



Connah's Quay Low Carbon Power

Applicant's Response to Legal Submissions on behalf of CESL Consultancy

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CONNAH'S QUAY LOW CARBON POWER

**APPLICANT'S RESPONSE TO LEGAL SUBMISSIONS ON BEHALF OF CESL
CONSULTANCY (EN010166-001075)**

Introduction

1. ■ Boswell and his organisation Climate Emergency Science Law (“CESL”) submitted legal submissions from ■ and ■ dated 27th March 2026 at Deadline 4 (“CESL Legal Submissions”).
2. Without prejudice to the adequacy of the Environmental Statement (“ES”) and environmental information already submitted, the Applicant has separately submitted responses which include additional environmental information dealing with CESL’s asserted concerns on three aspects of the ES and environmental impact assessment (“EIA”) of the Proposed Development. This document responds to the CESL Legal Submissions which claim there are “legal as opposed to subjective deficiencies” in the ES¹. For the reasons summarised below, there are no such legal deficiencies as asserted and the assertions to the contrary involve a misapplication of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the EIA Regulations”) and the relevant and now well-established jurisprudence.

The EIA Regulations

3. It is common ground that Regulation 4 of the EIA Regulations provides that development consent for EIA development cannot be granted unless an “EIA” has been carried out in respect of the application².
4. Regulation 3(1), however, defines “EIA” as having the meaning in Regulation 5. Regulation 5(1) identifies (so far as material) “the EIA” as a **process** consisting of three stages:

¹ See CESL’s Legal Submissions at para. 25(f).

² See CESL’s Legal Submissions at para. 7.

- a. the preparation of an ES by the applicant for the Development Consent Order (“DCO”);
 - b. the carrying out of any consultation, publication and notification as required by the EIA Regulations (or any other enactment); and
 - c. the steps required to be undertaken by the Secretary of State (in this case the Secretary of State for Energy Security and Net Zero) under Regulation 21 when making a decision in due course on the DCO application.
5. Again, it is common ground that Regulation 5(2) of the EIA Regulations identifies what is required of an EIA. But it is important to recognise the way in which that obligation is expressed, which (as the Courts have emphasised) introduces the requirement for professional evaluative judgment. Regulation 5(2) identifies (with emphasis added) that: “[t]he EIA must identify, describe and assess ***in an appropriate manner***, in light of ***each individual case***, the direct and indirect significant effects of the proposed development” on specified factors. These include “(c) land, soil, water, air and climate”. As set out further below, the terminology referring to an “appropriate” manner in each individual case requires professional evaluative judgment by competent experts and, in due course, an evaluative judgment by the relevant decision-maker. It is not purporting to be prescriptive.
6. As to the first stage of the EIA process identified in Regulation 5(1) – namely, the preparation of an ES – an ES is itself defined in Regulation 3 of the EIA Regulations as having the meaning given by Regulation 14.
7. Regulation 14(2) sets out requirements of an ES which again uses terminology requiring the exercise of professional evaluative judgment. The ES must include (amongst other things):
- “(b) a description of the likely significant effects of the proposed development on the environment”; and
- ...

“(f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected”.

8. To similar effect in calling for professional evaluative judgment, Regulation 14(3) identifies inclusion of (emphasis added): “*information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment*”.
9. Determination of matters such as the likely significance of any effects, or the information reasonably required in a particular case, or what reflects current knowledge and methods of assessment are evaluative matters for professional judgment ultimately for the Secretary of State.
10. Schedule 4 of the EIA Regulations (referred to in Regulation 14(2)(f) set out above) relates to information for inclusion in an ES.
11. Paragraph 1 of Schedule 4 deals with the description of the development including a description of “*the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used*”.
12. Paragraph 3 of Schedule 4 deals with the identification of a baseline scenario and an outline of its likely evolution without the development. Again, it is clear that this involves evaluative judgment as this is only required to be done: “*as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge*” (with emphasis added).
13. Paragraph 4 of Schedule 4 refers to the description of the factors specified in Regulation 5(2) “*likely to be significantly affected by the development*” including “*climate (for example greenhouse gas emissions)*”.
14. Paragraph 5 of Schedule 4 again refers to a description of the “*likely significant effects of the development*” resulting from specified factors including “*the impact of the project on*

climate (for example the nature and magnitude of greenhouse gas emissions)” and identifies that the description of the likely significant effects should cover “the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development.”

15. Paragraph 6 of Schedule 4 identifies that the ES should include a “... *description of the forecasting methods or evidence, used to identify and assess the significant methods on the environment, including details of difficulties (for example, technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.*”
16. Paragraph 7 of Schedule identifies that an ES should include a “*description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements*” and the description should “*explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases*”.
17. Regulation 14(4) identifies that to ensure the completeness and quality of the ES, an applicant must ensure that the ES is prepared by competent experts and is accompanied by a statement from the applicant outlining the relevant expertise or qualification of such experts. This has clearly been done by the Applicant in this case.
18. As to the second stage of the EIA process identified in Regulation 5(1), the process of consultation and publicity is principally dealt within in Regulations 12, 13, 16, 17 and 18 and is not in issue here.
19. As to the third stage of the EIA process, Regulation 21(1) stipulates what the Secretary of State must do in due course when making a decision in respect of the DCO. The Secretary of State must (so far as material here):

“(a) *examine the environmental information*”

that, of course, is a process that is already underway through the examination itself;

“(b) *reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination ...*”;

“(c) *integrate that conclusion into the decision as to whether an order is to be granted; and*”

“(d) *if an order is to be made, consider whether it is appropriate to impose monitoring measures.*”

20. Regulation 21(2) identifies that the Secretary of State’s reasoned conclusion in (b) must be up to date at the time that the decision to grant is taken and the conclusion “*shall be taken to be up to date if **in the opinion** of the Secretary of State it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the development described in the application*” (emphasis added). Again, this serves to emphasise the nature of evaluative judgments that are engaged by the EIA Regulations.

21. The term “environmental information” used in Regulation 21(1)(a) is defined in Regulation 3(1) as follows (so far as material):

““*environmental information*” means the environmental statement ... including any further information and any other information, any representations made by anybody required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the development ...”

22. This means that it is not simply the ES that comprises the “environmental information” but all the other information that falls within that definition.

23. The nature and consequence of EIA as a process therefore is one which involves the initial production of an ES (with publicity and consultation resulting in representations), and then consideration of all the resulting “environmental information” (which includes not just the ES, but any subsequent information and representations).

Case Law

24. These requirements have been the subject of repeated consideration by the Courts and some very well-established principles have now been established.
25. First, and fundamentally, it is now very clear that the **adequacy** of an ES in terms of its content and assessment is a matter for the decision-maker: see Sullivan J in *R(Blewett) v Derbyshire CC* [2004] Env LR 29 (“*Blewett*”) at [41], as subsequently endorsed by the House of Lords in *R(Edwards) v Environment Agency* [2008] Env. L.R. 34 at [38] and the Supreme Court in *R(Friends of the Earth) v Heathrow Airport Ltd* [2021] PTSR 190 at [143].
26. Second, the evaluative judgment as to the adequacy of an ES relates to all those matters which call for evaluative judgment in the Regulations. So, for example only, whether or not certain proposals should form part of a cumulative assessment or can be deferred to a later consent stage (*R(Together Against Sizewell C Ltd) v SSESNZ* [2023] EWCA Civ 1517 (“*Sizewell*”) at [57], [61]-[62], [92]-[97]).
27. Third, the nature of such evaluative judgment means that the law does not dictate the outcome of such judgments. So, for example, it is not the Court’s task on a legal challenge to adjudicate on the content of an ES unless there is some **patent defect** in the assessment, which has not been put right in the making of the decision (*R(Plan B Earth) v SST* [2020] PTSR 1446 at [137] in the Court of Appeal, a finding that was not affected by the later appeal to the Supreme Court).
28. Fourth, the difference between matters of evaluative judgment and matters of legal principle has been further clarified by the Supreme Court in *Finch*³. There, the Supreme Court identified that the question of whether something is or is not an “effect” of proposed development is an interpretative matter for the Court and is a legal question based on a question of causation⁴. By contrast, those things which require evaluative judgment remain matters for the decision-maker subject only to *Wednesbury* review, as identified by the

³ *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20.

⁴ See *Finch* at [65] and following.

Supreme Court in *R(Friends of the Earth)*⁵. The latter include, for example, the likely significance of an effect or the adequacy of the content of the ES itself.

29. So, in *Finch* Scope 3 emissions from burning fossil fuel were identified in law as a direct or indirect effect of oil extraction, where there was certainty that such fuel that was extracted would be burned. But importantly the Supreme Court affirmed that judgments as to the significance of any such potential effects remain matters of evaluative judgment for the decision-maker (*Finch* at [58]).

30. Fifth, the Supreme Court in *Finch* further went on to explain that material should only be included in an ES and taken into account in the EIA process if it is information on which a reasoned conclusion can properly be based, where conjecture and speculation have no place in the EIA process. If there is insufficient evidence available on which to found a reasoned conclusion that a possible environmental effect is “likely”, there is no requirement to identify, describe and try to assess this putative effect. The Supreme Court specifically identified that this same criterion “*must also govern, where a possible effect is regarded as “likely”, the nature and extent of the effect*”: see *Finch* at [77].

31. As Lord Leggatt stated (with emphasis added):

“76. The initial, information gathering stages of the process, including the preparation of the environmental statement, are thus directed towards the ability to reach a reasoned conclusion on the significant effects of the project on the environment. This is confirmed in article 5(1), which provides that the environmental statement shall “include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment.” Similarly, article 5(3)(c) provides that, “where necessary, the competent authority shall seek from the developer supplementary information, in accordance with Annex IV, which is directly relevant to reaching [a] reasoned conclusion on the significant effects of the project on the environment.”

*77. Implicit in these provisions, and in the aims of the EIA Directive, is the criterion that **material should be included in the environmental statement and taken into account in the procedure only if it is information on which a reasoned conclusion could properly be based. Conjecture and speculation have no place in the EIA process. Thus, if there is insufficient evidence available to found a reasoned conclusion that a possible environmental effect is “likely”, there is no requirement to identify, describe and try to assess this putative effect. This criterion must also govern,***

⁵ See footnote 1 above.

where a possible effect is regarded as "likely", the nature and extent of the assessment of the effect.

78. *There is here an area of evaluative judgment involved in determining the scope of an EIA. Judging whether a possible effect of a project is likely and capable of assessment may, depending on the circumstances, be a matter on which different decision-makers, each acting rationally, may take different views.*"

32. Lord Leggatt returned to this principle when considering why the underlying EIA Directive did not impose obligations which were impossibly onerous and unworkable in such assessment process at [167] (with emphasis added):

*"In particular, only effects which evidence **shows are likely to occur** and which are **capable of meaningful assessment** must be assessed."*

33. Lord Leggatt had already given examples of this application of evaluative judgment (so distinguishing between what is, on the one hand an effect (which is a matter of law), and on the other whether it is required to be subject of an assessment at [138] (with emphasis added)):

*"Give the agreed fact that all the oil produced would be refined, I see no reason why environmental impacts resulting from the process of refining the oil should not **in principle** fall within the scope of the EIA for the project of extracting the oil. There are, however, **potential reasons why the view might reasonably be taken that it was not necessary to include an assessment of such impacts in the EIA. One would be that there was insufficient information available on which to make a reasonable assessment of the relevant impacts. Another potential reason would be that, so far as it was possible to judge, such impacts were not themselves likely to be significant....**"*

34. Lord Leggatt in *Finch* also clearly affirmed that deciding whether an effect of a project is significant is an evaluative judgment:

"58. ...Deciding whether an effect of a project on the environment is "significant" clearly requires a value judgment and carries the potential for cases to arise in which different decision-makers may legitimately reach different conclusions without it being possible to say that any of them has made an error in interpreting or applying the term."

35. Sixth, these points were recently considered and applied directly by the High Court in *R(Luton and District for the Control of Aircraft Noise) v Secretary of State for Transport* [2025] EWHC 3206 (Admin) Lang J (“*LADACAN*”) at [60]-[85].
36. The claimant there sought to challenge a conclusion of the Secretary of State that whilst international inbound aviation emissions from an airport expansion were, necessarily an effect of that project, it was not possible to make a meaningful assessment of them when, in accordance with standard national and international practice, the appropriate benchmarks (such as the relevant carbon budgets) only calculated emissions for outward bound flights only. The High Court held that *Finch* concluded that the approach to the assessment of significance was a matter of evaluative judgment (see in particular Lang J at [70]-[71]).
37. The High Court in that case also applied the *Blewett* principle above regarding EIA being a process involving the initial production of an ES, publicity and consultation resulting in representations, and then consideration of the resulting "environmental information", which includes not just the ES, but any subsequent information and representations.
38. Seventh, where the exercise of evaluative judgment involves matters of technical scientific evidence, then the Court will apply an enhanced margin of appreciation when reviewing such a decision (see *R(Mott) v Environment Agency* [2016] 1 WLR 4338).
39. Eighth, the conclusions of an EIA do not dictate the outcome of a decision. EIA is a procedural obligation whereby decision-makers and the public are informed of the likely significant environmental effects of a project (*R(Boswell) v SST* [2024] EWCA Civ 145 (“*Boswell NH*”) at [11] and *Finch* at [62]).
40. Ninth, there is no set threshold which is to be applied in order to decide whether greenhouse gas (“GHG”) emissions are significant or not. A decision-maker has a discretion to decide to use benchmarks to contextualise emissions as a matter of their judgment (see *R(GOESA Ltd) v Eastleigh BC* [2022] EWHC 1221 (Admin) (“*GOESA*”) at [100] and [122-3]; *R(Boswell) v SSENZ* [2025] EWCA Civ 669 (“*Boswell NZT*”) at [79-80]; and *R(Bristol*

Airport Action Network Co-Ordinating Committee) v SSHCLG [2023] EWHC 171 (Admin) (“*Bristol*”) at [115]-[118]).

41. Tenth, accordingly where likely significant effects are identified, how they are weighed in the ultimate decision is also a matter for the evaluative judgment of the decision-maker subject only to *Wednesbury* review – see e.g. *Finch* at [3] and [58].
42. CESL refer to EIA being done by reference to a reasonable worst-case or a cautious worst-case (see *Rochdale* and *IPT*)⁶ and the obligation to take into account “all obviously material considerations”. However, those submissions conflate the question of principle as to an evaluative judgment as to the likely significance of an effect and whether it is capable of meaningful assessment (in line with the principles set out above) with the question of carrying out an assessment where there is a likely significant effect or one that is capable of assessment on a reasonable worst case basis and they fail to reflect or address the further well-established principle that follows below. Moreover, it is well recognised that the test of whether a consideration is “so obviously material” that it must be taken into account is the *Wednesbury* rationality test: see *R(Friends of the Earth) v Secretary of State for Transport* [2020] UKSC 52 at [116]-[122].
43. Eleventh, it is now well-established that the specific legal duties in section 13(1) of the Climate Change Act 2008 (“CCA 2008”) in drawing up policies and proposals relating to carbon budgets and the legal requirements of the CCA 2008 are different to those which arise in relation to decision-making of this kind: see *R(Global Feedback) v SSEFRA* [2023] EWCA Civ 1549 (“*Global Feedback*”).
44. Twelfth, and fundamentally, it is legitimate for the Examining Authority and Secretary of State to rely on the fact of the CCA 2008 and the legal requirements it imposed when taking planning decisions see *Bristol* at [138]-[145] and recently *LADACAN* at [137]-[147].
45. In particular, as a matter of national policy and law the Secretary of State is: (1) entitled to have regard to and rely upon control regimes outside the planning system when granting

⁶ See for example CESL Legal Submissions at para.11.

permission or consent; (2) there is no requirement to duplicate such controls which are often the responsibility of such controls; and (3) the Secretary of State should generally assume those regulatory process will operate effectively.

46. These principles derive from *Gateshead MBC v Secretary of State for the Environment* [1995] Env. L.R. 37, per Glidewell LJ at pp.49-50; *Cornwall Waste Forum St Dennis Branch v Secretary of State for Communities and Local Government* [2012] Env LR 34, per Carnwath LJ at [30], [34] and [38]; *R (Frack Free Balcombe Residents Association) v West Sussex CC* [2014] EWHC 4108 (Admin) per Gilbert J at [95], [100]-[104]); and more recently *Gladman Developments v SSCLG* [220] PTSR 129, per Lindblom LJ at [43]. These *Gateshead* principles were recently considered by Saini J. in *R (APT) v Secretary of State for Transport* [2025] EWHC 1992 (Admin), at [48], as followed Lang J in *LADACAN*.
47. The *Gateshead* principles are not confined to cases of pollution control regimes: see Sullivan LJ in *R (An Taisce (The National Trust for Ireland)) v Secretary of State for Energy and Climate Change* [2014] EWCA Civ 1111 ("*An Taisce*") at [46]-[51]. The decision-maker is entitled to "*have regard to, and rely upon, the existence of a stringently operated regulatory regime for future control*" (*An Taisce*, at [46]).
48. The CCA 2008 imposes duties on the Secretary of State for Energy Security and Net Zero: (1) to ensure net zero GHG emissions by 2050 (section 1); (2) to set carbon budgets covering successive five-year budgetary periods with a view to meeting the commitment to achieve net zero (sections 4, 8 and 10); (3) to prepare such proposals and policies as the Secretary of State for Energy Security and Net Zero considers will enable carbon budgets that have been set to be met (section 13); and (4) to ensure that the UK's net GHG emissions for a budgetary period do not exceed the relevant carbon budget (see section 4(1)(b)).
49. Amongst other things, Part 3 of the CCA 2008 provides for trading schemes relating to GHG emissions. The Greenhouse Gas Emissions Trading Scheme Order 2020 was made pursuant to section 44 and Part 3 of the CCA 2008 and established the ETS. The ETS is a 'cap and trade' system designed to reduce GHG emissions. The allowances under the ETS will be aligned with UK carbon budgets to achieve net zero by 2050.

50. In *Boswell*, at [81], the Court of Appeal held that it is not unlawful to conclude, in planning cases, that GHG emissions will be managed across the economy to ensure consistency with carbon budgets and the 2050 net zero target.

51. In the *Bristol* case, the High Court considered the CCA 2008 and the argument advanced by the claimant that the Secretary of State had erred in treating the CCA 2008 as a "*separate pollution control regime*" for the purposes of the National Planning Policy Framework. The High Court rejected the argument that the CCA 2008 was "*programmatic in nature*" and distinguished *Gladman*, which was concerned with the broad provisions of the Air Quality Directive, and air quality issues which have "*a significant and discrete local element*" (at [139]). In contrast, the specific duties in the CCA 2008 require the setting of carbon budgets and trading emission schemes at a national level which are designed to control emissions.

52. The Examining Authority and the Secretary of State are therefore entitled to rely on the proper operation of the regime in the CCA 2008, which will necessarily provide controls on GHG emissions nationally (including those from the Proposed Development) in any event, when reaching conclusions on the impact of GHG emissions in this specific case.

Application to CESL Legal Submissions for the Proposed Development

53. In light of the various legal principles set out above, the Applicant submits that CESL's summary of the relevant legal submissions in paragraphs 23 to 24 of its submissions is incomplete and does not reflect the basic points as to the evaluative judgments required on the process of EIA.

54. CESL's criticisms are directed at the approach to assessment on lifecycle GHG emissions so far as they relate to: a) upstream methane emissions; b) the methane climate metric (of GWP 100); and c) an assumed CO₂ carbon capture rate⁷.

55. CESL's contentions on each of these three elements are then summarised in paragraph 6 of its Legal Submissions and it is asserted that the "*simple point is that unless the Examining*

⁷ See CESL Legal Submissions at para.5.

Authority and the Secretary of State obtain sufficient information regarding the uncertainties surrounding upstream emissions, the climate metrics (particularly with respect to the short-term impacts of methane) and the Scope 1 combustion emissions, they are at risk of making an unlawful decision”.

56. That “*simple point*” is incorrectly framed as a matter of law in light of the legal principles set out above. The adequacy of the ES is a matter of evaluative judgment for the Secretary of State subject only to challenge on *Wednesbury* rationality grounds and this is not altered by framing the question as concerning “*sufficient information*”. Likewise, uncertainties that may exist are an inevitable part of an assessment process, but the fact that uncertainties may exist does not alter the fact that the EIA is concerned with likely significant effects, not every conceivable uncertain effect, nor that conjecture and speculation have no place in the EIA process. For example, if an effect is not considered to be a likely significant effect, it is not required to be assessed and if an effect is not considered to be capable of meaningful assessment, it is not required to be assessed. The Examining Authority and Secretary of State are entitled to consider and decide on what methodology to use where there may be differences in view about that.
57. Moreover, the CESL Legal Submissions do not grapple at all with the basis point that the Examining Authority and Secretary of State are entitled to rely upon the separate regulatory control over emissions that applies under the CCA 2008 and the ability to assume that this control regime will operate effectively. Thus, for example, even if it were the case that the carbon capture rate for the Proposed Development did not in practice operate at 95% or above (despite the design requirement), the Examining Authority and Secretary of State are entitled to have regard to the existence and to assume the proper application of the separate regulatory controls that will apply to emissions at a national level under the CCA 2008, which will necessarily ensure that the relevant legal targets will be met.
58. Turning to various assertions then made in CESL’s Legal Submission at paragraph 25 and following:
- a. As to paragraph 25a) there is no basis for suggesting that the Applicant’s assessment is based on “*out-of-date*” upstream emissions, or out-of-date climate metrics,

particularly with respect to the short term impacts of methane. To the contrary (as identified in the Applicant's substantive response), the approach to upstream methane emissions reflects the Government's own current statistics (for example as to the share of LNG in the UK supply) and the approach to climate metrics (and in particular GWP 100) reflects both the current industry approach and standard, where adoption of a different metric then creates the basic problem of not having any relevant benchmark against which to assess. This is the equivalent problem which arose (in a different context) in the previous *Boswell* case and *LADACAN*. A decision-maker is not just entitled to apply benchmarks which do exist (and therefore depend upon application of a relevant methodology such as GWP 100) to enable like for like comparisons, but a decision-maker is entitled to conclude that it is not necessary or appropriate to apply a different methodology where there is no relevant benchmark that can be applied for further meaningful assessment of the quantitative results to take place for that methodology. This is a lawful approach to take under the EIA Regulations. As the Applicant has demonstrated in its other information, even if one calculates methane emissions by reference to a different metric GWP20 (as has been done), one is left with no relevant benchmark against which one can meaningfully assess the results. CESL is simply repeating the same arguments in another form, which were rejected in *Boswell* and in *LADACAN* previously.

- b. As to paragraph 25b), it is asserted that if the decision-maker were to choose to assess upstream emissions against the UK's carbon budgets, this would risk irrationality. This misstates the nature of the problem that arises (as summarised above). In the absence of any relevant benchmark against which to assess emissions on a like for like basis, it may not be possible to carry out further meaningful assessment of certain emissions.
- c. As to paragraph 25b)i) and ii), CESL acknowledge that the upstream WTT factor used by the Applicant has been taken by the conversion factor dataset issued by the Government but then it asserts that this does not adequately reflect foreseeable upstream variability, where this may vary by reference to supply source and source intensity. Again, this submission fails to reflect the fact that the Applicant has specifically recognised the scope for such variability, but as a matter of professional judgment has explained why it is therefore appropriate to apply the Government's

chosen dataset. Entering into further speculation as to the degree of variability (up or down) enters into exactly the area of conjecture and speculation which has no place in the EIA process. As to the reference in paragraph 6 of Schedule 4 of describing difficulties and main uncertainties involved, that is exactly what the Applicant has done and which is inherent in the Government setting conversion factor datasets to use.

- d. As to paragraph 25b)iii) and the notion that the variability needs to be “*understood and grappled with*” and the potential for under-assessment, that is simply a repeat of the preceding point. The fact of potential variability (up or down) is inherently recognised in the Government’s own identification of a conversion factor dataset to use. It is plainly wrong to suggest that the EIA Regulations prescribe what methodology or dataset to use. This is a classic example of legitimate professional judgment being used to select a dataset to carry out an assessment. Without prejudice to that, of course, the Applicant has produced further calculations which show the effect if one were to enter into that realm of conjecture and speculation which is not required in the EIA process. Therefore, the Examining Authority and Secretary of State can see the reported effects if one were to use a different dataset to that recommended by the Government and the relevant comparison with the baseline.
- e. As to paragraph 25b)iii), CESL refer to the potential implications of under-assessment “*for other additional policies and projects that may be required to make up for any shortfall in the UK’s carbon budget delivery plan*”. This submission is misconceived as it runs squarely against the principle in *Global Feedback* that the decision-maker is not concerned with the exercise involved in s.13 of the CCA 2008. But in any event, it fails to reflect the principle affirmed in *Bristol* and *LADACAN* that the Examining Authority and Secretary of State are entitled to take account of the regulatory control mechanism that applies under the CCA 2008 by which there is a separate regime in place both to monitor and regulate GHG emissions under which legal compliance with the UK carbon budgets will necessarily be secured.
- f. As to paragraph 25b)v) and the apparent request for “*sensitivity testing*”, this has become academic given that the Applicant has (without prejudice to its position as to the adequacy of the ES) provided such “*sensitivity testing*”. So the Examining Authority and the Secretary of State have the reported information as to what the GHG

emissions would be if one were to assume what the Applicant considers to be “unlikely” or “unrealistic” or speculative scenarios in the EIA process, and then considers such effects against the relevant baseline. The Examining Authority and the Secretary of State, therefore, have such information before them, but that is submitted without prejudice to the point that these scenarios are not “*reasonable worst-case scenarios*” as asserted by CESL.

- g. As to paragraph 25c) and the submissions on short-term methane impacts, the Applicant’s own assessment recognises the nature of methane and its potential effects, but has addressed fully the basic problem of purporting to assess such effects against a 20 year horizon rather than a 100 year horizon as industry practice and past decision-making has done. Again, the Applicant has provided an assessment if one were to seek to look at effects against a 20 year horizon, but the Applicant has also pointed out the basic fallacy of that exercise in the context of application to relevant UK benchmarks, the issue which arose in a similar context in the *LADACAN* case. Both the Applicant and its competent professional experts, and the Secretary of State in the exercise of evaluative professional judgment, are entitled to conclude that the established practice of assessment against a 100 year horizon is the appropriate one. The Examining Authority and Secretary of State have the without prejudice results of looking at a shorter horizon. As pointed out, there is no relevant benchmark against which to make a further meaningful assessment of those quantitative results.
- h. As to paragraph 25d) and the assumed minimum 95% CO₂ capture rate, this reflects what is now prescribed as the design requirement for the carbon capture plant and is therefore unquestionably a *Wednesbury* rational basis for considering likely significant effects, or realistic worst-case scenarios, and assessment against the design requirement reflects the approach that was adopted for both Net Zero Teesside and Keadby 3. There is therefore no requirement to assess a carbon capture rate at a lower percentage than this because of this design requirement. However, without prejudice to that basic point, the Applicant has provided the results if operating the plant at a lower carbon capture rate (indeed down to 0%) so that the Examining Authority and the Secretary of State can see the consequential emissions which (unsurprisingly) would increase proportionately with a reduced percentage in carbon capture. This does

not make these carbon capture rates the “likely” significant effects of the Proposed Development which is being designed to achieve at least a 95% carbon capture rate. However, if it were to operate at a lower rate, one can see the results and compare them against the relevant comparative baseline of the existing generator that has no carbon capture plant at all.

- i. It is also asserted in paragraph 25d) that the environmental permit regime and the ETS do not secure the bounds of reasonably foreseeable operational performance against the project’s lifecycle. This betrays a misunderstanding of the relevance and role of those regulatory controls. As set out in light of *Bristol* and *LADACAN* and on the application of the *Gateshead* principle, the Examining Authority and Secretary of State are entitled to take account of the existence of other regulatory controls over emissions, including that which is provided by the environmental permit and, more fundamentally, that which applies by way overarching control through the application of the CCA 2008, with the ETS, and the legal obligations that will exist to ensure that the carbon budgets and net zero requirement will necessarily be met. The basic and incontrovertible point is that even if the Proposed Development were to operate at a lower carbon capture rate than 95%, such GHG emissions will be reported and capable of control through the environmental permitting process, may be controlled through the ETS and contractual arrangements, but in any event such emissions will necessarily have to be taken into account and balanced in the UK’s carbon budgets and the range of mechanisms available to ensure compliance with the UK’s legal obligations. CESL’s Legal Submission do not address this point.

- j. As to paragraph 25e), CESL acknowledges the “*high degree of discretion*” afforded to the assessment of and weight of emissions. For the reasons summarised above, the approach to assessment adopted by the Applicant in the ES and generally in the additional environmental information provided falls well within the bounds of a rational approach to the assessment and methodology adopted and represents a rational view of an “*appropriate manner*” or sufficiency of information even without the additional environmental information provided (without prejudice) by the sensitivity testing requested. However, the point is now essentially academic given that the

Applicant has provided the additional environmental information by way of “*sensitivity testing*” in any event.

59. For these and the other reasons identified elsewhere by the Applicant, the Applicant submits that its approach to the ES is legally compliant with the EIA Regulations and the Examining Authority and Secretary of State did not require any additional information and there were no “*legal deficiencies*” in the assessment previously provided. Without prejudice to that, the Applicant has provided the additional environmental information requested so the criticisms do not go anywhere as a matter of fact anyway. The additional environmental information itself only serves to emphasise the benefits of the Proposed Development in terms of GHG emissions, which is unsurprising given that it is development to provide for carbon capture in the generation of electricity and which is critical national priority infrastructure.



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