



# Department for Energy Security & Net Zero

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**Our Ref:** EN010103

16 February 2024

Dear Sir/Madam

## **PLANNING ACT 2008: APPLICATION FOR DEVELOPMENT CONSENT FOR NET ZERO TEESSIDE PROJECT**

### **1. Introduction**

- 1.1. I am directed by the Secretary of State for Energy Security & Net Zero ("the Secretary of State") to advise you that consideration has been given to the report dated 10 February 2023 of the Examining Authority ("the ExA"), comprising of Kevin Gleeson BA MCD MRTPI (Panel Lead), Susan Hunt BA (Hons) MA MRTPI and Beth Davies BSc (Hons) MSc FGS CGeol who conducted an examination into the application ("the Application") submitted on 19 July 2021, by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited ("the Applicants") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("PA2008") for the full chain Carbon Capture, Usage and Storage project comprising a number of elements including a new gas-fired electricity generating station (with an electrical output of up to 860 megawatts) with post combustion carbon capture plant; gas, electricity and water connections (for the electricity generating station); a carbon dioxide (CO<sub>2</sub>) pipeline network (a 'gathering network') for gathering CO<sub>2</sub> from a cluster of local industries on Teesside; a high pressure CO<sub>2</sub> compressor station and an offshore CO<sub>2</sub> export pipeline. The above elements are referred to in this letter as "the Proposed Development". The offshore section of the export pipeline and the offshore storage facility are subject to separate consenting processes and are, therefore, not part of the Proposed Development that is the subject of this DCO application. The offshore elements which do not form part of the Proposed Development are referred to as the "Offshore Elements". The "Wider NZT Project" is the term which has been used by the ExA, and is therefore used in this letter, to refer to both the onshore and offshore elements, including those beyond the limits of this DCO ("the Order Limits").
- 1.2. The Application was accepted for examination on 16 August 2021. The examination began on 10 May 2022 and concluded on 10 November 2022. The Secretary of State received the report containing the ExA's conclusions and recommendation on 10 February 2023. A total of 42 Relevant Representations (as defined in PA2008) were received by the Planning Inspectorate.

1.3. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER \*.\*.\*"]. The principal matters considered by the ExA, as set out in its Report are:

- Air Quality and Emissions
- Biodiversity and Ecology
- Climate Change
- Compulsory Acquisition and Temporary Possession
- Design, Landscape and Visual Effects
- The draft Development Consent Order
- Geology, Hydrogeology and Land Contamination.
- Historic Environment
- Major Accidents and Natural Disasters
- Noise and Vibration.
- The Proposed Development, Site Selection, Infrastructure and Cumulative and Combined Effects
- Socio-Economics and Tourism
- Traffic, Transport and Public Rights of Way
- The Water Environment

### **Matters arising following the close of the Examination**

1.4. Following receipt of the ExA's Report, the Secretary of State requested further information from the Applicants, the Environment Agency (EA), The Crown Estate (TCE) and parties listed in Tables 10 & 11 at ER 10.2.15, on 10 March 2023<sup>1</sup> in respect of the Applicants' approach to nutrient nitrogen and compulsory acquisition and related matters. Responses were received on 24 March 2023. The Secretary of State invited parties to respond again on 3 April 2023<sup>2</sup> and requested that the Applicants' comment on the responses received. On 9 May 2023 the statutory deadline was extended until 14 September 2023. On 16 May 2023 the Secretary of State requested further information from the Applicants<sup>3</sup> on the impacts of the Wider NZT Project and an updated Environmental Impact Assessment and Habitats Regulations Assessment Report which include assessment, alone and cumulatively, of the Offshore Elements of the Wider NZT Project, including the use of the Endurance Store, which is the Applicants' intended storage facility for the captured CO<sub>2</sub>. The Applicants responded on 30 May 2023. The Secretary of State asked for confirmation of when further

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002724-NZT%20-%20SoS%20Consultation%20-%20Information%20Request%201%20090323%20-%20signed.pdf>

<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002745-NZT%20-%20SoS%20DESNZ%20Information%20Request%202.pdf>

<sup>3</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002783-Offsen%20-%20NZT%20-Information%20Request%20160523.pdf>

information would be provided by the Applicants<sup>4</sup> on 14 June 2023 and again<sup>5</sup> on 14 July 2023. The Applicants responded on 4 August 2023. The Secretary of State invited parties to comment on the Applicants' responses on 7 August 2023<sup>6</sup> and requested final updates on outstanding protective provisions on 23 August 2023<sup>7</sup>. On 11 September 2023 the statutory deadline was extended until 16 November 2023. The Secretary of State issued a letter on 22 September 2023 asking the Applicants to comment on the responses received<sup>8</sup>.

- 1.5. By letters dated 20 October 2023 addressed to the Secretary of State and the EA, Natural England (NE) confirmed that it had had cause to revise the advice it previously provided regarding the effects of nutrient nitrogen deposition on the Teesmouth and Cleveland SSSI (the SSSI). The Secretary of State issued a letter on 9 November 2023 asking the Applicant to provide a timetable of progress on environmental permitting<sup>9</sup>. On 15 November 2023 the statutory deadline was extended until 16 February 2024. In letters dated 28 November 2023 addressed to the Secretary of State, the Applicants and NE confirmed their view that the matters raised by NE had been resolved.
- 1.6. The Secretary of State issued a letter to the Applicants on 30 November 2023, asking that they respond to concerns raised by Climate Emergency Policy and Planning (CEPP) regarding double counting of carbon emissions<sup>10</sup>. By letter dated 6 October 2023 and in response to representations CEPP sent to the Secretary of State on 6 and 12 September 2023, the Applicants revised their figures in Table 3 of Appendix 6 to the addendum submitted to the Secretary of State on 4 August concerning the Environmental Statement for the Wider Net Zero Teesside Project and responded to concerns raised by CEPP regarding a double counting error in [REP6-123].

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<sup>4</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002797-230614%20Offsen%20-%20NZT%20-%20Information%20Request%20-%20Date%20Clarification%20140623.pdf>

<sup>5</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002800-230714%20SoS%20-%20Information%20Request%20-%20140723.pdf>

<sup>6</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002802-NZT%20-%20Consultation%20-%20Information%20Request%20-%20070823.pdf>

<sup>7</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002842-Net%20Zero%20Teesside%20-%20Offsen%20-%20Final%20Request%20for%20Updates%20on%20Protected%20Provisions.pdf>

<sup>8</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002865-NZT%20-%20Final%20Consultation%20-%20140922\\_Redacted.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002865-NZT%20-%20Final%20Consultation%20-%20140922_Redacted.pdf)

<sup>9</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002881-NZT%20-%20Request%20for%20Timetable%20-%20091123\\_.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002881-NZT%20-%20Request%20for%20Timetable%20-%20091123_.pdf)

<sup>10</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ ipc/uploads/projects/EN010103/EN010103-002884-NZT%20-%20Consultation%20-%20CEPP%20Information%20Request%20-%20301123.pdf>

- 1.7. By letter dated 20 December 2023<sup>11</sup> the Secretary of State invited all parties to comment on the issues raised by NE and CEPP and the Applicants' responses. By letter dated 19 January 2024 EA confirmed their view that the matters raised by NE had been resolved. CEPP also provided a further response dated 19 January 2024 and the Applicants issued a letter commenting on this response on 5 February 2024. The Secretary of State's consideration of all of these issues is set out in the relevant sections below.
- 1.8. The Energy White Paper, *Powering Our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements (NPSs) but confirmed that the current 2011 NPSs ("the 2011 NPSs") were not being suspended in the meantime. The ExA has referred to the 2011 NPSs as EN-1, EN-2, EN-4 and EN-5. This letter refers to the 2011 NPSs in the same way. Draft NPSs were published on 6 September 2021 and subject to a consultation which closed on 29 November 2021. The ExA refers to the November 2021 NPSs ("draft 2021 NPSs") throughout the examination and report.
- 1.9. Updated versions of these draft NPSs were published on 30 March 2023 ("draft 2023 NPSs") and subject to a further consultation which closed on 23 June 2023. Revised draft NPSs were released on 22 November 2023 and designated in Parliament on 17 January 2024 ("the 2024 NPSs"). The Secretary of State has had regard to the draft and now designated 2024 NPSs in deciding the Application, and addresses these where relevant within this letter, but does not consider that there is anything contained within them that would lead her to reach a different decision on the Application than has been reached by relying on the 2011 NPSs.

### **Procedural matters and other considerations**

- 1.10. As applied for, the Proposed Development would comprise Works set out at [ER 2.3.1 et seq.]. The Order requires that the authorised development must not be commenced after the expiry of five years from the date of the Order [Schedule 2, 1 (1)].
- 1.11. Powers of compulsory acquisition and temporary possession and the creation of new rights over land are also sought by the Applicants to support the delivery of the Proposed Development.
- 1.12. The Applicants submitted three change requests during the Examination comprising 18 changes. The first involved 13 individual changes [ER 2.4.3]. A second comprised four further changes [ER 2.4.5]. The ExA considered that none of the proposed changes were so material that, individually or cumulatively, they would lead to a materially different project being proposed [ER 2.4.6]. A third change request was also made towards the end of the Examination. The ExA

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<sup>11</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002894-NZT%20-%20Consultation%20-%20All%20IPs%20-%2020201223.pdf>

agreed that the change was non-material and could be accepted into the Examination [ER 2.4.8].

1.13. Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website is a copy of the ExA's Report of Findings, Conclusions and Recommendation to the Secretary of State ("the ExA Report"). The main features of the development proposals as applied for and the policy and legal context are set out in sections 2 and 3 of the ExA's Report. The planning issues are set out in section 4 and the ExA's findings in section 5 of the ExA Report. The case for development consent and the ExA's conclusions on the terms of the Order are set out at sections 6 to 8, and 9 respectively.

## **2. Summary of the ExA Report and Recommendation**

2.1. The ExA assessed a range of issues during the Examination, set out in the ExA's Report under the following broad headings:

- The Proposal and the Site (Chapter 2);
- Legal and Policy Context (Chapter 3);
- The Planning Issues (Chapter 4);
- Findings and Conclusions in relation to the Planning Issues (Chapter 5);
- Findings and Conclusions in relation to Habitats Regulations Assessment (HRA) (Chapter 6);
- Conclusion on the case for Development Consent (Chapter 7);
- Compulsory Acquisition and related matters (Chapter 8);
- Draft Development Consent Order and related matters (Chapter 9);
- Summary of findings and conclusions (Chapter 10).

2.2. For the reasons set out in the Summary of Findings and Conclusions (Chapter 10) of the ExA's Report, the ExA recommends that the Order be made in the form attached at Appendix C to their report subject to the Secretary of State satisfying herself on the following matters [ER 10.1.1. et seq.]:

- *consent being obtained from The Crown Estate in relation to Crown land; and*
- *the Environment Agency confirming that it is content with the Applicants' approach to the modelling of nutrient nitrogen.*

2.3. Subject to these points the ExA considered that the Proposed Development meets the tests in s104 of PA2008 and recommended that the Secretary of State make the Net Zero Teesside Order in the form attached at Appendix C to its report [ER 7.3.1 et seq.].

## **3. Summary of the Secretary of State's decision**

3.1. The Secretary of State has considered the ExA's Report and all other material considerations, including further representations received after the close of the ExA's examination ("the post-examination representations") mentioned in paragraphs 1.4 to 1.7 above. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of PA2008 and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure

Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”).

- 3.2. The Secretary of State has considered the overall planning balance and, for the reasons set out in this decision letter, has concluded that the public benefits for the proposal outweigh the harm identified, and that development consent should therefore be granted for the Proposed Development.
- 3.3. This letter is intended to be read alongside the ExA’s Report and unless specifically stated that the Secretary of State disagrees with the ExA’s conclusions or recommendations any perceived difference in emphasis between the summaries in this letter and the ExA’s Report should not be inferred as conveying disagreement with the ExA’s Report. Unless otherwise stated, the Secretary of State can be taken to agree with the ExA’s findings, conclusions and recommendations as set out in the ExA’s Report and the reasons given for the Secretary of State’s decision are those given by the ExA in support of the conclusions and recommendations.

#### **4. Matters considered by the ExA during the Examination**

##### Legal and Policy Context

- 4.1. The Planning Statement sets out that elements of the Proposed Development fall within the definition and thresholds of an NSIP under s14(1)(a) and ss15(1) and (2) of the PA2008, notably Work No.1 comprising of the electricity generating station. Other elements are the subject of a direction that was made under s35(1) and s35ZA by the Secretary of State dated 17 January 2020 (“the s35 Direction”), which confirmed that the Specified Elements, together with any matters/development associated with them, are to be treated as development for which development consent is required (in so far as they form part of the NZT Project which includes a generating station which is an NSIP). The three Specified Elements correspond to Work Nos. 6-8 respectively [ER 3.2.3].
- 4.2. S115(1)(b) of the PA2008 states that a DCO can include consent for ‘associated development’. Work No.2 (Gas Connection), Work No.3 (Electrical Connection), Work No.4 (Water Supply Connection Corridor), Work No.5 (Water Discharge Connection Corridor), Work No.9 (Laydown Areas), and Work No.10 (Access and Highway Works) would support the construction and operation of the NSIP, the Specified Elements would therefore be considered as associated development for the purposes of s115(1)(b) of the PA2008 [ER 3.2.4]. The Secretary of State further considers that Work No.1C, the Carbon Capture Plant (CCP), should be treated as associated development for the purposes of section 115 of the PA2008, noting that it is development undertaken for the purpose of addressing the impacts of the Proposed Development.
- 4.3. The ExA agrees with the Applicants that the 2011 NPSs EN-1 and EN-2 have effect in relation to the low carbon electricity generating station, which falls within the definition and thresholds set out in s14 and s15 of the PA2008, together with its associated development, and is within the scope of the NPSs. Consequently, the application for consent for those elements should be assessed and determined pursuant to s104 [ER 3.2.11]. The Secretary of State agrees.

4.4. When considering whether consent for the Specified Elements should be determined under s104 or s105 of the PA2008, the ExA concluded that the Proposed Development as a whole can be determined under s104. They stated that the Application can be distinguished from the circumstances addressed in the judgment in *EFW Group Limited v Secretary of State for Business, Energy and Industrial Strategy* [2021] because the s35 direction in that case did not specify which NPS applied, whereas in the case of NZT the s35 Direction specifies that EN-1 has effect in respect of the application for development consent, including the Specified Elements [ER 3.2.15]. The Secretary of State, noting that the s35 Direction did specify that EN-1 should apply, concludes that it can be given its intended effect, and that the Application can therefore be determined under s104. The ExA notes that the Secretary of State may decide that the Specified Elements should be determined pursuant to s105, and it also presents its findings and recommendation on that basis [ER 3.2.15]. The Secretary of State has also set out her findings in the alternative and has considered the Specified Elements applying both s104 and s105.

4.5. The ExA notes [ER 3.3.1 et seq.] the relevant legal and policy considerations, including NPS EN-1 which sets out the Government's overarching policy for the delivery of major energy infrastructure [ER 3.3.2]. EN-2 provides the primary basis for decisions for nationally significant fossil fuel infrastructure, including gas-fired generating stations and has relevance to Work No.1 (the Low Carbon Electricity Generating Station) [ER 3.3.3]. EN-4 provides the primary basis for decisions on applications for gas supply infrastructure and gas and oil pipelines relevant to Work No.2 (the Gas Connection Corridor). It is relevant as natural gas will be used for fuel for the operation of the electricity generating station and the Proposed Development includes a gas supply pipeline [ER 3.3.4]. EN-5 provides the basis for electricity networks infrastructure relevant to Work No.3 (the Electrical Connection) as it includes a new electrical connection [ER 3.3.5].

4.6. The ExA further notes the legislative and policy framework applicable to the assessment of this application (which includes the Marine and Coastal Access Act 2009, UK Marine Policy Statements and local Marine Plan, European law and related UK regulations, and energy and climate change legislation and policy), as referred to in Chapter 3 of the ExA report [ER 3.4.1 et seq.]. It concludes that the relevant energy and climate change legislation and policy demonstrates how progress is being made and builds upon the suite of energy NPSs reflecting emerging technologies, legislation and wider Government policies in relation to energy and climate change. Section 104 of the PA2008 requires an application for development consent to be decided in accordance with relevant NPSs and that the Secretary of State must have regard to any other matters considered important and relevant to the decision. The same requirement applies in respect of applications determined under s105 of the PA2008. The ExA consider that policy and legislation and draft NPSs are clearly important and relevant matters and should be accorded significant weight [ER 3.6.37]. The Secretary of State has had regard to the draft 2021 NPSs, draft 2023 NPSs and designated 2024 NPSs in deciding the Application, and addresses these where relevant within this letter, but does not consider that there is anything contained within them that would lead her to reach a different decision on the

Application. Relevant publications post-dating the publication of the ExA's report are addressed at paragraph 8.9.

- 4.7. Other relevant legal and policy provisions are also considered at [ER 3.7.1 et seq.] including the National Planning Policy Framework (NPPF) and the local development plans including the adopted South Tees Area Supplementary Planning Document (SPD), the South Tees Regeneration Master Plan (unadopted) and the Teesworks Design Guide for Development 2020 (unadopted) [ER 3.9.3 et seq.]. EN-1 confirms that policies in development plans and other documents may be considered important and relevant for the purpose of decision-making by the Secretary of State [ER 3.9.2]. Neither Redcar and Cleveland Borough Council (RCBC) nor Stockton-on-Tees Borough Council (STBC) identified conflict with their respective development plan policies in their Local Impact Reports (LIR) nor their Statement of Common Ground (SoCG) [ER 4.6.2 et seq.]. Conformity with National Policy Statements, Marine Policy Statement and Plans, and Environmental Impact assessment are covered in each respective section and are considered in section 4.4 of the ExA's report [ER 4.4.1 et seq.].
- 4.8. A transboundary screening under Regulation 32 of the 2017 EIA Regulations was undertaken on behalf of the Secretary of State on 11 June 2019 and again on 30 November 2021 following changes made to the Proposed Development. The ExA has considered whether any facts emerged to change these screening conclusions up to the point of closure of the Examination. The ExA concluded that no mechanisms whereby any conceivable transboundary effects could occur emerged [ER 3.10.3].
- 4.9. The ExA remained aware of the need to consider whether revisions to the application documents have changed the proposal to a point where it becomes a different application and therefore, whether the Secretary of State would have the power under s114 of the PA2008 to make a DCO having regard to the development consent applied for [ER 3.11.1]. The ExA consider that the changes sought have not resulted in any significant changes to the proposals for which the application was originally made [ER 3.11.3]. The Secretary of State has considered the subsequent change request from the Applicants (dated 27 April 2023 and updated on 4 May 2023), which is considered in paragraph 6.75 below. The Secretary of State consulted on the change request in her letter dated 16 May 2023. She is satisfied that there will be no significant changes to the proposals for which the Application was originally made as a result of the subsequent change request.

### The Planning Issues

- 4.10. At ER 4.1 - 4.10 the ExA addresses the Initial Assessment of the Principal Issues (IPI) and confirms that all of the matters identified are addressed in detail in Chapters 5, 6, 8 and 9. The Secretary of State agrees and sets out her findings on these issues below.

### The Need, Scope and Alternatives

### *The Need for the Proposed Development*

4.11. The ExA considered that the Proposed Development would address the urgent need for new electricity capacity as set out in EN-1, the use of natural gas for energy generation (EN-1 and EN-4) and the urgent need for gas-fired electricity generation with CCS (Carbon Capture Storage) infrastructure as set out in the draft 2021 EN-1 [ER 5.2.125]. The Secretary of State notes that this urgent need is also set out in the draft 2023 and 2024 EN-1 and that the Proposed Development would help deliver the Government's net zero commitment by 2050. The ExA consider that by providing CCS the Proposed Development would be in line with Government's wider policy statements on energy and climate change, including those listed in section 3.6 of the ExA report, which constitute important and relevant matters. The UK Marine Policy Statement and the North East Marine Plan are supportive of the deployment of CCS/CCS in the UK Marine Area and local RCBC and STDC policies support the move to a low carbon economy and a CCUS network in the area [ER 5.2.125]. The Secretary of State notes that designated 2024 EN-1 further strengthens the support for the Proposed Development by making nationally significant low carbon infrastructure, including natural gas fired electricity generation which is CCR, a critical national priority. The Secretary of State also acknowledges that the full chain CCUS nature of the Proposed Development elevates it considerably above other CCR projects as it will be required to capture a minimum of 90% of carbon when operating at full load throughout its operation, and will seek to achieve a capture rate of at least 95% (see 4.22 et seq. below). This further contributes to the strong positive weight accorded to the need for the Proposed Development.

### *The Scope of the Proposed Development*

4.12. During the examination the Applicants clarified the scope of the Proposed Development in relation to the Wider NZT project. Whilst the NZT Project and Zero Carbon Humber are separate projects, together, they are part of the Northern Endurance Partnership (NEP). In October 2021, NEP's East Coast Cluster (ECC) plan was selected as a priority cluster in Phase-1 of the UK Government's Carbon Capture, Utilisation and Storage (CCUS) cluster sequencing process. On 30 March 2023 it was announced that the NZT Project had been selected to enter Phase 2 along with the H2Teesside and Teesside Hydrogen CO<sub>2</sub> Capture projects. The ECC aims to deliver 20MTPA of CCUS capacity by 2030 across multiple emitters in both Teesside and the Humber, with further expansion to 27MTPA by 2035 [ER 5.2.38]. According to the Applicants' Need Statement [AS-015], together with Zero Carbon Humber, the NZT Project would be able to maximise economies of scale to allow decarbonisation of nearly 50% of the UK's total industrial cluster emissions, enabling clean hydrogen production and creating a pathway for growth [ER 5.2.40].

4.13. The ExA questioned why the Offshore Elements of the wider project were not included within the DCO application and in response, the Applicants outlined the four main consents that are required to construct and operate the Offshore Elements [ER 5.2.43]. One of these has been consented under s18 of the Energy Act 2008 and the remaining three require a decision from the North Sea Transition Authority (NSTA) [ER 5.2.44]. The Applicants explained that two of the three remaining consents cannot be brought within the scope of the Planning Act

2008, as they are not included in the list of prescribed consent regimes under Schedule 2 to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 and they argue that there would be obvious benefit in one decision-maker (NSTA) dealing with all the Offshore Elements together [ER 5.2.45 and ER 5.2.46]. The ExA concludes that the Applicants' approach to the offshore consenting process is reasonable in the context of the PA2008 regime [ER 5.2.126] and the Secretary of State agrees. Nevertheless, the Secretary of State has taken additional steps to ensure that the environmental impact of both the onshore and Offshore Elements of the Wider NZT Project have been fully assessed (please see para. 4.26 and 4.27).

- 4.14. The ExA conclude that the Applicants have demonstrated to their satisfaction that the project is carbon capture ready (CCR) in line with the requirements in EN-1 [ER 5.2.109].
- 4.15. The Secretary of State agrees that the Proposed Development is CCR. The development includes a CCP and it is intended that it will connect to the Endurance store which has been designated for use by the Proposed Development and regarding which no planning objections are outstanding. Work towards securing the necessary consents for the Endurance store is in progress and the DCO stipulates that the Proposed Development can only be operational when it is connected to an offshore storage facility. The Secretary of State is satisfied that there are no known barriers to storage. She also notes that there are other geological storage sites capable of accepting the carbon output from the Proposed Development (APP-074) and that an east coast site has been sought due to proximity to a number of potential offshore CO<sub>2</sub> storage sites in the North Sea, including the Endurance store (APP-088).

#### *Alternatives*

- 4.16. The Applicants' consideration of alternatives is set out at ES Chapter 6 Alternatives and Design Evolution [APP-088] and in the Applicants' Planning Statement (section 6.2 [APP-070]). The key criteria for selection of the site are summarised at ER 5.2.23 and includes proximity to the coast to minimise the onshore section of the high pressure CO<sub>2</sub> export pipeline; avoidance of residential areas; and proximity to industrial emitters that could connect into the CO<sub>2</sub> gathering network, amongst other factors. Teesside performed well against the criteria and the former Redcar Steelworks Site (now Teesworks) was selected from various sites assessed [ER 5.2.24].
- 4.17. The ES (paragraph 6.3.8 [APP-088]) noted that as a final decision had not yet been made on a range of technology matters it had been necessary to incorporate flexibility within the application and consequently, the Applicants adopted the principles of the Rochdale Envelope [ER 5.2.22].
- 4.18. The HRA Report [APP-080] concluded that there would be no Adverse Effects on the Integrity (AEol) on any protected site either alone or in combination with other plans and projects, therefore, there is no requirement to consider alternatives to the Proposed Development under the Habitats Regulations [ER 5.2.26]. Chapter 9 and the accompanying site-wide Flood Risk Assessment (FRA), provided at Appendix 9A of the ES [APP-250 to APP-252] demonstrate

that the Proposed Development satisfies the Sequential Test [ER 5.2.27]. ES Chapter 17 Landscape and Visual Amenity [APP-099] confirms that the Order land is not subject to any nationally designated landscapes, nor are there any within the immediate vicinity. As such, there is no requirement to consider alternatives from a landscape perspective [ER 5.2.28].

- 4.19. At examination, CEPP [RR-023 and REP2-061] suggested that there were preferable technologies to CCS to maximise the balance of solar, wind and energy storage [ER. 5.2.53]. The Applicants advised that the Proposed Development does not intend to displace solar, wind or energy storage technologies which will also be required as part of the overall energy mix, alongside widescale energy efficiency improvements [ER 5.2.54]. The ExA considers that CEPP's position does not acknowledge that NPSs and wider Government energy policies recognise that CCS along with other technologies, including energy storage ones, are intended to be part of an overall energy mix.
- 4.20. The ExA noted that the Applicants have considered alternative technologies and that proper reasons have been provided for the choice of the Proposed Development. It considers that alternatives to the Proposed Development have been appropriately addressed by the Applicants in accordance with paragraph 4.4.2 of EN-1 [ER 5.2.113] and in line with NPS policies and EIA regulations [ER 5.2.127]. The ExA also notes that there is nothing to indicate that alternatives have not been addressed in respect of the Specified Elements, and this position holds whether the s35 Direction means that the energy NPSs have effect in relation to the Specified Elements or whether the NPSs and draft NPSs are important and relevant considerations [ER 5.2.116].
- 4.21. In CEPP's letter of 19 January 2024 they contend that the wider CCUS network for third party emitters in Teesside should be designed so that the pumping of CO2 is provided by renewable energy, not by the proposed (or any) Combined Cycle Gas Turbine (CCGT), and that alternatives to constructing a methane burning gas fired power plant at the centre of the wider CCUS network in Teesside have never been properly considered. The Applicants' response dated 5 February 2024 states that the primary purpose of the Proposed Development is to maintain the UK's energy security through the generation and supply of dispatchable low-carbon electricity to the national grid at times of low renewable electricity generation capacity and CEPP's assertion that the CCS network could equally be powered by an alternative, renewable, source of power is to fundamentally misunderstand this primary function. The Applicants state that there is no obligation on them in law or policy to consider an alternative that does not fulfil the role and purpose of the NZT Proposed Development. They also flag that the NZT Power Station could also provide the power required to operate the high pressure compressor station required for offshore transport and storage that is a core part of the T&S system, but it is important to note that the compressors may also be powered from the national grid. The T&S system, therefore, can operate without the involvement of the NZT Power Station.
- 4.22. EN-1 does not contain any general requirement to consider alternatives or to establish whether a proposed project represents the best option. EN-1 states that decision-makers should, when considering alternatives, be guided by whether there is a realistic prospect of the alternative delivering the same infrastructure

capacity (including energy security and climate change benefits) in the same timescale as the proposed development. The Secretary of State notes that this is supported by the designated 2024 EN-1. The Secretary of State considers that the alternative proposed by CEPP is a fundamentally different project to the proposed development and that CEPP have not taken in to account the clear policy support in both the designated and draft NPSs for gas fired generating stations which are CCR (see para 4.11 above). The Secretary of State also notes that alternatives which would mean that the necessary development could not proceed, for example because the alternatives are not commercially viable, or alternatives which are vague or inchoate, can be excluded from consideration on the grounds that they are not important and relevant to the decision. The Secretary of State, therefore, considers that the Applicants' assessment of alternatives remains acceptable.

#### *The Operation of the CCGT and the CCP*

- 4.23. The ExA considered how a carbon capture rate of 90% or greater would be achieved and secured, and when the CCGT would operate in unabated mode and how this would be minimised. The Applicants explained the circumstances under which the environmental permit (EP) would allow the CCGT to run in unabated mode and confirmed that these would be closely defined [ER 5.2.65].
- 4.24. In respect of the carbon capture rate, the Applicants confirmed that the design basis being progressed for the CCP is to achieve a capture rate of at least 95% in accordance with the current Best Available Technique (BAT) position in EA guidance, and that the Dispatchable Power Agreement (DPA) would also incentivise high capture rates. The EA confirmed that it is likely that the EP would require that the capture plant achieves the current BAT position of a capture rate of CO<sub>2</sub> of at least 95% [ER 5.2.62]. ClientEarth proposed the inclusion of a provision in the DCO requiring that at least 90% of the total carbon emissions generated by the power plant must be captured at all times during its commercial operation. They suggested drafting to mirror that in the definitions section of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, to provide for the applicable minimum capture requirements on the operation of the generating station applying when it is operating "at full load". The Applicants considered that the EP and DPA would sufficiently address this issue and the ExA concluded that the EP would provide appropriate controls to secure the capture rate. The Secretary of State has considered this issue and the representations of the Applicants, the EA and ClientEarth. Whilst the EA has stated that it is likely that a 95% capture rate would be provided for in the EP, an amendment to the definitions section of the DCO as proposed by ClientEarth will secure a minimum capture rate in the DCO itself and is consistent with the approach in Keadby 3. The DCO has been amended accordingly.
- 4.25. ClientEarth also stated that "there is no suggestion that the [EP] will require the export of captured [CO<sub>2</sub>] to the gathering network for onward geological storage" and maintains that additional provisions in the DCO should secure this aspect of the development and assumption in the ES [REP11-027]. The ExA concluded that draft Requirement 31 (R31) and the EP would require the CCGT and CCP to achieve a specified capture rate and provide appropriate controls to ensure that the normal commercial operation of the CCGT would involve the capture of

CO<sub>2</sub> to the standard of BAT and its transportation for offshore storage [ER 5.2.118]. For the avoidance of any doubt in respect of offshore storage, the Secretary of State has amended R31 to include provision that Work No. 8 must be connected to an operational storage site when Work No. 1A is brought into commercial use.

- 4.26. The ExA notes that a mechanism would be in place through Work Nos. 6-8 to create a pipeline system for the collection of CO<sub>2</sub> from local emitters. The potentially substantial benefits of capturing CO<sub>2</sub> from local businesses are not accounted for in the planning balance because they do not form part of the Proposed Development, however the ExA gives weight to the benefit of the creation of a CO<sub>2</sub> gathering network [ER 5.2.119].

*The relationship of NZT to the Hornsea Project Four Offshore Windfarm Project (HP4)*

- 4.27. The Endurance Store is the saline aquifer identified for the offshore storage of CO<sub>2</sub> from the Proposed Development and the Zero Humber Project as part of the ECC. There is an area of overlap between part of the Endurance store and with the area proposed for the siting of wind turbines as part of the HP4 Project, referred to as the “Overlap Zone”. Ørsted (the applicant for the HP4 Project) noted the clear link between the onshore and Offshore Elements of the Wider NZT Project [ER 5.2.76] and throughout the Examination, sought to protect its interests in the Overlap Zone and to ensure the successful co-existence of the Wider NZT Project, the Endurance store and the HP4 Project, [ER 5.2.77]. Throughout the Examination, the Applicants maintained their position that they did not consider there to be any connection between the Proposed Development and the HP4 Project, therefore, they did not consider there to be justification for any provision for the HP4 Project in the NZT DCO [ER 5.2.102]. The ExA concluded that these matters did not need to be addressed in the NZT DCO.
- 4.28. On 19 June 2023, the Applicants sent a letter to the Secretary of State. The letter confirmed that the Applicants and Ørsted had reached a commercial agreement and both parties agreed that there are no requirements for protective provisions under the NZT Project DCO for the benefit of Ørsted. Ørsted has no remaining objection to the proposed NZT Project DCO application and agreed to withdraw any and all prior representations made in relation to the NZT Project DCO application. The Secretary of State therefore concludes that protective provisions for the benefit of Ørsted are not required.

*The Secretary of State’s Conclusions on Need, Scope, and Alternatives*

- 4.29. The ExA concluded that the need for the Proposed Development is clearly justified through EN-1, EN-2, EN-4 and the draft 2021 EN-1, as well as a range of other recent Government energy policies. On this basis the ExA gives substantial weight to the need for the Proposed Development [ER 5.2.130].
- 4.30. The Secretary of State agrees with the ExA’s assessment of need for this type of energy infrastructure and has taken into account that the Proposed Development, as CCGT with CCS, attracts strong policy support and would support the UK’s transition towards the net zero target. The Secretary of State agrees with the ExA that weight should be given to the benefit of the creation of

a CO2 gathering network and ascribes this moderate positive weight. The Secretary of State agrees that the Proposed Development is CCR, that an appropriate approach has been taken in respect of the Offshore Elements and that the issue of alternatives has been appropriately addressed. She agrees with the ExA's position that appropriate controls would be in place through Requirement 31 and the necessary Environment Permits for the CCGT and carbon capture plant. In accordance with paragraph 3.2.3 of EN-1 and paragraphs 3.1.1-3.1.2 of the draft 2021, draft 2023 and designated 2024 NPSs the Secretary of State attributes substantial positive weight to the contribution that the Proposed Development would make towards meeting the national need.

### Climate Change

- 4.31. The relevant policy considerations include section 4.8 of EN-1, which states that when developing and consenting infrastructure, climate change that is already happening should be taken into account and that the decision maker should be satisfied that proposals have considered the potential impacts of climate change using the latest projections [ER 5.3.3]. EN-2 notes that fossil fuel generating stations are likely to be located at coastal sites and therefore at risk from rising sea levels [ER 5.3.5 et seq.]. Other relevant policies include EN-4, EN-5 and the revised NPPF which includes the challenge of moving to a low carbon economy, climate change, flooding and coastal change [ER 5.3.6 et seq.]. Adopted local policy documents include RCBC's Tees Valley Climate Change Strategy including its Strategic Flood Risk Assessment and STBC's Tees Valley Climate Change strategy with Climate Change Strategy and Action Plan [ER 5.3.9]. Draft 2023 EN-1 states that the Secretary of State should be content that the applicant has as far as possible assessed the greenhouse gas (GHG) emissions of all stages of the development and taken all reasonable steps to reduce the GHG emissions of the construction and decommissioning stage of the development.
- 4.32. The Applicants' case is set out in ES Chapter 21 [AP-103] which assesses the resilience of the Proposed Development in the context of future climate change and the potential impacts [ER 5.3.1, ER 5.3.16]. The ExA noted that details demonstrating how the Proposed Development would be resilient to climate change over the lifetime of the Proposed Development had been provided as required by EN-1, EN-2, EN-4 and EN-5. The Applicants had referenced the Institute of Environmental Management and Assessment (IEMA) guidance in concluding that there would be no likely significant effects from climate change related risks such as flooding, rainfall and rising sea levels, and the ExA saw no reason to come to a different conclusion [ER 5.3.43].
- 4.33. The Applicants concluded that the operation of the Proposed Development would not significantly affect the ability of the UK to meet its Carbon Budgets and that the significance of effects is 'minor adverse' [ER 5.3.20]. Having initially omitted upstream and downstream methane emissions, at Deadline 6 the Applicants submitted a revised assessment [REP6-123], including well-to-tank emissions, and a cumulative revised assessment of GHG emissions for construction, operation and decommissioning of the offshore pipeline that would be part of the Wider NZT project ("GHG Assessment"). This increased GHG emissions but did not change the conclusion on the significance of effects [ER 5.3.27]. The ExA was satisfied that this assessment was appropriate [ER 5.3.44].

4.34. The GHG Assessment used published emissions factors from BEIS/Defra for both direct emissions from the combustion of fuels and indirect emissions associated with extraction, refining and transportation of the raw fuel sources prior to combustion, including leakage of methane in the supply chain [ER 5.3.28]. Addressing queries relating to changes to the UK gas supply, the Applicants considered that the GHG Assessment was based on the most reliable data available in 2021 [ER 5.3.30]. The emissions factor relating to carbon intensity of natural gas consumed as a fuel was replaced in 2022 but would not change the outcome of the assessment or the significance of effects. The Applicants considered that whilst minor regional variations in the direct emissions from the combustion of natural gas would occur, this would be very unlikely to make a material difference to the GHG assessment [ER 5.3.30]. There could be a change in the source of natural gas over the lifetime of the Proposed Development but emissions from the Proposed Development would need to be monitored, reported and controlled to ensure they are within appropriate limits [ER 5.3.31]. The Applicants noted that the calculated carbon intensities were based on the best available information and that, considering the commitments made to reduce methane emissions, including leakage, from the oil and gas industry, applying the 2021 emissions factor over the lifetime of the site is conservative and appropriate [ER 5.3.32]. In respect of GHG emissions, the Applicants again referenced the IEMA guidance. The ExA noted that it is not disputed by IPs that this is a suitable approach and was content that the guidance is appropriate for addressing the requirements of the ES [ER 5.3.44]. The ExA regarded use of the 2021 BEIS/Defra emissions factor as a reasonable approach and were satisfied that this represents the best data and understanding available at the current time [ER 5.3.47]. The ExA acknowledged the considerable uncertainty over the future source of natural gas and that well-to-tank emissions could be higher for imported fuel. The ExA however recognised the international effort to reduce methane emissions, including leakage, which could lead to reduction in carbon intensities. Based on this, the ExA did not consider it necessary or reasonable to require annual projections for the lifetime of the Proposed Development to meet the requirements of the EIA regulations [ER 5.3.47]. The Secretary of State agrees with the ExA.

4.35. The Applicants' revised GHG Assessment [REP6-123] considered the effects of GHG emissions from the Proposed Development as being both significant and beneficial. This is based on comparing the Proposed Development to a baseline of a similar CCGT operating without CCS. The ExA noted that EN-1 requires that all commercial scale combustion power stations must be constructed Carbon Capture Ready (CCR). On this basis, the ExA did not consider it viable to use unmitigated emissions as a baseline any longer [ER 5.3.45]. The Secretary of State agrees, noting that the Proposed Development would emit approximately +20 MtCO<sub>2</sub>e during its operational life (see paragraph 4.55), and concludes that an unmitigated emissions estimate would not be an appropriate comparator. The Secretary of State notes in this regard that designated EN-1, both 2021 and 2023 drafts and designated 2024 NPSs state that operational GHG emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology).

4.36. IEMA consider that all GHG emissions are classed as having the potential to be significant as all emissions contribute to climate change. The ExA concluded that the GHG emissions would have a significant adverse effect. In coming to this conclusion, it had regard to the Applicants' use of the UK's Carbon Budget in section 21.3 of the ES Chapter 21 to put these emissions in context and accepted that they would be a very small part of this [ER 5.3.46].

4.37. In response to representations by CEPP during the Examination, the ExA did not consider it necessary to insert a requirement into the Order requiring the CCGT to operate only when the carbon intensity is below the International Energy Agency projections. The ExA considered that EN-1 is clear that the Energy Trading Scheme forms the cornerstone of UK action to reduce emissions. The draft 2021 EN-1 includes the key mechanism of Contracts for Difference, and business models to incentivise CCUS, Carbon Price Support and the Emissions Performance Standard. This is also reflected in paragraph 2.4.4 of the draft 2023 EN-1. The ExA considered that these regulatory and financial controls encourage the reduction of GHG emissions, and it is not considered appropriate to control this further in the Order [ER 5.3.48]. Based on information in chapter 21 of the ES, the ExA was satisfied that the Applicants had taken all reasonable steps to reduce GHG emissions during construction, operation and decommissioning, as required in the draft 2021 EN-1 [ER 5.3.49].

4.38. The ExA has considered the need for the assessment of cumulative effects from GHG emissions over different timescales in a local, regional and sector context to meet the requirements of the EIA regulations. The ExA considered that given this is a nationally significant power station that would input to the national grid, contextualisation of emissions on a local or even regional scale would not be appropriate, and it was content that the updated GHG Assessment provided an estimate of GHG emissions over time through lifecycle analysis [ER 5.3.50]. The ExA did however consider there is merit in an assessment of the cumulative effects on a sectoral basis. It accepted the Applicants' statement that insufficient data are available to quantify this and that cumulative effects of sectoral GHG emissions could be potentially significant and considers it inevitable that there would be GHG emissions from across the wider sector which, in line with draft 2021 EN-1 (and draft 2023 EN-1), would be a significant adverse effect. The data to undertake cumulative assessment of the sector in the context of the UK Carbon Budgets are not available [ER 5.3.51]. The ExA noted that the Applicants' assessment follows the IEMA guidance in this regard [ER 5.3.52].

4.39. Further the ExA noted that the draft 2021 EN-1 suggests because operational emissions would be managed in an economy-wide manner to ensure consistency with carbon budgets, net zero and international climate commitments, individual applications would not need to be assessed against these measures [ER 5.3.53]. This is also reflected in paragraph 5.3.12 of 2024 EN-1 which states that the Secretary of State does not need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments.

4.40. The ExA concluded that the Proposed Development would be resilient to climate change over its lifetime and would not increase risks to the surrounding

environment either on its own or in-combination with other development as required by section 4.8 of EN-1, and EN2, EN-4 and EN-5 [ER 5.3.55]. GHG emissions have been assessed from all stages of the Proposed Development, including upstream and downstream emissions, the ExA was satisfied that the assessment of likely significant effects over the lifetime of the Proposed Development meets the requirements of the EIA regulations, having regard to the draft 2021 NPSs and other government policy [ER 5.3.56].

- 4.41. The ExA concluded that, conservatively, allowing for 90% capture during operation, the total onshore GHG emissions would be over +16 MtCO<sub>2</sub>e over the lifetime of the Proposed Development. Based on draft 2021 EN-1 the ExA concluded that these emissions would have a significant, adverse effect on carbon emissions, even with deployment of CCS technology. The ExA concluded, although quantitative data are not available, that there would be a significant adverse effect from cumulative emissions across the sector. This finding was given moderate weight in the planning balance because the ExA found that it was based on draft policy. The ExA accepted that in isolation the emissions would not measurably harm the Government's ability to meet its national targets or have a significant effect on the UK Carbon Budgets [ER 5.3.57]. The Secretary of State's conclusion in relation to GHG emissions is set out at 4.56, below.
- 4.42. The ExA noted that carbon capture of emissions from third parties is estimated by the Applicants to be over 42 MtCO<sub>2</sub>e. The ExA noted that when viewed in its broader context the Wider NZT Project could facilitate a significant positive contribution to the reduction of CO<sub>2</sub> emissions. However, the Proposed Development does not secure carbon capture of third party GHG emissions so this potential reduction in overall emissions was not taken into account in the planning balance [ER 5.3.58]. The ExA considered that notwithstanding the benefits which the Wider NZT Project could bring in reducing CO<sub>2</sub> emissions, the emissions of GHG over the lifetime of the Proposed Development would have a significant adverse effect, to which it accorded moderate weight in the planning balance [ER 5.3.59].
- 4.43. In relation to impacts on offshore wind, at D2 CEPP [REP2-061] sought clarification from the Applicants on what it considered to be the impact, if the Wider NZT Project proceeds, to the national target for offshore wind and trajectories for offshore wind development, including the HP4 Project. At ER 5.3.42 the ExA states, 'In response, the Applicants stated [REP5-028] that the worst-case reduction in wind generation capacity would be 0.67GW, assuming coexistence of the NZT and HP4 Projects is possible'. In response to a query raised by the Secretary of State the ExA confirmed that this sentence should be corrected as follows, 'In response, the Applicants stated [REP5-028] that the worst-case reduction in wind generation capacity would be 0.67GW, assuming coexistence of the NZT and HP4 Projects is **not** possible' (Secretary of State's emphasis). The report goes on to state that the potential reduction of 0.67GW represents 0.005% of the Government and CCC trajectories for offshore wind development post 2030 to 2050. The ExA concludes that these percentages are, therefore, not expected to significantly affect the UK's ability to deliver their targets for wind. The Secretary of State notes the agreement reached between

the Applicants and the operators of HP4 and that no exclusion zone was imposed in the Order for HP4, and therefore considers this matter to be resolved.

- 4.44. After the examination, CEPP submitted two letters to the Secretary of State dated 30 May 2023 (referred to here as CEPP's first letter) and 6 September 2023 (referred to here as CEPP's second letter). Their first letter focused on a scientific paper published in the Royal Society of Chemistry journal ("RSC Paper"), provided as an appendix to CEPP's submission.<sup>12</sup>
- 4.45. CEPP submitted that, according to the RSC Paper, upstream methane emissions are being underreported from UK oil and gas activities. CEPP asserted that the Applicants had not provided any assessments of upstream methane emissions from the natural gas supply chain. CEPP further submitted that over 6% of power sector emissions for the 6<sup>th</sup> carbon budget from Carbon Budget Delivery Plan (CBDP) would result from methane supply chain emissions from the Proposed Development, providing a risk to the overall delivery of the 6<sup>th</sup> carbon budget. Further comments by CEPP related to the lack of consideration of supply chain methane emissions in the draft 2023 NPSs and lack of detail in Powering Up Britain (PUB).
- 4.46. The Applicants responded to these comments by letter dated 23 August 2023, and accompanying document Appendix 6, confirming that upstream Well to Tank (WTT) emissions, akin to upstream methane emissions as termed by CEPP, were provided to the Examination at Deadline 6 in the Applicants' Cumulative Onshore and Offshore GHG Assessment ("GHG Assessment") [REP6-123]. These were based on the Government conversion factors from 2021 for company reporting of greenhouse gas emissions. The Applicants considered that this official dataset is the standard to be applied for all projects with ongoing operational emissions and, therefore, they did not consider it necessary or appropriate to revisit the upstream emissions factor for natural gas in light of the RSC Paper. The Secretary of State agrees with this position, noting that this issue was discussed during the Examination and the ExA also concluded that these factors were appropriate [ER 5.3.47]. The Applicants also drew a distinction between an estimated methane emissions rate from the wider oil and gas sector and applying it to just the natural gas supply chain. The Applicants refuted CEPP's contention that over 6% of power sector emissions for the 6<sup>th</sup> carbon budget would result from methane leakage from the Proposed Development, submitting it would be 2.83% instead. The Applicants considered that CEPP's commentary on the draft NPSs and PUB was not specific to the Proposed Development, but a generalised commentary on recent Government policy papers, and they therefore did not provide a substantive response to this commentary. The Secretary of State agrees with this position regarding the draft NPSs and PUB.
- 4.47. The Secretary of State agrees with the Applicants' response in respect of the points raised in CEPP's first letter and notes that appropriate weight will be attributed to GHG emissions in the planning balance, and also notes that leakage of methane in the supply chain was considered in the Examination [ER 5.3.28].

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<sup>12</sup> <https://pubs.rsc.org/en/content/articlelanding/2023/ee/d2ee03072a>

4.48. CEPP's second letter submitted that the Applicants' GHG Assessment used an inappropriate alternative baseline of a CCGT power station not fitted with CCUS, contrary to other documents submitted earlier in the Examination by the Applicants. CEPP also submitted that the Applicants have not considered the probability of WTT emission factors varying over the 25-year lifecycle of the Proposed Development, and have not considered the loss of emissions capture through Transport and Storage (T&S) unavailability in their evaluation of the CBDP. CEPP stated that the Proposed Development would contribute 4.53% of power sector emissions for the 6<sup>th</sup> carbon budget, not 2.82% as submitted by the Applicants. CEPP further submitted there is a large double counting error in the calculation of carbon removals. CEPP laid out that, in the Applicants' GHG Assessment, the Applicants subtracted the carbon captured twice in the calculations of cumulative GHG emissions from the Proposed Development and Offshore Elements over its 25-year lifetime. The Applicants [REP6-123] submitted a figure of -32,556,291 tCO<sub>2</sub>e as the whole life GHG emissions from the Proposed Development and Offshore Elements while CEPP countered with a figure of +20,808,127 tCO<sub>2</sub>e. CEPP laid out in detail in its second letter how the figures were calculated and where it considered the Applicants had subtracted the carbon captured twice. The Applicants accounted for 90% carbon capture in the calculation of operational GHG emissions, resulting in total onshore operational emissions of +16,858,196 tCO<sub>2</sub>e and, later, deducted the carbon already accounted for in this calculation again, resulting in a double count of 53,364,418 tCO<sub>2</sub>e, and presenting the cumulative GHG emissions as -32,556,291 tCO<sub>2</sub>e. The Secretary of State agrees with CEPP's analysis of the figures (reproduced below) and notes that the presentation of GHG emissions in the GHG Assessment [REP6-123] is incorrect.

Development	Phase	GHG Emissions (tCO <sub>2</sub> e)	Note
Onshore Construction and Operation	Construction (4 years)	76,012	90% carbon capture at NZT project accounted in this figure
	Operation (25 years)	16,782,184	
	Total Onshore	16,858,196	
Offshore Construction and Operation	Construction (3 years)	324,699	
	Operation (25 years)	30,988	
	Decommissioning	1,721	
Carbon capture (NZT only)	Total Offshore	357,408	
	Carbon captured	<u>Already accounted above</u>	
	T&S unavailability adjustment	3,592,523	
Whole life GHG emissions	Adjusted for T&S unavailability	3,592,523	
		20,808,127	

**Table 1: Corrected version of REP6-121/Table 3-4, from CEPP's second letter of 6 September 2023**

4.49. The Applicants responded to these comments in a further letter dated 6<sup>th</sup> October 2023. The Applicants submitted that they had chosen an appropriate alternative baseline. However, as discussed at 4.34, above, the ExA considers that it is not appropriate to use unmitigated emissions as a baseline comparator and the Secretary of State agrees. The Applicants submitted that they have considered the variability of WTT emissions factors and used the most recent data available at the time. The Secretary of State acknowledges the variability of these factors and that they could increase or decrease over the 25-year lifetime of the

Proposed Development and agrees with the approach taken by the Applicants in this regard, noting that this issue was discussed during the Examination and the ExA also concluded that these factors were appropriate [ER 5.3.47].

- 4.50. The Applicants acknowledged that T&S unavailability should have been taken into account in the GHG Assessment, thereby increasing the estimated GHG emissions from the Proposed Development and acknowledged a consequent increase in the contribution to power sector emissions for the 6<sup>th</sup> carbon budget from 2.82% to 4.54%, as per CEPP's second letter. The Secretary of State notes this revised increased GHG emissions figure and its effect on the contribution to the 6<sup>th</sup> carbon budget and this is taken into account in the Secretary of State's conclusion on the planning balance.
- 4.51. The Applicants refuted the claim that it had double counted carbon removals. However, the Secretary of State considered that the Applicants' response did not adequately address the purported double counting error and in a letter dated 30 November 2023 requested that the Applicants clarify the double counting calculation error, and correct and update their assessment of GHG emissions and evaluation of significance in the GHG Assessment.
- 4.52. The Applicants responded on 13 December 2023, acknowledging that the earlier omission of T&S unavailability figures resulted in their submission of 4 October 2023 being incorrect and confirmed the increase from 2.82% to 4.54% power section emissions for the 6<sup>th</sup> carbon budget. However, the Applicants noted that the UK Government stated in the CBDP that sectoral figures are "only projections and should not be interpreted as hard sectoral policy targets". The Applicants restated that this increase did not affect the significance and that the net GHG impact of the Proposed Development was minor adverse, and, at a cumulative level, beneficial and significant. The Secretary of State notes the increase due to T&S unavailability.
- 4.53. The Applicants stated that there had been no double counting but acknowledged that the presentation of cumulative data in the GHG Assessment was insufficiently clear and provided the data in an alternative format. The Applicants presented a figure of +23,440,627 tCO<sub>2</sub>e as the whole life GHG emissions for the Proposed Development and Offshore Elements, noting this slight difference from CEPP's calculation was due to the inclusion of T&S unavailability from third party emitters. The Applicants further presented a figure of 92,139,395 tCO<sub>2</sub>e as an estimation of carbon storage from the Proposed Development and Offshore Elements. The Applicants confirmed their evaluation of significance was unchanged from their original GHG Assessment and in their view remained, at a cumulative level, beneficial and significant. The Secretary of State notes this revised presentation of data. She notes that the Applicants present, in Table 1, a whole life emissions figure which has already had 90% of sequestered GHG operational emissions accounted for. She further notes the inclusion of T&S unavailability from third party emitters in Table 1 but notes that as the Proposed Development does not secure carbon capture of third party GHG emissions, these emissions should be excluded from the calculation. Table 2 shows the captured carbon which is accounted for when reaching the net figure in Table 1 and, again, shows potential captured carbon from third party emitters. The Secretary of State notes that Table 2 does not take matters any further in respect

of the calculation of emissions as the carbon stored from the Proposed Development has been noted and is accounted for in Table 1 and the carbon stored from potential third-party emitters does not form part of the Secretary of State's analysis of GHG emissions from the Proposed Development.

- 4.54. CEPP responded to the all-party consultation of 20 December 2023 on 19 January 2024. CEPP reiterated its concerns with the emissions factors used by the Applicants, questioning whether the emissions factors provided by BEIS/DESNZ are the correct ones to use and further questioned the use of the natural gas factor as the fuel supply for the Proposed Development will also include a proportion of liquefied natural gas. The Secretary of State, taking into account information gathered through the Examination and previous consultation responses, remains satisfied with the approach taken by the Applicant, notwithstanding the likelihood of variation in future emission factors.
- 4.55. CEPP purported that the re-presentation of whole life GHG emissions for the Proposed Development and Offshore Elements was a departure from what had been previously used as part of the EIA assessment as the Applicants were now including emissions from third party emitters. The Secretary of State agrees with CEPP that this is inconsistent to the approach used by the Applicants elsewhere.
- 4.56. CEPP further addressed the double counting error. As outlined above, the Secretary of State agrees that the data has been presented incorrectly, but is satisfied that she has the relevant information to conclude that the whole life GHG emissions for the Proposed Development are +20,450,719 tCO<sub>2</sub>e and for the Proposed Development and Offshore Elements cumulatively are +20,808,127 tCO<sub>2</sub>e, as laid out by CEPP. The ExA states that 'because the Proposed Development does not secure capture of third party GHG emissions, this likely overall reduction in the emissions is not a matter that we can include in the planning balance' [ER 5.3.58]. While the Secretary of State appreciates that the Proposed Development, in conjunction with the Offshore Elements and Wider NZT Project, has capacity to store a large amount of carbon, she agrees with the ExA that the GHG emissions from the Proposed Development itself must result in negative weight in the planning balance.
- 4.57. On 5 February 2024 the Applicants sent a letter to the Secretary of State responding to CEPP's letter of 19 January 2024. They explained that their inclusion of emissions from third party emitters in their 13 December 2023 submission was "for completeness" and not to be taken to suggest that the scope of the Proposed Development had expanded to include third party emissions. The Secretary of State, as outlined above, has decided to exclude these emissions from the calculation. The Applicants continued to refute any claim of double counting. As outlined above, the Secretary of State agrees with the points raised by CEPP regarding the presentation of that data, but she remains satisfied that she has all the relevant information to conclude on the GHG emissions for the Proposed Development. The Applicants addressed the issue of emissions factors, further acknowledging the likely future variation in upstream emissions factors but concluding that the annually published DESNZ emission factor dataset is logical and appropriate. The Secretary of State, as outlined above, remains satisfied that the Applicants have taken a suitable approach on this issue.

### *The Secretary of State's Conclusion on Climate Change*

4.58. The Secretary of State has considered the ExA's report and consultation responses received. She considers that the Proposed Development would support the UK's transition towards a low carbon economy. The Secretary of State has considered the potential benefits which the Wider NZT Project would bring in reducing emissions but accepts the ExA's conclusions that over the lifetime of the Proposed Development, emissions would have a significant adverse effect. She does not, however, agree that this matter carries only moderate negative weight in the planning balance as GHG emissions are stated as having a significant adverse impact in both the 2011 and 2024 designated NPSs and draft 2021 and 2023 NPSs. Taking into account the post-examination inclusion of T&S unavailability emissions and the consequent increase in GHG emissions, the Secretary of State concludes that the cumulative whole life GHG emissions will be in the region of +20,808,127 tCO<sub>2</sub>e. Also, the Secretary of State notes the resultant increase in the contribution of the Proposed Development to the power sector carbon budgets. She agrees with the ExA in giving more weight to the 2024 NPS's than a comparison with the UK carbon budgets for the assessment of significance but has taken this increase into account. Overall, she considers that cumulative whole-life GHG emissions are a significant adverse effect, carrying significant negative weight in the planning balance.

### Air Quality and Emissions

4.59. The main sources of emissions during construction would be from additional traffic and dust. During operation several stacks, including the CO<sub>2</sub> absorber stack, would emit, amongst other things, oxides of nitrogen (NO<sub>x</sub>), carbon monoxide (CO) and ammonia (NH<sub>3</sub>) and amines and their degradation products [ER 5.4.1]. The Applicants' air quality assessment is set out in chapter 8 of the ES, accompanied by two appendices assessing in detail the potential impacts from construction and operational phases. A third appendix includes the approach to assessment of amine degradation products. The latest version of the accompanying figures illustrating the study areas was received at Deadline 12 [ER 5.4.6].

4.60. The ExA considered that the Applicants have satisfactorily described the significant air emissions and mitigation as required by section 5.2 of EN-1 and the draft 2021 EN-1 [ER 5.4.49]. The ExA was satisfied that no significant adverse effects would arise during construction and notes that the final Construction Environment Management Plan (CEMP) secured at Requirement 16 would ensure best practice, mitigation and monitoring of emissions, including those from dust and non-road mobile machinery (NRMM) during construction and decommissioning [ER 5.4.50]. The effects of emissions from construction traffic have been demonstrated to be negligible [ER 5.4.45]. The ExA was also satisfied that the decommissioning phase would give rise to a similar level of effects once mitigated, secured via the Decommissioning Environmental Management Plan (DEMP) as required by Requirement 32 of the Order [ER 5.4.45].

4.61. The ExA considered that the Applicants' air dispersion modelling is indicative because a detailed design has not yet been completed and the technology is still emerging in respect of amines. The ExA was satisfied however that the

assessment is conservative and accepts that there are unlikely to be significant effects from emissions on human health or the environment during the operation of the Proposed Development [ER 5.4.46]. The ExA has considered in detail the potential effects of NO<sub>x</sub> on protected sites, the potential variation in emissions during the year, and the uncertainty around stack heights and modelling of novel amine technology. The ExA noted that no queries from IPs remained outstanding [ER 5.4.46].

- 4.62. The EA confirmed that air quality dispersion modelling, mitigation and monitoring would all be reviewed as part of the EP process for the plant and that this would ensure statutory air quality limits and Best Available Technique-Associated Emission Levels (BAT-AELS) are met. The ExA was satisfied that the operation of the PCC Site would be adequately controlled via pollution control regimes [ER 5.4.48].
- 4.63. The ExA concluded that the Proposed Development can in principle achieve statutory limits during operation, which would be controlled through an EP to ensure all appropriate limits are met [ER 5.4.51]. Requirement 3 of the Order also requires the control of the height of all stacks to ensure that environmental effects will be no worse than those identified in ES Chapter 8 [ER 5.4.47]. The ExA considered matters relating to air quality and emissions therefore have no effect on the planning balance [ER 5.4.52].
- 4.64. By letters dated 20 October 2023 and addressed to the Secretary of State and the EA, NE confirmed that it had had to revise the advice it had provided regarding the effects of nutrient nitrogen deposition on the Teesmouth and Cleveland SSSI ("the SSSI") during the statutory consultation for this DCO application. NE provided this updated interim advice in response to further air quality modelling undertaken by the EA in relation to the Applicants' application for their Environmental Permit. By letter dated 28 November 2023 and addressed to the Secretary of State, the Applicants confirmed they have provided updated modelling to the EA and NE that demonstrates the Project is capable of achieving a nutrient nitrogen deposition rate that is less than 1% of the relevant lower critical load on the protected area of the SSSI at Coatham Sands, as recommended by NE, and that the Environmental Permitting process will ensure the Project does not exceed this figure when operational. By letter of the same date addressed to the Secretary of State, NE confirmed that the matters raised in their previous letter had been resolved and they have no further comments on the application. On 20 December 2023 the Secretary of State requested comments from all parties regarding NE's representations and received one response dated 19 January 2024 from the EA confirming that it agreed with the conclusions of the Applicants' updated modelling and if it subsequently decides to grant a permit for the proposed installation, it will include conditions that will require the Applicant to operate the installation in accordance with operating conditions described in the updated air dispersion modelling assessment. The Secretary of State, therefore, considers that the issues raised have been adequately addressed by the Applicants and will continue to be addressed in the Environmental Permitting process.
- 4.65. In CEPP's second letter, CEPP requested that the Secretary of State ask the Applicants for a revised ES on air quality grounds to reflect new regulations made

pursuant to the Environment Act 2021, the Environmental Targets (Fine Particulate Matter) (England) Regulations 2023 (“2023 Regulations”), and interim targets for 2028 via the Environmental Improvement Plan (“the interim targets”) for particulate matter 2.5 (PM2.5). The 2023 Regulations and the interim targets both set targets for annual mean concentrations of PM2.5 and targets to reduce population exposure to PM2.5. CEPP stated that the ES had not been updated for the new legislation and that no estimation or assessment is given for the PM2.5 effects from construction or operation of the Proposed Development ([APP-090] section 8.6) including the human health impacts of PM2.5 ([APP-090] Table 8-10).

- 4.66. The Applicants responded on 6 October 2023. They considered that the 2023 Regulations were introduced to drive improvements in air quality nationally, with the targets applying at relevant monitoring stations, rather than being targets for use in the evaluation of PM2.5 effects within the planning process. However, if an assessment by reference to the 2023 regulations was undertaken for the Proposed Development, the Applicants contended that it would not require any update to the ES for either the construction or operational phase. For the construction phase, changes in PM2.5 were assessed due to emissions associated with construction traffic (Table 8A-19 Results of Construction Traffic Impact Assessment at Human Receptors ES Vol III Appendix 8A Air Quality - Construction Phase [APP-247]). The predicted concentration of PM2.5 from construction traffic ranged between 7.2  $\mu\text{g}/\text{m}^3$  and 8.6  $\mu\text{g}/\text{m}^3$ , with changes of less than 0.1  $\mu\text{g}/\text{m}^3$ . The predicted change in PM2.5 concentration is the lowest level that would typically be reported for changes in pollutant concentrations and total PM2.5 concentrations are already below both the interim annual mean target of 12  $\mu\text{g}/\text{m}^3$  in 2028 or the final 2041 annual mean target of 10  $\mu\text{g}/\text{m}^3$ . This means that even if the 2023 Regulations were used to evaluate PM2.5 for the construction phase there would be no predicted exceedances nor a significant effect.
- 4.67. The Applicants stated that particulates of any diameter, including fine particulates, are not a pollutant of concern for the operational phase of the proposed combustion plant and carbon capture plant (paragraph 8.2.6 ES Vol III Appendix 8B Air Quality - Operational Phase [APP-248]). The Best Available Techniques (BAT) Reference Document for Large Combustion Plants (2017) (Section 1.3.2.3) notes that “The combustion of natural gas is not a significant source of dust emissions.”. This is because solid fuels which would require consideration for particulate emissions to air, including PM2.5, would not be burnt. The Applicants state that, additionally, no operational traffic assessment was required for PM2.5 as the level of traffic change was too low to require an air quality assessment (paragraph 8.2.1 ES Vol III Appendix 8B Air Quality – Operational Phase [APP-248]). Therefore, a change in PM2.5 assessment threshold to the 2023 Regulations would not have any impact on the assessment relating to the operational phase in the ES as submitted.
- 4.68. The Applicants concluded that the air quality assessment for the Proposed Development within the ES remains valid and no further work is required in relation to assessing the impact of the Proposed Development on air quality in the context of the 2023 Regulations.

4.69. In response to the consultation letter of 20 December 2023 inviting comments from all IPs on the Applicants' response regarding PM2.5, neither CEPP nor any other IP commented on this matter.

*The Secretary of State's Conclusion on Air Quality and Emissions*

4.70. Regarding PM2.5, the Secretary of State agrees with the response of the Applicants to CEPP and she is satisfied that the ES adequately assesses PM2.5 emissions as relevant to the Proposed Development. The Secretary of State does not consider that any further updates to the ES are required in light of the 2023 Regulations and interim targets and she does not consider that granting development consent for the Proposed Development would lead to her being in breach of any duty imposed by the 2023 Regulations and interim targets. Regarding the assessment of impacts of changes in air quality on human health, the Secretary of State also notes that the UK Health Security Agency stated agreement with the methodology used to undertake the EIA and that it was satisfied that the Proposed Development should not result in any significant adverse impact on public health [RR-036].

4.71. The Secretary of State has considered the ExA's Report and the representations received since the close of the examination. The Secretary of State agrees with the ExA and considers that, with the mitigation measures secured in the Order, there will be no significant effects on air quality. Consequently, this matter does not weigh for or against granting consent for the Development.

Design and Landscape and Visual Effects

4.72. NPS EN-1 section 4.5 refers to design and section 5.9 to landscape and visual effects. EN-2 specifically refers to fossil fuel generating stations and recognises the impact that the scale of the main structures including the plant and stack(s) will have on the surrounding landscape and visual amenity. Paragraph 2.6.10 of EN-2 specifies that if, having regard to the considerations in respect of other impacts set out in both EN-1 and EN-2, the Secretary of State is satisfied that the location is appropriate for the project and that it has been designed sensitively to minimise harm to landscape and visual amenity, the visibility of a fossil fuel generating station should be given limited weight [ER 5.5.7].

4.73. ES Chapter 17 assesses the landscape and visual effects and includes the assessment methodology. In terms of the Rochdale Envelope the assessment is based on the largest possible dimensions for the Proposed Development as representing the worst-case scenario; the widest building footprint and the tallest potential height. This includes a range of the most visible structures in Work Nos. 1 and 7 including an absorber stack at 128m AOD, and heat recovery steam generator at 110m AOD [ER 5.5.13]. The existing landscape baseline is informed by a range of landscape character assessments (LCA). There are three of NE's National Character Area profiles within 10km of the study area. The Tyne, Tees and West Estuaries and Coastal Waters profile lies within the 10km Marine environment study area [ER 5.5.18]. At a local level the Proposed Development crosses a number of LCA study areas, with the PCC being situated wholly within the Tees Lowlands and on the edge of the landscape character tract 'Redcar Flats' [ER 5.5.19]. LVIA and design matters were not raised within any

representations nor within STBC's LIR. NE representations confirm that the project would not affect any protected landscapes [ER 5.5.35].

- 4.74. The Marine Management Organisation (MMO) confirmed in their SoCG that the assessment of landscape and seascapes effects was appropriate [ER 5.5.51].
- 4.75. The Applicants' baseline characteristics of the local study area describe it as having sparse vegetation cover which reflects the site's coastal location. Topography is relatively flat until it rises up to the Eston Moor to the south-west. The River Tees flows through the centre into the Tees Mouth estuary and the North Sea. Settlements within the study area include the city of Middlesbrough, the towns of Redcar and Hartlepool and a number of seaside resorts. Main roads and Public Rights of Way (PRoWs) run through the area including long distance routes. The England Coast Path and the Teesdale Way are coastal routes near the site [ER 5.5.20]. There are no designated landscapes in the study area. The assessment of local landscape areas finds the overall landscape value of the study area to be 'medium', the site to be 'low' and the PCC site to be 'very low' [ER 5.5.21].
- 4.76. The Applicants' ES considers likely impacts and effects with the Eston Hills and the Coastal Fringe LCA's being assessed as having the highest sensitivity [ER 5.5.23]. Cumulative developments were considered in the assessment and a total of 13 other developments are scoped into the cumulative visual assessment. The cumulative viewpoint assessment identifies the cumulative effect as being the same overall classification of effects on each viewpoint as for the Proposed Development alone [ER 5.5.26]. The ExA considers that overall the methodology and establishment of the baseline is reasonable and adequate in relation to EIA requirements and in accordance with national policy objectives [ER 5.5.73].
- 4.77. The focus in design terms is on the PCC site, which is characterised in the Design and Access Statement (DAS) as sitting within an industrialised context dominated by industrial and port related uses and relatively remote from residential areas. The DAS sets out the design approach and notes that the appearance of the buildings and structures is representative of their function and purpose and would be simple and functional in form and detailing, predominantly comprising steel framed enclosures clad in appropriate materials [ER 5.5.30 et seq.]. It confirmed that a decision on final external finishes would be made at detailed design as secured by Requirement 3 of the Order [ER 5.3.32]. Landscaping around the perimeter of the PCC site would include wildflower grassland and native scrub creation. Areas between and around the main structures are likely to comprise hardstanding and crushed stone [ER 5.5.33].
- 4.78. RCBC commented in their LIR that the Landscape and Visual Impact Assessment (LVIA) methodology was appropriate and included representative viewpoints. It acknowledged the potential for significant adverse effects from viewpoints 5, 7 and 8. It accepts that an appropriate mechanism for minimising adverse impacts is through the appropriate siting of infrastructure and the use of suitable materials, secured through Requirement 3 of the Order [ER 5.5.36]. Overall, the ExA was satisfied that the methodology and establishment of the baseline is reasonable and adequate in relation to EIA requirements and in accordance with national policy. Guidelines for LVIA have been followed and the

range of visualisations are fit for purpose [ER 5.5.73]. The ExA considers the selection of locations for viewpoint assessment are broadly appropriate [EDR 5.5.74]. Whilst selecting an additional coastal viewpoint (such as Saltburn-by-the-Sea) would have been desirable the ExA accepted the effects would be no worse than from other coastal locations to the south of the Tees where effects were assessed to be not significant [ER 5.5.74]. The ExA requested an amendment to viewpoint 2 from Seaton Carew but agreed with the Applicants' assessment of sensitivity and the overall value of the view as medium, with a high susceptibility to change. The Applicants' assessment of the significance of effect on this view is 'negligible adverse'.

- 4.79. The ExA considered that the Applicants have underplayed the significance of the view from this location on the north side of the Tees. The ExA noted that views from this location are distinct in that the PCC site and former steelworks structures have the appearance of standing largely alone alongside the coastal scenery and the Cleveland Hills behind. The majority of other structures associated with the industrial areas and ports around the Tees do not appear in the backdrop of this view; rather they are detached and lie partially obscured behind the dunes at North Gare. The ExA considered that the amended viewpoints are not indicative of a completed development which the Applicants describe as barely noticeable, and not altering the context of the view. The ExA found the site structures would be noticeably prominent in the view and the effect on this viewpoint, during all phases of development, to be 'moderate adverse', which is significant [ER 5.5.79].
- 4.80. The ExA considered other viewpoints have also been underplayed in the LVIA including at Albion Terrace and North Gare Sands. However, the ExA agreed that in each case the overall effect would be minor adverse (not significant) [ER 5.5.80 et seq.]. The ExA agreed with the Applicants' assessment that the landscape impact would be neutral overall, but that visual impacts from certain viewpoints, would be significant adverse [ER 5.5.82]. The ExA also agreed with the Applicants' assessment of cumulative impacts, in that the effects would be no worse than assessed for the Proposed Development alone [ER 5.5.83].
- 4.81. The ExA accepted there had been very little engagement from the public or statutory authorities in relation to design matters during pre-application consultation and the Examination. However, the ExA was disappointed that further consideration had not been given to use of a design champion and/or design panel [ER 5.5.84]. The ExA accepted that reference to the Design and Access Statement had been added to Requirement 3, which refers to the Teesworks Design Guide and references design typologies and encourages good design. STDC would be a consultee on Requirement 3 and would have input into the final design details of the PCC site [ER 5.5.87]. Overall, the ExA was satisfied that the detailed design would be adequately dealt with by RCBC in consultation with STDC [ER 5.5.89].
- 4.82. The ExA agreed with the Applicants that it would not be possible to mitigate the significant adverse visual effects of the Proposed Development by screen planting, whether that be on or off site [ER 5.5.90]. The design of the Proposed Development will be key in reducing its adverse effects and it would be for RCBC and STDC, having regard to the SPD and design guide, to satisfy themselves

that good design principles would be adopted in the final design when considering Requirement 3 of the Order [ER 5.5.92].

- 4.83. The ExA concluded that Works Nos. 1 and 7 at the PCC site would fail to meet the requirements of EN-1 and EN-2 in terms of significant adverse effects on the visual amenity of a number of viewpoints predominantly along the coast, with long term effects in the case of viewpoints 2 and 7 and during construction for viewpoints 5 and 8. The draft 2021 EN-1 and EN-2 also recognise that power CCS facilities will have an impact on surrounding landscape and visual amenity but that good design should be applied from an early stage. However, the ExA was not satisfied this had been adequately carried out [ER 5.5.94]. The PCC site proposals partly conflicted with Policy NE-SCP-1 of the North East Marine Plan as the design had not adequately taken account of the character, quality and distinctiveness of the seascape and landscape [ER 5.5.95].
- 4.84. The ExA considered the approach to assessment of other components, including the electricity substations and the AGIs was proportionate given the lack of visibility and their industrial context [ER 5.5.97].

*The Secretary of State's Conclusion on Design and Landscape and Visual Effects*

- 4.85. The Secretary of State has considered the ExA's Report and notes its conclusions. She also notes the position of RCBC and STDC that detailed design would be considered as part of Requirement 3 of the Order. The Secretary of State agrees with the ExA's position on design and its conclusion that, in respect of design, landscape and visual impacts, the effects are negative. She attributes moderate weight against the making of the Order in the planning balance.

Water Environment

- 4.86. Relevant policy considerations include NPS EN-1, which details the requirement for an ES to consider effects on the water environment. This includes groundwater, inland surface water, transitional waters and coastal waters [ER 5.6.3]. NPS EN-2 is also relevant which states that some fossil fuel generating stations have very high water demands and that water supply should be investigated at an early stage. NPS EN-4 refers to risks associated with the construction of pipelines, and includes, amongst other things, changes to drainage. The North East Marine Plan policy NE-WQ-1 states that proposals that protect, enhance and restore water quality will be supported. Proposals that cause deterioration must demonstrate that they will, avoid, minimise and mitigate impacts.
- 4.87. Chapter 9 of the ES refers to the water environment specifically in relation to pollution, the Water Framework Directive (WFD), flood risk and the outfall to Tees Bay and is supported by the FRA and the WFD Assessment. The entirety of the PCC site is located within Flood Zone 1, with areas of land within the Order limits in Flood Zones 2 or 3a including Work No.2, Work No.4, Work No.8; Work No.6 and Work Nos. 9D and 9E [ER 5.6.37].

### *Water quality*

- 4.88. The Applicants responded to the ExA's questions on the mobilisation of fine sediment during construction on the new discharge outfall. All construction works would be undertaken in accordance with best practice mitigation measures, as set out in the ES and secured in the Framework CEMP [ER 5.6.48]. Monitoring requirements in respect of temporary effects on Redcar Coatham Bathing Water from turbidity would be secured via the Final CEMP. At Deadline 6 the EA stated it was satisfied with the proposed actions in the Framework CEMP in this respect [ER 5.6.49]. The ExA were satisfied the effects caused by the construction of the new outfall would be localised, temporary, and not significant [ER 5.6.67]. The ExA noted there could be a temporary, localised effect on turbidity in the Bay during construction, with the EA content with the mitigation and monitoring measures, and the ExA was satisfied there would be no significant adverse effects [ER 5.6.68].
- 4.89. Conditions in Article 17 and Requirement 11 require obtaining the consent of owners or relevant authorities and water discharges meeting a satisfactory standard [ER 5.6.50]. Requirement 16 of the Order secures a Hazardous Substances Management Plan, which must be approved by the RPA, following consultation with the EA [ER 5.6.51]. Further consideration was given to effects on water quality, including thermal effects from the outfall, during the Examination. The Applicants noted that the discharge would need to meet the standards required by a permit, and that further modelling of nutrients would be undertaken. This is considered in paragraphs 4.77-4.79 of this letter. Condition 30 of the Deemed Marine Licences specifies that Work No. 5B must be consistent with the maximum design parameters for the new outfall as set out in Chapter 9 of the ES [ER 5.6.53]. The ExA asked questions about the baseline dataset, including meteorological data, the conceptual model for Pond 14 and the search area for pollution incidents, indirect effects to distant receptors from increased demand on potable water supplies and foul water treatment. They also sought clarification on the criteria used in the assessment of hydromorphology. The ExA consider these were all satisfactorily addressed by the Applicants [ER 5.6.54]. Based on the final position Northumbrian Water Limited (NWL) in the SoCG the ExA was content that water supply and the discharge of foul water would not give rise to significant effects [ER 5.6.65]. Requirement 11 of the Order requires that details of surface water and foul water drainage systems must be approved by the RPA prior to commencement. Water quality would be protected by the Final CEMP provided for by Requirement 16 of the Order. Requirement 32 would ensure protection of the water environment during the decommissioning phase [ER 5.6.66].

### *Water Framework Directive*

- 4.90. The EA identified that the Application did not include measures to enhance or restore any water bodies, in particular with regards to the Tees Estuary Transitional Waterbody for Dissolved Inorganic Nitrogen (DIN). The Applicants' WFD Assessment identified no significant residual effects from the Proposed Development but they were engaging with the EA to future-proof enhancement initiatives and options [ER 5.6.55]. The signed SoCG with the EA records that both parties are confident that a design solution could be developed to achieve

WFD compliance on the Tees Coastal, Tees Transitional and Tees Estuary waterbodies both for current and future status and that this is adequately secured through Requirement 37 of the Order [ER 5.6.56]. The EA also confirmed modelling impacts from atmospheric deposition of nutrients on water bodies was acceptable and that it was content that other pollutants had been adequately considered [ER 5.6.57 et seq.].

- 4.91. The updated modelling identified that a small plume could exceed the Annual Exceedance Probability, but this would not be significant at a waterbody scale. Release of DIN has the potential to increase levels at the Teesmouth and Cleveland Coast SSSI, Special Protection Area (SPA) and Ramsar site. The Applicants produced a nutrient neutrality safeguarding scheme in discussions with the EA and NE which is secured through Requirement 37 of the Order. The EA confirmed<sup>13</sup> it is confident that a potential design solution for the treatment and discharge of wastewater to Tees Bay can be developed and implemented for the Proposed Development to achieve WFD compliance in the Tees Coastal, Tees Transitional and Tees Estuary waterbodies both for current and future status, and that the detail of the solution is adequately secured through Requirement 37 of the DCO. The ExA was satisfied that Requirement 37 provides appropriate mitigation and monitoring of the water bodies and the protected site to ensure that there would be no adverse effects. It was satisfied technical solutions to reduce the concentrations of DIN would be available if necessary [ER 5.6.70].
- 4.92. The EA was content with the approach to modelling impacts from atmospheric deposition of nutrients on WFD waterbodies and the ExA saw no reason to come to a different conclusion, noting there would be no adverse effects in this regard [ER 5.6.71]. The ExA concluded that the WFD Assessment had been satisfactorily completed and there would be no deterioration to any waterbody, nor would the Proposed Development prevent future attainment of good status or potential, providing the mitigation measures secured by the Order and all relevant permits and licenses are secured [ER 5.6.72]. The ExA was mindful that the details of the discharge are also subject to the Environmental Permitting regime along with the nutrient nitrogen safeguarding scheme. Taking these together, the ExA was content that no adverse effects would arise [ER 5.6.79].
- 4.93. The ExA concluded that the Proposed Development would not have an adverse effect on the achievement of the environmental objectives established under the WFD as required by NPS EN-1 [ER 5.6.80].

#### *Flood Risk*

- 4.94. The Applicants provided a Strategic Flood Risk Assessment during the Examination which confirmed that the entire PCC site would be on a 7.3m AOD platform and no land would be raised within the Flood Zone 2 or 3 displacing flood plain storage [ER 5.6.59]. The Applicants re-assessed the FRA based on

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<sup>13</sup> EN010103 - The 'Net Zero Teesside Project'. Post-examination Submissions. Submission 002 Environment Agency, received 11 November 2022. EA ref. NA/2022/115883/09-LO1.

the most up to date climate change allowances, and concluded that there were no implications for the assessment of risk and significance of effects [ER 5.6.60].

- 4.95. The ExA sought clarification regarding the Applicants' application of the Sequential Test, given that some of the alternative sites were entirely within Flood Zone 1 (at very low risk of flooding), which the Applicants' site is not. The Applicants responded that whichever site was chosen, the scale of the development meant that some crossing of Flood Zones 2 and 3 was inevitable, they were therefore all equally viable [ER 5.6.61]. Work No.2B, the AGI connecting Work No.2A to the National Transmission System via the Sembcorp South Pipeline, is partly in Flood Zone 3. In response to the ExA's queries regarding consideration of siting in less vulnerable areas, the Applicants consider they are constrained by the existing access road and that operability restricted them from splitting the works [ER 5.6.62]. The ExA were content that this is reasonable and that mitigation measures secured in Requirement 12 (a flood emergency response and contingency plan) and Requirement 16 (CEMP) are appropriate to negate the risk [ER 5.6.75].
- 4.96. Access to and from the PCC site would be flooded during higher return period events where it is proposed that staff either remain within the PCC Site area or are evacuated via the northern gate onto South Gare Road. The Applicants confirmed that access would be secured and that the escape route would remain above worst-case cumulative flood levels [ER 5.6.64]. Further evidence of a sequential assessment was also requested on a site scale for Works Nos 9D and 9E (laydown areas near Saltholme) given that these are in Flood Zone 3a and 2 respectively. The ExA considers that the Applicants have not clearly explained how a sequential approach was applied to placement of the laydown areas at Saltholme and that areas at lower risk of flooding could not be found [5.6.63]. However, no other IP has raised concern in this regard and the ExA concluded that it is satisfied that the schemes required by Requirement 12 of the Order should ensure that the residual risks at these locations are managed to the extent that the potential risks are not significant [ER 5.6.76]. The final CEMP, secured at Requirement 16 of the Order, would also ensure that best practise is adhered to and risks minimised during construction [ER 5.6.83].
- 4.97. The ExA were persuaded, given the extensive area of the flood zones and length of the connection corridors that some pipework in Flood Zones 2 or 3 cannot be avoided. Pipelines would be underground or in existing pipe racks and would not increase flood risks elsewhere. Risks to personnel during construction and operation can be satisfactorily managed through a scheme for the mitigation of flood risk, and a flood emergency response and contingency plan (Requirement 12). The CEMP (Requirement 16) should ensure best practise and that risks are minimised during construction [ER 5.6.73]. The ExA were satisfied with the outcome of the sequential and exception tests at a site scale and concur with the clear wider sustainability benefit, that the land is previously developed and that the FRA has demonstrated that the Proposed Development would be safe from flooding and would not increase the risk of flooding off-site [ER 5.6.74].
- 4.98. The ExA concluded that matters relating to the water environment would have no effect on the planning balance [ER 5.6.84].

### *The Secretary of State's Conclusion on Water Environment*

4.99. The Secretary of State has considered the ExA's Report on impacts on water quality, water resources and the water environment and the Applicants' Flood Risk Assessment. The Secretary of State accepts that the site is an appropriate location for the Development and considers that the risk and potential impacts of flooding have been considered appropriately. The Secretary of State considers that the mitigation and monitoring measures are appropriate. The Secretary of State considers that this matter does not weigh for or against granting consent for the Development.

### Biodiversity and Ecology

4.100. EN-1 states that the ES should clearly set out any effects on designated sites of ecological importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. ER 5.7.3 et seq. sets out the relevant policy considerations. The Applicants' case is set out in ES chapters 12-15 which are supported with appendices including Appendix 12A which sets out the legislation and planning policy relevant to ecology; Appendix 12B the Ecological Impact Assessment Methodology; and Appendix 12C the Preliminary Ecological Appraisal [ER 5.7.12]. The Secretary of State has had sight of the unredacted ES Volume III Appendix 15B: Ornithology Baseline Report. The ExA was satisfied that the ES has appropriately set out the potential effects from all phases of the Proposed Development on designated sites, protected species and on habitats and species of principal importance as required by EN-1 and the draft 2021 EN-1 [ER 5.7.137]. Modelling of the thermal plume from the outfall has also been provided in accordance with EN-4 which demonstrates no adverse effects [ER 5.7.137].

### *Terrestrial ecology*

4.101. The assessment of impacts on terrestrial ecology was undertaken in accordance with best practice guidance. Impact assessments have been prepared in accordance with precautionary principles [ER 5.7.102]. Other relevant appendices to the ES are listed at [ER 5.7.13 et seq.] and include a number of ecological survey reports. Water vole and otter surveys were updated at Deadline 5. The EA agreed with the Applicants' approach to surveys [ER 5.7.101]. Supplementary habitat information and a terrestrial invertebrate survey report were also provided for Coatham Sands. Teesmouth and Cleveland Coast SSSI, Teesmouth National Nature Reserve and Lovell Hills Pools SSSI were scoped in for assessment of potential impacts from changes in air quality [ER 5.7.14]. Bats, common lizard, terrestrial invertebrates and controlled weed species were scoped in for assessment from habitat loss and disturbance [ER 5.7.15].

4.102. Construction activities would result in permanent losses of semi-improved grassland habitat of borough nature conservation value on the PCC site. The loss of 17.3ha of grassland on the PCC site would be compensated for within the PCC site with the aim of achieving an overall net gain for biodiversity, as described in the Applicants' Indicative Landscape and Biodiversity Strategy [ER 5.7.16]. Areas of secondary grassland and dense local scrub of local value could also be temporarily lost for the Teeswork construction and laydown area on the PCC site.

This would be reinstated in accordance with the requirements of the landowner [ER 5.7.19]. The ExA noted that the loss of habitat on the PCC site would result in the loss of one breeding site for a single pair of ringed plover, up to two breeding sites for one pair of barn owls and loss of a breeding bird assemblage that includes small numbers of lapwing, herring gull, skylark and meadow pipit [ER 5.7.130]. The Landscaping and Biodiversity Plan will be appended to the Landscape and Biodiversity Strategy, and this is secured through Requirement 4 of the Order [ER 5.7.106]. Compliance with the Landscaping and Biodiversity Protection Plan is secured in Requirement 4 and includes monitoring of the plan in accordance with set timescales, approved by the RPA and provided to STDC. It also secures arboricultural measures [ER 5.7.108]. Reinstatement of lost or damaged habitats would be secured through the Landscaping and Biodiversity Protection Plan and the final CEMP, as required by Requirement 16 of the Order.

4.103. Construction noise from the PCC site would increase levels at Coatham Dunes, but the ExA noted that this is a small proportion of the SSSI as a whole and the impact is temporary and reversible. For these reasons the ExA was satisfied that the effects would not be significant. Noise thresholds might be exceeded in the immediate vicinity of pipeline works, but the overall effects would be to a small area of habitat and would be short term. The overall effects would also be insignificant [ER 5.7.131].

#### *Aquatic ecology*

4.104. Chapter 13 and the accompanying aquatic ecology supplementary desk study and field survey report [Appendix 13A, APP-314] consider the potential effects of the Proposed Development on fish, macroinvertebrates, macrophytes and their habitats. No direct impacts were identified on aquatic habitats and fish during construction, operation or decommissioning; such as from disturbance to watercourse banks, channels or beds. There is a risk of potential indirect effects on water quality from accidental pollution or site run off, however, these would be adequately addressed through adherence to regulatory requirements, the pollution control measures identified in the Framework CEMP (R16) [REP9-007] and the DEMP (R32 of the DCO) [ER 5.7.36 – ER 5.7.41].

#### *Marine ecology/Ornithology*

4.105. The ExA queried the Applicants' conclusion that it is unlikely that dredging operations associated with cumulative developments would occur concurrently, and that piling activities associated with the construction of cumulative developments are also unlikely to occur simultaneously. The Applicants consider that dredging in Tees Bay could be timed to avoid other dredging activities. If piling activities were to overlap with other developments, an acoustic barrier would not be formed and impact zones would not overlap due to the likely distance between them [ER 5.7.111]. The MMO and Cefas were satisfied that the locations of additional benthic sampling at Coatham Sands were representative of the area in which the replacement outfall would be constructed [ER 5.7.112]. The Applicants confirmed there would be no routine maintenance works in the intertidal or subtidal zone but may be visual inspections of the outfall. The ExA considered that the effects of maintenance works on the marine environment would be negligible [ER 5.7.113]. The Applicants consider that

vessel movements for the construction of the outfall and delivery of materials to Redcar Bulk Terminal would be low relative to the vessel activity in the area. For this reason, the Applicants did not consider that monitoring would be necessary during offshore works [ER 5.7.114].

- 4.106. The Applicants also clarified that continuous Horizontal Directional Drilling (HDD) had been assumed in the ES. HDD would be drilled 10m below the seabed, and sound effects would be expected at the start and end of tunnelling, which would be short-term and in soft sediment. For these reasons, the effects are predicted by the Applicants to be negligible [ER 5.7.115]. The EA requested that if dredging takes place that it should avoid peak migration times. The Applicants considered this was not necessary because the extent of dredging is small and would not result in a barrier to diadromous fish. The location and timings of dredging would be included in a Marine Method Statement, secured in the Deemed Marine License (DML), and the EA would be consulted on the sample plan and analysis in the DML and Framework CEMP [ER 5.7.118].
- 4.107. The potential effects from noise on migratory fish such as salmon has been based on a precautionary approach, with emphasis that dredging in the Tees Estuary is no longer required and that works away from the River Tees would be of very short duration [ER 5.7.116]. The MMO identified detonation of Unexploded Ordnance (UXO) as a high-risk activity that should be managed in a separate Marine Licence, to ensure that the most up to date evidence and technology could be applied. During the Examination the MMO confirmed it was satisfied with the assessment of the impacts of UXO presented in the ES and wording was agreed and added to the DML [ER 5.7.117].
- 4.108. The ExA asked IPs if other development, including the Tees Bank Quarry, should be included in the assessment of cumulative and combined effects on marine ecology, NE confirmed it was not aware of any other developments that should be included and the ExA noted that no other sites were brought to their attention [ER 5.7.119]. The Marine Pollution contingency plan would be required by condition 11 of the DML as secured in the Order [ER 5.7.120]. NE confirmed it was satisfied with the approach and scope of the ornithological impact assessment and that it would be consulted on discharge of Requirement 16 of the Order [ER 5.7.123].
- 4.109. The ExA noted that management and mitigation plans include the final CEMP, which contains provision for a Site Waste Management Plan (SWMP), an Invasive Non-Native species plan, ornithological monitoring and the external lighting scheme. It found that the DEMP secured at Requirement 32 would also provide appropriate protection to biodiversity during decommissioning [ER 5.7.125].
- 4.110. The ExA noted that not all ponds were surveyed but are satisfied that the approach taken is precautionary and that mitigation of potential effects would provide protection [ER 5.7.126]. It was demonstrated that the Proposed Development would take advantage of opportunities to conserve and enhance biodiversity in line with EN-1 and was secured in Requirement 4 of the Order, which contains provision for an annual monitoring report to be submitted to the RPA [ER 5.7.127 et seq.].

4.111. The ExA considered the permanent loss of subtidal sandflats noting that the affected area would be small and the effects, including the loss of habitats for fish and shellfish, is not significant [ER 5.7.132].

4.112. The ExA was satisfied that significant harm to biodiversity conservation interests would be avoided through integrated mitigation and monitoring secured via requirements in the Order and that the Proposed Development would take advantage of opportunities to conserve and enhance biodiversity in line with EN-1. The ExA was content that the Applicants had identified opportunities for Biodiversity Net Gain on the site and are satisfied that the extent of information provided is consistent with draft 2021 policy [ER 5.7.139].

4.113. The ExA concluded that biodiversity and ecology matters would not give rise to any likely significant adverse effects and acknowledge the benefit that enhancement to biodiversity on the PCC site would bring and applies moderate positive weight to these in the planning balance [ER 5.7.140].

#### *The Secretary of State's Conclusion on Biodiversity and Ecology*

4.114. The Secretary of State has considered the submissions made during the Examination, the Applicants' ES, the ExA's report and all responses to the consultation letters. The Secretary of State agrees with the ExA's conclusion that the Development would not give rise to any likely significant adverse effects. The Secretary of State notes that the ExA does not provide justification for applying moderate positive weight, and it does not report or comment on the Biodiversity Metric calculations as presented and secured in the Indicative Landscape and Biodiversity Strategy [REP5-011] in coming to its recommendation of moderate positive weight in the planning balance for biodiversity and ecology matters. In this instance, the Secretary of State does not consider that proposed enhancements to biodiversity to achieve Biodiversity Net Gain of 9.95% habitat units [REP5-011] are sufficient to justify moderate positive weighting, and in this instance accords it minor positive weight in the planning balance.

#### Geology, Hydrogeology and Land Contamination

4.115. The ExA report identifies that EN-1 states that for developments on previously developed land, applicants should ensure that they have considered the risk posed by land contamination. The legislation is set out in the Environmental Protection Act 1990 which endorses the principle of a 'suitable for use' approach [ER 5.8.2]. The relevant policy considerations are set out at ER 5.8.2 et seq.

4.116. The Applicants' case is set out in ES Chapter 10, with appendices including a contaminated land environmental risk assessment. A hydrogeological impact assessment was also provided [ER 5.8.7]. The Order land has been subject to extensive industrial development including iron and steel works and a number of other contaminative uses. Ground investigations on part of the site have identified that the subsurface is contaminated [ER 5.8.10]. Remediation and long-term monitoring are anticipated by the Applicants [ER 5.8.8]. Prior to detailed design and construction of the project it is proposed that ground investigations, assessment and remediation would be undertaken. The findings would feed into the Final CEMP [ER 5.8.9].

4.117. Requirement 13 of the Order requires that a scheme to deal with land contamination and groundwater must be approved by the RPA in consultation with EA and STDC. The scheme must include a preliminary risk assessment (a desk-top study) and risk assessment, supported by a site investigation scheme, and an updated hydrogeological impact assessment, along with various other elements [ER 5.8.11]. Requirement 23 requires all piling and penetrative works to be carried out in accordance with a piling and penetrative foundation design method statement, to be agreed with the RPA following consultation with relevant specified parties, to ensure protection of groundwater quality. Measures proposed in the Framework CEMP, which will be included in the final CEMP pursuant to Requirement 16, include provision for a groundwater monitoring plan, amongst other measures, to identify changes to groundwater quality during the construction period [ER 5.8.12].

4.118. The geotechnical risk register identifies likely challenges on the Order land and a Foundations Optioneering Appraisal has assessed suitable foundation options for structures [ER 5.8.13]. During the Examination the ExA sought clarification on aspects of future ground investigation, conceptual modelling, environmental and hydrogeological risk assessments. The ExA consider that the Applicants responded satisfactorily to their requests [ER 5.8.18]. The EA are content to rely on Requirement 13 of the Order to ensure that risks would be appropriately understood and managed post consent [ER 5.8.19]. The Final CEMP is secured by Requirement 16, and provides for a groundwater monitoring plan which must take into account the updated hydrogeological impact assessment. The EA confirmed they are content with the wording of Requirements 16 and 23 of the Order [ER 5.8.20]. A requirement to consult with the EA has also been added to Requirement 32 of the Order (decommissioning) following the EA's request [ER 5.8.21]. RCBC also requested that Requirement 13 should include the standard wording for contaminated land conditions and requested that sampling of the boundary of the site is undertaken to assess any migration of contamination. At Deadline 11 RCBC confirmed it was satisfied that the revised wording would achieve these objectives [ER 5.8.22].

4.119. The ExA considered that the Applicants had appropriately considered the risk posed by land contamination as required by EN-1 and the draft 2021 EN-1. The ExA was satisfied that an appropriately robust investigation, risk assessment, remediation and monitoring strategy would be secured by Requirement 13 of the Order and that Requirement 23 would protect groundwater quality during construction of penetrative foundations. The ExA was satisfied that contamination beneath the Order land would not give rise to likely significant effects. It also found that geotechnical conditions have been appropriately assessed, as required by EN-4 and draft 2021 EN-4 [ER 5.8.32].

4.120. The ExA found that it has been demonstrated that the Proposed Development would not have an impact on the Mineral Safeguarding Area nor preclude access to mineral resources in line with EN-1 and draft policy EN-1. There would be no significant effects on soil quality and there would be no protected geological formations in the vicinity. The ExA concluded there would be no conflict with the requirements of EN-1 and the draft 2021 EN-1 in relation to these issues [ER 5.8.33].

4.121. Ground investigations undertaken by the Applicants in respect of their proposals for drilling beneath the Teesmouth and Cleveland Coast SSSI, SPA and Ramsar site have confirmed that the conditions are suitable for HDD [ER 5.8.34]. The ExA considered that there would be no likely significant effects and matters relating to geology, hydrogeology and land contamination that are neutral in the planning balance [ER 5.8.35].

*The Secretary of State's Conclusion on Geology, Hydrogeology and Land Contamination*

4.122. The Secretary of State has considered the ExA's Report and agrees with its conclusions. The Secretary of State is satisfied that the Development will not lead to any likely significant effects on geology, hydrogeology and land contamination and agrees it is neutral in the planning balance.

Material Resources and Waste Management

4.123. The relevant policy considerations include EN-1 which is intended to protect human health and the environment [ER 5.9.1 et seq.]. EN-1 sets out that the Applicants should set out arrangements for managing waste produced in a SWMP. The Applicants' case is set out in Chapter 5 of the ES [ER 5.9.3].

4.124. Spoil from construction and enabling works would be stockpiled within the Order limits. It would then either be reused on site for construction (in an area at low risk of flooding) or would be taken off-site by HGV either for treatment at Teeswork's proposed soil treatment hub or for off-site treatment at another local permitted facility [ER 5.9.4]. The Applicants anticipate that the bulk of spoil would be beneficially used within the Order land. Stockpile heights would be low and there are sufficient areas within the Order limits to accommodate the volume of spoil expected to be generated [ER 5.9.5]. The removal of up to 10,000 m<sup>3</sup> of spoil per month from site for re-use, treatment or disposal has been allowed for in the HGV movements for construction identified in Appendix 16A: Transportation Assessment (ES Volume III, Document Ref.6.4). Spoil would arise from construction associated with Work Nos. 2, 5, 6 and 8. Management of spoil would be via the final CEMP, secured at Requirement 16 of the Order following approval from RCBC and STBC. This would be accompanied by a number of management plans, including a SWMP which would require that waste streams are estimated and monitored with goals set for waste produced [ER 5.9.8]. A Materials Management Plan would also be appended to the final CEMP and would require that contaminated material is managed in accordance with best practice [ER 5.9.9]. The Applicants have undertaken an assessment of the suitability of potentially contaminated soils for re-use [ER 5.9.10].

4.125. RPAs have not expressed any concerns regarding the Framework CEMP and their role in approving this, and there are no outstanding matters raised by RCBC in its final statement of common ground [ER 5.9.13].

4.126. The ExA was content that the Applicants have answered all queries in relation to material resources and waste management. Waste would be managed in accordance with the waste hierarchy in line with EN-1 and draft 2021 EN-1 and

this would be implemented and managed via the final CEMP in Requirement 16. A SWMP is secured in Requirement 24 of the Order [ER 5.9.16 et seq.].

4.127. The ExA concluded it was satisfied that the issues relating to material resources and waste management would not give rise to likely significant effects and do not affect the planning balance [ER 5.9.18].

*The Secretary of State's Conclusion on Material Resources and Waste Management*

4.128. The Secretary of State has considered the ExA's Report and agrees with its conclusions. The Secretary of State is satisfied that the Development will not lead to any likely significant effects from the management of material resources and waste management. The Secretary of State considers this issue is neutral in the planning balance.

Major Accidents and Disasters

4.129. The relevant law and policy in this regard is set out at ER 5.10.2 onwards. ES Chapter 22 considers the Applicants' case and includes a figure showing the Health & Safety Executive's (HSE) consultation zones, with the latest version received in the Examination at Deadline 12. All operators on the HSE's list of consultation zones were consulted and no specific concerns were raised [ER 5.10.12]. The ES refers to HSE guidance notes, including those on pipeline and carbon capture technology, UK guidelines and established best practice. The ES identifies the reasonably foreseeable worst-case environmental consequences and the likelihood of these occurring [ER 5.10.8]. The Framework CEMP contains details for protection against accidents involving hazardous materials with the final CEMP based on this secured by Requirement 16 of the Order. A Major Accident Prevention Plan would also be required to inform an application for a COMAH licence. The DEMP would ensure no adverse effects during the cessation of operations and is controlled by Requirement 32 [ER 5.10.10]. The ES notes that the Proposed Development has been sited to maximise the distance from sensitive receptors and other industrial operations, including siting the high-pressure CO<sub>2</sub> compressor on the shoreline to minimise risk given the prevailing wind direction [ER 5.10.11].

4.130. Operations at neighbouring facilities have been considered and it was concluded that existing safety precautions at neighbouring industrial sites, in addition to implementation of the CEMP, would mitigate the risk of domino effects occurring [ER 5.10.12]. The HSE confirmed that a Hazardous Substances Consent may be needed. The Applicants consider that this can be applied for once the design has been progressed [ER 5.10.13]. The ExA agreed this would be appropriate in the circumstances [ER 5.10.25].

4.131. The ExA considered that the Order land would be subject to stringent safety standards under appropriate legislation and HSE, RCBC and EA have not raised any specific concerns, nor indicated that the required permissions are not achievable in principle. The Applicants provided detailed information on how risks would be managed to be As Low as is Reasonably Practicable (ALARP) during construction through the final CEMP, secured by Requirement 16 of the Order. The ExA was satisfied that risks during decommissioning would be highly likely

to be manageable and adequately controlled through a DEMP and EP [ER 5.10.26]. The ExA has noted the concerns raised by IPs and APs regarding the safety risk of losing access to their pipelines and found that such matters must either be negotiated between the parties and/or addressed by way of protective provisions. This issue is considered in Section 6 of this decision letter.

4.132. The ExA was satisfied that an assessment of whether the inherent features of the design are sufficient to prevent, control and mitigate major accidents has been undertaken to a standard sufficient for the purposes of the Examination as required by section 4.11 of EN-1 [ER 5.10.28]. Effects on aviation sites have been addressed and the impacts minimised through the requirements in the Order as required by section 5.4 of EN-1. The HSE was consulted about safety issues in relation to pipelines and its comments incorporated in the assessment in line with advice in EN-4 [ER 5.10.30].

4.133. Overall, the ExA concludes that the Order land would be subject to stringent safety standards under the appropriate legislation, with additional controls during construction and decommissioning secured via the final CEMP and the DEMP. The Applicants have demonstrated that the features of the design would be sufficient to prevent, control and mitigate major accidents, including the risks to aviation, as required by EN-1 and draft 2021 EN-1 [ER 5.10.31]. The ExA was satisfied that the issues relating to major accidents and natural disasters would not give rise to likely significant effects and conclude that such matters would not have an effect on the planning balance [ER 5.10.32].

#### *The Secretary of State's Conclusions on Major Accidents and Disasters*

4.134. The Secretary of State has considered the ExA's conclusions and is satisfied that issues relating to major accidents and natural disasters would not give rise to likely significant effects. The Secretary of State concludes that the issue should be considered to be neutral in the planning balance.

#### Noise and Vibration

4.135. ES Chapter 11 sets out the Applicants' case and is accompanied by figures showing noise sensitive receptors and places of predicted noise generated during construction and operation of the PCC site. At Deadline 12 the figures were revised to reflect the change requests [ER 5.11.10]. Noise sensitive receptors were identified within a specified study area. Until a contractor is appointed specific details of construction activity are not known. Indicative noise predictions have therefore been calculated using the ABC method and thresholds set out in the 'Code of practice for noise and vibration control on construction and open sites' (BS 5228) [ER 5.11.12]. The Applicants assumed that the noise generated during decommissioning would be similar to that from construction [ER 5.11.12].

4.136. There would be potentially minor adverse effects from noise at Marsh Farm during both construction and operation, and two offices at Bran Sands and Seal Sands during construction. Minor annoyance from vibration at the two offices would occur during construction. The ExA considered the effects of noise and vibration from the Proposed Development would be insignificant during all

phases, including at these locations [ER 5.11.30]. Mitigation and monitoring for noise have been embedded in the Framework CEMP and would be refined in the final CEMP [ER 5.11.31].

- 4.137. Requirements 21 and 22 would ensure that any impacts from noise are monitored and minimised during construction and operational phases respectively [ER 5.11.31]. The ExA was content that Requirement 21 satisfies RCBC's request that validation of noise outputs is carried out during construction. Noise levels would be controlled to BAT standards through the EP for the installation [ER 5.11.32]. Requirement 22 would restrict noise during operation to certain measurable limits for certain times of the day, in line with EN-1. The potential effects of noise during decommissioning are controlled via the DEMP (Requirement 32). For these reasons the ExA was satisfied that the Application meets the requirements of paragraph 5.11.9 of EN-1 [ER 5.11.32].
- 4.138. The ExA considered that the Applicants have undertaken appropriate indicative and conservative modelling of the likely effects on nearby residential and commercial receptors based on current guidance and best practice and it is satisfied that the approach is consistent with the requirements of EN-1, EN-2 and EN-4 [ER 5.11.29] and their draft 2021 versions [ER 5.11.33]. Mitigation and monitoring would be secured for all phases through the CEMP (Requirement 16); control of noise (Requirements 21 and 22) and the DEMP (Requirement 32) of the Order [ER 5.11.34].
- 4.139. The ExA was satisfied that the issues relating to noise and vibration would not give rise to likely significant effects. These issues therefore have a neutral effect on the planning balance [ER 5.11.35].

#### *The Secretary of State's Conclusions on Noise and Vibration*

- 4.140. The Secretary of State has considered the ExA's report and agrees with the ExA's conclusions. The Secretary of State agrees that, with the inclusion of the measures set out in the Requirements, significant noise and vibration impacts should be avoided and the proposal would therefore meet the requirements of EN-1, EN-2 and EN-4 with regard to noise and vibration.

#### Traffic and Transport and Public Rights of Way

- 4.141. Chapter 16 of the ES sets out the Applicants' case and is accompanied by a Transport Assessment, a Framework Construction Worker Travel Plan (CWTP) and a Framework Construction Traffic Management Plan (CTMP). The CWTP includes measures to promote the use of sustainable transport by construction staff and details of construction parking and monitoring, and the provision of an approved final CWTP is secured by Requirement 19. The CTMP includes details of construction routes, carriageway protection, monitoring and more, and the provision of a final approved CWTP is secured through Requirement 18. During the Examination two technical notes on traffic sensitivity modelling were submitted in response to questions raised by the ExA [ER 5.12.6]. The transport assessment also includes cumulative effects with other developments [ER 5.12.14]. The ExA considered that a satisfactory transport assessment using appropriate methodologies was provided with the application, in consultation with

statutory consultees as required by EN-1 [ER 5.12.29]. The Proposed Development is in an accessible location close to existing transport routes for delivery of construction materials, fuel, waste, equipment and for employees and is considered to meet the requirements of paragraph 2.2.5 of EN-2 [ER 5.12.30].

- 4.142. The ES anticipates that the construction workforce would peak at approximately 1,870 workers per day, comprising of approximately 750 one-way trips to the main car park associated with the PCC site. The ES predicts approximately 120 pipeline workers would be transferred to the working area at Dabholm Gut by minibus [ER 5.12.7]. The number of HGV movements during construction is estimated to be 80 two-way daily vehicle movements at the peak of construction associated with the PCC site and 10 movements associated with the pipeline construction. No HGV deliveries would normally be undertaken outside of core working hours and arrivals would be spread evenly over the day as far as reasonably practicable [ER 5.12.8].
- 4.143. The Applicants' assessment proposes to import most of the large modular plant and Abnormal Indivisible Loads (AIL) components for Work No.1 using the existing ship offloading facilities at the Redcar Bulk Terminal wharf to the PCC site. Imports of AILs would result in approximately 40 ship movements over a period of two years. Smaller loads and smaller AILs could use facilities at Teesport and be transported by HGV to the site [ER 5.12.9]. The Applicants consider that the additional traffic cause during construction of the Proposed Development would result in small, temporary increases of traffic flows, including HGVs on the roads leading to the site. No significant effects in relation to severance, pedestrian amenity, fear and intimidation highway safety or driver delay are predicted [ER 5.12.10].
- 4.144. During operation there could be a maximum of approximately 60 full time staff working across three shifts and around 40 corporate staff based at the site during normal working hours. This equates to 71 cars per day, in addition to a maximum of four HGVs per day generated by deliveries of plant and equipment. Maintenance would be undertaken annually with major overhauls occurring approximately once every five years with maintenance requiring around 200 additional contractors to work on site. Due to the very low traffic flows the overall effects during operation are considered in the Assessment to be negligible [ER 5.12.12]. Traffic during decommissioning is expected to be no greater than during construction and is therefore insignificant. The DEMP must include traffic management arrangements during any demolition, removal and remediation works and is secured by Requirement 32 of the Order, with details to be approved by the relevant planning authority [ER5.12.13].
- 4.145. PRoWs within 2km of the site are considered in the ES. PRoWs within the connection corridors may be temporarily affected if any temporary diversion or closures are put in place including the England Coastal Path, Teesdale Way and PRoWs 116/31. Article 13 of the Order sets out powers in respect of PRoWs and access land [ER 5.12.16]. The ExA were satisfied that no permanent severance of PRoWs would occur, and potential temporary diversions would be temporary and spatially limited [ER 5.12.40].

4.146. The ExA noted that STDC did not support the Applicants' proposed HGV and construction traffic access via the A1053 Tees Dock Road. This was not resolved by the end of the Examination, but the ExA considered this largely related to the temporary possession of land for construction rather than traffic/highway safety issues. As it would only comprise seven HGV movements during peak times, RCBC were content that this did not require specific assessment, and consequently the ExA were satisfied that this access point would not lead to significant adverse effects [ER 5.12.35]. Additional modelling demonstrating that there would be no additional adverse effects from use of the Lackenby Gate roundabout as an alternative HGV access has also been provided [ER 5.12.36]. The Secretary of State notes that the Applicants' change request submitted to the Secretary of State on 27 April 2023 (updated 5 May 2023), which included a formal change request to remove the Tees Dock Road access from the scope of the Proposed Development has now removed STDC's objections in so far as they relate to the Tees Dock Road access.

4.147. The ExA were satisfied that the CTMP secured by Requirement 18 would be approved by the RPAs following consultation with a number of statutory authorities and IPs. The ExA were satisfied that the control of HGV traffic would be in accordance with paragraph 5.13.11 of EN-1. Further, the use of water borne transport from RBT would be appropriate means of delivering AILs to the PCC site in accordance with EN-1 [ER 5.12.31].

4.148. The ExA considered that Requirement 19 would be adequate in requiring the final submission of CWTP in accordance with the framework plan including measures to promote sustainable transport modes, details of construction parking and monitoring, and would require agreement with the RPAs. The ExA was satisfied that the provisions of the CWTP would meet the requirements of paragraph 5.13.4 of EN-1 [ER 5.12.32]. The ExA were satisfied that the CTMP and CWTP could cover the issues raised by RCBC during the Examination and would minimise any residual effects during the construction phase. The ExA concluded that the relatively low levels of operational traffic did not justify any mitigation, given the capacity of the local highway network [ER5.12.34].

4.149. The ExA concluded overall that the Applicants have provided an appropriate transport assessment that demonstrates there would be no significant adverse effects on the surrounding transport network at any phase in accordance with EN-1 and draft 2021 EN-1. The ExA was satisfied the issues relating to traffic and transport would not give rise to likely significant effects and therefore have a neutral effect on the planning balance [ER 5.12.43].

#### *The Secretary of State's Conclusions on Traffic and Transport and Public Rights of Way*

4.150. The Secretary of State has considered the ExA's Report and notes its conclusions. She has considered the views of the RPAs at each phase of the development. The Secretary of State is satisfied that it has been demonstrated that the capacity of the local highway network along with the Requirements within the Order, mean that there will not be any significant traffic and transport impacts arising from the Development. The Secretary of State agrees with the ExA that issues related to traffic and transport would be neutral in the planning balance.

## Socio Economics and Tourism

4.151. ES Chapter 20 considers socio-economic matters. Cumulative and combined effects are set out in ES Chapter 24. The Applicants have assessed the potential effects on jobs and tourism, including the availability of accommodation, and the potential effects on the regional labour market. Social effects have also been assessed with regard to direct effects on economic activity, community infrastructure and the local population [ER 5.13.5].

4.152. Construction is anticipated to take up to four years to complete, creating employment opportunities of varying types and levels throughout this time period. The Applicants estimated an average of 1,760 gross construction workers over the peak years of construction of the Proposed Development [ER 5.13.9].

4.153. An additional 1,120 net indirect jobs in the Travel to Work Area (TTWA) are estimated during the construction period. A total of 2,440 net construction jobs are therefore estimated, 1,220 of which are expected to be from the Middlesbrough and Stockton TTWA. The Applicants consider this would be approximately 240 Full Time Equivalent (FTE) permanent jobs during the construction period and concludes it is likely to have a major beneficial short-term effect on the TTWA's economy [ER 5.13.10]. During operation employment is expected to total up to 100 FTE gross direct jobs per annum, arising from operative, management and maintenance roles. Leakage to jobs outside of the TTWA is assumed to be low for operational employment (13%) and displacement is also predicted to be low (25%). Together, all types of employment created by the operation of the Proposed Development are predicted to have a moderate beneficial long-term effect (non-significant) [ER 5.13.15].

4.154. Other impacts identified during the construction phase include benefits associated with an increased demand for short term accommodation with existing business expected to operate as usual during the construction phase. The effect is assessed to be not significant [ER 5.13.11]. Tourism is considered in the ES with local designations assessed as having a negligible adverse impact (non-significant) due to limited restrictions to such amenities. Recreation would be affected due to multiple PRoW close to the site and along the coastline, some of which may require temporary diversions during the construction phase [ER 5.13.12]. An employment support programme would help local residents and unemployed workers into roles, which would have a minor beneficial (non-significant) effect on the skills and employability of local people during the construction phase [ER 5.13.13]. The effects during decommissioning are expected to be similar to during the construction phase, having an overall minor beneficial effect on employment in the area [ER 5.13.14].

4.155. RCBC's LIR states that the Proposed Development would assist in safeguarding thousands of skilled, well-paid jobs, bring brownfield land back into use, bring business rates income to deliver much need local services and offer opportunities to highly skilled personnel who wish to return to Tees Valley [ER 5.13.20]. STBC in their LIR concluded that the social, environmental and economic benefits would make a significant contribution to meeting national targets and policies and would support local businesses, creating jobs for local people in the Borough [ER 5.13.21].

4.156. The ExA notes that given that no significant adverse effects are predicted during any phase of the Proposed Development, the Applicants do not propose any specific mitigation. The Applicants have nonetheless committed to a plan detailing arrangements to promote employment, skills, training and development opportunities for local residents, secured at Requirement 30, and the establishment of a local liaison group, secured at Requirement 29 [ER 5.13.17]. There is considered to be a short-term risk of temporary labour shortage and a deficit in local accommodation, but overall, the ES states that the cumulative socio-economic effects are expected to be significantly beneficial [ER 5.13.18]. Both SoCGs with RCBC and STBC agree that socio-economic effects would be beneficial [ER 5.13.27].

4.157. The ExA considers that the Proposed Development would generate a significant number of net jobs, particularly during construction, resulting in benefits for the local area. The ExA agrees that the overall socio-economic effects would be beneficial [ER 5.13.28]. The ExA consider that whilst the assessment lacked detail on some issues, particularly in relation to recreation and tourism, overall the information in the ES, supplemented by responses to written questions, was sufficient for the ExA to conclude on this topic. It notes that effects during construction on holiday makers to the parks and users of nearby recreational facilities are likely to be minor adverse and overall, effects would not be significant [ER 5.13.29].

4.158. The ExA is satisfied that specific mitigation is not required and Requirements 29 and 30 would secure appropriate enhancement measures [ER 5.13.30]. Overall, socio-economic effects are considered beneficial and attract moderate positive weight in the planning balance [ER 5.13.32].

#### *The Secretary of State's Conclusions on Socio Economics and Tourism*

4.159. The Secretary of State has considered the ExA's Report and agrees with its conclusions. She notes the positive benefits of the Proposed Development and the views expressed by local Councils that it has the potential to make a positive contribution towards growth and regeneration, support for local businesses and creation of jobs in the local area. The Secretary of State agrees with the ExA's conclusion that there is a moderate positive socio-economic benefit from the Proposed Development.

#### Historic Environment

4.160. NPS EN-1 sets out the presumption in favour of the conservation of designated heritage assets in proportion with their significance (paragraph 5.8.14). EN-1 also refers to non-designated heritage assets at 5.8.4, which can be of equivalent significance. Paragraph 5.8.8 et seq. requires that the Applicants describe the significance of the affected heritage assets and the contribution of their setting to that significance. Regulation 3 of the Infrastructure Planning (Decision) Regulations 2010 and section 16 of the NPPF are also relevant [ER 5.14.2 et seq.]. Relevant development plan policies regarding the historic environment are summarised in ES Chapter 18 [see ER 5.14.7]. Relevant local policies are also referenced [ER 5.14.8]. Local policy recognises the industrial heritage of the former Redcar Steelworks [ER 5.14.58 et seq.].

4.161. The Applicants' consideration of onshore historic environment in ES Chapter 18 includes appendices covering a Cultural Heritage Baseline Report and Gazetteer [ES 5.14.9 et seq.]. There are no designated heritage assets within the Order limits. Assets within 5km are assessed in the ES. Three listed buildings, four conservation areas and a Scheduled Ancient Monument (SAM) are considered further in the final assessment. RCBC, STBC, HBC, the MMO and Historic England (HE) agreed with or had no comments to make on the methodology or study area for the designated heritage asset assessment [ER 5.14.21].

4.162. Marine heritage is considered in Chapter 19 of the ES, which has been revised to include change requests made in the Examination. The ES concludes that no significant effects are predicted to occur in relation to both onshore and marine heritage matters in operation or decommissioning. In the construction phase, Chapter 18 of the ES refers to the adoption of a protocol for managing unknown archaeological discoveries, with appropriate measures to record or stabilise the asset in order to avoid significant effects. Requirement 14 of the Order requires a Written Statement of Investigation (WSI) to be submitted and approved by the RPA, in accordance with Chapter 18 [ER 5.14.11]. A WSI would also be secured for marine archaeology in Condition 15 of the DMLs in Schedules 10 and 11 of the Order [ER 5.14.12].

#### *Listed buildings*

4.163. The ExA requested more detail from the Applicants on the assessment of significance of the nearest designated heritage assets situated at Marsh Farm, including the Grade II listed Marsh Farmhouse and cottage, its garden wall, stable and barn [ER 5.14.24]. In terms of setting, the isolated coastal landscape setting of the group has substantially altered over time. An appreciation of the buildings' former relationship with the former community at Warrenby and the sea has been significantly eroded over time. The community at Warrenby has been replaced with a range of industrial buildings and uses [ER 5.14.28]. The listed buildings' significance lies in their age and rarity in this 20<sup>th</sup> century industrial setting. As a group they have a small and discrete setting of their own derived from the buildings within the group and associative relationship with one another [ER 5.14.32]. The ExA agrees with the Applicants' overall assessment in the ES that the group of listed buildings, and their setting, is of medium value [ER 5.14.32].

4.164. The ExA considers that construction activity at the PCC site has the potential to temporarily affect the setting of the buildings as a result of noise during peak construction activity. It is considered that such noise would have a temporary minor adverse effect [ER 5.14.33]. The effect is considered to be similar as a result of decommissioning activities [ER 5.14.33]. When completed, it is possible that the higher structures would be partially visible from certain locations in the area around Marsh Farm. The existing setting is dominated by cranes, warehousing and outdoor storage associated with commercial uses. The ExA concludes that the significance of Marsh Farm and the associative relation between the buildings would continue to be appreciable in this setting. Whilst the Proposed Development would result in change to the wider setting, the significance of the more discrete setting of the group would not be harmed and such effects would be neutral [ER 5.14.35].

## *Conservation Areas (CA)*

4.165. Four Conservation Areas were selected for further assessment of potential effects, all south of the River Tees in close proximity to the PCC site [ER 5.14.36]. The ExA sought further information on the assessment of the setting of each from the Applicants. No comments were received from RCBC or HBC regarding the assessment of setting [ER 5.14.37]. Coatham Conservation Area is situated approximately 1.7km to the east of the PCC site. The nearest views of the PCC site would be from its northern and western edges over the golf course and Coatham Green. The ExA consider that the change in view would not affect the ability to appreciate the historic and architectural character of the Conservation Area. The ExA agrees that the impact is assessed to be very low resulting in a minor adverse effect which is not significant [ER 5.14.39]. With regard to Kirkleatham, Yearby and Wilton Conservation Areas the ExA agrees with the assessment of impact in each as being neutral and not significant [ER 5.14.42 et seq.]. In respect of Seaton Carew Conservation Area the ExA assess impact as having a minor adverse effect. In ES terms it is not considered to be significant [ER 5.14.50].

## *Scheduled Monuments: Eston Nab Iron Age Hillfort*

4.166. Eston Nab is located 6.7km from the Order Limits within Eston Hills and is assessed to be of high value. From Eston Nab the majority of the area of the Order limits are visible, from distance and height. The Proposed Development would represent a new component into the existing industrial landscape which extends across the Tees Valley. Given its coastal location and scale the development at the PCC site would be easier to locate from Eston Nab than other proposed works. The ExA considers it would not dominate the visual setting nor interrupt longer range views to the coast and across the Tees Estuary. The ExA concludes that no direct impacts to setting or the heritage values of the Scheduled Monument would arise at any stage, and it agrees that the effects are neutral and not significant [ER 5.14.52].

## *Non-designated heritage assets (NDHA)*

4.167. Within the Order limits at the time of the application, 23 NDHAs were located within the boundary. These are primarily 20<sup>th</sup> century industrial structures associated with the steelworks and iron works, including former tramways [ER 5.14.55]. Within the CO<sub>2</sub> gathering network (Work No.6) and gas connection corridor (Work No.2) there are a number of NDHAs. However, the infrastructure would be above-ground and therefore there would be little to no impact on buried deposits [ER 5.14.56]. There is low potential for buried features of archaeological interest. The ExA agrees with the Applicants' assessment that collectively, the redundant structures relating to the former Redcar Steelworks complex provide a very visible and well-preserved feature of the industrial heritage of the region, contributing to local identity [ER 5.14.58 et seq.].

4.168. There are no designated assets within the marine assets Study Area. A number of undesignated maritime assets were identified [ER 5.14.65]. However, the likelihood of encountering any unknown maritime assets within the survey areas is stated in the ES to be very low. The impact on NDHAs is assessed in the ES

to be low, resulting in a minor adverse effect on marine heritage assets [ER 5.14.67]. The ExA agreed with this assessment. The Applicants propose to undertake a geoarchaeological assessment prior to construction to determine the extent of any deposits and paleoenvironmental features that may extend to the offshore Order limits. Condition 15 of the DML secures the provision of a WSI together with measures in the Framework CEMP [ER 5.14.70]. The outline WSI for marine archaeology sets out broad principles and methodology of mitigation for the future site specific WSI. HE agree that the proposed measures are acceptable in the SoCG [ER 5.14.71].

- 4.169. The ExA concludes that the description of heritage assets has been provided in a level of detail proportionate to their importance and that the significance of impacts on both onshore and offshore archaeological and cultural heritage has now been adequately assessed for all phases of the Proposed Development [ER 5.14.73].
- 4.170. The ExA consider that the Proposed Development would not lead to any adverse effects on the historic environment and that there would therefore be no conflict with the objectives of EN-1, section 16 of the NPPF and the draft EN-1 policy. The ExA agrees with the overall findings of ES Chapters 18 and 19 which indicate that effects would not be significant. Given the effects on listed buildings and conservation areas overall would be neutral, as would the effects on the setting on Eston Nab SAM, the ExA are satisfied that no mitigation would be necessary [ER 5.14.74]. Requirement 14 and Condition 15 of the DML would ensure that any unexpected finds and effects on archaeological potential would be adequately mitigated, together with measures in the Framework CEMP [ER 5.14.75].
- 4.171. Taken altogether the ExA concludes that the Proposed Development would have no likely significant effects on the historic environment and that the effect on the planning balance would be neutral [ER 5.14.76].

#### *The Secretary of State's Conclusions on Historic Environment*

- 4.172. The Secretary of State has carefully considered the Applicants' assessment of impacts and the ExA's Report and the ExA's conclusion that no likely significant effect on the historic environment would arise. The Secretary of State agrees with the conclusions of the ExA in relation to heritage and non-designated heritage assets and considers effect on the historic environment is neutral in the planning balance. She does not consider that the adoption of the new NPSs changes the position.

#### Cumulative and Combined Effects

- 4.173. The assessment of cumulative and combined effects is presented in Chapter 24 of the ES [ER 5.15.1].
- 4.174. Combined effects are defined by the Applicants as those resulting from different effects from the Proposed Development on a single receptor [ER 5.15.4]. The Applicants' ES sets out that there would be no combined visual and noise effects on residential or commercial receptors during construction. There are predicted

to be minor adverse effects of a temporary nature on Viewpoint 5 and users of South Gare Breakwater [ER 5.15.7]. During operation, the Applicants concluded that there would be no significant combined effects [APP-106].

- 4.175. Cumulative assessment of effects is required under the EIA regulations [ER 5.15.2]. EN-1 states that the ES should provide information on how the effects of the proposal would combine and interact with the effects of other development. It must then consider how the accumulation of, and interrelationship between cumulative effects might affect the environment, economy, or community [ER 5.15.3]. The ExA consider that the Applicants' assessment complies with EN-1 and that the Applicants satisfactorily answered all its queries in relation to the extent and timing of the assessment of combined and cumulative effects [ER 5.15.49].
- 4.176. During the examination, representations were made by Ørsted in respect of the potential for the wider NEP Project to impact on the HP4 development. The ExA accepted that if HP4 were prevented from constructing turbines in the Overlap Zone, the effect on that project without mitigation would be of major adverse significance. Following the commercial agreement between the Applicants and Ørsted, all prior representations and outstanding objections put forward by Ørsted in relation to the NZT Project DCO application were withdrawn. Following agreement being reached, it is noted that there are no protective provisions in the HP4 DCO for the protection of the operators of the Proposed Development, nor are there protective provisions which prevent development in the Overlap Zone. The Secretary of State considers that cumulative effects with HP4 have not been demonstrated.
- 4.177. The ExA note that there would be CO<sub>2</sub> emissions from the Proposed Development, even with significant abatement. The ExA conclude that the effects from the Proposed Development alone would be significant adverse in accordance with draft 2021 EN-1 [ER 5.15.44]. The Secretary of State notes that this is also reflected in designated EN-1, draft 2023 EN-1 and designated 2024 EN1.
- 4.178. The ExA consider that there is scope for an assessment of the cumulative effects on a sectoral basis and accept the Applicants' statement that insufficient data are available to quantify this. The ExA consider it inevitable that there would be emissions across the wider sector and conclude that cumulatively the effects from GHG across the wider sector would be adverse and significant [ER 5.15.45].
- 4.179. The ExA note that there would be minor adverse effects from accumulated construction noise at residential properties in the vicinity of Broadway West, and significant visual effects on a range of coastal viewpoints at South Gare Breakwater, Redcar seafront, and the England Coast path at Warrenby. The ExA consider the effects would not increase to any significant degree when considered with other projects [ER 5.15.52].
- 4.180. The ExA note there would potentially be a significant benefit from cumulative development to the local economy, including employment opportunities from other projects in the area [ER 5.15.53]. The ExA acknowledge there are current and forthcoming development activities in the immediate area of the Order land

and the wider Teesside area, both onshore and offshore. The ExA consider that numerous cumulative and combined effects are possible, but overall, no significant effects with other projects have been identified that would result in adverse effects over and above those associated with the Proposed Development alone. On balance the ExA consider such matters to be neutral in the planning balance [ER 5.15.54].

4.181. On 16 May the Secretary of State requested further information from the Applicants on the impacts of the Wider NZT Project and an updated Environmental Impact Assessment and Habitats Regulations Assessment Report which include assessment, alone and cumulatively, of the Offshore Elements of the Wider NZT Project, including the use of the Endurance Store. The Applicants response included Document 6.6 – Wider Project Environmental Statement – Habitat Regulations Assessment Addendum (“the Addendum”) to fully assess the potential cumulative and in-combination effects of the Wider NZT Project. The Addendum drew upon other documents provided by the Applicants, including the ES for the Offshore Elements and an updated Cumulative Impact Assessment long list of projects.

4.182. The Addendum concludes that:

- there are no new or materially different effects both “alone” and “cumulatively” that have not been identified in the Onshore ES and HRA Report, and the Offshore ES (including the Onshore HRA) to the extent that its findings relate to the Wider NZT Project;
- there are no changes to the environmental information that was relied upon in the production of the ES that would change the conclusions of the Onshore ES, HRA and supporting documentation; and
- the assumptions applied to the EIAs undertaken as part of the Offshore ES that relate to the construction and operation of the Offshore Elements of the Wider NZT Project (including the offshore HRA) remain valid and correct.

#### *The Secretary of State’s Conclusions on Cumulative and Combined Effects*

4.183. The Secretary of State has considered the ExA’s recommendation and all representations received since Examination. Whilst the Secretary of State considers that the Proposed Development and the Offshore Elements of the Wider NZT Project are separate, they are related projects and their cumulative effects on the environment should be assessed. She is satisfied that the potential environmental effects of the Wider NZT Project have been adequately assessed, and she agrees with the ExA’s conclusion that matters relating to cumulative and combined effects are neutral in the planning balance.

#### Other considerations

##### *Combined Heat and Power (CHP)*

4.184. The ExA was content that the Proposed Development has been designed to be CHP ready in line with the requirements of EN-1, EN-2 and EA guidance, should any future opportunities to introduce CHP arise in the future. The ExA considers that such matters do not affect the planning balance. The Secretary of State

agrees and does not consider that the adoption of the new NPSs changes the position.

#### *Grid Connection*

4.185. The ExA was satisfied that the Electricity Grid Connection Statement, together with the submissions from NGET, demonstrate it is feasible to connect to the National Electricity Transmission System and there do not appear to be any impediments to grid connection. Therefore, it considers the provisions of EN-1 and EN-2 would be met and this matter does not affect the planning balance [ER 5.16.12]. The Secretary of State agrees and does not consider that the adoption of the new NPSs changes the position.

#### *Land Use*

4.186. The vast majority of the Order land would be previously developed and there would be no above ground development on greenfield or agricultural land, including the sand dunes and foreshore at Coatham Sands [ER 5.16.14]. Effects on users of The England Coast Path and PRoWs are considered in relevant sections above. The routes would be maintained during construction and operation due to the use of HDD construction methods for Work Nos. 5 and 8, except for short periods of testing and maintaining the CO<sub>2</sub> export pipeline. No IPs raised objections during the Examination.

4.187. The ExA considers that potential effects on land use do not create conflict with section 5.10 of NPS EN-1. The effective re-use of previously contaminated brownfield land is a benefit of the Proposed Development and therefore carries moderate positive weight. The Secretary of State agrees and does not consider that the adoption of the new NPSs changes the position.

#### *Health*

4.188. ES chapter 23 sets out the Applicants' population and human health case, with all impacts and effects predicted to be not significant. ES chapter 20 considers economy and tourism which set out that there would be beneficial effects arising from employment during operation. Overall, no significant effects on population and human health were identified and as such, no mitigation measures are proposed [ER 5.16.21]. The ExA considered potential effects in accordance with EN-1 and concurred with the Applicants' assessment that effects would not be significant, and did not find any conflict with the policy. As such these matters were neutral in the planning balance [ER 5.16.23]. The Secretary of State agrees and does not consider that the adoption of the new NPSs changes the position.

#### *Security*

4.189. The ExA considered security in accordance with section 4.15 of EN-1, with the inclusion of Requirement 9 to secure security measures, found no conflict with the policy and considered that this matter should be neutral in the planning balance [ER 5.16.29]. The Secretary of State agrees and does not consider that the adoption of the new NPSs changes the position.

### *Shipping, Navigation and Other Marine Users*

- 4.190. The Proposed Development has the potential to effect shipping and navigation as well as activities of other marine users. Recreational activities could be temporarily affected during construction but effects would be limited [ER 5.16.40].
- 4.191. EN-3 requires the Secretary of State to be satisfied that site selection has been made with a view to avoiding or minimising disruption or economic loss to shipping and navigation industries with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade, and recreational users of the sea [ER 5.16.30]. Recreational activities, including fishing at South Gare, could be temporarily affected during construction by temporary diversions or realignment of South Gare Road for the CO<sub>2</sub> export pipeline [ER 5.16.31].
- 4.192. The High Voltage export cable for the Teesside Wind Farm directly overlaps the route of the proposed CO<sub>2</sub> export pipeline (Work No. 8). Works associated with this Order would be beyond the wind farm boundary, short in duration, and outside of the main vessel access route [ER 5.16.39].
- 4.193. Chapter 20 of the Navigational Risk Assessment sets out a number of Marine Licences that exist in the vicinity of the site. The Proposed Development is subject to Deemed Marine Licences (“DMLs”) from the Marine Management Organisation as set out in the Order [ER 5.16.33].
- 4.194. Navigational risks at the outfall tunnel and head location were considered in the Navigational Risk Assessment and are considered to be low in all instances, and able to be suitably managed by conditions in the DMLs to ensure PD Teesport Ltd (PDT) and other stakeholders are informed of the final CEMP by the MMO [ER 5.16.34], and to ensure mariners are made fully aware of works. The MMO raised no concerns regarding shipping and navigational risk in their written representations and agreed to defer such matters to navigational stakeholders (including the Maritime and Coastguard Agency (MCA), PDT and Trinity House) [ER 5.16.35]. PDT (the statutory harbour authority) confirmed that the scope of the navigational risk assessment was adequate and appropriate [ER 5.16.37].
- 4.195. ES Chapter 24 and appendix 20B considers the potential for vessel displacement from the Proposed Development in combination with the construction of the offshore works. It concluded there could be temporary displacement of mariners. The Applicants concluded it highly unlikely their navigation would be impeded by simultaneous works and marine exclusion zones. There would therefore be a very low risk of a significant potential cumulative effect on shipping and navigation [ER 5.16.38].
- 4.196. The ExA concluded that commercial shipping and fishing activities within the Tees Bay and surrounding area could be temporarily disrupted by construction works and supporting vessels but works would be in short duration and spatially limited. The DMLs would include a range of conditions to minimise disruption [ER 5.16.39].

4.197. Overall, the ExA agreed with the Applicants' conclusions of a minor adverse (non-significant) effect on marine users, both alone and cumulatively with other projects, and that any risk to marine users can be minimised through the conditions of the DMLs. The ExA considered the effect in the planning balance to be neutral [ER 5.16.41]. The Secretary of State agrees and does not consider that the adoption of the new NPSs changes the position.

## **5. Findings and Conclusions in Relation to Habitats Regulations Assessment**

- 5.1. The Secretary of State's HRA is published alongside this letter. The following paragraphs summarise and provide conclusions of the HRA and must be read alongside the HRA which is the full record of the Secretary of State's consideration of these matters.
- 5.2. The Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations") aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation (SACs). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas (SPAs). SACs and SPAs together form part of the UK's National Site Network (NSN). The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as "protected sites").
- 5.3. Regulation 63 of the Habitats Regulations provides that: *....before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.*
- 5.4. And that: *In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).*
- 5.5. The Proposed Development is not directly connected with, or necessary to the management of, a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required (as Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects (LSE) cannot be ruled out, the Secretary

of State must undertake an Appropriate Assessment (AA) addressing the implications for the protected site in view of its Conservation Objectives.

- 5.6. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity of protected sites, unless she chooses to continue to consider the derogation tests (regulations 64 and 68). The complete process of assessment is commonly referred to as an HRA.
- 5.7. The Secretary of State has carefully considered the information presented during the Examination, including the Report on the Implications for European Sites (RIES), the ES, representations made by IPs, the ExA's Report and all representations received in response to the consultation letters.
- 5.8. Whilst the Proposed Development as applied for and authorised by the DCO (Onshore Elements), and Offshore Elements of the Wider NZT Project are related Developments, consent for each element is being sought through differing consenting regimes. On 16 May 2023, the Secretary of State requested that the Applicants provided an updated HRA report which included an assessment, both alone and in combination with the Onshore Elements (the Proposed Development as applied for and authorised by the DCO), of the Offshore Elements of the Wider NZT Project, including the Endurance Store. The Secretary of State considered this important and relevant, so that she had sufficient information to consider all direct, indirect and in-combination environmental effects of both the Proposed Development as applied for and the Offshore Elements, which will inevitably exist and operate at the same time.
- 5.9. She considers that the Proposed Development has the potential to have a LSE on five protected sites when considered alone and in-combination with other plans or projects:
  - Teesmouth and Cleveland Coast SPA;
  - Teesmouth and Cleveland Coast Ramsar;
  - North York Moors SAC;
  - North York Moors SPA; and
  - Southern North Sea SACdue to noise and visual disturbance, water quality and air quality effects, impacts on bird flightlines and direct habitat loss due to pipeline installation.

#### Appropriate Assessment conclusion

- 5.10. The Secretary of State has undertaken an AA in respect of the Conservation Objectives of the protected sites to determine whether the Proposed Development, either alone or in-combination with other plans or projects including the Wider NZT Project, will result in an AEoI of the identified sites. The Secretary of State has considered all information available to her including the recommendations of the ExA, the advice of NE as the SNCB the views of all other IPs, the Applicants' case including the ES-HRA Addendum and Offshore ES and responses to her consultation letters.

- 5.11. Taking account of the mitigation measures as secured in the DCO and DML, the Secretary of State is satisfied that an AEol of North York Moors SAC and SPA and Southern North Sea SAC both alone and in-combination can be excluded beyond all reasonable scientific doubt. Having sought confirmation that the EA is content with the Applicants approach to nutrient nitrogen modelling and amending Requirement 37(3)(a) of the DCO to refer to nitrogen loads rather than concentrations as suggested by the ExA and NE, the Secretary of State is satisfied that an AEol of Teesmouth and Cleveland Coast SPA and Ramsar can be excluded beyond all reasonable scientific doubt.
- 5.12. Overall, the Secretary of State agrees with the Applicants, in accordance with the recommendations of the ExA and advice of NE, that subject to mitigation measures as secured in the DCO / DML an AEol of any protected site can be excluded beyond reasonable scientific doubt.

## **6. Consideration of Compulsory Acquisition and Related Matters**

- 6.1. The Secretary of State notes that the Applicants are seeking powers for the compulsory acquisition (CA) and temporary possession (TP) of land.
- 6.2. The Planning Act 2008, together with related case-law and guidance, provides that compulsory acquisition can only be granted if certain conditions are met. Under section 122 of the Planning Act 2008 CA may only be authorised if:
  - the land is required for the development to which the consent relates, or
  - it is required to facilitate or is incidental to that development; or
  - it is replacement land which is to be given in exchange for the Order land under sections 131 or 132 of the Planning Act 2008; and
  - there is a compelling case in the public interest.
- 6.3. In connection with this, the “Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land” sets out factors to be taken into account, including:
  - the land required to be taken must be no more than is reasonably required and be proportionate;
  - there must be a need for the project to be carried out;
  - all reasonable alternatives to CA have been explored;
  - the applicant has a clear idea of how it intends to use the land and can demonstrate that funds are available to pay for the acquisition; and
  - they are satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the interference with the human rights of those with an interest in the land.

### The Applicants' case

- 6.4. The Applicants' compelling case for seeking CA and TP powers is set out in the Statement of Reasons (SoR) and refers to the Planning Statement and Project Need Statement [ER 8.4.3]. The Applicants consider that there is a clear and compelling need for the development in light of its contribution to new electricity

generating capacity and decarbonisation of industrial sectors, and state that the site has been selected for technical, environmental and commercial reasons [ER 8.4.3]. The Book of Reference (BoR) identifies all the plots of land required [ER 8.4.4. et seq.]. The status of negotiations with the relevant Affected Parties (APs) was updated at regular intervals throughout the Examination in the CA schedule submitted at Deadline 12, and at Deadline 13 an 'End of Examination Negotiation Status' table was submitted including APs who had participated in the Examination [ER 8.4.11]. The Applicants engaged with landowners, tenants, lessees, and occupiers with the aim of completing voluntary agreements.

#### *Temporary Possession*

6.5. The Applicants' case for the use of TP powers is set out in the SoR [Section 6.19, REP12-010], and given effect in the draft Order through Articles 31 and 32 [REP12-003]. The Order limits TP to land which is listed in Schedule 9, and Article 31 permits the Applicants to take TP of any other Order land where powers of CA to facilitate construction have not been exercised [ER 8.5.1]. The land identified in Schedule 9 is coloured yellow on the Land Plans [REP12-015] and the Applicants do not require any interest in this land on a permanent basis as it is required for temporary use as construction and laydown areas (Work No. 9), and for access and highway improvements (Work No. 10). Article 31 allows a phased approach to occupation and acquisition where the Applicants can initially take TP of the whole width of corridors required for connections for natural gas, electricity, water supply, wastewater disposal, the CO<sub>2</sub> gathering network and the CO<sub>2</sub> export pipeline corridor. They can then acquire new, permanent rights over a narrower strip of the corridors but only for the maintenance, operation and protection of the relevant apparatus [ER 8.5.4].

#### *Reasonable Alternatives to CA*

6.6. The Applicants considered alternatives in the SoR. They stated that the 'do nothing' scenario is inappropriate given the established national need for new energy generation and the urgent need for transition to a low carbon economy to meet Net Zero 2050 commitments. The PCC site location was selected for a number of reasons as set out in the SoR. A number of options for routeing of connections required for the Proposed Development were considered [ER 8.7.3]. The Applicants conclude that none of the alternatives would provide the compelling benefits that the Proposed Development would. They would involve additional impacts or disadvantages in terms of land take, environmental, technical, or other considerations. The Applicants have continued to seek to acquire the land and rights by voluntary agreement. They require CA powers to provide certainty that they will have all the land required to construct and operate the Proposed Development, in order to realise its very significant public benefits [ER 8.7.4].

#### Statutory Undertakers' Land

6.7. Section 138 of the PA2008 is engaged because the Applicants seek powers to interfere with the apparatus of Statutory Undertakers as described in the SoR [ER 8.8.5]. The relevant undertakers: NGET, NGT (formerly NGG), NR, Northern

Gas, NPG, NWL, PDT and BT/Openreach are considered further below in paragraph 6.14 et seq.

### Special Category Land

- 6.8. Section 132 of the PA2008 is engaged, regarding land forming open space. No freehold CA of land is proposed under s131, only new rights (and TP). Special category land is listed at Part 5 of the BoR and CA affects plots 379, 448, 494, 499, 501, 526 to 529 and 539, this wholly relates to foreshore and beach at Coatham Sands and Coatham Sand Dunes, which is used for public recreation purposes. The freehold owners of the plots are STDC, RCBC or the Crown. Plot 501 is unregistered [ER 8.9.2]. Works on the open space land would comprise the installation of part of the water discharge pipeline (Work No. 5B) and part of the CO<sub>2</sub> export pipeline (Work No.8). No works are proposed on the surface of the open space land, and access to it is expected to remain open throughout the construction period. The physical appearance of the open space land would be unaffected [ER 8.9.3]. Testing, start-up and pressurisation of the CO<sub>2</sub> export pipeline may necessitate temporary restrictions on access. The Applicants expect this to be over a limited area and a very short duration (a maximum of 24 hours). Testing is expected to take place at night so that it has negligible impact on users of the open space [ER 8.9.4].
- 6.9. The TP of the land would allow the use of the relevant land to remain with or revert to the relevant landowners. New rights would permit the Applicants' infrequent use of the open space by easements for maintenance [ER 8.9.5]. No other type of special category land is affected, and no objections were received in relation to special category land [ER 8.9.6].

### Crown Land

- 6.10. At the end of the Examination three Crown-owned plots remain within the BoR, plots 218, 528 and 530 [ER 8.10.1]. At Deadline 13 Heads of Terms had been agreed and draft legal documents were being clarified. No update was provided at the end of the Examination [ER 8.10.8]. The Secretary of State issued a letter on 10 March 2023 with regards to the outstanding matters in relation to Crown Land and/or Crown rights. This issue remained unresolved, and a second letter dated 3 April 2023 was issued requesting an update from the Applicants. On 21 April 2023 the TCE responded confirming that, subject to the inclusion of Article 43 in the Order and its continuing application, and the Commissioners being consulted further if any variation to the draft DCO is proposed which could affect any other provisions of the Order which are subject to section 135(1) and 135(2) of the Act, it consents to Articles 4, 5, 6, 17, 20, 31, 32 and 37 of the Order, to the extent that they are included in the Order, applying in relation to Plots 218, 528 and 530 for the purpose of section 135(2) of the Act. The Secretary of State has considered this and does not consider that any further consultation is necessary.

### Availability and adequacy of funds

- 6.11. The Applicants submitted an updated Funding Statement and Appendices for each of the project partners at Deadline 13, confirming there was no change to

the estimated costs of £1,800 million for the Proposed Development [ER 8.11.3]. The ExA sought clarification on matters in the Funding Statement concerning CCUS business models, which relate to separate entities who would be responsible for electricity generation with post-combustion carbon capture, CO<sub>2</sub> gathering, CO<sub>2</sub> compression and CO<sub>2</sub> export and storage; and industrial carbon capture and connections to the CO<sub>2</sub> gathering network. The Applicants explained there are multiple business models being developed by the former BEIS department which would provide the commercial framework for each distinctive element of a CCUS system [ER 8.11.4]. Given the 'split chain' nature of the business models and range of potential projects, each element of the CCUS value chain will attract potentially different investors [ER 8.11.5]. UK Research and Innovate support the development of low-carbon technologies and provide grant funding for FEED and associated studies leading up to a final investment decision which was, at the time of the examination scheduled for mid-2023 [ER 8.11.6]. No changes were proposed to the Proposed Development costs as a result of changes to the Order limits. The Applicants consider there would be a minor impact on the associated land costs which would be insignificant in the context of the overall development cost [ER 8.11.7].

- 6.12. The Applicants provided clarification regarding the required mechanism for decommissioning funds during the Examination [ER 8.11.8]. STDC referred to the lack of a separate estimate for land acquisition costs in the Funding Statement. The Applicants state this was not possible due to commercial sensitivity, and that there are good public interest reasons why disclosure of specific values would not be appropriate but provided assurances that the overall figure is correct, is based on professional advice and includes CA costs [ER 8.11.9].

#### Compulsory Acquisition Schedule

- 6.13. The Applicants submitted an updated CA schedule dated March 2023 following the Secretary of State's letter dated 10 March 2023. Subsequent updates regarding CA, TP and protective provisions have been provided via consultation responses from the Applicants and APs.

#### Consideration of individual objections and issues

- 6.14. The ExA note that 23 objections were submitted during the Examination from APs regarding the request for the grant of CA and TP powers [ER 8.15.1 et seq.]. After considering the ExA's Report, the Secretary of State consulted those affected parties listed at [ER 10.2.15] for updates on the progress of discussions on 10 March, 3 April and 23 August 2023. The responses to these consultations are detailed in the relevant sections below from para 6.17 onwards.
- 6.15. The Secretary of State notes that 13 objections remain outstanding and considers this to be unsatisfactory considering the amount of time that has passed since the close of the examination. The Secretary of State expects that parties should engage early and often to seek to reach agreement wherever possible.

6.16. The Secretary of State has carefully considered the ExA's views on outstanding issues and has taken account of the additional information provided to him by the parties since the close of the Examination. The final position in respect of each AP is set out in the relevant sections below.

*Air Products*

6.17. Air Products are tenants of plots 143, 145, 146 and 150 and/or occupiers of a number of plots of land which contain their pipeline infrastructure affected by Work Nos. 6 and 10. CA rights are proposed for the majority of the plots, with TP of plots 138a, 141a, 142a and 191c which are located on the edges of those proposed for CA of rights [ER 8.16.1]. Air Products raised a number of objections during the Examination: the Applicants responded to their concerns, including PPs in Schedule 12 of the Order and stated negotiations were taking place concerning an asset protection agreement [ER 8.16.3]. The End of Examination Negotiation Status document reported that the Applicants had received no further response from Air Products and were continuing to seek agreement [ER 8.16.4].

6.18. The ExA considered that agreement was likely to be reached in the post-Examination period and that the Applicants had provided sufficient justification for the CA of rights and TP. The ExA are satisfied that the proposed powers of CA would be necessary for the delivery of the Proposed Development and is justified in the public interest [ER 8.16.5 et seq.]. Following the Secretary of State's letters of 10 March and 3 April, Air Products (letter dated 13 April 2023) confirmed they are still concluding negotiations with the Applicants with the view to resolve outstanding matters, but maintain their objection in the absence of agreement. The Applicants confirmed (in a letter dated 30 August) that no agreement had been reached. The Secretary of State has considered the ExA's position on these outstanding issues and agrees with the ExA's conclusion that CA of rights and TP would be necessary and justified. The Secretary of State has considered the protective provisions included in the draft DCO for the benefit of Air Products and notes that Air Products have not provided their own preferred version. The Secretary of State agrees with the ExA that the Applicants' proposed protective provisions can be accepted for inclusion in the DCO.

*Anglo American*

6.19. Anglo American are the developers of the Woodsmith Project (formerly York Potash) which is developing an underground mine for winning and working of polyhalite together with its handling and transportation. The area of the York Potash Harbour Facilities Order 2016 intersects with the Proposed Development in a number of locations [ER 8.17.1]. Anglo American are freehold owners of a significant number of plots as set out in the BoR and CA is proposed for plots 325, 328, 329, 330 and 333, with numerous others proposed for CA rights [ER 8.17.1]. Anglo American participated in the CA hearings confirming that they were in active discussions with the Applicants regarding the property agreements and protective provisions [ER 8.17.4]. Agreement was reached in respect of reducing the width of the permanent easement relating to Work No. 2A (buried gas pipeline) and would be reflected in the property agreements [ER 8.17.5]. At Deadline 13 the Applicants confirmed that property agreements were in near final

form and that they were aiming to complete them prior to the end of the Examination, if not shortly after [ER 8.17.9].

- 6.20. The ExA was satisfied that the Applicants have provided reasoned justification for the extent of the proposed CA of land and rights and the proposed CA would be necessary in order to implement the Proposed Development. The ExA consider it would be reasonable and proportionate in this instance [ER 8.17.11].
- 6.21. Following the Secretary of State's letters of 10 March and 3 April 2023 representatives on behalf of Anglo American issued a statement (dated 4 April 2023) which confirmed that parties had reached agreement that the protective provisions included in the Order should be those in the draft DCO submitted to the Examining Authority on 1 November 2022 [REP12-003]. That applies to both the protective provisions in Schedule 3 and the protective provisions in Part 17 of Schedule 12. The Secretary of State agrees that the CA of land and rights in respect of Anglo American's land is justified and would be reasonable and proportionate.

#### *CATS North Sea Limited (CNSL)*

- 6.22. CNSL operate CATS gas terminal at Seal Sands Road which processes North Sea gas and distributes to local industrial users as well as the National Transmission System. CNSL also operates a 404km pipeline that transports gas from the North Sea to a terminal at Seal Sands and are leaseholders of plots 110, 112, 113 and 114 from PD Teesport Limited (PDT) who are the freeholder. PDT confirmed that the Applicants would deal with CNSL directly with a view to reaching a voluntary agreement. CA of land is proposed for plot 112 for the gas compound Above Ground Installation (AGI) associated with Work No.2 (the gas connection). CA of rights is proposed for other plots. CNSL submitted a number of objections to the CA of land into the Examination. At Deadline 13 a final signed SoCG was issued which confirmed a number of additional discussions had taken place between the parties. The End of Examination Negotiation Status document indicated that the parties had agreed the form of side agreement and annexed protective provisions were going through final internal sign-off processes [ER 8.18.12].
- 6.23. Following the Secretary of State's letters of 10 March, 3 April and 23 August, representatives on behalf of CNSL (dated 30 August 2023) confirm that, "CNSL has now agreed terms with the Applicants that address CNSL's outstanding concerns in relation to the draft DCO [REP12-003]. On this basis, CNSL have no remaining objection to the DCO application and withdraws any and all representations made to the application".

#### *CF Fertilisers UK Limited (CFL)*

- 6.24. CFL have freehold land ownership of several plots (plot numbers 10/10a, 12/12a, 15 to 17, 19 to 26, 28/28a, 30 to 33, and 36) within the Order land, which are proposed as Work No. 6, the CO<sub>2</sub> gathering network corridor. The SoCG states that CFL are supportive of the Proposed Development, which would assist in the achievement of their environmental goals [ER 8.19.2]. Concerns were raised regarding the potential effects on its pipeline, cabling infrastructure including

proposed new pipelines and decommissioning [ER 8.19.3]. The End of Examination Negotiation Status document stated that the side agreement and annexed protective provisions were going through final internal sign-off ahead of completion. Heads of Terms for an option agreement for a Deed of Grant of Easement are agreed, and the documents were with CFL and progress was hoped to be made shortly after the Examination [ER 8.19.4].

6.25. The ExA note that CFL did not make specific objections relating to CA of land or rights, and saw no reason why a voluntary agreement would not proceed [ER 8.19.5]. In the absence of such an agreement however they consider that the Applicants had provided sufficient justification for the CA of rights and are satisfied that the proposed powers of CA would be necessary for the delivery of the Proposed Development and is justified in the public interest [ER 8.19.6]. No further updates were provided by CFL in response to the Secretary of State's letters of 10 March, 3 April and 23 August. In the absence of an agreement between the parties the Secretary of State agrees with the Examining Authority's conclusions that the proposed CA would be necessary and justified, and agrees that the protective provisions which are recommended in the draft Order should be included in the final DCO.

*Exolum (including Exolum Riverside Limited and Exolum Seal Sands Limited)*

6.26. Exolum are the occupiers of a large number of plots listed in the BoR which are proposed for CA of rights and TP. Their apparatus is affected by the CO<sub>2</sub> gathering network corridor (Work No.6), and the gas connection (Work No.2). At the end of the Examination a form of side agreement and annexed protective provisions had been agreed and were awaiting sign off. The ExA was satisfied that the need for CA of rights to secure the delivery of the proposed CO<sub>2</sub> gathering network and gas connection, and that matters raised by Exolum would be appropriately dealt with through protective provisions. The ExA considered that the public benefits of the Proposed Development would outweigh any loss of private interests in respect of Exolum's rights [ER 8.20.7]. The Secretary of State agrees.

6.27. Following the Secretary of State's letter of 10 March 2023 Exolum confirmed that they have reached agreement with the Applicants in relation to protective provisions and have withdrawn their objection.

*Huntsman Polyurethanes (UK) Limited (HPU)*

6.28. HPU's concerns were raised in relation to CA powers and their interest in the Link Line corridor which consist of rights to maintain their apparatus. The ExA note that the final CA schedule and the end of Examination Negotiation Status table indicates that a side agreement is being negotiated between the parties, alongside the protective provisions. The ExA notes that the Applicants were in contact with HPU throughout the examination and accepted provisions proposed by HPU for inclusion in the draft DCO [ER 9.4.211 - 212]. HPU submitted its own protective provisions on the last day of the examination and the ExA made one amendment accordingly but noted that HPU had not explained in detail the reasons for departing from the Applicants' proposed provisions [ER 9.4.215]. The Secretary of State wrote to parties on 10 March and 3 April 2023 to seek an

update on the completion of any voluntary agreement. On 21 April 2023 preferred protective provisions were again provided by representatives acting on behalf of HPU which, as noted by the ExA, differed from the Applicants' proposed protective provisions in multiple respects. The Secretary of State has considered HPU's proposed amendments to the Protective Provisions. She does not consider that HPU have provided sufficient justification for the amendments. The Secretary of State agrees with the ExA's conclusion that the Applicants' version provides appropriate protection for HPU [ER 9.4.215]. In the absence of an agreement between the parties, the Secretary of State considers that the protective provisions should remain as drafted at the end of the examination.

*Ineos Nitriles (UK) Limited*

- 6.29. Ineos Nitriles are landowners and occupiers of numerous plots around Seal Sands Road to the north of the River Tees. The land is proposed for TP for a construction compound and laydown area and access at plots 122 and 123 (Work Nos. 9C and 10), as well as CA rights relating to the CO<sub>2</sub> gathering network. Ineos Nitriles supported the project in principle but had concerns the access to critical infrastructure, adversely affecting their offices, give rise to safety hazards, and that decommissioning had not been adequately addressed [ER 8.22.2].
- 6.30. At the End of the Examination Heads of Terms had been agreed subject to board approval. Ineos Nitriles confirmed, in response to the Secretary of State's letter of 10 March (dated 3 April 2023) that they have reached agreement with the Applicants in relation to protective provisions and have withdrawn their objection.

*The Breagh Pipeline Owners' - Ineos UK SNS Limited and One-Dyas UK Limited*

- 6.31. The Breagh Pipeline is a southern North Sea gas field with pipeline connected to Teesside Gas Processing Plant at Seal Sands Road. The owners state that the pipeline is a nationally significant asset that is integral to the UK's current and future energy security [RR-010]. It is co-owned by Ineos UK SNS Ltd and One-Dyas UK. Both owners hold a number of land rights and interests within the Order limits as set out in the BoR. The majority are proposed for CA of rights. One-Dyas are listed as freehold owners of a small area of land at plot 356 and lessee/tenants of numerous plots. The Breagh apparatus is affected by the CO<sub>2</sub> gathering network corridor (Work No.6), and the gas connection corridor (Work No.2) [ER 8.23.2].
- 6.32. The ExA noted that the final version of the CA schedule and End of Examination Status table indicate that agreement has been reached, subject to final sign off [ER 8.23.4]. The ExA considered the lack of engagement from both parties in the Examination but acknowledged agreement had been reached subject to sign-off, and was satisfied that CA is needed in order to secure the delivery of the proposed CO<sub>2</sub> gathering network and gas connection, that matters raised would be appropriately dealt with via protective provisions at Schedule 12, Part 21 of the Order [ER 8.23.5]. Breagh Pipeline Owners confirmed (dated 15 March 2023), in response to the Secretary of State's letter of 10 March, that they have reached agreement with the Applicants in relation to protective provisions and have withdrawn their objection.

*National Grid Electricity Transmission PLC (NGET)*

- 6.33. NGET are not landowners but are Statutory Undertakers and occupiers of numerous plots that are proposed for CA of rights or TP. A number of substations and overhead transmission lines are within or in close proximity to the Order land, including at the site of the proposed connection at Tod Point substation (Work No.3) to upload electricity from the CCGT [ER 8.24.1]. NGET object to any CA powers for land or rights or TP where it would affect its land interests, rights, apparatus or right of access and maintain its apparatus, unless suitable protections have been secured [ER 8.24.2]. The End of Examination Negotiation Status documents state that the parties continue to engage. The ExA concluded that the extinguishment of rights and interference with apparatus sought by the Applicants would be necessary for the purpose of carrying out the proposed development and the Secretary of State agrees.
- 6.34. The ExA concluded that the Applicants' protective provisions should be accepted in the absence of alternatives being put forward by NGET. NGET confirmed, in response to the Secretary of State's letters of 10 March and 23 August, that they were close to reaching agreement with the Applicants and provided revised protective provisions that they want included in the final DCO and which they anticipated would shortly be agreed upon. The Applicants stated in their letter of 30 August that final protective provisions had been agreed subject to final signatures but have not commented on NGET's revisions or provided a copy of any agreed protective provisions. The Secretary of State has carefully considered NGET's revised protective provisions and concludes that many of the changes are minor and can be accepted. The Secretary of State has not included the provision entitled "Acquisition of Land", subject to which the Applicants would not be able to acquire NGET's apparatus, land, land interests and rights otherwise than by agreement, such agreement not to be unreasonably withheld. The Secretary of State's understanding is that the inclusion of this provision has not been agreed with the Applicants. In light of the conclusion that the case for CA and TP has been made out, the Secretary of State does not consider the provision to be necessary and notes that such provisions risk impeding the Applicants' ability to deliver the Proposed Development. The Secretary of State has also not included the proposed replacement of "street" with "highway", the amendment to trench-bearing capacity or the amendment to the indemnity clause, as it is not considered that these changes are necessary or justified.

*National Gas Transmission PLC (Formerly National Grid Gas PLC (NGT)*

- 6.35. NGT are Statutory Undertakers and occupiers of numerous plots that are proposed for CA of rights or TP. NGT has a high-pressure gas transmission pipeline and above ground installation within and in close proximity to the Order land including the proposed gas connection for Work No.2. The final CA schedule confirms that the parties continue to seek agreement. The Applicants consider that if agreement is not reached the CA powers should be granted for the reasons given in the SoR and notes that NGT would benefit from the protective provisions provided at Part 4 of Schedule 12 of the Order [ER 8.25.9].
- 6.36. The ExA considered that the need for the proposed AGIs and gas connections have been satisfactorily demonstrated by the Applicants and direct the Secretary

of State to their conclusions on CNSL and NSMP relating to the CATS and TGPP terminals which overlap with the land occupied by NGT [ER 8.25.10]. For the purposes of s138 of the PA2008 the ExA was satisfied that the extinguishment of rights and interference with apparatus sought would be necessary for the purpose of carrying out the Proposed Development, and the Secretary of State agrees. The ExA also concluded that the Order would contain appropriate protective provisions for NGT [ER 8.25.11].

- 6.37. NGT confirmed, in response to the Secretary of State's letter of 23 August, that they were close to reaching agreement with the Applicants and provided revised protective provisions that they want included in the final DCO. The Applicants stated in their letter of 30 August that final protective provisions had been agreed subject to final signatures but have not commented on NGT's revisions or provided a copy of any agreed protective provisions. In the absence of comments from the Applicants, the Secretary of State has carefully considered NGT's revised protective provisions and concludes that the majority of these are minor and can be accepted. For the reasons set out above in respect of NGET, the Secretary of State has not included all of the proposed changes, including the proposed provision entitled "Acquisition of Land".

*Navigator Terminals North Tees Limited and Navigator Terminals Seal Sands Limited ("Navigator")*

- 6.38. Navigator are freehold owners, tenants and occupiers of a number of plots located at Seal Sands Road, proposed for CA of rights and TP for Work Nos. 6, 9 and 10. Bespoke protective provisions are provided for the benefits of Navigator at Part 24, Schedule 12 of the Order. At the end of the Examination Heads of Terms for an Option Agreement and Deed of Grant of Easement had been agreed between the parties, and draft legal documents issued but that negotiations were continuing [ER 8.26.3].
- 6.39. The ExA concluded that in the absence of agreement it was satisfied that the CA is needed in order to secure the delivery of the Proposed Development and that protective provisions would be secured in the Order [ER 8.26.4]. In the absence of an agreement between the parties the Secretary of State agrees with the Examining Authority's conclusion that the Applicants' draft protective provisions provide appropriate protections for Navigator [ER 9.4.218] and should be accepted for inclusion in the final DCO.

*Network Rail Infrastructure Limited (NR)*

- 6.40. NR is a statutory undertaker with a range of interests within the Order Limits including railway corridors listed in ER 8.27.1. The land is required for a range of works including CO<sub>2</sub> gathering network corridor, gas, electricity and water connections [ER 8.27.1]. NR raised a number of concerns that information supplied was not sufficiently detailed to assess railway safety and operation and they sought protection from the exercise of CA powers over their operational land and that their standard protective provisions would need to be included in the Order. Additionally, a number of legal and commercial agreements would need to be entered into [ER 8.27.2]. The final CA schedule and End of Examination Negotiation Status document state that Heads of Terms have been reviewed by

NR and a proposal provided by the Applicants for a commercial agreement and that parties continue to seek to reach agreement [ER 8.27.5].

- 6.41. The ExA noted that NR did not engage any further with the Examination beyond submission of their relevant representations. The ExA was satisfied that the extinguishment of rights and interference with apparatus sought by the Applicants in relation to NR land interests would be necessary for the purpose of carrying out the Proposed Development and the Secretary of State agrees.
- 6.42. The ExA notes that the draft Order includes bespoke protective provisions for the benefit of NR in order to safeguard its interests and assets [ER 8.27.6] and that NR did not provide their preferred protective provisions to the examination [ER 9.4.150]. NR provided their preferred protective provisions for the first time in October 2023, in response to the Secretary of State's letter of 22 September. The Applicants confirmed on 6 October that agreement has not been reached but the parties are engaged in negotiating a side agreement. The Applicants wrote again to the Secretary of State on 24 October 2023 confirming that NR's proposed amendments were not agreed. In the absence of an agreement between the parties the Secretary of State has considered NR's proposed protective provisions, notwithstanding the lateness of the submission and the absence of an explanation or justification from NR as to why these changes are required. The Secretary of State agrees with the Examining Authority's conclusions that the Applicants' proposed provisions can be included in the Order but has made some of NR's suggested changes where these are relatively minor or uncontentious and appear reasonable.

#### *Northern Gas Networks Ltd (NGN)*

- 6.43. NGN are a statutory undertaker and occupiers of a number of plots as the BoR which are proposed for CA of rights and TP. Protective Provisions were entered into the DCO at Deadline 4 of the examination and are set out in Schedule 12 Part 26 of the Order. It was noted that an asset protection agreement was being negotiated with parties but there is limited information regarding timescales. The Secretary of State's letters of 10 March 2023 and 23 August 2023 requested updates on negotiations. NGN responded on 8 September setting out concerns but without reference to the ongoing negotiations. The Applicants confirmed in their letter of 6 October 2023 that they will continue to engage with NGN in relation to their concerns.
- 6.44. The ExA concluded for the purposes of s138 of PA2008 it was satisfied that the extinguishment of rights and interference with apparatus sought would be necessary for the purpose of carrying out the Proposed Development [ER 8.28.3]. It further noted that the Order, including the Applicant's final version of protective provisions for the protection of NGN, would provide appropriate protections for NGN [ER 9.4.223]. In the absence of an agreement between the parties the Secretary of State agrees with the ExA's conclusions on CA and TP and in relation to the protective provisions which are recommended in the draft Order.

*Northern Powergrid (Northeast) PLC (NPG)*

- 6.45. NPG are Statutory Undertakers that are occupiers of a number of plots which are proposed for CA of rights or TP [ER 8.29.1]. Their concerns relate to the impacts on their existing assets and their ability to serve clients in the future. NPG were not satisfied that the Order included adequate land rights for works required to relocate their apparatus or to access and maintain their apparatus [ER 8.29.2]. The final CA schedule and End of Examination Negotiation Status document set out that parties are making progress on the draft side agreement and protective provisions and would continue to seek agreement. The Applicants' position is that CA powers should be granted for the reasons set out in the SoR and that NPG would benefit from the protective provisions set out in Part 12 of Schedule 12 of the Order.
- 6.46. The ExA was satisfied that the extinguishment of rights and interference with apparatus sought would be necessary for the purpose of carrying out the Proposed Development. The Secretary of State agrees. The Order includes bespoke protective provisions for the benefit of the company to safeguard its interests and assets and the ExA considered them to be sufficient [ER 8.29.6]. Following the Secretary of State's letter of 3 April 2023, representations on behalf of NPG were received (dated 30 April 2023) to confirm that parties had reached agreement and to formally withdraw their objection to the Order.

*North Sea Midstream Partners (NSMP)*

- 6.47. NSMP manage the interests of Teesside Gas Processing Plant ("TGPP") and Teesside Gas and Liquids ("TGL") and they own the TGPP plant at Seal Sands Road, a national energy infrastructure installation delivering gas into the national transmission system. The plant supports the operation of approximately 30 natural gas fields in the North Sea and is classified as an upper tier COMAH site. They are freehold owners of plots 103, 105 and 106, which are adjacent to the proposed site of the AGI and gas connection at plot 112. They also have rights of access and easements on nearby land including plots 98, 108 and 111 which contain sections of the sole access road into the TGPP [sheet 3, REP12-015]. The plots are required in relation to Works No. 2 (the gas connection) and Works No.10 (access).
- 6.48. NSMP's objections mainly centre around use of the access into the TGPP site and its relationship with the adjoining plots which are on land leased by CNSL within the CATS terminal. The Applicants are pursuing an alternative access via the CATS terminal, which should resolve many of NSMP's concerns, however, no agreement has been reached for this alternative access. The ExA considers that that the protective provisions would adequately cover NSMP's safety concerns should agreement not be reached on an alternative access [ER 8.30.14]. The ExA concludes that the proposed powers of CA would be necessary for the delivery of the Proposed Development for Work No. 2 and are justified in the public interest [ER 8.30.16]. The Secretary of State agrees, but has given careful consideration to the points raised by NSMP in respect of the protective provisions.

- 6.49. Following the Secretary of State's letters of 10 March, 3 April and 23 August, both parties confirmed that no agreement has been reached. The Secretary of State notes the ExA's various recommendations and has also considered the representations of the parties.
- 6.50. In the absence of an agreement between the parties the Secretary of State agrees with the ExA's conclusions on CA and in relation to the protective provisions which are recommended in the draft Order. The Secretary of State has adopted the changes proposed by the ExA, for the reasons given in the ER. In addition, the Secretary of State accepts NSMP's reasonable proposed amendments to the defined term "relevant works" and their proposed expanded definition of "NSMP Group" to include "affiliates".

#### *North Tees Group (NTG)*

- 6.51. NTG are freehold landowners of land which lies within the Link Line pipeline corridor (plots 119 to 121, 124 (a, b and d), and 128/128a) and they lessee/tenant plots 81 and 83 to 88. The land is required for Work No. 6 [ER 8.31.1]. NTG engaged throughout the examination with concerns following the extent and duration of rights; sterilisation of land; TP of plots 124a and 128a; crossing points and management responsibilities [ER 8.31.5]. At the end of the Examination the final CA schedule and End of Examination Negotiation Status document confirmed that Heads of Terms for a voluntary Option Agreement for a Deed of Grant of Easement were being negotiated by parties, and the parties continued to engage in relation to a voluntary agreement [ER 8.31.29]. The ExA acknowledged that NTG is a significant landowner in the area and have responsibility for a number of users of the Link Line pipeline corridor and that safety is paramount and is a common theme with many of the APs who engaged in the examination [ER 8.31.30]. The ExA noted NTG's concerns regarding the widths of the pipeline corridor, this varies for a variety of reasons, largely because of the flexibility required before full engineering design is carried out. The majority of the 90m width quoted is proposed for TP.
- 6.52. The ExA considered that the PPs in the Order would ensure that NTG would be given reasonable notice and details of works prior to commencing any part of the Proposed Development which would have an effect on operations or access. Suitable provisions for access for construction and maintenance are also set out in separate PPs for other AP's who occupy the pipeline corridor. The ExA did not consider it necessary to reduce rights for crossing points within plot 124b [ER 8.31.32].
- 6.53. The ExA noted NTG's concerns regarding negotiations and their desire to reach an agreement as an alternative to CA. The Applicants provided regular updates throughout the examination via the CA Schedule and have indicated their willingness to continue discussions regarding voluntary agreements and protective provisions. Whilst no agreement had been reached by the close of the examination, the ExA considered that the Applicants' actions have been appropriate and reflect the CA guidance [ER 8.31.33].
- 6.54. The ExA considered that the interests of NTG and the various occupiers of the pipeline corridor would be adequately protected through the provisions of

Schedule 12 of the Order. The ExA considered the Applicants had provided a satisfactory explanation for the extent of the land and duration of powers and that they would not use the proposed CA powers if they were not needed or if a narrower easement could be agreed between parties. The ExA consider this to be reasonable [ER 8.31.34]. The ExA found there is a compelling case in the public interest for the CA powers sought and are satisfied that the powers of CA in relation to plots which NTG own and have an interest in would be necessary and are justified in the public interest [ER 8.31.35]. The Secretary of State agrees. In relation to the form of the protective provisions, the Secretary of State notes that NGT submitted alternative protective provisions which were considered by the ExA and amendments were made to the draft DCO where considered appropriate. The Secretary of State received no response from NTG to their letters dated 10 March, 3 April and 23 August. In the absence of an agreement between the parties the Secretary of State agrees with the Examining Authority's conclusions and has included the protective provisions which were recommended in the draft Order.

*Northumbrian Water (NWL)*

- 6.55. NWL are a statutory undertaker and operators of Bran Sands Wastewater Treatment Plant ("WwTP") and have interests in numerous plots of land north and south of the Tees, which contain their apparatus for water and wastewater supply. The Applicants seek to obtain CA rights and TP over NWL land at numerous locations but concentrated at Bran Sands, adjacent to the proposed CO<sub>2</sub> gathering network corridor [ER 8.32.1].
- 6.56. The final SoCG set out that the side agreement annexing bespoke protective provisions had been agreed and was awaiting sign off. On 9 November 2022 NWL confirmed a voluntary agreement had been entered into and they therefore wished to withdraw their objections [ER 8.32.4]. Following the Secretary of State's letter of 10 March NWL reconfirmed that they have reached agreement with the Applicants in relation to protective provisions and withdrawn their objection.

*NPL Waste Management Ltd (NPL)*

- 6.57. NPL are freehold owners of a number of plots located at Billingham which relate to a disused anhydrite mine. The Applicants seek CA of rights and TP over the mine for the construction and maintenance of the CO<sub>2</sub> gathering network corridor [ER 8.33.1].
- 6.58. In response to the Secretary of State's letter dated 10 March 2023 NPL confirmed that they had not reached agreement with the Applicants. The Secretary of State received no responses from NPL to the letters dated 3 April and 23 August 2023. In the absence of an agreement between the parties the Secretary of State agrees with the ExA's conclusions on CA and TP and in relation to the protective provisions which are recommended in the draft Order.

*PD Teesport Limited (PDT)*

- 6.59. PDT is the statutory harbour authority for Teesport and is a statutory undertaker for the purposes of s127 of the PA2008 [ER 8.34.1]. PDT are freehold owners and or/occupiers of numerous plots to both sides of the River Tees. Their interests would be affected by Work No.6, Works Nos 2A and 2B, Works 9b and 10 at plots 222 and Teesworks (plots 474,475, 477), Work No.5 and Work No.8 at plot 378 [ER 8.34.2]. They have also granted leases to a range of affected parties ("APs") involved in the examination. Separate conclusions have been reached on the proposed CA of plots leased by other parties, including matters related to alternatives [ER 8.34.13].
- 6.60. The ExA noted that access on South Gare Road is unlikely to be affected due to the methods of construction of Work Nos. 5 and 8. If closure is required, the protective provisions require the Applicants to provide an alternative route. The ExA noted that the provisions in Part 14 of Schedule 2 of the Order were largely agreed between parties [ER8.34.14].
- 6.61. Following the close of the examination (by letter dated 11 November 2022) and again in response to the Secretary of State's letter of 10 March 2023, PDT confirmed that they have reached agreement with the Applicants in relation to protective provisions and have withdrawn their objection.

*Redcar Bulk Terminal Ltd (RBT)*

- 6.62. RBT are freehold owners of plots 223 and lessee/tenant of plot 222 (owned by PDT) and also occupy a number of plots within Teesworks [ER 8.35.1]. RBT operate a deep marine terminal on the south bank of the River Tees [ER 8.35.2]. The Applicants seek to use RBT land and facilities for unloading of outsized loads during the construction phase with powers sought over plots 222 and 223 [ER 8.35.3]. RBT's concerns related to the impacts on its ongoing operations at the terminal and that of its customers [ER 8.35.4]. Other concerns related to CA rights for an underground gas pipeline through plot 288 which was subsequently removed at the first change request [ER 8.35.5]. At Deadline 13 it was confirmed that protective provisions had been agreed but negotiations were continuing on the side agreement and associated legal agreements [ER 8.35.14].
- 6.63. Following the close of the Examination (by letter dated 26 January 2023) RBT confirmed that they have reached agreement with the Applicants in relation to protective provisions and withdrawn their objection.

*Redcar and Cleveland Borough Council (RCBC)*

- 6.64. RCBC owns plots 499, 526, 527, 529 and 539 located at Coatham Sands, including the foreshore. The plots are proposed for CA of rights for Work Nos 5 and 8 and are classed as Open Space, considered in paragraph 6.7 of this Letter [ER 8.36.1]. The final CA Schedule and the End of Examination Negotiation Status document noted that Heads of Terms had been agreed and a Deed of Grant of Easement is agreed in principle [ER 8.36.3].

6.65. The ExA noted that RCBC made no submissions in respect of CA matters and that completion of an agreement was imminent. The ExA were satisfied that the Applicants had provided reasoned justification for the extent of the proposed CA rights. There is a need for the land to be utilised in connection with the water discharge connection CO<sub>2</sub> export pipeline corridors, which are fundamental elements of the Proposed Development connecting to the Offshore Elements of the NZT project [ER 8.36.5]. In the absence of any update following the Secretary of State's letters of 10 March and 3 April 2023 the Secretary of State agrees with the ExA's conclusions in relation to the CA rights sought by the Applicants.

*SABIC Petrochemicals UK Ltd ("SABIC")*

6.66. SABIC operates facilities that connect to its North Tees terminals and storage facilities via the Link Line corridor. It also operates a cross country network, and substantial logistical facilities to the north and south of the Tees. SABIC owns plots 65, 67, 67a and 68 (proposed for TP for Work No.9) and are lessees/tenants or occupiers of numerous other plots primarily along the Link Line corridor [ER 8.37.1]. SABIC raised concerns regarding the potential effects upon its numerous locations, and the proposed CA of rights which are not compatible with its existing rights. SABIC is also concerned that the Proposed Development would compromise the safety and operation of the Link Line corridors, and its uninterrupted access to, and navigation of, the River Tees [ER 8.37.2].

6.67. The CA Schedule and End of Examination Negotiation Status document state that Heads of Terms regarding an option agreement were agreed in December 2021 and draft legal documents were in negotiation. Following the Secretary of State's letter of 3 April 2023 SABIC wrote (dated 21 April 2023) to confirm their preferred protective provisions which include minor amendments to those provided to the examination previously. The Secretary of State has carefully considered SABIC's proposed amendments to the protective provisions. She does not consider that SABIC have provided sufficient justification for the amendments. The Secretary of State agrees with the ExA's conclusion that the Applicants' version provides appropriate protection for SABIC [ER 9.4.171]. In the absence of an agreement between the parties, the Secretary of State considers that the protective provisions should remain as drafted at the end of the examination.

*Sembcorp Utilities (UK) Ltd ("Sembcorp")*

6.68. Sembcorp's industrial power and utility assets are based at Wilton International, supplying major industrial businesses as well as securing inward investment and is described as an industrial and manufacturing hub of national importance. Its pipeline corridor contains critical infrastructure used for import and export of various chemicals and gases linking with other major industrial clusters on Teesside. The entire pipeline corridor stretches from Wilton International, via a tunnel under the River Tees through to Seal Sands and onto Billingham and totals around 12 km [ER 8.38.1].

6.69. Sembcorp has significant land interests within and around the Order land, both as owner and lessee/tenant, as well as numerous rights held under deeds of grant and easements. It highlighted the potential disruption to its complex legal

arrangements through which it manages its pipeline corridors and sought for any new rights to safeguard the rights of existing businesses [ER 8.38.4]. The ExA concluded that there was a compelling case in the public interest for the CA powers sought, and that these were necessary and justified in the public interest [ER 8.38.34].

- 6.70. Following the examination and in response to the Secretary of State's letter 10 March 2023, Sembcorp confirmed that they have reached agreement with the Applicants in relation to protective provisions and withdrawn their objections. The agreed provisions have been included in the final Order.

*South Tees Development Corporation (STDC)*

- 6.71. STDC is a Mayoral Corporation and encompasses the entities of Teesworks Limited and South Tees Development Limited as defined in the Order. STDC are responsible for 1,820 hectares of land to the south of the River Tees, secured by compulsory purchase order of land relating to the former steelworks. The wider development site 'Teesworks' forms a large part of the area granted Freeport status in 2021. STDC are freehold owners of a significant number of plots and the largest areas of land proposed for CA and TP of land and rights required for Works Nos 1 and 7, together with other elements of the Proposed Development [ER 8.39.2].
- 6.72. STDC objected throughout the examination on the following issues:
  - Excessively wide land requirements in the utilities/easement corridor;
  - An alternative access to Tees Dock Road should be considered;
  - Alternative construction worker parking would be available at a park and ride, so a number of plots would be unnecessary;
  - Potential sterilisation of development land from CA and TP of various plots (including access to RBT); and
  - The preference for entering into voluntary legal agreements for a lease as opposed to permanent acquisition of land and rights.
- 6.73. The final version of the SoCG set out the parties' position that STDC's concerns could largely be addressed via protective provisions [ER 8.39.37] and it was noted that the parties would continue to work together to finalise option agreements and an interface agreement alongside protective provisions [ER 8.39.40]. The ExA concluded that STDC's concerns would not preclude the finding that there is a compelling case in the public interest for the CA powers sought. The ExA were satisfied that the use of CA would be necessary and is justified in the public interest [ER 8.39.50].
- 6.74. Following the Secretary of State's letters of 10 March and 3 April 2023 STDC confirmed that no agreement had been reached in respect of the powers sought. On 27 April 2023 the Secretary of State received an update from the Applicants confirming that a legally binding agreement has now been reached with STDC in respect of the main site which secures arrangements for access and removes the Tees Dock Road Access from the Application (subject to the agreement of the Secretary of State and to which the Secretary of State has agreed), reducing

the extent of the Order Limits and Order Land. STDC also confirmed their support for the change request (by letter dated 5 May 2023) and that it withdraws its objections to the Proposed Development insofar as they relate to electrical connections.

6.75. Nevertheless, STDC's other outstanding objections remain. In the absence of a final agreement between the parties the Secretary of State has carefully considered STDC's proposed protective provisions and the ExA's comments. The changes proposed by the ExA and set out at ER 9.4.210 have been accepted. In light of the accepted change request, the Secretary of State has added a clause clarifying that a means of access from the Tees Dock Road shall not be created, as requested by STDC. The Secretary of State has also deleted the words "complies with the adequacy criteria" from the definition of "diversion criteria" as requested by STDC. Overall, the Secretary of State agrees with the Examining Authority's conclusions in relation to the protective provisions which were recommended in the draft Order and has included provisions in the final Order accordingly.

*Stockton-on-Tees Borough Council (STBC)*

6.76. STBC is a freehold landowner of a number of plots in the Billingham area, which comprises of public highway land. The highway land would be crossed by the CO<sub>2</sub> gathering network corridor (Work No.6).

6.77. The ExA noted that STBC participated in the Examination as one of the RPAs but did not make any submissions in relation to land matters relating to highways, nor in its SoCG. The final CA schedule specifies that a voluntary agreement is not required in respect of highway land [ER 8.40.2].

*Suez Recycling and Recovery UK Ltd ("Suez")*

6.78. Suez are freehold owners of plots 7 and 8. The Applicants seek CA rights and TP to enable the CO<sub>2</sub> gathering network (Work No. 6). Part 19 of Schedule 12 of the Order included protective provisions for the benefit of Suez. In response to the Secretary of State's letter of 10 March 2023 the Applicants noted that it was unlikely that agreement of the Option Agreement for a Deed of Grant of Easement would be reached prior to the Secretary of State's decision. The ExA noted at the close of the examination that negotiations were continuing. In the absence of a voluntary agreement the ExA were satisfied that the proposed CA is needed in order to secure the delivery of the Proposed Development, and that satisfactory protective provisions for Suez would be secured in the Order [ER 8.41.4]. The Secretary of State agrees.

*Teesside Wind Farm Ltd (EDF Renewables Ltd) (TWL)*

6.79. TWL comprises 27 turbines located off the coast of Coatham Sands. Its operator, EDF, raised concerns that the Proposed Development had the potential to adversely affect their electricity export cable, which runs from the turbines to the National Grid substation at Warrenby. EDF/TWL are not landowners but occupy a number of plots in the area of Coatham dunes proposed for CA of rights for the CO<sub>2</sub> export pipeline (Work No.8) and the water discharge connection corridor

(Work No.5) [ER 8.42.1]. At Deadline 11 TWF provided an update to the negotiations, explaining that a draft side agreement and protective provisions were agreed and would be completed imminently [ER 8.42.3].

- 6.80. Following the close of the examination, EDF and the Applicants have confirmed in their letter dated 30 January 2023 that they have negotiated to reach agreement regarding protective provisions and EDF subsequently confirmed the removal of their objection to the DCO application.

#### *Other Affected Persons*

- 6.81. The ExA noted that there are numerous occupiers and users who current have rights of access from South Gare Road [ER 8.43.1]. The Applicants confirm that CA of rights is sought over a section of South Gare Road to lay and maintain pipes for the CO<sub>2</sub> export pipeline (Work No.8) and water discharge outfall (Work No. 5B). Such powers would only be exercised if agreement cannot be reached with PDT to facilitate access and ensure the Proposed Development is deliverable. PPs for PDT under Part 14 of Schedule 12 of the Order are also relevant to its occupiers. Article 159 specifically refers to the right for parties authorised by PDT to use South Gare Road, and article 163 requires the undertaker not to hinder or prevent access to South Gare (and provide an alternative diversionary route if necessary). No separate agreement is therefore required with the occupiers of South Gare Road including Teesside 43 BSAC diving club [ER 8.43.1].
- 6.82. Marlow Foods utilise part of Nelson Avenue as their primary access to their operational site at Billingham. The Applicants' proposed protective provisions prevent the undertaker from exercising powers to prevent Marlow Foods being able to access their adjacent site and require advanced notice to be given to Marlow Foods before doing works that utilise the highway route at Nelson Avenue. The Applicants therefore consider that the protective provisions appropriately address and manage the potential impact of the proposed scheme on Marlow Foods' operations [REP12-005]. Despite initial contact with the Applicants prior to and during the examination, Marlow Foods neither commented on the Applicants' protective provisions nor submitted their own preferred protective provisions to the examination, therefore, the ExA considers that the Applicants' protective provisions should be accepted. No further comments were received from Marlow Foods in response to the Secretary of State's letters of 10 March and 3 April 2023. In the absence of an agreement between the parties the Secretary of State agrees with the Examining Authority's conclusions in relation to the protective provisions recommended in the draft Order.
- 6.83. The Church Commissioners for England are freehold owners of multiple plots around Seal Sands Road in relation to below ground mineral rights. The Applicants do not propose the need to acquire an interest in such rights [ER 8.43.3]. The EA are owners and occupiers of plots 218 and 232a and as a regulator in respect of main rivers, where TCE is owner [ER 8.43.4]. The CA schedule also lists the rights of a range of other parties who are not freehold landowners nor did they participate in the examination but may be affected by the Proposed Development or have an interest. Part 1, Schedule 12 of the Order

includes protections for these parties, including privately owned and operated mains, pipelines and cables which are not covered by the protective provisions in Schedule 12 [ER 8.43.5].

#### *Statutory Undertakers*

- 6.84. Section 127 and s138 of PA2008 are engaged in relation to the proposals to acquire land and /or rights, seeking powers to interfere with the apparatus of the Statutory Undertakers in paragraphs 9.1.24 to 9.1.32 of the SoR [ER 8.44.1]. Agreement has been reached with NWL and is considered in the preceding sections. Protective provisions in Part 2 of Schedule 12 of the Order would protect BT/Openreach together with any other telecommunications operators [ER 8.44.4].
- 6.85. The ExA concluded that all Statutory Undertakers whose rights and apparatus would be interfered with have been dealt with, with the exception of BT plc/Openreach who are now listed in the BoR. Whilst s127 could apply to this undertaker, its provisions are not triggered in their case [ER 8.44.7]. Schedule 12 of the Order includes protective provisions for the Statutory Undertakers and the ExA was satisfied that the interference with apparatus and rights is necessary for the purposes of carrying out the proposed development [ER 8.44.8]. Accordingly, having regard to s138(4) of the Act the ExA recommended to the Secretary of State that the Order includes provision for the extinguishment of the relevant rights or the removal of the relevant apparatus [ER 8.44.9].

#### *Special Category Land*

- 6.86. CA rights are required over open space to enable delivery of Work Nos. 5 and 8. The ExA agrees with the Applicants that the exemption in s.131 (5) of the Act would apply. The ExA concluded that the test under s.132 (3) of the Act is satisfied, as the open space would be no less advantageous than it was before [ER 8.45.2].

#### *Overall conclusions on CA and related matters*

- 6.87. The ExA has concluded that compulsory acquisition powers were required for the purposes of carrying out the Proposed Development. It concluded that private losses to the APs would be outweighed by the public benefits from the Proposed Development and that there was a compelling case in the public interest to grant the compulsory acquisition powers and that the tests set out in sections 122(2) and 122(3) of the Planning Act 2008 were satisfied.
- 6.88. NGET, NGG, NR, Northern Gas, NPG, PDT and BT/Openreach are statutory undertakers. In each case the ExA concluded that the tests in sections 127 and 138 of the Planning Act 2008 were satisfied. The Secretary of State agrees and has concluded that with the inclusion of the protective provisions contained in the Order the compulsory purchase powers will not cause serious detriment to the carrying on of the relevant undertaking.

6.89. The Secretary of State is satisfied that there are no outstanding issues or reasons to refuse the Compulsory Acquisition and Temporary Possession powers as recommended by the ExA.

## **7. The Secretary of State's Consideration of the Planning Balance**

7.1. Where National Policy Statements have effect, section 104 of the Planning Act 2008 requires the Secretary of State to have regard to a range of policy considerations including the relevant National Policy Statements and marine policy documents, local impact reports, prescribed matters and any other matters that the Secretary of State thinks are important and relevant to the decision. Where section 104 does not apply, section 105 requires the Secretary of State to have regard to local impact reports, prescribed matters and any other matters that the Secretary of State considers are important and relevant to the decision.

7.2. As set out above, the Secretary of State concludes, as the ExA did, that NPS EN-1 can be applied to the whole of the Proposed Development and the application for consent can therefore be determined under section 104. As the ExA did, the Secretary of State also presents her findings in the alternative i.e. by considering the Specified Elements under section 105.

7.3. The Secretary of State notes that the Proposed Development should be decided in accordance with the relevant NPSs EN-1, EN-2, EN4 and EN5. The ExA had regard to the draft 2021 NPSs and the Secretary of State has given regard to the 2023 draft NPSs and agrees with the ExA that the draft NPSs can be considered to be important and relevant matters in respect of s104 and s105 of the PA2008. The North East Marine Plan provides support for the Proposed Development. The host local authorities also support the Proposed Development as confirmed by the LIRs and there is no conflict with the relevant development plans. No prescribed matters have been identified. Both the ExA and the Secretary of State have identified a range of important and relevant matters, namely energy and climate change legislation, and policy which postdate the publication of the energy NPSs in 2011, including the publication of the designated 2024 NPSs. The Secretary of State agrees that significant weight should be ascribed to these matters and that they represent important and relevant matters in the context of s105 of the PA2008.

7.4. All nationally significant energy infrastructure developments will have some potential adverse impacts. In the case of the proposed development, most of the potential impacts have been assessed by the ExA as having not breached NPS policy or those contained in the 2021 draft NPSs, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy.

7.5. The ExA considered that the urgent need for new electricity generating capacity (as set out in EN-1) and the urgent need for gas-fired electricity generation with CCS and CCS infrastructure (set out in 2021 draft EN-1) provide a strong case for the Proposed Development and gives substantial weight to the need for the Proposed Development. The Secretary of State notes that 2023 draft EN-1 provides the same support for the Proposed Development and the designated 2024 EN1 further strengthens this support by making all low carbon

infrastructure, including natural gas fired electricity generation which is CCR, a critical national priority (see para 4.11). This is in addition to the moderate beneficial weight accorded to the socio-economic effects arising from employment provision and training and skills opportunities available for the local population and the enhancements to biodiversity [ER 7.3.9].

- 7.6. Despite the future benefits the wider NZT Project could bring in terms of reducing CO<sub>2</sub> emissions, the ExA identified significant adverse effects in relation to the significant volume of GHG over its lifetime both when considered individually and cumulatively with the sector and ascribed this moderate weight in the planning balance. The Secretary of State, however, considers that the volume of GHG emissions carries significant adverse effects, in accordance with both the designated 2011 and 2024 and draft 2021 and 2023 NPSs (see para 4.56 above) and, therefore, ascribes this significant negative weight in the planning balance. Additionally, the development of the PCC Site would result in significant visual effects to recreational and PRoW users in a number of locations including Seaton Carew seafront, the England Coastal Path at Warrenby and Redcar seafront both during construction and when operational. The ExA, however, considers agreement of a high-quality final design and use of materials in accordance with the SPD and the principles of the Masterplan and Design Guide may assist in mitigation of such effects [ER 7.3.10].
- 7.7. Overall, the ExA considers that the Proposed Development would be in accordance with relevant NPSs and the benefits significantly outweigh the limited harms such that there is no conflict with s104(7) of the PA2008 [ER 7.3.12]. The ExA also notes that recent energy and climate change policy, including draft policy, constitute important and relevant matters which would justify the approval of the Specified Elements under section 105. The ExA concluded that the case for Development Consent is made [ER 7.3.13]. The Secretary of State agrees with the ExA that the benefits of the Proposed Development attract significant positive weight. She differs from the ExA in her conclusion that the adverse impact of GHG emissions attracts significant, rather than moderate, negative weight. She has considered and weighed the benefits and harms that have been identified and concludes overall that the benefits of the Proposed Development outweigh the harms. She notes that the Proposed Development would be in accordance with policy, including the NPSs. She agrees with the ExA that the case for Development Consent has been made.

#### Secretary of State's Conclusion and Decision

- 7.8. The Secretary of State has considered the matters discussed in the ExA's Report together with the representations received in response to the consultation letters of 10 March, 3 April, 16 May, 7 August, 23 August, 14 September 2023, 30 November and 20 December 2023.
- 7.9. For the reasons given in this letter the Secretary of State considers that there is a strong case for granting development consent for the Proposed Development. Given the national need for the development, as set out in the relevant National Policy Statements, the Secretary of State does not believe that this is outweighed by the adverse impacts set out above. The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting

development consent, including the modifications set out in section 9. In reaching her decision, the Secretary of State confirms regard has been given to the ExA's Report, the LIRs submitted by RCBC and STBC, the National Policy Statements, including the 2021 and 2023 draft NPSs and the designated 2024 NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 and section 105 of the PA2008. The Secretary of State confirms for the purposes of regulation 4(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

## **8. Other Matters**

### Human Rights Act 1998

- 8.1. The ExA notes that the draft Order would engage Article 1 of the First Protocol, Article 6 and Article 8 of the European Convention on Human Rights as given effect in the Human Rights Act 1998. The ExA was satisfied that in relation to the inclusion of Compulsory Acquisition and Temporary Possession powers in the recommended Order, any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest [ER 8.48.6]. The Secretary of State has considered the potential infringement of human rights in relation to the proposed Development, along with the significant public benefits arising from the making of the Order. She has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

### Equality Act 2010

- 8.2. The Equality Act 2010 includes a Public Sector Equality Duty (PSED). This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender reassignment; disability; pregnancy and maternity; religion or belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.3. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 8.4. The ExA considered potential equality impacts during the examination and within the report [ER 8.49.1-3.]. The ExA acknowledges the infringement of rights through Compulsory Acquisition and Temporary Possession powers however accepts that there is no evidence that the proposed development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not, or that there has been any lack of regard to the aims of the Equality Act 2010. The ExA was satisfied therefore that, in relation

to the inclusion of Compulsory Acquisition and Temporary Possession powers in the Recommended Order, that there is no evidence that the proposed Development would not accord with Section 149 of the Equality Act 2010.

- 8.5. The Secretary of State is confident that, in taking the recommended decision, she has paid due regard to the above aims when considering the potential impacts of granting or refusing the Application and can conclude that the Net Zero Teesside project will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that neither the grant nor refusal of the Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

#### Natural Environment and Rural Communities Act 2006

- 8.6. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.
- 8.7. The Secretary of State is of the view that the ExA’s Report, together with the Environmental Impact Assessment considers biodiversity sufficiently to inform her decision to grant consent to the Proposed Development.

#### Climate Change Act and the Net Zero Target

- 8.8. The Secretary of State has considered that the UK’s sixth Carbon Budget requires a 78% reduction of emissions by 2035 compared to 1990 levels. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 22 June 2021, following advice from the Climate Change Committee, the UK Government announced a new carbon reduction target for 2035 which resulted in a requirement for the UK to reduce net carbon emissions by 2035 from 78% below the 1990 baseline. The Secretary of State notes the Energy White Paper states that National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State does not consider that the amendment to the Climate Change Act 2008 has lessened the need for development of the sort represented by the Proposed Development which is, therefore, still in accordance with the designated 2011 and 2024 NPSs. Operational emissions will be addressed in a managed, economy-wide manner, to ensure consistency with carbon budgets, net zero and our international climate commitments. The Secretary of State does not, therefore need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments.

## The British Energy Security Strategy

8.9. The Secretary of State notes the support for new CCUS technology in the British Energy Security Strategy, which states:

*We will ensure a new lease of life for the North Sea in low-carbon technologies:*

- *delivering on our £1 billion commitment to 4 CCUS clusters by 2030, with the first 2 sites selected in the North East and North West currently proceeding through Track 1, with the Scottish Cluster in reserve*
- *the industrial clusters will be the starting point for a new carbon capture industry with a sizeable export potential, helping to create industrial ‘SuperPlaces’ in the UK*

8.10. The Proposed project will contribute to the East Coast Cluster.

## **9. Modifications to the draft Order**

9.1. Following consideration of the draft Order provided by the ExA the Secretary of State has made the following modifications to the draft Order:

- a. Amendments to the definitions in Article 2(1) (Interpretation):
  - i. the definition of “emergency” has been moved from Article 2(1) to Schedule 2 (Requirements) as this definition should apply specifically in relation to construction hours, in line with other DCOs;
  - ii. inclusion of definitions for “mean high water springs” and “Trinity House”; and
  - iii. amendments to the definitions of “CCP” to include a minimum capture rate, and to “maintain” and “statutory undertaker” for clarity.
- b. Amendments to Article 8 (Consent to transfer benefit of this Order) to correct the previous drafting which included a default power of the undertaker to transfer the benefit of the Order to a transferee or lessee without requiring the Secretary of State’s consent. Article 8(8) has been amended to require the Applicants to notify STDC prior to transfer or grant taking effect where the transfer or grant relates to the STDC are, and subparagraphs 14 and 15 deleted accordingly. The Secretary of State accepts STDC’s submission that it is reasonable for them to be informed prior to a transfer and considers that the requirement on the Applicants is not onerous.
- c. Amendment to Article 22 (Compulsory acquisition of land) to include Article 24 (time limit for exercise of authority to acquire land compulsorily), Article 28 (acquisition of subsoil and airspace only) and Article 30 (rights over or under streets) as further articles that Article 22 is subject to.
- d. Amendment to Article 31 (Temporary use of land for carrying out the authorised development) with Article 31(15) amended to state this article is subject to Article 43 (Crown Rights).

- e. Amendments to Article 32 (Temporary use of land for maintaining the authorised development) with Article 32(6) amended to remove the words “but the undertaker is not to be required to replace a building or any debris removed under this article” as this Article is about maintenance and does not give permission to remove either of these from the land; this permission is provided for by Article 31. Also, Article 32(14) amended to state that it is subject to Article 43 (Crown Rights).
- f. Amendment to Article 46 (Service of notices) to add a sub paragraph at paragraph 1 including another form of notice to be “by delivering it to the person on whom it is to be served or to whom it is to be given or supplied”.
- g. The following amendments made to Schedule 5, 9, 12 and 14 to reflect the change request made by the Applicants in April 2023 which has been accepted by the Secretary of State:
  - i. Deletion from Table 3, Schedule 5 (Access) of the entire first row containing the words “In the District of Redcar and Cleveland” in column 1, the words “Tees Dock Road / unnamed private road” in column 2, and the words “That part of the access in the area cross hatched in red at the point marked BO on sheet 4 of the access and rights of way plans” in column 3;
  - ii. Removal of plots 274 and 279 from Table 8 in Schedule 9 (Land of Which Temporary Possession May Be Taken) in the column entry entitled “Temporary use to facilitate access to and highway improvements (Work No. 10) in relation to the authorised development”;
  - iii. Deletion from paragraph 256 of Schedule 12 (Protective Provisions) of paragraph (i) from the definition of “diversion condition”; the definition of “Lackenby Gate”; “southern access land” from the definition of “proposed land”; “southern access route works” from the definition of “proposed work”; the definition of “southern access route land” and the definition of “southern access route works”;
  - iv. Deletion from paragraph 264(d) of Schedule 12 (Protective Provisions) of “the southern access route works”; and
  - v. Insertion of a new Table 13 in Schedule 14

## Schedule 1

- h. The final provision in Schedule 1 is amended to limit the scope of the further associated development that might be permitted. This is in line with the approach taken in other DCOs.

## Schedule 2

- i. Amendment to Requirement 3(12) to clarify the limits of the amendments that can be agreed between the Applicants and the relevant planning authority.

- j. Amendment to Requirement 10, taking into account the importance of this Requirement, to require the fire prevention method statement to be in place before work commences on the authorised development as a whole, rather than just with Work Nos. 1 and 7, given that other Works may also carry fire risks. Paragraph 1 also amended to require that fire prevention measures, detection measures and fire accesses are also maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the relevant part of the authorised development.
- k. Inclusion of paragraph 5 in Requirement 20 of the definition of “emergency”.
- l. Amendment to Requirement 31(3) to include the words “and Work No. 8 being connected to an operational storage site” in order to make it clear that the captured carbon will be exported to the storage site.

#### Schedule 11

- m. Amendment to paragraph 30 of Schedule 11(Deemed Marine Licence Under the 2009 Act: Project B) to include Work No. 8.

#### Schedule 12

- n. Various amendments have been made to the Protective Provisions in Schedule 12. These are discussed in Chapter 6.

#### Other changes

- 9.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interests of clarity and consistency. The Order, including the modifications referred to above is being published with this letter.

### **10. Challenge to decision**

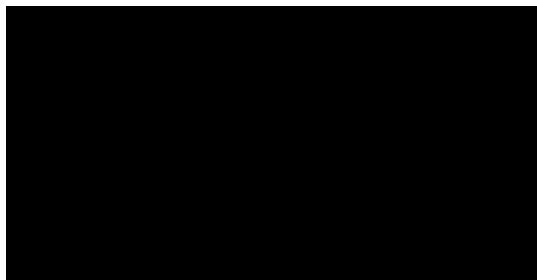
- 10.1. The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

### **11. Publicity for decision**

- 11.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 11.2. Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure

Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely



**David Wagstaff**

**Deputy Director, Energy Infrastructure Planning**

## ANNEX

### **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting or refusing development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/north-east/the-net-zero-teesside-project/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).**

## Glossary of Terms

Abbreviation	Reference
AA	Appropriate Assessment
AEol	Adverse Effect on Integrity
AGI	Above Ground Installation
AIL	Abnormal Indivisible Loads
ALARP	As Low as is Reasonably Practicable
AP	Affected Party
BAT	Best Available Technique
BAT-AELS	Best Available Technique – Associated Emissions Levels
BoR	Book of Reference
CA	Compulsory Acquisition
CBDP	Carbon Budget Delivery Plan
CCGT	Combined Cycle Gas Turbine
CCP	Carbon Capture Plant
CCR	Carbon Capture Ready
CCS	Carbon Capture Storage
CCUS	Carbon Capture Usage and Storage
CEPP	Climate Emergency Policy & Planning
CEMP	Construction Environmental Management Plan
CFL	CF Fertilisers UK Limited
CHP	Combined Heat and Power
CNSL	CATS North Sea Limited
CO	Carbon Monoxide
CO <sub>2</sub>	Carbon Dioxide
CTMP	Construction Traffic Management Plan
CWTP	Construction Worker Travel Plan
DAS	Design and Access Statement
DCO	Development Consent Order
DEMP	Decommissioning Environmental Management Plan
DIN	Dissolved Inorganic Nitrogen
DML	Deemed Marine Licence

DPA	Dispatchable Power Agreement
EA	The Environment Agency
ECC	East Coast Cluster
EP	Environmental Permit
FRA	Flood Risk Assessment
FTE	Full Time Equivalent
GHG	Greenhouse Gas
HDD	Horizontal Directional Drilling
HE	Historic England
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IAPI	Initial Assessment of the Principal Issues
IEMA	Institute for Environmental Management and Assessment
IP	Interested Party
LCA	Landscape Character Assessment
LSE	Likely Significant Effect
LIR	Local Impact Report
LVIA	Landscape and Visual Impact Assessment
MCA	Maritime and Coastguard Agency
MMO	Marine Management Organisation
NDHA	Non-Designated Heritage Asset
NE	Natural England
NEP	Northern Endurance Partnership
NGET	National Grid Electricity Transmission PLC
NGN	Northern Gas Networks Limited
NGT	National Gas Transmission PLC
NH3	Ammonia
NDHA	Non-Designated Heritage Asset
NOx	Nitrogen
NPG	Northern Powergrid (Northeast) PLC
NPL	NPL Waste Management Limited
NR	Network Rail Infrastructure Limited
NRMM	Non-road mobile machinery

NSIP	Nationally Significant Infrastructure Project
NSN	National Site Network
NSMP	North Sea Midstream Partners
NSTA	North Sea Transition Authority
North Tees Group	North Tees Group
NWL	Northumbrian Water Limited
NZT	Net-Zero Teesside
PA2008	Planning Act 2008
PDT	PD Teesport Ltd
PP	Protective Provisions
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
PUB	Powering Up Britain
R	Requirement
Ramsar Convention	Ramsar Convention on Wetlands of International Importance
RBT	Redcar Bulk Terminal Limited
RCBC	Redcar and Cleveland Borough Council
RIES	Report on the Implications for European Sites
R31	Requirement 31
SAC	Special Area of Conservation
SAM	Scheduled Ancient Monument
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SWMP	Site Waste Management Plan
STBC	Stockton-on-Tees Borough Council
STDC	South Tees Development Corporation
T&S	Transport & Storage
TCE	The Crown Estate
TP	Temporary Possession
TTWA	Travel to Work Area
TWF	Teesside Wind Farm Limited

UXO	Unexploded Ordnance
WFD	Water Framework Directive
WSI	Written Statement of Investigation
WTT	Well to Tank