chapter 7. The results showed that there would be an adverse impact of moderate magnitude, depending on context, for night-time operational noise at noise sensitive receptors R6 (increase of 6dB) and R14 (increase of 7dB).

3.9.18. The Applicant presented contextual considerations in the ES which, it stated, demonstrated that the operational noise effects would be not significant for the reasons outlined below.

3.9.19. The Applicant concluded that there would be no change in ambient noise levels ($L_{Aeq,16h}$ dB) at daytime or night-time at any sensitive receptor. This was assessed by logarithmically adding the measured baseline ambient noise levels ($L_{Aeq,16h}$ dB) to the specific sound source of the Proposed Development ($L_{Aeq,T}$ dB) and then comparing the resulting value against the measured baseline ambient noise levels (see Tables 7.27 and 7.28 of ES Chapter 7).

3.9.20. The absolute noise levels were assessed against guidance in BS8233:2014 (Guidance on sound insulation and noise reduction for buildings, BSI 2014) and it was found that the night-time internal noise level at the highest noise modelling result (residential receptor R13) was predicted to be lower than the guideline values for within bedrooms (see Tables 7.29 and 7.30 of ES Chapter 7).

3.9.21. Conservative background noise levels were used for the assessment. For approximately 70% of the time, the background noise levels would likely be higher than those selected for the assessment.

3.9.22. The Applicant concluded that overall, no significant effects were identified for the Proposed Development and as a result no further design, mitigation or enhancement measures were proposed.

ISSUES CONSIDERED DURING THE EXAMINATION

North Yorkshire Council

Permitted preliminary works

3.9.23. The LIR from NYC [REP-039] raised concerns that R14 of the dDCO [APP-013] allowed a number of 'permitted preliminary works' that would take place prior to the CEMP being agreed and implemented. The Applicant responded at D2 [REP2-067] to clarify which activities could be progressed prior to the production of the CEMP. The matter was raised by the ExA at ISH3 [EV-026 and EV-028] and NYC expressed its concern that construction compounds could constitute 'permitted preliminary works' and therefore the siting of such would not be subject to scrutiny. In its D5 submission [REP5-032] NYC confirmed that this matter was resolved as it was reassured by the construction laydown plan (Figure 2.3 in the ES [APP-061]).

Core construction hours

3.9.24. NYC raised concern regarding construction working hours in its comments on responses to ExQ1 [REP3-031]. NYC proposed that core construction hours should be:

- Monday to Friday 08:00 - 18:00; and
- 08:00 - 13:00 on Saturday.

3.9.25. The Applicant's proposed standard working hours during the construction phase, set out in item G5 of the REAC [REP9-019], are:

- Monday to Friday 07:00 to 19:00; and
- 07:00 - 14:30 on Saturday

3.9.26. The matter was raised by the ExA at ISH3, specifically asking the Applicant to justify its proposed construction working hours for Saturdays relative to other projects such as Drax Repower and Keadby 3. The Applicant responded that the noise assessment had shown no significant effects throughout the construction hours proposed and assessed. The Applicant went on to say that any restriction on working hours should be based on impact. In addition, any shortened working hours would have the effect of lengthening the construction timeframe.

3.9.27. NYC explained in its post-hearing submission [REP4-042] that the siting of construction compounds was the primary concern when operating outside of recommended construction hours. In its D5 submission [REP5-032] NYC confirmed that this matter was resolved as it was reassured by the construction laydown plan (Figure 2.3 in the ES [APP-061]).

Operational impacts on residential receptors

3.9.28. In its LIR [REP-039], NYC raised concerns that operational noise impacts were not adequately addressed or mitigated in R17 of the dDCO in relation to night-time residual effects on residential Receptors 6 and 14. NYC acknowledged the contextual considerations put forward by the Applicant in the ES. However, NYC expressed concern that there was uncertainty regarding good acoustic design in terms of efforts to incorporate noise mitigation measures when seeking to avoid adverse noise impacts at all sensitive receptors.

3.9.29. In NYC's response to ExQ1 [REP2-095], it stated that in the absence of demonstrating good acoustic design, the 'Rating Level' dDCO in R17 for Receptors 6 and 14 should be reduced to 33dB.

3.9.30. The Applicant reiterated its position in its response to ExQ2 [REP6-033]. It stated that once the identified contextual factors have been considered (see paragraphs 3.9.18 to 3.9.22 above), the initial operational noise impact estimations indicated in Table 7.26 of the ES are held to be not significant. Further, the Applicant stated that reducing the rating levels any further would add disproportionate costs to the project.

3.9.31. In its D7 responses to issues raised at D6 [REP7-017], the Applicant pointed to examples from its assessment demonstrating how it had undertaken good acoustic design. The Applicant pointed to Appendix 7.2 of the ES [APP-131] where the assumed mitigated noise levels for the CO_2 compressor buildings, pumps, power turbines and flue gas booster fans are considerably lower than the unmitigated levels.

3.9.32. The Applicant also appended to its D7 submission a comparison of the northern, which is the chosen option, and southern layout options. This comparison shows that the nearest noise sensitive receptors would be closer to the southern layout option and therefore, the chosen option would be more favourable in term of noise impacts. In the signed SoCG between the Applicant and NYC [REP10-014], NYC confirmed it is agreed that the northern option is the most favourable.

3.9.33. In the signed SoCG it is noted that matters relating to residual effects at residential Receptors 6 and 14 were not agreed between the parties at the close of the Examination. NYC's position was that it was still requesting the rating levels in R17 of the dDCO to be lowered to remove the potential for adverse impact. The Applicant reiterated its position that when contextual considerations are taken into account then the operational noise effects would be not significant.

3.9.34. NYC stated that it acknowledged the Applicant's case for contextual considerations and that the assessment methodology provides for a deflated background noise level against an inflated rating level, and that the ExA would balance this against the likelihood for adverse impact and the need for the Proposed Development.

3.9.35. Following a request by the ExA at ISH3 [EV-026 and EV-028], the Applicant appended extracts of the guidance on contextual considerations to its summary of oral case provided at D4 [REP4-026].

3.9.36. 'BS4142:2014+A1:2019 Technical Note, March 2020 Version 1' states *"absolute levels may be as, or more, important than relative outcomes where background and rating levels are low."* It goes on to clarify that BS 4142 doesn't define 'low' in the context of background sound or rating levels, although it does say *"The note to the Scope of the 1997 version of BS 4142 defined […] low rating levels as being less than about 35 dB $L_{AR,TR}$. The WG suggest that similar values would not be unreasonable in the context of BS4142, but that the assessor should make a judgement and justify it where appropriate."*

3.9.37. The rating levels for residential Receptors 6 and 14 are assessed as 34 and 35 dB $L_{AR,TR}$ respectively. Therefore, it is the ExA's view that in the context of the above technical note, the absolute noise levels may be as, or more, important than the margin by which the rating level exceeds the background.

3.9.38. In its response to ExQ2 [REP6-033], the Applicant stated that both absolute noise levels and the margin by which the rating level exceeds the background are important and quotes BS4142:2014+A1:2019 Clause 11 which advises that: *"The significance of sound of an industrial/or commercial nature depends upon both the margin by which the rating level of the specific sound source exceeds the background sound level and the context in which the sound occurs."*

3.9.39. NYC, in its response to ExQ2 [REP6-051], stated that it considered the margin by which the rating level exceeds the background is more important to appreciating what the impact will be. NYC also stated that it was clear from the data that the receptors currently enjoyed very quiet living conditions and would continue to do so alongside the Proposed Development in accordance with BS8233:2014 design criteria for habitable rooms.

3.9.40. The ExA acknowledge NYC's position and it is clear that there is some room for interpretation in the guidance. However, it is the ExA's position that the Applicant's position is reasonable. There is an indication of an adverse impact at Receptors 6 and 14 which is dependent on the context. It is important to note that the impacts are reported to be 'adverse' rather than 'significant adverse'. Furthermore, the contextual considerations of no change in ambient noise $L_{Aeq,T}$ levels, no adverse exceedance in relation to BS8233:2014 and the use of conservative background $L_{A90,T}$ levels do demonstrate that the noise effects in the operational phase would not be significant.

CONCLUSIONS

3.9.41. The ExA is satisfied that the Applicant has done everything reasonably practical to mitigate and minimise adverse effects through good acoustic design in the layout of the site and primary mitigation measures set out in the ES.

3.9.42. The ExA is satisfied that given the contextual considerations presented by the Applicant, the noise rating levels in R17 of the rDCO would not result in significant adverse effects at residential receptors. The ExA is satisfied that the Noise Mitigation Scheme to be submitted in accordance with R17 would give the NYC sufficient opportunity to ensure that a good acoustic design is achieved during detailed design.

3.9.43. The ExA considers that noise and vibration issues have been addressed adequately and meet the requirements specified in section 5.11 of NPS EN-1, as well as dNPS EN-1. The ExA considers that noise and vibration effects are neutral and do not weigh for or against the making of the order.

3.10. WATER ENVIRONMENT AND FLOOD RISK

INTRODUCTION

3.10.1. This section addresses the potential impact of the Proposed Development on the water environment, including water quality and flood risk. Matters relating to the impact on ecological receptors are considered under 'Biodiversity and Ecology' above.

POLICY BACKGROUND

3.10.2. NPS EN-1 recognises that infrastructure can have adverse effects on the water environment. It states that the effects could lead to adverse impacts on health or on protected species and habitats and could result in surface waters, groundwaters or

protected areas failing to meet environmental objectives established under the Water Framework Directive (WFD).

3.10.3. It states that where projects are likely to have effects on the water environment, applicants should undertake an assessment of the existing status of, and impacts of, the proposed project on water quality, water resources and physical characteristics of the water environment as part of the ES. The ES should describe existing quality of watercourses, existing water resources, existing physical characteristics of the water environment and impacts on protected waterbodies and areas.

3.10.4. Section 5.7 of NPS EN-1 relates to flood risk. Paragraph 5.7.3 states that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. Where new energy infrastructure is, exceptionally, necessary in such areas, policy aims to make it safe without increasing flood risk elsewhere and, where possible, by reducing flood risk overall.

3.10.5. Paragraph 5.7.4 of NPS EN-1 states that applications for energy projects of 1 hectare or greater in Flood Zone 1 and all proposals 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 would be managed, taking climate change into account.

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

3.10.7. dNPS EN-1 reiterates the requirement for an FRA in Flood Risk Zones 2 and 3 and an assessment of impacts on water quality, resources and physical characteristics of the water environment. It also states that the impact on local water resources can be minimised through planning and design for the efficient use of water, including water recycling.

THE APPLICATION

3.10.8. ES Chapter 12 (Water Environment) [APP-048] examined the effect of the Proposed Development on the water environment including the impact of flood risk. This was supported by an FRA [APP-160], a WFD screening note [APP-161] and a Proposed SWDS [APP-162]. The WFD screening exercise identified that there would not be significant impacts to waterbodies assessed against the WFD objectives.

Water quality

3.10.9. The Applicant identified sensitive receptors for the Proposed Development in relation to the water environment to include various watercourses, drains, ponds, aquifers, abstractions and people. The site is also located within a groundwater Source Protection Zone (SPZ).

3.10.10. The Applicant identified that Carr Dyke and an unnamed drain along the eastern side of New Road and Carr Lane could be temporarily affected by increased sediment load. Impacts to these watercourses and to various drains, the River

Ouse, aquifers, groundwater and abstractions as a result of accidental spillage and leakage of fuels or hazardous substances during construction and decommissioning was also identified. The Applicant considered that with the implementation of mitigation, including a piling risk assessment, and good practice measures to control silt and potentially polluting substances, these effects would not be significant.

3.10.11. The REAC outlines how the actions and commitments set out within it (and described in section 12.10 of ES Chapter 16) are secured and includes within it a requirement for a CEMP and DEMP. The CEMP and DEMP would be used to manage the potential environmental impacts that could result from the construction/ decommissioning of the Proposed Development. thus, ensuring suitable actions are in place to mitigate the potential impacts.

3.10.12. Taking into account the proposed pollution measures described in section 12.10 of the ES and contained within the SWDS, the Applicant considered that there would be no change in the potential deterioration of the water quality caused by potential pollutants contained in routine runoff.

Flood risk

3.10.13. A detailed assessment of flood risk was undertaken in the FRA. This stated that the site is at risk of tidal and fluvial flooding and that flood records received from the EA show that there are no known historic records of flooding within the Order Limits.

3.10.14. The area of the Proposed Development is located partially in Flood Risk Zone 1 and partially within Flood Risk Zone 3 (see Figure 12 below (extract from [REP2-039])) and as such the FRA contains a Sequential and Exception Test. The FRA demonstrates that both tests are passed as the Proposed Development is classified as Essential Infrastructure under the NPPF. In terms of the Sequential Test this is because as an extension to the existing power station site, the Proposed Development cannot be located elsewhere.

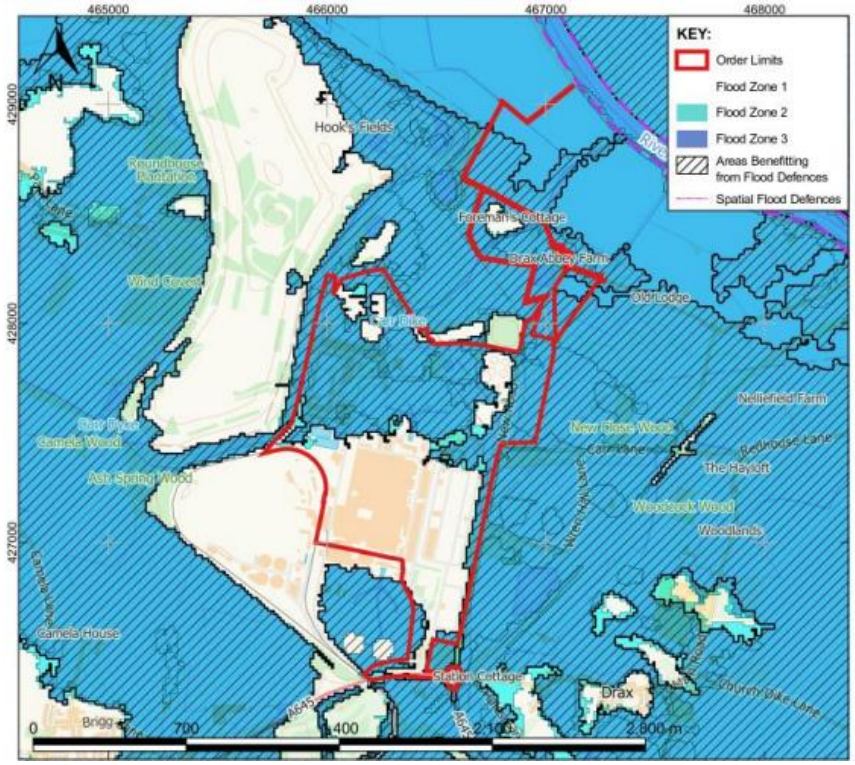


Figure 12: Extract of the EA's Flood Map for Planning

3.10.15. It states that it passes the Exception Test because it provides sustainability benefits through CCS which provides a sustainable approach to the production of energy, which is less harmful to the environment. Additionally, the FRA demonstrates that the Proposed Development would remain safe throughout its design life, that flood risk would not be increased elsewhere and provides a sustainable approach to the production of energy, which is environmentally more sustainable and will help align with the UK Government's Net Zero Strategy: Build Back Greener.

3.10.16. The Applicant considered that with the implementation of the proposed SWDS there could be a beneficial effect in relation to flood risk and people and properties elsewhere as the rate and volume of surface water runoff discharged from the site would be reduced by utilising some or all of the runoff in the cooling water process.

3.10.17. The flood risk to the site would be mitigated by raising sensitive infrastructure that is located within the future floodplain above the predicted flood water levels. The construction of the proposed footprint in the floodplain would be greater than the existing built footprint area, and that would result in an increased risk of flooding for the Proposed Development, people and properties elsewhere. To mitigate this potential impact, the difference between the existing and the proposed built footprint would be offset by land lowering to create additional floodplain on land under the control of the Applicant. This land was included as part of Proposed Change 01 submitted on 5 December 2022 [AS-045] (see Figure 13 below (extract from [REP2-039]).

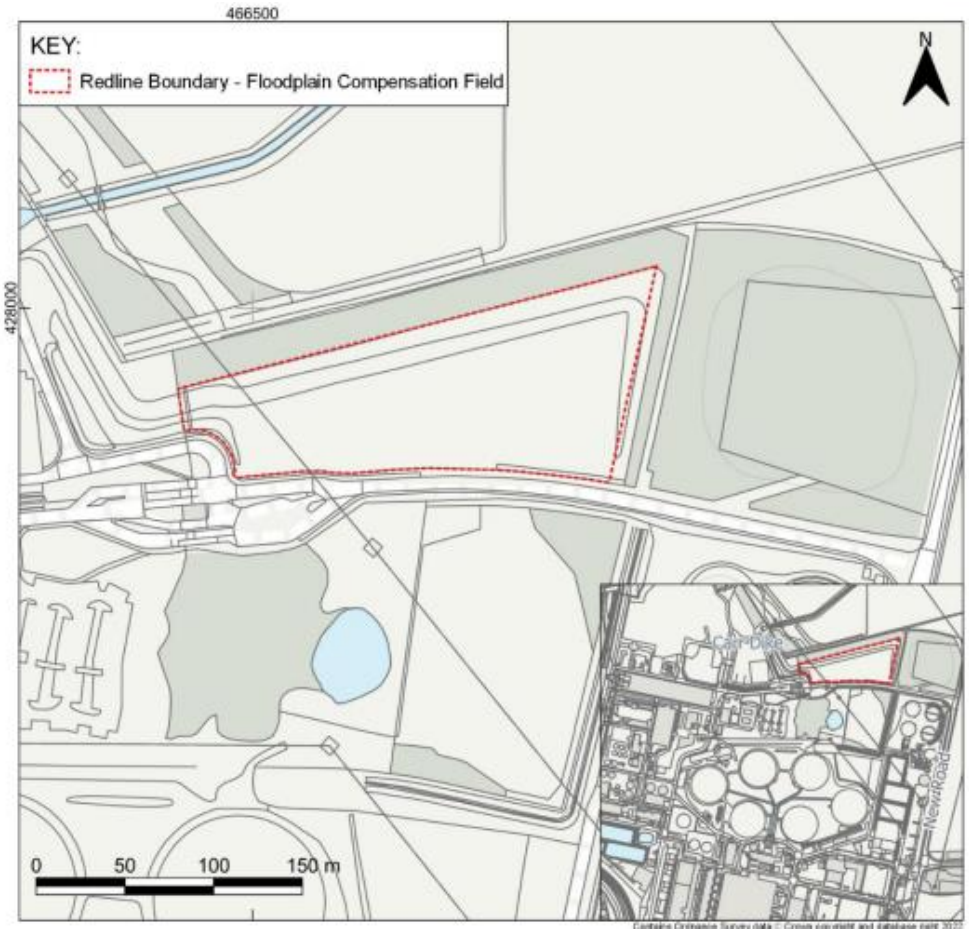


Figure 13: Indicative location of Flood Compensation Area

3.10.18. In summary, the Applicant considered that whilst there could be impacts on the water environment during construction these would be controlled and would not be

significant. During the operational phase, no impacts to the quality of water features are anticipated by the Applicant. Implementation of the proposed SWDS could provide a betterment to the existing situation. The proposed provision of additional floodplain storage would ensure that there is no change to the existing situation in terms of flood risk.

ISSUES ARISING DURING THE EXAMINATION

Water quality

3.10.19. Whilst the EA considered that the ES provided a satisfactory assessment of the potential impact of the scheme with regard to water resources and groundwater and considered the mitigation and enhancement measures appropriate, there were a number of issues that it considered were not yet fully addressed. The EA considered that foul water treatment and drains with hydraulic connectivity should have been scoped into the ES and requested clarification of the assessment of surface water receptors in relation to increased pollution from silt and sediments [RR-051].

3.10.20. The Applicant responded to the EA's concerns in Table 4.1 of [PDA-002] providing clarification with regard to waste water treatment works and providing additional information on watercourses and drains (Appendix A). In its response to ExQ1 and in its WR [REP2-077], the EA confirmed that the concerns raised in its RR had been addressed in the Applicant's response.

3.10.21. The REAC was updated at D3 to include the EA's request that the Watercourse Pollution Prevention Plan (WPPP) was listed as a plan to be included within the CEMP and to include a contingency plan within commitment WE14 of the REAC [REP3-007]. In response to ExQ2 the EA confirmed that it was now satisfied with the measures set out in the REAC for the WPPP [REP6-042].

3.10.22. At the end of the Examination, all matters relating to the water environment were agreed in the SoCGs with the EA [REP8-018], NYC [REP10-014] and Selby Area Internal Drainage Board (IDB) [REP5-018].

3.10.23. The ExA is satisfied that the Applicant has adequately assessed the impact of the Proposed Development on water quality and that any adverse impacts would be satisfactorily mitigated by actions and commitments contained in the REAC. During construction this would be controlled by the WPPP which would form part of the CEMP, the submission of which is secured by R14 of the rDCO. During operation, a number of pollution control measures would be contained within a SWDS, secured by R10 of the rDCO. R10 requires the SWDS to be substantially in accordance with the principles set out in sections 5 and 6 of the proposed SWDS [REP2-043].

Flood risk

3.10.24. The LIR stated that the Lead Local Flood Authority had no specific concerns regarding the Proposed Development and deferred to the IDB on local risk management. A signed SoCG with the IDB was submitted at D5 with all matters agreed [REP5-018].

3.10.25. In its RR, [RR-051], the EA raised initial concerns regarding the flood risk modelling used in the FRA. Whilst the EA considered that the ES provided a satisfactory assessment of the potential impact of the scheme with regard to flood risk and that the mitigation and enhancement measures were appropriate, it was initially unable to confirm that the flood risk modelling on which the FRA was based was fit for

purpose and requested that the Applicant provided further detail regarding the possible extension of the lifetime of the development and how this risk would be managed.

3.10.26. A number of RRs raised concerns relating to flood risk, for example [RR-033 RR-036 and RR-019], pointing out that the area surrounding Drax is at known risk of flooding and querying why the latest advice from the Climate Change Risk Assessment (CCRA) had not been used in the FRA. In its WR, Just Transition Wakefield submitted alternative evidence which it stated predicted Drax and its surroundings would flood every year on average including the connecting rail network [REP2-079].

3.10.27. At D3, the Applicant acknowledged that the application did not accord with the third CCRA but stated that because the Proposed Development is part of an existing power station rather than new development, and as the design life is 25 years rather than 100, a different approach had been agreed with the EA [REP3-020]. This is corroborated by the EA in the SoCG which shows the model, results and conclusions as agreed based on the UK Climate Projections 18 (UKCP18) and the latest EA's model which has been calibrated against the December 2013 flood event, the most serious tidal surge in recent times [REP8-018].

3.10.28. The Applicant continued to engage with the EA during the Examination and provided an updated FRA which incorporated additional information on the floodplain compensation and modelling sensitivity testing to assess the impacts of climate change for both a 25 year design life and a 60 year design horizon as part of the change request submitted in December 2022 [AS-088 and AS-090]. This was further updated at D2 [REP2-039 and REP2-041]. Amendments were also made to R11 of the dDCO following a request by the EA to provide reassurance that there is an effective mechanism for securing a future review of flood risk should the lifetime of the development be extended beyond 25 years.

3.10.29. In terms of surface water, the SWDS demonstrates that the additional surface water runoff that will be generated as a result in the change in impermeable areas as part of the Proposed Development would be collected, stored, and used in the cooling water process with no increase in discharge off site. It also concludes that the Proposed Development may result in a decrease in surface water runoff from the wider site as it is expected that surface water from other parts of the site would also be connected into the cooling water reservoir and used in the cooling process which is a more sustainable option than abstracting water from the River Ouse.

3.10.30. Following submission of the updated documents, all matters relating to flood risk were agreed in the SoCGs with the EA [REP8-018], NYC [REP10-014] and Selby Area IDB [REP5-018].

3.10.31. Whilst noting the concerns of IPs on the flood risk data, the ExA is satisfied, based on the information provided by the EA, that the Applicant has adequately assessed flood risk and that the proposed mitigation measures contained within Chapters 6 and 7 of the FRA, the Proposed SWDS and the REAC, secured by R10 and R11 of the rDCO would sufficiently mitigate the impacts of the scheme.

CONCLUSIONS

3.10.32. The ExA is satisfied that, subject to the mitigation measures identified in the ES, REAC and SWDS, secured by R6 (Detailed Design), R10 (Surface Water Drainage), R14 (CEMP) and R18 (DEMP) of the rDCO, there should be no adverse

effects on water quality and resources from the Proposed Development during construction, operation or decommissioning. As such, the ExA finds that the Proposed Development accords with the requirements of the Water Framework Directive Regulations 2017.

3.10.33. The ExA is satisfied that the Applicant has adequately assessed flood risk and that the FRA demonstrates both the Sequential and Exception Test are passed. Furthermore, the ExA considers that, subject to the mitigation measures identified in the ES, the REAC, the FRA and the SWDS, and secured in R6 (Detailed Design), R10 (Surface Water Drainage), R11 (Flood Risk), R14 (CEMP) and R18 (DEMP) of the rDCO, the proposed mitigation would sufficiently mitigate the impacts of the Proposed Development both during construction, operation and decommissioning.

3.10.34. Accordingly, the ExA concludes that the requirements in respect of water quality and flood risk set out in NPS EN-1 and dNPS EN-1 are met. Consequently, the ExA considers the effect would be neutral and does not weigh for or against the making of the order.

3.11. SOCIO-ECONOMIC EFFECTS

3.11.1. This section addresses the potential impacts and effects of the Proposed Development arising from socio-economic effects. Those effects relating to human health are considered under 'Air Quality and Emissions' and 'Noise and Vibration' above.

POLICY BACKGROUND

3.11.2. NPS EN-1 identifies that information on the likely significant social and economic effects of the development should be set out alongside how any likely significant negative effects would be avoided or mitigated. It notes impacts at local or regional levels and cumulative effects should be considered.

3.11.3. It notes that the assessment of a project should consider all relevant socio-economic impacts including the creation of jobs and training opportunities, provision of additional local services and local infrastructure, effects on tourism, influx of workers and cumulative effects with other projects in the vicinity. Mitigation measures to address adverse effects should be considered.

3.11.4. dNPS EN-1 requires a similar assessment but goes further in requiring information on the sustainability of the jobs created, particularly where they will help develop the skills needed for the UK's transition to Net Zero, and the contribution to the development of low-carbon industries at the local and regional level.

3.11.5. It states that the SoS may wish to include a requirement that specifies the approval of an employment and skills plan detailing arrangements to promote local employment and skills development opportunities.

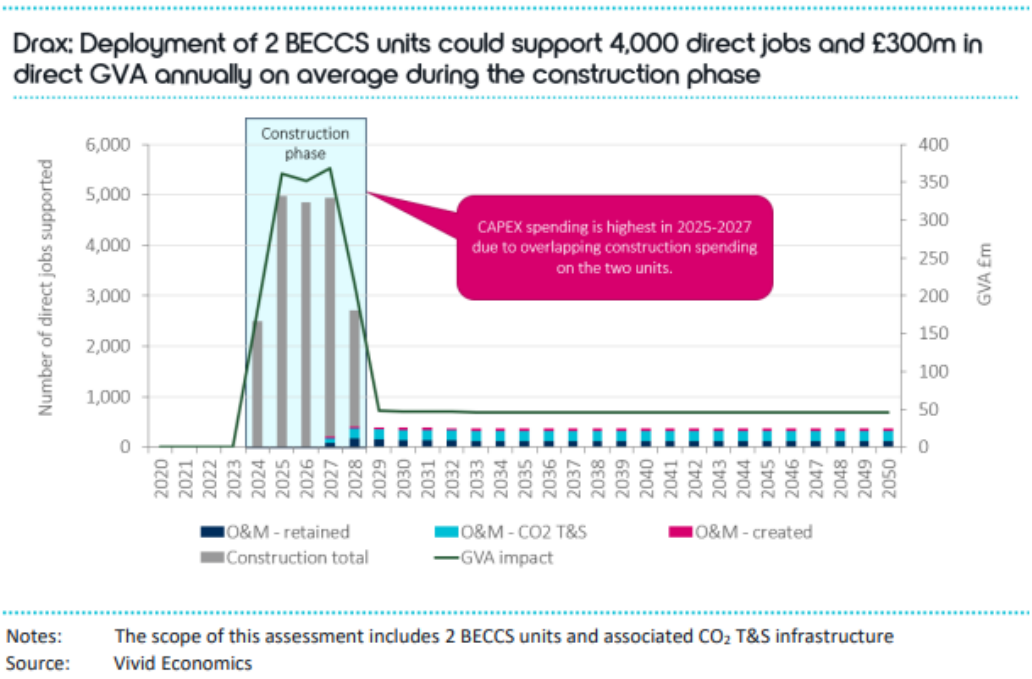
THE APPLICATION

3.11.6. ES Chapter 16 (Population, Health and Socio-economics) [APP-052] considered the potential impacts of the Proposed Development on the local population, health and socio-economics [APP-052]. The assessment focuses on the potential impacts associated with the generation of employment opportunities, disruption to local commercial businesses during construction and increased demand for accommodation and local facilities due to an influx of workers during construction.

3.11.7. The Applicant's Needs and Benefits Statement [APP-033] also outlines the contribution that BECCS at Drax would bring in terms of economic and social impacts and includes reports on both the value of BECCS to the UK decarbonisation pathway and a report by Vivid Economics to quantify the social and economic benefit of deploying BECCS at Drax Power Station. These can be found at Appendix B and C of the Statement.

3.11.8. The Applicant predicted that the construction of the Proposed Development could generate an annual average of 4000 gross (4500 net) direct jobs, 1600 indirect jobs and 2500 induced jobs, which while temporary during construction would provide local and regional benefits. It also predicted that BECCS at Drax would generate an additional £300 million on average in direct Gross Value Added (GVA) during the construction period. During operation, the Applicant predicted there would be approximately 375 jobs and concluded that there would be no significant effects. Figure 14 below is taken from the Vivid Economics report and shows the number of direct jobs supported including GVA impact until 2050.

Figure 4 Direct economic benefits at the Drax level



Notes: The scope of this assessment includes 2 BECCS units and associated CO_2 T&S infrastructure
Source: Vivid Economics

Figure 14: Economic benefits at Drax level

3.11.9. The report also predicted a much larger proportion of jobs in the Humber region as a whole as a result of deploying CCS and hydrogen technologies, particularly those in high quality construction.

3.11.10. ES Chapter 16 stated that by promoting the use of local suppliers and contractors (including activities such as supplier and skills engagement programmes), the Applicant would ensure that local people and businesses have the ability to benefit from the Proposed Development during the construction phase. It is estimated that approximately 80% of the total construction workforce would be comprised of local workers. This was initially secured by way of a planning obligation and later superseded by the addition of a requirement to the dDCO (R21) which requires the submission of a Local Employment Plan (LEP) in accordance with the Outline Local Employment Plan (OLEP) [REP3-022]. The LEP would set out details and

mechanisms for securing the local labour contractors, goods and services during construction and operation.

3.11.11. The Applicant acknowledged that the influx in workers could place additional pressure on local temporary accommodation facilities particularly within the local towns of Selby and Goole. However, as the cities of York, Doncaster and Leeds are all situated around 20 minutes away by road and offer a range of accommodation options, the Applicant concluded that the effect of increased demand for accommodation due to an influx of construction workers was not considered significant.

3.11.12. It was anticipated that the only time access to development land or local businesses would be restricted would be during the movement of AILs from Goole to the site. and therefore, the effect of the Proposed Development on development land and business was not anticipated to be significant. The Applicant stated in its response to ExQ1 [REP2-060] that it anticipated 15 AIL deliveries would be required during the construction phase and that all AIL deliveries were expected to be at night to minimise disruption.

3.11.13. In summary, the Applicant considered that the generation of employment opportunities during construction and the fact the employees and contractors would be staying close to site would bring benefits to local businesses through increased spend. Therefore, the Applicant concluded that there is likely to be a beneficial significant effect on the local economy.

ISSUES ARISING DURING THE EXAMINATION

3.11.14. The LIR did not comment on the matter of socio-economics. In the signed SoCG submitted at D10 [REP10-014], all matters relating to socio-economics were considered agreed.

3.11.15. Concerns were raised by IPs regarding the predicted employment figures and the assessment in the Vivid Economics report. Whilst an alternative report on the Applicant's website was referred to by Leeds Trade Union Council [REP2-080], the ExA has only had regard to the report submitted into the Examination (Appendix C of the Needs and Benefit Statement [APP-033]). It was submitted that the Applicant had over-inflated the predicted employment, for example [REP2-079], and concerns were raised regarding the projected drop in employment following the construction phase. Concerns were also raised regarding the exclusion of certain contracts in the OLEP, the vagueness of jobs projections and the lack of comparison scenarios.

3.11.16. The Applicant provided a response to these matters in Table 3.1 of [PDA-002] and at D3 [REP3-020]. It acknowledged that the estimate of 4000 gross direct jobs was a projection based on an annual average and that the assessment noted that the number of construction employees on site at any one time would be lower. The total number of construction workforce on site is predicted to be 1000 construction workers in the peak month of construction. The Applicant also stated the estimate of operational employment generation (375 gross direct jobs) had been made on assumptions of the worst case but could not at this stage predict how many of these would be retained jobs.

3.11.17. R21 of the rDCO would also secure the approval and implementation of an LEP which must be substantially in accordance with the OLEP. This would set out the details and mechanism for securing the use of local labour contractors, goods and services during the construction and operation period.

3.11.18. The ExA is satisfied that the Applicant has adequately assessed the socio-economic impacts of the Proposed Development and has provided evidence to support its assessment. Whilst noting the concerns raised by IPs, no alternative assessments were before the ExA. The ExA acknowledges that economic impacts are difficult to quantify, however the evidence presented indicates that there would be some moderate positive socio-economic impacts not least in terms of job creation, albeit this would primarily be short term during construction. The ExA also acknowledges that the Proposed Development has the potential to support further economic development in the area given the investment in the Humber region of which Drax would form a part.

3.11.19. The ExA is satisfied that the submission of an LEP, secured by R21 of the rDCO, provides an appropriate mechanism to promote the use of local suppliers and contractors which would ensure that local people and businesses have the ability to benefit from direct, indirect and induced employment associated with the Proposed Development. Given the specialised nature of certain elements of the Proposed Development the ExA does not think it is unreasonable for certain contracts to be excluded from the LEP.

CONCLUSIONS

3.11.20. In terms of socio-economic effects, the ExA considers the Applicant has adequately assessed the effects of the Proposed Development and has provided sufficient evidence to support its conclusions on those effects. The ExA is satisfied that the Proposed Development would support economic development in the area and would accord with all relevant policies, including NPS EN-1 and dNPS EN-1. The ExA affords this moderate positive weight in the planning balance.

3.12. TRAFFIC, TRANSPORT AND WASTE MANAGEMENT

INTRODUCTION

3.12.1. This section considers the effects of the Proposed Development in relation to traffic, transport and waste management.

POLICY

3.12.2. Section 5.13 of NPS EN-1 sets out guidance and policy for undertaking the assessment of traffic and transport impacts. Section 5.14 sets out guidance and policy for undertaking the assessment of waste management. Paragraphs of particular note are identified below.

3.12.3. In relation to traffic and transport, paragraph 5.13.3 states that if a project is likely to have a significant transport implication, the applicant's ES should include a transport assessment and the applicant should consult the Highways Agency (now National Highways) and Highways Authorities as appropriate on the assessment and mitigation.

3.12.4. Paragraph 5.13.4 states that, where appropriate, the applicant should prepare a travel plan including demand management measures to mitigate transport impacts. The applicant should also provide details of proposed measures to improve access by public transport, walking and cycling, to reduce the need for parking associated with the proposal and to mitigate transport impacts.

3.12.5. Paragraph 5.13.6 states that because a new energy NSIP may give rise to substantial impacts on the surrounding transport infrastructure, the SoS should

ensure that the applicant has sought to mitigate these impacts, including during the construction phase of the development.

3.12.6. In relation to waste management, paragraph 5.14.7 states that the SoS should be satisfied that:

- any waste arising from the construction, operation and decommissioning of the Proposed Development will be properly managed;
- the waste can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available; and
- adequate steps have been taken to minimise the volume of waste arisings and the volume of waste sent for disposal unless it can be demonstrated that this is the best overall environmental outcome.

3.12.7. Paragraph 5.14.9 makes it clear that where the project will be subject to the EP regime, waste management arrangements during operations will be covered by the permit.

THE APPLICATION

Traffic and transport

3.12.8. The Applicant's assessment of traffic and transport impacts was primarily contained within ES Chapter 5 (Traffic and Transport) [APP-041]. The supporting figures and appendices are listed in Table A1 in Appendix A of this report.

3.12.9. The ES study area shown in Figure 5.1 [APP-062] included the junctions, the highway links between the junctions and the PRoWs that could potentially be affected by the Proposed Development.

3.12.10. Traffic levels and highway safety issues used to inform the assessment were compiled from traffic surveys conducted in 2018 (ES Appendix 5.3 [APP-121]) and traffic collision data (ES Appendix 5.4 [APP-122]). Traffic from other planned developments was also considered. Growth factors were applied to base traffic levels to create the 2026 future baseline for the construction phase and 2029 for the operational phase.

3.12.11. The assessment considered the effects on traffic flows, delays, road safety, fear and intimidation, severance and pedestrian amenity. The sensitive receptors identified in the assessment included motorised and non-motorised users of the surrounding highway network, including drivers, pedestrians, cyclists and horse riders, users of the PRoWs, as well as residents within Camblesforth, Drax and Carlton.

Construction phase

3.12.12. An Outline CTMP (ES Appendix 5.1 [APP-119]) and a Framework CWTP (ES Appendix 5.2 [APP-120]) were submitted with the DCO Application with the final versions being [REP2-028] and [REP2-030] respectively.

3.12.13. The Applicant identified in the ES that, without the Proposed Development, the M62 Junction 36 dumbbell roundabout would operate over capacity in 2026. The Proposed Development, in combination with other proposed developments, would contribute to an increase in driver delay and queuing which would contribute to the impact on highway safety at this junction.

3.12.14. The Applicant also identified that there would be some temporary disruption to the highway network associated with the movement of AILs between the Port of Goole and the site. In addition to road modifications, traffic management would also be required to facilitate AIL movements. The Applicant included a strategy to manage AILs within the Outline CTMP. The Applicant considered there would be no significant adverse effects associated with the movement of AILs due to the temporary nature of it.

3.12.15. During the construction phase the presence of construction plant and equipment in works areas adjacent to the PRoW network may temporarily reduce the amenity value of the paths. The Applicant considered that appropriate construction environmental measures could be put in place to manage the effects in the CEMP. It is also proposed to temporarily stop up path 35.6/6/1 to enable the establishment of the OSHPA. The Applicant considered that there would be no significant effects on PRoW users.

Operational phase

3.12.16. The ES stated that there would be an overall net reduction of approximately 180 people in the workforce compared to the 2018 baseline traffic data and the vehicle numbers generated would be significantly lower than experienced during the construction phase. The Applicant considered the effects during the operational phase would be negligible (not significant).

Waste management

3.12.17. The Applicant's assessment of waste management impacts was primarily contained within Chapter 13 (Materials and Waste) of the ES [APP-049]. The supporting appendices are listed in Table A1 in Appendix A of this report.

3.12.18. The Applicant's assessment considered the impacts of the Proposed Development and their effects on the use of natural and non-renewable resources during construction and on the reduction in landfill capacity across the region during both construction and operation.

3.12.19. The Applicant identified in the ES that, in the absence of future provision, landfill capacity in the region is unlikely to be available after 2027 for non-inert waste and 2028 for inert waste. However, there are plans to expand existing landfill capacity in the region, as stated in the Minerals and Waste Joint Plan (MWJP) document [REP2-092] produced by North Yorkshire County Council (NYCC), City of York Council and North York Moors National Park Authority. The Applicant used professional judgement to determine a reduction of 80% from current capacity for non-inert waste as a worst-case baseline scenario.

3.12.20. Waste anticipated to be disposed of to landfill comprises earthwork and aggregate arisings, hazardous wastes and general construction wastes. There are not expected to be any inert waste arisings generated during construction of the Proposed Development to be disposed to landfill.

3.12.21. Mitigation within the design of the Proposed Development includes reuse of site-won arisings, reuse of imported materials, and diversion of waste from landfill in accordance with the Applicant's current commitment to divert 95% of waste from landfill. Other measures include management of stockpiled arisings and development and implementation of measures within the REAC and CEMP including the implementation of a Site Waste Management Plan (SiWMP) and Materials Management Plan (MMP).

3.12.22. Taking the proposed mitigation measures into consideration, the Applicant concluded that there would be a slight adverse (not significant) effect on landfill void capacity as a result of the Proposed Development.

ISSUES CONSIDERED DURING THE EXAMINATION

Traffic and transport

3.12.23. National Highways (NH) raised a number of concerns in its RR [RR-097] including the injury collision data used in the assessment, whether the worst case peak time for M62 Junction 36 had been assessed, the sensitivity of the M62 mainline, Passenger Car Unit (PCU) assumptions used in the assessment, the securing of the CTMP in the dDCO [APP-013] and the controls within the CWTP to manage parking of construction workers.

3.12.24. In the SoCG between the Applicant and NH submitted at D1 [REP-021], NH requested further sensitivity testing to assess the impact of blocking back between the roundabouts at M62 Junction 36. The Applicant submitted a Highways Technical Note [REP2-063] in response to the issues raised by NH in its RR and the request for further sensitivity testing. The technical note concluded that while the junction itself would operate over capacity in the future scenarios, the sensitivity test suggests that blocking back would be unlikely to occur.

3.12.25. The technical note also included revised assessment scenarios to highlight the impact of the Proposed Development on the operation of M62 Junction 36 in isolation. The Applicant concluded that although the operation of the junction would slightly worsen in the 2026 'do something' scenario, the impact of traffic associated with the Proposed Development is minimal.

3.12.26. At ISH3 [EV-026 and EV-028], the Applicant and NH confirmed agreement had been reached on most matters and the only outstanding concern was the agreement of Protective Provisions (PP). Updated Outline CTMP [REP2-028] and Framework CWTP [REP2-030] documents were submitted by the Applicant at D2. At D10 NH withdrew its objection [REP10-025] and the final SoCG between the parties [REP10-015] confirmed that the PPs were agreed. Further detail on the PPs can be found in Chapter 7 of this report.

3.12.27. At the close of Examination there were no outstanding concerns from either NYC or ERoY in relation to traffic and transport matters.

Commencement timescale

3.12.28. In the dDCO submitted at D8 [REP8-005], the time in which to commence the authorised development increased from five to seven years. The Applicant was asked in the R17QB [PD-021] to provide an update of any impacts on the baselines, assessments and conclusions of the ES.

3.12.29. The Applicant responded at D9 [REP9-026], stating that for delay and highway safety, it is likely that the inter-project potential impacts could be greater than reported due to increased baseline traffic volumes and potentially reduced available spare capacity on the highway network, resulting in a potentially greater magnitude of impact. However, there is uncertainty as there is potential that not all developments in the local plan may come forward and identified local plan junction improvements could also come on stream, reducing the magnitude of impact. The Applicant did not propose any additional mitigation; its position was that the agreed

management measures are considered sufficiently flexible and robust to adapt to the prevailing traffic conditions at the time of construction.

3.12.30. In the SoCG between NH and the Applicant [REP10-015], NH confirmed the agreed measures are appropriate to mitigate the impact of the development with the updated timescales. ERoY also confirmed agreement with the Applicant's position in the SoCG with the Applicant [REP10-016], however this SoCG remained unsigned at the close of the Examination which limits the weight that can be attached to it.

Waste management

3.12.31. The EA confirmed in its RR [RR-051] that it was satisfied that the assessment fully considered matters relating to its remit with regards to waste minimisation. It also provided advice on the correct assessment of waste. The Applicant responded [PDA-002] confirming that the need to submit a SiWMP is confirmed in MW3 of the REAC (final version [REP9-019]), and a MMP is confirmed in G3, the mitigation within which would be secured by R14 (CEMP) in the dDCO [AS-076].

3.12.32. At the close of the Examination there were no outstanding concerns from the EA, NYC or ERoY in relation to waste management matters.

CONCLUSIONS

3.12.33. The ExA is satisfied, on the basis of the information provided by NH, NYC, ERoY and the Applicant, that the transport and traffic assessment set out in the ES meets the requirements of NPS EN-1 and dNPS EN-1. The ExA is also satisfied that no significant traffic or transportation effects are likely to arise from the Proposed Development.

3.12.34. While the ExA acknowledges there would be an increase in traffic impacts, the ExA is satisfied that the control and management measures included in the rDCO would be sufficient to mitigate any negative impacts to an acceptable level. R14 (CEMP), R15 (CTMP), R16 (CWTP) and R19 (DTMP) would ensure mitigation identified in the ES is adequately carried out, and this is secured in the rDCO. Traffic and transport related effects are neutral and do not weigh for or against the making of the order.

3.12.35. The ExA is satisfied that waste arising from the construction, operation and decommissioning of the Proposed Development would be properly managed. The ExA is also satisfied that adequate steps have been taken to minimise the volume of waste arisings and the volume of waste sent to landfill. R14 (CEMP) would ensure mitigation identified in the ES is adequately carried out, and this is secured in the rDCO.

3.12.36. The ExA is satisfied the Proposed Development would meet all legislative and policy requirements relating to waste management, including those of NPS EN-1 and dNPS EN-1. As such the ExA considers waste management effects are neutral and do not weigh for or against the making of the order.

3.13. OTHER MATTERS

INTRODUCTION

3.13.1. Other matters where no significant issues were identified are discussed in this section, including climate change resilience, major accidents and disasters (MA&D) and cumulative and combined effects.

CLIMATE CHANGE RESILIENCE

Policy

3.13.2. Paragraph 4.8.6 of NPS EN-1 states that the SoS should be satisfied that applicants for new energy infrastructure have taken into account the potential impacts of climate change using the latest UK Climate Projections available; and further in paragraph 4.8.8 that the SoS should be satisfied that there are not features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected.

The Application

3.13.3. The Applicant's assessment of climate change resilience related impacts was primarily contained within ES Chapter 14 (Climate Change Resilience) [APP-050]. The supporting appendices are listed in Table A1 in Appendix A of this report. Matters relating to GHG emissions are covered in section 3.5 of this report and matters related to the impact of the Proposed Development on flood risk are covered in section 3.10.

3.13.4. The potential impacts as a result of climate change are detailed in ES Chapter 14. The potentially significant effects identified by the Applicant are:

- the flooding of the Carbon Capture Plants and supporting infrastructure;
- the faster rate of deterioration of materials from increase in ultraviolet (UV) radiation; and
- increased wind loading on the Main Stack may compromise the structural integrity.

3.13.5. The Applicant determined that with the proposed mitigation measures summarised below, the residual effects would be minor adverse (not significant). The mitigation measures proposed by the Applicant are:

- creation of additional floodplain capacity;
- raising sensitive equipment above the design flood level;
- the design shall be in accordance with the UK Building Regulations and British Standard (BS) EN codes or Eurocodes and International Organization for Standardization (ISO) standards as applicable;
- use of heat resistant materials when it comes to replacement/ refurbishment of pavements; and
- proactive maintenance to address any defects.

Examination and conclusions

3.13.6. There were no substantive concerns raised during the Examination on this specific matter, and the ExA did not consider it necessary to ask questions or examine the matter further.

3.13.7. The signed SoCG between the Applicant and NYC [REP10-014] confirmed that the Applicant has adequately considered the climate resilience implications of the Proposed Development, and that NYC has taken a pragmatic approach to the consideration and assessment of these issues and does not have any additional queries or concerns with them.

3.13.8. The ExA is satisfied that there are unlikely to be any significant effects associated with climate change resilience. The ExA is satisfied that there are not features of the design critical to its operation which may be seriously affected by more radical

changes to the climate beyond that projected and that mitigation measures are adequately provided for and secured in the rDCO. The ExA concludes that the requirements in respect of climate change resilience set out in NPS EN-1 are met. The effect in the planning balance is neutral and does not weigh for or against the making of the order.

MAJOR ACCIDENTS AND DISASTERS

Policy

3.13.9. NPS EN-1 does not set out any principles for the assessment of MA&D but does include reference to potential generic mitigation measures for environmental impacts for aspects which must be addressed by the ES.

3.13.10. Paragraph 4.11.3 of NPS EN-1 identifies that some energy infrastructure will be subject to the COMAH Regulations 2015. These regulations aim to prevent major accidents involving dangerous substances and limit the consequences to people and the environment of any that do occur.

3.13.11. In relation to hazardous substances, paragraph 4.12.1 states that all establishments wishing to hold stocks of certain hazardous substances above a threshold need Hazardous Substances Consent (HSC).

The Application

3.13.12. The Applicant's assessment of MA&D was primarily contained within ES Chapter 17 (Major Accidents and Disasters) [APP-053]. The supporting appendices are listed in Table A1 in Appendix A of this report. It examined the potential for major accidents and/ or disasters to impact population and human health; biodiversity; land, soil, water, air and climate; and material assets, cultural heritage and the landscape.

3.13.13. The ES identified that Proposed Development may be vulnerable to incidents during the construction, decommissioning and operational phases including, amongst other things, earthworks and construction activities causing damage to existing industrial/ highway infrastructure, increased road traffic accidents, major fire on the BECCS plant and loss of containment of CO_2 leading to a gas cloud.

3.13.14. The Applicant provided details of primary mitigation measures for each potential MA&D event identified in Appendix 17.2 [APP-172]. The Applicant stated that it is committed to constructing and managing the Proposed Development in accordance with the list of standards and systems set out in paragraph 17.11.2 of ES Chapter 17. The Applicant concluded that there is no likely requirement for secondary mitigation measures; it is deemed that the risks are anticipated to be as low as reasonably practicable (ALARP).

Examination and conclusions

3.13.15. In the Rule 6 letter [PD-008], the ExA requested that a SoCG be prepared between the Applicant and the Health and Safety Executive (HSE). In the Applicant's response [PDA-001], it confirmed it had liaised with HSE and agreed that a SoCG was not necessary. HSE is quoted as stating: *"we can confirm that based on the information provided, HSE would not advise against this nationally significant infrastructure project."*; and further in relation to whether HSC would be required: *"HSE notes that based on the information, the quantities of stored and proposed materials related to the use of the Proposed Scheme fall below the threshold for a Hazardous Substance Consent (HSC)."*

3.13.16. In ExQ1 [PD-011] the ExA asked the UKHSA to comment on the Applicant's approach to assessment of major accidents in the context of the Proposed Development, including elements of novel technology.

3.13.17. UKHSA responded at D2 [REP2-097], stating: *"The applicant has included and considered appropriate accident and hazard scenarios and demonstrated mitigation measures to ensure risk is 'as low as reasonably practicable' (ALARP). It appears that the applicant has considered appropriate guidance and best practice information to determine the assessment methodology and that a conservative approach was used in the analysis. Furthermore, the Proposed Development will require appropriate permissions to be in pace for its operation including COMAH Licence and environmental permit, and these regulatory controls will stipulate several requirements that must be demonstrated to prevent or minimise the effects of major accidents."*

3.13.18. The SoCG signed between the Applicant and NYC [REP10-014] confirmed that NYC agreed that the Applicant had adequately considered and assessed the MA&D implications of the Proposed Development.

3.13.19. There were no other substantive concerns raised during the Examination on this matter by IPs, and the ExA did not consider it necessary to ask any further questions other than those asked of the Applicant at ExQ1 which covered clarifications relating to the assumptions made in the assessment, the assessment of loss of containment of CO_2 and the assessment of the decommissioning phase.

3.13.20. The ExA is satisfied that the Proposed Development accords with all legislation and policy requirements and that MA&D mitigation matters are adequately provided for and secured in the rDCO. The effect in the planning balance is neutral and does not weigh for or against the making of the order.

CUMULATIVE AND COMBINED EFFECTS

The Application

3.13.21. The EIA Regulations require an ES to include a project-level assessment of potentially significant effects of a proposed development. The Applicant's assessment of cumulative and combined effects is primarily contained within ES Chapter 18 [APP-054] (superseded by [REP4-035]). The supporting figures and appendices are listed in Table A1 in Appendix A of this report. The ES examined the cumulative and combined effects of the Proposed Development. It defined both as follows:

- Intra-project combined effects are the interaction and combination of different environmental effects of the Proposed Development affecting the same receptor.
- Inter-project cumulative effects are the combined residual environmental effects of the Proposed Development with a committed project (or projects) affecting the same receptor.

3.13.22. The potential moderate adverse intra-project combined effects identified by the Applicant in the ES are mainly associated with the changes in views and landscape alterations and increased noise during the construction phase. However, the effects are anticipated to be no worse than the effects of the Proposed Development alone.

3.13.23. The potential moderate adverse inter-project cumulative effects due to the Proposed Development and 'other developments' identified by the Applicant in the ES are

mainly associated with the changes in views and landscape alterations, increased noise and effects on ecological receptors during the construction phase. However, similarly to the intra-project combined effects, it is anticipated to be no worse than the effects of the Proposed Development alone.

3.13.24. No further mitigation or monitoring is proposed by the Applicant for the Proposed Development, other than that set out in the ES for the Proposed Development alone.

Examination and conclusion

3.13.25. At D4 Chapter 18 of the ES and the associated appendices were updated to reflect additional developments put forward by NYC during consultation. The SoCG signed between the Applicant and NYC [REP10-014] confirms that NYC agrees that the methodology proposed, and the list of developments identified, by the Applicant provides the basis for an adequate assessment of cumulative effects. NYC has taken a pragmatic approach to the consideration of the methodology and does not have any additional queries or concerns with it.

3.13.26. Concerns raised by Biofuelwatch in relation to inter-project cumulative air quality effects are covered in section 3.3 of this report.

3.13.27. While undoubtedly the construction and decommissioning of the Proposed Development could cause likely additional effects particularly in relation to ecological, noise, landscape and visual matters, the ExA is nevertheless satisfied that there are not likely to be any significant cumulative or combined effects from construction, operation and decommissioning activities that are worse than the effects of the Proposed Development alone. The rDCO adequately provides and secures mitigation measures to minimise individual and cumulative effects.

3.13.28. The ExA is satisfied that the assessment of cumulative and combined effects accords with the EIA Regulations and relevant NPSs. The effect in the planning balance is neutral and does not weigh for or against the making of the order.

OTHER MATTERS OUTWITH THE SCOPE OF THE EXAMINATION

3.13.29. A number of submissions were made throughout the Examination relating to ongoing legal proceedings and/ or investigations of the Drax Power Station site. These matters are outside of the scope of the Examination, are not planning issues and did not form part of any findings in this report.

4. SUMMARY OF CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

4.1.1. This chapter provides a summary of the ExA's conclusions relevant to the Habitats Regulations Assessment (HRA). The full analysis can be found in Appendix C.

4.1.2. In accordance with the precautionary principle embedded in the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations), consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European sites and no reasonable scientific doubt remains.

4.1.3. The ExA has been mindful throughout the Examination of the need to ensure that the Secretary of State (SoS) has such information as may reasonably be required to carry out their duties as the competent authority. The ExA has sought evidence from the Applicant and the relevant Interested Parties (IP), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and Issue Specific Hearings (ISH).

4.2. HABITATS REGULATIONS ASSESSMENT IMPLICATIONS

4.2.1. The Proposed Development is not directly connected with or necessary to the management of a European site. Therefore, the SoS must make an 'appropriate assessment' (AA) of the implications of the Proposed Development on potentially affected European sites in light of their Conservation Objectives.

4.2.2. The Applicant's assessment of effects is presented in the following document(s):

- Habitats Regulations Assessment – Volume 1 – Main Text - Rev 04 [REP9-021] (hereafter referred to as the HRA Report (HRAR)).
- Habitats Regulations Assessment – Volume 2 – Figures 1 to 3 [APP-186 to APP-188].
- Habitats Regulations Assessment – Volume 3 – Appendices 1 to 8 [APP-189, APP-190, REP6-023 (Rev 3), REP6-025 (Rev 3), APP-193, APP-194, REP8-015 (Rev 02) and REP3-009, respectively].

4.2.3. All references in this report to the HRAR are to [REP9-021] unless indicated otherwise.

4.3. SUMMARY OF HABITATS REGULATIONS ASSESSMENT MATTERS CONSIDERED DURING THE EXAMINATION

4.3.1. The main HRA matters raised by the ExA, NE and other IPs and discussed during the Examination include:

- potential loss and/ or disturbance of land functionally linked to the European sites during construction; and
- potential impacts of increased acid and nitrogen deposition and ammonia (NH_3) concentrations arising from aerial emissions during operation.

4.3.2. Matters which were undisputed by IPs, including NE as the ANCB, were that:

- there would be no construction or decommissioning likely significant effect (LSE) on the qualifying features of the European sites as a result of disturbance from noise and vibration (including from construction traffic).

4.3.3. This matter is set out in the Report on the Implications for European Sites (RIES) [PD-020].

4.4. SUMMARY OF FINDINGS IN RELATION TO ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

4.4.1. Ten European sites and their qualifying features were considered in the Applicant's assessment of LSE:

- Humber Estuary Ramsar site
- Humber Estuary Special Area Conservation (SAC)
- Humber Estuary Special Protection Area (SPA)
- Lower Derwent Valley Ramsar site
- Lower Derwent Valley SAC
- Lower Derwent Valley SPA
- River Derwent SAC
- Skipwith Common SAC
- Thorne and Hatfield Moors SPA
- Thorne Moor SAC

4.4.2. The Applicant concluded that there would be no LSE on the Thorne and Hatfield Moors SPA. This was disputed by Biofuelwatch.

4.4.3. LSEs were initially identified for the other nine sites, from the Proposed Development alone and in combination with other plans or projects. Subsequently, the Applicant concluded during the Examination that there would be no LSE on Skipwith Common SAC and its qualifying features [REP6-021]. This conclusion was not disputed by IPs.

4.4.4. The methodology and outcomes of the Applicant's screening for LSEs on European sites was subject to some discussion and scrutiny, however, the sites and features for which LSEs were identified were not disputed by any IP, with the exception of Biofuelwatch in respect of the Thorne and Hatfield Moors SPA and its qualifying feature.

4.4.5. The ExA is satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and is satisfied with the approach to the assessment of alone and in-combination likely significant effects.

4.4.6. Taking into account the reasoning set out in Appendix C, the ExA considers that the Proposed Development is likely to have a significant effect on the qualifying features of the European sites identified in Table 1 of Appendix C when considered alone or in combination with other plans or projects. This was not disputed by IPs/ NE during the Examination.

4.5. SUMMARY OF FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

4.5.1. The Applicant's HRAR concluded that an Adverse Effect on Integrity (AEoI) can be excluded for the European sites listed in Table 1 of Appendix C from the Proposed Development alone and in combination with other plans and projects. These

conclusions were agreed with NE [REP8-019]. Biofuelwatch had remaining concerns at the end of the Examination [REP10-026].

4.5.2. Some of the conclusions in the Applicant's HRAR were subject to examination through ExA written questions, ISHs and Rule 17 requests for information. Based on the findings of the Examination, the ExA is satisfied that an AEoI of all of the European sites and their qualifying features can be excluded from the Proposed Development alone and in-combination with other plans or projects.

4.6. CONCLUSIONS

4.6.1. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

4.6.2. The ExA's findings are that, subject to the mitigation measures to be secured in the rDCO, an AEoI of the following sites from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed:

- Humber Estuary Ramsar site.
- Humber Estuary SAC.
- Humber Estuary SPA.
- Lower Derwent Valley Ramsar site.
- Lower Derwent Valley SAC.
- Lower Derwent Valley SPA.
- River Derwent SAC.
- Thorne Moor SAC.

4.6.3. The ExA considers that there is sufficient information before the SoS to enable them to undertake an AA in order to fulfil their duty under the requirements of the Habitats Regulations.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

5.1.1. This chapter provides an evaluation of the planning merits of the Proposed Development. It does so in the light of the legal and policy context set out in Chapter 2 and individual applicable legal and policy requirements identified in Chapters 3 and 4 of this report. Whilst the Habitats Regulations Assessment (HRA) has been documented separately in Appendix C (summary in Chapter 4), relevant facts and issues set out in that chapter are taken fully into account.

5.1.2. The Examining Authority (ExA) has taken into account all Relevant Representations, Written Representations and responses to the Examining Authority's First Written Questions and Second Written Questions and Rule 17 requests for further information as well as all other representations made during the course of the Examination including the Local Impact Report (LIR) from North Yorkshire Council (NYC).

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

THE PRINCIPLE OF DEVELOPMENT

5.2.1. The urgent need for energy security at the same time as dramatically reducing Green House Gas (GHG) emissions is established through the National Policy Statements (NPS) and is carried forward into the draft NPSs (dNPS) which recognise that there is an urgent need for new carbon capture infrastructure to support the transition to a Net Zero economy. The ExA concludes that the Proposed Development as a Carbon Capture and Storage (CCS) project would make a meaningful contribution to meeting this need, would help in the transition to a low carbon system and would generally be in accordance with the designated NPSs.

5.2.2. It is also clear that since the designation of the NPSs, the direction of travel in Government policy is that the deployment of CCS is central to the decarbonisation of the UK economy and in reaching Net Zero by 2050 and that without it, the legally binding target in the Climate Change Act 2008 (CCA2008) is unlikely to be met (see section 3.2 of this report). As such, the Proposed Development would clearly make an important contribution towards meeting the Net Zero obligation.

5.2.3. The ExA is satisfied that sufficient details of the alternatives, including the 'do nothing' scenario, the approach to site selection, layout and technologies and how these were considered as part of the overall project design, have been provided to meet the requirements of NPS EN-1, dNPS EN-1 and the Infrastructure (Environmental Impact Assessment) Regulations 2017 (EIA Regulations).

5.2.4. The ExA concludes, notwithstanding the consideration of project-specific issues, the overarching need argument for the Proposed Development is very strong in terms of meeting the urgent need for low carbon energy and this weighs heavily in favour of making the order and carries very great weight in the planning balance.

THE ENVIRONMENTAL STATEMENT

5.2.5. The ExA considers that the Environmental Statement (ES), as supplemented with additional information during the Examination, is sufficient to enable the Secretary of State (SoS) to take a decision in compliance with the EIA Regulations. The ExA has

taken full account of all environmental information in its consideration of this Application.

HRA CONSIDERATIONS

5.2.6. The Proposed Development is development for which an HRA Report has been provided. In reaching the overall conclusion and recommendations in this report, the ExA has considered all documentation relevant to HRA.

5.2.7. The SoS is the competent authority under the Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) and will make the definitive assessment. The ExA considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of the Habitats Regulations.

AIR QUALITY AND EMISSIONS

5.2.8. The ExA has assumed that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced. The ExA is satisfied that the air quality assessment undertaken by the Applicant adequately assesses impacts on air quality.

5.2.9. The ExA is satisfied, subject to the imposition of appropriate requirements in the recommended Development Consent Order (rDCO), that no significant effects on air quality are likely to arise in the construction or decommissioning phase. The ExA considers residual impacts related to construction and decommissioning activities including from traffic can be effectively managed through the mitigation measures secured in Requirement (R)14 (Construction Environmental Management Plan (CEMP)), R15 (Construction Traffic Management Plan (CTMP)), R16 (Construction Worker Travel Plan (CWTP)), R18 (Decommissioning Environmental Management Plan (DEMP)) and R19 (Decommissioning Traffic Management Plan (DTMP)) of the recommended DCO (rDCO).

5.2.10. The ExA is satisfied that no significant effects on air quality on human receptors are likely to arise in the operational phase of the Proposed Development both alone and cumulatively with other projects. The ExA considers, based on the Statement of Common Ground (SoCG) with the Environment Agency (EA), that there is no reason why it cannot be assumed that the mitigation measures proposed to increase the plume buoyancy and reduce Sulphur Dioxide (SO_2) emissions can be incorporated into the Environmental Permit (EP) conditions.

5.2.11. The ExA considers that the requirements of NPS EN-1 and dNPS EN-1 will be met. Air quality effects are therefore neutral and do not weigh for or against the making of the order.

BIODIVERSITY

5.2.12. The ExA has given careful consideration to the views of Interested Parties (IP), to the evidence presented and the responses received, including the view of the relevant Statutory Nature Conservation Body (SNCB), Natural England (NE). The ExA is satisfied that during the Examination, the Applicant has adequately addressed those concerns.

5.2.13. Whilst acknowledging that there would be adverse impacts on some habitats and protected species during construction, these would be short term until mitigation measures have reached their target condition.

5.2.14. In the long term, the ExA considers that adequate mitigation measures would be put in place to ensure that there would be no significant residual effects on ecology and biodiversity and would result in an enhancement for some species. These measures are adequately secured through the Outline Landscape and Biodiversity Strategy (OLBS), proposed Surface Water Drainage Strategy (SWDS), draft Lighting Strategy and commitments in the Register of Environmental Actions and Commitments (REAC), all of which would be secured through the rDCO by R7 (Landscape and Biodiversity mitigation), R8 (Lighting), R10 (Surface Water Drainage), R14 (CEMP) and R18 (DEMP). Works within the Off-Site Habitat Provision Area (OSHPA) would be secured by the duly executed s106 agreement.

5.2.15. Furthermore, the ExA considers that the Biodiversity Net Gain (BNG) demonstrated would represent a considerable benefit which weighs positively in favour of the Proposed Development.

5.2.16. Given the evidence presented, the ExA considers that biodiversity and ecology have been adequately assessed and that the policy requirements of NPS EN-1, NPS EN-3 and the dNPSs are met. The rDCO would adequately secure the mitigation necessary to address any impacts. Overall, the ExA considers that those mitigation measures and the BNG arising from the Proposed Development would enhance biodiversity and as such the ExA considers the effects to attract moderate positive weight in the planning balance.

GHG EMISSIONS

5.2.17. There would be significant adverse effects in relation to GHG emissions in the construction phase. However, the ExA consider that the Applicant has taken reasonable steps to reduce the GHG emissions in construction in accordance with dNPS EN-1.

5.2.18. Over the whole life of the Proposed Development there would be a significant beneficial effect due to carbon captured in the operational phase and this is sufficient to outweigh the negative effects from construction to the effect that over the lifetime of the project, it would result in negative GHG emissions. The ExA is satisfied that negative emissions from the Proposed Development would contribute to meeting the UK's carbon commitment and supporting the transition to a low carbon economy.

5.2.19. The ExA is satisfied that the Proposed Development would accord with the guidance in the relevant NPSs and would be in accordance with the UK's commitments under the CCA2008 and the Paris Agreement 2015.

5.2.20. GHG emission impacts of the Proposed Development weighs heavily in favour of making the order and carries very great weight in the planning balance.

HISTORIC ENVIRONMENT

5.2.21. The ExA considers the Applicant has adequately assessed the significance of the heritage assets affected by the Proposed Development and that the extent of the likely impact can be understood. In this regard the ExA considers that the application meets the requirements of NPS EN-1, dNPS EN-1, the NPPF and PPG.

5.2.22. The ExA has no reason to disagree with the Applicant's conclusions in ES Chapter 10 or the HEDBA and notes this is the view of HE and NYC. The ExA is satisfied that the Proposed Development would not result in significant adverse effects to any of the heritage assets identified in EIA terms.

5.2.23. Nevertheless, notwithstanding the mitigation measures proposed, the Proposed Development would result in slight adverse effects to the setting of a number of designated assets. The ExA agrees with the Applicant's assessment that this harm would be limited to less than substantial harm to the following designated assets:

- Drax Augustinian Priory (Scheduled Monument).
- The Church of St Peter and St Paul (Grade I Listed).
- Cowick Hall (Grade I Listed).
- Church of St Mary the Virgin (Grade I Listed).
- Airmyn Conservation Area.
- Snaith Conservation Area.

5.2.24. To conclude, the ExA considers that the Proposed Development would result in less than substantial harm to designated heritage assets. Where there is a harm, the SoS must give that harm considerable importance and weight. The ExA considers the slight adverse effects would be at the lower end of the scale of less than substantial harm and therefore ascribes this little weight against the making of the order.

5.2.25. The ExA considers the slight adverse effects would be at the lower end of the scale of less than substantial harm. Given this harm, the ExA ascribes little negative weight to matters relating to the historic environment against the Order being made.

5.2.26. This harm requires clear and convincing justification and is weighed against the public benefits of the Proposed Development at section 5.3 of this report, in the planning balance.

LANDSCAPE AND VISUAL AMENITY

5.2.27. The ExA considers that there would be temporary significant effects in relation to visual amenity for residential and recreational receptors as a result of the Proposed Development in the construction phase. While the OLBS, CEMP and DEMP set out mitigation to reduce some visual amenity effects, the significant adverse effects of the Proposed Development would remain.

5.2.28. R7 (Provision of landscape and biodiversity mitigation and enhancement) and R14 (CEMP) of the rDCO would secure mitigation identified in the ES. The ExA accepts that the adverse visual effects of the Proposed Development in the construction phase cannot be avoided entirely, and as such the OLBS mitigates the landscape and visual effects of the Proposed Development as far as reasonably practicable. In that regard the ExA concludes that the Proposed Development complies with the policies in NPS EN-1.

5.2.29. The ExA considers that there would be no significant adverse effects in the operational phase. The ExA is satisfied that the landscape and visual effects would be minimised through the appropriate siting of the Proposed Development within the site and the use of an appropriate colour palette to create a cohesion between the new and existing structures. R6 (Detailed design approval), R7 (Provision of landscape and biodiversity mitigation and enhancement) and R8 (External lighting during operation) would ensure design principles identified in the Design Framework would be applied within the detailed design, and this is secured in the rDCO.

5.2.30. As NPS EN-1 and dNPS EN-1 make clear, all proposed energy infrastructure is likely to have visual effects. The significant effects on landscape and visual amenity during the construction phase would cause harm weighing against the Proposed

Development. However, as this would be temporary and localised, the ExA affords this little negative weight in the planning balance.

LAND USE, GROUND CONDITIONS AND CONTAMINATION

5.2.31. The ExA is satisfied that no significant land use, ground conditions and contamination effects are likely to arise from the Proposed Development.

5.2.32. In relation to impacts on best and most versatile (BMV) agricultural land, the ExA is satisfied that the control and management measures included in the rDCO would be sufficient to mitigate any negative impacts to an acceptable level. R14 (CEMP) would ensure mitigation identified in the ES is adequately carried out, and this is secured in the rDCO.

5.2.33. In relation to effects of contamination on construction workers, site users and controlled waters, the ExA is satisfied that the remediation, verification and management measures included in the rDCO would be sufficient to mitigate any negative impacts to an acceptable level. R12 (Ground Conditions) and R14 (CEMP) would ensure mitigation identified in the ES is adequately carried out, and this is secured in the rDCO.

5.2.34. Overall, the ExA considers land use, ground conditions and contamination to be a negative consideration in the planning balance due to the slight adverse effects on BMV agricultural land. However, as negative impacts could be managed to an acceptable level, the ExA affords this a little negative weight in the planning balance.

NOISE AND VIBRATION

5.2.35. The ExA is satisfied that the Applicant has done everything reasonably practical to mitigate and minimise adverse effects through good acoustic design in the layout of the site and primary mitigation measures set out in the ES.

5.2.36. The ExA is satisfied that given the contextual considerations presented by the Applicant, the noise rating levels in R17 of the rDCO would not result in significant adverse effects at residential receptors. The ExA is satisfied that the Noise Mitigation Scheme to be submitted in accordance with R17 would give NYC sufficient opportunity to ensure that a good acoustic design is achieved during detailed design.

5.2.37. The ExA considers that noise and vibration issues have been addressed adequately and meet the requirements specified in section 5.11 of NPS EN-1, as well as dNPS EN-1. Noise and vibration effects are neutral and do not weigh for or against the making of the order.

WATER ENVIRONMENT AND FLOOD RISK

5.2.38. The ExA is satisfied that, subject to the mitigation measures identified in the ES, REAC and SWDS secured in R6 (Detailed Design), R10 (Surface Water Drainage), R14 (CEMP) and R18 (DEMP) of the rDCO, there should be no adverse effects on water quality and resources from the Proposed Development during construction, operation or decommissioning. As such, the ExA finds that the Proposed Development accords with the requirements of the WFD Regulations.

5.2.39. The ExA is satisfied that the Applicant has adequately assessed flood risk and that the Flood Risk Assessment (FRA) demonstrates both the Sequential and Exception

Test are passed. Furthermore, the ExA considers that, subject to the mitigation measures identified in the ES, the REAC, the FRA and the SWDS, and secured in R6 (Detailed Design), R10 (Surface Water Drainage), R11 (Flood Risk), R14 (CEMP) and R18 (DEMP) of the rDCO, the proposed mitigation will sufficiently mitigate the impacts of the Proposed Development both during construction, operation and decommissioning.

5.2.40. Accordingly, the ExA concludes that the requirements in respect of water quality and flood risk set out NPS EN-1, dNPS EN-1, the NPPF and local development plans are met. Consequently, the ExA considers the effect would be neutral and does not weigh for or against the making of the order.

SOCIO-ECONOMIC EFFECTS

5.2.41. In terms of socio-economic effects, the ExA considers the Applicant has adequately assessed the effects of the Proposed Development and has provided sufficient evidence to support its conclusions on those effects. The ExA is satisfied that the Proposed Development would support economic development in the area and would accord with all relevant policies, including NPS EN-1 and dNPS EN-1. The ExA affords this moderate positive weight in the planning balance.

TRAFFIC, TRANSPORT AND WASTE MANAGEMENT

5.2.42. The ExA is satisfied that no significant traffic or transport effects are likely to arise from the Proposed Development. While the ExA acknowledges there would be an increase in traffic impacts, the ExA is satisfied that the control and management measures included in the rDCO would be sufficient to mitigate any negative impacts to an acceptable level. R14 (CEMP), R15 (CTMP), R16 (CWTP) and R19 (DTMP) would ensure mitigation identified in the ES is adequately carried out, and this is secured in the rDCO.

5.2.43. The ExA is satisfied that waste arising from the construction, operation and decommissioning of the Proposed Development would be properly managed. The ExA is also satisfied that adequate steps have been taken to minimise the volume of waste arisings and the volume of waste sent to landfill. R14 (CEMP) would ensure mitigation identified in the ES is adequately carried out, and this is secured in the rDCO.

5.2.44. The ExA is satisfied the Proposed Development would meet all legislative and policy requirements relating to traffic, transport and waste management, including those of NPS EN-1 and dNPS EN-1. Traffic, transport and waste management effects are neutral and do not weigh for or against the making of the order.

OTHER MATTERS

Climate change resilience

5.2.45. The ExA is satisfied that there are unlikely to be any significant effects associated with climate change resilience. The ExA is satisfied that there are no features of the design critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected and that mitigation measures are adequately provided for and secured in the rDCO. The effect in the planning balance is neutral and does not weigh for or against the making of the order.

Major accidents and disasters

5.2.46. The ExA is satisfied that the Proposed Development accords with all legislation and policy requirements and that major accident and disaster mitigation matters are adequately provided for and secured in the rDCO. The effect in the planning balance is neutral and does not weigh for or against the making of the order.

Cumulative and combined effects

5.2.47. While undoubtedly the construction and decommissioning of the Proposed Development could cause likely additional effects particularly in relation to ecological, noise, landscape and visual matters, the ExA is nevertheless satisfied that there are not likely to be any significant cumulative or combined effects from construction, operation and decommissioning activities that are worse than the effects of the Proposed Development alone. The rDCO adequately provides and secures mitigation measures to minimise individual and cumulative effects. The effect in the planning balance is neutral and does not weigh for or against the making of the order.

5.3. THE PLANNING BALANCE

5.3.1. The Proposed Development would make a significant contribution to the urgent need for low carbon electricity generation established in NPS EN-1 and carried through in dNPS EN-1 and which has become more urgent following the legally binding target of Net Zero by 2050. Over the lifetime of the project, the Proposed Development would result in negative GHG emissions contributing to meeting the UK's carbon commitment. The ExA affords these significant public benefits very great weight.

5.3.2. Furthermore, it would result in some enhancements to biodiversity and ecology and achieves 10% BNG which would be managed and secured over the long term. The ExA considers this should attract moderate positive weight.

5.3.3. In addition, the Proposed Development would result in some positive benefits to employment and the local economy. However, these are primarily temporary and as such are afforded only moderate positive weight.

5.3.4. On the other hand, a range of negative impacts have been identified. The ExA has found that the Proposed Development would lead to less than substantial harm to the setting of designated heritage assets to which it attaches little negative weight.

5.3.5. The ExA has also found that the Proposed Development would result in residual slight adverse effects on BMV agricultural land. However, as negative impacts could be managed to an acceptable level, the ExA affords this only little negative weight.

5.3.6. The ExA has also found that the Proposed Development would result in significant effects on visual amenity for residential and recreational receptors during construction. However, these effects would be temporary and would be mitigated as far as reasonably practical. As such, the ExA considers this should be afforded only little negative weight.

5.3.7. Taking the above factors into account and having had regard to all important and relevant matters, the ExA concludes that there are no adverse impacts of sufficient weight, either on their own or collectively, that would suggest the DCO should not be made. The ExA concludes that the harm identified to designated heritage assets, BMV agricultural land and on the landscape is clearly outweighed by the substantial benefit from the provision of low carbon energy to meet the need identified in NPS

EN-1 (and continued into dNPS EN-1 and dNPS EN-3) and by the other benefits of the Application as summarised above.

5.3.8. The ExA concludes that there is no breach of NPS policy, or the policies contained in the dNPSs. The Proposed Development therefore accords with the relevant NPSs and the dNPSs. Regard has been paid to the LIR, to prescribed matters and all other important and relevant policy, and to other important and relevant matters in this report, and the ExA does not consider that there are any other matters that are both important and relevant to the decision that would lead to a different conclusion being reached.

5.3.9. For the reasons set out in the preceding chapters and summarised above, the ExA finds that the Proposed Development is acceptable in principle in planning terms and that the case for Development Consent has been made.

6. LAND RIGHTS AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The Application includes proposals for the Compulsory Acquisition (CA) of new rights on land, the extinguishment and/ or suspension of rights on land and Temporary Possession (TP) of land. As the Proposed Development is sited largely within the operational Drax Power Station site, in which the Applicant owns the freehold, there are no proposals for the CA of land. This chapter records the examination of those proposals and related issues.

6.2. THE REQUEST FOR COMPULSORY ACQUISITON AND TEMPORARY POSESSION POWERS

6.2.1. Articles in the Application draft Development Consent Order (dDCO) [APP-013] and all subsequent versions included both permanent and temporary powers to construct, operate and maintain the Proposed Development.

6.2.2. The Order Limits of the dDCO establish the extent of the land that would be affected by the CA and TP powers sought.

6.2.3. The Application was accompanied by:

- a Statement of Reasons (SoR) [APP-015];
- a Funding Statement [APP-016];
- a Book of Reference (BoR) [APP-017];
- Land Plans [APP-009]; and
- Access and Rights of Way Plans [APP-011]

6.2.4. Taken together, these documents set out the land and rights sought by the Applicant at the time of submission together with the reasons for its requirement and the basis under which compensation would be funded. As a result of the Applicant's change requests and where the Examination and due diligence processes required changes to this documentation, new versions and additional plans were submitted. By the close of the Examination the most up to date versions of documents were as follows:

- SoR [REP9-010].
- Funding Statement [REP6-008].
- BoR [REP9-014].
- Schedule of Changes to BoR [REP9-016].
- Land Plans [AS-105].
- Access and Rights of Way Plans [AS-107].
- Crown Land Plan [REP5-005].
- Funding Statement [REP6-008].

6.2.5. The Examining Authority (ExA) was kept updated by the Applicant throughout the Examination on the progress of negotiations with Affected Persons (AP) by means of the Schedule of Negotiations and Powers (SNP), the final version of which was submitted at Deadline 10 [REP10-010].

6.2.6. These documents taken together form the basis for the analysis for this chapter. Reference to the documents and plans in this chapter from this point should be read as reference to the latest versions above.

6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.3.1. The Application is for development consent for the construction, operation, and maintenance of post-combustion carbon capture technology as an extension to the existing biomass generating station (Units 1 and 2) at Drax Power Station. The purposes for which the CA and TP powers are required are set out in the final submitted BoR and SoR.

6.3.2. The Applicant states that it requires powers of CA to ensure that the Proposed Development can be built, maintained and operated, and so that the Government policies in relation to achieving ambitious Net Zero targets are met. It goes on to say that in the absence of these powers, the Order land may not be assembled, uncertainty would continue to prevail, and its objectives and Government policy objectives would not be achieved.

6.3.3. The Applicant does not seek to acquire any land and has been seeking to acquire the new rights and temporary use of land by private agreement. However, at the close of Examination this had not been possible with all APs. The SNP sets out the progress to these negotiations. The Applicant also requires certain rights to be suspended, overridden or extinguished within the Order land so as to ensure there are no impediments for the construction, operation and maintenance of the Proposed Development.

6.3.4. The Applicant's principal justification for the use of powers of CA arises from the fact that the Proposed Development (including the facilitation of access to the site in order to deliver the Proposed Development):

- meets an urgent need for new energy infrastructure;
- is a form of economic development that is suitable in its local context;
- minimises or mitigates adverse impacts to an acceptable degree; and
- is compliant with National Policy Statement (NPS) EN-1, NPS EN-3, Draft NPS (dNPS) EN-1 and dNPS EN-3 and in accordance with other decision-making factors specified in (s) 104 of the Planning Act 2008 (PA2008).

6.3.5. The BoR identifies all the plots of land affected and these are also shown on the Land Plans comprising four sheets. The Land Plans submitted by the Applicant were revised and amended as the Examination proceeded to accommodate the changes referred to below.

6.4. THE COMPULSORY ACQUISITION AND TEMPORARY POSESSION POWERS SOUGHT

6.4.1. The powers sought in the dDCO relate to the acquisition of new rights (Article 20), the extinguishment and/ or suspension of rights (Article 18 and 21) and the temporary use of land to permit construction or maintenance (Articles 26 and 27).

NEW RIGHTS

6.4.2. The Applicant seeks to acquire new rights on land identified on the Land Plans as being shaded blue. The relevant plots are set out in Part 1 of Schedule 8 of the dDCO. The dDCO includes the power to impose restrictive covenants for the purposes for which new rights are sought and only so far as set out in Part 1 of Schedule 8.

6.4.3. The Applicant seeks the CA of rights in order to construct, maintain and operate elements of the Proposed Development relating to integral electrical connections

within the existing generating station and carbon capture plant (Work No. 1F), supporting works (Work No. 3), the habitat provision area (Work No. 6) and in order to facilitate the delivery of abnormal loads to the site including the diversion of overhead lines (Works No. 8A and 8B).

EXTINGUISHMENT AND/ OR SUSPENSION OF RIGHTS

6.4.4. The Applicant seeks powers to ensure that easements, restrictions and other private rights identified as affecting the land can be extinguished or suspended. These powers relate to seven plots and more generally over all the Order land in order to construct, operate and maintain all elements of the Proposed Development. The land over which the Applicant proposes to only extinguish certain easements, servitudes and other private rights is shown shaded green on the Land Plans. The relevant plots are set out in Part 2 of Schedule 8 of the recommended DCO (rDCO), alongside the purposes for the extinguishment of existing rights.

TEMPORARY POSSESSION

6.4.5. The Applicant seeks to take TP of land to permit construction or maintenance on land shaded yellow on the Land Plans. The Applicant seeks to take TP of the land which is listed in Schedule 10 of the rDCO as well as TP of any other land where it has not yet exercised powers of Compulsory Acquisition.

CHANGES TO THE APPLICATION

6.4.6. During the Examination the Applicant submitted two formal change requests (the details of which can be found in section 1.5) both of which invoked the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations). The ExA accepted both change requests subject to the subsequent fulfilment of duties under Regulations 7, 8 and 9 of the CA Regulations.

6.4.7. In line with Regulation 7, notice was provided of a consultation period on the proposed provisions for both requests. As required by Regulation 15(2) of the CA Regulations, the ExA notified all APs and Interested Parties (IP) and held a second Compulsory Acquisition Hearing (CAH).

6.5. LEGISLATIVE REQUIREMENTS

PA2008

6.5.1. Section 122(2) of the PA2008 provides that a DCO may include provision authorising CA only if the Secretary of State (SoS) is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which the development consent relates or is required to facilitate or is incidental to it.

6.5.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met, the former Department for Community and Local Government's 'Guidance related to procedures for the compulsory acquisition of land' (CA Guidance) indicates the SoS will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.

6.5.3. Section 123 requires the SoS to be satisfied that one of the three procedural conditions set out in subsections (2) to (4) are met, namely:

- that the application for the order included a request for CA of (rights over) the land to be authorised - s123(2); or
- that all persons with an interest in the land consent to the inclusion of the provision – s123(3); or
- that the prescribed procedure has been followed in relation to the land - s123(4).

6.5.4. The Application included a request for CA of the land to be authorised. As such, the ExA is satisfied that the condition set out in s123(2) of the PA2008 has been met.

6.5.5. Section 127 of the PA2008 applies to Statutory Undertakers (SU) land. S 127(2) and (3) state that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the SoS is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking. Similarly, s127(5) and (6) of the PA2008 provide that an order granting development consent may only include provision authorising the CA of rights belonging to SUs to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good. A number of SUs have land interests within the Order Limits. These are set out in the BoR.

6.5.6. Section 138 of the PA2008 relates to the extinguishment of rights on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. For the Proposed Development, this section of the PA2008 is relevant to SUs with land and equipment interests within the Order Limits.

6.5.7. TP powers are also capable of being within the scope of a DCO by virtue of paragraph 2, Part 1 of Schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole and only capable of proceeding if the primary development is justified.

NEIGHBOURHOOD PLANNING ACT 2017

6.5.8. The Neighbourhood Planning Act 2017 includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions have not been brought into force and are described as technical changes in the explanatory notes that accompany the Act. Article 8(d) of the rDCO disapplies the provisions of the Act insofar as they relate to TP of land under articles 26 (TP of land for carrying out the authorised development) and 27 (TP of land for maintaining the authorised development).

THE CA GUIDANCE

6.5.9. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also need to be addressed. Namely that:

- all reasonable alternatives to CA must have been explored;

- the Applicant must have a clear idea of how it intends to use the land subject to CA powers;
- the Applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.5.10. The ExA has taken all relevant legislation and guidance into account when considering this matter and relevant conclusions are drawn at the end of this chapter.

6.6. EXAMINATION OF THE COMPULSORY ACQUISITION AND TEMPORARY POSESSION CASE

THE EXAMINATION PROCESS

6.6.1. The ExA's approach to the question of whether CA powers should be granted and if so what it should recommend to the SoS to grant has been to seek to apply the relevant sections of the PA2008; notably s122 and s123, the CA Guidance and the Human Rights Act 1998. In addition, in light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

6.6.2. In examining the Application, the ExA considered all written material in respect of CA and TP and asked written questions regarding justification of the need for the CA/ TP in the ExA's First Written Questions (ExQ1) [PD-011], the ExA's Second Written Questions (ExQ2) [PD-015] and the Rule 17 request dated 22 June 2023 (R17QB) [PD-021].

6.6.3. In addition, the issues were explored in further detail at CAH1 [EV-030 and EV-032]. With the exception of Yorkshire Water, no APs chose to attend CAH1. As required by Regulation 15(2) of the CA Regulations as a result of the Applicant's change requests, the ExA notified all APs and IPs and held a second CAH on Monday 12 July [EV-039].

6.6.4. Five objections/ representations were made to the Proposed Development specifically relating to concerns regarding the CA and/ or TP of the land, and the impact on the use of the land, four of which were received following consultation on the changes to the Application. These are considered below. The Applicant has been in dialogue with all the landowners.

6.6.5. No withdrawals of objections/ representations regarding CA and/ or TP of the land have been submitted to the Examination. The SNP summarises the discussions and sets out the status with each party. Table 4.1 of the Applicant's Closing Position Statement [REP10-020] also provides a summary of the position reached with each AP at the end of the Examination.

THE APPLICANT'S CASE

6.6.6. The Applicant's general case for CA and TP is set out in the SoR under the following chapters:

- Chapter 4 – CA Powers.
- Chapter 5 – Need for the CA of Land and Rights.
- Chapter 6 – Justification for the Use of Powers of CA.

- Chapter 7 – Policy Support.
- Chapter 8 – Special Considerations.

6.6.7. The Applicant concludes that:

- the inclusion of powers of CA in the DCO for the purposes of the Proposed Development meets the conditions of s122 of the PA2008, as well as considerations in the CA Guidance;
- the acquisition of rights and the temporary use of land, together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of private rights, is no more than is reasonably required to facilitate or is incidental to the Proposed Development;
- the rights identified to be subject to CA are no more than is reasonably necessary for that purpose and are proportionate;
- it is demonstrated that there is a compelling case in the public interest for the land to be acquired compulsorily;
- all reasonable alternatives to CA have been explored; and
- the proposed interference with the rights of those with an interest in the Order land is for a legitimate purpose, namely the Proposed Development, and is necessary and proportionate to that purpose.

6.6.8. Overall, the ExA agrees with the Applicant's conclusions on the generality of the case, and subject to the ExA's further consideration of plots affected by outstanding objections/ representations below, the ExA considers the tests set out in s122(2) and s122(3) of the PA2008 to be met.

ALTERNATIVES

6.6.9. The CA Guidance indicates that the Applicant should be able to demonstrate to the satisfaction of the SoS that all reasonable alternatives to CA (including modifications to the scheme) have been explored.

6.6.10. The Applicant's approach to the consideration of alternatives in relation to CA is set out in section 5.4 of the SoR. In summary, the Applicant has chosen the site because the Drax Power Station site is within the ownership of the Applicant, the addition of post combustion capture technology would mean there would be little material change to the land use, the majority of the Order land consists of brownfield land, it allows existing infrastructure on site to be re-used and it provides a suitable location for the connection to the transport and storage infrastructure.

6.6.11. Given the nature and requirements of the Proposed Development, the ExA agrees with the Applicant that an offsite location would not provide the benefits of the proposed location and would involve additional impacts or disadvantages in terms of land take, environmental, technical or other considerations. Alternative layouts and technologies within the Drax Power Station site have been considered (Environmental Statement (ES) Chapter 3 [APP-039]. However, as these options are within the operation site and owned by the Applicant, the consideration of those alternatives has limited relevance in terms of avoiding CA.

6.6.12. The Applicant is seeking to acquire the necessary rights by agreement but has not yet been able to do so. Whilst the Applicant will continue to seek to acquire the rights by voluntary agreement, the Applicant requires the powers of CA and TP sought in order to provide certainty that it will have all the rights required to construct and operate the Proposed Development in order to realise its very significant public benefits.

6.6.13. In light of the above, the ExA considers that the Applicant has satisfactorily demonstrated that all reasonable alternatives to CA have been explored.

FUNDING

6.6.14. The Applicant's Funding Statement [REP6-008] indicates that the Applicant has the ability to procure the financial resources required for the Proposed Development, including the cost of acquiring any rights and the payment of compensation, as applicable.

6.6.15. Article 42 of the rDCO requires the Applicant to put in place financial security before exercising any powers of CA. This provides a clear mechanism whereby the necessary funding for CA can be guaranteed.

6.6.16. Based on the information provided, the ExA is satisfied that the necessary funds would be available to the Applicant to cover the likely costs of CA.

6.7. CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES

6.7.1. Although this section specifically considers objections/ representations raised, the ExA appreciates that these represent only a proportion of the plots that would be affected. Even though a specific objection/ representation may not have been raised in relation to a particular plot of land, the ExA has nevertheless applied the relevant tests to the whole of the land that would be the subject to the powers of CA or TP in reaching its overall conclusions.

6.7.2. Following the Applicant's first change request, two RRs were submitted ([RR-280 and RR-282]) which related to general matters about the principle of the Proposed Development rather than the proposed provision itself. They have not therefore been considered in this section.

NATIONAL GRID ELECTRICITY TRANSMISSION (NGET)

Plots 01-20, 01-22, 01-23 and 01-25

6.7.3. NGET submitted an RR [RR-052] and a WR [REP2-083] identifying that it has a number of substations and associated apparatus and a high voltage electricity line within or in close proximity to the proposed Order Limits. NGET's primary concern was to meet its statutory obligation and ensure that any development did not impact in any adverse way upon those statutory obligations.

6.7.4. In particular, NGET had concerns over the extent of Work No. 1F on the Works Plan [AS-103] and Plot 01-23 on the Land Plans. Plot 01-23 extends over the entirety of the Drax substation site and NGET considered that the work and extent of the land in this plot was disproportionate as it included more land than necessary to connect to the Drax substation thereby failing to meet the tests for CA. NGET also considered that the extent of rights over Plot 01-23, 01-20, 01-22 and 01-25 was so broad that in effect, they amounted to the acquisition of the land and would cause serious detriment to NGET's undertaking.

6.7.5. In addition, NGET wanted to ensure that there would be no impact on the delivery of the Scotland to England Green Link 2 (SEGL2) for which it had submitted a planning application, and which also connected to Drax Power Station site.

6.7.6. The Applicant responded to the concerns of NGET at Deadline (D) 3 [REP3-020] and actively engaged with NGET throughout the Examination to agree the wording

of Protective Provisions (PP). The SNP states that the PPs are now in agreed form as included in Part 3 of Schedule 12 of the dDCO [REP10-005]. The SNP states that the parties have also largely agreed a confidential side agreement which was expected to complete shortly after the close of the Examination. Although these matters are shown as agreed in the final submitted Statement of Common Ground (SoCG) [REP10-017], it remained unsigned at the close of Examination which limits the weight that can be afforded. The Applicant has stated that it will provide an update to the SoS following the close of the Examination and it anticipates that NGET will then be in a position to withdraw its representation.

6.7.7. The ExA recommends that the SoS may wish to seek an update as to whether NGET is now content to withdraw its representation and that the side agreement has now been completed. Having considered the wording in the PPs in the dDCO the ExA is satisfied that the wording in Part 3, Schedule 12 of the dDCO provides adequate protection for NGET's assets which provides that the Applicant may not acquire or take TP of any land interest or appropriate, extinguish, interfere with or override any easement or other interest/ right and/ or apparatus of NGET otherwise than by agreement.

6.7.8. Given the above the ExA is satisfied that the PPs in favour of NGET included in the dDCO are sufficient to ensure there would be no serious detriment. The ExA concludes that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA and TP powers sought.

NORTHERN GAS NETWORKS LIMITED (NGN)

Plots 01-108, 01- 110, 01- 115, 01-125

6.7.9. NGN submitted an RR [RR-283] following consultation on the Applicant's second change request raising an objection until it had a better understanding of the works on land over which the Applicant sought powers to extinguish easements and third party land rights where NGN has an easement for above and below ground gas apparatus. Concerns were also raised regarding the wording of the standard PPs included in the dDCO [REP10-005] for utility companies.

6.7.10. The ExA issued a request for further information [PD-022] on 29 June 2023 asking for an update on the status of negotiations, whether there were any envisaged impediments in completing a private agreement and requesting NGN's preferred wording for any PPs. NGN responded [REP9-039] stating that it did not foresee any issues in completing a private agreement. NGN attached a template [REP9-038] with wording for an Asset Protection Deed and therefore from the information before the ExA, it does not appear that NGN is looking for alternative form of wording in the PPs but rather to agree a private asset protection agreement with the Applicant.

6.7.11. The SNP confirms that the Applicant has continued to engage with NGN and is in receipt of the Asset Protection Deed which it has reviewed and responded to NGN on. This had not been agreed at the end of the Examination and NGN had not withdrawn its representation.

6.7.12. The ExA recommends that the SoS may wish to seek an update as to whether the Asset Protection Deed has been agreed and signed and whether NGN would therefore withdraw its representation. However, should this remain unsigned, Part 1 of Schedule 12 of the dDCO includes provisions for the protection of electricity, gas, water and sewerage undertakers. The ExA is satisfied that this provides adequate protection for NGN's assets.

6.7.13. Given the above the ExA is satisfied that the PPs included in the dDCO are sufficient to ensure there would be no serious detriment. We conclude that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA and TP acquisition.

YORKSHIRE WATER

Plots 01-01, 01- 03, 1-14, 1- 19, 1-26, 1- 29, 1-30, 1- 31, 01-54, 01-55, 01-70, 01-71, 01-72, 01- 73, 01-74, 01-75, 01- 80, 01-82, 01-86, 01- 90, 01-91,01-102, 01-116, 01-118, 01-119, 01-120, 01-121

6.7.14. At D3 Yorkshire Water submitted a representation outlining four areas of concern regarding the location of the works in relation the location of clean water and strategic mains [REP3-034]. Its specific concerns were discussed in more detail at CAH1 [EV-032], at which both parties agreed to engage further.

6.7.15. The Applicant continued to engage with Yorkshire Water throughout the Examination on the wording of PPs. The Applicant updated the draft PPs to incorporate Yorkshire Water's policy for its apparatus. The SNP indicates that at the end of the Examination, Yorkshire Water confirmed that the PPs were agreed although it did not withdraw their representation formally.

6.7.16. The ExA is satisfied that Part 1 of Schedule 12 of the dDCO, which includes provisions for the protection of electricity, gas, water and sewerage undertakers, provides adequate protection for Yorkshire Water's assets.

6.7.17. Given the above the ExA is satisfied that the PPs included in the dDCO are sufficient to ensure there would be no serious detriment. The ExA concludes that the land is required for the Proposed Development or is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the CA and TP powers sought.

EAST RIDING OF YORKSHIRE COUNCIL (ERoY)

Plots 01-53, 01-54, 01- 55, 01-60, 01-61, 01-62, 01-63, 01- 66, 01-67, 01-68, 01-70, 01-71, 01- 72, 01-118, 01- 102, 01-103, 01- 112, 01-116, 01-73, 01-74, 01- 75, 01-76

6.7.18. ERoY submitted an RR [RR-278] following consultation on the Applicant's first change request. ERoY objected to the proposed change on the basis that more information was needed relating to cable route and depth, soil management, field drainage, works compound and access and the impact of undergrounding the telecommunications line. The Applicant responded to say that comments on these matters would be taken into consideration as the proposal is developed further.

6.7.19. ERoY was also concerned that the unrestricted nature of future rights may prove unduly onerous for it and its tenants and could disrupt the efficient use of this land in future.

6.7.20. The SNP indicates that the Applicant has continued to engage with ERoY and discussions have been ongoing regarding Heads of Terms (HoTs), including the appropriate protection and compensation for agricultural land holdings as well as wording for a potential licence. However, at the close of the Examination, neither the HoTs nor licence had been agreed. The Applicant has said that it will continue to engage with ERoY to seek a voluntary agreement.

6.7.21. The ExA recommends that the SoS may wish to seek an update as to whether the HoTs or licence have now been completed. However, should the agreement remain unsigned then the ExA is satisfied that the amount of land requested would be the minimum necessary and that any private harm would be outweighed by the public benefit from the Proposed Development and recommends the grant of CA and TP sought in relation to these plots.

INVESTORS IN COURT HOUSE FARM/ DELTA ENTERPRISE PARK

Plots 01-96, 01-118, 01-123, 01-124

6.7.22. The Investors in Court House Farm/Delta Enterprise Park (the Consortium) submitted an RR [RR-279] following consultation on the Applicant's first change request. Concerns were raised over boundary issues, the extent, position and scale of the land to be acquired for new rights and TP and the timescale for completion of the project.

6.7.23. The Applicant has continued to engage with the Consortium throughout the Examination and proposed HoTs have been exchanged.

6.7.24. The SNP states that on 3 July 2023 the Consortium raised concerns about the location of the temporary access route from Elite Road and provided the Applicant with an alternative. However, the route is outside of the Order Limits, would involve third party land and would necessitate a traffic analysis to ensure it would provide suitable space for necessary vehicle movements during the works. Therefore, the Applicant did not have time to progress this in the remainder of the Examination. The SNP states that the Applicant is comfortable that this is a matter that could be agreed outside of the DCO process and has updated PH3 of the Register of Environmental Actions and Commitments (REAC) [REP9-020] to include a commitment that the Applicant must agree the construction route with the affected land interests. The SNP indicates that this wording was acceptable to the Consortium.

6.7.25. Whilst noting the above, the alternative route was not before the ExA and there is no evidence to suggest that the alternative route would be viable and therefore the ExA has only considered the request for CA and TP powers on the basis of the information before the ExA at the close of the Examination. The Applicant has stated that it will continue to engage with this party post-Examination to seek a voluntary agreement.

6.7.26. The ExA recommends that the SoS may wish to seek an update as to whether the HoTs have now been completed. However, should the agreement remain unsigned then the ExA is satisfied that the amount of land requested would be the minimum necessary and that any private harm would be outweighed by the public benefit from the Proposed Development and recommends the grant of CA and TP sought in relation to these plots.

EXAS CONCLUSIONS ON OUTSTANDING OBJECTIONS AND ISSUES

6.7.27. The ExA is 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. It therefore follows that the ExA is satisfied that the powers sought meet the condition set out in s122(2) of the PA2008.

6.7.28. Furthermore, while it is accepted that the CA and TP powers sought might result in some adverse impacts to the private interests of the owners of the land affected, in

view of the established need for the Proposed Development and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for the CA and TP powers sought. The ExA is therefore satisfied that it meets the tests in s122(3) of the PA2008.

6.7.29. Having considered the PPs, the ExA considers they are sufficient to ensure that there would be no serious detriment to those SUs affected. Moreover, the ExA considers the extinguishment or removal of apparatus belonging to SUs is necessary for the purpose of carrying out the Proposed Development. Accordingly, the ExA considers the powers sought meet the requirements of s127 and s138 of the PA2008.

6.8. OTHER PARTICULAR CONSIDERATIONS

6.8.1. The Applicant was asked throughout the Examination whether the Proposed Development bore on any of the special land and rights provisions that arise under the PA2008. Issues are reported under individual headings below.

SU LAND, RIGHTS OR APPARATUS

6.8.2. Section 8 of the SoR sets out the SUs identified by the Applicant that may have land or apparatus belonging to them in the Order Limits. The Applicant has engaged with all of the SUs affected by the Proposed Development in order to address any representations raised by them where s127 or s138 apply. At the end of the Examination, Table 2-2 of the SNP sets out the Applicant's position in relation to these matters.

6.8.3. Whilst Network Rail (NR) had initially submitted a representation, it was then withdrawn and the ExA agrees with the Applicant that as the rDCO does not seek any powers with respect to land or assets owned by NR, the tests in s127 and 138 do not apply. Similarly, the ExA considers that National Grid Carbon Limited (NGCL) is not a Statutory Undertaker as they do not hold apparatus, a right in apparatus or any land generally within the Order Limits.

6.8.4. The ExA has concluded in relation to individual representations above, including in relation to NGET, NGN and Yorkshire Water. The rDCO includes PPs in respect of SUs (Article 34 and Schedule 12) and a bespoke PP for NGET.

6.8.5. Article 28 of the dDCO gives the undertaker certain powers in relation to CA and acquisition of rights from SUs within the Order land. That article is subject to the PPs included at Schedule 12 of the rDCO. The ExA is satisfied that the PPs provide adequate protection for SUs assets and that the SUs will not suffer serious detriment to the carrying on of their undertaking.

6.8.6. The ExA therefore concludes that the tests set out in subsections 127(3) and/ or 127(6) (as appropriate) can be met.

6.8.7. Various SUs and owners of apparatus have a right to keep equipment (in connection with their undertaking) on, in or over the Order land and are included in the BoR. The dDCO includes provision to authorise the extinguishment of a relevant right, or the removal of relevant apparatus belonging to SUs.

6.8.8. The exercise of such powers will be carried out in accordance with the PPs contained in Schedule 12 to the rDCO. The PPs will be agreed with the relevant SUs and electronic communications apparatus owners and will accordingly set out constraints on the exercise of the powers in the DCO, with a view to safeguarding

the SUs and electronic communications apparatus owners' interests, whilst enabling the Proposed Development to proceed.

6.8.9. In accordance with s138(4) the ExA is satisfied that the extinguishment of the SU rights and removal of the SU apparatus is necessary for the purposes of carrying out the development to which the Order relates.

CROWN LAND

6.8.10. Section 135(1) of the PA2008 precludes the CA of interests in Crown Land unless the land is held "otherwise than by or on behalf of the Crown", and the appropriate Crown authority consents to the acquisition. Section 135(2) precludes a DCO from including any provision applying to Crown Land or Crown rights without consent from the appropriate Crown authority. This is not limited to CA provisions in a DCO.

6.8.11. Crown Land has been identified within the Order Limits as shown by Plots 01-83, 01-87 and 01-22 on the Crown Land Plan [REP5-005]. The SNP states that the Department for Transport confirmed consent for the use of Crown Land and a copy of this letter is included at Appendix B of the SNP.

SPECIAL CATEGORY LAND

6.8.12. There is no Special Category Land within the Order Limits. Special Category Land that was previously identified has now been removed.

HUMAN RIGHTS ACT 1988 AND EQUALITY ACT 2010 CONSIDERATIONS

6.8.13. The Human Rights Act 1988 places the European Convention on Human Rights (ECHR) into UK statute. The ECHR is subscribed to by member states of the Council of Europe. ECHR rights are enforceable in the domestic courts but with final recourse to the European Court of Human Rights. The ECHR, the Council of Europe and the European Court of Human Rights are not European Union (EU) institutions and are unaffected by the decision to leave the EU.

6.8.14. Schedule 1 of the Human Rights Act 1998 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, the ExA have no reason to believe that Article 8 (Right to respect for private and family life) would be engaged.

6.8.15. Chapter 10 of the SoR addresses the compliance with the relevant provisions of the ECHR and fair compensation. The Applicant concludes that any infringement of the ECHR of those whose interests are affected by the inclusion in the Drax DCO of powers of CA, proportionate and legitimate, would be in the public interest and in accordance with national and European law.

6.8.16. The ExA considers that appropriate consultation took place before and during the process and that there has been an opportunity to make representations. The CAHs provided an opportunity for all APs to be heard had they wished to do so. Furthermore, should the Order be made, there are further opportunities for APs to challenge the Order in the High Court. The ExA considers this sufficient to meet the obligations set out in Article 6.

6.8.17. The Applicant acknowledges in the SoR that the Order has the potential to infringe the rights of APs. The ExA notes it has sought to minimise the amount of land

affected and included suitable provisions for the payment of compensation in the dDCO. The ExA has found above that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. Furthermore, the ExA considers that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. The ExA therefore concludes that the CA and TP sought is compatible with the Human Rights Act 1998 and the ECHR.

6.8.18. The Equality 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. The ExA has had regard to this duty throughout the Examination and in its consideration of the issues raised in this report.

6.8.19. Overall, the ExA finds 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. On that basis, the ExA has found no breach of the Public Sector Equality Duty.

6.9. CONCLUSIONS

6.9.1. Having considered all of the material submitted to the Examination, the ExA has reached the following conclusions:

- The Application site has been appropriately selected.
- All reasonable alternatives to CA have been explored.
- The Applicant would have access to the necessary funds and the rDCO 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, operate and maintain the Proposed Development within a reasonable timeframe, and the Proposed Development represents a significant public benefit to weigh in the balance.
- That in all cases relating to individual objections and issues that CA and TP is justified to enable implementation of the Proposed Development.
- 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.
- The Applicant has obtained consent from the relevant Crown authorities and therefore the powers sought meet the conditions in s135 of the PA2008.

6.9.2. Considering all of the above, the ExA finds there is a compelling case in the public interest for the CA and TP powers sought and the ExA recommends acceptance of the CA and TP powers proposed in the dDCO.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. The application draft Development Consent Order (dDCO) [APP-013] and the Explanatory Memorandum (EM) [APP-014] were submitted by the Applicant as part of the application for development consent. Both the dDCO and EM were updated throughout the Examination with the latest version of the dDCO being [REP10-005] and the EM being [REP10-007]. The EM explains the purpose and effect of each article of, and Schedules to, the Order and why they are required.

7.1.2. The EM also identifies and explains departures from the (now withdrawn) Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. It also makes reference to where the drafting has been taken from wording for other orders made under the Planning Act 2008 (PA2008). The original application dDCO and subsequent iterations are in the form of a statutory instrument as required by section (s) 117(4) of the PA2008.

7.1.3. During the Examination, several further drafts of the DCO were submitted by the Applicant incorporating progressive changes arising from the Examining Authority's (ExA) written questions and requests for further information [PD-011, PD-015, PD-018 and PD-021], points made by Interested Parties (IP) and from the proceedings at the DCO hearings held on 19 January 2023 [EV-014 and EV-016] and 24 March 2023 [EV-034 and EV-036].

7.1.4. This chapter provides an overview of the Examination of the Development Consent Order including notable changes made to the dDCO during the Examination and considers changes made to the final dDCO in order to arrive at the recommended DCO (rDCO) in Appendix D of this report. Changes as a result of typographical or grammatical errors, or minor changes in the interests of clarity, consistency or updates to lists following discussion between the Applicant and relevant IPs, or as a result of written questions or comments made by the ExA, are not reported.

7.2. THE ORDER AS APPLIED FOR

7.2.1. This section records the structure of the dDCO. It is based on the Applicant's final dDCO and is as follows:

- Part 1: Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of various terms used in the Order.

- Part 2: Articles 3 to 5 provide development consent for the Proposed Development, and allow it to be constructed, maintained and operated. Articles 6 and 7 set out who has the benefit of the powers of the Order and how those powers can be transferred. Article 8 relates to the disapplication and modification of certain legislative provisions, and addresses inconsistencies between the Order and previous consents granted under the Planning and Electricity Acts in respect of the Drax Power Station site, which is located within the existing Drax Power Station, as well as the Drax Repower DCO.

- Part 3: Articles 9 to 14 provide for the undertaker to be able to carry out works to and within streets, to alter the layout of streets, to create or improve accesses; and to temporarily close public rights of way.

- Part 4: Articles 15 to 17 set out three supplemental powers relating to discharge of water, authority to survey land and removal of human remains.

- Part 5: Articles 18 to 31 provide for the undertaker to be able to compulsorily acquire rights over/ within the Order land, and to be able to temporarily use parts of the Order land for the construction or maintenance of the Proposed Development. The provisions also provide for the undertaker to suspend or extinguish certain private rights. The provisions provide for compensation to be payable to Affected Persons (AP) in respect of these powers, where that is not already secured elsewhere. These articles also provide for powers in relation to equipment of statutory undertakers.

- Part 6: Articles 32 and 33 provide (respectively) powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Proposed Development and any protective works to buildings.

- Part 7: Articles 34 to 44 include various general provisions in relation to the Order: -

  (a) Article 34 provides protection for Statutory Undertakers (SU) through the protective provisions (set out in Schedule 12);
  (b) Articles 35 to 44 include provisions such as: application of statutes relating to leases; that the Order land will be 'operational land'; a defence to proceedings in respect of statutory nuisance; certification of documents relevant to the Order; notices served under the Order; procedures for approvals required under the Order; arbitration in case of disagreements under the Order; guarantees in respect of the payment of compensation; a provision relating to electronic communications; and protection of Crown rights.

7.2.2. There are 14 Schedules to the Order:

- Schedule 1 providing for the description of the Proposed Development;
- Schedule 2 setting out the requirements (R) which apply to it;
- Schedule 3 lists the local legislation relating to railways, drainage and utilities that the Order will disapply insofar as any provisions are inconsistent with the powers contained in the Order;
- Schedules 4 to 7 relate to matters in relation to streets, accesses and rights of way;
- Schedule 8 to 10 are linked insofar as they concern land rights, Temporary Possession and compensation. Schedule 8 relates to the to land in which only rights may be acquired or in which rights may be extinguished. Schedule 9 relates to amendments to statutes to ensure appropriate compensation is payable where new rights over land are acquired under the Order. Schedule 10 relates to land which may be used temporarily for the Proposed Development;
- Schedule 11 sets out the procedure for discharging requirements;
- Schedule 12 provides Protective Provisions (PP) for SUs and their apparatus;
- Schedule 13 lists the documents and plans to be certified; and
- Schedule 14 sets out the design parameters for the Proposed Development.

7.2.3. The structure of the dDCO is set out in the Contents and is listed on its face. The ExA is content that the structure is fit for purpose and does not recommend any changes to it.

7.3. EXAMINATION OF THE DEVELOPMENT CONSENT ORDER

7.3.1. The Applicant updated the dDCO at every other and the final deadline (D) responding to issues raised in questions, to Written Representations (WR) and as a consequence of the hearing process. The Applicant submitted both clean and tracked change versions of the dDCO. The changes made to the dDCO and the reasons for these changes can be found in the Schedule of Changes to Development Consent Order submitted at D2, D4, D6, D8, D9 and D10. These are detailed in Table 1 below.

Table 1: Key dDCO documentation submitted into the Examination

dDCO version	Deadline	Examination Library (EL) Reference
01	-	[APP-013] (Application DCO) [APP-014] (EM)
03	-	[AS-025] (dDCO clean) [AS-026] (dDCO tracked)
04	-	[AS-076] (dDCO clean) [AS-077] (dDCO tracked] [AS-078] (EM clean) [AS-079] (EM tracked)
05	D2	[REP2-007] (dDCO clean) [REP2-008] (dDO tracked) [REP2-010] (EM clean) [REP2-011] (EM tracked) [REP2-009] (Schedule of Changes)
06	D4	[REP4-022] (dDCO clean) [REP4-019] (dDCO tracked) [REP4-023] (EM clean) [REP4-009] (EM tracked) [REP4-031] (Schedule of Changes)
07	-	[AS-109] (dDCO clean) [AS-110] (dDCO tracked) [AS-111] (Schedule of Changes)
08	D6	[REP6-005] (dDCO clean) [REP6-006] (dDCO tracked) [REP6-007] (Schedule of Changes)
10	D8	[REP8-005] (dDCO clean)

dDCO version	Deadline	Examination Library (EL) Reference
		[REP8-006] (dDCO tracked) [REP8-007] (Schedule of Changes)
11	D9	[REP9-005] (dDCO clean) [REP9-006] (dDCO tracked) [REP9-008] (EM clean) [REP9-009] (EM tracked) [REP9-007] (Schedule of Changes)
12	D10	[REP10-024] (Final dDCO) [REP10-005] (dDCO clean) [REP10-006] (dDCO tracked) [REP10-007] (final EM clean) [REP10-008] (final EM tracked) [REP10-009] (Schedule of Changes)

7.3.2. As referred to above, all changes made to the iterations of the dDCO were accompanied by a Schedule of Changes detailing all amendments. A summary of the notable changes made throughout the Examination is shown in Table 2.

Table 2: Notable changes made to the dDCO

Version/ Deadline	Notable changes made
05/ D2	Article 20 - Addition of reference to 'Part 1' in relation to Schedule 8 and addition of 'or in which rights may be extinguished' to the title of Schedule 8. Article 26 - Addition of reference to 'Part 1' in relation to Schedule 8 and addition of 'or in which rights may be extinguished to the title of Schedule 8 Schedule 2, R11 – Additional wording at Environment Agency's (EA) request Addition of R20 (local liaison committee) and R21 (local employment plan) Schedule 8 – Addition of new part: 'Land which may be extinguished'; and various amendments throughout schedule. Schedule 11 – Definition of 'application' added and amended timeframe for discharge of requirements.
06/ D4	Schedule 2, Requirement 11 – Additional wording at the request of the EA

Version/ Deadline	Notable changes made
	Deletion of Network Rail Infrastructure Limited Protective Provisions
07/-	Various changes following the Applicant's second change request including Article 2, Article 8, Article 20 and Article 44 relating to Crown Land and various amendments to land powers required for plots in Schedules 8 and 10
08/ D6	Deletion of National Grid Carbon Limited (NGCL) and replacement with Northern Endurance Partnership (NEP) in Article 1, Article 6, Schedule 1, Work No. 2 and Schedule 14, Part 3 following NEP taking over the Humber Low Carbon Pipelines project (HLCP)
10/ D8	Change from a period of five years to seven years in Article 19, Article 22, Article 24 and Schedule 2, Requirement 1 Schedule 2, Requirement 11(3) – Addition of wording to reflect agreement with EA Schedule 11(2) – Additional subparagraph added in response to Natural England Schedule 12, Part 1 – Various amendments to wording within PPs
11/ D9	Deletion of NEP and replacement with onshore carbon pipeline operator to Article 2, Article 6, Schedule 1, Work No. 2, and Schedule 14
12/ D10	Addition of PPs for National Highways Limited

7.3.3. The main issues arising in or outstanding at the end the Examination were:

- the change from a period of five to seven years in Schedule 2, Requirement 1 (Commencement of the authorised development);
- the rating levels in Schedule 2, Requirement 17 (Control of noise during operation);
- PPs for NGCL; and
- The imposition of a requirement preventing commencement until development consent has been granted for the carbon pipeline and storage akin to R33 of the Keadby 3 Order 2022

SCHEDULE 2, R1

7.3.4. In April 2023, NGCL announced that it was withdrawing from the HLCP project, to which the Proposed Development would connect. As a result of the anticipated change to the promoter and operator of the HLCP, at D8 the Applicant sought to amend the time in which it had to commence the authorised development from five to seven years.

7.3.5. The ExA asked the Applicant to justify this amendment in the Rule 17 request dated 22 June 2023 (R17QB) [PD-021]. The Applicant responded [REP9-026] that following the Government's announcement regarding Track 1 Cluster sequencing

and the change in the organisational structure and equity associated with the transport and storage system provider, it believed that it was prudent for the benefit of the Proposed Development and the delivery of the Government's Net Zero strategy to extend the window within which to commence development of the Proposed Development.

7.3.6. The Applicant stated that it still expected to be in a position to progress the Proposed Development with the aim of delivering it to a timescale that would assist the Government in meeting its target for greenhouse gas (GHG) removal by 2030. However, it sought some flexibility to have seven years in which to implement the Proposed Development, given the interdependencies of Bioenergy with Carbon Capture and Storage (BECCS) on other factors.

7.3.7. A number of IPs raised concerns regarding the impacts of such a delay, primarily relating to the implications for baselines, survey work and accelerating climate change (see [REP9-029, REP9-035 and REP9-043]).

7.3.8. The ExA also asked the Applicant, North Yorkshire Council (NYC), NE and the EA if this amendment would have any implications for the baselines, assessments and conclusions reached in the Environmental Statement (ES) and the Habitats Regulations Assessments (HRA). In response, the Applicant stated that it would not have any substantive implications for HRA and in Appendix A (Table 0.1) of [REP9-026] provided updates on potential impacts to the baseline used, impacts to survey work, confirmation that the worst case construction programme had been used and updates to the outcome of the Environmental Impact Assessment (EIA) for each topic contained within the ES. With the exception of impacts on traffic and transport which is discussed further in section 3.12, the Applicant concluded that there would be no material impact on the conclusions in the ES.

7.3.9. Neither NYC, the EA nor NE raised any objection to the extension of time in which to commence development to seven years. In [REP9-034], the EA responded that it did not consider there were any implications on survey works or conclusions that had not already been addressed during the Examination, given that surveys would be updated prior to the commencement of development and that flood risk had assessed a longer lifetime of the development in terms of its mitigation.

7.3.10. In [REP9-036], NE responded to state that although a seven year commencement period would introduce more uncertainty into the reliability of the assessment conclusions, particularly on in-combination assessments for impacts on designated sites, any future applications would have to make their own assessment with the Proposed Development as an in-combination/ cumulative project. Similarly, in [REP9-037], NYC stated that given the requirements in place for pre-commencement surveys, monitoring and mitigation measures, it considered the dDCO and associated documents to be sufficiently flexible to accommodate a delay of this length.

7.3.11. Having regard to the responses received, the ExA can see no reason why the extension of time from five to seven years in Schedule 2, R1 would lead the ExA to reach different findings or conclusions to those in Chapter 3 and 5. The ExA accepts the Applicant's amendment to the commencement period which is reflected in its final dDCO [REP10-024].

SCHEDULE 2, R17

7.3.12. This matter is discussed in further detail in section 3.9 of Chapter 3. In summary, there remained outstanding matters with NYC at the end of the Examination relating to operational noise effects at night, specifically at Receptors 6 and 14. NYC requested that the rating levels in R17 of the dDCO were lowered to remove potential for adverse operational impacts.

7.3.13. NYC states in its response at D9 [REP9-037] that it was not suggesting that consent should be refused on this matter but remained of a different view to the Applicant that the margin by which the rating level exceeds the background level is more important than contextual considerations. The Applicant considered that when contextual considerations were taken into account then the operational noise effects would be not significant and provided extracts of the guidance on contextual considerations which state that absolute levels may be as, or more important than, relative outcomes where background and rating levels are low.

7.3.14. NYC stated although discussions with the Applicant had taken place suggesting the removal of rating levels from R17 (to be agreed at a later date), this was not its preferred option as it would leave the matter for resolution at a later date (outside of the Examination process).

7.3.15. The ExA has concluded on this matter in section 3.9 and on the basis of the evidence before it, it is satisfied that the noise rating levels secured by R17 would not result in significant noise effects and does not therefore recommend any amendments to Schedule 2, R17 in this regard.

PROTECTIVE PROVISIONS FOR NATIONAL GRID CARBON LIMITED

7.3.16. In its Relevant Representation (RR) [RR-022] NGCL requested the inclusion of PPs to protect its assets related to its position as promoter of the HLCP, a request to which the Applicant initially agreed [AS-029]. During the Examination, NGCL announced that it was withdrawing from the project and the NEP would take over. At the close of the Examination, NGCL was still in commercial discussions on the transfer of the HLCP project.

7.3.17. Following this development, the Applicant's position was that it did not consider it appropriate to include PPs for the protection of NGCL, given it no longer expected to have an interest in the HLCP. The Applicant confirmed in its response to R17QB that NEP had communicated that it envisaged submitting an application for a DCO for HLCP in 2024 [REP9-026]. The Applicant considered that the change in the promoter of the onshore transport and storage infrastructure meant that it would be simpler and more time effective for the Applicant to negotiate a meaningful set of reciprocal PPs with the new promoter (once known) based on that promoter's requirements and plan for development of the project.

7.3.18. On this basis, the Applicant proposed that when the DCO for the HLCP came forward, PPs could be progressed by the promoter of the scheme and could be imposed on the Proposed Development via that DCO. The Applicant pointed to precedent for the modification of a DCO by a subsequent DCO in the Immingham Open Gas Turbine Order 2020 and the Millbrook Gas Fired Generation Station Order 2019. The Applicant therefore considered that the HLCP DCO should be the appropriate mechanism by which to secure any required PPs.

7.3.19. On the other hand, NGCL remained of the view that the PPs enclosed within its D6 submission [REP6-049] should be included in the DCO for the benefit of the HLCP

project. It considered that as no sale has yet been agreed, NGCL remained the custodian of the HLCP project. Whilst NGCL acknowledges that it does not currently have the benefit or an interest in the right of land in connection with in-situ apparatus, it did not consider that this was relevant to the appropriateness of including PPs for the protection of HLCP. It also pointed to the recent inclusion of PPs in the Keadby 3 Order 2022 which reflected the PPs requested by NGCL in this case. NGCL's final position on this matter can be found in 4.1.7 of the Statement of Common Ground (SoCG) [REP10-013].

7.3.20. Having considered the position of both parties, the ExA is persuaded by the Applicant that as NGCL has no statutory undertaking or apparatus in-situ and has formally announced its departure from the HLCP project, the pragmatic approach would be for the new promoter of the HLCP to negotiate a set of reciprocal PPs based on that promoter's requirements and plans for development, which may differ from those held by NGCL. Having regard to the precedents quoted by the Applicant, the ExA can see no reason why there would be any impediments to this being imposed on the Proposed Development within the future DCO for the HLCP project.

7.3.21. Nonetheless, should the Secretary of State (SoS) be minded to make the DCO and take a different view to the ExA on this matter, both parties have provided preferred wording for PPs in this regard. Whilst the Applicant continued to engage with NGCL on a without prejudice basis, agreement had not been reached on the wording by the close of the Examination. NGCL's preferred PPs can be found at [REP6-049]. On a without prejudice basis, the Applicant provided a set of PPs that it considers would be preferable to include which are not specific to NGCL but instead provide protection for the onshore carbon pipeline operator. These are included at Appendix A of the Applicant's Closing Position Statement [REP10-020].

ADDITIONAL REQUIREMENT AKIN TO R33 OF THE KEADBY 3 ORDER 2022

7.3.22. At Issue Specific Hearing (ISH) 1 the ExA asked the Applicant, whether a requirement similar to R33 of the Keadby 3 Order 2022, restricting commencement of the development until an Environmental Permit (EP) and consents for the transport and storage of carbon dioxide were in place, should be included in the dDCO.

7.3.23. At D2 [REP2-009] the Applicant stated that it did not consider such a requirement to be appropriate or necessary, given the urgent need to deliver Carbon Capture Storage (CCS) projects in order to de-carbonise the UK and meet Net Zero targets. The Applicant considered that such a requirement would prevent the Proposed Development from being carried out in a timely and efficient manner.

7.3.24. The Applicant also considered that the nature of the Proposed Development was different to the project that was the subject of the Keadby 3 Order. In that case, consent was granted for a new gas-fired generating station, from which carbon dioxide would be emitted if allowed to operate without the carbon dioxide transport and storage system in place. The Applicant stated that those circumstances were different from the Proposed Development as if it was constructed ahead of the transport and storage infrastructure, the effect would not be to increase the amount of carbon dioxide emitted, but the biomass plants would continue to operate as they do currently until it was in place.

7.3.25. Having considered the Applicant's stance on this matter, the ExA agrees that the two projects are distinguishable by virtue of the fact that the Proposed Development

does not seek consent to generate electricity in a way that also emits carbon as was the case in the Keady 3 Order. Consent is already in place for the biomass station. Furthermore, there is nothing before the ExA which indicates the variation to the EP would not be granted by the EA and Draft National Policy Statement (dNPS) EN-1 acknowledges that due to the approach of deploying CCS in clusters with shared transport and storage, it is likely that development consent applications may not include the full CCS chain (paragraph 4.8.20).

7.3.26. Therefore, the ExA does not consider that such a requirement is necessary for the Proposed Development. Should the SoS be minded to grant the DCO and take a different view, the Applicant provided suggested wording for such a requirement on a without prejudice basis in response to the Rule 17 request dated 6 June 2023 (R17QA) question R17QA.21 [REP8-029], which also includes justification for departing from the wording in R33 of the Keadby 3 Order.

7.4. PROTECTIVE PROVISIONS

7.4.1. Schedule 12 of the dDCO provides PPs for SUs and their apparatus. The status of any PPs with SUs can be found in Table 2-2 of the Schedule of Negotiations and Powers Sought [REP10-010] and the Applicant's final position on PPs can be found in Table 5-1 of the Applicant's Closing Position Statement [REP10-020]. PPs as set out below have been agreed for the most part:

- Part 1 (For the Protection of Electricity, Gas, Water and Sewerage Undertakers) as generic PPs to cover those undertakers for whom there are no tailored PPs. These PPs take the form which is consistent with that contained in other DCOs. Representations received from Yorkshire Water have been incorporated into the wording and the Schedule of Negotiations and Powers states that Yorkshire Water confirmed the PPs were now agreed. The Applicant is also negotiating an asset protection agreement with Northern Gas Networks.

- Part 2 (For the Protection of Operators of Electronic Communications Code Networks) as generic PPs to cover for electronic communications code network operators where there are no tailored PPs. These PPs take a form which is consistent with that contained in other DCOs and no representations on them have been received throughout the Examination process.

- Part 3 (For the Protection of National Grid Electricity Transmission PLC (NGET) as Electricity Undertaker, are bespoke PPs for the benefit of NGET. In the Schedule of Negotiations and Powers Sought, the Applicant states that the PPs are now in agreed form and the that the parties have also now largely agreed a confidential side agreement. This had not been completed at the end of the Examination and whilst all matters are shown as agreed in the final SoCG, it had not been signed by NGET. The Applicant has stated that it will update the SoS upon completion of this agreement at which point it anticipates that NGET would withdraw its objection.

- Part 4 (For the Protection of National Highways) are as finally agreed between the parties.

7.4.2. The application dDCO included PPs for Network Rail Infrastructure Limited. During the Examination the parties agreed that there was very limited chance of interaction between the Proposed Development and Network Rail Limited assets. The parties have entered into a Deed of Undertaking and as a result Network Rail Infrastructure

Limited withdrew its representation [REP8-031]. Therefore, this PP was removed from the dDCO at D4.

7.4.3. The ExA is satisfied with the wording of Schedule 12 and that adequate protection is provided to SUs such that there would be no serious detriment to the carrying out of their respective roles and functions and recommends no amendments in the rDCO.

7.5. EXAMINING AUTHORITY'S PROPOSED CHANGES

7.5.1. In light of the ExA's conclusions above, it does not consider any substantive changes are necessary to address issues that have come to light during the Examination. However, the ExA does recommend a small number of changes, primarily to achieve correctness and consistency with other DCOs. These can be found in Table 3 below.

Table 3: DCO Provisions Recommended to be Changed

Provision	Recommendation	ExA reasoning
Article 2 Interpretation	Remove of Electric Lighting Act 1909(a) and the electricity (Supply) Act 1919(b) and associated footnotes from definition of Electricity Acts.	Both Acts have been repealed.
Article 17 Removal of human remains	Remove from Order.	There are no known burial grounds within the Order Limits and the ExA considers this article unnecessary. Provision for human remains should be included in the written scheme of investigation, as required by Schedule 2, R13.
Article 21(2)(c) Private rights	Remove from Order.	The ExA considers this provision to be uncertain and does not consider that rights should be affected before the triggering of one of the formal processes set out in (a) or (b).
Schedule 11(2)(3)	Amend to allow the relevant planning authority ten, rather than five days to issue a consultation to the required consultee after receipt of application.	To ensure a reasonable time for action.

7.6. CONCLUSIONS

7.6.1. The ExA has considered all iterations of the dDCO as set out in Table 1 above and the degree to which the Applicant's final version has addressed matters arising during the Examination.

7.6.2. The ExA is satisfied that the requirements set out in Version 12 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. No substantive amendments to the DCO are recommended and only a small number of changes as shown in Table 3 above are included in the rDCO in Appendix D of this report.

7.6.3. Taking all matters raised in this chapter and all matters relevant to the DCO raised in the remainder of this report fully into account, if the SoS for Energy Security and Net Zero is minded to make the DCO, it is recommended that the DCO should be made in the form set out in the rDCO, which can be located at Appendix D of this report.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.1.1. As the Examining Authority (ExA) has noted in Chapter 5 above, the urgent need for low carbon energy is established through the National Policy Statements (NPS) and is carried forward into the draft NPSs (dNPS). In relation to section (s) 104 of the Planning Act 2008 (PA2008), the ExA concludes that making the recommended Development Consent Order (rDCO) would be in accordance with NPS EN-1 and NPS EN-3.

8.1.2. In reaching the above conclusions, the ExA has also had regard to the Local Impact Report produced by North Yorkshire Council (NYC) and notes that on balance, the Proposed Development would be acceptable subject to the mitigation measures secured in the rDCO.

8.1.3. Whilst the Secretary of State (SoS) for Energy Security and Net Zero (ESNZ) is the competent authority under the Conservation of Habitats and Species Regulations 2017, and will make the definitive assessment, the ExA concludes that subject to mitigation secured in the rDCO, adverse effects on the integrity of the European sites and their features from the Proposed Development when considered alone or in combination with other plans or projects can be excluded from the impact-effect pathways assessed. The ExA has taken this finding into account in reaching its conclusion.

8.1.4. With regard to designated heritage assets and in consideration of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations), the ExA has found the Proposed Development would result in less than substantial harm to designated heritage assets. However, those harms are outweighed by the substantial benefit from the provision of low carbon energy to meet the need identified in NPS EN-1, dNPS EN-1 and by the other benefits of the Application as summarised in Chapter 5.

8.1.5. In terms of biodiversity and bearing in mind Regulation 7 of the Decisions Regulations, the ExA is satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and that the requirements of both NPS EN-1 and dNPS EN-1 are met. Furthermore, the ExA considers Biodiversity Net Gain arising from the Proposed Development would enhance biodiversity, as well as assist in enhancing ecological and nature conservation effects.

8.1.6. In relation to the application for Compulsory Acquisition (CA) and Temporary Possession (TP) powers, the ExA concludes as follows:

- The Application site has been appropriately selected.
- All reasonable alternatives to CA have been explored.
- The Applicant would have access to the necessary funds and the rDCO provides a clear mechanism whereby the necessary funding can be guaranteed.
- There is a clear need for all the land included in the Book of Reference to be subject to CA or TP.
- There is a need to secure the land and rights required to construct, operate and maintain the Proposed Development within a reasonable timeframe, and the

Proposed Development represents a significant public benefit to weigh in the balance.

- That in all cases relating to individual objections and issues that CA and TP is justified to enable implementation of the Proposed Development.
- 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 Statutory Undertakers meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.
- The Applicant has obtained consent from the relevant Crown authorities and therefore the powers sought meet the conditions in s135 of the PA2008.

8.1.7. With regard to all other matters and representations received, the ExA has found no important and relevant matters that would individually or collectively lead to a different recommendation to that below.

8.1.8. The ExA has had regard to the Public Sector Equality Duty (PSED) throughout the Examination and in producing this report. The Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the PSED.

8.1.9. In relation to s104(7) of the PA2008, and with the mitigation proposed through the rDCO in Appendix D to this report, the ExA considers that there are no adverse impacts arising from the Proposed Development that would outweigh its benefits. Furthermore, there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSs.

MATTERS WHICH THE SOS MAY WISH TO CONSIDER FURTHER

8.1.10. As will be evident, in examining this application, consideration was given to both the designated and the draft NPSs published in March 2023. Interested Parties were given an opportunity to comment on the dNPSs during the Examination. The Biomass Strategy (TBS) was published on 10 August 2023, following the close of the Examination. IPs have not been given an opportunity to comment on TBS despite their requests to do so.

8.1.11. On this basis, the ExA recommends that the SoS may wish to consider if the publication of TBS would have any implications on the findings and conclusions in this report and whether parties should be consulted on this matter. Similarly, in the event the new suite of Energy NPSs are designated before a decision is made, the SoS may wish to consider any alterations made to the dNPSs prior to designation and may wish to seek the views of IPs on this matter.

8.1.12. In addition, the ExA recommends that the SoS may wish to seek a response from the EA to questions asked by the ExA in relation to the regulation of potential pollutant releases but to which the EA could not respond within the timescales of the Application due to the timing of the Environmental Permit application (see paragraphs 3.3.45 to 3.3.49 under Environmental Permit).

8.1.13. As detailed in section 6.7 of this report, there were outstanding objections from National Grid Electricity Transmission (NGET) and Northern Gas Networks (NGN). The ExA recommends that the SoS may wish to seek an update as to whether a side agreement (NGET) or Asset Protection Deed (NGN) have been agreed and signed and whether NGET or NGN would now withdraw its objection as a result.

8.2. RECOMMENDATION

8.2.1. For all of the above reasons, the ExA considers that the Proposed Development meets the tests in s104 of the PA2008. On that basis, the ExA concludes that the case for the development has been made and that the SoS for ESNZ makes the Drax Bioenergy with Carbon Capture and Storage Project Order in the form attached at Appendix D to this report.

APPENDICES

APPENDIX A: REFERENCE TABLES A:1
APPENDIX B: LIST OF ABBREVIATIONS B:1
APPENDIX C: HABITATS REGULATIONS ASSESSMENT C:1
APPENDIX D: THE RECOMMENDED DCO D:1

APPENDIX A: REFERENCE TABLES

Table A1 – The Environmental Statement (ES)

ES Chapter/Figures/Appendix	Examination Library (EL) reference
ES Non-Technical Summary	APP-178
Chapter 1 Introduction	APP-037
Figures	APP-056, APP-057, APP-058
Appendices	APP-115, APP-116
Chapter 2 Site and Project Description	APP-038
Figures	APP-059, APP-060, APP-061
Chapter 3 Considerations of Alternatives	APP-039
Chapter 4 EIA Methodology	APP-040
Appendices	APP-117, APP-118
Chapter 5 Traffic and Transport	APP-041
Figures	APP-062, APP-063, APP-064, APP-065, APP-066, APP-067
Appendices	REP2-028, APP-120, APP-121, APP-122, APP-123, APP-124
Chapter 6 Air Quality	APP-042
Figures	APP-068, APP-069, APP-070, APP-071, APP-072, APP-073, APP-074, APP-075, APP-076, APP-077, APP-078, APP-079, APP-080, APP-081, APP-082, APP-083, APP-084, APP-085, APP-086, APP-087, APP-088
Appendices	APP-125, APP-126, APP-127, REP2-032, REP9-017
Chapter 7 Noise and Vibration	APP-043
Figures	APP-089, APP-090, APP-091
Appendices	APP-130, APP-131, APP-132, APP-133, APP-134, APP-135
Chapter 8 Ecology	APP-044
Figures	APP-092, APP-093, APP-094, APP-095, APP-096, APP-097

ES Chapter/Figures/Appendix	Examination Library (EL) reference
Appendices	APP-136, APP-137, APP-138, APP-139, APP-140, APP-141, APP-142, APP-143, APP-144, APP-145, APP-146, APP-147, APP-148
Chapter 9 Landscape and Visual Amenity	APP-045
Figures	APP-098, APP-099, APP-100, APP-101, APP-102, APP-103, APP-104,
Appendices	APP-149, APP-150, APP-151, APP-152, APP-153
Chapter 10 Heritage	APP-046
Figures	APP-105, APP-106, APP-107
Appendices	APP-154, APP-155
Chapter 11 Ground Conditions	APP-047
Figures	APP-108, APP-109
Appendices	APP-156, APP-157, APP-158, APP-159
Chapter 12 Water Environment	APP-048
Figures	APP-110, APP-111, APP-112, APP-113
Appendices	REP2-039, REP2-041, APP-161, APP-162, APP-163, APP-164
Chapter 13 Materials and Waste	APP-049
Appendix	APP-165
Chapter 14 Climate Change Resilience	APP-050
Appendices	APP-166, APP-167
Chapter 15 Greenhouse Gasses	APP-051
Appendices	APP-168, APP-169
Chapter 16 Population, Health and Socio-Economics	APP-052
Appendix	APP-170

ES Chapter/Figures/Appendix	Examination Library (EL) reference
Chapter 17 Major Accidents and Disasters	APP-053
Appendices	APP-171, APP-172
Chapter 18 Cumulative Effects	APP-054
Figure	APP-114
Appendices	APP-173, REP4-004, APP-175, APP-176, APP-177
Chapter 19 Summary of Significant Effects	APP-055

Table A2 – Change Request Documents

Document	EL reference
Applicant's change request dated 5 December 2022	
Change Request Cover Letters	AS-044, AS-067
Proposed Changes Application Report	AS-045
Change Request Figures	AS-046, AS-047, AS-048, AS-049
Change Request Appendices	AS-050, AS-051, AS-052, AS-053, AS-054, AS-055, AS-056, AS-057, AS-058, AS-059, AS-060, AS-061, AS-062, AS-063, AS-064, AS-065, AS-066
Updated Application Documents Following Acceptance of Change Request	AS-068, AS-069, AS-070, AS-071, AS-072, AS-073, AS-074, AS-075, AS-076, AS-077, AS-078, AS-079, AS-080, AS-081, AS-082, AS-083, AS-084, AS-085, AS-086, AS-087, AS-088, AS-089, AS-090, AS-091, AS-092, AS-093, AS-094, AS-095
Applicant's change request dated 21 April 2023	
Change Request Cover Letter	AS-123
Second Change Application Report	AS-126

Document	EL reference
Change Request Figures	AS-124, AS-125
Updated Application Documents	AS-100, AS-101, AS-102, AS-103, AS-104, AS-105, AS-106, AS-107, AS-108, AS-109, AS-110, AS-111, AS-112, AS-113, AS-114, AS-115, AS-116, AS-117, AS-118, AS-119, AS-120, AS-121, AS-122

Table A3 – Summary of National Policy Statements (NPS)

NPSs
Overarching National Policy Statement for Energy (NPS EN-1) ▪ NPS EN-1 (July 2011) sets out general principles and generic impacts to be taken into account in considering applications for energy Nationally Significant Infrastructure Projects (NSIP). All other energy NPSs sit under the policy framework provided by this NPS. It provides the primary basis for determining if development consent should be granted. All other energy NPSs are used together with this NPS. ▪ Part 2 of NPS EN-1 sets out *"Government policy on energy and energy infrastructure development"*. The paragraphs of note are as follows: o Paragraph 2.2.1 sets out the Government's commitment to meeting the UK's legally binding target to cut greenhouse gas (GHG) emissions by at least 80% by 2050, compared to 1990 levels. o Paragraph 2.2.8 confirms that to avoid the most dangerous impacts of climate change, global emissions must start falling as a matter of urgency. o Paragraph 2.2.23 states that Carbon Capture and Storage (CCS) is part of the UK's plans to reduce its dependence on fossil fuels, particularly unabated combustion. ▪ Part 3 of NPS EN-1 sets out the need for new nationally significant energy infrastructure projects. The paragraphs of note are as follows: o paragraph 3.1.1 sets out the need for the types of energy infrastructure covered by the NPS in order to achieve energy security at the same time as dramatically reducing GHG emissions. o paragraph 3.1.4 states that the Secretary of State (SoS) should give substantial weight to the contribution which projects would make towards satisfying this need. o paragraph 3.4.3 states that the use of biomass is a significant source of renewable and low carbon energy which can support the decarbonising the UK's power sector. ▪ Part 4 of NPS EN-1 sets out assessment principles and general policies against which applications relating to energy infrastructure are to be decided. The paragraphs of note are as follows: o paragraph 4.1.2 sets out a presumption in favour of granting consent to applications for energy NSIPs, unless any more specific and relevant

NPSs
policies set out in the relevant NPSs clearly indicate that consent should be refused. ○ paragraph 4.1.3 states that the SoS should consider potential benefits in meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and any potential adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts. ○ paragraphs 4.5.1 to 4.5.6 set out the criteria for good design for energy infrastructure projects. ▪ Part 5 of NPS EN-1 lists a number of generic impacts that relate to most types of energy infrastructure, which the SoS should take into account when considering applications. ▪ A summary of the topics and policy tests in NPS EN-1 relevant to the Examination is set out below and topic specific policy is considered where necessary in the remainder of this report, particularly within Chapter 3: ○ Air Quality – section 5.2. ○ Biodiversity – section 5.3. ○ Greenhouse Gas Emissions – section 5.2. ○ Historic Environment – section 5.8. ○ Landscape and Design – section 5.9. ○ Noise and Vibration – section 5.11. ○ Water Environment and Flood Risk – paragraphs 5.7.1 to 5.7.25 and 5.15.1 to 5.15.10. ○ Socio-Economic Effects – section 5.12. ○ Traffic and Transport – section 5.13. ○ Waste Management – section 5.14. ○ Land Use, Ground Conditions and Contamination – section 5.10. ○ Resilience to Climate Change – section 4.8.
National Policy Statement for Renewable Energy (NPS EN-3) ▪ NPS EN-3 (July 2011) details assessment criteria specific to different types of renewable energy infrastructure including energy from biomass proposals. The assessment criteria for energy from biomass proposals include impacts relating to air quality and emissions; landscape and visual; noise and vibration; waste management; and water quality and resources amongst others. ▪ Whilst the Proposed Development is not for a biomass generating station, it constitutes an extension to an existing generating station and is referred to as post-combustion carbon capture as the carbon dioxide is captured from the flue gas produced during the combustion of biomass in Units 1 and 2. For that reason the Examining Authority (ExA) considers NPS EN-3 to be applicable to the Proposed Development.
Draft National Policy Statements ▪ In March 2023 the Department for Energy Security and Net Zero (DESNZ) published revised draft NPSs in relation to energy (draft NPS EN-1 to NPS EN-5 (inclusive)) for consultation. These draft NPSs reiterate the urgent need for low carbon energy development and carbon capture, as well as confirming the role of the combustion of biomass for electricity generation. ▪ The draft NPSs, are clear that *"…for any application accepted for examination before designation of the 2021 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS"* (paragraph 1.6.2 of draft NPS EN-1). However, it is also clear in paragraph 1.6.3 that any

NPSs
emerging draft NPSs may potentially be important or relevant matters for consideration, pursuant to section (s) 104(2)(d) of the Planning Act 2008 (PA2008). **Draft NPS EN-1 (Overarching NPS for Energy)** ▪ The draft NPS EN-1 (Overarching NPS for Energy) recognises the need for new nationally significant infrastructure. It acknowledges that Bioenergy *"… could provide either baseload or dispatchable low carbon generation. The need for negative emissions to offset residual emissions through BECCS, might provide a case for baseload deployment"* (paragraph 3.3.43 of draft NPS EN-1). **Draft NPS EN-3 (NPS for Renewable Energy)** ▪ The draft NPS EN-3 (NPS for Renewable Energy) states in paragraph 3.7.1 that *"… combustion of biomass for electricity generation plays an important role in meeting the UK's energy needs and supports the decarbonisation of the sector. It also has a potentially significant role in supporting delivery towards the UK's net zero target when combined with carbon capture and storage."*

Table A4 – Summary of other Relevant National Policies for the Proposed Development

Relevant Policies
The National Planning Policy Framework ▪ The National Planning Policy Framework (NPPF) was adopted in July 2021. The NPPF, and the accompanying Planning Practice Guidance (PPG), set out the Government's planning policies for England and how these are expected to be applied. A consultation draft NPPF on proposed changes was issued in December 2022, which closed in March 2023. The NPPF was updated following the close of examination on the 5 September 2023. ▪ Paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework set out in the PA2008 and the relevant NPSs, but the NPPF is a relevant consideration on decision-making for the Application. Paragraphs 7 and 8 state 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. ▪ Both the NPPF and the PPG are capable of being important and relevant considerations in decisions on NSIPs, but only to the extent where it is relevant to that project.
Net Zero: The UK's Contribution to Stopping Global Warming Emissions ▪ In May 2019, the Committee on Climate Change (CCC) published a report 'Net Zero: The UK's contribution to stopping global warming' (CCC, 2019). ▪ The executive summary states that industry must be largely decarbonised and where there are remaining emissions *"…these must be fully offset by removing CO_2 from the atmosphere and permanently sequestering it, for example by using sustainable bioenergy in combination with CCS."* It also states that in order to achieve UK Net Zero by 2050, CCS is a necessity not an option.

Relevant Policies
▪ The report identifies that progress regarding CCS has been slow and while there are 43 large-scale Carbon Capture, Usage and Storage (CCUS) projects operating or under development around the world, none are in the UK.
Ten Point Plan for a Green Industrial Revolution ▪ In November 2020, the Government published 'The Ten Point Plan for a Green Industrial Revolution' (HM Government, 2020). The plan seeks to ensure that the UK's recovery from the coronavirus pandemic *"will be green, generate jobs and bolster the economy, whilst continuing to drive down emissions both now and in the future."* (p.30) ▪ The plan highlights the need for CCUS in delivering a green economy, stating the Government's commitment to establishing CCUS at two industrial clusters by the mid-2020s and aim to establish CCUS at four industrial clusters by 2030. ▪ Point 8 of the plan is 'Investing in Carbon Capture, Usage and Storage', stating: *"Our ambition is to capture 10Mt of carbon dioxide a year by 2030, the equivalent of four million cars' worth of annual emissions. We will invest up to £1 billion to support the establishment of CCUS in four industrial clusters, creating 'Super Places' in areas such as the North East, the Humber, North West, Scotland and Wales."*
Energy White Paper: Powering our Net Zero Future ▪ In December 2020, the Government published its 'Energy White Paper: Powering our Net Zero Future' (HM Government, 2020), which builds on the Ten Point Plan and sets out the Government's policies and commitments which seek to achieve Net Zero and tackle climate change. ▪ The White Paper states (p.43) *"A low-cost, net zero consistent system is likely to be composed predominantly of wind and solar. But ensuring the system is also reliable, means intermittent renewables need to be complemented by technologies which provide power, or reduce demand, when the wind is not blowing, or the sun does not shine."* ▪ The White Paper confirms the Government's support for CCUS and, like the Ten Point Plan, outlines the Government's ambition to capture 10 megatonnes (Mt) of carbon dioxide a year by 2030 and invest up to £1 billion to support the establishment of CCUS in four industrial clusters in the UK. In relation to Bioenergy with Carbon Capture and Storage (BECCS) specifically, it states (p.53) *"BECCS plants could deliver negative emissions, by capturing the carbon released during biomass combustion, gasification and other processes, provided supply chain emissions are sufficiently low."*
Industrial Decarbonisation Strategy (HM Government, 2021) ▪ In March 2021, the Government published the Industrial Decarbonisation Strategy which considers how the full range of the UK's industrial sectors can reflect the Net Zero target. The indicative roadmap to Net Zero UK industry includes carbon capture clusters in the next decade.
Net Zero Strategy: Build Back Greener ▪ The Net Zero Strategy expands on key commitments in the Energy White Paper. The executive summary states the proposals to *"fully decarbonise our power system by 2035"* and deliver *"four carbon capture, usage and storage (CCUS) clusters, capturing 20-30 MtCO2 across the economy, including 6 MtCO2 of industrial emissions, per year by 2030."*

Relevant Policies
▪ The strategy states (p.184) that greenhouse gas removals (GGR) (of which BECCS is identified as an engineering-based approach) are essential to compensate for the residual emissions arising from the most difficult activities to reduce or eliminate from within polluting sectors. ▪ Furthermore, in relation to BECCS, the strategy states (p. 189) *"By 2030 we envisage significant deployment of mature BECCS technologies and commercial scale deployment of DACCS. BECCS technologies will include retrofit applications in the power and industry sectors. BECCS applications in the power sector could be deployed by the late 2020s".* ▪ The Net Zero Strategy was found to be unlawful by the High Court in its judgement on the case of case of R. (on the application of Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 1841 (Admin). Whilst the Net Zero Strategy was not quashed, a report that addresses the concerns identified within the strategy was required to be prepared and submitted, with compliance required by 31 March 2023 (refer to Powering up Britain (2023) below).
British Energy Security Strategy (2022) ▪ In April 2022, the Government published the British Energy Security Strategy (BESS) in response to the rising global energy costs, which has ultimately resulted in an increase in the cost of living in the UK. The policy paper sets out how the UK Government is *"going to bring clean, affordable, secure power to the people for generations to come" and "build a British energy system that is much more self-sufficient."*
Powering up Britain (DESNZ, 2023) ▪ In March 2023, the Government published the Powering Up Britain policy paper. It sets out the Government's plans to enhance energy security, seize the economic opportunities of the energy transition, and deliver on the Government's Net Zero commitments. ▪ The 'Powering Up Britain – Energy Security Plan' sets out the steps by which the Government will enhance the country's energy security following the publication of the BESS in April 2022. ▪ The 'Powering Up Britain – Net Zero Growth Plan' sets out how the UK will achieve its climate targets following the High Court's conclusion that the Government's Net Zero Strategy lacked the sufficient level of detail on how the UK would reduce its emissions (refer to Net Zero Strategy above).
Carbon capture, usage and storage net zero investment roadmap, 2023 ▪ In April 2023, the Government published the 'Carbon capture, usage and storage net zero investment roadmap', which outlines Government and industry commitments to the deployment of CCUS in the UK and sets out the approach to delivering four CCUS low carbon industrial clusters, capturing 20-30 $MtCO_2$ per year across the economy by 2030 to help meet the UK's 2050 Net Zero target.

Table A5 – Summary of Relevant Legislation for the Proposed Development

Relevant Legislation
▪ **Equality Act 2010:** Section 149 of the Equality Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of

Relevant Legislation
opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making. The ExA had particular regard to the PSED in terms of holding blended in-person/ virtual meetings, producing guidance on holding those meetings, ensuring participants were provided with hard copy correspondence, where requested, and in our conduct of site inspections to ensure full appreciation of the potential impacts of the Proposed Development on persons with protected characteristics. ▪ **Human Rights Act 1998** The Compulsory Acquisition of land can engage various relevant articles under the Human Rights Act 1998. The implications of this are considered in Chapter 6 of this report. ▪ **Climate Change Act 2008 (as amended)** The Climate Change Act 2008 (as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019) (CCA2008) established the world's first long-term, legally binding framework to tackle the dangers of climate change. It sets statutory climate change projections and carbon budgets. A key provision is the setting of legally binding targets GHG emission reductions in the UK of at least 100% by 2050 ("Net Zero", increased from 80% by the June 2019 amendment order). ▪ Water Resources Act 1991 ▪ The Environment Act 1995 ▪ The Water Resources (Abstraction and Impounding) Regulations 2006 ▪ Environmental Permitting (England and Wales) Regulations 2016 ▪ Pollution Prevention and Control Act 1999 ▪ Land Drainage Act 1991 ▪ Water Industry Act 1991 ▪ Environmental Protection Act 1990 s79(1)(d) ▪ Part IV of the Environment Act 1995 ▪ Air Quality (England) Regulations 2000 ▪ Air Quality Standards Regulations 2010 (as amended) ▪ Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019 ▪ Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020 ▪ The Conservation of Habitats and Species Regulations 2017 (as amended) ▪ Wildlife and Countryside Act (WCA) 1981 (as amended) ▪ Natural Environment and Rural Communities (NERC) Act 2006 ▪ Environment Act 2021 ▪ Hedgerow Regulations 1997 ▪ Protection of Badgers Act 1992 (as amended) ▪ Salmon and Freshwater Fisheries Act 1975 (as amended) ▪ Water Framework Directive (2000/60/EC) (as amended) ▪ Eels (England and Wales) Regulations 2009 ▪ The Kyoto Protocol ▪ The Paris Agreement ▪ Climate Change Act 2008 ▪ Climate Change Act 2008 (2050 Target Amendment) Order ▪ Carbon Budget Order 2009 ▪ Carbon Budget Order 2011 ▪ Carbon Budget Order 2016 ▪ Carbon Budget Order 2021 ▪ Climate Change Act 2008 (Credit Limit) Order 2021 ▪ Ancient Monuments and Archaeological Areas Act 1979

Relevant Legislation

- Planning (Listed Buildings and Conservation Areas) Act 1990
- Wildlife and Countryside Act 1981 (as amended)
- National Parks and Access to the Countryside Act 1949 (as amended)
- Contaminated Land (England) (Amendment) Regulations 2012 ('Contaminated Land Regulations')
- Environmental Protection Act 1990 (as amended by the Environmental Act 1995 Part 2A)
- Water Resources Act 1991 (WRA 1991) (as amended)
- Town and Country Planning Act 1990 (as amended)
- Building Act 1984 and the Building Regulations 2010 (as amended)
- Water Act 2003 (as amended) Environmental Permitting (England and Wales) (Amendment) Regulations 2016/1154
- Highways Act 1980 Section 105A
- Water Framework Directive (2000/60/EC) (as amended)
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- European Landscape Convention (ELC) (Council of Europe, 2016)
- Waste Framework Directive (2000/60/EC (as amended)
- European Commission Circular Economy Package Environmental Protection Act 1990
- Hazardous Waste (England and Wales) Regulations 2005 (as amended)
- Waste (England and Wales) Regulations 2011 (as amended)
- Waste Electrical and Electronic Equipment ('WEEE') Regulations 2013
- Environmental Permitting Regulations 2016
- Environmental Noise (England) Regulations 2006 (as amended)
- Control of Pollution Act 1974 (as amended)
- Noise Insulation Regulations 1975
- Environmental Protection Act 1990 (as amended)
- Localism Act 2011
- The Commons Registration Act 1965
- The Countryside and Rights of Way Act 2000
- The National Parks and Access to the Countryside Act 2000
- The Health and Social Care Act 2012
- Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
- Environment Act 2021
- Environment (Amendment etc.) (EU Exit) Regulations 2019
- Environmental Protection Act 1990
- Environment Act 1995
- Environmental Permitting (England and Wales) Regulations 2016
- Water Resources Act 1991
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFD)
- Land Drainage Act 1991
- Water Act 2014
- Water Resources (Abstraction and Impounding) Regulations 2006
- Water Abstraction and Impounding (Exemptions) Regulations 2017
- Flood Risk Regulations 2009
- Water Supply (Water Quality) Regulations 2018
- Flood and Water Management Act 2010 Environmental Damage (Prevention and Remediation) (England) Regulations 2015
- Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015

Relevant Legislation
▪ Groundwater (Water Framework Directive) (England) Direction 2016

Table A6 – Relevant Local Policies

Plan	Identified documents and/or relevant policies
Selby District Core Strategy Local Plan	▪ Policy SP1: Presumption in Favour of Sustainable Development. ▪ Policy SP2: Spatial Development Strategy. ▪ Policy SP12: Access to Services, Community Facilities and Infrastructure. ▪ Policy SP13: Scale and Distribution of Economic Growth. ▪ Policy SP15: Sustainable Development and Climate Change. ▪ Policy SP16: Improving Resource Efficiency. ▪ Policy SP17: Low-Carbon and Renewable Energy. ▪ Policy SP18: Protecting and Enhancing the Environment. ▪ Policy SP19: Design Quality.
Selby District Local Plan	▪ Policy ENV1: Control of Development. ▪ Policy ENV2: Environmental Pollution and Contaminated Land. ▪ Policy ENV3: Light Pollution. ▪ Policy ENV4: Hazardous Substances. ▪ Policy ENV9: Sites of Importance for Nature Conservation. ▪ Policy ENV12: River and Stream Corridors. ▪ Policy ENV13: Development Affecting Ponds. ▪ Policy ENV27: Scheduled Monuments and Important Archaeological Sites. ▪ Policy ENV28: Other Archaeological Remains. ▪ Policy EMP10: Additional Industrial Development at Drax and Eggborough Power Stations. ▪ Policy T1: Development in Relation to the Highway Network. ▪ Policy T2: Access to Roads. ▪ Policy T7: Provision for Cyclists. ▪ Policy T8: Public Rights of Way. ▪ Policy CS6: Development Contributions to Infrastructure and Community Facilities.
Minerals and Waste Joint Plan	▪ Policy S01: Safeguarding minerals resources. ▪ Policy S02: Developments proposed within Minerals Safeguarding Areas. ▪ Policy S06: Consideration of applications in Consultation Areas. ▪ Policy M11: Supply of alternatives to land-won primary aggregates. ▪ Policy W01: Moving waste up the waste hierarchy. ▪ Policy W05: Meeting waste management capacity requirements – Construction, Demolition and Excavation waste (including hazardous CD&E waste).

Table A7 – Made Development Consent Orders (DCO)

Other made DCOs identified by the Applicant
▪ Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022. ▪ Great Yarmouth Third River Crossing Development Consent Order 2020. ▪ The Immingham Open Cycle Gas Turbine Order 2020. ▪ Lake Lothing (Lowestoft) Third Crossing Order 2020. ▪ Cleve Hill Solar Park Order 2020. ▪ Riverside Energy Park Order 2020. ▪ The Drax Power (Generating Stations) Order 2019. ▪ Millbrook Gas Fired Generating Station Order 2019. ▪ Eggborough Gas Fired Generating Station Order 2018. ▪ Silvertown Tunnel Order 2018. ▪ Wrexham Gas Fired Generating Station Order 2017. ▪ East Anglia Three Offshore Wind Farm Order 2017. ▪ Meaford Gas Fired Generating Station Order 2016. ▪ North Wales Wind Farm Connection Order 2016. ▪ Hirwaun Generating Station Order 2015. ▪ Knottingley Power Plant Order 2015. ▪ Progress Power (Gas Fired Power Station) Order 2015. ▪ Hinkley Point C (Nuclear Generating Station) Order 2013. ▪ National Grid (King's Lynn B Power Station Connection) Order 2013. In addition to the above, the Applicant has made reference to the following draft Order to support its position: ▪ The draft Net Zero Teesside Order.

APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation	Term
AA	Appropriate assessment
AADT	Annual Average Daily Traffic
ACoW	Archaeological Clerk of Works
ADMLC	Atmospheric Dispersion Modelling Liaison Committee
ADMS	Air Dispersion Modelling System
AEoI	Adverse effect on integrity
AIL	Abnormal Indivisible Loads
ALARP	As low as reasonably practicable
ALC	Agricultural Land Classification
ANCB	Appropriate Nature Conservation Body
AOD	Above Ordnance Datum
AP	Affected Person
APIS	Air Pollution Information System
Applicant	Drax Power Limited
AQ TN2	The Applicant's Air Quality Technical Note 2
AQ TN3	The Applicant's Air Quality Technical Note 3
AQTAG	Air Quality Technical Advisory Group
AS	Additional Submission
ASI	Accompanied Site Inspection
BAT	Best Available Techniques
BECCS	Bioenergy with carbon capture and storage
BEIS	(Former) Department for Business, Energy and Industrial Strategy
BESS	British Energy Security Strategy
BMV	Best and most versatile
BNG	Biodiversity Net Gain
BNGA	Biodiversity Net Gain Assessment
BoR	Book of Reference
BS	British Standard
CA	Compulsory Acquisition
CA Guidance	(Former) Department for Communities and Local Government's 'Guidance related to procedures for the compulsory acquisition of land'
CA Regulations	The Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CAH	Compulsory Acquisition Hearing
CCA2008	Climate Change Act 2008
CCC	Committee on Climate Change
CCR	Carbon Capture Ready
CCRA	Climate Change Risk Assessment
CCS	Carbon Capture and Storage
CCUS	Carbon Capture, Usage and Storage

Abbreviation	Term
CEMP	Construction Environmental Management Plan
CEPP	Climate Emergency Planning and Policy
CH_4	Methane
CLe	Critical level
CLo	Critical load
CO_2	Carbon dioxide
CO_2e	Carbon dioxide equivalent
COMAH	Control of Major Accident Hazards
CPS	Carbon Price Support
CTMP	Construction Traffic Management Plan
CWTP	Construction Worker Travel Plan
D	Deadline
DACCS	Direct air carbon capture and storage
dB	Decibel
DCO	Development Consent Order
dDCO	Draft Development Consent Order
Decisions Regulations	Infrastructure Planning (Decisions) Regulations 2010
DEFRA	Department for Environment, Food and Rural Affairs
DEMP	Decommissioning Environmental Management Plan
DESNZ	Department for Energy Security and Net Zero
DLUHC	Department for Levelling Up, Housing and Communities
DMBC	Doncaster Metropolitan Borough Council
dNPS	Draft National Policy Statement
dSoCG	Draft Statement of Common Ground
DTMP	Decommissioning Traffic Management Plan
EA	Environment Agency
EAL	Environmental Assessment Level
ECC	East Coast Cluster
ECHR	European Convention on Human Rights
ECLA	East Construction Laydown Area
EEA	European Economic Area
EIA	Environmental Impact Assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EL	Examination Library
ELV	Emission Limit Value
EM	Explanatory Memorandum
EP	Environmental Permit
EPS	Emissions Performance Standard
ERoY	East Riding of Yorkshire Council
ES	Environmental Statement

Abbreviation	Term
ESNZ	Energy Security and Net Zero
ESP	Energy Security Plan
ETS	Emissions Trading System
EU	European Union
EWHC	England and Wales High Court
ExA	Examining Authority
ExQ1	Examining Authority's First Written Questions
ExQ2	Examining Authority's Second Written Questions
FCA	Flood compensation area
FGD	Flue gas desulphurisation
FLL	Functionally linked land
FRA	Flood Risk Assessment
GCN	Great Crested Newt
GGR	Greenhouse gas removal
GHG	Greenhouse gas
GT	Gas turbine
GVA	Gross Value Added
ha	Hectare
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017 (as amended)
HCl	Hydrogen chloride
HDV	Heavy Duty Vehicle
HE	Historic England
HEDBA	Historic Environment Desk-Based Assessment
HLCP	Humber Low Carbon Pipeline
HM	His Majesty
HoTs	Heads of Terms
HRA	Habitats Regulations Assessment
HRAR	Habitats Regulations Assessment Report
HSC	Hazardous Substances Consent
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
ICE	In-combination effect
IDB	Internal Drainage Board
IEMA	Institute of Environmental Management and Assessment
ILA	Important Landscape Area
Inspectorate	Planning Inspectorate
IP	Interested Party
IPCC	Intergovernmental Panel on Climate Change
IPCC guidelines	2019 Refinement to the 2006 IPCC Guidelines for National Greenhouse Gas Inventories, section 2.3.3.4

Abbreviation	Term
ISH	Issue Specific Hearing
ISO	International Organization for Standardization
kgN/ha/year	Kilograms of nitrogen per hectare per year
km	Kilometre
$ktCO_2e$	Kilotonnes of carbon dioxide equivalent
LCA	Landscape character area
LEP	Local Employment Plan
LGR	Local Government Reorganisation
LIR	Local Impact Report
LOAEL	Lowest Observed Adverse Effect Level
LSE	Likely significant effect
LULUCF	Land Use, Land-Use Change, and Forestry
LVIA	Landscape and Visual Impact Assessment
m	Meter
MA&D	Major accidents and disasters
MEA	Monoethanolamine
MMP	Materials Management Plan
Mt	Megatonne
MW	Megawatt
N_2O	Nitrous oxide
NCA	National Character Area
NDMA	Nitrosodimethylamine
NE	Natural England
NEP	Northern Endurance Partnership
NGCL	National Grid Carbon Limited
NGET	National Grid Electricity Transmission plc
NGN	Northern Gas Networks Limited
NH	National Highways
NH_3	Ammonia
NO_x	Nitrogen oxides
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-1	National Policy Statement for Energy
NPS EN-3	National Policy Statement for Renewable Energy
NR	Network Rail
NSIP	Nationally Significant Infrastructure Project
NSN	National Site Network
NYC	North Yorkshire Council
NYCC	North Yorkshire County Council
NZGP	Net Zero Growth Plan
NZT	Net Zero Teesside

Abbreviation	Term
OFH	Open Floor Hearing
OHL	Overhead line
OLBS	Outline Landscape and Biodiversity Strategy
OLEP	Outline Local Employment Plan
OLs	Order Limits
OSHPA	Off-Site Habitat Provision Area
PA2008	Planning Act 2008
PC	Proposed Change
PC-01	Proposed Change 01
PC-02	Proposed Change 02
PCAR	Proposed Changes Application Report
PCU	Passenger Car Unit
PD	Procedural Decision
PDA	Procedural Deadline A
PEA	Preliminary Ecological Appraisal
PEIR	Preliminary Environmental Information Report
PM	Preliminary Meeting
PM_{10}	Particulate matter of 10 micrometers or less in diameter
$PM_{2.5}$	Particulate matter of 2.5 micrometers or less in diameter
PP	Protective Provision
PPG	Planning Practice Guidance
Proposed Development	Drax Bioenergy with Carbon Capture and Storage Project
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
R	Requirement
R17QA	Rule 17 request dated 6 June 2023
R17QB	Rule 17 request dated 22 June 2023
rDCO	Recommended Development Consent Order
REAC	Register of Environmental Actions and Commitments
RIES	Report on the Implications for European Sites
RR	Relevant Representation
s	Section
SAC	Special Area of Conservation
SCAR	Second Change Application Report
SDC	Selby District Council
SEGL2	Scotland to England Green Link 2
SHMP	Soil Handling Management Plan
SiWMP	Site Waste Management Plan
SNCB	Statutory Nature Conservation Body

Abbreviation	Term
SNP	Schedule of Negotiations and Powers
SO_2	Sulphur dioxide
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SPA	Special Protection Area
SPZ	Source Protection Zone
SSSI	Site of Special Scientific Interest
SU	Statutory Undertaker
SWDS	Surface Water Drainage Strategy
SWMP	Surface Water Management Plan
t	Tonne
TBS	The Biomass Strategy
tC	Tonnes of carbon
tCO_2e	Tonnes of carbon dioxide equivalent
The Application	Application for the Drax Bioenergy with Carbon Capture and Storage Project
The Consortium	Investors in Court House Farm/Delta Enterprise Park
The Roadmap	Carbon Capture, Usage and Storage Net Zero Investment Roadmap
TP	Temporary Possession
ug/m^3	Micrograms per cubic meter
UK	United Kingdom
UKCP18	United Kingdom Climate Projections 18
UKHSA	United Kingdom Health Security Agency
USI	Unaccompanied Site Inspection
UV	Ultraviolet
WFD	Water Framework Directive
WPPP	Watercourse Pollution Prevention Plan
WR	Written Representation
WSI	Written Scheme of Investigation
ZCH	Zero Carbon Humber
ZoI	Zone of Influence
ZTV	Zone of Theoretical Visibility

APPENDIX C: HABITATS REGULATIONS ASSESSMENT

FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

C.1 INTRODUCTION

C.1.1 This chapter sets out the Examining Authority's (ExA) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS) for Energy Security and Net Zero (ESNZ), as the competent authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

C.1.2 This chapter is structured as follows:

- Section 1.2: Findings in relation to likely significant effects on the UK National Site Network (NSN) and other European sites.
- Section 1.3: Conservation Objectives for sites and features.
- Section 1.4: Findings in relation to adverse effects on integrity (AEoI).
- Section 1.5: HRA conclusions.

C.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 sites[1] and no reasonable scientific doubt remains[2].

C.1.4 Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 2 of this report.

C.1.5 The ExA has been mindful throughout the Examination of the need to ensure that the SoS for ESNZ has such information as may reasonably be required to carry out their duties as the competent authority. The ExA has sought evidence from the Applicant and the relevant Interested Parties (IP), 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 (RIES) AND CONSULTATION

C.1.6 The ExA produced a RIES [PD-020], which compiled, documented, and signposted HRA-relevant information provided in the Development Consent Order (DCO) application and Examination representations up to deadline (D) 7 (24 May 2023). The RIES was issued to set out ExA 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. Consultation on the RIES took place between 14 June 2023 and 6 July 2023. Comments were received from the Applicant [REP9-025] and Biofuelwatch [REP9-030 and REP9-031] at D9 (6 July 2023). Responses to these comments on the RIES were then submitted by the Applicant [REP10-018]

[1] The term 'European sites' includes Special Areas of Conservation (SAC) and Special Protection Areas (SPA), proposed SACs, potential SPAs, Ramsar, proposed Ramsar, and any sites identified as compensatory measures for adverse effects on any of the above.
[2] 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

and Biofuelwatch [REP10-026] at D10 (17 July 2023). These comments have been taken into account in the drafting of this chapter.

C.1.7 The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS for ESNZ 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

C.1.8 The Proposed Development is described in Chapter 1 of this report.

C.1.9 The spatial relationship between the Order Limits (OL) of the Proposed Development and European sites is shown in HRA Figures 1, 2 and 3 [APP-186, APP-187 and APP-188, respectively].

C.1.10 The Proposed Development is not directly connected with or necessary to the management of a European site [REP9-021]. Therefore, the SoS 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.

C.1.11 The Applicant's assessment of effects is presented in the following document(s):

- Habitats Regulations Assessment – Volume 1 – Main Text - Rev 04 [REP9-021] (hereafter referred to as the HRA Report (HRAR)).
- Habitats Regulations Assessment – Volume 2 – Figures 1 to 3 (APP-186 to APP-188).
- Habitats Regulations Assessment – Volume 3 – Appendices 1 to 8 [APP-189, APP-190, REP6-023 (Rev 3), REP6-025 (Rev 3), APP-193, APP-194, REP8-014 (Rev 02) and REP3-009, respectively].

C.1.12 All references in this report to the HRAR are to [REP9-021] unless indicated otherwise.

C.1.13 Section 2.4 of the HRAR refers to advice and engagement with NE via the NE Discretionary Advice Service. Appendix E of the Applicant's Consultation Report [APP-023] contains NE's December 2021 response to the Applicant's section 42 consultation under The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. It includes comments in respect of HRA.

C.1.14 The Applicant submitted a change request during Pre-Examination and a second change request during the Examination, as described in Chapter 1 of this report. These changes were accepted by the ExA as described in Chapter 1 of this report.

C.1.15 Proposed Change 02 (PC-02), included in the first change request, required additional land to be included within the OLs to incorporate relocation of the overhead line (OHL) and telecommunications lines on the road network between the power station site and Goole (Work No. 8). The Applicant considered that this could potentially impact the Humber Estuary Special Protection Area (SPA) and Ramsar site and Lower Derwent Valley SPA and Ramsar site.

C.1.16 The Applicant submitted an initial version of the HRAR with the Application [APP-185]. In response to the ExA's questions and representations made by IPs during the Examination and acceptance of the Applicant's first change request, the Applicant provided an updated HRAR [REP2-101] and updated screening matrices [REP2-103] and integrity matrices [REP2-105] at D2. The updated HRAR included

information relating to the potential impacts of the accepted change request. Further commentary on this is provided in section 1.4 of this chapter. The updated HRAR recorded that the OLs were closer to the following European sites than previously: the Humber Estuary Special Area of Conservation (SAC), SPA and Ramsar site; the Thorne and Hatfield Moors SPA; and the Thorne Moor SAC. It also included an update to the assessment of in-combination effects (ICE) that incorporated new projects for which information was not publicly available when the application HRAR was prepared, updates to projects for which additional information had become available, and the removal of Keadby 2 Power Station (and incorporation into the future baseline) given that its commissioning was imminent.

C.1.17 The Applicant provided updated versions of the HRAR [REP6-021] at D6 which responded to NE submissions, incorporated updates to the in-combination assessment and reflected updates that had been made at D3 to Appendix 8 [REP3-009] of the HRAR and addressed the second change request. It also submitted updated screening and integrity matrices at D6 [REP6-023 and REP6-025, respectively]. The Applicant submitted a final, updated version of the HRAR at D9 [REP9-021] that incorporated minor amendments and textual corrections in response to the ExA's Rule 17 request of 6 June 2023 [PD-018]; corrected a previously identified error in the reported baseline concentrations of nitrogen oxides (NO_x) at the Humber Estuary SAC, SPA and Ramsar site; and reflected the final, signed Statement of Common Ground (SoCG) with NE [REP8-019]. The air quality assessment originally reported the highest baseline NO_x level anywhere within the Humber Estuary SAC, SPA and Ramsar site; it was amended in the D9 HRAR (and Environmental Statement (ES) Appendix 6.5 [REP9-017]) to report the highest baseline NO_x level within the 15-kilometre (km) Zone of Influence (ZoI) of the Proposed Development. This increased the reported level from 15.6 micrograms per cubic meter (ug/m^3) to 19.2ug/m^3, which remains below the limit value (set out in the Air Quality Standards Regulations 2010) for protection of ecosystems of 30 ug/m^3.

C.1.18 The Applicant did not identify any likely significant effects (LSE) on European sites in European Economic Area (EEA) States in its HRAR or within its ES [APP-044]. Biofuelwatch expressed concerns in [REP2-073], [REP6-034] and [REP8-034] that there was potential for impacts on other countries arising from pollutant dispersion from the Proposed Development. The Applicant responded to this within [REP4-020], [REP7-017] and [REP9-023]. The ExA is satisfied on the basis of the information provided by the Applicant and NE's agreement that the correct sites had been considered in the HRA [REP2-085] that the Proposed Development would not have an LSE on European sites in any EEA States. Only European sites which form part of the NSN are addressed in this report.

SUMMARY OF HRA MATTERS CONSIDERED DURING THE EXAMINATION

C.1.19 The main HRA matters raised by the ExA, NE and other IPs and discussed during the Examination include:

- potential loss and/ or disturbance of land functionally linked to the European sites during construction; and
- potential impacts of increased acid and nitrogen deposition and ammonia (NH_3) concentrations arising from aerial emissions during operation.

C.1.20 These matters are discussed in the sections below, as appropriate.

C.1.21 Matters which were undisputed by IPs, including NE as the ANCB, were that:

- there would be no construction or decommissioning LSEs on the qualifying features of the European sites as a result of disturbance from noise and vibration (including from construction traffic).

C.1.22 This matter is set out in the RIES [PD-020].

C.2 FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

C.2.1 Under Regulation 63 of the Habitats Regulations the competent authority must consider whether a development will have LSEs on a European site, either alone or in combination with other plans or projects. The purpose of the LSEs 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.

C.2.2 The Applicant identified European sites within 15km of the main stack of Drax Power Station. This is based on emissions of treated flue gas to air, considered to be the impact pathway with the greatest ZoI in relation to potential effects of the Proposed Development on European sites. No part of the application site is within any European site. In response to BIO.1.19 from the ExA's First Written Questions (ExQ1) [PD-011] NE confirmed that it considered that the correct sites and features had been considered in the HRA [REP2-085]. Selby District Council and North Yorkshire County Council (joint) and the Environment Agency (EA) agreed within their draft SoCGs (dSoCG) [REP3-012 and REP5-016, respectively] that the European sites identified by the Applicant were the sites that were relevant to the assessment.

C.2.3 The European sites and qualifying features that were considered in the Applicant's assessment of LSEs are presented in section 3.4 and Table 3.2 of the HRAR. The Applicant sets out the methodology applied to determining what would constitute a 'significant effect' within Section 2 of the HRAR.

C.2.4 The Applicant's HRA concluded no LSEs from the Proposed Development alone on the qualifying feature (nightjar) of the Thorne and Hatfield Moors SPA alone or in combination. This was on the basis that the closest part of the SPA was approximately 9.1km from the Proposed Development and that nightjar are strongly associated with heathland, moorland, woodlands with large clearings and recently felled plantations, no such habitat types of which are within or adjacent to the application site. Subsequently, the updated D2 version of the HRAR [REP2-101] reflected that as a result of the changes included in the first change request the OLs were closer to a number of the European sites than previously, including the Thorne and Hatfield Moors SPA, which was 4.5km instead of 9.1km away. This did not alter the Applicant's conclusion of no LSEs.

C.2.5 Biofuelwatch, in its comments on the RIES [REP9-030], stated that it had disputed and continued to dispute this conclusion. It did not identify the relevant documents and no explicit reference appears to have been made to the SPA in its submissions during the Examination. It incorrectly referred, in its D2 Written Representation (WR) [REP2-073], to nightjar as a feature of the Thorne Moor SAC. No other IPs disputed the Applicant's conclusion during the Examination.

C.2.6 Biofuelwatch considered that the modelled increase in nitrogen deposition above the critical load (CLo) at Thorne Moor SAC was relevant to the assessment of the Thorne and Hatfield Moors SPA, and that the approach taken by the Applicant to the assessment of the SPA was not consistent with that applied to the SAC or with the Conservation Objectives of the SPA [REP9-030].

C.2.7 The Applicant responded to this point at D10 [REP10-018]. It stated that it had considered a range of impact pathways in assessing the potential for LSEs on the SPA nightjar feature. In respect of potential impacts on functionally linked land (FLL) it had discounted LSEs based on the distance to the SPA and the lack of suitable habitat for nightjar in the vicinity of the application site. In relation to air quality impacts, it referred to the information obtained from Air Pollution Information System (APIS) contained in HRA Appendix 5 [APP-193], which confirmed that nightjar is not considered sensitive to air quality effects on its woodland habitats or elevated NH_3 or acid deposition on its heathland habitats. In respect of nitrogen deposition on its heathland habitats no exceedances of the 1% screening criterion alone or in combination were predicted. It also drew attention to NE's response [REP6-050] BIO.2.3 of the ExA's Second Written Questions (ExQ2) which it considered highlighted the multiple sources of evidence used to determine the potential for significant air quality effects on European sites.

LSEs FROM THE PROPOSED DEVELOPMENT ALONE

C.2.8 The Applicant identified potential impacts of the Proposed Development alone considered to have the potential to result in LSEs in section 3.5 of the HRAR.

C.2.9 The impacts considered by the Applicant to have the potential to result in LSEs during construction are:

- loss or physical disturbance of FLL (locations depicted on HRA Figure 3 [APP-188]);
- dust emissions on FLL;
- increased risk of pollution from sediment load on FLL (Carr Dyke);
- accidental releases of water-borne pollutants on FLL; and
- increased visual disturbance from plant and personnel on FLL.

C.2.10 The impacts considered by the Applicant to have the potential to result in LSEs during operation are:

- treated flue gas to air emissions (acid deposition) on the Lower Derwent Valley SAC and Ramsar site and Thorne Moor SAC; and
- accidental releases of water-borne pollutants on FLL.

C.2.11 The European sites affected and the potential impact pathways are shown in Table 3.7 of the HRAR and in Table 1 below. The IPs did not dispute these conclusions. These sites are discussed further in section 1.4 of this chapter.

LSEs FROM THE PROPOSED DEVELOPMENT IN COMBINATION

C.2.12 The Applicant addressed potential ICEs arising from the Proposed Development within section 3.5 of the HRAR, which sets out the methodology applied. Developments up to 30km away from the Proposed Development were considered on the basis that this was the maximum distance within which there was considered to be any prospect of ICEs occurring. The other plans and projects included in the ICEs assessment are set out in Table 3.1 of the HRAR and in section 3.0 of the RIES [PD-020].

C.2.13 Of the projects included in the Applicant's 'short list' of developments for the cumulative environmental impact assessment it was determined that a number of projects, listed in Table 3.1 of the HRAR, had the potential to contribute to ICEs and so were considered in the HRA ICEs assessment carried out by the Applicant.

C.2.14 The in-combination LSEs identified in the HRAR during construction, operation and decommissioning on European sites and their features are set out in section 3.0 and Annex 1 of the RIES.

C.2.15 The impacts considered by the Applicant to have the potential to result in in-combination LSEs during construction are:

- loss or disturbance of FLL;
- dust emissions on FLL;
- increased risk of pollution from sediment load on FLL;
- accidental releases of water-borne pollutants on FLL; and
- increased visual disturbance from plant and personnel on FLL.

C.2.16 The impacts considered by the Applicant to have the potential to result in in-combination LSEs during operation are:

- treated flue gas to air emissions (nitrogen and acid deposition for Thorne Moor SAC); and
- accidental releases of water-borne pollutants on FLL.

C.2.17 No in-combination LSEs have been identified for the sites and qualifying features where LSEs were excluded from the Proposed Development alone. In-combination effects have been excluded because of the distance between the Proposed Development and the European sites and the suitability of the habitat for the qualifying species.

LSEs ASSESSMENT OUTCOMES

C.2.18 The sites for which the Applicant concluded no LSEs would occur from either the project alone or in combination with other projects and plans are presented in Annex 1 of the RIES [PD-020].

C.2.19 The Applicant initially screened out from the HRA potential impacts on the European sites from construction traffic (HRAR paragraph 3.3.13 [APP-185]). NE considered that additional information was required on impacts on the Humber Estuary SAC, SPA and Ramsar site features alone and in combination arising from emissions to air from construction traffic using the M62 (Relevant Representation (RR) Issue 1) [AS-011]. It was subsequently screened in and concluded that it would not result in an LSE. This is discussed in section 1.4 of this chapter below.

C.2.20 As a result of the additional air quality modelling and information gathered during the Examination the Applicant identified that the acid deposition CLo for the Skipwith Common SAC would not be exceeded and subsequently concluded in the D6 updated HRAR [REP6-021] that acid deposition would not result in an in-combination LSE on that site. Therefore, the Applicant concluded that there would be no LSEs on Skipwith Common SAC and its qualifying features.

C.2.21 The Applicant's screening assessment (HRAR Section 3) concluded that the project would have no LSEs, either alone or in combination with other projects or plans, on the qualifying feature (nightjar) of the Thorne and Hatfield Moors SPA.

C.2.22 The final suite of European sites and features for which the Applicant could not exclude LSEs are listed in Table 1 below. The following sites were identified:

- Humber Estuary Ramsar site.
- Humber Estuary SAC.

- Humber Estuary SPA.
- Lower Derwent Valley Ramsar site.
- Lower Derwent Valley SAC.
- Lower Derwent Valley SPA.
- River Derwent SAC.
- Thorne Moor SAC.

C.2.23 In relation to the statement made by Biofuelwatch about the Applicant's conclusion in respect of the nightjar feature of the Thorne and Hatfield Moors SPA, the ExA does not consider that Biofuelwatch has provided evidence to support its position and notes that NE agreed with the Applicant's conclusions.

C.2.24 The ExA is satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and is satisfied with the approach to the assessment of alone and in-combination LSEs.

C.2.25 Taking into account the reasoning set out above, the ExA considers that the Proposed Development is likely to have a significant effect from the impacts on the qualifying features of the European sites identified in Table 1 below when considered alone or in combination with other plans or projects. This was not disputed by IPs/ NE during the Examination.

C.3 CONSERVATION OBJECTIVES

C.3.1 The Conservation Objectives for the sites and features identified in Table 1 below are set out in Appendix 2 of the HRAR. The Applicant had regard to NE's Supplementary Advice on Conservation Objectives for the European sites, to which reference is made in the HRAR. In the absence of Conservation Objectives for Ramsar sites the Applicant applied the Conservation Objectives that apply to other European sites that are in the same location.

C.4 FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

C.4.1 The European sites and qualifying features identified in Table 1 below were further assessed by the Applicant to determine if they could be subject to an AEoI from the Proposed Development, either alone or in combination. The assessment of AEoI was made in light of the Conservation Objectives for the European sites.

C.4.2 The ExA is satisfied, based on the information provided that the correct impacts have been assessed. This section discusses the conclusions with respect to AEoI for each site.

C.4.3 The Applicant's approach to the ICEs assessment is set out in Section 4.3 of the HRAR.

C.4.4 Based on the findings of the Examination, the ExA is satisfied that an assessment of AEoI from the Proposed Development in combination with other plans or projects can be based on this information and that no other plans or projects should be taken into account.

C.4.5 The Applicant's HRAR concluded that the Proposed Development would not result in an AEoI of the following European sites and their qualifying features:

- Humber Estuary Ramsar site.

- Humber Estuary SAC.
- Humber Estuary SPA.
- Lower Derwent Valley Ramsar site.
- Lower Derwent Valley SAC.
- Lower Derwent Valley SPA.
- River Derwent SAC.
- Thorne Moor SAC.

C.4.6 Mitigation measures are considered in Section 4.1 of the HRAR. The proposed mitigation is summarised; cross-reference is made to more detailed information contained in relevant ES chapters and appendices. Commentary on proposed mitigation measures is set out below.

Table 1: LSEs on European sites and qualifying features for which an AEoI from the Proposed Development (alone or in-combination) can be excluded

European site	Qualifying features	LSEs alone	LSEs in-combination	AEoI alone and in-combination
River Derwent SAC	Otter	**C & D** Loss of FLL Dust emissions on FLL Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL from plant and personnel **O** Accidental releases of water-borne pollutants	**C & D** Loss of FLL Dust emissions on FLL Accidental releases of water-borne pollutants Increased risk of pollution from sediment load Increased visual disturbance of FLL from plant and personnel **O** Accidental releases of water-borne pollutants	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019]

European site	Qualifying features	LSEs alone	LSEs in-combination	AEoI alone and in-combination
	River lamprey	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019]
	Sea lamprey	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019]
Lower Derwent Valley SAC	Otter	**C & D** Loss of FLL Dust emissions on FLL	**C & D** Loss of FLL Dust emissions on FLL	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the

European site	Qualifying features	LSEs alone	LSEs in-combination	AEoI alone and in-combination
		Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL from plant and personnel **O** Accidental releases of water-borne pollutants	Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL from plant and personnel **O** Accidental releases of water-borne pollutants	finalised SoCG submitted at D8 [REP8-019]
Lower Derwent Valley SPA	Wildfowl and waders – teal and shoveler	**C & D** Loss and disturbance of FLL Dust emissions on FLL	**C & D** Loss and disturbance of FLL Dust emissions on FLL Increased risk of pollution from sediment load Accidental releases of water-borne pollutants	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019]

European site	Qualifying features	LSEs alone	LSEs in-combination	AEoI alone and in-combination
			Increased visual disturbance of FLL from plant and personnel	
	Wintering birds – Bewick's swan, teal, shoveler, wigeon, golden plover, wildfowl and waders	**C & D** Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL from plant and personnel **O** Accidental releases of water-borne pollutants	**C & D** Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL from plant and personnel **O** Accidental releases of water-borne pollutants	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019]
Lower Derwent Valley Ramsar site	Wildfowl and waders/ wintering birds – teal and wigeon	**C & D** Loss and disturbance of FLL	**C & D** Loss and disturbance of FLL Dust emissions on FLL	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the

European site	Qualifying features	LSEs alone	LSEs in-combination	AEoI alone and in-combination
		Dust emissions on FLL Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL from plant and personnel **O** Accidental releases of water-borne pollutants	Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL from plant and personnel **O** Accidental releases of water-borne pollutants	finalised SoCG submitted at D8 [REP8-019]
Humber Estuary SAC	River lamprey	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019]

European site	Qualifying features	LSEs alone	LSEs in-combination	AEoI alone and in-combination
	Sea lamprey	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019]
Humber Estuary SPA	Wildfowl and waders/ wintering birds – waterbird assemblage (lapwing, curlew, shoveler, mallard, wigeon), marsh harrier, golden plover	**C & D** Loss and disturbance of FLL Dust emissions on FLL Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL	**C & D** Loss and disturbance of FLL Dust emissions on FLL Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL **O**	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019]

European site	Qualifying features	LSEs alone	LSEs in-combination	AEoI alone and in-combination
		O Accidental releases of water-borne pollutants	Accidental releases of water-borne pollutants	
	Wintering birds - waterbird assemblage (lapwing, curlew, shoveler, mallard, wigeon), marsh harrier, golden plover	**C & D** Loss and disturbance of FLL Dust emissions on FLL Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL	**C & D** Loss and disturbance of FLL Dust emissions on FLL Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019]
Humber Estuary Ramsar site	Wildfowl and waders – waterbird assemblage (lapwing, curlew, shoveler, mallard, wigeon), golden plover	**C & D** Loss and disturbance of FLL	**C & D** Loss and disturbance of FLL Dust emissions on FLL	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the

European site	Qualifying features	LSEs alone	LSEs in-combination	AEoI alone and in-combination
		Dust emissions on FLL Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL **O** Accidental releases of water-borne pollutants	Increased risk of pollution from sediment load Accidental releases of water-borne pollutants Increased visual disturbance of FLL **O** Accidental releases of water-borne pollutants	finalised SoCG submitted at D8 [REP8-019]
	River lamprey	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019].

European site	Qualifying features	LSEs alone	LSEs in-combination	AEoI alone and in-combination
	Sea lamprey	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	**C & D** Accidental releases of water-borne pollutants **O** Accidental releases of water-borne pollutants	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019]
	Wintering birds – waterbird assemblage (lapwing, curlew, shoveler, mallard, wigeon), golden plover	**O** Accidental releases of water-borne pollutants	**O** Accidental releases of water-borne pollutants	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the finalised SoCG submitted at D8 [REP8-019]
Thorne Moor SAC	Degraded raised bogs	**O** Treated flue gas to air emissions during operation (acid deposition)	**O** Treated flue gas to air emissions during operation (nitrogen deposition, acid deposition)	Applicant's conclusion of no AEoI alone and in combination agreed in the dSoCG between the Applicant and NE [REP5-017]. Confirmed in the

European site	Qualifying features	LSEs alone	LSEs in-combination	AEoI alone and in-combination
				finalised SoCG submitted at D8 [REP8-019]

Note

C & D = Construction and decommissioning

O = Operation

This table contains a summary, as at the end of the Examination, of the features of the European sites for which the Applicant had identified an LSE, alone and/ or in combination; and identifies the Applicant's AEoI assessment conclusions. Detailed commentary on the AEoI conclusions in relation to these features is set out below.

C.4.7 The Applicant's conclusions of no AEoI in relation to some of these European sites and their qualifying features were disputed by IPs and were discussed throughout the Examination. The account of the Examination of these matters is set out in the following sections.

C.4.8 The Applicant's conclusions in relation to the sites and features listed below and shown in Table 3.1 were disputed by NE in its RR (Version 1.2) [AS-011]. NE was not satisfied that it could be ascertained beyond reasonable scientific doubt that the Proposed Development would not have an AEoI of the following European sites:

- Lower Derwent Valley SAC.
- Lower Derwent Valley SPA.
- Lower Derwent Valley Ramsar site.
- Humber Estuary SAC.
- Humber Estuary SPA.
- Humber Estuary Ramsar site.
- River Derwent SAC.
- Skipwith Common SAC.
- Thorne Moor SAC.

C.4.9 NE considered that further information was required in relation to:

- impacts from emissions to air from construction traffic using the M62 on the Humber Estuary SAC, SPA and Ramsar site designated features alone and in combination (RR Issue 1) (screened out of the HRA by the Applicant);
- impacts from potential loss of FLL in the 'Off-site Habitat Provision Area' during construction associated with the Lower Derwent Valley SPA and Ramsar site and Humber Estuary SPA and Ramsar site alone (RR Issue 2);
- clarification on scenarios used to assess the impacts from operational aerial emissions on the Humber Estuary SPA and SAC, Lower Derwent Valley SAC, SPA and Ramsar site, Thorne Moor SAC, River Derwent SAC and Skipwith Common SAC designated features (RR Issue 18);
- impacts of acid deposition from operational aerial emissions on the Lower Derwent Valley SAC and Ramsar site designated features alone and in combination (RR Issue 19);
- impacts of nitrogen deposition from operational aerial emissions on the Thorne Moor SAC in combination, and River Derwent SAC designated features alone and in combination (RR Issue 20);
- impacts of NH_3 from operational aerial emissions in combination on the Thorne Moor SAC (RR Issue 21); and
- proposed mitigation for operational aerial emissions on the Lower Derwent Valley SAC and Ramsar site, Thorne Moor SAC, River Derwent SAC and Skipwith Common SAC designated features (RR Issue 22).

C.4.10 In NE's subsequent RR [RR-281] for the first change request, in respect of the additional land included in the OLs it considered that the Applicant had provided insufficient evidence on the construction impacts from potential loss of/ disturbance to land which was potentially functionally linked to the Humber Estuary SPA and Ramsar site.

C.4.11 NE stated in [AS-011] that subject to the proposed mitigation it considered that the Proposed Development was not likely to result in an AEoI of the European sites in respect of the following impact pathways:

- pollution from increased sediment load on FLL during construction.
- accidental releases of water-borne pollutants during construction and operation.

- dust impacts on FLL during construction.
- visual disturbance on FLL during construction.

C.4.12 Biofuelwatch stated in [AS-040] that it agreed with NE's comments on potential impacts on internationally (and nationally) designated sites, particularly in relation to loss of FLL and traffic emissions. It clarified in [REP9-030] that it did not agree with all of NE's conclusions in respect of the sites.

OPERATIONAL SCENARIOS USED TO ASSESS THE IMPACTS FROM AERIAL EMISSIONS ON THE HUMBER ESTUARY SPA/ SAC, LOWER DERWENT VALLEY SAC/ SPA/ RAMSAR SITE, THORNE MOOR SAC, RIVER DERWENT SAC AND SKIPWITH COMMON SAC

C.4.13 In response to NE's RR [AS-011] the Applicant provided clarification in [AS-038] and its Appendix B on the scenarios used to assess the impacts from operational aerial emissions on the Humber Estuary SPA and SAC; Lower Derwent Valley SAC, SPA and Ramsar site; Thorne Moor SAC; River Derwent SAC; and Skipwith Common SAC features: termed the 'mid-merit' and the 'full load' scenarios. It considered that the realistic worst-case scenario would be the mid-merit scenario, ie two Carbon Capture and Storage (CCS) units operating at full load for the entire year and in addition two non-CCS units operating at full load for 4000 hours.

C.4.14 NE confirmed in the D1 dSoCG that, following the submission of the additional information provided in [AS-038], it agreed the methodology and scenarios used to assess the operational impacts from aerial emissions on the features of the European sites.

C.4.15 Biofuelwatch, in its comments on the RIES [REP9-030] considered that no information had been provided to justify the mid-merit scenario as the worst case. It considered that the following scenarios could be worse: two CCS units operating at full load for the entire year and two non-CCS biomass combustion units operating at full load for the entire year; two CCS units operating at full load for the entire year with the non-CCS biomass combustion units not operating at all. The Applicant responded to this point at D10, referring to its previous responses on this point contained in [PDA-002 and REP7-017], which explained its rationale for the assessment of the chosen scenarios and for determining the mid-merit scenario to be the realistic worst-case scenario.

C.4.16 The ExA is satisfied on the basis of the information provided by the Applicant that the mid-merit scenario represents a realistic worst-case scenario on which to base the assessment.

APPLICANT'S PROPOSAL TO EXTEND THE TIME PERIOD IN WHICH TO IMPLEMENT THE DCO

C.4.17 In NE's response to question R17QA.5 from the ExA's Rule 17 request dated 6 June 2023 (R17QA) [PD-018] about the Applicant's proposal to delay the start of the construction programme by two years, NE stated that the ICEs assessment for the European sites could be made with less confidence as a result. However, it considered that the assessment undertaken to date and updated during the Examination was robust and agreed that any future projects coming forward for which details are not yet known would need their own ICEs assessment which would include the Proposed Development [REP8-038].

C.4.18 In response to question R17QB.3 from the ExA's Rule 17 request dated 22 June 2023 (R17QB) [PD-021], NE similarly considered that the ICEs assessment could

be made with less confidence as a result of the proposed extended commencement period [REP9-036]. However, it reiterated that any future applications would have to make their own assessment including the Proposed Development as an in-combination project.

C.4.19 The Applicant responded [REP9-026] at D9 to question R17QB.4 [PD-021] of R17QB request about whether an extension of time to January 2031 in which to implement the DCO had any implications for the HRA. It considered that changes over time in background concentrations and deposition rates of gaseous pollutants in air and changes in the other plans and projects relevant to the ICEs assessment could potentially affect the HRA. However, it concluded that the proposed extension would not have any implications for the HRA. In relation to pollutants this was on the basis that background concentrations and deposition rates were predicted to reduce up to and beyond 2031 (reflected in NE's response [REP8-038] to question R17QA.5). The Applicant acknowledged that a 2031 commencement would reduce certainty in the ICEs assessment. However, it highlighted that there would no longer be an overlap with the construction period of three of the other projects considered in the assessment so ICEs would potentially be reduced.

C.4.20 The ExA is satisfied, on the basis of the information contained in the Applicant's and NE's responses, that the proposed extension of time in which to commence the DCO does not have any adverse implications for the Applicant's HRA.

CONSTRUCTION AND DECOMMISSIONING EFFECTS FROM DUST EMISSIONS ON THE EUROPEAN SITES FROM THE PROPOSED DEVELOPMENT ALONE

C.4.21 It was determined in the HRAR that there could be an LSE from dust emissions on FLL related to otter associated with the River Derwent SAC and Lower Derwent Valley SAC; and bird species associated with the Lower Derwent Valley SPA and Ramsar site and Humber Estuary SPA and Ramsar site. A number of proposed mitigation measures to minimise and/ or suppress dust are identified. These would be contained in a Construction Environmental Management Plan (CEMP), developed from the Register of Environmental Actions and Commitments (REAC) [REP9-019], and include measures to minimise dust generation from operating vehicles and machinery, to minimise and/ or supress dust generation from demolition, fabrication, and construction activities; and to address dust generation from earthworks. It was concluded in the HRAR that this potential LSE would not result in an AEoI of any European site. NE confirmed its agreement with this conclusion in [AS-011].

C.4.22 The ExA is satisfied that there would not be an AEoI of any of these European sites alone as a result of construction and decommissioning LSEs from dust emissions. This is on the basis that the ExA considers that the proposed measures set out in the REAC [REP9-019] are appropriate, would effectively mitigate the identified effects and would be incorporated into a CEMP which is secured by Requirement 14 (R14) of the draft DCO (dDCO) [REP10-024]. R14 requires that the approved CEMP must be substantially in accordance with the REAC and all construction works must be carried out in accordance with the approved CEMP.

CONSTRUCTION AND DECOMMISSIONING EFFECTS FROM AN INCREASED RISK OF POLLUTION FROM SEDIMENT LOAD ON THE EUROPEAN SITES FROM THE PROPOSED DEVELOPMENT ALONE

C.4.23 An LSE resulting from an increased risk of pollution from sediment load on FLL was identified in the HRAR for otter associated with the River Derwent SAC and Lower Derwent Valley SAC and bird species associated with the Lower Derwent Valley SPA and Ramsar site and Humber Estuary SPA and Ramsar site. The proposed CEMP and Decommissioning Environmental Management Plan (DEMP), secured by dDCO R14 and R18, would contain several measures proposed to mitigate the risk. These include the use of Method Statements, appropriate management of stockpiles, a construction Surface Water Management Plan (SWMP), temporary cut-off drains and wheel-washing facilities. It was concluded in the HRAR that this potential LSE would not result in an AEoI of any European site. NE confirmed its agreement with this conclusion in [AS-011].

C.4.24 The ExA is satisfied that there would not be an AEoI of any of these European sites alone resulting from an increased risk of pollution from sediment load on FLL during construction and decommissioning. This is on the basis that the ExA considers that the proposed measures that would be incorporated into the CEMP and DEMP, as set out in the REAC [REP9-019] and secured in the dDCO [REP10-024], are appropriate and would effectively mitigate the identified effects. R18 requires that the measures set out in the DEMP must be consistent with the principles informing the measures contained in the REAC.

CONSTRUCTION AND DECOMMISSIONING EFFECTS FROM ACCIDENTAL RELEASES OF WATER-BORNE POLLUTANTS ON THE EUROPEAN SITES FROM THE PROPOSED DEVELOPMENT ALONE

C.4.25 An LSE resulting from an increased risk of pollution from accidental releases of water-borne pollutants on FLL was identified in the HRAR for otter associated with the River Derwent SAC and Lower Derwent Valley SAC and bird species associated with the Lower Derwent Valley SPA and Ramsar site and Humber Estuary SPA and Ramsar site. The proposed CEMP and DEMP would contain several measures proposed to mitigate the risk. These include the incorporation of appropriate interceptors into on-site drainage systems, the location of hazardous substances stored in bunded areas more than 10m away from water bodies and drainage lines and the mixing of construction materials, such as cement, in designated areas located away from water bodies and drainage lines. It was concluded in the HRAR that this potential LSE would not result in an AEoI of any European site. NE confirmed its agreement with this conclusion in [AS-011].

C.4.26 The ExA is satisfied that there would not be an AEoI of any of the European sites alone as a result of construction and decommissioning LSEs from accidental releases of water-borne pollutants. This is on the basis that the ExA considers that the proposed measures that would be incorporated into the CEMP and DEMP, as set out in the REAC [REP9-019] and secured in the dDCO [REP10-024], are appropriate and would effectively mitigate the identified effects.

CONSTRUCTION AND DECOMMISSIONING EFFECTS FROM INCREASED VISUAL DISTURBANCE FROM PLANT AND PERSONNEL ON THE EUROPEAN SITES FROM THE PROPOSED DEVELOPMENT ALONE

C.4.27 An LSE resulting from visual disturbance on FLL was identified in the HRAR for otter associated with the River Derwent SAC and Lower Derwent Valley SAC and bird species associated with the Lower Derwent Valley SPA and Ramsar site and Humber Estuary SPA and Ramsar site. The proposed CEMP and DEMP would include measures to avoid or minimise potential visual disturbance effects. These

include hoardings a minimum of 2.4m high around elements such as construction compounds, laydown and demolition areas; detailed lighting measures "*substantially in accordance with*" the submitted Draft Lighting Strategy (secured via dDCO R8) which would avoid or minimise potential increases in illumination of FLL; and a number of measures specifically related to otter. These include exclusion zones around holts and shelters, minimisation of light spill and maintenance of dark corridors, and capping of any exposed pipe systems and providing exit ramps from any exposed trenches or holes.

C.4.28 It was concluded in the HRAR that this potential LSE would not result in an AEoI of any European site. NE confirmed its agreement with this conclusion in [AS-011].

C.4.29 The ExA is satisfied that there would not be an AEoI of any of the European sites alone as a result of construction and decommissioning LSEs from increased visual disturbance from plant and personnel. This is on the basis that the ExA considers that the proposed measures that would be incorporated into the CEMP and DEMP, as set out in the REAC [REP9-019] and secured in the dDCO [REP10-024], are appropriate and would effectively mitigate the identified effects.

CONSTRUCTION EFFECTS FROM POTENTIAL LOSS OR DISTURBANCE OF FLL IN THE OFF-SITE HABITAT PROVISION AREA ASSOCIATED WITH THE LOWER DERWENT VALLEY SPA AND RAMSAR SITE AND HUMBER ESTUARY SPA AND RAMSAR SITE

C.4.30 In respect of impacts from potential loss of FLL in the Off-site Habitat Provision Area during construction associated with the Lower Derwent Valley SPA and Ramsar site and Humber Estuary SPA and Ramsar site, the Applicant responded to NE in [AS-038] that it considered that there was no credible risk of the proposed habitat enhancement measures leading to loss or deterioration of FLL that may be used by SPA/ Ramsar site qualifying interest bird species. The information provided in the HRAR highlighted that the assessment was made on a precautionary basis and determined that the FLL in the Off-site Habitat Provision Area could be of limited value for the SPA and Ramsar site qualifying bird species. Much of the Off-site Habitat Provision Area is comprised of habitats (woodland and scrub) that are unlikely to be used by SPA/ Ramsar site bird species and to which minimal change is proposed; bird sightlines are obstructed; and it is bisected by a public footpath that would remain unchanged. It is over 4.5km away from the European sites. The Applicant analysed desk studies within 1km of the Off-site Habitat Provision Area for relevant bird species, as requested by NE, and concluded that the habitat was unsuitable for the species recorded.

C.4.31 NE confirmed in the D1 dSoCG [REP-020] that it agreed that there would be no construction impacts from the potential loss of FLL in the Off-site Habitat Provision Area associated with the Lower Derwent Valley SPA and Ramsar site and Humber Estuary SPA and Ramsar site.

C.4.32 The ExA is satisfied that there would not be an AEoI of any of the European sites alone as a result of construction LSEs from potential loss or disturbance of FLL in the Off-site Habitat Provision Area. This is on the basis of the convincing evidence provided about the suitability of the land within the Off-site Habitat Provision Area for the qualifying bird species of these sites and that recreational activities take place on it due to the public footpath running through it, which are also likely to make the land less attractive to the bird species.

CONSTRUCTION EFFECTS ARISING FROM ADDITIONAL LAND INCLUDED IN CHANGE PC-02 FROM LOSS OF OR DISTURBANCE TO LAND POTENTIALLY FUNCTIONALLY LINKED TO THE HUMBER ESTUARY SPA AND RAMSAR SITE

C.4.33 NE remained of the view in [REP2-085] that further information was required in relation to the construction impacts from loss of/ disturbance to potential FLL associated with the Humber Estuary SPA and Ramsar site, which formed part of the additional land included in the revised OLs in change PC-02 of the Applicant's first change request. It recommended that further assessment of the potential suitability for SPA birds of the land within the proposed OLs and adjacent areas was carried out to inform the updated HRA. Biofuelwatch stated at D3 [REP3-024] that it shared NE's concerns about the loss or disturbance of FLL during construction.

C.4.34 The Applicant responded to NE's concerns at D3 [REP3-020]. It stated that Work No. 8 would be entirely located within 120 metres (m) of either a main road and/ or occupied commercial or residential premises, which would reduce the likelihood of significant use by bird species associated with the Humber Estuary SPA and Ramsar site. It also considered that even if the location had low-level use by SPA/ Ramsar site bird species, there could be no loss of FLL because the works had negligible potential for permanent habitat change and all the habitats present would be reinstated following the works completion. The works would cause temporary disturbance for up to approximately four weeks to a maximum of approximately 2.7 hectares (ha) of grassland and farmland crops (based on a worst-case scenario of all the habitat within the OLs being directly affected). It considered that there was abundant alternative comparable habitat present in the wider landscape and that the temporary non-availability of the limited area of land required was comparable to temporary fluctuations in land use in the wider surrounding agricultural landscape. The Applicant also provided further justification for its conclusion in the updated HRAR provided at D6 [REP6-021].

C.4.35 NE stated at D4 [REP4-041] that, on the basis of the information provided by the Applicant about the type and limited spatial and temporary nature of the works and the proposed habitat reinstatement, it agreed that an LSE arising from Work No. 8 relating to permanent loss of and potential disturbance impacts to FLL could be ruled out.

C.4.36 The ExA is satisfied that there would not be a construction AEoI of any of these European sites arising from loss of or disturbance to potentially FLL resulting from works included in change PC-02. This is on the basis of the availability of comparative habitat in the area, the nature and limited duration of the proposed works and the proposed reinstatement following completion of the works.

CONSTRUCTION AND DECOMMISSIONING EFFECTS FROM INCREASED RISK OF POLLUTION FROM SEDIMENT LOAD IN COMBINATION WITH DEVELOPMENT ID102

C.4.37 It is explained in the HRAR that the construction periods of the Proposed Development and ID102 could overlap and an LSE had been identified for land functionally linked to the River Derwent SAC, Lower Derwent Valley SAC, SPA and Ramsar site, and the Humber Estuary SPA and Ramsar site. Both developments propose mitigation measures to minimise the risk of water-borne pollution, including sediment loading, during their construction. Relevant mitigation for the Proposed Development is set out in items WE8, WE9, WE12, WE14, and WE15 of the REAC [REP7-010], secured by dDCO R14. The Preliminary Environmental Information

Report (PEIR) for ID102 identifies that good practice measures contained within a proposed CEMP would reduce the risk of pollution of the water environment during construction by removing the pathways between sources and receptors. It is concluded in the HRAR that with these mitigation measures in place there would be no AEoI of any European sites resulting from sediment loading. NE stated its agreement to this in [AS-011].

C.4.38 The ExA is satisfied that there would not be an AEoI of any of the European sites resulting from LSEs from an increased risk of pollution from sediment load in combination with ID102 during construction and decommissioning. This is on the basis that the ExA considers that the proposed measures set out in the REAC [REP9-019] are appropriate, would effectively mitigate the identified effects and would be incorporated into the CEMP secured by R14 of the dDCO [REP10-024].

CONSTRUCTION AND DECOMMISSIONING EFFECTS FROM INCREASED VISUAL DISTURBANCE FROM PLANT AND PERSONNEL ON THE EUROPEAN SITES IN COMBINATION WITH DEVELOPMENTS ID6, ID44, ID52, ID99, ID100, ID102 AND ID103

C.4.39 An LSE was identified during the construction and decommissioning phases of the Proposed Development for land functionally linked to the River Derwent SAC; Lower Derwent Valley SAC, SPA and Ramsar site; and the Humber Estuary SPA and Ramsar site in relation to increased visual disturbance.

C.4.40 In relation to ID6 it is explained in the HRAR that mitigation measures to address potential visual disturbance effects of the Proposed Development include the use of solid hoarding to provide visual screening. The Off-site Habitat Provision Area is approximately 50m to the west of ID6. An existing band of dense scrub and tree cover would be maintained between the existing/ proposed open habitats in the Off-site Habitat Provision Area and ID6, which would provide visual screening between the two areas.

C.4.41 ID44, ID52, ID99 and ID100 are all within 1km of Work No. 8. The ecological information submitted with the planning application for ID44 stated that habitats within its application site were considered to be of no importance for wintering/ passage bird species that may be associated with the Humber Estuary SPA and Ramsar site and of negligible importance for breeding lapwing. It also detailed a number of mitigation measures proposed to further reduce any residual risk of disturbance to these features including the provision of acoustic fencing along the eastern boundary of the application site during site clearance and construction.

C.4.42 The ecological assessments for ID52 identified that habitats within its application site were considered unsuitable for bird species associated with the Humber Estuary SPA/ Site of Special Scientific Interest SSSI/ Ramsar site, as a result of the application site being surrounded by mature trees to the east and existing buildings and industrial areas to the north, east, and west. Its HRAR also identified that the application site is surrounded by several existing land uses which generate noise and lighting and which also partially screen it. Its HRAR concluded that there would be no risk of LSEs to Humber Estuary bird species from disturbance, either alone or in-combination with other plans and projects.

C.4.43 The ecological information submitted with the ID99 planning application identified that the application site ground cover was dominated by scrub and rough grassland, habitats considered unsuitable for bird species associated with the Humber Estuary SPA and Ramsar site. Its HRAR concluded that there would be no risk of LSEs to

the bird features from disturbance, either alone or in-combination with other plans and projects.

C.4.44 The ecological assessment for ID100 identified that habitats within and adjacent to its site boundary were unsuitable for bird species associated with the Humber Estuary SPA and Ramsar site. The site is dominated by dense scrub and poor semi-improved grassland with some tree cover, which are habitats of limited suitability for Humber Estuary SPA and Ramsar site bird species. It is surrounded by major roads including the M62 and existing industrial land uses. The proposed Work No. 8 OHL locations are adjacent to an existing main road and public footpaths, with residential and commercial properties present, making these locations less suitable for SPA and Ramsar site bird species.

C.4.45 The western limit of ID102 is at the northern boundary of the existing Drax Power Station site and there would be some overlaps with the OLs of the Proposed Development. It is explained in the HRAR that NE agreed with the conclusion that habitats within and adjacent to ID102's onshore works were of low importance for SPA/ Ramsar site/ SSSI bird species, and the PEIR for ID102 confirmed that a suite of construction avoidance and mitigation measures would be implemented, with additional measures identified as necessary as the design progressed and further ecological surveys were completed.

C.4.46 The western limit of ID103 is at the eastern boundary of the existing Drax Power Station site and there would be minor overlaps with the OLs of the Proposed Development. FLL in the Habitat Provision Area north of the Drax Power Station site and areas surrounding the East Construction Laydown Area, that may support Lower Derwent Valley SPA and Ramsar site and Humber Estuary SPA and Ramsar site bird features or River Derwent SAC and Lower Derwent Valley SAC otter features, could be affected. It is considered that there would be no significant visual disturbance should the construction programmes coincide. The wintering bird surveys for the Proposed Development recorded no SPA species in the East Construction Laydown Area including the eastern portion of the Habitat Provision Area. Both the Proposed Development and ID103 propose mitigation to reduce visual disturbance effects on ecological receptors.

C.4.47 It is concluded in the HRAR that there would be no AEoI of any European sites arising from the Proposed Development in combination with other plans and projects in relation to visual disturbance during construction and decommissioning. NE stated its agreement to this conclusion in [AS-011].

C.4.48 The ExA is satisfied that there would not be an AEoI of any of the European sites resulting from in-combination construction and decommissioning LSEs from increased visual disturbance from plant and personnel on FLL. This is on the basis of the information as set out above about the unsuitability of the land for qualifying species and the mitigation measures proposed by the Proposed Development and the other developments, that would further reduce the likelihood of adverse effects.

CONSTRUCTION, DECOMMISSIONING AND OPERATIONAL EFFECTS FROM ACCIDENTAL RELEASES OF WATER-BORNE POLLUTANTS ON THE EUROPEAN SITES IN COMBINATION WITH DEVELOPMENTS ID3, ID12, ID102 AND ID103

C.4.49 An LSE was identified for land functionally linked to the River Derwent SAC; Lower Derwent Valley SAC, SPA and Ramsar site; and the Humber Estuary SAC, SPA and Ramsar site for the construction, decommissioning and operational phases of

the Proposed Development in combination with ID3 and ID102; during construction only with ID103; and during operation only with ID12. Potential was identified for effects on otter, river lamprey, sea lamprey and bird features of the respective European sites.

C.4.50 It is explained in the HRAR that the Proposed Development and these other projects propose mitigation measures to minimise the risk of water-borne pollution during their construction. Relevant mitigation for the Proposed Development is set out in items WE8, WE9, WE12, WE14, and WE15 of the REAC [REP7-010]. The PEIR for ID102 and scoping information for ID103 identify good practice measures to be included in their CEMPs that would reduce the risk of pollution of the water environment during construction by removing the pathways between sources and receptors. It is concluded that with these mitigation measures in place there would be no AEoI of any European sites from the Proposed Development in combination with other plans and projects resulting from water-borne pollution. NE stated its agreement to this conclusion in [AS-011].

C.4.51 The ExA is satisfied that there would not be an AEoI of any of these European sites alone as a result of construction, decommissioning and operational in-combination LSEs from accidental releases of water-borne pollutants on the European sites. This is on the basis that the ExA considers that the proposed measures set out in the REAC [REP9-019] are appropriate, would effectively mitigate the identified effects and would be incorporated into the CEMP secured by R14 of the dDCO [REP10-024]. In addition, it can be expected that the good practice measures proposed by the other developments would be implemented.

CONSTRUCTION EFFECTS FROM EMISSIONS TO AIR FROM CONSTRUCTION TRAFFIC USING THE M62 ON THE HUMBER ESTUARY SAC, SPA AND RAMSAR SITE ALONE AND IN COMBINATION

C.4.52 The Applicant responded to NE's comments in [AS-038]. In respect of impacts from emissions to air from construction traffic using the M62 on the Humber Estuary SAC, SPA and Ramsar site features it considered that there would be no risk of LSEs. It stated that construction was a temporary activity and a conservative approach had been applied to the traffic modelling. The forecast peak construction year Annual Average Daily Traffic (AADT) was below the threshold of 200 Heavy Duty Vehicles (HDV). The M62 bridge over the Humber Estuary is raised approximately 30m above ground level and pollutants emitted by vehicles would be subject to considerable vertical and horizontal dispersion before reaching the Humber habitats. The latest projections for the UK vehicle fleet are for a continuing decline in NO_x emissions due to the continued uptake of low, ultra-low and zero-emission vehicles; it was therefore reasonable to assume that the contribution of M62 traffic to NO_x and NH_3 levels and nitrogen deposition on the Humber Estuary adjacent to the M62 crossing will continue to reduce over future years.

C.4.53 NE subsequently stated, as recorded in the D1 dSoCG [REP-020], that following the submission of this additional information it agreed no LSEs on the Humber Estuary SAC, SPA, and Ramsar site arising from emissions from construction traffic alone or in combination.

C.4.54 The ExA is satisfied that there would not be an AEoI of any of the European sites as a result of construction LSEs alone and in combination from emissions to air from construction traffic using the M62 on the Humber Estuary SAC, SPA and Ramsar site. This is on the basis of the information provided by the Applicant on the traffic

modelling forecasts, the likely dispersion of pollutants as a result of height of the bridge above the Humber Estuary and future vehicular projections.

CONSTRUCTION EFFECTS ARISING FROM LOSS OF OR DISTURBANCE TO FLL IN COMBINATION WITH DEVELOPMENTS ID103 AND ID106

C.4.55 The potential for ID103 and 106 to contribute to loss of or disturbance to FLL was identified in the HRAR submitted at D6.

C.4.56 It was considered by the Applicant that during cable installation ID103 could result in temporary loss and/ or disturbance of minor watercourses, potentially used by otters associated with the River Derwent SAC and Lower Derwent Valley SAC, and loss and disturbance of farmland that could be used by wintering birds associated with the Lower Derwent Valley SPA and Ramsar site and/ or the Humber Estuary SPA and Ramsar site. The majority of habitat loss would be short term and temporary; there would be minor permanent habitat loss from the field where a convertor station would be located.

C.4.57 It was stated that ID106 could result in permanent or temporary loss and/ or disturbance of bankside habitats adjacent to the River Ouse that may be used by otters associated with the River Derwent SAC and Lower Derwent Valley SAC.

C.4.58 It was concluded that there would not be an adverse effect on the European sites. This was on the basis that the permanent habitat loss would be negligible, the temporary loss would be short-term, and the habitats affected by temporary works would be reinstated by 2027. It was highlighted that the Scoping Report for ID103 confirmed that a suite of avoidance and mitigation measures would be implemented during construction. The Preliminary Ecological Appraisal for ID106 confirmed that further surveys would be carried out to determine the presence of otter near the site. It was assumed in the HRAR that the local planning authority would satisfy itself that the proposed works would have no adverse effect on the otter population associated with the European sites prior to granting permission. No IPs commented on this at D7.

C.4.59 The ExA is satisfied that there would not be an AEoI of any of the European sites alone as a result of in-combination construction LSEs arising from loss of or disturbance to FLL. This is on the basis of the scale of the permanent habitat that would be lost, the limited duration of the temporary loss of habitat and that expectation that the mitigation measures proposed by the other developments would be implemented.

CONSTRUCTION EFFECTS ARISING FROM DUST DEPOSITION ON FLL IN COMBINATION WITH DEVELOPMENTS ID102 AND ID103

C.4.60 The potential for dust deposition effects on FLL arising from the Proposed Development together with ID102 and ID103 was addressed in the updated HRAR submitted at D6. It was concluded that there would be no AEoI of any European site. In relation to ID102 it was stated in the PEIR that mitigation measures were proposed, as with the Proposed Development, to address construction dust impacts. Good practice measures to manage dust effects were proposed in the PEIR for ID102 and the Scoping Report for ID103 to be included within the CEMPs. No IPs commented on this at D7.

C.4.61 The ExA is satisfied that there would not be an AEoI of any of the European sites alone as a result of in-combination construction LSEs arising from dust deposition on FLL. This is on the basis that the Applicant's proposed mitigation measures set out in the REAC [REP9-019] are appropriate, would effectively mitigate the identified effects and would be incorporated into the CEMP, as secured by R14 of the dDCO [REP10-024]. In addition, it can be expected that the mitigation measures proposed by the other developments would be implemented.

OPERATIONAL EFFECTS FROM ACCIDENTAL RELEASES OF WATER-BORNE POLLUTANTS ON THE EUROPEAN SITES FROM THE PROPOSED DEVELOPMENT ALONE

C.4.62 It was determined in the HRAR that there could be an LSE from accidental releases of water-borne pollutants on FLL in relation to otter associated with the River Derwent SAC and Lower Derwent Valley SAC; and bird species associated with the Lower Derwent Valley SPA and Ramsar site and Humber Estuary SPA and Ramsar site. Mitigation measures would be contained in the detailed drainage design, the approval of which is secured by dDCO R10. This requires that the surface water drainage scheme must be "*substantially in accordance*" with the principles set out in the Surface Water Drainage Strategy (SWDS), contained in ES Chapter 12 Appendix 12.3 [REP2-043]. The proposed measures include containment measures to collect potentially contaminated surface water runoff and appropriate oil storage and management systems. It was concluded in the HRAR that there would be no operational AEoI of any European site arising from this pathway. NE stated its agreement to this in [AS-011].

C.4.63 NE noted in its D2 submission [REP2-085] that 'substantially' was not defined in the dDCO and in the absence of that considered that there was uncertainty about whether changes could be made to the proposed mitigation which could result in the measures committed to in the HRAR not being strictly implemented and the conclusions of the HRA being undermined. The Applicant responded at D3 [REP3-020] that without use of 'substantially', 'in accordance with' could be construed as meaning 'exactly the same as', and that would be inappropriate for inclusion in R10 (or any DCO requirement) as the SWDS is a final scheme to be developed based on the detailed design of the Proposed Development and any update in legislation or guidance. NE restated within the dSoCG submitted at D5 [REP5-017] that it would welcome clarification of the definition of 'substantially'. At D6 it confirmed [REP6-050] that it agreed that dDCO R10 appropriately secured the relevant surface water drainage measures but reiterated its point about the dDCO terminology, as it did at D7. The Applicant responded at D7 [REP7-017] that, in order to provide more certainty, the procedure for discharge of the requirements set out in dDCO Schedule 11 would be amended to require that a statement was submitted alongside an application to discharge a Requirement to confirm that its content (which would include mitigation) did not lead to a change to the HRA conclusions. NE confirmed at D8 that, subject to the agreed update being made, its concerns had been resolved [REP8-038]. The Applicant's proposed wording was included in the dDCO submitted at D8 [REP8-005].

C.4.64 Biofuelwatch raised a concern in its WR [REP2-073] about a risk of amine and nitrosamine contamination of cooling water released into the River Ouse impacting on the European sites. The Applicant explained at D3 [REP3-020] that there would be no potential for water containing amines to be discharged to the water environment as the process water treatment plant would remove the amines from the water stream for containment and treatment offsite.

C.4.65 The ExA is satisfied that there would not be an AEoI of any of the European sites arising from operational LSEs from accidental releases of water-borne pollutants on the European sites from the Proposed Development alone. This is on the basis that the drainage scheme would have to accord with the measures contained in the SWDS [REP2-043], which the ExA considers to be appropriate and would mitigate potential water pollution effects, and which are secured by dDCO R10 [REP10-024].

OPERATIONAL EFFECTS FROM TREATED FLUE GAS TO AIR EMISSIONS (ACID DEPOSITION ALONE AND IN COMBINATION WITH DEVELOPMENTS ID1, ID4, ID47 AND ID92, AND NITROGEN DEPOSITION IN COMBINATION WITH DEVELOPMENTS ID1, ID4, ID47 AND ID92 ON THORNE MOOR SAC; ACID DEPOSITION AND NITROGEN DEPOSITION ON LOWER DERWENT VALLEY SAC AND RAMSAR SITE ALONE AND IN COMBINATION)

C.4.66 It is explained in the HRAR that the air quality modelling was based on the following conservative assumptions, which resulted in highly precautionary modelled outcomes:

- Meteorological data for 2016 – 2020 was used with the results from the maximum (ie, worst) year presented.
- The two bioenergy with carbon capture and storage (BECCS) biomass units would both operate at continuous full load (8,760 hrs/year), which in reality would be unlikely to occur.
- Assessment of maximum impacts anywhere in a designated site, irrespective of area represented by the maximum.
- Assessment against the lower threshold of the recommended critical levels (CLe) and CLos.
- ID1, ID4 and ID47 would all be operational at the same time as the Proposed Development and would all operate at continuous full load (ie, 8,760 hrs/year), which in reality was an extremely unlikely scenario, so represents a conservative worst-case assessment of annual mean impacts.

C.4.67 Paragraphs 4.1.20 to 4.1.25 of the HRAR propose operational stage mitigation for flue gas emissions of nitrogen deposition and acid deposition and identify two proposed design changes to the main stack: reducing the concentration of sulphur dioxide (SO_2) emissions from the two BECCS biomass units by 40% compared to the Best Available Techniques (BAT) Environmental Assessment Level (EAL); and increasing the exit temperature of flue gases from the BECCS units from 80ºC to 100ºC. The purpose of these measures would be to increase buoyancy in the flue gases leaving the main stack, thereby improving dispersion of all pollutants; and to reduce the concentration of SO_2 being emitted, thereby reducing the Proposed Development's contribution to acid deposition at the identified sensitive habitats. These measures would be secured through the proposed variation to the existing Drax Environmental Permit (EP), for which the application was duly made to the EA in May 2023.

C.4.68 It was predicted in the application HRAR [APP-185] that following mitigation the modelled maximum acid deposition impact from the Proposed Development alone would be 1.1% of the CLo for the Lower Derwent Valley SAC and Ramsar site. It was concluded that as the modelling was based on several conservative assumptions (set out in paragraph 4.2.174) the impact would be analogous to 1% of the CLo and would not result in any perceptible changes to the condition of function of the qualifying habitat and therefore no AEoI. In combination with other plans and projects, acidification was modelled to be 1.9% of the CLo. The Applicant concluded

(paragraph 4.3.28) no AEoI based on the conservative assumptions applied to the modelling and therefore the highly precautionary outcomes, and the magnitude of the modelled acid deposition.

C.4.69 In respect of Thorne Moor SAC, the modelled impacts for NH_3 (1.1%), nitrogen deposition (1.7%) and acid deposition (1.9%) resulting from the Proposed Development in combination with other plans and projects exceeded the CLes and CLos, respectively. The Applicant concluded (paragraphs 4.3.39 to 4.3.43) that the exceedances were only marginally above the CLes and CLos, that no perceptible effects on the SAC vegetation were predicted to arise and therefore no AEoI.

C.4.70 The Applicant concluded that there would be no AEoI of any European site resulting from operational emissions to air from the Proposed Development alone or in combination.

C.4.71 NE raised concerns in its RR [AS-011] about the following operational impacts from aerial emissions, which are addressed in further detail below:

- Acid deposition on the Lower Derwent Valley SAC/ Ramsar site alone and in combination.
- Nitrogen deposition on the Thorne Moor SAC in combination and the River Derwent SAC alone and in combination.
- NH_3 concentrations on the Thorne Moor SAC in combination.

C.4.72 Biofuelwatch also raised concerns in its WR [REP2-073] about operational NH_3 and acid and nitrogen deposition impacts on the European sites and confirmed at D3 [REP3-024] that it shared NE's concerns.

C.4.73 Potential impacts of nitrogen deposition on the River Derwent SAC were not included in the air quality assessment contained in the application ES air quality chapter [APP-042]. They were included in the revised dispersion modelling that was subsequently undertaken (set out in [REP2-065]) which predicted that with mitigation the maximum annual mean nitrogen deposition would be 0.3% of the CLo alone and 0.7% in combination, ie the CLo threshold would not be exceeded.

C.4.74 In response to a request by NE in its RR [AS-011] for additional assessment of the potential for effects on the River Derwent SAC from nitrogen deposition the Applicant undertook additional analysis and survey work. NE had requested that (in the absence of CLos) proxy habitats were used to enable air quality dispersion modelling against proxy habitats for the River Derwent SAC. The survey work undertaken to confirm the appropriate habitats for use in dispersion modelling of proxy habitats for the River Derwent is reported in HRAR Appendix 7 [REP2-107]. It was concluded as a result that the features of the SAC were not sensitive to nitrogen (or acid) deposition.

C.4.75 In relation to NE's concerns raised in its RR about the impacts of acid deposition, nitrogen deposition and NH_3 the Applicant provided information within [AS-038] but confirmed that it was in continuing discussion with NE about the additional information that it required.

C.4.76 In its response to ExQ1 [REP2-060] the Applicant stated that updated dispersion modelling had been undertaken to account for updated operational emissions abatement of SO_2 and to reflect an updated approach to the assessment of Keadby 2, whereby it was included in the future baseline rather than the in-combination assessment. It explained that the abatement mitigation enabled a greater reduction

in SO_2 mass emissions from the BECCS units, which leads to a corresponding reduction in the contribution to acid deposition. The annual Emission Limit Value (ELV) for SO_2 had been reduced to 45 milligrams/cubic nanometre for the BECCS units.

C.4.77 The Applicant explained that full details of the modelling were provided in Air Quality Technical Note 2 – Rev 01 (AQ TN2) [REP2-065], which contained revised figures for pollutant deposition. The acid deposition rates were lower at all of the European sites than previously predicted. Acid deposition at the Lower Derwent Valley SAC and Ramsar site had reduced to 0.96% of the CLo alone and 1.56% in combination, and to 0.6% alone and 1.49% in combination at Thorne Moor SAC. In-combination nitrogen deposition was predicted to reduce to 1.25% of the CLo and in-combination NH_3 concentrations were predicted to reduce to 0.58% of the CLe at Thorne Moor SAC.

C.4.78 In response to NE's RR and in support of maintaining its conclusion of no AEoI of the European sites where the CLo/ CLe was exceeded, the Applicant pointed in [REP2-060] to the historical reductions in SO_2 nationally and regionally and the consequent effects on acid deposition, and the likelihood that further reductions would occur. It acknowledged that this was not certain and could not be relied upon when considering the potential for AEoI. It also stated that it had completed site surveys of parts of the Lower Derwent Valley SAC/ Ramsar site, the outcomes of which were provided in Appendix 7 [REP2-107] of the updated HRAR. It was acknowledged by the Applicant that the survey work was completed outside of the optimal period for botanical survey but explained that a number of botanical species could still be identified. The surveys found evidence of agricultural improvement within a number of field units within and bordering the Lower Derwent Valley, which the Applicant considered suggested that the surveyed locations are likely to be relatively insensitive to additional aerial nitrogen and acid deposition inputs. It maintained its position that the level of exceedance of the pollutants was insufficient to result in an AEoI.

C.4.79 NE, in [REP2-085], stated that to ensure modelling uncertainty complies with the precautionary principle it was essential for conservative assumptions to be built into the model in order to reflect a realistic worst case. It acknowledged that this could result in overestimates of pollutant deposition or concentration but considered that these could not be discounted. It could not be concluded that a process contribution over 1% was analogous to 1% on the basis that certain assumptions will overestimate concentrations.

C.4.80 NE also noted that the Applicant had considered amine impacts for ecological receptors only in terms of deposition and not concentration, and that there was potential for amines to react in the atmosphere in a similar way to NH_3, a pollutant in its own right. It stated that recent reviews of current scientific understanding undertaken by the EA and the UK's Air Quality Technical Advisory Group (AQTAG) had suggested that the impact of atmospheric breakdown products from emitted amines may need to be considered in addition to deposition impacts.

C.4.81 At D3 the Applicant highlighted [REP3-020] that it had provided an updated assessment of air quality effects on European sites in relation to habitats at the River Derwent SAC [REP2-107]; within AQ TN2 [REP2-065], which contained updated dispersion modelling results; and within the updated HRAR [REP2-101] submitted at D2. However, it stated that predicted concentrations of total amines in the atmosphere would be a maximum of 0.03% of the NH_3 CLe over the designated sites, and that total concentrations of nitrosamines and nitramines would be a

maximum of 0.001% of the NH_3 CLe. It considered that on the basis of the extremely low concentrations required to meet conservative criteria relating to human health the risk of adverse effects on ecological systems was also likely to be negligible.

C.4.82 NE confirmed at D4 [REP4-041] that the additional information provided by the Applicant had addressed all of its concerns. It was satisfied that the Proposed Development would not have an adverse effect on any European site, subject to the HRA being further updated accordingly and the proposed mitigation being adequately secured.

C.4.83 In relation to impacts of acid deposition from aerial emissions on the Lower Derwent Valley SAC and Ramsar site alone and in combination, NE noted the revised dispersion modelling results as set out in AQ TN2 and the updated HRAR, which predicted lower contributions to the CLo from the Proposed Development than previously predicted. It referenced the habitat survey work and analysis undertaken by the Applicant detailed in HRAR Appendix 7 [REP2-107] to confirm the habitats present along the River Derwent SAC and Lower Derwent Valley SAC. It agreed that the survey data evidenced agricultural improvement within a number of field units within and bordering the Lower Derwent Valley which suggested that the surveyed locations were likely to be relatively insensitive to additional aerial nitrogen and acid deposition inputs. It also noted that the Applicant had provided a habitat analysis report for the Lower Derwent Valley SAC (HRAR Appendix 8 [REP3-009]) based on NE survey data, which concluded that neutral grassland was the most abundant broad habitat type and that more of the plots sampled were in the 'calcareous' rather than 'acid' or 'acid-neutral' pH ranges. It agreed that it was therefore more appropriate to apply the CLo for calcareous grassland rather than acid, which allowed for greater pH buffering capacity and so potentially makes the site less sensitive to acid deposition.

C.4.84 NE considered that the proposed monitoring, recording, and reporting to the EA was appropriate to ensure emissions from the Proposed Development remained within the limits used for the assessments. In relation to its recommendation that the Applicant undertake operational monitoring at the European sites it acknowledged the Applicant's concern that such monitoring would be unlikely to be able to distinguish between impacts arising from the Proposed Development and from other sources. It clarified that the purpose of the monitoring would be to support the Applicant's claims that acid deposition and other pollution was decreasing at the European sites and also that the precautionary assumptions applied to the modelling were appropriate. However, it accepted that the measure was unnecessary as it would not be possible to identify triggers for further measures and confirmed that it did not require such monitoring to be included in the DCO.

C.4.85 In respect of potential impacts of nitrogen deposition on Thorne Moor SAC in combination, NE noted the updated dispersion modelling figures and the additional site-specific information provided in the updated HRAR to address how the deposition could affect the Conservation Objectives. The updated HRAR provided clarification of the relevance to the SAC of the referenced NE Commissioned Report 210, including by comparing the species referenced within the SAC citation to 2019 data on the SAC produced by the Thorne and Hatfield Moors Conservation Forum. NE agreed that the Applicant's conclusion that the level of deposition and the potential consequential vegetative change continues to fall within the bounds of natural variation and would lead to negligible (and imperceptible) effects on the SAC appeared justified based on the evidence presented and the overall comparatively low levels of in-combination nitrogen deposition.

C.4.86 In relation to potential impacts of nitrogen deposition on the River Derwent SAC alone and in combination, NE noted the information provided in HRAR Appendix 7 on survey work undertaken by the Applicant to confirm the habitats present and the most appropriate habitats to use as proxy habitats for the purposes of the air quality modelling. It was concluded that 'fen, marsh and swamp' habitat was the most appropriate and the associated CLo of 15 kilograms of nitrogen per ha per year (kgN/ha/year) was identified. NE considered that this CLo was appropriate and sufficiently precautionary. It noted that the impact of the Proposed Development according to the updated modelling figures was 0.4% of the CLo alone and 0.7% in combination. It also noted the information provided in HRAR Appendix 6 [APP-194] that the SAC is 'skewed' towards phosphate limitation, which also indicates that that there would be a limited impact on the qualifying features of the SAC from nitrogen deposition. Appendix 6 explains that where phosphate is the primary limiting nutrient additional inputs of nitrogen have limited effects on plant productivity. The Applicant submitted an updated version of HRAR Appendix 7 (and ES Appendix 6.5 [REP8-012]) at D8 to correct an error in the in-combination figures, where the CLe percentage had been incorrectly rounded down to 0.6% instead of up to 0.7% [REP8-014]. NE had highlighted this and confirmed in [REP4-041] that this was not a point of disagreement.

C.4.87 NE highlighted that Table 3.6 of the updated HRAR [REP2-101] identified that the River Derwent SAC was not sensitive to nitrogen or acid deposition (notwithstanding that the HRAR did subsequently include the assessment of the proxy CLo for nitrogen deposition), although the UK APIS (as of April 2022) indicates that the SAC is sensitive to both pollutants. However, NE considered that the information provided in the HRAR relating to the high acid buffering capacity and impact of acid deposition on otter habitat and prey indicated that the Conservation Objectives of the SAC would not be undermined by the modelled acid deposition.

C.4.88 In respect of in-combination impacts from NH_3 on the Thorne Moor SAC, NE noted the revised dispersion modelling results contained in AQ TN2 [REP2-065], particularly as a result of the removal of the now operational Keadby 2 Power Plant from the in-combination assessment and the consequential decrease in the NH_3 concentration on the SAC from 1.1% to 0.6% of the CLo. It considered that an LSE could be ruled out.

C.4.89 At ISH3 Biofuelwatch raised concerns that no reference had been made to uncertainties in the nitrogen deposition modelling [REP4-037]. The Applicant explained that a reasonable worst-case scenario is inherently taken into account in the modelling and provided further details in its updated Response to Issues Raised at D3 [REP4-028].

C.4.90 In its comments on the D4 submissions [REP5-030] Biofuelwatch queried what level of cumulative (in-combination) uncertainty NE had assumed when assessing whether nitrogen and acid deposition at Thorne Moor SAC fell within the bounds of natural variation. It also questioned why NE considered "*significant increased long-term*" nitrogen and acid deposition on the Lower Derwent Valley sites and Thorne Moor SAC, even if within the bounds of natural variation, to be acceptable when CLos are exceeded.

C.4.91 Both NE [REP6-050] and the Applicant [REP6-032] responded to Biofuelwatch's comments at D6. NE acknowledged that the use of modelling to predict pollutant deposition levels was subject to uncertainty. It noted that the Applicant had used precautionary/ conservative assumptions in the model to mitigate for the uncertainty and that the modelling had been undertaken in accordance with good practice. It

considered that there was nothing to suggest a need for further uncertainty to be applied to the assessment. It agreed with the conclusions in the HRAR that the Proposed Development would not impact on measures to reduce emissions from existing sources and from the dominant sources of nitrogen deposition in the area. It noted that the proposed mitigation would substantially decrease acid deposition from the Proposed Development and would be ensured though a monitoring condition in the EP. It considered that the predicted additional in-combination quantities of acid deposition and nitrogen deposition would not undermine the Conservation Objectives even though the CLos are already exceeded at the protected sites.

C.4.92 The Applicant responded that the deposition experienced at the designated sites varied considerably between years and the impacts of the Proposed Development would be considerably lower than the natural inter-annual variation in deposition. It also highlighted that NE had agreed that use of the 'calcareous grassland' CLo for acid deposition, rather than the 'acid grassland' CLo, was appropriate for the Lower Derwent Valley, and that therefore the CLo was not exceeded.

C.4.93 The Applicant provided additional justification for its conclusions in relation to operational acid deposition on Thorne Moors SAC in the updated HRAR submitted at D6 [REP6-021]. It highlighted that annual SO_2 emissions from Drax Power Station had fallen substantially over recent years, in line with EP requirements. There had been a reduction in SO_2 emissions from approximately 35 kilotonnes in 2012 to approximately 5 kilotonnes in 2020. It explained that as SO_2 has approximately 16 times the acidifying potential of NO_x, reductions in SO_2 emissions lead to a proportionately greater reduction in acidification potential. The UK set targets to reduce SO_2 emissions by 59% by 2020 and by 88% by 2030 compared to 2005 emissions and achieved the 2020 target "*with headroom*". 2020 data indicates that SO_2 UK emissions were 83% lower than in 2005. The Applicant acknowledged that the trend according to the national targets could not be fully applied at a regional or local level and solely relied on in determining potential for AEoI but considered that the information about future likely national SO_2 reductions supported its conclusion of no AEoI.

C.4.94 Biofuelwatch reiterated its concerns about uncertainties in the Applicant's modelling approach at D6 [REP6-034] and commented on NE's D6 response [REP6-050] at D7 [REP7-018]. It considered that the Applicant's modelling predictions may have underestimated the increase in pollution and that any exceedance of the CLos would result in harm. The Applicant submitted a comprehensive response to Biofuelwatch's D6 and D7 comments at D7 [REP7-017] and D8 [REP8-026]. It explained its approach to the modelling undertaken and how it represented a conservative approach. Biofuelwatch responded to [REP7-017] at D8 [REP8-034]. It confirmed that its concerns remained [REP8-034].

C.4.95 In its comments on the RIES [REP9-030 and REP9-031] Biofuelwatch reiterated its view that insufficient consideration had been given within the Applicant's assessment to uncertainties and that it was not sufficiently precautionary. It provided examples of some of the uncertainties about which it had previously raised concerns: no allowance made for modelling prediction uncertainties arising from the modelling software; no validation reports provided for the modelling software version used; although the deposition velocities used by the Applicant were recommended by the AQTAG in 2014 AQTAG did not state they were worst case nor supply supporting evidence; and uncertainties arising from the assumption that the flue gases from the BECCS and non-BECCS units would mix completely.

C.4.96 The Applicant responded to these points in [REP10-018], including cross-references to relevant information contained in previous submissions, such as [REP2-067], [REP3-009], [REP7-017], [REP8-029] and [PDA-002]. It confirmed that the only European site that would, following mitigation, experience an exceedance of 1% of the CLo for nitrogen deposition was Thorne Moor SAC, in combination with other plans and projects. It stated, consistent with NE advice, that an exceedance of thresholds did not automatically result in a conclusion of harm to a European site or frustrate the site's Conservation Objectives. It led to the need for further assessment to investigate the potential for harm, as set out in section 4.3 of the HRAR. The Applicant highlighted that NE had agreed its conclusion of no AEoI of any European site, as evidenced in the final SoCG [REP8-019].

C.4.97 As a result of updates on 25 May 2023 to background pollutant concentration and deposition data held by APIS the Applicant submitted Air Quality Technical Note 3 at D8 (AQ TN3) [REP8-030]. It set out the changes to the air quality assessment resulting from the changes to the APIS data, which led to reduced total pollutant concentrations and deposition on the European sites. However, following discussion with and advice from NE AQ TN3 was withdrawn at D9, on the basis of the advanced stage of the Examination. It is stated by the Applicant in [REP9-024] that NE confirmed that it was "*satisfied with the assessment and the approach taken based on the best available information at the time that the assessment was undertaken*". Consequently, the updated HRAR [REP9-021] submitted at D9 contained minor updates and corrected minor textual errors contained in the previous version but did not reflect the changes resulting from the APIS updates as set out in AQ TN3.

C.4.98 In its comments on the RIES [REP9-030] Biofuelwatch expressed its view that the assessment of potential impacts from amines and their breakdown products was not robust. This was on the basis that it was made without determining levels of amines arising from biomass combustion; background levels of amines and their breakdown products; and other potential sources of amines and their breakdown products which may combine with the emissions from the Proposed Development. In the Applicant's response to this concern [REP10-018] it referred back to previous relevant responses contained in [REP8-026 and REP9-023]. It confirmed its view that its assessment of the deposition of amines and their degradation products was appropriately conservative.

C.4.99 The ExA notes Biofuelwatch's concerns. However, the ExA is satisfied that there would not be an AEoI of the European sites arising from operational LSEs from treated flue gas to air emissions (acid deposition alone and in combination and nitrogen deposition in combination on Thorne Moor SAC; and acid deposition and nitrogen deposition on Lower Derwent Valley SAC and Ramsar site alone and in combination). This is on the basis of the above evidence and information provided by the Applicant and NE.

PROPOSED ADDITIONAL CONTROLS FOR AERIAL EMISSIONS DURING OPERATION ON THE LOWER DERWENT VALLEY SAC/ RAMSAR SITE, THORNE MOOR SAC, RIVER DERWENT SAC, AND SKIPWITH COMMON SAC

C.4.100 In response to NE's RR [AS-011] the Applicant stated that the Proposed Development would be regulated by the EA under the Environmental Permitting Regulations, which would control its aerial emissions, including compounds associated with acid deposition including but not limited to sulphur dioxide (SO_2) [AS-038]. The Applicant had submitted an application to the EA to vary its existing

EP for Drax Power Station, which included a decrease in SO_2 concentrations from the units associated with BECCS (Units 1 and 2), due to a quencher system which reduces the sulphur load which enters the absorber system and which eventually is emitted to air. The HRA was based on the limits included in the variation application, which applied a realistic worst-case scenario.

C.4.101 In its response [REP2-060] to ExQ1 [PD-011] the Applicant confirmed that the existing EP contains mitigation and monitoring requirements and that similarly the varied EP would contain the proposed operational mitigation and monitoring arrangements for the Proposed Development. It also responded to NE's recommendation, as reflected in Rev 02 of the dSoCG [REP-020], that monitoring of the European sites should also be carried out for the identified pollutants and a relevant requirement included in the DCO. The Applicant considered that this monitoring was not possible and would not in any event yield useful information. It was not aware of any monitoring technique which would be capable of separating (and therefore detecting) pollutants from the Proposed Development from the other plans and projects considered in the ICEs assessment and from all other sources.

C.4.102 NE agreed, in its response to ExQ1 [REP2-085], that it was appropriate for arrangements for monitoring of emissions from the Proposed Development to be contained within the varied EP. It reiterated its suggestion that the protected sites should be monitored in addition.

C.4.103 The Applicant responded at D3 [REP3-020]. It confirmed that its position remained as set out at D2 and highlighted that since NE had raised this concern it had provided updated dispersion modelling information within AQ TN2 [REP2-065] and an updated assessment within a revised HRAR [REP2-101] of air quality effects on the European sites. The Applicant considered that no additional air quality monitoring and mitigation measures were required.

C.4.104 NE confirmed at D4 [REP4-041] that on the basis of the updated dispersion modelling and additional information on mitigation provided by the Applicant it agreed with the assessment conclusions.

C.4.105 In accordance with National Policy Statement (NPS) EN-1, the ExA has assumed that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced and does not consider there to be any reasons why the EP variation application, as applied for, would not be granted as no specific concerns that could not be acceptably addressed were identified during the Examination. The ExA is satisfied that the controls that would be contained in the varied EP, on which the HRA was based, would adequately regulate the aerial emissions.

AEOI ASSESSMENT OUTCOMES - SUMMARY

Proposed Development alone and in combination

C.4.106 The Applicant's HRAR concluded that an AEoI can be excluded on the European sites listed in Table 1 above from the Proposed Development alone and in-combination with other plans and projects. These conclusions were agreed with NE [REP8-019]. Biofuelwatch had remaining concerns at the end of the Examination [REP10-026].

C.4.107 Some of the conclusions in the Applicant's HRAR were subject to Examination though ExA written questions, ISHs and Rule 17 requests for information. Based on the findings of the Examination, the ExA is satisfied that an AEoI of all of the

European sites and their qualifying features can be excluded from the Proposed Development alone and in-combination with other plans or projects.

C.5 HRA CONCLUSIONS

C.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 Proposed Development with respect to adverse effects on potentially affected sites must be assessed by the SoS.

C.5.2 Ten European sites and their qualifying features were considered in the Applicant's assessment of LSEs:

- Humber Estuary Ramsar site.
- Humber Estuary SAC.
- Humber Estuary SPA.
- Lower Derwent Valley Ramsar site.
- Lower Derwent Valley SAC.
- Lower Derwent Valley SPA.
- River Derwent SAC.
- Skipwith Common SAC.
- Thorne and Hatfield Moors SPA.
- Thorne Moor SAC.

C.5.3 The Applicant concluded that there would be no LSEs on the Thorne and Hatfield Moors SPA. This was disputed by Biofuelwatch.

C.5.4 LSEs were initially identified for the other nine sites, listed in Table 1 above, from the Proposed Development alone and in combination with other plans or projects. Subsequently, the Applicant concluded during the Examination that there would be no LSEs on Skipwith Common SAC and its qualifying features [REP6-021]. This conclusion was not disputed by IPs.

C.5.5 The methodology and outcomes of the Applicant's screening for LSEs on European sites was subject to some discussion and scrutiny, however, the sites and features for which LSEs were identified were not disputed by any IP, with the exception of Biofuelwatch in respect of the Thorne and Hatfield Moors SPA and its qualifying feature.

C.5.6 The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

C.5.7 Our findings are that, subject to the mitigation measures to be secured in the dDCO, an AEoI of the following sites from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed:

- Humber Estuary Ramsar site.
- Humber Estuary SAC.
- Humber Estuary SPA.
- Lower Derwent Valley Ramsar site.
- Lower Derwent Valley SAC.
- Lower Derwent Valley SPA.
- River Derwent SAC.

- Thorne Moor SAC.

C.5.8 The ExA considers that there is sufficient information before the SoS for ESNZ to enable them to undertake an AA in order to fulfil their duty under the requirements of the Habitats Regulation.

APPENDIX D: THE RECOMMENDED DCO

S T A T U T O R Y I N S T R U M E N T S

202* No.

INFRASTRUCTURE PLANNING

The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*

Made - - - -	***
Laid before Parliament	***
Coming into force	***

CONTENTS

PART 1
PRELIMINARY

1. Citation and commencement
2. Interpretation

PART 2
PRINCIPAL POWERS

3. Development consent etc. granted by this Order
4. Maintenance of authorised development
5. Operation of authorised development
6. Benefit of the Order
7. Consent to transfer benefit of the Order
8. Application and modification of statutory provisions

PART 3
STREETS

9. Street Works
10. Power to alter layout, etc., of streets
11. Construction and maintenance of altered streets
12. Temporary closure of public rights of way
13. Access to works
14. Agreements with street authorities

PART 4
SUPPLEMENTAL POWERS

15. Discharge of water
16. Authority to survey and investigate the land
17. Removal of human remains

PART 5
POWERS OF ACQUISITION

18. Power to override easements and other rights
19. Time limit for exercise of authority to acquire rights compulsorily
20. Compulsory acquisition of rights
21. Private Rights
22. Application of the 1981 Act
23. Acquisition of subsoil only
24. Modification of Part 1 of the Compulsory Purchase Act 1965
25. Rights under or over streets
26. Temporary use of land for constructing the authorised development
27. Temporary use of land for maintaining the authorised development
28. Statutory undertakers
29. Apparatus and rights of statutory undertakers in stopped up streets
30. Recovery of costs of new connections
31. Compulsory acquisition of land – incorporation of the mineral code

PART 6
OPERATIONS

32. Felling or lopping of trees and removal of hedgerows
33. Protective works to buildings

PART 7
MISCELLANEOUS AND GENERAL

34. Protective provisions
35. Application of landlord and tenant law
36. Operational land for purposes of the 1990 Act
37. Defence to proceedings in respect of statutory nuisance
38. Certification of plans and documents, etc.
39. Service of notices
40. Procedure in relation to certain approvals etc
41. Arbitration
42. Guarantees in respect of payment of compensation
43. Electronic communications
44. Crown rights

SCHEDULES

SCHEDULE 1 — AUTHORISED DEVELOPMENT
SCHEDULE 2 — REQUIREMENTS

SCHEDULE 3 — LEGISLATION TO BE DISAPPLIED
SCHEDULE 4 — STREETS SUBJECT TO STREET WORKS
SCHEDULE 5 — ALTERATION OF STREETS
PART 1 — TEMPORARY ALTERATION OF LAYOUT
PART 2 — PERMANENT ALTERATION OF LAYOUT
SCHEDULE 6 — PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED
SCHEDULE 7 — ACCESS TO WORKS
PART 1 — TEMPORARY MEANS OF ACCESS TO WORKS
PART 2 — PERMANENT MEANS OF ACCESS TO WORKS
SCHEDULE 8 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED OR IN WHICH RIGHTS MAY BE EXTINGUISHED
PART 1 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED
PART 2 — LAND IN WHICH RIGHTS MAY BE EXTINGUISHED
SCHEDULE 9 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS
SCHEDULE 10 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
SCHEDULE 11 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS
SCHEDULE 12 — PROTECTIVE PROVISIONS
PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
PART 3 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER
PART 4 — FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED
SCHEDULE 13 — DOCUMENTS AND PLANS TO BE CERTIFIED
SCHEDULE 14 — DESIGN PARAMETERS
PART 1 — DESIGN PARAMETERS ASSOCIATED WITH THE CARBON CAPTURE PLANT FOR UNIT 1
PART 2 — DESIGN PARAMETERS ASSOCIATED WITH THE CARBON CAPTURE PLANT FOR UNIT 2
PART 3 — DESIGN PARAMETERS ASSOCIATED WITH THE COMMON INFRASTRUCTURE REQUIRED FOR BOTH THE CARBON CAPTURE PLANT FOR UNIT 1 AND THE CARBON CAPTURE PLANT FOR UNIT 2

An application has been made to the Secretary of State for an order granting development consent under section 37 of the Planning Act 2008(**a**) ("the 2008 Act") in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**).

(**a**) 2008 c.29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011 (c.20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2021/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/254, S.I. 2017/572 and S.I. 2018/378.

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to chapter 3 of Part 6 of the 2008 Act and carried out in accordance with chapter 4 of Part 6 of the Infrastructure Planning (Examination Procedure) Rules 2010(**a**).

The Examining Authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2)(fn) of the 2008 Act made a report and recommendation to the Secretary of State.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**b**) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application on the terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(**c**), 115(**d**), 120(**e**), 122(**f**) and 123(**g**) of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202* and comes into force on [***] 202*.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**h**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**i**);

"the 1980 Act" means the Highways Act 1980(**j**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**k**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**l**);

"the 1990 Act" means the Town and Country Planning Act 1990(**m**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**n**);

(**a**) S.I. 2010/103, amended by S.I. 2012/635.
(**b**) S.I. 2017/572, amended by S.I. 2018/695, S.I. 2018/834 and S.I. 2018/942.
(**c**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**d**) As amended by section 160 of the Housing and Planning Act 2016 (c.22) and section 43 of the Wales Act 2017 (c.4).
(**e**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**f**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**g**) Ibid.
(**h**) 1961 c.33.
(**i**) 1965 c.56.
(**j**) 1980 c.66.
(**k**) 1981 c.66.
(**l**) 1984 c.27.
(**m**) 1990 c.8.
(**n**) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

"the 2008 Act" means the Planning Act 2008(**a**);

"access and rights of way plans" means the plans of that name identified in the table at Schedule 13 (documents and plans to be certified) and which are certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;

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

"AGL" means above ground level;

"AOD" means above ordnance datum;

"apparatus" has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act except that unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

"authorised development" means the development described in Schedule 1 (authorised development) and any other development within the meaning of section 32 (meaning of "development") of the 2008 Act authorised by this Order;

"book of reference" means the document of that name identified in the table at Schedule 13;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"commence" means beginning to carry out a material operation, as defined in section 56(4) of the 1990 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than the permitted preliminary works (except where stated to the contrary) and "commencement", "commenced" and cognate expressions are to be construed accordingly;

"commissioning" means the process of assuring that all systems and components of numbered works 1(D)(i), (iii) and (v), and all systems and components of numbered works 1(D)(ii), (iv) and (vi) (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker and "commission" and other cognate expressions, in relation to the such numbered works, are to be construed accordingly;

"crown land plan" means the plan of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the crown land plan for the purposes of this Order;

"date of Unit 1 full commissioning" means the date on which the commissioning of numbered works 1(D)(i), (iii) and (v), is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 3 of Schedule 2 (requirements) to this Order;

"date of Unit 2 full commissioning" means the date on which the commissioning of numbered works 1(D)(ii), (iv) and (vi), is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 3 of Schedule 2 (requirements) to this Order;

"draft lighting strategy" means the document entitled draft lighting strategy identified in the table at Schedule 13 and which is certified by the Secretary of State as the draft lighting strategy for the purposes of this Order;

"Drax Power Limited" means Drax Power Limited (Company No. 04883589) whose registered office is at Drax Power Station, Selby, North Yorkshire YO8 8PH;

"Electricity Acts" means the Electricity Act 1989(**b**);

"electronic communication" has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000(**c**);

"electronic transmission" means a communication transmitted—

(**a**) 2008 c.29.
(**b**) 1989 c.29.
(**c**) 2000 c.7.

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

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

"environmental statement" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

"FGD plant" means the redundant flue gas desulphurisation plant situated within the Order limits and in respect of which Drax Power Limited has planning permission under the 1990 Act to undertake the decommissioning, demolition (including of 6 absorber units) and associated restoration works;

"flood risk assessment" means the document of that name identified in the table at Schedule 13 and which are certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

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

"framework construction worker travel plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the framework construction worker travel plan for the purposes of this Order;

"habitat regulations assessment" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the habitat regulations assessment for the purposes of this Order;

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

"holding company" has the same meaning as in section 1159 of the Companies Act 2006(**a**);

"land plans" means the plans of that name identified in the table at Schedule 13 and which are certified by the Secretary of State as the land plans for the purposes of this Order;

"limits of deviation" means the area up to the edge of the area shown for each numbered work on the works plans;

"maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development provided that any such activities do not give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly;

"NGESOL" means National Grid Electricity System Operator Limited (company number 11014226) whose registered office is at 1 to 3, Strand, London, WC2N 5EH;

"onshore carbon pipeline" means the onshore carbon dioxide transportation infrastructure into which the authorised development will connect;

"onshore carbon pipeline operator" means the party with responsibility for developing or operating the onshore carbon pipeline;

"Order land" means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

"Order limits" means the limits shown on the land plans and works plans within which the authorised development may be carried out and land acquired or used;

"outline construction traffic management plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

"outline local employment plan" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline local employment plan for the purposes of this Order;

(**a**) 2006 c.46.

"outline landscape and biodiversity strategy" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the outline landscape and biodiversity strategy for the purposes of this Order;

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

"permitted preliminary works" means all or any of—

(c) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, demolition of buildings and removal of plant and machinery;

(d) above ground site preparation for temporary facilities for the use of contractors;

(e) remedial work in respect of any contamination or other adverse ground conditions;

(f) diversion and laying of services;

(g) the provision of temporary means of enclosure and site security for construction;

(h) the temporary display of site notices or advertisements; or

(i) site clearance (including vegetation removal, demolition of existing buildings and structures);

"Planning Acts" means the Town and Country Planning Act 1947(**b**), the Town and Country Planning Act 1962(**c**), the Town and Country Planning Act 1971(**d**), and the 1990 Act;

"plot" means any plot as may be identified by reference to a number and which is listed in the book of reference and shown on the land plans;

"proposed surface water drainage strategy" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the proposed surface water drainage strategy for the purposes of this Order;

"register of environmental actions and commitments" means the document of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the register of environmental actions and commitments for the purposes of this Order;

"relevant planning authority" means the unitary council for the area in which the land to which the provisions of this Order apply is situated;

"requirements" means those matters set out in Schedule 2 (requirements) and "requirement" means any one of the requirements;

"statutory undertaker" means any person falling within section 127(8) (statutory undertakers' land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of chapter 1) of the Communications Act 2003(**e**);

"street" means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and part of a street;

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

"street works" means the works listed in article 9(1) (street works);

"subsidiary" has the same meaning as in section 1159 of the Companies Act 2006(**f**);

"traffic authority" has the same meaning as in section 121A (traffic authorities) of the 1984 Act(**a**);

(**a**) 1981 c.67.
(**b**) 1947 c.51 as repealed by the Town and Country Planning Act 1962 and the Planning (Consequential Provisions) Act 1990 (c.11).
(**c**) 1962 c.38 as repealed by the Town and Country Planning Act 1971 and the Planning (Consequential Provisions) Act 1990 (c.11).
(**d**) 1971 c.78 as repealed by the Planning (Consequential Provisions) Act 1990 (c.11).
(**e**) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30).
(**f**) 2006 c.46.

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

"Upper Tribunal" means the Lands Chamber of the Upper Tribunal;

"watercourse" includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain; and

"works plans" means the plans of that name identified in the table at Schedule 13 and which is certified by the Secretary of State as the works plans for the purposes of this Order.

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

(3) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between lines or points on a numbered work comprised in the authorised development and shown on the works plans and access and rights of way plans are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, "Work No. 1A" or "numbered work 1A"), is a reference to the work so designated in that Schedule and a reference to "Work No. 1" or "numbered work 1" means numbered works 1A to 1F inclusive and the same principle applies to such numbered works that contain letters.

(5) In this Order, the expression "includes" is to be construed without limitation.

(6) In this Order, references to any statutory body include that body's successor bodies.

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

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

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

Maintenance of authorised development

4.—(1) The undertaker may at any time maintain the authorised development.

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

Operation of authorised development

5.—(1) The undertaker is authorised to use and operate the authorised development.

(**a**) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999 (c.29), section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to, the Infrastructure Act 2015, S.I. 1999/1920 and S.I. 2001/1400.

(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.

Benefit of the Order

6. Subject to article 7 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for Work No. 1F in relation to which the provisions of this Order have effect for the benefit of the undertaker and NGESOL, Work No. 2 in relation to which the provisions of this Order have effect for the benefit of the undertaker and the onshore carbon pipeline operator, Work No. 8A in relation to which the provisions of this Order have effect for the benefit of the undertaker and Northern Powergrid Limited, and Work No. 8B in relation to which the provisions of this Order have effect for the benefit of the undertaker and BT Openreach Limited.

Consent to transfer benefit of the Order

7.—(1) Subject to the powers of this Order, 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; and

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

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (8), include references to the transferee or the lessee.

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

(a) the transferee or lessee is—

(i) the holder of a licence under section 6 of the Electricity Act 1989;

(ii) a holding company or subsidiary of the undertaker; or

(iii) in relation to a transfer or lease of any works within a highway a highway authority responsible for the highways within the Order land; or

(b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claim has been made and has been compromised or withdrawn;

(iii) compensation has been paid in full and final settlement of any such claim;

(iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

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

(5) The notification referred to in paragraph (4) must state—

(a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;

(b) subject to paragraph (6), the date on which the transfer will take effect;

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(7) The notification given must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notification.

(8) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—

(a) the benefit transferred or granted ("the transferred benefit") must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;

(b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and

(c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant 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.

Application and modification of statutory provisions

8.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

(a) section 23 (prohibition of obstructions, etc, in watercourses) of the Land Drainage Act 1991(**a**);

(b) any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(**b**);

(c) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order; and

(d) the provisions of the Neighbourhood Planning Act 2017(**c**) insofar as they relate to temporary possession of land under articles 25 (temporary use of land for carrying out the authorised development) and 26 (temporary use of land for maintaining the authorised development) of this Order.

(2) As from the date on which the authorised development (including the permitted preliminary works) is commenced any approval, grant, permission, authorisation or agreement made under the Planning Acts or Electricity Acts prior to that date is hereby excluded and does not apply but only insofar as such approval, grant, permission, authorisation or agreement relates to the Order limits and is inconsistent with the authorised development and anything approved under the requirements.

(3) As from the date on which this Order takes effect the undertaker must not commence, or to the extent already commenced must not continue to carry out, any works consented by the Drax Power (Generating Stations) Order 2019 other than as set out in this Order.

(4) The carrying out of Work No. 8A shall not be regarded as conflicting with or constituting non-compliance by any person with, any conditions of a planning permission granted under section 57(f) (requirement of planning permission) of the 1990 Act which relate to plots 01-108, 01-110 and 01-115 of the land plans or land adjacent to those plots outside of the Order limits.

(**a**) 1991 c.59. Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995 (c.25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c.29) and S.I. 2013/755.

(**b**) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c.21).

(**c**) 2017 c.20.

PART 3

STREETS

Street Works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) drill, tunnel or bore under the street;

(c) place and keep apparatus under the street;

(d) maintain apparatus under the street, change its position or remove it;

(e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and

(f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

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

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc., of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the streets—

(a) in the case of the streets specified in column 2 of the table in Part 1 (temporary alteration of layout) of Schedule 5 (alteration of streets) temporarily in the manner specified in relation to that street in column (3); and

(b) in the case of the streets specified in column 2 of the table in Part 2 (permanent alteration of layout) of Schedule 5 (alteration of streets) permanently in the manner specified in relation to that street in column (3).

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

(a) alter the level or increase the width of any kerb, footway, cycle track or verge;

(b) alter, remove, modify and restore street furniture;

(c) trim vegetation in the street; and

(d) make and maintain passing places.

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

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

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

Construction and maintenance of altered streets

11.—(1) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 1 (temporary alteration of layout) of Schedule 5 (alteration of streets) must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(2) The permanent alterations to each of the streets specified in Part 2 (permanent alteration of layout) of Schedule 5 (alteration of streets) must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed by the street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 10(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

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

(5) For the purposes of a defence under paragraph (3), a court must in particular have regard to the following matters—

(a) the character of the street including the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

(6) Paragraphs (1) to (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary closure of public rights of way

12.—(1) The undertaker, during and for the purposes of or incidental to constructing or maintaining the authorised development, may temporarily prohibit the use of, authorise the use of, alter or divert any public right of way and may for any reasonable time—

(a) divert the traffic or a class of traffic from the public right of way;

(b) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and

(c) subject to paragraph (2), prevent all persons from passing along the public right of way.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily prohibit the use of, authorise the use of, restrict the use of, alter or divert the public rights of way specified in column (2) of the table in Schedule 6 (public rights of way to be temporarily closed) to the extent specified in column (3) of that table.

(4) The undertaker must not temporarily, prohibit the use of, restrict the use of, authorise the use of, alter or divert—

(a) any public right of way specified in paragraph (3) without first consulting the street authority; and

(b) any other public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

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

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

(7) In this article expressions used in this article and in the 1984 Act have the same meaning.

Access to works

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

(a) form and lay out the temporary means of access in the location specified in Part 1 (temporary means of access to works) of Schedule 7 (access to works);

(b) form and lay out the permanent means of access in the location specified in Part 2 (permanent means of access to works) of Schedule 7 (access to works); and

(c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The undertaker must restore any access that has been temporarily created under this Order to the reasonable satisfaction of the street authority.

Agreements with street authorities

14.—(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) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;

(d) the undertaking in the street of any of the works referred to in article 9 (street works); or

(e) the adoption by a street authority which is the highway authority of works—

(i) undertaken on a street which is existing public maintainable highway; or

(ii) which the undertaker and highway authority agree to be adopted as public maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) specify a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

15.—(1) Subject to paragraphs (3), (4) and (7) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction 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 (right to communicate with public sewers) of the Water Industry Act 1991(**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 whose consent may be given subject to 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) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(7) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(**c**) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**d**) have the same meaning as in that Act.

Authority to survey and investigate the land

16.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development or upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

(a) survey or investigate the land;

(**a**) 1991 c.56. Section 106 was amended by sections 35(1), 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43), sections 32(2) and 99 of the Water Act 2003 (c.37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c.29).

(**b**) S.I. 2016/1154.

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

(**d**) 1991 c.57.

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required before entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority.

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

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 5

POWERS OF ACQUISITION

Power to override easements and other rights

17.—(1) Any authorised activity which takes place on land within the Order land (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article "authorised activity" means—

(a) the erection, construction or maintenance of any part of the authorised development;

(b) the exercise of any power authorised by the Order; or

(c) the use of any land within the Order limits (including the temporary use of land).

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

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

(a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

(i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

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

(6) Where a person deriving title under the undertaker by whom the land in question was acquired—

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(7) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

Time limit for exercise of authority to acquire rights compulsorily

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

(a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 21 (application of the 1981 Act).

(2) The authority conferred by article 25 (temporary use of land for constructing 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

19.—(1) Subject to paragraph (2) and article 25 (temporary use of land for constructing the authorised development), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for the authorised development or to facilitate it by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 20 (private rights) and article 27 (statutory undertakers), in the case of the Order land specified in column (1) of the table in Part 1 of Schedule 8 (land in which only new rights etc. may be acquired or in which rights may be extinguished) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants to the extent 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) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their

application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (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.

(7) This article is subject to article 43 (Crown rights).

Private Rights

20.—(1) Subject to the provisions of this article, all private rights over the Order land specified in column (1) of the table in Part 2 of Schedule 8 (land in which only new rights etc. may be acquired or in which rights may be extinguished) are extinguished to the extent specified in relation to that land in column (2) of that Part of that Schedule on commencement of any activity authorised by the Order which interferes with or breaches those rights.

(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 19 (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 acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the rights are acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights 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 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 27 (statutory undertakers) applies.

(6) Paragraphs (2) 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 land,

that any or all of those paragraphs do not apply to any right specified in the notice; or

(b) any agreement made at any time between the undertaker and the person in or to whom the right 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,

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

(8) References in this article to private rights over land include any right of way, trust, incident, restrictive covenant, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

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

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of the Act), for subsection 2 substitute—

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

(4) In section 5(2) (earliest date for execution of declaration) omit the words from "and this subsection" to the end.

(5) Section 5A (time limit for general vesting declaration) is omitted.

(6) In section 5B(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in 5A" substitute section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the seven year period mentioned in article 18 (time limit for exercise of authority to acquire rights compulsorily) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*".

(7) In section 6 (notices after extension of declaration), in subsection (1)(b) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(8) In section 7 (constructive notice to treat), in subsection (1)(a) omit the words "(as modified by section 4 of the Acquisition of Land Act 1981)".

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

"(2) But see article 22(3) (acquisition of subsoil only) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202* which excludes the acquisition of subsoil only from this Schedule.".

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 23 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition under this Order.

Acquisition of subsoil only

22.—(1) The undertaker may acquire compulsorily such rights in the subsoil of the land referred to in article 19 (compulsory acquisition of rights) as may be required for any purpose for which rights in that land may be acquired under that provision instead of acquiring rights in the whole of the land.

(2) Where the undertaker acquires rights in the subsoil of land, 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 only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires rights in a cellar, vault arch, or other construction forming part of a house, building or manufactory.

Modification of Part 1 of the Compulsory Purchase Act 1965

23.—(1) Part 1 of the 1965 Act (compulsory acquisition under Acquisition of Land Act 1946), as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the seven year period mentioned in article 18 (time limit for exercise of authority to acquire rights compulsorily) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*".

(3) In section 11A (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after "land" insert "under that provision"; and

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (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 18 (time limit for exercise of authority to acquire rights compulsorily) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*".

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

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see article 22(3) (acquisition of subsoil only) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*, which excludes the acquisition of subsoil only from this Schedule."; and

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 25 (temporary use of land for constructing the authorised development) or article 26 (temporary use of land for maintaining the authorised development) or article 32 (protective works to buildings) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*.".

Rights under or over streets

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

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

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

(a) any subway or underground building; or

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land 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 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for constructing the authorised development

25.—(1) The undertaker may, in connection with the construction of the authorised development—

(a) enter on and take temporary possession of—

(i) so much of the land specified in column (1) of the table in Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of the table; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

(b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;

(c) construct temporary works, haul roads, security fencing, bridges, structures and buildings on that land;

(d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;

(e) construct any works, on that land as are mentioned in Schedule 1 (authorised development); and

(f) carry out mitigation works required under the requirements in Schedule 2 (requirements).

(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 14 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 must not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the later of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning; or

(b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the later of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired or leased the land.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to the land or has 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 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;

(c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to street works); or

(d) restore the land on which any works have been carried out under paragraph (1)(e) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2 (requirements).

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker must not compulsorily acquire, acquire new rights over or impose restrictive covenants over, the land referred to in paragraph (1)(a)(i) under this Order.

(10) Nothing in this article precludes the undertaker from—

(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Part 1 of Schedule 8 (land in which only new rights etc. may be acquired or in which rights may be extinguished) under article 19 (compulsory acquisition of rights); or

(b) acquiring rights in the subsoil of that land under article 22 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 24 (rights under or over streets).

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

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

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

Temporary use of land for maintaining the authorised development

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

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

(b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (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 (6).

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

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

(11) In this article "the maintenance period" means the period of five years beginning with the earlier of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning except in respect of any part of the authorised development which is comprised of landscaping where "the maintenance period" means such period as set out in the landscape and biodiversity strategy which is approved by the relevant planning authority pursuant to requirement 7 beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

27. Subject to the provisions of Schedule 12 (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 plans within the Order land;

(b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land; and

(c) create and acquire compulsorily the new rights over land belonging to statutory undertakers within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

28. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of altered streets) or article 12 (temporary closure of public rights of way) any

statutory undertaker whose apparatus is under, in on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 12 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

29.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27 (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 27 (statutory undertakers), any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 28 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(**a**); and

"public utility undertaker" has the same meaning as in the 1980 Act.

Compulsory acquisition of land – incorporation of the mineral code

30. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**b**) are incorporated into this Order subject to the modifications that—

(a) paragraph 8(3) is not incorporated;

(b) for "the acquiring authority" substitute "the undertaker"; and

(c) for the "undertaking" substitute "authorised development".

PART 6

OPERATIONS

Felling or lopping of trees and removal of hedgerows

31.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

(a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;

(**a**) 2003 c.21.
(**b**) 1981 c.67.

(b) constituting a danger to persons using the authorised development; or

(c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), remove the hedgerows within the Order limits that may be required for the purposes of constructing the authorised development.

(5) The undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the public maintainable highway without the prior consent of the highway authority.

(6) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(**a**).

Protective works to buildings

32.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order land as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the later of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning.

(3) For the purpose of determining how the power under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in case falling within sub-paragraph (a), (c) or (d) specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d) the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is

(**a**) S.I. 1997/1160.

necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 40 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of five years beginning with the later of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article "protective works" in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or use of the authorised development; and

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or use of the authorised development.

PART 7

MISCELLANEOUS AND GENERAL

Protective provisions

33. Schedule 12 (protective provisions) has effect.

Application of landlord and tenant law

34.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

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

Defence to proceedings in respect of statutory nuisance

36.—(1) Where proceedings are brought under section 82(1) (summary of proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(**a**) in relation to a nuisance falling within section 79(1) (statutory nuisances and inspections therefore) of that Act 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, maintenance or decommissioning of the authorised development and that the nuisance is attributable to the construction or maintenance of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), or section 65 (noise exceeding registered level) of the Control of Pollution Act 1974(**b**); or

(ii) is a consequence of the construction, maintenance or decommissioning of the authorised development and that it cannot be reasonably avoided; or

(b) is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded) of that Act, do not apply where the consent relates to the use of premises by the undertaker for the purposes of, or in connection with the construction, maintenance or decommissioning of the authorised development.

Certification of plans and documents, etc.

37.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 13 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

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

Service of notices

38.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(**a**) 1990 c.43. Section 82 was amended by section 103 to the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

(**b**) 1974 c.40. 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.

(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 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at that time of service.

(4) Where for the purpose of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by the description of "owner", or as the case may be "occupier" of the land (describing it); and

(b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(**a**) 1978 c.30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

Procedure in relation to certain approvals etc

39.—(1) Where an application is made to or request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Schedule 11 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 11 (procedure for discharge of requirements) and where stated to the contrary if, within eight weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

(6) Schedule 11 (procedure for discharge of requirements) does not apply in respect of any consents, agreements, or approvals contemplated by the provisions of Schedule 12 (protective provisions) or any dispute under article 32(6) (protective works to buildings) to which paragraph (4) applies.

(7) In this article "consenting authority" means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 12 (protective provisions).

Arbitration

40.—(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) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

Guarantees in respect of payment of compensation

41.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

(a) a guarantee, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or

(b) an alternative form of security, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

(a) article 17 (power to override easements and other rights);

(b) article 19 (compulsory acquisition of rights);

(c) article 20 (private rights);

(d) article 24 (rights under or over streets);

(e) article 25 (temporary use of land for constructing the authorised development);

(f) article 26 (temporary use of land for maintaining the authorised development); and

(g) article 27 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Electronic communications

42.—(1) In this Order—

(a) references to documents, maps, plans, drawings, certificates or other documents, or to copies, include references to them in electronic form; and

(b) references to a form of communication being "in writing" include references to an electronic communication that satisfies the conditions in paragraph (2) and "written" and other cognate expressions are to be construed accordingly.

(2) The conditions are that—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission; and

(b) the communication is—

(i) capable of being assessed by the recipient;

(ii) legible in all material respects; and

(iii) sufficiently permanent to be used for subsequent reference.

(3) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(4) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (5).

(5) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date may not be less than seven days after the date on which the notice is given.

Crown rights

43.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description—

(a) identified as Crown land on the crown land plan;

(b) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(c) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or

(d) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

Signatory text

Name
Address — Parliamentary Under Secretary of State
Date — Department

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the administrative area of The North Yorkshire Council a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises the extension to the generating station known as the Drax Power Station, which has an existing gross electrical output capacity of over 50 megawatts, comprising all or any part of work number 1 in this Schedule—

Work No. 1— carbon capture plant as an extension to an existing generating station comprising—

(a) **Work No. 1A**— works to modify and upgrade the existing generating station water pre-treatment plant comprising updated technology retrofitted to the existing four sedimentation tanks;

(b) **Work No. 1B**— works to modify, upgrade and extend the existing generating station cooling water system including—

(i) modifications, upgrades and extension to existing generating station cooling water pumps, and reconfiguration of discharge manifold;

(ii) works for the distribution and usage of cooling water within the carbon capture plant and supporting systems including—

(aa) supply lines to the carbon capture plant;

(bb) filtering equipment and heat exchangers;

(cc) biocide / chemical dosing;

(dd) pipework connections from the reconfigured discharge manifold to heat exchangers and other components of the carbon capture plant; and

(iii) return into the existing generating station cooling infrastructure comprising return lines from the carbon capture plant to the existing generating station cooling towers;

(c) **Work No. 1C**— works to modify, upgrade and extend the existing generating station boilers and turbines for the carbon capture plant process steam connection comprising—

(i) **Work No. 1C(i)**— works in connection with Unit 1 of the existing generating station including—

(aa) extraction of steam from Unit 1 of the existing generating station including either or both of (i) interconnection through a boiler tap out of the hot reheat section of the host boiler from Unit 1 of the existing generating station, and (ii) interconnection into the host turbine from Unit 1 of the existing generating station;

(bb) modifications to the boiler and/or turbine from Unit 1 of the existing generating station;

(cc) pipelines and pipeline supports carrying steam from Unit 1 of the existing generating station to the combined power turbines and/or pressure reducing de-superheating stations including drains and flash vessels; and

(dd) return of condensate from the carbon capture plant to Unit 1 of the existing generating station including pipelines and pipeline supports carrying condensate to Unit 1 of the existing generating station interconnection back into the condensate system within Unit 1 of the existing generating station;

(ii) **Work No. 1C(ii)—** works in connection with Unit 2 of the existing generating station including—

(aa) extraction of steam from Unit 2 of the existing generating station including either or both of (i) interconnection through a boiler tap out of the hot reheat section of the host boiler from Unit 2 of the existing generating station and (ii) interconnection into the host turbine from Unit 2 of the existing generating station;

(bb) modifications to the boiler and/or turbine from Unit 2 of the existing generating station;

(cc) pipelines and pipeline supports carrying steam from Unit 2 of the existing generating station to the combined power turbines and/or pressure reducing de-superheating stations including drains and flash vessels; and

(dd) return of condensate from the carbon capture plant to Unit 2 of the existing generating station including pipelines and pipeline supports carrying condensate to Unit 2 of the existing generating station and interconnection back into the condensate system- within Unit 2 of the existing generating station;

(iii) **Work No. 1C(iii)—** processing of steam from Unit 1 and Unit 2 of the existing generating station by the carbon capture plant including—

(aa) up to two combined power steam turbines and generator sets including all balance of plant and ancillaries;

(bb) up to two combined power steam turbine buildings;

(cc) up to two pressure reducing de-superheating stations;

(dd) up to two pressure reducing de-superheating stations buildings; and

(ee) a new overground pipe bridge structure carrying steam, return condensate and connecting pipework including drainage points between the combined power steam turbines and the carbon capture plant;

(d) **Work No. 1D**— up to two carbon dioxide capture plants for Unit 1 and Unit 2 of the existing generating station comprising—

(i) **Work No. 1D(i**)— absorber and quench system for the carbon capture plant for Unit 1 of the existing generating station including—

(aa) one quench column; and

(bb) one absorber column;

(ii) **Work No. 1D(ii)—** absorber and quench system for the carbon capture plant for Unit 2 of the existing generating station including—

(aa) one quench column; and

(bb) one absorber column;

(iii) **Work No. 1D(iii)**— solvent regeneration system and rich solvent / lean solvent heat exchangers for the carbon capture plant for Unit 1 of the existing generation station including—

(aa) up to two regenerators;

(bb) main process and service rack including rich solvent / lean solvent heat exchangers; and

(cc) drums and vessels;

(iv) **Work No. 1D(iv)—** solvent regeneration system and rich solvent / lean solvent heat exchangers for the carbon capture plant for Unit 2 of the existing generation station including—

(aa) up to two regenerators;

(bb) main process and service rack including rich solvent / lean solvent heat exchangers; and

(cc) drums and vessels;

(v) **Work No. 1D(v)—** supporting infrastructure for the carbon capture plant for Unit 1 of the existing generating station including—

(aa) up to two gas / gas heat exchangers;

(bb) up to four flue gas booster fans;

(cc) solvent pumps; and

(dd) monitoring and metering equipment;

(vi) **Work No. 1D (vi)—** supporting infrastructure for the carbon capture plant for Unit 2 of the existing generating station including—

(aa) up to two gas / gas heat exchangers;

(bb) up to four flue gas booster fans;

(cc) solvent pumps; and

(dd) monitoring and metering equipment;

(vii) **Work No. 1D (vii)—** common solvent storage and make-up system infrastructure for the carbon capture plants for Unit 1 and Unit 2 of the existing generating station comprising up to four bunded solvent storage compounds;

(viii) **Work No. 1D (viii)—** common supporting infrastructure including—

(aa) a wastewater treatment plant;

(bb) up to eight chemical storage areas;

(cc) road tanker loading and unloading areas;

(dd) all firefighting systems including up to four fire water tanks; and

(ee) works connecting Work Nos. 1D(i) to 1D(vii) to Work No. 1E and the existing generating station;

(e) **Work No. 1E**— carbon dioxide processing and compression plant comprising—

(i) **Work No. 1E(i)**— carbon dioxide processing and compression plant for the carbon capture plant for Unit 1 of the existing generating station including—

(aa) up to eight carbon dioxide gas compressors enclosed in up to four buildings; and

(bb) up to two carbon dioxide dryers and associated treatment and exporting plant including filters, conditioners, recirculating compressors, heated safety valves, oxygen removal equipment, hydrogen generation, hydrogen storage, gas detection safety systems, metering and system process vents;

(ii) **Work No. 1E (ii)—** carbon dioxide processing and compression plant for the carbon capture for Unit 2 of the existing generating station including—

(aa) up to eight carbon dioxide gas compressors enclosed in up to four buildings; and

(bb) up to two carbon dioxide dryers and associated treatment and exporting plant including— filters, conditioners, recirculating compressors, heated safety valves, oxygen removal equipment, hydrogen generation, hydrogen storage, gas detection safety systems, metering and system process vents;

(iii) **Work No. 1E (iii)**— one carbon dioxide main vent stack and one silencer for the carbon capture plant for Unit 1 of the existing generating station;

(iv) **Work No. 1E (iv)—** one carbon dioxide main vent stack and one silencer for the carbon capture plant for Unit 2 of the existing generating station;

(f) **Work No. 1F**— integral electrical connections within the existing generating station and carbon capture plant including—

(i) upgrade to the existing 400 kV National Grid substation;

(ii) modifications and upgrade to the 132 kV air insulated switchgear including but not limited to circuit breakers, busbar disconnectors, and earth switches;

(iii) decommissioning and removal of existing oil-filled cabling, and installation of upgraded cabling as part of the connection from the 132 kV air insulated switchgear in Work No. 1F(ii) to the new distribution voltage infrastructure- in Work No. 1F(v);

(iv) destringing, upgrading and restringing of existing overhead lines as part of the connection from the switchgear in Work No. 1F(ii) to the new distribution voltage infrastructure in Work No. 1F(v);

(v) installation of new distribution voltage infrastructure including associated HV and LV transformers and distribution voltage cabling to and from the switchroom buildings and the combined power turbines;

(vi) installation of up to two combined power turbine power control cubicles and associated generator step-up transformers;

(vii) installation of up to thirty switchroom buildings; and

(viii) installation of facilities for storage of excess electrical power and / or for electrical load balancing.

And associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project referred to in Work No. 1 comprising—

Work No. 2— infrastructure to transport compressed carbon dioxide from Work No. 1E to storage and transport infrastructure operated by the onshore carbon pipeline operator comprising one of the following—

(g) a new carbon dioxide delivery terminal compound and pipelines including—

(i) a new underground or aboveground carbon dioxide pipeline connecting Work No. 1E with this Work No. 2(a);

(ii) a pigging station;

(iii) safety valves;

(iv) monitoring and metering equipment;

(v) filters;

(vi) system process vents;

(vii) a new underground or aboveground carbon dioxide pipeline connecting this Work No. 2(a) to a terminal point within the Order limits;

(viii) trenching works; and

(ix) pipeline field marker posts and cathodic protection test / transformer rectifier unit(s); or

(h) a new carbon dioxide delivery pipeline including—

(i) a new underground or aboveground carbon dioxide pipeline connecting Work No. 1E to a terminal point within the Order limits;

(ii) trenching works;

(iii) pipeline field marker posts and cathodic protection test / transformer rectifier unit(s); and

(iv) monitoring and metering equipment.

Work No. 3— supporting works in connection with and in addition to Work Nos. 1, 2 and 5 including—

(i) a new pipeline or pipelines connecting Work Nos. 1A and 1B to the existing generating station's on-site purge chamber;

(j) surface water collection and drainage pipe works to discharge to cooling towers;

(k) modification to and refurbishment of existing electrostatic precipitators of Unit 1 and Unit 2 of the existing generating station;

(l) cable connection back to existing generating station central control room;

(m) service and pipeline connections for supply of heat to wastewater treatment plant;

(n) replacement of the main generator transformers for Unit 1 and Unit 2 of the existing generating station;

(o) other minor auxiliary infrastructure required to support the carbon capture process;

(p) ground raising and ground preparation works;

(q) electricity, water, wastewater, control and telecommunications and other services;

(r) trenching works;

(s) below ground drainage works;

(t) security and site lighting infrastructure, including cameras, perimeter fencing and lighting columns;

(u) tree and hedge removal;

(v) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments;

(w) civil works and support structures;

(x) works required in order to protect existing utilities infrastructure;

(y) internal roadways, car parking, pedestrian network, cycle parking and hardstanding; and

(z) site drainage and waste management infrastructure, including relocation of existing infrastructure as required.

Work No. 4— works to facilitate the safe entry and navigation of construction vehicles for the purpose of construction access to Work Nos. 1 to 5 and 7 including—

(aa) road modifications;

(bb) temporary removal or reinstatement of structures, features and landscaping; and

(cc) temporary modification and subsequent reinstatement of external parts of structures and buildings.

Work No. 5— temporary construction laydown areas including—

(dd) car parking;

(ee) areas of hardstanding;

(ff) laydown areas for storage including of plant, equipment, materials and topsoil;

(gg) site and welfare offices, fabrication areas and workshops; and

(hh) electricity, water, waste water and telecommunications connections.

Work No. 6— habitat provision area including—

(ii) soft landscaping including planting;

(jj) landscape and biodiversity enhancement measures; and

(kk) security fencing, gates, boundary treatment and other means of enclosure.

Work No. 7— works to create a floodplain compensation area including—

(ll) partial removal of existing grassland or vegetation;

(mm) earthworks to include excavation and movement of material within the floodplain compensation area; and

(nn) landscape and habitat reinstatement and enhancement measures.

Work No. 8— works to facilitate the delivery of abnormal indivisible loads to the site comprising—

(oo) **Work No. 8A—** diversion of existing electrical 11 kV overhead lines including—

(i) removal or realignment of sections of existing electrical 11 kV overhead lines;

(ii) installation of new sections of electrical 11 kV overhead lines or new sections of electrical 11 kV underground cabling;

(iii) installation of new, or relocation, or replacement, or removal of existing, electrical overhead line poles;

(iv) removal of existing infrastructure for detecting and interrupting transient faults on the electrical network;

(v) construction of new joint bays to allow connection of new electrical 11 kV underground cabling with existing electrical 11 kV underground cabling;

(vi) civil works including excavation, trenching, and reinstatement;

(vii) works required in order to protect existing utilities infrastructure;

(viii) vegetation removal and landscape and habitat reinstatement measures;

(ix) works to facilitate construction access including temporary road modifications and temporary removal or reinstatement of structures, features and landscaping; and

(x) temporary construction laydown area.

(pp) **Work No. 8B—** diversion of existing telecommunication overhead lines including—

(i) removal or realignment of sections of existing telecommunication overhead lines;

(ii) installation of new sections of telecommunication overhead lines;

(iii) installation of new, or relocation or replacement, of existing, telecommunication overhead line poles;

(iv) general civil works;

(v) works required in order to protect existing utilities infrastructure;

(vi) vegetation removal and landscape and habitat reinstatement measures;

(vii) works to facilitate construction access including temporary road modifications and temporary removal or reinstatement of structures, features and landscaping; and

(viii) temporary construction laydown area.

In connection with and in addition to Work Nos. 1 to 8 further associated development including—

(qq) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;

(rr) electrical, gas, water, foul water drainage and telecommunications infrastructure connections and works to, and works to alter the position of, such services and utilities connections;

(ss) hard standing and hard landscaping;

(tt) biodiversity measures;

(uu) closed circuit television cameras and columns and other security measures;

(vv) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of the services and utilities; and works for the protection of buildings and land;

(ww) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;

(xx) vehicle parking and cycle storage facilities;

(yy) accesses, roads and pedestrian and cycle routes;

(zz) tunnelling, boring and drilling works,

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement.

SCHEDULE 2

Article 2

REQUIREMENTS

Commencement of the authorised development

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

Phasing of the authorised development

2.—(1) No part of the authorised development (save for numbered work 8) is to commence until a written scheme setting out the phasing of construction of numbered works 1, 2, 3, 4 and 7 has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must confirm that the construction of any part of the authorised development would not occur in parallel with any part of the demolition of the FGD plant.

(3) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

Notice of date of full commissioning

3.—(1) Within seven days of the completion of the commissioning of numbered works 1(D)(i), (iii) and (v), the undertaker must provide the relevant planning authority with notice of the date of Unit 1 full commissioning.

(2) Within seven days of the completion of the commissioning of numbered works 1(D)(ii), (iv) and (vi), the undertaker must provide the relevant planning authority with notice of the date of Unit 2 full commissioning.

Requirement for written approval

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

Approved details and amendments to them

5.—(1) With respect to the documents certified under article 37 (certification of plans and documents, etc), the parameters specified in the table at Schedule 14 (design parameters) and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together "Approved Documents, Plans, Parameters, Details or Schemes"), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to Approved Documents, Plans, Parameters, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement.

Detailed design approval

6.—(1) In relation to any part of the authorised development comprised in numbered works 1, 2, and 3, no development of that part is to commence until details of the following for that part have been submitted to and approved by the relevant planning authority—

(a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;

(b) finished floor levels;

(c) hard standings; and

(d) the internal vehicular access and circulation roads, vehicle parking, cycle parking and routes, and pedestrian facilities and routes.

(2) The authorised development must be carried out in accordance with the parameters in Schedule 14 (design parameters) and the details submitted must accord with items D1, D2, D3, D5, D6, D7, D8, D9, D10, H1 WE1, WE2, WE3, WE4, WE5, WE7, CC1, CC2 and GHG1 of the register of environmental actions and commitments.

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

Provision of landscape and biodiversity mitigation and enhancement

7.—(1) No phase of the authorised development or part of numbered works 5, 6 and 8 is to commence until, a written strategy for that phase or part, which is substantially in accordance with the outline landscape and biodiversity strategy, has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The strategies submitted and approved pursuant to sub-paragraph (1) must include details of—

(a) the hedgerows to be removed including–

(i) where the hedgerows are located; and

(ii) if and how they are to be replaced,

(b) all proposed hard and soft landscaping works;

(c) ecological mitigation;

(d) enhancement measures;

(e) the location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting;

(f) cultivation, importing of materials and other operations to ensure plant establishment;

(g) hard surfacing materials;

(h) a confirmation that numbered work 6 is in accordance with items G8, E2, E6, E8, E10, E11 and E14 of the register of environmental actions and commitments;

(i) an implementation timetable;

(j) annual landscaping and biodiversity management and maintenance;

(k) the ecological surveys required to be carried out prior to commencement of a numbered work, or following completion of a numbered work in order to monitor the effect of the ecological mitigation measures and the monitoring regime to be taken forward following those initial surveys; and

(l) an explanation for how the design of the numbered works comprised in the part of the authorised development, which is the subject of the strategy, has sought to minimise the biodiversity net loss as a result of the authorised development as far as reasonably practicable.

(3) Any shrub or tree planted as part of the approved strategy that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority,

seriously damaged or diseased, must be replaced in the first available planting seasons with a specimen of the same species and size as that originally planted.

(4) The strategies must be implemented in accordance with the implementation timetable and the measures implemented pursuant to the strategies maintained as approved once implemented throughout the operation of the numbered works to which they relate.

(5) For the purposes of sub-paragraph (1) a phase of the authorised development means a phase as identified in the phasing plan with respect to numbered works 1, 2, 3, 4 and 7 as approved pursuant to sub-paragraph (1) of Requirement 2.

External lighting during operation

8.—(1) Prior to the earlier of date of Unit 1 full commissioning or date of Unit 2 full commissioning a written scheme for the permanent external lighting to be installed for the purposes of normal operation for numbered works 1, 2 and 3 must be submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) of this requirement must be substantially in accordance with the principles set out in the draft lighting strategy and must include details of the permanent external lighting to be installed for the purposes of the operation of the relevant numbered works.

(3) The scheme must be implemented and maintained as approved.

Highway accesses during construction

9.—(1) Construction of each of the accesses listed in Schedule 7 (access to works) must not commence until details of the siting, design and layout (including visibility splays and construction specification) of that access, and in respect of the accesses listed in Part 1 of Schedule 7 only, the means of reinstating the temporary means of access after construction, has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details.

Surface water drainage

10.—(1) Each of numbered works 1, 2 and 3 of the authorised development must not commence until a surface water drainage scheme for that numbered work has been submitted to, and after consultation with the Environment Agency, lead local flood authority and relevant internal drainage board, approved by the relevant planning authority.

(2) The surface water drainage scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the principles set out in sections 5 and 6 of the proposed surface water drainage strategy.

(3) The schemes must be implemented and maintained as approved throughout the operation of the numbered works to which they relate.

Flood risk mitigation

11.—(1) The authorised development must be carried out and operated in accordance with the flood risk assessment.

(2) No later than 20 years following the date of full commissioning, the undertaker must notify the relevant planning authority and the Environment Agency whether it anticipates that the operation of Work No. 1 will continue past the 25th anniversary of the date of full commissioning.

(3) If a notification under sub-paragraph (2) indicates that the undertaker anticipates that the operation of Work No. 1 will continue past the 25th anniversary date of full commissioning, it

must, unless otherwise agreed by the Environment Agency, submit for approval to the Environment Agency–

(a) an updated flood risk assessment of the flood risk arising from the continued operation of Work No. 1 past the 25th anniversary of the date of full commissioning;

(b) the details of any mitigation or compensation measures that the flood risk assessment under sub-paragraph (a) suggests are necessary;

(c) the implementation timetable (including identifying the need for (but not requiring a specific programme for the obtaining of) any consents) for any measures identified under sub-paragraph (b); and

(d) retention proposals for any measures identified under sub-paragraph (b).

(4) The undertaker must share the details approved by the Environment Agency under sub-paragraph (3) with the relevant planning authority within 5 days of such approval being given.

(5) The undertaker must implement the measures approved under sub-paragraph (3)(b) in accordance with the implementation timetable approved under sub-paragraph (3)(c) no later than the 25th anniversary of the date of full commissioning of Work No. 1 or such other time period as is agreed with the Environment Agency and must retain them for the lifetime of Work No. 1 in accordance with the retention proposals approved under sub-paragraph (3)(d).

(6) The undertaker must not continue operation of Work No. 1 beyond the 25th anniversary of the date of full commissioning unless the Environment Agency has given its approval under sub-paragraph (3) and the undertaker has complied with sub-paragraph (4), unless otherwise agreed in writing by the Environment Agency.

(7) For the purposes of this requirement 'the date of full commissioning' means the earlier of the date of Unit 1 full commissioning and the date of Unit 2 full commissioning.

Ground conditions

12.—(1) No part of the numbered works 1, 2, 3, 5 and 7 is to commence (including permitted preliminary works comprising demolition of existing structures, remedial work in respect of any contamination or other adverse ground conditions or the diversion and laying of services) until a written strategy in relation to the identification and remediation of any risks associated with the contamination of the Order limits associated with that numbered work has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The strategy submitted and approved pursuant to sub-paragraph (1) must—

(a) include a site investigation scheme, based on the preliminary risk assessment set out in appendix 11.1 of the environmental statement and providing details of the detailed risk assessment to be carried out for the receptors on or in the vicinity of the Order limits that may be affected by the authorised development;

(b) set out how the outcomes of the site investigation scheme and detailed risk assessment carried out pursuant to sub-paragraph 12(2)(a) above will be reported, and provide for the submission and approval by the relevant planning authority of an options appraisal and remediation strategy based on such outcomes and providing details of any remediation measures required and how they are to be carried out;

(c) include an earthworks specification setting out protocols for testing and limiting values to ensure that imported materials are suitable for their intended use in terms of their chemical or geotechnical quality; and

(d) include a verification plan identifying the data to be collected in order to demonstrate that the remediation measures set out in the options appraisal and remediation strategy prepared pursuant to sub-paragraph 12(2)(b) above have been completed and are effective, and any requirement for long term monitoring of pollutant linkages, maintenance or arrangements for contingency action.

(3) Prior to the date of Unit 1 full commissioning a report prepared substantially in accordance with the verification plan prepared pursuant to sub-paragraph 12(2)(d) and approved pursuant to

sub-paragraph 12(1) must be submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(4) If, during the carrying out of numbered works 1, 2, 3, 5 and 7 contamination not previously identified is found to be present within such area(s) no further development (unless otherwise agreed in writing with the relevant planning authority) must be carried out on the area(s) on which the contamination has been found until a remediation strategy detailing how such contamination must be dealt with has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(5) No piling works comprised in the numbered works 1, 2 and 3 must commence until a piling risk assessment has been submitted to and approved by the Environment Agency.

(6) The piling risk assessment approved by the Environment Agency under sub-paragraph (5) must be provided to the relevant planning authority before commencement of numbered works 1, 2 and 3.

(7) The authorised development must be carried out in accordance with the strategy approved pursuant to sub-paragraph (1), any remediation strategy approved pursuant to sub-paragraph (4), and the piling risk assessment approved pursuant to sub-paragraph (5).

Archaeology

13.—(1) Each of numbered works 5, 6 and 8 of the authorised development must not commence (including permitted preliminary works comprising intrusive archaeological surveys only) until either—

(a) a written scheme of investigation has, for that numbered work, been submitted to and approved by the relevant planning authority; or

(b) the relevant planning authority has confirmed that no written scheme of investigation is required for that numbered work.

(2) Any scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with items H2, H3, H4, H5 and H6 of the register of environmental actions and commitments.

(3) Any scheme submitted and approved pursuant to sub-paragraph (1) must—

(a) identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified;

(b) provide details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found; and

(c) provide details of archaeological monitoring to be undertaken during construction.

(4) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

(a) in accordance with the approved scheme; and

(b) by a suitably qualified person or organisation approved by the relevant planning authority.

Construction environmental management plan

14.—(1) No part of the authorised development is to commence (including permitted preliminary works comprising geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, demolition of buildings and removal of plant and machinery, above ground site preparation for temporary facilities for the use of contractors, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, and site clearance (including vegetation removal, demolition of existing buildings and structures) only), until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority, after consultation with the Environment Agency.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the register of environmental actions and commitments.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

Construction traffic management plan

15.—(1) No part of numbered works 1, 2, 3 and 8 of the authorised development is to commence, until a construction traffic management plan has, for that part, been submitted to and, after consultation with National Highways and the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the relevant part of the outline construction traffic management plan.

(3) Notices must be erected and maintained by the undertaker throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(4) The plan must be implemented and maintained as approved throughout the construction of the authorised development.

Construction worker travel plan

16.—(1) No part of numbered works 1, 2 and 3 of the authorised development is to commence until a construction worker travel plan has, for that part, after consultation with National Highways and the highway authority, been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the relevant part of the framework construction worker travel plan.

(3) The plan must be implemented and maintained as approved throughout the construction of the authorised development.

Control of noise during operation

17.—(1) No part of numbered works 1, 2 or 3 is to commence until a noise mitigation scheme containing details of how the design of that numbered work has ensured that rating noise levels for normal mode of operation predicted at 1m from the façade of noise sensitive receptors as included Table 1 below will not be exceeded for that part, has been submitted to and approved by the relevant planning authority.

(2) The noise mitigation scheme must also include a set of noise limits that must not be exceeded during operation at locations that are 5m from the equipment listed below, such locations to be agreed with the relevant planning authority in the noise mitigation scheme. The equipment referred to in this sub-paragraph are—

(a) flue gas booster fans;

(b) carbon dioxide compressor buildings;

(c) pumps; and

(d) combined power turbine buildings.

(3) The noise mitigation scheme must be implemented and maintained as approved pursuant to sub-paragraph (1).

Table 1

Operational Rating Noise Limits

(1)	*(2)*	*(3)*	*(3)*
Receptor	*Easting*	*Northing*	*Rating Level, LAR,Tr*

			dB
R1, Wren Hall	467273.9	427168.2	30
R2, Long Drax	468163.8	428107.5	25
R3, Old Lodge	467515.8	428113.3	24
R4, Drax Abbey Farm	467042.9	428281.2	26
R5, Foreman's Cottage	466842.8	428479.7	26
R6, 2 Forest Grove Barlow	465213.8	428417.7	34
R7, Brigg Lane	465054.1	426248.0	33
R8, Station Cottage	466671.9	426399.0	23
R9, Briden Bungalow	467759.4	426857.7	27
R10, Weston House	466922.8	426331.1	24
R11, Rose Cottage	468427.5	426135.4	24
R12, Brigg Farm Court	465207.2	426066.8	24
R13, Camela House	464868.2	426604.7	36
R14, Low Farm	464211.5	427351.1	35

Decommissioning environmental management plan

18.—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval, after consultation with the Environment Agency, a decommissioning environmental management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must include details of—

(a) the buildings to be demolished;

(b) the means of removal of the materials resulting from the decommissioning works;

(c) the phasing of the demolition and removal works;

(d) any restoration works to restore the land to a condition agreed with the relevant planning authority;

(e) the phasing of any restoration works; and

(f) a timetable for the implementation of the scheme.

(4) The measures set out in the plan submitted under paragraph (1) must be consistent with the principles informing the measures that are set out in the register of environmental actions and commitments.

(5) The plan must be implemented and maintained as approved for the duration of the decommissioning of the authorised development.

Decommissioning traffic management plan

19.—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval, after consultation with National Highways and the highway authority, a decommissioning traffic management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must include details of—

(a) route diversions; and

(b) routing of abnormal loads and HGVs.

(4) The measures set out in the plan submitted under paragraph (1) must be consistent with the principles informing the measures that are set out in the register of environmental actions and commitments.

(5) The plan must be implemented and maintained as approved for the duration of the decommissioning of the authorised development.

Local liaison committee

20.—(1) The authorised development (save for numbered work 8) must not commence (including permitted preliminary works) until the undertaker has established a committee to liaise with local residents and organisations about matters relating to the construction, operation and decommissioning of the authorised development (a 'local liaison committee').

(2) The undertaker must invite the relevant planning authority and local parish councils, to nominate representatives to join the local liaison committee.

(3) The undertaker must supply an appropriate venue for the local liaison committee meetings to take place.

(4) The local liaison committee must—

(a) include representatives of the undertaker;

(b) meet quarterly during the construction, operation and decommissioning of the authorised development, starting within one month of commencement, unless otherwise agreed by the majority of the members of the local liaison committee.

(5) For the purposes of sub-paragraph (2) the local parish councils are Airmyn Parish Council, Barlby with Osgodby Parish Council, Barlow Parish Council, Brayton Parish Council, Bubwith Parish Council, Camblesforth Parish Council, Carlton Parish Council, Cliffe Parish Council, Drax Parish Council, Gowdall Parish Council, Hemingbrough Parish Council, Long Drax Parish Council, Newlands Parish Council, Rawcliffe Parish Council, Selby South Town Council, Selby East Town Council, Snaith and Cowick Town Council and Wressle Parish Council, unless otherwise agreed in writing by the undertaker and the relevant planning authority.

Local employment plan

21.—(1) No part of the authorised development (save for numbered work 8) is to commence (including permitted preliminary works) until a local employment plan has been submitted to, and approved in writing by, the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the outline local employment plan.

(3) The plan must be implemented and maintained as approved throughout the construction, operation and decommissioning of the authorised development.

SCHEDULE 3

Article 8

LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development—

(a) Great Central Railway Act 1910(**a**);

(b) Doncaster Area Drainage Act 1929(**b**); and

(c) Local Government Board's Provisional Orders Confirmation (Gas) Act 1891(**c**).

(**a**) 1910 c.xliii.
(**b**) 1929 c.xvii.
(**c**) 1891 c.cviii.

SCHEDULE 4

Article 9

STREETS SUBJECT TO STREET WORKS

(1) *Area*	*(2)* *Streets subject to street works*	*(3)* *Description of the street works*
In the District of East Riding of Yorkshire	A465	Works in the street to remove overhead power line and replace or underground it between the points marked I and J on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 Rawcliffe Road	Works in the street to remove overhead telecommunications line and replace it with one telecommunications line installed at an increased height above ground level between the points marked K and L on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 Rawcliffe Road	Works in the street to remove overhead power line and underground it between the points marked M and N on sheet 5 of the access and rights of way plans

SCHEDULE 5

Articles 10, 11

ALTERATION OF STREETS

PART 1

TEMPORARY ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Streets subject to alteration of layout*	*(3)* *Description of alteration*
In the District of The North Yorkshire Council	A465	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked E and F on sheet 2 of the access and rights of way plans
In the District of The North Yorkshire Council	A465 roundabout	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked G and H on sheet 2 of the access and rights of way plans
In the District of East Riding of Yorkshire / the District of The North Yorkshire Council	A465	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked H and J on sheets 2, 3 and 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 / A465 roundabout	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked J and K on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked M and N on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	Rawcliffe Road	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked N and O on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked P and Q on sheet 5 of the access

		and rights of way plans
In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked Q and S on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked O and R on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked R and S on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked R and T on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 / Rawcliffe Road roundabout	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked O and P on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked S and T on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked T and U on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	Elite Road	Works in the street to remove, modify and replace street furniture on the south side of Elite Road between the points marked SS and TT on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	Tom Pudding Way / A161 roundabout	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked U and V on sheet 6 of the access and rights of way plans

In the District of East Riding of Yorkshire	Anderson Way / Tom Pudding Way	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked V and W on sheets 5 and 6 of the access and rights of way plans
In the District of East Riding of Yorkshire	Normandy Way / Anderson Road	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked W and X on sheet 6 of the access and rights of way plans
In the District of East Riding of Yorkshire	Normandy Way	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked X and Y on sheet 6 of the access and rights of way plans
In the District of East Riding of Yorkshire	Bridge Street / Normandy Way	Works in the street to remove, modify and restore street furniture and trim vegetation between the points marked Y and Z on sheet 6 of the access and rights of way plans
In the District of East Riding of Yorkshire	Bridge Street	Works in the street to remove, modify and restore street furniture (and gate) and trim vegetation between the points marked CC and DD on sheet 6 of the access and rights of way plans.

PART 2

PERMANENT ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Streets subject to alteration of layout*	*(3)* *Description of alteration*
In the District of East Riding of Yorkshire	A465	Works to alter an existing private means of access to create a new permanent means of access on the east side of the A645 within the area shaded orange between the points marked II and JJ on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 Rawcliffe Road	Works for the provision a new private means of access on the south side of the A614 Rawcliffe Road within the area shaded orange between the points marked LL and KK on sheet 4 of the access and rights of way plans

In the District of East Riding of Yorkshire	A614 Rawcliffe Road	Works to alter an existing private means of access to create a new permanent means of access on the south side of the A614 Rawcliffe Road within the area shaded orange between the points marked OO and PP on sheet 5 of the access and rights of way plans

SCHEDULE 6

Article 12

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

(1) *Area*	*(2)* *Public right of way*	*(3)* *Description of temporary closure etc.*
In the District of The North Yorkshire Council	Public footpath 35.6/6/1	Between the points marked AA and BB on sheet 2 of the access and rights of way plans
In the District of East Riding of Yorkshire	Public footpath AIRMF03	Between the points marked II and QQ on sheet 4 of the access and rights of way plans

SCHEDULE 7

Article 13

ACCESS TO WORKS

PART 1

TEMPORARY MEANS OF ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of relevant part of access*
In the District of The North Yorkshire Council	New Road	The temporary construction access on the north side of the A645 between the points marked E and F on sheet 2 of the access and rights of way plans
In the District of The North Yorkshire Council	New Road	The temporary construction access on the east side of New Road between the points marked A and B on sheets 1 and 2 of the access and rights of way plans
In the District of The North Yorkshire Council	New Road	The temporary construction access on the east side of New Road between the points marked C and D on sheet 2 of the access and rights of way plans

PART 2

PERMANENT MEANS OF ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of relevant part of access*
In the District of East Riding of Yorkshire	A645	Works to alter an existing private means of access to create a new permanent means of access on the east side of the A645 within the area shaded orange between the points marked II and JJ on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 Rawcliffe Road	Works to alter an existing private means of access to create a new permanent means of access on the south side of the A614 Rawcliffe Road within the area shaded orange between the points marked LL

		and KK on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 Rawcliffe Road	The construction of a new permanent means of access on the north side of the A614 Rawcliffe Road within the area shaded orange between the points marked MM and NN on sheet 5 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 Rawcliffe Road	Works to alter an existing private means of access to create a new permanent means of access on the south side of the A614 Rawcliffe Road within the area shaded orange between the points marked OO and PP on sheet 5 of the access and rights of way plans

SCHEDULE 8

Articles 19, 20

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED OR IN WHICH RIGHTS MAY BE EXTINGUISHED

PART 1

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this Schedule—

"Work No. 1F and 3 infrastructure" means any works or development comprised within Work Nos. 1F and 3, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work Nos. 1F and 3 on the works plans;

"Work No. 6 planting" means the soft landscaping including planting, landscape and biodiversity enhancement measures and security fencing, gates, boundary treatment and other means of enclosure to be provided on the habitat provision area and comprised within Work No. 6, including any other necessary works or development permitted in respect of such habitat provision area within the area delineated as Work No. 6 on the works plans;

"Work No. 8A infrastructure" means any works or development comprised within Work No. 8A infrastructure, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No.8A on the works plans; and

"Work No. 8B infrastructure" means any works or development comprised within Work No 8B infrastructure, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No.8B on the works plans.

(1) *Number of plot shown on the land plans*	*(2)* *Rights etc. which may be acquired*
01-20, 01-21, 01-22, 01-23, 01-25	For and in connection with the Work No. 1F and 3 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1F and 3 infrastructure, together with the right to install, retain, use and maintain the Work No. 1F and 3 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 1F and 3 infrastructure, or interfere with or obstruct access from and to the Work No. 1F and 3 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
01-01, 01-02, 01-03, 01-04, 01-05, 01-06, 01-	For and in connection with the Work No. 6

07, 01-08, 01-09, 01-10, 01-11, 01-12, 01-13	planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 6 planting, together with the right to retain, maintain, inspect and replant the Work No. 6 planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 planting, or interfere with or obstruct access from and to the Work No. 6 planting.
01-45, 01-61, 01-66, 01-70, 01-72, 01-74	For and in connection with the Work No. 8A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8A infrastructure together with the right to install, retain, use and maintain the Work No. 8A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8A infrastructure, or interfere with or obstruct access from and to the Work No. 8A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
01-52, 01-53, 01-54, 01-55	For and in connection with the Work No. 8A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8A infrastructure.
01-76, 01-85, 01-86, 01-87, 01-92, 01-93, 01-121, 01-122	For and in connection with the Work No. 8B infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8B infrastructure together with the right to install, retain, use and maintain the Work No. 8B infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8B

	infrastructure, or interfere with or obstruct access from and to the Work No. 8B infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
01-96, 01-106, 01-108, 01-115, 01-118	For and in connection with the Work No. 8A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8A infrastructure together with the right to install, retain, use and maintain the Work No. 8A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8A infrastructure, or interfere with or obstruct access from and to the Work No. 8A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

PART 2

LAND IN WHICH RIGHTS MAY BE EXTINGUISHED

(1) *Number of plot shown on the land plans*	*(2)* *Rights etc. which may be extinguished*
01-17	Extinguishment of existing rights in order to facilitate construction and operation of Work Nos. 2, 3, 4, 5 and 6
01-18	Extinguishment of existing rights in order to facilitate construction and operation of Work Nos. 2, 3, 4 and 5
01-19	Extinguishment of existing rights in order to facilitate construction and operation of Work Nos. 1, 2, 3, 4, 5 and 6
01-24	Extinguishment of existing rights in order to facilitate construction and operation of Work Nos. 1F, 3, 4 and 5
01-78, 01-80, 01-90	Extinguishment of existing rights relating to existing telecommunications apparatus

SCHEDULE 9

Article 19

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right 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 limitation on the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

(a) for the words "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date), omit the words after "if—" and substitute—

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202*) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.".

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as modified by article 23 (modification of Part 1 of the Compulsory Purchase Act 1965), applies to the compulsory acquisition of a right by the creation of a new right under article 19 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(**a**) 1973 c.26.

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.".

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

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

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

(5) Section 11 (powers of entry)(**a**) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section, 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 11A (powers of entry: further notices of entry)(**b**), 11B (counter-notice requiring possession to be taken on specified date)(**c**), 12 (penalty for unauthorised entry)(**d**) and 13 (refusal to give possession to acquiring authority)(**e**) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.)(**f**) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as it actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 23(4) (modification of Part 1 of the Compulsory Purchase Act 1965) 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 or restrictive covenant imposed, subject to compliance with that section as respects compensation.

(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c.22) and S.I. 2009/1307.

(**b**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**c**) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(**d**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c.23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.

(**e**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c.15).

(**f**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and S.I. 2009/1307.

(8) For Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 21 (application of the 1981 Act) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202* in respect of the land to which the notice to treat relates.

(2) But see article 22 (acquisition of subsoil only) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 202* which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served ("the decision period").

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority 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 authority 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 the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.".

SCHEDULE 10

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Plot reference number shown on the land plans*	*(2)* *Purpose for which temporary possession may be taken*
01-16	Temporary use for works to facilitate construction access (Work No. 4) Temporary use as construction laydown area (Work No. 5)
01-27	Temporary use for works to facilitate construction access (Work No. 4)
01-43, 01-48, 01-60, 01-62, 01-63, 01-67, 01-68, 01-71, 01-73, 01-75	Temporary use to undertake Work No.8A including construction laydown and construction access
01-77, 01-79, 01-81, 01-82, 01-83, 01-88, 01-89, 01-91, 01-94, 01-119, 01-120	Temporary use to undertake Work No.8B including construction laydown and construction access
01-97, 01-98, 01-102, 01-103, 01-110, 01-112, 01-116, 01-123, 01-124, 01-125	Temporary use to undertake Work No.8A including construction laydown and construction access

SCHEDULE 11 Article 39

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

1. In this Schedule—

"application" means an application for any consent, agreement or approval required by a requirement whether or not the application seeks to discharge a requirement in whole or in part;

"requirement consultee" means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

"start date" means the date of the notification given by the Secretary of State under paragraph 5(2)(b).

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

(a) the day immediately following that on which the application is received by the authority;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph (3); or

(c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(5) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement confirming whether it is likely that the subject matter of the application, including any mitigation measures, will give rise to a change in the conclusions of the habitat regulations assessment and if it will then it must be accompanied by information setting out what those changes are.

(6) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine that application within the period set out in sub-paragraph (1) and is accompanied by a report pursuant to sub-paragraph (5) which states that the subject matter of such

application, including any mitigation measures, will give rise to a change in the conclusions of the habitat regulations assessment then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 21 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within ten working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within five working days of receipt of such a request and in any event within 21 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2 and paragraph 3.

Fees

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(**a**) (as may be amended or replaced from time to time) is to apply and must be paid to that authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within eight weeks from the relevant date in paragraph 2 unless—

(i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or

(ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2(1)(c) of this Schedule.

Appeals

5.—(1) The undertaker may appeal in the event that—

(**a**) S.I. 2012/2920 as amended by S.I. 2013/2153, S.I. 2014/357 and S.I. 2014/2026.

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;

(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(3);

(c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

(a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;

(b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

(c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(d) the undertaker must make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (c);

(e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and

(f) the appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in sub-paragraphs (2)(c) to (2)(e) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to them that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) Either the relevant planning authority or the undertaker may request that the appointed person to 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 advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

SCHEDULE 12

Article 33

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that utility undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"utility undertaker" means—

(e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**c**);

(g) water undertaker within the meaning of the Water Industry Act 1991; and

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(**a**) 1989 c.29.
(**b**) 1991 c.56.
(**c**) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained; and

"Yorkshire Water" means Yorkshire Water Services Limited (company no. 02366682) whose registered office is at Western House, Halifax Road, Bradford, West Yorkshire, BD6 2SZ.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary closure of public rights of way), 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 and Crown 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 of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 40 (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 40 (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 40 (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 execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 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 40 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

12. Where the execution of works is required pursuant to paragraphs 6 or 8 of this Part of this Schedule with respect to apparatus belonging to or maintained by Yorkshire Water, such works must be undertaken in compliance with Yorkshire Water's "Protection of Mains and Services Policy" (provided by Yorkshire Water to the undertaker by letter dated 5 May 2023).

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

13.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

"operator" means the operator of an electronic communications code network.

14. The exercise of the powers of article 27 (statutory undertakers) is subject to Part 10 (undertakers' works affecting electronic communications apparatus) of the electronic communications code.

15.—(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.

(**a**) 2003 c.21.

(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 39 (procedure in relation to certain approvals etc.).

16. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

17. 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.

18. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent access to the Airwaves Solutions Limited telecommunications site located 2.68 metres from the Order limits by Airwaves Solutions Limited, its employees, contractors or sub-contractors, such access to be over plot 9-06.

PART 3

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

19. For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

20. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid; together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2 (interpretation) of this Order except for the purposes of paragraph 25 this Part of this Schedule where it shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and

interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"Incentive Deduction" means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid; construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid" means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"NGESO" means as defined in the STC;

"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;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

"specified works" means any of the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 25(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 25(2) or otherwise; and/or

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc's transmission system which arises as a result of the authorised works;

"Transmission Owner" means as defined in the STC;

"undertaker" means the undertaker as defined in article 2(1) of this Order;

On Street Apparatus

21. Except for paragraphs 22 (apparatus of National Grid in stopped up streets), 27 (retained apparatus: protection), 28 (expenses) and 29 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in stopped up streets

22.—(1) Where any street is stopped up under article 9 (street works), article 10 (power to alter layout, etc, of streets), article 11 (construction and maintenance of altered streets), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 25 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 27

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (temporary closure of public rights of way), National Grid 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.

Protective works to buildings

23.—(1) The undertaker, in the case of the powers conferred by article 32 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

24.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not;

(a) appropriate or acquire or take temporary possession of any land or apparatus; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to

such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraphs 27 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

25.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 26(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

26.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 33 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

27.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 19 to 21 and 24 to 26 apply as if the removal of the apparatus had been required by the undertaker under paragraph 25(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 works for which a plan has been approved pursuant to sub-paragraph (4), a new plan for such works, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

28.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any works referred to in paragraphs 25(2) and (3) including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 25(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 33 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by National Grid are less than the amount already paid by the undertaker National Grid will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

29.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the

construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section (b) will be subject to the full terms of this Part of this Schedule including this paragraph 29; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Grid must 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) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

30. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

31.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 25(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 27, the undertaker shall 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 National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

32. If in consequence of the agreement reached in accordance with paragraph 24(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

33. Save for differences or disputes arising under paragraphs 25(2), 25(4), 26(1) and 27 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 40 (arbitration).

Notices

34. Notwithstanding article 38 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 27 must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.

35.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England)

Order 2015 shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

36.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with subparagraph (2) the latter prevail.

(2) In this Part of this Schedule—

"as built information" means one electronic copy of the following information—

(a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;

(b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys if required to comply with DMRB standards;

(c) product data sheets and technical specifications for all materials used;

(d) as constructed information for any utilities discovered or moved during the works;

(e) method statements for the works carried out;

(f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;

(g) organisation and methods manuals for all products used;

(h) as constructed programme;

(i) test results and records as required by the detailed design information and during construction phase of the project;

(j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;

(k) the health and safety file; and

(l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time.

"the bond sum" means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

"the cash surety" means the sum agreed between the undertaker and National Highways;

"commuted sum" means such sum calculated as provided for in paragraph 43 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;

"condition survey" means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

"contractor" means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

"defects period" means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

"detailed design information" means such of the following drawings specifications and calculations as are relevant to the development—

(m) site clearance details;

(n) boundary, environmental and mitigation fencing;

(o) road restraints systems and supporting road restraint risk appraisal process assessment;

(p) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways

(q) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;

(r) pavement, pavement foundations, kerbs, footways and paved areas;

(s) traffic signs and road markings;

(t) traffic signal equipment and associated signal phasing and timing detail;

(u) road lighting (including columns and brackets);

(v) regime of California Bearing Ratio testing;

(w) electrical work for road lighting, traffic signs and signals;

(x) motorway communications as required by DMRB;

(y) highway structures and any required structural approval in principle;

(z) landscaping;

(aa) proposed departures from DMRB standards;

(bb) walking, cycling and horse riding assessment and review report;

(cc) stage 1 and stage 2 road safety audits and exceptions agreed;

(dd) utilities diversions;

(ee) topographical survey;

(ff) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;

(gg) health and safety information including any asbestos survey required by GG105 or any successor document; and

(hh) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

"DBFO contract" means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

"DMRB" means the Design Manual for Roads and Bridges or any replacement or modification of it;

"final certificate" means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 43;

"the health and safety file" means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

"highway operations and maintenance contractor" means the contractor appointed by National Highways under the DBFO contract;

"nominated persons" means the undertaker's representatives or the contractor's representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

"programme of works" means a document setting out the sequence and timetabling of the specified works;

"provisional certificate" means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 41 when it considers the specified works are substantially complete and may be opened for traffic;

"road safety audit" means an audit carried out in accordance with the road safety audit standard;

"road safety audit standard" means DMRB Standard HD GG119 or any replacement or modification of it;

"road space booking" means road space bookings in accordance with National Highways' Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

"Specification for Highways Works" means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

"specified works" means so much of any work, including highway works and signalisation, authorised by this Order, including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority;

"strategic road network" means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

"utilities" means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

"winter maintenance" means maintenance of the road surface to deal with snow and ice.

(3) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

General

37. In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of this Schedule but for the purposes of any approvals required under this Part of this Schedule the undertaker shall liaise directly with National Highways.

38. Notwithstanding the limits of deviation permitted pursuant to article 3 (development consent etc. granted by this Order) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under or over the strategic road network at a distance within 4 metres of the lowest point of the ground.

39. References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

40. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals and security

41.—(1) The specified works must not commence until:

(a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;

(b) the programme of works has been approved by National Highways;

(c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways:

(i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);

(ii) details of the proposed road space bookings;

(iii) the identity and suitability of the contractor and nominated persons;

(iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;

(v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding; and

(d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;

(e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;

(f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;

(g) the undertaker has agreed the estimate of the commuted sum with National Highways;

(h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;

(i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and

(j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.

(2) The undertaker must not exercise—

(a) article 4 (maintenance of authorised development);

(b) article 9 (street works);

(c) article 10 (power to alter layout, etc., of streets);

(d) article 12 (temporary closure of public rights of way);

(e) article 13 (access to works);

(f) article 15 (discharge of water);

(g) article 16 (authority to survey and investigate land);

(h) article 19 (compulsory acquisition of rights);

(i) article 20 (private rights);

(j) article 22 (acquisition of subsoil only);

(k) article 26 (temporary use of land for maintaining the authorised development);

(l) article 31 (felling or lopping of trees and removal of hedgerows);

(m) article 32 (protective works to building);

over any part of the strategic road network without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or (2).

(4) Any approval of National Highways required under this paragraph—

(a) must not be unreasonably withheld;

(b) must be given in writing;

(c) shall be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and

(d) may be subject to any conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with sub-paragraph (1) of this Part.

Construction of the specified works

42.—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

(a) the relevant detailed design information and programme of works approved pursuant to paragraph 41(1) above or as subsequently varied by agreement between the undertaker and National Highways;

(b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and

(c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

(5) If any part of the specified works is constructed–

(a) other than in accordance with the requirements of this Part of this Schedule; or

(b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(6) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(7) If within 28 days on which a notice under sub-paragraph (5) or sub-paragraph (6) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(8) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(9) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(10) During the construction of the specified works the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 41(1)(h) and the undertaker must carry out such maintenance at its own cost.

(11) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 41(1)(h) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

43.—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

(a) the checking and approval of the information required under paragraph 41(1);

(b) the supervision of the specified works;

(c) the checking and approval of the information required to determine approvals under this Order;

(d) all costs in relation to the transfer of any land required for the specified works;

(e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and

(f) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising "the NH costs".

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 44(4).

(6) Within 28 days of the issue of the final account:

(a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;

(b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

44.—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:

(a) inspect the specified works; and

(b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

(a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;

(b) the specified works incorporating the approved remedial works under sub-paragraph (a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the satisfaction of National Highways;

(c) the as built information has been provided to National Highways; and

(d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

45. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.

Final condition survey

46.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 44(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to sub-paragraph (1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Defects Period

47.—(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

(a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);

(b) in respect of matters which National Highways considers to be serious defects or faults within 14 days of receiving notification of the same; and

(c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the expiry of the defects period National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

48.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:

(a) inspect the strategic road network; and

(b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph (2).

(4) When National Highways is satisfied that:

(a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph (2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and

(b) the NH costs have been paid to National Highways in full;

National Highways must issue the final certificate after which the bond shall be released in full.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Security

49.—(1) The specified works must not commence until—

(a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and

(b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 43 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

Commuted sums

50.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

51. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

52. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

53.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 45 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

54.—(1) Following the issue of the final certificate pursuant to paragraph 48(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(3) The undertaker must not under the powers of this Order:

(a) acquire or use land forming part of;

(b) acquire new or existing rights over; or

(c) seek to impose or extinguish any restrictive covenants over;

any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk.

(4) Where any land or interest is proposed to be acquired for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 19 (compulsory acquisition of rights) as applied by article 23 (modification of Part 1 of the Compulsory Purchase Act 1965) and article 21 (application of the 1981 Act) of this Order to directly vest in National Highways any such land or interest.

Expert Determination

55.—(1) Article 40 (arbitration) of this Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 40 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

SCHEDULE 13

Article 37

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*
access and rights of way plans	2.4	P04	April 2023
book of reference	4.3	Rev 10	July 2023
crown land plan	2.6	P02	April 2023
draft lighting strategy	6.7	Rev 02	May 2023
environmental statement	Volume 1 (6.1) Chapters (excluding chapter 18)	Rev 01	May 2022
	Volume 1 (6.1) (chapter 18)	Rev 03	March 2023
	Volume 2 (6.2) Figures (excluding figures 6.1, 7.1, 7.3, 10.1 and 18.1)	Rev 01	May 2022
	Volume 2 (6.2) Figures (figures 6.1, 7.1, 7.3, 10.1)	Rev 02	February 2023
	Volume 2 (6.2) Figures (figure 18.1)	Rev 03	March 2023
	Volume 3 (6.3) Appendices (excluding appendices 5.1, 5.2, 6.4, 6.5, 7.5, 11.2, 12.1, 12.3, 18.1, 18.2, 18.4 and 18.5)	Rev 01	May 2022
	Volume 3 (6.3) Appendices (appendices 7.5, 11.2 and 12.3)	Rev 02	February 2023
	Volume 3 (6.3) Appendices (appendices 18.1, 18.4 and 18.5)	Rev 03	March 2023
	Volume 3 (6.3) Appendices (appendix 18.2)	Rev 04	March 2023
	Volume 3 (6.3) Appendices (appendix 5.1)	Rev 05	February 2023
	Volume 3 (6.3) Appendices (appendices 5.2, 6.4 and 12.1)	Rev 03	February 2023
	Volume 3 (6.3) Appendices (appendix 6.5)	Rev 05	July 2023
	Volume 4 (6.4) Non-Technical Summary	Rev 01	May 2022
flood risk assessment	6.3.12.1 (ES Appendix 12.1)	Rev 03	February 2023

framework construction worker travel plan	6.3.5.2 (ES Appendix 5.2)	Rev 03	February 2023
habitat regulations assessment			
volume 1 – main text	6.8.1	Rev 04	July 2023
volume 2 – figure 1: European sites within air quality study area	6.8.2.1	Rev 01	May 2022
volume 2 – figure 2: European sites within 5km	6.8.2.2	Rev 01	May 2022
volume 2 – figure 3: functionality-linked land	6.8.2.3	Rev 01	May 2022
volume 3 – appendix 1: European site citations	6.8.3.1	Rev 01	May 2022
volume 3 – appendix 2: European site conservation objectives	6.8.3.2	Rev 01	May 2022
volume 3 – appendix 3: screening matrices	6.8.3.3	Rev 03	May 2023
volume 3 – appendix 4: adverse effect matrices	6.8.3.4	Rev 03	May 2023
volume 3 – appendix 5: air quality sensitivity of European sites in the Zol	6.8.3.5	Rev 01	May 2022
volume 3 – appendix 6: Drax nitrate / phosphate nutrient limitation note	6.8.3.6	Rev 01	May 2022
volume 3 – appendix 7: SAC habitat monitoring	6.8.3.7	Rev 02	February 2023
volume 3 – appendix 8: Lower Derwent Valley note on habitats and soils	6.8.3.8	Rev 01	March 2023
land plans	2.2	P03	April 2023

outline construction traffic management plan	6.3.5.1 (ES Appendix 5.1)	Rev 05	February 2023
outline local employment plan	8.12	Rev 01	March 2023
outline landscape and biodiversity strategy –			
volume 1 – main text	6.6.1	Rev 05	May 2023
volume 2 – figure 1: landscape and mitigation plan	6.6.2.1	Rev 01	May 2022
volume 2 – figure 2: off-site habitats provision area	6.6.2.2	Rev 01	May 2022
volume 2 – figure 3: existing retained vegetation	6.6.2.3	Rev 01	May 2022
figure 3 – FCA landscape and biodiversity plan	8.5.2.3	Rev 01	December 2022
figure 4 – OHL landscape and biodiversity plan	8.5.2.4	Rev 03	April 2023
proposed surface water drainage strategy	6.3.12.3 (ES Appendix 12.3)	Rev 02	February 2023
register of environmental actions and commitments	6.5	Rev 11	July 2023
works plans	2.3	P04	April 2023

SCHEDULE 14

Requirement 6

DESIGN PARAMETERS

PART 1

DESIGN PARAMETERS ASSOCIATED WITH THE CARBON CAPTURE PLANT FOR UNIT 1

(1) Component / Building / Area	*(2) Work No.*	*(3) Maximum number*	*(4) Maximum length (m)*	*(5) Maximum width (m)*	*(6) Maximum height (m AGL)*	*(7) Maximum height (m AOD)*
Gas / Gas Heat Exchanger[1]	1D(v)(aa)	2	25	25	45	51.1
Quench Column	1D(i)(aa)	1	50	30	40	46.1
Absorber Column	1D(i)(bb)	1	50	30	95	101.1
Regenerator	1D(iii)(aa)	2	15	15	70	76.1
Carbon Dioxide Gas Compressor Building	1E(i)	4	45	40	30	36.1
Carbon Dioxide Main Vent Stacks	1E(iii)	1	10	10	30	36.1
Main Process & Service Rack[2] [3]	1D(iii)	1	150	20	25	31.1

[1] Component to be located at elevation (i.e. located within the duct). Height stated is the maximum height component could be AGL.

[2] Buildings / Structures may be coupled together. Total building volume will however not exceed volume required for maximum number of buildings. Maximum height stated is for all configurations. Switchrooms may also be doubled stacked.

[3] The Rich Solvent / Lean Solvent Heat Exchangers would be located at elevation on the Main Process and Service Rack.

PART 2

DESIGN PARAMETERS ASSOCIATED WITH THE CARBON CAPTURE PLANT FOR UNIT 2

(1) Component / Building / Area	*(2) Work No.*	*(3) Maximum number*	*(4) Maximum length (m)*	*(5) Maximum width (m)*	*(6) Maximum height (m AGL)*	*(7) Maximum height (m AOD)*
Gas / Gas Heat Exchanger[1]	1D(vi)(aa)	2	25	25	45	51.1
Quench Column	1D(ii)(aa)	1	50	30	40	46.1
Absorber Column	1D(ii)(bb)	1	50	30	95	101.1
Regenerator	1D(iv)(aa)	2	15	15	70	76.1
Carbon Dioxide Gas Compressor Building	1E(ii)	4	45	40	30	36.1
Carbon Dioxide Main Vent Stacks	1E(iv)	1	10	10	30	36.1
Main Process & Service Rack[2] [3]	1D(iv)	1	150	20	25	31.1

[1] Component to be located at elevation (i.e. located within the duct). Height stated is the maximum height component could be AGL.

[2] Building / Structures may be coupled together. Total building volume will however not exceed volume required for maximum number of buildings. Maximum height stated is for all configurations. Switchrooms may also be double stacked.

[3] The Rich Solvent / Lean Solvent Heat Exchangers would be located at elevation on the Main Process and Service Rack.

PART 3

DESIGN PARAMETERS ASSOCIATED WITH THE COMMON INFRASTRUCTURE REQUIRED FOR BOTH THE CARBON CAPTURE PLANT FOR UNIT 1 AND THE CARBON CAPTURE PLANT FOR UNIT 2

(1) Component / Building / Area	*(2) Work No.*	*(3) Maximum number*	*(4) Maximum length (m)*	*(5) Maximum width (m)*	*(6) Maximum height (m AGL)*	*(7) Maximum height (m AOD)*
Carbon Capture Wastewater Treatment Plant Area	1D(viii)(a)	1	80	70	40	46.1
Solvent Storage and Make-up System Compound	1D(vii)	4	55	45	25	31.1
Combined Power Turbine Building(1)	1C(iii)(bb)	2	50	45	35	41.1
Pressure Reducing De-Superheating Station Building(1)	1C(iii)(dd)	2	15	45	15	21.1
Steam Pipe Bridge Connection (Connection with existing Drax Power Station Infrastructure)	1C(iii)(ee)	1	30	10	65	71.1
Steam Pipe Bridge	1C(iii)(ee)	1	300	20	25	31.1
Fire Water Tanks	1D(viii)(dd)	4	15	15	15	21.1
Switchroom Building(1)	1F	30	30	16	20	26.1
Carbon Dioxide Pipe Bridge	2	1	500	20	20	26.1
Carbon Dioxide Delivery Terminal Compound (onshore carbon pipeline operator)	2	1	100	100	12	18.1

(1) Buildings / Structures may be coupled together. Total building volume will however not exceed volume required for maximum number of buildings. Maximum height stated is for all configurations. Switchrooms may also be double stacked.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Drax Power Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission carbon capture plant as an extension to an existing generating station and associated development. This Order would permit the undertaker to acquire, compulsorily or by the agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 37 of this Order (certification of plans and documents, etc) may be inspected free of charge during working hours at The North Yorkshire Council, County Hall, Northallerton, North Yorkshire, DL7 8AD and at Civic Centre, Doncaster Road, Selby, YO8 9FT.